

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, February 6, 2023

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Joseph Hoppock, Chair
Jane Taylor, Vice Chair
Michael Welsh
Richard Clough
Joshua Gorman

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

All Present

I) Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted.

II) Minutes of the Previous Meeting: December 5, 2022

Ms. Taylor stated that she has two corrections:

Line 488, page 14 of 50: the last word is “stable” and should be “statute.”

Line 1115, page 29 of 50: the text “under 674.54” should read “under RSA 674:54.”

Mr. Hoppock made a motion to approve the meeting minutes with the two edits. Ms. Taylor seconded the motion, which passed with a vote of 4-0. Mr. Welsh abstained.

III) Unfinished Business – Election of Chair and Vice Chair

Ms. Taylor asked if she is allowed to re-nominate Mr. Gorman as chair, given that he is a holdover [his term has technically expired]. Mr. Gorman replied that although it is allowable, he thinks it is time to choose a new chair.

Ms. Taylor nominated Mr. Hoppock as Chair. Mr. Welsh seconded the motion, which passed by unanimous vote.

Chair Hoppock nominated Ms. Taylor as Vice Chair. Mr. Welsh seconded the motion, which passed by unanimous vote.

Mr. Gorman thanked the Board members and stated that it was a pleasure being Chair and working with them. Ms. Taylor and other members thanked Mr. Gorman and expressed appreciation for his work, especially during the challenge of the pandemic.

IV) Hearings

A) ZBA 23-01: Petitioner, Christopher Masiello of Nuevo Transfers, LLC of 1 Bedford Farms, Suite 202, Bedford, NH, and represented by Jim Phippard of Brickstone Land Use Consultants, LLC, requests a Variance for two properties each located at 0 Carroll St. and two other separate properties located at 0 Elm St. and 225 Elm St., Tax Map #'s 536-049-000-000-000, 536-050-000-000-000, 536-055-000-000-000 and 536-056-000-000-000. The Petitioner requests a Variance to permit a building containing five dwelling units on a single lot in the Medium Density District where no more than three dwelling units on a single lot may be permitted per Chapter 100, Article 8.3.1.C.2a of the Zoning Regulations.

Chair Hoppock noted a correction to the agenda: “ZBA 32-01” should be “ZBA 23-01.” He introduced ZBA 23-01 and asked to hear from staff.

John Rogers, Zoning Administrator, stated that there are four properties involved with this application. He continued that they are all in the Medium Density District, which has a restriction of a maximum of three units, and that is why the applicant is before them tonight. On the screen, the one that is highlighted yellow is one of the properties on Elm St. The other three right around it are the other three that are part of this application.

Ms. Taylor stated that the application is phrased as being only three parcels – 0 Carroll St. and 0 and 225 Elm St. Mr. Rogers replied that until a structure is present, properties have a ‘0’ address, and on Carroll St. there are two ‘0’ properties. He continued that there are four tax map numbers. Ms. Taylor replied that she saw that but thought it should say ‘0 Carroll St.’ twice. Mr. Rogers replied that it says, “*two properties, each located at 0 Carroll St.,*” so he can see the confusion, but there are four properties if you look at the tax map numbers.

Ms. Taylor asked if these parcels could support, based on the current zoning and the parcels’ size, a single-family unit or a duplex. Mr. Rogers replied that prior to this, the applicant had applied for and received permits for four single-family homes. He continued that the applicant will speak to it, but part of their hardship is the soil. They [Community Development Staff] had to issue a stop work order when it became apparent that the soils on this property were not suitable for a traditional foundation. He will let the applicant speak to the conditions, but yes, there would be enough square footage there for four single-family homes. Without the three-unit restriction, if they merged all four lots, they would have enough square footage (in the Medium Density District) to have five units. That is part of the reason why the applicant is asking for that.

Ms. Taylor stated that she was looking at the City's GIS for this, and the layers show that the area is quite damp. She asked if any of these parcels are in a wetlands area. Mr. Rogers replied that he does not believe there are delineated wetlands on any of these properties and they are not within the floodplain. He continued that the moisture is certainly part of the soil conditions in the whole neighborhood.

Chair Hoppock asked Mr. Rogers to clarify the location of the four lots in the image on the screen. Mr. Rogers replied that directly to the right of the yellow square is one, as is the one directly north, and the one to the northeast. Carroll St. is on one side and Elm St. is on the other. These lots would need to be merged to do this type of development. It would be one lot with frontage on both Elm and Carroll Streets. The applicant's package has a rendition of the proposed site. If this were approved as a multi-family dwelling, it would have to go to the Planning Board (PB) for site approval.

Chair Hoppock asked if anyone had further questions for Mr. Rogers. Hearing none, he asked to hear from the applicant.

Jim Phippard of Brickstone Land Use Consultants stated that he is here on behalf of Nuevo Transfers, LLC, the owner of the four lots. He continued that the plan shown on the board is another version of the same GIS tax map from the City's database. He outlined in red the four lots they propose merging. Ms. Taylor's question was a good one. These are all legal, conforming lots in the Medium Density District. Originally, the owner applied for a building permit to build a single-family home on each of the lots. When it was realized that the peat known to exist in this neighborhood extends under these lots and creates an unsafe building condition they were stopped, rightly so, by [Community Development] and were told they had to hire a geotechnical consultant or qualified engineer to design a proper foundation to safely be able to construct a building.

Mr. Phippard continued that the problem is the peat that exists under the ground's surface and that it exists in several lots in this neighborhood. Nuevo Transfers hired M&W Soils Engineering, having submitted copies of the boring log with the application. The soil identification portion identifies where the peat is and how deep. It starts close to the surface and extends to as deep as 16 feet, with trying to put a building on soils that contain peat or organic material is problematic since peat acts like a sponge. It compresses easily when weight is put on it, and a building built on peat settles. Several houses in this neighborhood were built prior to extensive knowledge about the peat in the area. One house not too far from here was six inches out of level, meaning that one portion of the house settled six inches more than the other portion. Over the years, people have bought lots and determined how deep the peat was. If it was only four or five feet deep, they would over excavate, remove the organic material, and put in suitable material to build on. Even that was tricky to do without harming adjacent properties. Excavating down into groundwater typically means pumping groundwater out to lower it, to excavate material easier. You cannot do that in an area of peat as pumping the groundwater out

and lowering the groundwater table means letting that sponge squeeze and potentially affecting neighboring properties. The history of these problems is why these lots remain undeveloped, and now they have the knowledge of the peat's depth in this specific location.

Mr. Phippard continued that the geotechnical engineer recommended a pile foundation. Pile foundations are found throughout the downtown area. That method of pile driving is still done to a large degree, but now "helical piles" exist. Mr. Phippard explained, to think of an old-fashioned auger drill, turning with its helical/spiral-shaped bit that can screw into wood. It is a version of that, used for piles with a machine that screws it into the ground instead of pounding it. They add another rod on top and keep going. These have been sized and used enough to become acceptable as a house foundation. They are very expensive, depending on the depth needed. These boring logs only went to 32 feet. The second column shows how many blows it took for the auger to extend another six inches into the ground. Several say "WOH," which means it extended into the ground just by the 'weight of the hammer', and they did not have to pound it at all, because they were in the peat. Once they reached the peat, the auger just sank. He has been on sites when they have done this and has seen how they can actually lose their auger, if it extends deeper and they do not have their cable attached to stop it from sinking. Here, luckily, it stopped at 16 feet. Below that was clays and silts, which is typical for under the City of Keene, which is an old lakebed. The clay extends very deep and thick under the City.

Mr. Phippard continued that the company that sells the helical piles did drilling of their own and determined that they can put in a helical pier system adequate to support a residential building, having to extend at least 60 feet into the ground, turning into a tremendous expense. [Nuevo Transfers] could not afford to spend \$100,000 on the foundation for one house. The contractor worked with the geotechnical engineer and the company that could install the piers and came up with a plan to save money by combining the units. That is when they came up with the idea and came to him to ask about the possibility of merging the lots and doing a multi-family building. They determined that there was enough square footage to support five units. The contractor and property owner were trying to find a way to save this project of building housing and making it affordable so people can afford to rent the units, making it practical, so [Nuevo Transfers] can make a profit by doing this. He (Mr. Phippard) wanted them to stop at four units, but they felt that it was still too expensive. [Nuevo Transfers] needs the fifth unit to make their plan work, which is why he is before the ZBA on their behalf, asking for a Variance. In the Medium Density District, the maximum number of units that can be on a lot is three.

Mr. Phippard went through the criteria.

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

Mr. Phippard stated that it is well known that residential building lots in Keene are in short supply, and housing is in even shorter supply. He continued that there is a serious need for housing; he hears from clients who are manufacturers and employers in the area that they bring employees into the area as they expand their industry, but the employees cannot find affordable housing in the area. Keene's apartment vacancy rates are down to 0.3%, and without creating

more housing, that is a serious problem. This is an existing residential neighborhood, serviced by City water and City sewer. There are City sidewalks here; it is a walkable neighborhood close to downtown. Thus, this is a good residential area to build in, absent the problem of the inadequate soils. A new residential building in this area will enhance the appearance of these now-vacant lots. Over the years, debris has sometimes been left there and [Nuevo Transfers] removed an old refrigerator and stove that were dumped on these sites, for example. Allowing the lots to be developed is in the public interest because it will clean it up and increase the value of these properties and the taxes paid to the City of Keene.

Mr. Phippard continued that the application he submitted includes the concept plan he did, showing a five-unit building. It shows the size the owner would propose to build. The building would be 32 feet deep and 90 feet long. It would be a two-story building of five townhouse apartments. Each two-bedroom apartment would be about 1,150 square feet, which is a good size. They are a little bigger than the units he (Mr. Phippard) built at Farmstead Commons in Keene, which sold out well. Due to the location, these (five units Nuevo Transfers proposes) will be on the affordable end of rental units in Keene – that is, not \$2,000 per month – and should be well received.

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

Mr. Phippard stated that this is consistent in a residential neighborhood in the Medium Density District. He continued that existing housing is marked up on his plan and shows that [Nuevo Transfer's] lot would become the biggest in the neighborhood, at .75 acres. He showed the multi-family buildings he has identified, mainly three-family but with a couple six-family units. There is a mix of single-family homes and multi-family residences, and he believes this will fit in because of that. He continued that as the concept plan shows, there is plenty of room for parking as the City requires two parking spaces per dwelling unit. There is a large yard space behind each of the units, for gardens or play areas. If this is approved and goes to the PB, they will use part of that area for stormwater treatment and retention. City storm drains are on both streets where they would put in an overflow system to overflow into the City storm drains. [This project] would not be increasing runoff in the area, but again, that is a PB issue.

Mr. Phippard continued that he thinks this project fits well in the neighborhood. The other lots, due to being smaller, have less green space. Even the three-family lots, although larger, have far less green space than what would be created on this lot. By his calculations for this type of layout, the proposed lot coverage would be about 28%. That is well under what the City allows in the Medium Density District. This would comply with all of the Zoning dimensional requirements except for the number of units on one lot. Thus, he believes it meets the spirit of the Ordinance.

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

Mr. Phippard stated that the owner of these properties bought them in 2022, thinking that they were vacant building lots that met all the zone requirements, and he could build single-family homes on them. He continued that it was not until after [Nuevo Transfers] bought the lots and applied for the permits that they discovered the problem with the peat. He wishes [Nuevo Transfers] had asked him about that beforehand, because he could have told him before he bought the lots. Nonetheless, [Nuevo Transfers] owns these lots, and the only way he can build on them – and this was quite a bit of expense just to get to this decision – is to use the helical piers. This very expensive foundation system requires asking for the additional unit, which is what is driving this. Building on the lots in this manner would not be out of place in the neighborhood. It would match the character of the multi-family units in the neighborhood, and it meets all the other zone dimensional requirements. He does not think it would hurt property values. He thinks it would help protect property values in the neighborhood and would do substantial justice for the property owner.

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

Mr. Phippard stated that he thinks it is true that the values of surrounding properties would not be diminished. He continued that it has not been a serious, continuing problem, but there has been a problem with people dumping [trash] on the vacant lots. That will stop, which will help clean up this area and help protect the values in the neighborhood. Again, he thinks [this project] will maintain the character, because of other multi-family units in the area. They chose to front the building in the area where City sidewalk exists, facing Elm St. Parking will be to the side and rear. He knows the PB will require more screen plantings, but they will maintain the trees along the Carroll St. frontage and along the boundary to the greatest extent possible. If they need more screening, they can add it. This project will protect the values of surrounding properties and help provide needed housing.

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. Phippard stated that the special condition of this property is the peat. He continued that [Nuevo Transfers] did not know about it when they bought the properties, then discovered it, and now is trying to deal with it. He thinks they are dealing with it the correct way, with the only way to build on this lot is to do something like this pier foundation. It would not be proper to excavate and try to remove the material, because it is too deep in the ground and is deep in the groundwater. It is not feasible to excavate the material without disturbing and endangering other properties, causing excessive settlement and movement. It is a serious problem, and the owner is trying to do what is correct. He hopes the ZBA can recognize this special condition.

and

ii. The proposed use is a reasonable one because:

Mr. Phippard stated that this proposed multi-family use is reasonable in a residential neighborhood that contains multi-family residential uses. He continued that this vacant lot has City water, City sewer, and sidewalks. City streets are available to the site, and it is a walkable neighborhood. It is consistent with the character of the neighborhood.

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 that he repeats what he said previously, the merged lots are necessary in order to make the project feasible. He continued that they cannot do single, individual homes as he knows the neighbors would prefer, because it is too expensive, and no one could afford to live in those units.

Chair Hoppock asked if the Board had questions for the applicant.

Mr. Welsh stated that Mr. Phippard talked about excavating down to non-peat material and then filling. He asked if he is wrong in thinking that if someone were to do that – pull all the peat out and then put in some sort of impervious material –the water would have to go somewhere, and that strategy would likely have some sort of impact on neighboring properties.

Mr. Phippard replied that it depends on how they do it. He continued that because of the depth, they would have to use cofferdams, large sheets of corrugated metal pounded into the ground to enclose the whole area. Then they try to excavate deep enough to get through the peat to remove it all. It would be pulled out a bucket at a time. If someone like M&W Soils were going to take that on, they would say you could not de-water the site because it would endanger surrounding properties, suggesting to leave the water alone. They would have to work slowly and pull the material out. As long as they coffer dammed the area, nothing else could slough in to try to fill in the hole. Then they would replace the material, probably with crushed stone, which can compact even in water; you cannot compact water. You cannot dump in sand and run a compactor over it; it would not work. It gets very tricky and has to be done properly. The use of the cofferdams, and the process of trying to excavate, is even more expensive than doing the pier foundations. The piers became the only viable solution that [he and Nuevo Transfers] could find for how to do this without endangering surrounding lots.

Ms. Taylor stated that the soil information Mr. Phippard gave the Board uses the expression “flowing sand.” She asked what that is. Mr. Phippard replied that when they do borings like this, they are not just pounding a bit into the ground; they want to pull samples out to examine. He continued that they were in a layer of coarse sand, which was completely saturated with

water, and screwed the sample tube through it and pulled it back out of the hole. Coarse sand saturated with water will not stay in the tube, the sand flows right out. Thus, they pulled the sample tube up out of the hole and found it empty. They could see this coming, because the sand got coarser and coarser the deeper, they went as is typical in Keene. As the lake formed here from the glaciers in who-knows-when, the area rivers where the coarse sand existed got overtopped and inundated with water and silts and clays formed at the bottom of the lake, covering that. Thus, they see this situation throughout the city, where they might drill through 30 feet of clay and suddenly there is beautiful sand and gravel when they were expecting more clay. Downtown, it is all clay under Main St., all the way down to ledge/bedrock. With that situation, they worry about the clay consolidating under the weight of multi-story buildings, which is why they drive the piles when they are building in downtown Keene. To get through the clay, the piles sit on the ledge, which supports the building. For houses, they use these augers/helical piles, down to a depth of at least 60 feet. At the top, they use grade beams to connect the top of a pile to the next pile to the next pile, then do a frost wall. These buildings will be a slab on grade, with no basements, due to the water in the area. The basements would be wet, and water getting through would eventually be a problem. They could use a sump pump, but it would never end.

Ms. Taylor asked if it is correct that the sample depths go down to 32 feet. Mr. Phippard replied yes. Ms. Taylor asked if they drill the helical piers down to bedrock. Mr. Phippard replied no, they would go down at least 60 feet. He continued that the company that does the helical piers came in and did their own borings, which he does not have. However, the report the company gave to the contractor and the owner includes the price for the company to drill down 60 feet and screw the helical piers in. It is not like the pile drivers you see downtown. Ms. Taylor asked if it is correct that Mr. Phippard does not know what is beyond 32 feet. Mr. Phippard replied that he assumes dense clay. He continued that it is not just a matter of a building sitting on something hard enough to hold it; soil *friction* also supports the weight. It gets complicated and he will not go into all the technical details, but this company knows what they are doing and how to go deep enough to hold up a two-story residential building.

Ms. Taylor stated that she looked at the City maps online, and apparently, the 225 Elm St. parcel once had a house. She asked whether Mr. Phippard knows anything about that and about its demolition. She is curious as to whether it was a structural issue with the foundation. Mr. Phippard replied that he was told it was a structural failure; the house had settled un-uniformly. He believes it was 11 inches out of level across 30 feet of the house, and it was not livable. Windows were breaking, doors would not open, and the basement flooded. Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked for public comment, beginning with people opposed to the application.

Carl Babbitt of 152 Carroll St. stated that he lives on the corner of Carroll and Spruce St. and has owned his house for about 14 years. He continued that he is not against anyone owning a house. He owns a Habitat for Humanity house and is very proud of that. It is on a slab. What he is not proud of is that when he looks out his kitchen window, this property “is disgusting” – nothing

but dirt mounds. A while back, there was a lot of rain, causing a lot of mud. He is not against anyone building a house here but thinks they should go by the law. If the law is three houses, then let three houses be there. Mr. Babbit said there are many multi-family units on this street; there are also many children. Cars have been flying up and down the street and one day one of those children will get hit because of the [speeding]. He only wants to see what is allowed by law. He gets up at 3:30 AM to go to work, for the State of NH, and comes back at 4:30 or 5:00 PM. He wants to see only what is proper and allowed by law. His house is on a slab because when it was first built, his understanding is that Habitat for Humanity had to go to the ZBA for a Variance because of the wetlands and his property gets really wet. He has done things to circumvent that. Other than that, he asks that people stick to the law. He is a taxpayer and has been paying his taxes right along. He is a good homeowner and takes care of his property. He does not want to see property values go down or something bad happen.

Ronald Dunn stated that he lives right across the street at 228 Elm St. He continued that he knows what was there [at the properties in question], and he knows what was left there by the person who bought it when he demolished the house. He does not know if the contractor knows there is still cement in the ground in several places. He does not know if this [project/plan] would work or not. It would be nice to see something there, but he does not know about five units and questions the measurements as five units seems like a lot. Using the map, he indicated the location of where the house used to be, and where the foundation was/is. He showed the back corner where a person dumped several slabs of the walls, twenty feet down. He continued that he does not know if the contractors would have to dig all that up and remove it to get it out of the way of the helical piers. He thinks it would be too expensive, which is why he is unsure about this project. He does not know what is underneath the other properties, but he has seen what is underneath that one, and it was still peat. It is now several layers of stone, from large stones to smaller stones to smaller stones. They did not get to the final grade and at what grade will all of this end? At the level of the sidewalk, or higher? When it rains, this [neighborhood] floods, especially in big rains, even his yard floods. Every year, since they have redone Elm St., a section of his property floods every spring with knee-deep water. Since they put the road in, some of the land has sunk, about a foot. He watched as they were digging it, and told one of the crew members, "Hey, you broke a pipe." The crew member told him, no, that was a root that was pulled out, and the water was running out from his [Mr. Dunn's] land, into where the road was going to be, thus, his land is on a ton of water. He hopes it is not leaking through the road over to [Nuevo Transfer's property], but if it does, he does not know what will happen. Chair Hoppock asked if anyone else wanted to speak in opposition to this application. Corinne Marcou, Zoning Clerk, stated that the ZBA received a letter in opposition that needs to be read into the record.

Chair Hoppock stated that they have received a letter from Michael Melisi on behalf of abutter Ann Claridge. He continued that Ms. Claridge's statement is as follows:

"To the Zoning Board of Adjustments,

This letter is pertaining to the request for 5 apartments being built in one building.

Please let me introduce myself. I am Ann Claridge. I own the house and property at 140 Carroll St. (TMP#)536-051-000-000-000.

My house is a split entry with a cellar that gets water in it every time it rains and when the snow melts. The house was built on peat and the yard is all peat. My property abuts the vacant lot and after heavy rains and snow melt, it floods up to my large maple trees beside my house in the back yard. It also floods over from the vacant lot. The vacant lot used to have trees and bushes on it that would suck up the water. But now they have been removed and I am very concerned about the water levels being much worse now and my cellar being flooded even more. I hope your committee can help with this problem.

Now to get to the subject of one building with 5 apartments in it. I definitely do not want that to happen. I can see one building with 3 apartments in it that have nice size apartments in it like the one on Carroll St. Putting 5 apartments in one building [would mean] the apartments would be so small. It would look like a slum area. Are these apartments going to have 2 floors and a cellar? Nothing has been mentioned about this. Also, nothing has been mentioned about parking cars or pickups. What is going to be done in that area? If the peat is not taken out and sand or gravel put into that area, cars and trucks will be sinking into the ground and the owners will be up to their knees in mud. Is the dumpster going to be fenced in so the trash can't be blown all over the place and neighborhood? The dumpster has to be put on a very sturdy area also or it will be sinking.

There are 4 house lots that I know about that had trees, brush, peat and water that was all removed and lots of sand brought in before the houses were built. Three on Carroll St. and one on Elm St.

(TMP)#549-024-000-000-000 104 Carroll St.

(TMP)#549-024-000-000-000 110 Carroll St.

(TMP)#536-052-000-000-000 152 Carroll St.

The house on Elm St. and had to be demolished because the cellar flooded every time it rained or snow melted. The land was all dug out and the peat was removed and sand brought in my (TMP#)536-051-000-000-000 140 Carroll St. There is a house directly behind my house on Elm St. [but] I do not know their name, address, or number.

Looking from Carroll St. over to Elm St. that house lot is to the left of the house directly behind my house. I don't know if Christopher Masiello bought that property also. I would think he probably did.

I also have a major concern about the pounding of the posts into the ground to hit hardpan or clay to hold the building. That is going to shake all of the homes around that area, especially the houses built on peat, and seriously do damage to other houses in the neighborhood.

Voting NO to 5 units.

*Thank you,
Ann Claridge”*

Chair Hoppock asked if anyone wanted to speak in support of the application. Hearing none, he asked if Mr. Phippard wanted to respond to the public comments.

Mr. Phippard stated that Mr. Babbitt was complaining about the condition of the property as it exists. He continued that this is what he was referring to with vacant properties – [trash] gets dumped, does not get cleaned up, and becomes unsightly. Obviously, the owners would have to clean it up in order to build a new building and parking area on the property. The laws allow five units on that land area. He is just changing it to one lot instead of four lots. Originally, [Nuevo Transfers] was going to build four houses but determined that it was not feasible. What the application proposes is allowed under the City’s existing regulations.

Mr. Phippard continued that Mr. Dunn pointed out that some of the concrete foundation was probably left in place. Obviously, [Nuevo Transfer’s] contractor would remove that because the proposed building is along that frontage. That will be cleaned up.

Mr. Phippard continued that many of the [other comments from the public] were issues for the PB; he does not know if the ZBA wants him to respond, although he is willing to do so. He does not have a site plan completed yet. They have yet to design drainage, which is always a big one, but obviously, he would propose raising the location of the building a couple feet and then slope down around it with a drainage collection system that keeps water on the site. They do not want to run the water into the street. They have to keep it on site, per NH law and the City’s Zoning requirements. All of those issues will be addressed with the PB, and as Mr. Rogers mentioned, this project requires PB review, because it is not a single-family home nor a duplex. Other items they will address include drainage, screening, lighting, and landscaping, which the PB regulations require.

Mr. Phippard showed the concept plan he prepared. He continued that once he looked at the land area, his thinking was a single building, adequately sized for two-bedroom units, with 1,150 square feet per unit. He wanted to front it on Elm St. because that is where the sidewalk is, creating a good façade and street frontage setting. Regarding access to the property, they would eliminate all the other curb cuts on the separate lots, to have a single curb cut from Elm St. into the parking area. He identified a dumpster location, which is required to be on a concrete pad. The entire parking area would be excavated, putting down fabric, which acts as a unifier, holding together the gravel put on it. A gravel parking lot that sits on fabric can sustain the weight of a

vehicle without non-uniform settlement, so that is how he designed that. The concrete pad would also be on the same material. They would over excavate, put in the fabric, bring in 18 inches of gravel (12 inches anchoring, 6 inches crushed), and put a concrete pad on top. The City's development standards require screening dumpsters with 6' high fencing. The letter-writer had a concern that rubbish would blow through the neighborhood, but obviously, they will not allow that to happen. He thinks this project will be a huge improvement over what is there today. Keene badly needs housing, and this is a step in the right direction.

Carl Babbitt asked how far back the house will be from the sidewalk. Mr. Phippard replied about 20 feet. He continued that Zoning requires a building to be 20 feet back from the property line.

Mr. Babbitt asked why a soil test was not done prior to purchase. He continued that when he bought his house, he had to have a soil test done and that he, too, had water issues to deal with. Chair Hoppock replied that the question is not so relevant for this meeting, but probably, the owner just did not know he needed one. Mr. Phippard stated that if a lender is involved, the lender requires all those tests to be done. He continued that in this case, there was no lender – [Nuevo Transfers] just paid cash. Not having a soil test done was a mistake.

Chair Hoppock asked if the ZBA had further questions.

Ms. Taylor stated that she has a question for Mr. Rogers. Many years ago, there was an attempt to develop a parcel of land at the corner of Carroll St. and North St., but they gave up and that is now in conservation, mostly because it is a peat bog. She continued that she realizes that these were subdivided lots a long time ago. She is curious as to why all of this testing does not scream that this is another peat bog. She does not know how the City goes about identifying these things.

Mr. Rogers replied that he thinks that is exactly what the applicant is implying – this is now a peat bog, and hence why an engineer was required to determine what kind of foundation these soil conditions would require. He continued that people are building on another lot down the street, which has soils that are probably slightly different, because his opinion is that the peat bog is deepest in this area. A little further down, the City attempted to develop the field that was behind the Keene Housing property and had to stop because that was all peat. Ms. Taylor replied that she thinks that is the one she is thinking of. Mr. Rogers continued that they were going to build something like a ballpark there but were unable to. That is probably the worst area. He is not sure exactly what Ms. Taylor's question is.

Ms. Taylor replied that she is concerned because a peat bog is within the definition of wetlands. She continued that if this is wetlands, she questions whether anything should be built there, notwithstanding the fact that this person has purchased the property. Mr. Rogers replied that the words "peat bog" are probably being thrown around a little too easily. He continued that certainly there is a huge layer of peat and he does not know the official definition of "peat bog."

The fact is that a house was previously built on one of these lots. They are subdivided lots. He apologizes for using the term “peat bog.” There is peat. Ms. Taylor replied that she is the one who brought up the term. She continued that she is not an engineer or a soil scientist, but intuitively, it strikes her that a form of wetlands is what they are looking at.

Mr. Gorman stated that he has a question for Mr. Rogers, too. Would it be fair to say that all of these issues that fall under the category of engineering or wetlands delineations/wetlands regulations are not really ZBA issues? He continued that they are more building permit issues, State of NH regulations and City regulations that will need to be complied with, right down to the parking, the dumpster, and all of the issues that have been raised. Those issues are not why the ZBA is here tonight. They are here tonight to see if the Board can approve a Variance for five units where three are allowed.

Mr. Rogers replied that is correct. He continued that many of these issues are ones that would pop up under the PB application and approval process. Certainly, they would be looking into that soil specialist if required by the PB, but Mr. Gorman is correct that the PB would be covering these issues.

Mr. Phippard stated that regarding Ms. Taylor’s question, the surface soils existing at the site are not wetlands soils. He continued that it is not peat; it is sand and silt. That is why no wetlands were delineated on the property. It did not look like wetlands, but the peat begins four feet down. Over the years, he does not know who did it, but someone obviously filled it with sand and silt in hopes of building on it. Apparently, they tried to build on the Elm St. lot where the house was torn down, and it failed. The problem is the depth of the peat. It is not at the surface, so unless you are trained to look for it, you will not know it is there.

Chair Hoppock asked if it is fair to say that the peat exists about four feet below the surface to 32 feet below. Mr. Phippard replied four feet to 16 feet below.

Chair Hoppock asked if there were any further questions. Hearing none, he closed the public hearing and asked the Board to deliberate.

Ms. Taylor stated that she brought up the issue of wetlands because she felt it had some bearing on the public interest criterion the Board has to look at. She continued that it is true that housing is in short supply, though she does not necessarily think that is enough of a reason for a Variance, given everything else they have to look at. However, she suspects that if this were not wetlands, then using it for housing would be in the public interest. Personally, she would prefer to see four units instead of five. Four would fit individually on those lots, and financial interest should not be the sole determining factor.

Chair Hoppock asked how the wetlands issue would be addressed in the further regulatory process for this [application], such as the PB review. He continued that he is not sure if this is wetlands, although he doubts it. Mr. Rogers replied that he appreciates Mr. Phippard’s response, about how this is a site that if you were to drive by, [you would not see wetlands]. He continued

that as Mr. Phippard stated, these vacant lots were subdivided back in the day, and this became an area where people started to put stuff down and you now have four to six feet of silty sand on top. He is seeking the definition of “peat bog,” but he thinks that the presence of 12 feet of peat does not necessarily make it a “peat bog” or “wetlands” in this setting. They could confer with the State’s wetlands division to get their opinion, but seeing these lots, how long they have been there, with one of them having already been developed, he does not think this would meet the criteria. Mr. Rogers will reach out to the NH Department of Environmental Services (NHDES).

Chair Hoppock stated that he thinks this application would serve the public interest for addressing the need for housing in this community. He continued that in terms of the impact on the neighborhood of three (units) versus five, he thinks it fits in with the neighborhood more than it does not fit in; and it is consistent with what is there, generally. This particular property seems to have an abundance of this special condition located right in the middle of it – the peat. He did not hear that other properties had higher concentrations of it. Maybe they do not have that data. He can accept that the peat is a special condition.

Mr. Gorman stated that in terms of the application being in the public interest, he thinks this does meet that requirement. Number one, they have a shortage of housing in the city – and in the state and nation, probably – so the project is filling a need for the public. He continued that he does not think there is much public gain from having a vacant lot. In fact, the ZBA heard testimony from neighbors who are discouraged by the condition of the lot presently. He thinks that some of the issues the neighbors brought up in opposition to this development could actually be alleviated by the development, in the long term. They will gain water retention from it because the developer will have to put in a water retention system, which will be a plus for the neighbors. They will lose vacant lots, and gain something new and nicely laid out while serving a need for the public. He thinks it could actually end up being advantageous to the neighbors. That fits in with the property value criterion as well.

Mr. Gorman continued that the spirit of the Ordinance, generally speaking, to not allow more than three units on one lot, is something he appreciates, but he does not think it was written with the thought in mind that four lots would be being merged. That creates a unique situation, with four individual building lots being put together. If someone was trying to put three units on each individual building lot, they could in theory have 12 units. This applicant is seeking to merge four lots to have five units, which seems reasonable and within the spirit of the Ordinance to him. He certainly thinks the soil conditions create a hardship. Even the abutters, as well as the applicant supported that hardship.

Mr. Welsh stated that the spirit of the Ordinance, as he reads it, is expressed as this being a zone that is designed to encourage residential development. He continued that this is a way of getting residential development on a vacant lot in this zone. It also says, “three units,” but he thinks that is less important in terms of the spirit and priorities of the zone. In this case, going above three units is the necessary feature of having to get the residential development here. Thus, he thinks the application is consistent with the first two criteria.

Chair Hoppock replied that in that vein, he would argue that approving the application would grant substantial justice to the owner. He continued that it does not matter much to him that the owner did not know about the peat; the condition of the property is what it is. The owner is trying to do something with it. If the ZBA denied him the ability to do something with it, it would cause him great loss, without any corresponding gain to the public. He does not see that balance working out in favor of the public at large.

Ms. Taylor stated that going back to the second criteria, the spirit of the Ordinance, her only comment is that five units speaks more of a high density development as opposed to medium density. That is her only her only concern in that area.

Ms. Taylor stated that regarding the substantial justice criterion, she thinks this is probably a wash.

Chair Hoppock asked if anyone had thoughts on the fourth criterion, the impact to surrounding properties. Mr. Clough stated that he cannot see how it would have a negative impact. He continued that they would be cleaning up something everyone has said is an eyesore – for example, there were appliances dumped there. If it were not developed in some way, it would probably continue to accumulate things of that nature, whereas in the other direction, if they fix it up it improves everyone's feeling about their neighborhood. Chair Hoppock added that it could likely increase the values of surrounding properties and continued that that is a realistic conclusion for him.

Chair Hoppock asked for Board members' comments on the hardship criterion. Mr. Gorman stated that he thinks the applicant did a good job of describing the situation the property owner finds himself in and finds himself looking for solutions to. He continued that this is seemingly a viable solution. He thinks the soil conditions necessitate a unique situation and sees it as a hardship. He does not think you can have someone own and pay taxes on four building lots that they are hamstrung on and cannot do anything with. If the Board created that, they would be creating a hardship for the owner. He thinks the proposed use is reasonable, given that there are four building lots, which four single-family homes would be allowed on. These are townhouse-style apartments of about 1,000 square feet apiece, which means about a 5,250 square foot structure, based on what Mr. Phippard said. There is adequate parking and green space and they would be cleaning up a vacant lot. All of this is reasonable to him.

Chair Hoppock stated that he agrees with all those comments. He continued that he would also point out that the purpose of the Zoning Ordinance, in terms of the limit to the number of units on a lot, is to regulate density. Here, they are looking at adding one more living unit than the applicant could have if he left the lots the way they are. As Mr. Gorman mentioned, putting them in one building, with roughly 1,100 square feet per two-bedroom unit, does not, in his view, impact density significantly or at all. There is little connection between the overall

purpose of the regulation to this property, and the special condition of the property means that imposing that regulation causes a hardship, in his view. He thinks the fifth criterion is met.

Mr. Gorman stated that he wants to add, in terms of the abutters' concerns, that he is confident that the process of developing this property, given the stringent building requirements and stringent wetland requirements, will allay most of their fears. He continued that the abutters' concerns are legitimate, but most can be solved through engineering. He thinks this could end up being a good situation for everyone.

Chair Hoppock asked if the Board had further comments on this application. Hearing none, he asked for a motion.

Mr. Gorman made a motion to approve ZBA 23-01 without any conditions, to approve five dwelling units in a single lot in the Medium Density District where no more than three units on a single lot may be permitted. Chair Hoppock 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.*

Met with a vote of 5-0.

and

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

Met with a vote of 5-0.

The motion to approve ZBA 23-01 carried with a vote of 5-0.

V) New Business: Adoption of the 2023 Meeting Schedule

Chair Hoppock asked if anyone had comments or questions about the 2023 meeting schedule. Hearing none, he asked for a motion.

Mr. Gorman made a motion to approve the 2023 meeting schedule. Chair Hoppock seconded the motion, which passed by unanimous vote.

VI) Communications and Miscellaneous

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Hoppock adjourned the meeting at 7:53 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk

Reviewed by,
Jane Taylor, Vice Chair