

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, March 1, 2021

6:30 PM

Remote Meeting via Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Arthur Gaudio
Jane Taylor
Michael Welsh

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 6:32 PM.

1) Introduction of Board Members

Roll call was conducted.

2) Minutes of the Previous Meeting – February 1, 2021

Ms. Taylor made a motion to approve the minutes of February 1, 2021. Mr. Hoppock seconded the motion, which passed by unanimous vote with Mr. Welsh abstaining.

3) Unfinished Business

John Rogers, Zoning Administrator, stated there is nothing to report.

4) Hearings

- a. **Continued ZBA 21-04:/ Petitioner, Nathan and Karen Manlove of 188 East Shore Rd., Swanzey, NH, represented by Chad Branon of Fieldstone Land Consultants of Milford, NH, requests a Variance for property located at 163 Washington St., Tax Map #553-011-000; that is in the Office District and owned by Kontor Partners, LLC of 188 East Shore Rd., Swanzey, NH. The Petitioner requests a Variance to**

allow eight parking spaces where the minimum of 13 is required per Section 102-793 of the Zoning Ordinance with one parking space for every 200 square feet of gross area for an Office Use.

Chair Gorman asked to hear from City Staff. Mr. Rogers stated that this property is on the right-hand side heading north on Washington St. He continued that it is in the Office District where the proposed use is an allowed use. It does have the requirement for 200 square feet of gross area for each parking spot, which is why the Applicant is before the Board. This was originally a single-family home and in 1970, it received a Special Exception to become a funeral home. Mr. Rogers stated he was not able to locate a good copy of the Zoning Code from the 1970s, but he assumes the funeral home business was an allowed use at the time with a Special Exception. The building was converted back to a single-family home in 2003, which is what the current use is. He showed a graphic of the property.

Mr. Welsh asked that when the property was a business, prior to being a single-family home, was the parking in compliance with the Code. Mr. Rogers replied that the plan from the 1970s required the business to have 19 parking spaces on site. He does not know how that worked and if there was stacked parking though he speculated that there was a different impact when it was a funeral home as opposed to an office with many people who would come at the same time and leave at the same time.

Ms. Taylor asked if it is correct that the actual use itself, as an office building, is permitted in this district and it is only the parking that the Board is addressing. Mr. Rogers replied that is correct. Ms. Taylor stated that her other question might be for the Applicant. She noticed that there was an expansion of the impervious coverage from the application and asked if Mr. Rogers knows where that is as well as asking if it is a building expansion or just blacktop. Mr. Rogers replied that he will let the Applicant speak to that and correct him if he is wrong, but his understanding is that it would be for pavement installation for parking. Ms. Taylor asked if the percentage is still within the Code limitations. Mr. Rogers replied yes, that is what their plan is showing.

Mr. Hoppock stated that he is looking at the picture of the property and the driveway looks like it is a shared driveway with the neighbor on the right. Mr. Rogers replied that is correct.

Chair Gorman asked if there were any further questions. Hearing none, he opened the public hearing and explained the procedures for members of the public to participate. He asked to hear from Chad Branon.

Chad Branon, Civil Engineer with Fieldstone Land Consultants, of 206 Elm St. in Milford, NH. He continued that he is representing Nathan and Karen Manlove tonight with their Variance application. The Manloves are proposing to convert the property back into a commercial use, which would make the property more conforming from a use standpoint, as this property is situated in the Office Zone. The proposed use will be a professional office. The conversion will consist of creating seven offices on the interior of the existing, Victorian-style main structure. Those seven offices will share a conference room, kitchen, and bathroom facilities, with the office space will be occupied primarily by therapists. This type of office use is by appointment only and will not be open to the public. They consider that a unique characteristic, therefore

requiring less of a parking demand, which they think is consistent with their request before the Board.

Mr. Branon continued that Section 102-793 of the Zoning Ordinance deals with the minimum parking requirements for various uses and as was stated earlier, there is a 200 square foot requirement for gross floor area for the office use. The gross floor area that is not shared or common space or used for storage space inside the building as proposed for this conversation is about 2,410 square feet and that requires 13 parking spaces per the City Ordinance. The subject property currently proposes eight parking spaces, which is demonstrated on the exhibit plan they submitted with the application. This is less than the required minimum, and as such, they are before the Board seeking relief from the parking requirements in the form of a Variance.

Mr. Branon stated that he will go through the five criteria for the Variance.

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

Mr. Branon stated that granting this Variance would allow the property to be converted back to a conforming use, as the site is situated in the Office Zone. Granting this Variance would also allow for the productive use of the existing property. Granting this Variance would not be contrary to the public interest because this project will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. This proposal will be in harmony with the surrounding properties.

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

Mr. Branon stated that the proposal is consistent with the surrounding areas and would bring the site into conformance with the underlying Zoning. The project will meet all the dimensional standards and be in harmony with the neighborhood. This project will increase the City tax base while having no measurable negative impacts to the public. The proposed use for the project as a professional office that operates by appointment only is not open to the public is unique and will not require the same parking demand as a standard office space. This proposal will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. For these reasons, they believe that granting the Variance would observe the spirit of the Ordinance.

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

Mr. Branon stated that granting this Variance would allow the landowner to reasonably utilize the property with a use that is compatible with the local Zoning. Granting this Variance would do substantial justice, as there would be a clear benefit and gain to the owner, his client, with no loss to the public. The guiding rule on determining substantial justice is weighing the loss to the individual versus the gain to the public, and it is their belief that a denial of this Variance request would be an injustice to his client, as there would be no apparent gain to the public by denying this application.

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

Mr. Branon stated that the subject property, as was stated previously, had been used commercially in the past and has most recently been used as a single-family home. The proposal before the Board, converting the property into professional office space, will be in harmony with the neighborhood and is a less intense use than a standard office or other permitted uses in the zone. The owner will be making improvements to the property and this will presumably increase the value of the subject property. They do not believe that the request for reduced parking in this Variance application would have any negative impacts on the surrounding property values and for these reasons, they do not believe that the conversion of this property to a conforming office use would have any negative impacts on the surrounding property values.

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. Branon stated that the subject property is a .31-acre site with existing improvements. He continued that these improvements include a 5,300 square foot Victorian-style main structure and a detached, two-car garage. The size of the property, along with the size of the existing improvements and the location of the existing improvements, restrict his clients' ability to conform to Section 102-793 of the Zoning Ordinance and the minimum parking requirements for an office use. The proposed use for the property is a professional office, which will include seven offices with a shared conference room, kitchen, and bathroom facilities. The office will be by appointment only and will not be open to the public. Due to the unique characteristics of this office use, there is less of a parking demand and the site will provide ample parking for the use as proposed. There is on-street parking available along the frontage of the property, which is utilized for businesses in the area. The conversion of this site into a conforming office use will not require significant site improvements, will not burden local services, and will not be a detriment to the surroundings. This proposal will likely increase the City's tax base and will be consistent with its surroundings while providing a much-needed service to the community. For these reasons, they do not believe that a fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property. The design of this site and the proposed use best fits the specific conditions of the property due to the size and location of the existing improvements and a denial of this Variance would prevent reasonable conforming use from occupying the site.

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

Mr. Branon stated that they believe the proposed use is reasonable because granting this Variance would allow for the productive use of the existing property with a conforming use. He

continued that the conversion of the property from residential to office brings the site into conformance with the underlying zoning, which is Office Zone. The proposed use as an office space would be in harmony with the neighborhood and many of the surrounding properties. The conversion of the property into an office space would not be contrary to the public interest because this project will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public. In their opinion, this proposal would, observe the spirit and intent of the Ordinance. The project would have no measurable impacts on the surroundings or their property values, and the proposal would allow a less intense office use to occupy and utilize an existing building along Washington St., which would maintain the beautiful setting along this section of Washington St. and allow the nice Victorian-style structure to be reasonably repurposed. For all of those reasons they believe the proposed use is reasonable.

Chair Gorman stated that he is trying to understand the parking situation. He asked if it is correct that 13 spaces are required and Mr. Branon's clients have eight. Mr. Branon replied that is correct. Chair Gorman stated that if there will be seven office suites, and thus seven individual tenants who each have a car, that really leaves only one parking space for any clientele. If there were seven business entities, he would have to assume for their success, there would need to be much more parking spaces than that. He does see that this is becoming a more conforming use as the property was already in existence and already structured this way many years ago, leaving certain things beyond the Applicant's control. Chair Gorman asked how they propose making the parking numbers work given that the on-street parking is not that abundant.

Mr. Branon replied that he has spent a great deal of time reviewing the parking with his clients, talking about the proposed office use and how best the proposal will work. He continued that generally speaking, therapists' hours of operation are varying throughout the day. It is not likely that all seven offices would be occupied at the same time. It is a by-appointment business, typically. There are eight parking spaces proposed on site, and some parking available on Washington St. as well, and three parking spaces along the frontage of the subject property. He has visited the site many times and has parked on Washington St. every time; the parking in front of the property has been available all of the times that he has been there. They have not considered those with this Variance application because they currently are not allowed to utilize off-street parking. They do have two garage parking spaces that they have not accounted for in the parking calculations, and in working with staff after they submitted the application, they understand that they technically can count those. Practically speaking, there will be ten parking spaces if they are able to utilize those interior garage spaces. That does change their request slightly but they are confident that the site would function with eight spaces, which is why they did not make a formal request to modify those numbers. That is a function of the intensity of the use, the varying hours that each therapist works. Certainly, some of their work can happen remotely and they do not have to be in the office. They may only be arriving at the office for appointments with clients and not doing all of their work there throughout the day.

Chair Gorman thanked Mr. Branon and stated that the commentary about the garage has helped in his understanding.

Ms. Taylor asked that unless they have already discussed the comings and goings of the tenants with the tenants how does Mr. Branon or his clients know that the tenants will not be there. She continued that raises a concern for her. Someone referenced earlier that the parking was shown on the plan, but she cannot tell where they are even going to put eight spaces from the plan the Board was given. She asked Mr. Branon to describe that.

Mr. Branon stated that as you come in on the shared driveway off Washington St., they are proposing three parking spaces on the left-hand side, and those are complying spaces. They propose them behind the front building line. As you, head toward the garage there are two parking spaces to the right-hand side and then they are extending and constructing a parking area to the north of the existing garage, and that will be an access aisle and three additional parking spaces, which includes one ADA-acceptable space. Then there is a walkway on the north side of the existing structure, which will provide ADA-compliant access to the building, which is a design requirement. That totals eight spaces, with the two garage spaces that they technically are allowed to use as well.

Ms. Taylor asked, regarding the two spaces by the garage, if it is correct that one of them would be blocking one portion of the garage. Mr. Branon replied that they are currently reviewing this with staff as part of site plan review, and there is some talk about whether they are allowed to depict the garage spaces as employee parking. He continued that he thinks that one of the spaces may just slightly encumber the garage door so they may have to make adjustments.

Ms. Taylor replied that potentially, they would either have to give up a space in front of the garage door or one of the garage spaces. Mr. Branon replied that is correct, and that is part of the reason why they left the request at eight and did not request a formal modification. He continued that he feels they have to have some flexibility in working through the site plan review process as well. Ms. Taylor stated that maybe they could potentially stretch it to nine spaces.

Ms. Taylor asked if the parking areas, which she had not understood to be the parking spaces, meet all the setback requirements. Mr. Rogers stated that as Mr. Branon mentioned, his clients also have an application before the Planning Board, thus, there are a set of plans that are being reviewed for those specific things. They are waiting for feedback from Mr. Branon about that; to be sure, the setback on the south side is being met, needing to have a five-foot setback from the property line.

Ms. Taylor stated that she knows they are not allowed to include calculation of on-street parking, but realistically, they all know that people park on Washington St. She continued that her concern with that potentially being client parking for the office tenants is that, although she cannot tell from the plan, the elementary school has a drop-off lane and a bus lane that goes in front of several of those houses. She does not know absolutely that it goes all the way to the subject property but that is a concern, because obviously two or three times a day the pick-up, drop-off, and busses take up a lot of that Washington St. frontage.

Mr. Branon stated that the parking layout does adhere to all of the setback requirements. Those spaces are conforming as it pertains to the requirements. In front of this property, there is on-street parking. He believes that the condition Ms. Taylor is referring to happens just beyond this

site. They do not believe that this use, as proposed, technically needs the on-street parking. They think it is great that it is there as an option for this business, if the application is successful this evening, and for all the businesses along Washington St. Nathan Manlove can address the use of the office as he has the comfort level of how the operations would work within this building.

Nathan Manlove of 188 East Shore Rd., Swanzey, stated that he is one of the owners of the property, and it would be his business moving over there. He continued that right now his business is renting space from the abutter, owned by Sunspace Realty. Speaking to the use of the building, as Mr. Branon mentioned earlier, it is very common for therapists to work varying hours and it would be incredibly rare for all seven to be there at once. Some therapists take days off every single week, some work evenings, some work weekend hours, etc. The other important aspect to note is that with the required changes this year, therapists are doing a significant portion of their work via telehealth. While that will change and there will be clients coming back into office spaces, telehealth is not leaving us. Thus, the actual amount of clients coming to the practice is very limited, which helps the parking concern. For a point of reference, in his caseload he has one client who comes to the office once a week, at this current time; all of his other clients are remote.

Mr. Gaudio stated that he wants to pursue the number of people here a little more. He continued that he understands that each of these therapists are not likely to have patients there all the time, but he wonders about how often they will be leaving the premises and coming back. Even if they were, if he were a tenant, he would be upset if he did not have a parking space and had to search for an on street space. Mr. Gaudio suggested that they might require a reserved parking space as part of their lease though that still does not account for all of the possible employees. He assumes there is going to be at least one receptionist with possible one or two employees that would be on site. That aside, they have anywhere from one to seven patients there, and if it is like any other medical office, there is likely to be a waiting room and there could be a few others there. He is concerned at the possible high number of necessary spaces as well as one of those spaces is a handicapped space, not available to just anyone. Mr. Gaudio stated that it seems like there are many people who would be parking along the front of the premises.

Mr. Branon stated that what is important here is that there are seven offices proposed in this building, and the operations of this office are unique. As Mr. Manlove stated, he currently runs his practice next door on a site that has a similar amount of parking, if not less, when you start contemplating other tenants and so on in that particular site. He continued that they are trying to represent the use that they are proposing on this property. They have his testimony, which is based in large part on his understanding of his clients' business, but Mr. Manlove has stated for the record how his business operates and what he is anticipating on that the site as designed and as requested. They do not anticipate any issues. This is not a medical office or a dental office; it is nothing that has that volume of people with that number of appointments proposed. Unfortunately, regulations are written to cover a broad spectrum of uses. In this case, this use is unique. It is unlike many office uses where it is a professional setting, by appointment only, and as Mr. Manlove stated, it often might not be 8:00 AM to 5:00 PM; it can be off hours or evenings. Thus, you would not have the intensity you would have in a typical office setting throughout the day, and because of that, you do not have the same parking demand or parking

need. When Fieldstone Land Consultants proposes a project they present something they believe will be supported by the infrastructure, whether that is parking, drainage, or all these other details they are depicting on the plan, and they have confidence that this project and this proposal will function appropriately on this site. The on-street parking is just an added service to all of the businesses on Washington St. It is not something that they are planning on with this proposal. This is a unique business, unique use, and unique proposal, and that is why they think this particular use deserves some consideration in regards to the relief that they are requesting.

Chair Gorman stated that great lengths have been gone to in order to explain that this office use is exceptional, in that both the tenants and their clients will be more sporadically present on the property. He continued that from a zoning perspective, the only use they are approving is "office," not specifically, whether it will be appointment-only or how those office tenants will conduct their business as that is not under the Board's purview. His question is whether Mr. Branon or the property owner would take exception to the Board placing some sort of appointment-only condition to this Variance, if granted. Mr. Branon asked Karen or Nathan Manlove to answer that. Mr. Manlove replied that they would allow or accept that.

Chair Gorman asked if members of the public had any questions or comments and explained the procedures for participation. He asked Ms. Marcou if there were any members of the public calling in and wishing to speak. Ms. Marcou replied no. Chair Gorman stated that he does not see any attendees raising their hands. He closed the public hearing and stated that the Board will discuss and vote upon ZBA 21-04.

The Board deliberated on the criteria.

Mr. Gaudio stated that he wishes he could be more certain about the actual number of parking spaces. He continued that he understands the fact that this business will work by appointment only and that perhaps not all of the tenants would be there at the same time, but he is still concerned that they would have these spaces on the premises and the parking along the front be consumed and spread out from there. He is not sure what the actual parking space numbers might be and he wishes he could be more certain and finds this to be a problem. If there were too many, it might be contrary to the public interest.

Ms. Taylor stated that she has similar concerns to Mr. Gaudio. She continued that one of the issues that the Board has frequently before them is the intensity of the use. She has not heard any concerns about this building reverting to an office use, but again, it is the intensity of use that is creating the parking issue, and she has concerns that it is not necessarily in the public interest to overburden the parking situation. Especially since it is directly across from other streets, and very close to the elementary school where there are a lot of parking and traffic issues. She has real concerns that this request is not necessarily in the public interest.

Mr. Welsh stated that he shares his fellow Board members' concerns. He continued that he imagines to this site's previous use as a funeral home, which was a very intense use. He also stated how hard it is to imagine compliant use with the standard of the public interest; however, he thinks there are by-appointment office buildings up and down this part of Washington St., which seem to operate quite well with the nature of the neighborhood. Mr. Welsh stated that

there are businesses also on Washington St. closer in town, which have no parking at all and seem to operate quite well which helps quiet his concerns. In addition, the possibility that the Board may assign some condition, which the Applicant stated they would agree to, convinces him that they can approve this in the public interest.

Chair Gorman stated that he agrees with Ms. Taylor and Mr. Gaudio as well as Mr. Welsh. He continued that his thinking is that the Office Zone was created to be kind of a buffer between the high commercial activity that occurs in the downtown and the residential activities that strongly occur as you move further up Washington St. All of these houses were built long before any of us were alive and they are there, and they do need a use. Single-family homes of that size and scope, especially in sort of a commercial setting, that is a difficult use. He does see some problems with the property that are beyond anyone's control. If the Board can add some leeway as a result of that, combined with some conditions, he thinks he can get his head around this being a suitable and beneficial use both for the owners as well as the community.

Mr. Hoppock stated that the comments that he heard in connection with the condition was really related to appointment-only hours. He asked how Code Enforcement would go about enforcing that. It seems like a reasonable condition, but he is not sure how they would make sure that is being observed. Chair Gorman replied that is a valid point. He asked to hear from Mr. Rogers. He continued that he guesses that staff's scope of enforcement would be minimal.

Mr. Rogers stated that he has some of the same concerns. He continued that obviously, it most likely would be something Code Enforcement would not be monitoring; it would be more complaint-based. If complaints were submitted, then staff would be speaking with the Applicant in regards to reinforcing the idea that this was supposed to be appointment-only. That would probably be all that staff could do. Chair Gorman replied that it seems like it would be more of a good faith type of condition.

Ms. Taylor stated that she also has concerns with the suggested condition, because she thinks that it goes beyond the scope of what the Board is able to do. She continued that she does not think it is within the Board's power to tell anyone how to run their business. She does not think it would be a good condition. She continued that she also wants to mention that the question before them is the parking; it is not necessarily the fact that the Applicant wants to use the building as an office building. Regardless of whether it is this particular owner or if he eventually sells the building to another owner, this parking Variance runs with the property. It does not disappear when the property is sold. That increases her anxiety. She thinks they could still use this as an office building, but maybe not as intensely – that would require this many parking spaces.

Chair Gorman stated that he hears what Ms. Taylor is saying, but would suggest that whether they can use it as an office building is what is on the table. He continued that the building already exists and it is 3,100 square feet and the parking requirements are one per 200 square feet. Thus, unless they wanted to use less than 40% of their building, they really cannot use it as an office, regardless of what type of office use it is. He does agree that the Board cannot tell people how to run their business, but the Board does tell people whether they can have a business at a location. This is the Office Zone and the building was built in the 1800s, as big as it is now;

it was not added onto and it is not being proposed to be added onto. If this building is to be used as an office, regardless of the type of office, it does not seem as though it can be, under the current parking guidelines.

Ms. Taylor asked Mr. Rogers if the parking spaces calculation is based on the entire floor area that is being used, or just the area that is being used for offices. Mr. Rogers replied that in the Zoning Code, the calculation is based off the gross floor area, where it is allowed to take out the common spaces that are accessory to the use. It is not every square foot of the building.

Ms. Taylor asked if that means that when calculating the parking spaces you are only looking at the square footage of those rooms designated for offices. Mr. Rogers replied that there are also a few other areas; it is not just the office spaces. Mr. Branon spoke to it a bit in his narrative, regarding what parts of the building he subtracted from the overall square footage.

Chair Gorman re-opened the public hearing to receive input from Mr. Branon.

Mr. Branon stated that the parking calculation, based on the City Ordinances, is somewhat cumbersome and he spent a fair amount of time trying to determine what the parking requirements are for this proposal. He continued that he submitted a parking summary with the application. The summary outlines the calculations that include the count of all the hallways, at least one bathroom, and other areas of the building though not all-common space is deducted. It is a little confusing, and part of the reason for the parking summary was to outline to some extent that if they just use the office spaces, the site would be more conforming. A couple of the offices are under 200 square feet in size and others are between 200 and 300 square feet. They do count the hallways, and the hallways in this old Victorian-style house are very wide. The main hallway and the stairway and all of those areas have to be utilized in the parking calculations. Unfortunately, that is part of the number that they are presenting, and ultimately, it is part of the reason why they are seeking relief this evening.

Chair Gorman asked if there were any other questions for Mr. Branon relative to his parking calculations.

Ms. Taylor asked if the intent is to use the building as it currently exists today, or if they are dividing up rooms that exist into office space. Mr. Branon replied that his client is not proposing any modifications to the interior to the building. He continued that they are not dividing up any of the rooms. They are utilizing this building as it sits with the finished space on the inside and calling the rooms throughout the building office spaces. There are seven rooms, with the exception of what is going to be a shared conference room and a shared kitchen area. They are just trying to utilize the building that exists now. That is what he tried to refer to, when he talked about the size of the existing structure and its placement on the site. It is a beautiful building and he thinks it would be a very nice professional office space.

Mr. Gaudio stated that if the Board were to take into consideration the two parking spaces within the existing garage, the calculations would be much more in line with the requirements and less problematic.

Mr. Branon replied that he is right, and the calculation comes out to 12.6 parking spaces. He continued that certainly some interior renovations such as potentially enlarging a common space would bring the calculations to a 12 requirement. It would not necessarily change the number of offices that they are proposing inside the building; this is an exercise at that point. Mr. Branon stated that he and the Applicant had recently received a staff review on a submitted site plan package and are appraising the garage spaces with staff. It is his understanding that they can count those though he does have a question in to staff as to whether they could utilize both garage spaces if these were designated employee spaces, while still keeping that one conflict space. They have not worked through that yet with staff. Worst case, they are probably at nine spaces, based on this layout. They are trying to balance the improvements here with the infrastructure and existing building. Thirteen is the technical requirement but that is utilizing a lot of space inside the building that is not going to technically be offices, but he does understand the requirements and that is why they worked through that. Comfortably speaking, they are probably at nine, unless Mr. Rogers can confirm if they can have parking in tandem if they restrict one of those spaces.

Chair Gorman asked if Mr. Rogers wanted to provide comment. Mr. Rogers replied that it is under review at the moment. He continued that as Mr. Branon mentioned, one of staff's initial concerns is with the one space that is to the right of the garage would partially be blocking access for a vehicle that is going in and out of the garage. If the Board is inclined to allow that to be counted and feels that if those two spaces were designated for use by one of the office users just so there is no conflict with someone blocking someone else in, that is something staff could work with.

Mr. Gaudio stated that he is concerned that they are premature, not knowing all the facts, yet as Mr. Rogers said, if it acceptable to say that the number is not eight but ten, and if the Applicants are okay with that, that might shape the matter a little different, too. Chair Gorman stated that he agrees.

Chair Gorman stated that he would close the public hearing. He stated that if there are no more questions for Mr. Branon the Board can discuss all of these developments.

Mr. Branon stated that one more piece is that it is his understanding that the City has been contemplating zoning changes, and one of those is a change to the parking requirements to 250 square feet per space. He continued that that would ultimately make the parking requirement for this site 10 spaces. It has not been voted on, but it will likely be voted on in the near future.

Chair Gorman replied that he is aware of that, and the Board members are aware of the zoning proposals. He continued that unfortunately, they couldn't take any of those into consideration. The rules they are bound by currently are just that, and they cannot look forward into the future, although he appreciates Mr. Branon's point.

Chair Gorman closed the public hearing. He stated that the Board would continue deliberations.

Mr. Gaudio stated that he proposes that the number of parking spaces be changed from eight spaces to ten. Chair Gorman stated that he agrees, especially if the garage spaces are for

employee or tenant use only to avoid people blocking each other in. Mr. Gaudio stated that he thinks that Mr. Rogers and the applicant both said that ten spaces would be possible, and he thinks they were saying as long as it is tenant parking in the garage.

Chair Gorman stated that he thinks eight is a lot further from 13, which is arguably 12 and 10 is a lot closer than eight, just from a percentage standpoint. That, culminating with the availability of some on-street parking and the proposed use in terms of these being therapist offices, does dim his concerns about parking overload that would adversely affect the public. When he combines that with the fact that this building does exist and has existed for over 100 years and that it does need to be used for something, he thinks this is a pretty reasonable request.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-04 for a Variance to allow ten parking spaces where a minimum of thirteen is required under Section 102-793. Mr. Gaudio seconded the motion.

Chair Gorman asked if Mr. Hoppock's motion includes that at least one of the two garage spaces will be used for tenant parking only. Mr. Hoppock replied yes, he guesses that how the garage gets used is up to the owner or the tenants; he is not going to impose a condition. He is just counting the spaces. He thinks Mr. Gaudio is correct.

Mr. Rogers stated that the garage has garage doors on it and thus would be under the full control of the property owner.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 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.*
- and*
- ii. The proposed use is a reasonable one.*

Met with a vote of 4-1. Mr. Gaudio was opposed.

- 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.*

Met with a vote of 4-1. Ms. Taylor was opposed.

The motion to approve ZBA 21-04 passed by unanimous vote.

- b. ZBA 21-05: Petitioner, Flyboy Realty, LLC of Keene, NH, represented by Jim Phippard of Brickstone Land Use Consultants of 185 Winchester St., requests a Variance for property located at 166 West St., Tax Map #576-002-000; that is in the Central Business Limited District and owned by Flyboy Realty, LLC. The Petitioner requests a Variance to allow a mixed-use building with eight one-bedroom apartments and an office use of 6,136 sq. ft. with 39 parking spaces on a lot where 43 parking spaces are required per Section 102-793 of the Zoning Ordinance with one parking space for every 200 square feet of gross area for an Office Use.**

Chair Gorman asked to hear from staff. Mr. Rogers stated that this property was before the Board a while ago for a Variance from the Gilbo St. Overlay District requirements. He continued that now that the Applicant has a more detailed working plan for the proposed new building, the parking calculations are short a few parking spots. At the beginning of this process, the Applicant was working on a conceptual plan for the new building, hence the reason this was not in front of the Board a few months ago with the first Variance. Also, this property will be subdivided with the former Friendly's building converted to office space as a separate lot that will meet all of the parking requirements. This new building will be short four required spaces.

Mr. Gaudio asked if Mr. Rogers or the Applicant to explain to the Board how many square feet are going to be dedicated or used for apartments, and how many square feet to be used for office space in this building. Mr. Rogers replied that that would be a question for the Applicant.

Ms. Taylor asked, based on the more detailed plans if the building orientation for the new construction will still be the same. Mr. Rogers replied yes, his understanding is that the footprint is still the same as presented.

Ms. Taylor asked if it is correct that this does not impact the Variance that the Board already granted on this parcel. Mr. Rogers replied that is correct.

Mr. Welsh stated that he is not saying that this is a condition of his approval, but it feels like he has been involved with other reviews in which apartments or offices have made a condition of their approval the leasing of parking space on adjacent properties. He asked if that is a practice or if he is remembering that wrong. Mr. Rogers replied that there is the ability within the Zoning Code to have off-site parking on another lot if the Applicant cannot meet the parking demand with a lease agreement needing the City Manager approval. This is a process seen periodically but not often. He would let the Applicant elaborate but this is a building that has the ability to have shared parking, since it is going to be office space on the first floor and there will be apartments on the second floor. Shared parking might be something to discuss with the Applicant.

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

Jim Phippard, of Brickstone Land Use Consultants, stated that he is presenting on behalf of Flyboy Realty, LLC. Mr. Rogers is correct that his Applicant came before the Board and received approval for a Variance to allow the front façade of the proposed new building, rather than face Gilbo Ave., to face to the east on the property. Since that time, they have completed the plans for the proposed new building and have been negotiating with the occupant of the former Friendly's building, who has decided that he wants to own the building and does not want to lease it from Flyboy Realty.

He continued that they have prepared an application for a subdivision for this property and noted the presentation slide of the proposed subdivision with West St. on the left and Gilbo Ave. on the right. The building on the left is the former Friendly's restaurant. This would create a standalone lot with that building having 20 existing parking spaces. The existing building is 4,000 square feet with a single office user for the entire building and the 20 spaces complies with the Zoning requirement. Everything else on the plan complies with the zone dimensional requirements and that lot should be fine to stand alone. The lot to the right, which will front Gilbo Ave., will be about 27,256 square feet and will consist of a single building with 39 on-site parking spaces. Previously they had 40 spaces that they showed the Board at their previous Variance application regarding the façade of this building. With the subdividing of the lot, they can no longer share a dumpster with the front building (former Friendly's), so they lost one parking space to a dumpster being located in the lower left corner. This new building, 6,136 square feet, would be two stories. The entire second floor would consist of eight one-bedroom apartments and the entire ground floor would be an office space for Chesco. Chesco is an existing business located on lower Winchester St. and would be relocating to this location.

Mr. Phippard stated that in determining the parking calculation for this space, and he reviewed this again today with Mr. Rogers, they subtracted the elevator lobbies for this building because it would be a shared space with both floors of the building and the common corridor area servicing both areas, as well as the two stairwells. They do not count those as office space because they do not generate a need for parking. They are just access spaces to get to the office spaces within the building. That left a net of 5,450 square feet for the ground floor office space, requiring 27

parking spaces. Each of the eight apartments require two parking spaces, which is 16, plus 27, results in 43 parking spaces required.

Mr. Phippard reviewed the individual criteria.

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

Mr. Phippard stated that he believes this to be true. He continued that the proposed uses for this building are apartments and offices, which are permitted uses in the district. The mixed use alone does not require a Variance; it is permitted and encouraged in the downtown area. These one-bedroom apartments will provide additional, much needed housing for the downtown area. The office space also allows for additional jobs as Chesco is relocating to this location from Winchester St. This former location on Winchester St. is a shared building with the kidney dialysis clinic. The clinic will be expanding their workforce in that location. Mr. Phippard continued that this new building on West St. would improve the appearance of the property and definitely would increase property value, resulting in more property tax revenue for the City of Keene. They believe the 39 parking spaces that will be provided are adequate for the proposed office use and the eight one-bedroom apartments, and therefore they think this should be allowed.

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

Mr. Phippard stated that the spirit of the Ordinance would be observed, because the spirit in this case is to provide adequate off-street parking for the use of the proposed property, and 39 spaces does that. He continued that these are existing, on-site parking spaces that they will utilize for this proposed mixed use. The eight one-bedroom apartments are not large, are under 1,000 square feet, which typically one person occupies a one-bedroom apartment with some occupied by two people. They therefore believe that the 16 parking spaces required for eight one-bedroom apartments does not represent the actual need.

He continued that Chesco has existed in Keene for many years. They are well-established and well-known, providing a needed service for people with disabilities and their employment. Chesco typically will have up to 14 employees within the building during their office hours, which are Monday through Friday, 9:00 AM to 5:00 PM, with rare exceptions. With only 14 employees, they would not be occupying space beyond that. The reason is employees typically meet with clients in their homes or workplaces. These are clients with disabilities, who typically are not driving on their own. Realistically, the most occupied parking spaces most of the time would be the 14 employees and eight one-bedroom apartments, would be 22 spaces. They feel that the additional parking spaces required by zoning are not going to be necessary to address public safety in this case.

3. Granting the Variance would do substantial justice.

Mr. Phippard stated that redevelopment of this property would be better than to have it remain a vacant restaurant and under the current pandemic conditions; it is unknown how long it would be vacant. He continued that it is important to allow properties like this in the downtown area to be

redeveloped. They think this will improve the property value and that it does provide adequate parking and will not result in a threat to public safety. They think it will not diminish property values and will in fact enhance them, due to redevelopment of the property. The Keene Master Plan encourages the redevelopment of properties like this and they think their proposal is completely consistent with the Master Plan and would therefore do substantial justice. They think denial of this Variance would not benefit the public in any way. Therefore, there is not a public need that outweighs the need of the Applicant in this case.

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

Mr. Phippard stated that with the approval of the last Variance, the work on the property has already begun. He continued that part of the redevelopment of the property was the rehabilitation of the former restaurant building. The white paint has been removed from the brick having been restored to the red brick appearance, which is more typical and more fitting in the Historic District in Keene as well as in that area of West St. It has already enhanced the property values, just by that beginning phase of work on the property. They think the proposed new building, which will also use red brick on the ground floor, will also help to enhance property values in the area. They think that this will not diminish values but will enhance them. They think they are providing adequate parking and it will not result in a threat to public safety and will not be a nuisance to vehicles or pedestrians in the area.

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.*

Mr. Phippard stated that this is an existing property in the downtown area. The existing parking area extends all the way from the building near West St. to Gilbo Ave. It is in the Central Business Limited District, the Gilbo Ave Overlay District and the Historic District, so there is a lot of zoning in place. They think that adding the four additional parking spaces is just not necessary. Because of the existing conditions on this property and the buildings as they are located on the property, the Community Development Department regulations do not allow them to extend the parking beyond the front lines of the building. That creates a unique condition on this property that limits the amount of parking spaces they can add. They feel that justifies an unnecessary hardship.

Mr. Phippard continued that the parking requirements for the City of Keene, as he has said to the Board before, are completely archaic. They need to be updated again and there is a proposal before the City Council for a partial update, which he is grateful. One of those amendments would allow the Zoning Administrator to make a determination on what is adequate parking and what is not, and be allowed to waive a small percentage of parking spaces. If that regulation were in place today, he would not be before the Board. In the absence of that regulation, he went

to the Institute of Transportation Engineers (ITE), which generate a parking manual and a trip generation manual. In the parking manual, they researched properties across the country. The category that this project would fall under is Use Code 711, "small office space, less than 50,000 square feet." The manual states that the peak number of parking spaces occupied is actually 0.79 times the number of employees. They have proposed 14 employees for this space. The manual also says that for apartments in that type of location, 1.2 spaces per apartment would be occupied. The current City of Keene Code requires two spaces per apartment and one space per 200 square feet of office area, not looking at the number of employees. Mr. Phippard stated that he has used the parking manual in other applications before the Board, and it has always proven to be true that their calculations based on actual uses in different locations around the country show that the Keene parking regulations are outdated and not all of those parking spaces are required. Based on that information, using the parking manual, they would only need 21 parking spaces and they expect 21 to be occupied at any one time. They feel 39 parking spaces are more than adequate even though 43 parking spaces are required by the archaic parking regulations.

and

ii. The proposed use is a reasonable one.

Mr. Phippard stated that the Board has already found that the office and apartments are reasonable uses in this district. He continued that he and his clients think that 39 existing parking spaces on site are more than adequate for the proposal, due to the limited number of employees and the fact that the apartments are one-bedroom. They cannot change the number of apartment bedrooms, unless they reduce the number of apartments, so that will not change. The Board may question if another business moves into the building requiring for a larger office use. In utilizing the ITE calculations, the 0.79 parking spaces per employee, would allow up to 35 employees to occupy that space and still not require additional parking spaces.

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. Phippard stated he heard Mr. Welsh ask about leasing spaces from adjacent properties. His clients could go that route, but he does not feel that it would be necessary. He feels that they have more than adequate parking based on the uses they are proposing. He has used the parking manual with regards to other sites in the past and it has always proved adequate and reliable and he would rely on it again under the circumstances. He reminded the Board that although they cannot rely on this for their vote, the zoning regulations are going to change at some point and he thinks they will be more reasonable with the actual parking that is required. There are plenty of reasons for the City Council to approve that type of Ordinance change. He further stated that not all this parking space is needed and the City shouldn't be looking at having that entire paved surface which could create the water run-off associated with the paved parking. His client believes it would be best to have that green space instead.

Mr. Phippard stated that he thinks this is a reasonable proposal before the Board with a small number of non-compliant parking spaces. He hopes the Board can approve this request.

Ms. Taylor asked if it is correct that if they did not subdivide this parcel they would have adequate parking, and this is only a function of the subdivision. Mr. Phippard replied no. He continued that when they did their original proposal to add the additional building, they did not have a finished floor plan. Once that was completed, after the Board had approved the Variance for the façade location, it was realized there would not be enough parking spaces for the building with the finished floor plan. Mr. Phippard stated that regardless of whether they were subdividing the property, the project was going to be short a few parking spaces and they would have to apply for a Variance.

Ms. Taylor stated that she reviewed the earlier application and the meeting minutes to refresh her memory. She continued that she had asked staff if there was adequate parking for the project, and the October 5, 2020 meeting minutes say: *“Staff spoke with Mr. Phippard and the owners were going to make adjustments to meet the correct requirements.”* She guesses Mr. Phippard’s understanding at that time was that he would somehow manage to deal with the correct number. She asked what changed in the proposal.

Mr. Phippard replied that what changed was Chesco revised their proposed floor plan. He continued that they are trying to accommodate Chesco’s needs, which will be the prime occupant for the whole ground floor of that new building. What also changed was the size of the area for the elevator. That resulted in a slight reconfiguration of some of the office space in the building and left them with a little bit more square footage for office use, which he had not accounted for. Then he had to eliminate one space for a dumpster location because there will no longer be a shared dumpster. With both of these changes, the project is four parking spaces short.

Chair Gorman asked if it is correct that the office tenant does not have clients coming to and from this location. Mr. Phippard replied that there are very few clients who come to the building. He continued that all of the clients are people with disabilities and typically the staff is visiting clients in the clients’ homes or workplaces, helping people are acclimated to a new job or workspace, which typically occurs offsite. There is very little use by clients in the building in their current office location.

Chair Gorman stated that relative to the information Mr. Phippard provided about the 0.79 spaces per employee, given that they do not know if the office tenant will be the same one forever, is whether that accounts for clients at all, or if that is just strictly the calculation set forth for employees. Chair Gorman questioned what the calculation for clients is, in an average office use would be. Mr. Phippard replied that it does account for the clients. These calculations are based on nationwide studies of office buildings that have less than 50,000 square feet inside. It is all types of offices that get addressed, such as real estate, legal, or others. Chair Gorman asked if that is just a cumulative average of what may take place based on different data collection. Mr. Phippard replied that several hundred studies were done, based on office uses of that size, and this is the result of that data collection.

Chair Gorman asked if there were any further questions for Mr. Phippard. Hearing none, he asked if members of the public had any questions or comments. He explained the procedures for participation. He asked Ms. Marcou if there were any call-ins. Ms. Marcou replied no. Chair Gorman stated that he does not see any Attendees with raised hands, either. He closed the public hearing.

The Board deliberated on the criteria.

Mr. Hoppock stated that he does not see any issue with this application. He continued that he does not think it would be contrary to the public interest, and the spirit of the Ordinance is being observed, in terms of the details of the plan. He sees it improving the character of the neighborhood, putting a viable business there. It is a responsible plan and he thinks they are making the best out of the space they have. Mr. Phippard is probably spot on in his analysis of the parking regulations and his use of the manual that he referenced. He thought that was enlightening. He intends to support the application.

Mr. Welsh stated that he will second that and agrees with all of the points that Mr. Hoppock made.

Ms. Taylor explained the question on the subdivision and whether or not the subdivision would be approved or, if it was a different design, if the Board should have their approval contingent on the subdivision being approved, but Mr. Phippard has indicated that because of changes to the building itself they would need these spaces anyway. Thus, she does not have a problem with it and does not think the Board needs to add that type of condition.

Mr. Gaudio stated that he agrees that it is not contrary to the public interest and the spirit of the Ordinance would be observed. He continued that he thinks there is an unnecessary hardship but they should not be making reference to the ITE parking manual. That is sort of like this Board doing legislation to set up a new standard. He would rather do it based on an unnecessary hardship.

Chair Gorman stated that they can have more discussion if needed, but it seems like the Board is leaning in the same direction.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-05 for a Variance to allow 39 parking spaces where 43 are required per Section 102-793 of the Zoning Ordinance. Mr. Welsh seconded the motion.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 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*

and

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

Met with a vote of 5-0.

The motion to approve ZBA 21-05 passed by unanimous vote.

- c. **ZBA 21-06:/ Petitioner, Len Weldon of 165 South Lincoln St., Keene, requests a Variance for property located at 424 Old Walpole Rd., Tax Map #207-002-000 that is in the Rural District and owned by Monadnock Waldorf School, Inc. The Petitioner requests a Variance to allow a multifamily dwelling of four units per Section 102-332 of the Zoning Ordinance.**

Chair Gorman asked staff to speak. Mr. Rogers stated that this property is on Old Walpole Rd. that is currently a private school by the Waldorf School, he believes for preschool and kindergarten that sits on 11.8 acres in the Rural District. Back in 1991, it received a Special Exception from the Board to allow for a private school. The Petitioner is applying for a multi-family dwelling use with their intent is to create four units, which is not a permitted use in the Rural District, which currently the only dwelling units allowed, is a single-family home.

Mr. Welsh asked if the Special Exception is pretty much the same thing as a Variance. Mr. Rogers replied that if the Special Exception in 1991 was the same as it is today it is more dealing with safety issues, as opposed to a Variance, where the main difference would be the hardship clause that sits in the Variance and that the Special Exception does not have.

Mr. Welsh asked why they are not looking at this application as a Change in Non-Conforming Use, which has a different set of standards and analysis. Mr. Rogers replied that when the school came before the Board in 1991 for the Special Exception, the school use was a permitted use in the Rural District with a Special Exception. Though it is a non-conforming use by today's standards, Staff felt that this was such a significant change from the use for that district, where a

single-family home is allowed and they are looking to go to a four-unit, residential building, and it was more appropriate for it to go with the Variance method.

Ms. Taylor stated that when she looked at the provisions for Rural District, an institutional use is permitted, and under the definitions in the Zoning Ordinance, an institutional use includes private schools. She asked if her reading is correct. Mr. Rogers replied that she is correct that in the table of permitted uses within the Rural District, a Special Exception allows an institutional use. He continued that it is an allowed use by Special Exception as long as it is subject to the Article V Division 12, which is the institutional street list. Old Walpole Rd. is not on that street list. It would not be an allowed use in this location.

Ms. Taylor stated that in regards to Mr. Welsh's question, her view is that to be a Change in Non-Conforming Use it would have to be more conforming, and she assumes Mr. Rogers would see a four-unit residential use as less conforming. Mr. Rogers replied that is correct. He continued that since the time of the original approval as a private school based on what the zoning ordinance was at the time, what is asked for with this application of a four unit dwelling that does not resemble a single-family home, which is the allowed residential use in this district.

Chair Gorman asked if there were any further questions for Mr. Rogers. Hearing none, he opened the public hearing and explained the procedures for participation. He asked to hear from the Petitioner, Len Weldon.

Len Weldon stated that his presentation has to do with Sections 102-331, which has to do with the intent for the Rural District, and 102-332, which has to do with how this property can be used. He continued that at this time it is a preschool with about 40 children and teachers who meets five days a week. Dr. Weldon explained that the group he is representing to the Board consists of four people, one of whom is his son, a former student of the Waldorf School. He wishes it could remain as the Waldorf School, but insofar that it cannot, three former Waldorf School students and one parent want to purchase this to change four large classrooms, each of which has a bathroom and a kitchen, into four living spaces and then to begin to organically farm at least one acre possibly up to four acres. As his proposal states, there will be no loss of open space and there will be less actual use on that space and it may add a little bit of economic vibrancy and some texture. When one looks at the permitted uses in Section 102-332, it allows for a "manufacturing housing park" and a "manufacturing housing subdivision." This proposal is just breaking this large building up into four units, which they think will have less impact. If the Variance is granted the spirit of the Ordinance is observed. It is rural and less pressure on the land. Mr. Weldon stated that he and his partners think this proposed project would add value and certainly lessen some of the pressure in the area to have affordable housing.

Dr. Weldon stated that regarding the third criterion, creating a Variance would be substantially just, in that, the spaces would come into existence and the fields would remain the same. He continued that there would be no change to the water flows, how the land is shaped, or the vegetation, other than where the organic garden would be after a bit of time. Dr. Weldon stated that this housing stock is needed in this area and this project would generate less traffic in the neighborhood.

He continued that if the Variance were granted the property values would not diminish, because there would be less pollution and less noise and the beauty would remain or, in his opinion, be enhanced by virtue of a farm and the noise of chickens. This property would probably accommodate about 20 people, by their estimation. His son would own and occupy one of the units and would watch it closely. Another former Waldorf student would also live there as they begin to pay for this and they begin to afford this more. There would be no great injustice to any of the neighboring properties. If he is not misinterpreting Section 102-332, manufactured housing parks are great places for people to live if it became that, but he does not want to see this particular piece of property have too many people using it.

He continued that they are asking for very little change, but it is not a single-family home, it would be a multi-family dwelling. It would either be rental properties, but also they were thinking that it would be individual condominiums, which he thinks brings a lot of stability. That is substantially their argument, and he wants to emphasize to the Board that a permitted use is a manufactured housing park. That is not well defined in that permitted use section, but his assumption is a trailer park. He has only presented to the Board once, about 23 years ago when he had a house on Main St. change to accommodate his practice. That house is beautiful and maintained well. In this particular area they want to maintain the beauty and really be respectful of all of the surroundings to keep this lovely area beautiful and desirable by virtue of housing, not just urban housing, but rural housing.

Chair Gorman asked if Dr. Weldon would care to touch on the fifth criterion.

Dr. Weldon stated that essentially, 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 the property is zoned Rural and will remain Rural. Remaining rural is not negated by having four families, as there will be less people actually using the property. It is 11.8 acres, which is substantial, and he thinks cluster housing is a concept accepted in many areas that are more progressive. He continued that this project is a reasonable one, because the offer mentioned makes common sense in many regards and allows people with less money to be in a beautiful, rural setting and enjoy the benefits that exemplify New Hampshire, which is rural, affordable, and hopefully diverse. He did not mention this yet but they have already spoken with owners of the school and just like his own backyard at 165 So. Lincoln St., they have a half acre of big open land that the Waldorf School uses and that will be the same. Dr. Weldon stated that if people want a little plot of land to have a garden on or a playground on that rural land that will not change. They are hoping to have Waldorf families and other families enjoy the 11 acres, as it is a nice thing for people to get out into the country. He thinks that addresses the fifth criterion.

Chair Gorman stated that he sees an Attendee with their hand raised, but they will have to wait because he cannot call on them until this is open for public comment. He asked if anyone had questions for Dr. Weldon. Dr. Weldon stated that one of his partners, Eric Olson, has prepared quite a few items to discuss as well and he might be the one wishing to speak. He is a spokesperson, too. Chair Gorman replied that if Mr. Olson is part of the application he is welcome to speak.

Eric Olson of 5 Grant St. stated that he is a spokesperson in this case. He continued that what he wants to add to the conversation is when they say that they would be keeping in rural, specifically, what that means by the definition of the Ordinance. They are not just using “rural” as an adjective but mean it in terms of the Ordinance. Section 102-331 says the intent of the Rural District is *“to provide for scattered, very low density development, predominantly of a residential or agricultural nature, which can be accommodated on the land without major disruption to the natural terrain, vegetation, water courses, or surface drainage. Such lands are generally those outside of the valley floor and beyond where city water, sewer and other utilities can be readily supplied.”* He wanted to tie that in to what Dr. Weldon was saying, as their intention from turning this from a single-family home to a multi-family unit as far as they can tell in no way changes the intent of the Zoning Ordinance.

Chair Gorman asked if Board members had questions for Dr. Weldon or Mr. Olson. Dr. Weldon stated that he had a question, which Chair Gorman allowed. Dr. Weldon asked if someone could define the permitted use of “manufactured housing park” or “manufactured housing subdivision” in Section 102-332. Chair Gorman asked for clarification that that is not what the application states. Dr. Weldon replied no, but that would certainly be more disruptive, he would think, and it seems like it is similar. Four trailer houses, or a large building with 5,700 square feet to accommodate four beautiful apartments or condominiums; it seems like the latter would definitely be less of an impact and really confluent with what Mr. Olson just said. Chair Gorman stated that he would ask City staff to provide that definition for Dr. Weldon, though that is not what their application states.

Mr. Rogers stated that the definition of “manufactured housing park” in the Zoning Ordinance is *“any lot, parcel, or tract of land designed, maintained, or intended for the purpose of supplying a location or accommodations for any manufactured housing and upon which any manufactured housing is parked to be occupied as a dwelling and includes all buildings used or intended for use as part of the park.”* He continued that it essentially would be called a trailer park.

Ms. Taylor asked Dr. Weldon to explain what he meant by “cluster housing” when he used the term in his application as that is not a defined term that she could find in the Zoning Ordinance. Dr. Weldon replied no, he does not think she will find the term there. He continued that it is just through some of his readings about how one can have a large population on the planet Earth and not sacrifice farmland or open land. He continued stating that instead of having a 2,000 to 5,000 square foot home for one family, occupying five acres, you have four families occupying that home. The school is 5,700 square feet on two floors, so about 2,600 square feet per floor does not diminish the actual, available number of square feet of land. It is much easier on land and much better usage if you cluster homes. If you have 20 homes on a very small area that allows 10 or 20 acres for those people who are living in that tight space to enjoy open spaces, rather than having 20 houses on 11 acres or 20 acres. Cluster housing is a concept to concentrate people actually living in a more open space.

Ms. Taylor asked Mr. Rogers to expand on the statement from Dr. Weldon who mentioned potential condominiums. She asked how this would be handled in the Zoning Ordinance and if it is a permitted use. Mr. Rogers replied that the Zoning Code does not speak to condominiums.

Mr. Rogers stated that the City Ordinance has Section 102-288, which is the Conservation Residential Development District, which somewhat mentions what Dr. Weldon is speaking to in

regards to being able to cluster. The Zoning Code does speak to that and is an allowed use in the Rural District. Mr. Rogers continued that with the 11.8 acreage on this property, he believes, without doing more research, would only allow for two dwelling units.

Chair Gorman asked if there were any further questions for Dr. Weldon. Hearing none, he asked if there were members of the public wishing to speak, and explained the procedures for participation. He asked if there were any call-ins. Ms. Marcou replied no. She continued that the City received a letter of opposition, which was sent to the Board. Chair Gorman asked if everyone on the Board had a chance to review that letter. Ms. Taylor stated that she thinks it should be read into the record. She read it aloud as follows:

“To: The Zoning Board of Adjustment

Members of the ZBA. I rise in opposition to the variance request to allow a multi-family apartment dwelling of four units at 424 Old Walpole Road.

Keene Zoning provides other spots zoned and more suitable for multifamily units. I am sure many people would like to build multi dwellings on their lots. This is totally against the spirit of the zoning ordinance which is to provide adequate space and population density.

When you cram many housing units on one lot in a rural residential neighborhood it alters the character of the area.

So for this and other reasons I would hope you will deny this inappropriate variance request.

Thank you for hearing my response.

*John Croteau
185 Eastside Rd
Harrisville, NH”*

Chair Gorman stated that he does not see any Attendees who wish to speak. He continued that he sees Mr. Olson’s hand up, but he cannot call on him to speak as a member of the public, because he has already spoken as an Applicant. Seeing no further public comment, Chair Gorman closed the public hearing and stated that the Board will discuss and vote on ZBA 21-06.

Mr. Gaudio stated that he has concerns about the spirit of the Ordinance and other provisions. His concerns are in that in granting a Variance for this 11.8-acre lot, this does not prohibit the owner returning in a year to subdivide 11 acres then selling them as half-acre lots while still having the four-unit building on .88 acres. He is not sure if the Board can deal with that within a Variance but, if the premise is keeping with the rural nature because that is 11 acres, there is no guarantee that it will be.

Mr. Hoppock stated that he did not hear anything in the presentation that led him to believe that there is a special condition of this property that distinguishes it from other properties in the area. He continued that he is not persuaded that the unnecessary hardship criterion has been met.

Ms. Taylor stated that she agrees with both Mr. Gaudio and Mr. Hoppock and definitely thinks that this does not meet the spirit of the Ordinance because of the nature of being a four-unit apartment building, as that is essentially, what is being asked for. As was mentioned earlier in another application, when the Board grants a Variance they do have to consider what happens with the next owner. Whereas this current potential owner may have wonderful, laudable ideas of keeping the land in farm, there is no guarantee that a future owner would do the same. Thus, she has some real concerns about both the spirit and hardship criteria.

Chair Gorman stated that he agrees with the three Board members. He continued that he thinks Dr. Weldon's intentions for the land and property are good, but unfortunately, it is not Dr. Weldon who receives the Variance, it is actually the property. When he thinks "rural," he does not think tenement house, and that is probably the reason that tenement house, especially one with four units, is not allowed in the Rural District. That is what is being applied for, regardless of the intent to use the land in a peaceful and productive manner. He does not really see a hardship, either.

Mr. Welsh stated that he agrees that everyone has summarized his thoughts well. He continued that while he does see the comparison with the manufactured housing, he sees this as significantly different from manufactured housing as he recognizes it, which is abundantly transportable, movable, and changeable with owners.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-06 for a multi-family dwelling of four units per Section 102-332 of the Zoning Ordinance where such units are not permitted. Ms. Taylor 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.*

Not met by a vote of 0-5.

Mr. Hoppock stated that he is not sure there was any information they heard on this point and he is not sure the burden has been met. Mr. Hoppock stated that he votes no also on the premise that the evidence was not presented. Mr. Welsh agreed.

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*

and

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

Not met by a vote of 0-5.

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 21-06 failed with a vote of 0-5.

Mr. Hoppock made the following motion, seconded by Ms. Taylor.

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 21-06.

d. **ZBA 21-07:/ Petitioner, Edward J. Haas of 114 Jordan Rd., Keene, requests a Variance for property located at 114 Jordan Rd., Tax Map #232-015-000; that is in the Rural District. The Petitioner requests a Variance to allow a decrease of setback requirements from 50 ft. to 30 ft. for installation of solar panels per Section 102-791 of the Zoning Ordinance.**

Chair Gorman asked to hear from staff. Mr. Rogers stated that the Applicant is before the Board seeking a Variance for a setback with the intention of installing solar panels. He continued that this property is in the Rural District where there is a 50-foot setback requirement and they are asking for the Variance for a 30-foot setback.

Chair Gorman asked if anyone had questions for Mr. Rogers. Hearing none, he opened the public hearing and explained the procedures for participation. He asked to hear from the Petitioner, Edward Haas.

Edward Haas stated that the solar panel plan displayed presents the project. He continued that they have an open field of about 1-acre in size and he would prefer to keep it wide open. The plan for this property is to maintain it as is, and maintain it as a meadow/native plant

environment. He wants to introduce solar energy and solar panels, but does not have good building locations for them, due to the trees in the area and the orientation, but this upper corner of the field is perfect for it though he is concerned with sight lines and the arrangement. He stated he would prefer to arrange them so they do not impose on anyone's views. The request is for the setback requirement from the property line on the north side. The proposed project calls for the panels situated within the 30-foot side setback in order to have the best use, maintaining the meadow as wide open, and maintaining as much of it in meadow condition as possible. It also allows them to maximize their area of solar panels and minimize the height of the panels. Mr. Haas continued that there would be no issues with a view of the panels for his neighbor to the north, as that area has become overgrown with invasive species, which he intends to remove and replace with other native, screening plants. Jordan Rd. is down to the left and their driveway comes up through an orchard.

Mr. Haas continued that the next slide shows orientation of several views – slide A is from Jordan Rd., slide B is from the northeast corner and a view of where the panels would be located adjacent to the property line, and slide C is the view from the corner in the driveway near a stone wall. Regarding the view from Jordan Rd., the northeast corner of the field where they wish to place the panels is shown on the right as indicated by the arrow. If they are successful with placement using this 30-foot Variance and then minimizing the height, likely the panels will hardly be seen from Jordan Rd. The hill slopes up in this area and when trees are in bloom along with the growth along the road, the panels will be virtually invisible and low profile. From Jordan Rd. it would really take some effort to see the solar panels if you are driving by. Regarding the view from the northeast corner of the field, the forested property behind him is still part of his land. There is a wire fence at the property line, behind all of the growth to the left. That screening will be maintained. They intend to reduce the invasive species as much as possible and introduce native species. They will maintain the screening to ensure their neighbors' privacy, since they would just be looking at the back of the panels. Having the panels at this point allows it to be up on the flat of the land and also maximizes the area of the meadow that they can continue to have as a natural space. There is a picture of the view from the driveway. There is a stonewall and the arrow on the picture does not show it quite right but the panel location would be way back in the far corner.

Mr. Haas stated that he will go through the five criteria.

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

Mr. Haas stated that it is not contrary to the public interest because if the panels are visible at all from the public way or from other properties it would be a minor visibility and there is no reflection that would ever come off of it that would put sun glare on anyone. He continued that for his neighbor to the north, either the existing screen of shrubbery or the shrubs and screening that he will introduce would shield their view. If the Board grants the Variance, it also allows him to minimize the height of the panels while maximizing the area of coverage.

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

Mr. Haas stated that there would be no impact to adjacent properties because the sight lines would not be there.

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

Mr. Haas stated that the area in question is a meadow field, and if the Board grants the Variance, they can minimize the height and maximize the area of the panels for maximum power production while minimizing the impact on the meadow and maintaining the meadow area as large as possible. Also, since he applied for the Variance, he determined that the solar panels are in perfect alignment with the City of Keene's renewable energy goals.

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

Mr. Haas stated that if the Variance were granted, the values of the surrounding properties would not be diminished because there is no change to the surrounding properties. He continued that if there is a sightline, perhaps where his neighbor across Jordan Rd. can see it, it is a minor view and it is from the corner of the panels in any case. The panels will not come nearly down to his driveway at all, as they lose solar efficiency. The goal is to keep them all on the flat of the property, which is well away from Jordan Rd. and his driveway. Certainly, the contribution to the city's renewable energy goals should be recognized.

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 because:*

Mr. Haas stated that they still could install the panels and still would work to minimize the sightlines and the impact on the area but it would reduce the amount of panels that they could install as well as raise them in height. He is not going have the panels above eight feet in height and hope to minimize the height if granted the Variance.

Ms. Taylor stated that she was hoping Mr. Haas would go a little deeper into the unnecessary hardship criteria, why he does not think there is a fair and substantial relationship between the Zoning Ordinance and how it applies to his property. She asked if there is a special condition of his property that the Board should know about.

Mr. Haas replied that he thinks the special condition is the growth that exists on the north property line. He continued that there is about 20 to 25 feet of random shrubs and vines and some trees and such in that area that creates an impenetrable dense screen already. That existing screen means that he is not really changing anything at all, whether it is 30 feet or 50 feet from that property line.

Ms. Taylor stated if, could Mr. Haas site the solar panel array 50 feet from the property line, or is this where he would prefer to put it.

Mr. Haas replied that it is certainly a preference, where he wants to put it, but the difference in siting it 30 or 50 feet from the property line means that he would impact the meadow. He continued that he would be taking away from the grassland area of the meadow. They plan to maintain that meadow in a natural grass state to facilitate a natural environment for pollinators and such; it will not be farmed or mowed into a lawn. If he brings the panels further away from the property line rather than using that border for them then he takes away from the meadows, or, at the same time he might reduce the area available to him for panels.

Ms. Taylor asked if he could explain, “reduce the area available for panels”. Mr. Haas replied that the panels are 3’x7’ and he hopes to get as many as 20 or 24 panels in the array. He continued that the more panels he can place without having view lines from the street, the more power he can produce. If he wanted to not have such impact on the meadow, he could go higher. That is perfectly allowed, but he would prefer not to have that height. He would prefer to keep the panels as low as possible and keep as much of the meadow as possible. If he put them 50 feet from the property line the area behind them becomes shaded and it is not of any use for the meadow purposes. It still will be filled by shrubbery to create a shield for his neighbor but it would not contribute to the open meadow area.

Mr. Hoppock stated that the Board’s agenda packet shows Mr. Haas’s property with the existing woodland, driveway, and the corner of the property with the array of 20 solar panels in pairs of two. Mr. Haas replied that that is just a diagrammatic arrangement. He continued that he will settle on the specific arrangement pending the success of this request and how they will lay it out in relation to the other trees. He knows that if they can be within 30 feet of the north property line that makes the most favorable ability to get on a flat surface and to keep the panels tucked up into the corner.

Mr. Hoppock asked if that area of the property is a flat-surfaced area as opposed to the rest of the meadow. Mr. Haas replied that it is still a little sloped but you can see how the contour lines, on the next slide, are very close down along the driveway – that area is lined with fruit trees. As the contour lines flatten out you can see how the meadow flattens as you go up the hill there.

Mr. Hoppock asked if he has an idea of what the dimensions are of the whole array. Mr. Haas replied yes, depending on how many panels, it is on the order of 20 feet wide by 80 feet long.

Mr. Hoppock asked if it is correct that it would be no more than eight feet high. Mr. Haas replied that is his intent.

Mr. Gaudio asked if he understands correctly that by keeping it back that far, 20 feet into the setback, Mr. Haas would be able to keep it at a lower height. He asked if there is something gained by the fact that he is putting it back there that allows him to keep it lower and less visible. Mr. Haas replied yes, he could get the same area with a lower angle of the panels. He continued that instead of putting in a two- or three-panel high structure he could stay with a two-panel high structure, which is his intent. Mr. Gaudio replied that the unique aspect to this property is that because of the hill slope and the ability to install the panels that would be the hardship. Mr. Haas replied that it would take away from the meadow area. Mr. Gaudio stated that it would make it more visible from the street or from someone else's property. Mr. Haas replied yes, if they came forward to the south, and maintained the 50-foot setback, they would likely be more visible from Jordan Rd.

Chair Gorman stated that it sounds like what Mr. Haas is trying to articulate is, that he is looking at a 20'x80' array of solar panels and his reasoning for placing them closer to the boundary than they could be per setbacks is to basically insulate visibility. In other words, this is going to enable Mr. Haas to keep the solar panels shorter, which will have less impact on his neighbors and keep them further away from the road, which will lessen the impact to passersby. He asked if that is accurate. Mr. Haas replied that is correct. He continued that the third reason is to maximize the open space that exists now, rather than to intrude upon it. He reminds them that 20'x80' is an estimate but that is the footprint he is trying to stay within. Chair Gorman asked if it is correct that in the event that this Variance is granted, he can count on an array that is no more than two panels high. Mr. Haas replied yes.

Ms. Taylor asked if the Board denied the Variance, would Mr. Haas still move forward with building a solar array. Mr. Haas replied yes, they intend to move forward with the project. He continued that if the Variance is denied he probably would not be able to install as many panels as he would like because he has the competing interests of visibility and maintaining the open space of the meadow. He respects those as well but he would like to install as much solar capacity as possible to move more in the direction of electric power.

Chair Gorman asked if there were any further questions for Mr. Haas. Hearing none, he asked for public comment and explained the procedures for participation. He asked Ms. Marcou if there were any call-ins. Ms. Marcou replied no. Chair Gorman stated that he does not see any attendees with their hands raised. Seeing no public input, he closed the public hearing.

The Board deliberated on the criteria.

Mr. Welsh stated that he wants to start by expressing his admiration for and appreciation of his fellow Board members for extracting testimony that did such a great job of ascertaining the nature of hardship. He continued that he is prepared to vote in favor of this. One of the things

that he gleaned from the testimony also is that in its own way the values of surrounding properties and the value of those properties to the people driving by or seeing them would not be diminished. He is convinced that the Applicant and the Board has made the case for this Variance.

Ms. Taylor stated that she takes the opposite view, and the purpose for her last question was basically to determine if this was an “it would be really nice” request or if this is a case where if the Applicant did not get the Variance for his project he could not do it. She continued that she is struggling, as she does not see the hardship. She thinks that the other criteria are probably met, but she is not convinced that there is a hardship. She thinks this is a preference of where to place the solar array.

Mr. Gaudio stated that he is going to be contrary to Ms. Taylor on the premise of the unnecessary hardship. In this situation, with the public interest and spirit of the Ordinance are connected, in that in order to further promote the public interest, which is to keep the elevation low and not be seen, there is an unnecessary hardship that is being experienced. He continued that if there was no hardship, the Applicant would have to go install the array at a higher elevation which would then be more likely to be seen leading to a negative effect on the public interest. He thinks there is an unnecessary hardship that distinguishes it from other properties.

Mr. Hoppock stated that he concurs with that opinion and notes that the special condition of the property is the terrain of that area, and that area is desirable for the reasons explained. He continued, stating that to keep the array at a low height and to get the best solar benefit from the location is, from what has been explained, is to keep it out of the line of sight from the neighbors and the travelers on Jordan Rd. Thus, he agrees that there is a hardship there and he thinks there would be an unnecessary hardship if the Variance were denied. He does not regard it as a preference of the owner.

Chair Gorman stated that he is inclined to agree. He continued that he does think it is a preference of the owner, but he does not think that is the only piece of the equation; he is entitled to have that preference. At the end of the day, that preference does lead to the greater good and denying the Variance would allow him to install the solar array in a way that is ineffective for both himself and his abutters as well as passersby. The Variance allows him to put the solar array in a manner that is productive for himself and has lesser impact to his abutters as well as passersby. He thinks it is unique and that it was well articulated by Mr. Gaudio and supported by Mr. Hoppock. He would be prepared to support this as well.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-07 to grant a Variance to allow a decrease of setback requirements from 50 feet to 30 feet for the installation of solar panels, which would normally be prohibited by Section 102-791 in terms of the side setback limitations.

Chair Gorman stated questioned the Board that if Mr. Haas plans to remove some invasive species, would they add the condition of that the maintenance of the buffer. He continued that he thinks there may be some merit to it.

Ms. Taylor replied that she thinks that is an excellent point and wonders if Mr. Hoppock is willing to amend his motion to add that condition.

Mr. Welsh stated that they heard from the applicant that he intends to maintain and maybe even improve the buffer by the removal of the invasive species and the replacement of more natural plants, but he thinks it would be a good addition to the motion.

Mr. Hoppock stated that he has no objection; he just is not sure how to describe the location of the buffer. Chair Gorman suggested “that a vegetative buffer be maintained along the property line.” Mr. Hoppock replied that he will amend the motion to add that.

Ms. Taylor suggested “Vegetative buffer of similar density to maintain the visual separation between this property and the abutter.” Chair Gorman suggested “A vegetative buffer containing year-round density to shield the view of the solar panels.” Ms. Taylor and Mr. Hoppock agreed.

Mr. Gaudio seconded the motion to approve ZBA 21-07 to grant a Variance to allow a decrease of setback requirements from 50 feet to 30 feet for the installation of solar panels, which would normally be prohibited by Section 102-791 in terms of the side setback limitations, with the condition that a dense, vegetative, year-round buffer be maintained by the property owner to shield his abutter from view of the back side of the solar panels.

Chair Gorman stated that he sees Mr. Haas’s hand up, but the public hearing is closed. Ms. Taylor stated that if they are in the voting process it is not appropriate to go back into the public hearing. Chair Gorman agreed. He continued that they have a motion on the table and they are prepared to vote on it.

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

Met with a vote of 5-0.

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

Met with a vote of 4-1. Ms. Taylor was opposed.

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

Met with a vote of 5-0.

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

Met with a vote of 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.*
 - and
 - ii. *The proposed use is a reasonable one.*

Met with a vote of 4-1. Ms. Taylor was opposed.

The motion to approve ZBA 21-07 with the condition was approved 4-1. Ms. Taylor was opposed.

5) **New Business**

a. Department Review of Board and Commission Fees

Mr. Rogers stated that they have not had a chance to do an analysis of the fees, but Ms. Marcou has been taking a look at the overall costs, especially in this new world of Zoom, and one of the big impacts that has had, is on the fees are the newspaper fees. Newspapers charge by the line, and they have had to add all of the Zoom information to the ads and that has been an added cost. They will continue to review and bring back a recommendation to the Board for a possible increase to those fees. They just wanted to give the reasoning behind this review. Last time they reviewed the fees the cost per line was also much less than it is today.

6) **Communications and Miscellaneous**

Mr. Rogers stated that staff is once again reviewing the possibility of hybrid meetings, now that the COVID-19 numbers are starting to decline and the number of people vaccinated is increasing. He continued that the City's overall intent is for some of the committees, especially some of the smaller ones, to be able to maintain social distancing in the Council Chambers. He wanted to gauge the feeling of the Board, regarding having a hybrid meeting in April, with the understanding that any of the Board members who are still not quite comfortable would still be able to join the meetings via Zoom.

Chair Gorman stated that he would prefer meeting in person. Mr. Hoppock and Mr. Gaudio agreed. Ms. Taylor stated that she would continue to be remote. Chair Gorman stated that they

are all in this together. He asked if Ms. Taylor is okay with Board members meeting in person and having her continue to participate from home or if she would rather they all do the same. Ms. Taylor replied that she does not have a problem with the others meeting in person, but she is not quite ready to meet in person, nor has been vaccinated. Mr. Welsh stated that he thinks it is important for people to be ready and vaccinated before joining, or however else people need to be ready. He continued that he understands that the City will make a judgment based upon trends before changing it. That said, he would love to get away from Zoom. Others agreed.

Mr. Rogers thanked the Board for their feedback. He continued that he and other staff members will continue to discuss it, and he will let the Board know as they move forward. The intent is to maintain the option for any member to attend via Zoom until they feel comfortable to meet in public.

7) **Non-Public Session (If Required)**

8) **Adjournment**

There being no further business, Chair Gorman adjourned the meeting at 9:48 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Edits submitted by,
Corinne Marcou, Zoning Clerk
and
Jane Taylor, Board member