



City of Keene Zoning Board of Adjustment

AGENDA

Tuesday, January 2, 2024 6:30 p.m. City Hall, 2nd Floor Council Chambers

- I. Introduction of Board Members:
- II. Vote for Chair & Vice Chair
- III. Minutes of the Previous Meeting: December 4, 2023
- IV. Unfinished Business:
- V. Hearings:
- VI. New Business:
 - Vote to adopt 2024 meeting calendar.
 - Rules of Procedure Updates
- VII. Communications and Miscellaneous:
- VIII. Non-Public Session: (if required)
- IX. Adjournment:

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1 City of Keene
2 New Hampshire

3
4
5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Monday, December 4, 2023**

6:30 PM

**Council Chambers,
City Hall**

Members Present:

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

Staff Present:

Corinne Marcou, Zoning Clerk
Mike Hagan, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

9
10
11 **I) Introduction of Board Members**
12

13 Chair Hoppock called the meeting to order at 6:30 PM and explained the procedures of the
14 meeting. Roll call was conducted. Chair Hoppock stated that Mr. Weigle is not a voting
15 member tonight.
16

17 **II) Minutes of the Previous Meeting – November 6, 2023**
18

19 Ms. Taylor gave the following edits for the meeting minutes:
20

- 21 - Line 549, “He continued that has been there...” should be “He continued that he has been
22 there....”
23 - Line 663, “Mr. Bridges continued that as stated in section 3, patients can easily find their
24 way to the main point of entry,” should be either “patients need to easily find their way”
25 or “so that patients can easily find their way,” otherwise it does not make sense, given the
26 context of the conversation.
27

28 Chair Hoppock stated that he agrees with adding the words “so that” to the sentence on line 663.
29

30 Mr. Welsh made a motion to approve the meeting minutes of November 6, 2023, as amended.
31 Mr. Clough seconded the motion, which passed by a vote of 4-0. Mr. Gorman abstained due to
32 having been absent from the November 6 meeting.
33

34 **III) Unfinished Business**

35
36 None.

37
38 **IV) Hearings**

39
40 **A) Continued ZBA 23-25: Petitioner, 706 Main St. Owner LP, of Newark, DE,**
41 **represented by Jeffrey Christensen, Esq. of Cleveland, Waters and Bass of Concord,**
42 **NH, requests an Enlargement or Expansion of a Nonconforming Use for property**
43 **located at 706 Main St., Tax Map #120-019-000 and is in the Low Density District.**
44 **The Petitioner requests to expand or enlarge the pre-existing, nonconforming three-**
45 **unit multifamily use to add two additional dwelling units, per Articles 18.2 and 25.7**
46 **of the Zoning Regulations.**

47
48 Mike Hagan, Plans Examiner, stated that 706 Main St. is in the Low Density District, and the lot
49 size is .63 acres. He continued that it is about 27,402 square feet, is a non-conforming, three-unit
50 residential building with the living space the City has on record is 2,148 square feet. There are
51 no ZBA decisions found on record.

52
53 Ms. Taylor asked Mr. Hagan to clarify the pre-existing non-conforming use. She continued that
54 her understanding is that in the Low Density District, a three-family, multi-unit is permitted. Mr.
55 Hagan replied that is not correct. He continued that single-family homes are the only residential
56 units permitted in the Low Density District, as well as ADUs. A (multi-family unit) is allowed
57 in the Low Density District with a Conservation Residential Development (CRD). Those are big
58 lots of land that are allowed to be divided into a CRD. Ms. Taylor asked if this is non-
59 conforming because it existed prior to putting the CRD requirement there. Mr. Hagan replied no,
60 certain lot sizes are necessary to qualify for a CRD. He continued that off the top of his head, he
61 thinks the minimum lot size is one or two acres in the Low Density District to qualify for a CRD.

62
63 John Rogers, Zoning Administrator stated that Table 3.3.5 shows the permitted uses in the Low
64 Density District. He continued that at the top of "Residential" it says "Dwelling, single-family,"
65 which is the only residential use allowed in this district. The CRD is a separate overlay district.
66 This (property in question) is not a CRD in any way. It was a pre-existing use that happened
67 before the zoning changes.

68
69 Ms. Taylor asked if it was pre-existing before the CRD requirement went into effect. Mr. Rogers
70 replied that the CRD is something completely different. They are looking at this just as a Low
71 Density District property as this would not qualify for a CRD. Ms. Taylor asked if that is
72 because of its lot size. Mr. Rogers replied that this pre-dates the CRD; it was a three-family lot
73 before a CRD was ever developed. Ms. Taylor replied that that answers her question; the CRD
74 came after this property existed. Mr. Rogers replied that is correct.

75
76 Chair Hoppock asked to hear from the Petitioner.

77 Jeffrey Christensen, Esq., stated that he is representing the owner, 706 Main St. Owner LP. He
78 continued that with him are Manny and Leslie Pellegrino, the principals, who can answer
79 questions about the specifics of the property. As mentioned, this is a pre-existing non-
80 conforming lot that predates not only the CRD but also the Zoning Ordinance as a whole. It is a
81 three-unit, multi-family in the primary building shown on the screen. It is an oddly shaped lot.
82 The building has an attached garage, on the right side of the building, depending on how you are
83 looking at it, near the “edge of the hockey stick (shape).”
84

85 Mr. Christensen continued that the proposal is to put two additional dwelling units in that
86 attached barn, which is not currently being used. There is enough parking area because of the
87 large lot size with room for ten parking spaces, which would be two parking spaces per unit. The
88 submitted application includes a parking plan that shows where those are. Because this is a pre-
89 existing non-conforming lot, in order to expand the number of dwelling units, they need
90 approval, pursuant to Section 18.2 and 25.7, which are interrelated.
91

92 Mr. Christensen continued that broadly speaking, this is a net benefit without any burden to the
93 area. There are no changes to the footprint of the building or the exterior, other than some
94 cosmetic changes as they redo that attached barn. From the perspective of something like
95 overcrowding, there will not be any impact. This uses existing buildings to add to the housing
96 supply without adding any new structures, no additional encroachment in the setbacks, and no
97 overcrowding of the land. The changes to the property will primarily be to the interior, which
98 will not affect anyone other than the residents. The parking is on a gravel driveway, so the
99 expanded parking will not add any problems for water runoff or drainage. It is a pervious
100 surface.
101

102 Mr. Christensen continued that regarding the criteria of approval, the first is whether this will
103 reduce the value of surrounding properties, or add some obnoxious, injurious, or offensive use.
104 It will not, because the use is already there, it is already a multi-family building, and there have
105 not been any issues with it being a multi-family. There is no reason that adding two additional
106 units to the otherwise unused space would suddenly create some new harm to the area that did
107 not exist before. It is in an area, downtown Main St., which can support this. It means adding
108 housing units to an area that can support and accommodate that, taking the burden off the more
109 rural parts of the city. There is no reason that this would reduce property values. A nearby
110 condominium association is much larger than this. It will not alter the essential character of the
111 neighborhood at all.
112

113 Mr. Christenson continued that likewise, there would be no nuisance to vehicles or pedestrians
114 with plenty of space for parking, and there could be even more. This will have to go through site
115 plan approval by the Planning Board to hammer out some of those details. There will not need
116 to be any burden on anything off the property – no street parking, no parking off the property;
117 there is plenty of space exactly where it is. Given that it is already being used as a multi-family
118 without any hazards to pedestrians or traffic, again, there is no reason that this would create some

119 new hazard. It would be putting traffic in an area that can accommodate traffic, and keeping the
120 increased traffic out of rural neighborhoods where such use might not be as suitable.

121
122 Mr. Christensen continued that regarding adequate facilities, this property is already on
123 municipal utilities, water and sewer. The expanded dwellings will also be on municipal utilities
124 so there will not be any change there. All this will do is add to the tax base without adding to the
125 physical burden on the land or the City. Given the location, there will not be any undue burden
126 on other municipal services like emergency response as it is right downtown.

127
128 Ms. Taylor stated that she noticed in the application that the (impervious) coverage area is blank.
129 She asked what the coverage is. She continued that she knows the building is not changing, but
130 there will be additional parking area. She thought gravel was impervious, not pervious. Mr.
131 Hagan replied that part of that review would be done by the Planning Board, which under their
132 review, all those numbers will be provided. The minimum requirements for setbacks, parking
133 coverage, they may have to adjust to accommodate for that.

134
135 Mr. Rogers stated that gravel would be an impervious surface when put down correctly for use as
136 travel lanes and parking spaces. He continued that as Mr. Hagan said, it would be reviewed by
137 the Planning Board, if needed, or else by the Minor Project Review Committee. Either way, it
138 would be reviewed for the lot coverage. The Low Density District has an impervious coverage
139 of 45%. If there is 45% in that lot it would be covered, between the building and the impervious
140 surfaces.

141
142 Ms. Taylor asked about the fact that there is additional parking surface there. Mr. Rogers replied
143 that it is proposed parking, so with this change of additional units, Planning approval would have
144 to occur, and the applicant would have to provide those percentage numbers for review at that
145 time. He continued that, if need be, it would be back before this Board for lot coverage, if they
146 came to find out they could not provide the ten parking spaces and/or could not meet the
147 impervious coverage. Mr. Hagan stated that there are options for pervious paving that could also
148 satisfy that, if it becomes an issue, but if you look at the property, (you will see) there is plenty of
149 space. Ms. Taylor replied that it would have been helpful to have that in the application.

150
151 Mr. Weigle stated that there is a requirement for it to have the appropriate facilities as well, such
152 as the sewer/water hookup, as this is moving from a three-unit to a five-unit. He asked if that is
153 covered here with the ZBA or if that would also be going to the Planning review. Mr. Hagan
154 replied that it would be reviewed in the Planning process.

155
156 Chair Hoppock asked Mr. Christensen to talk about the two new units. He asked how many
157 rooms there will be and how many people will live in them. Mr. Christensen deferred to Manny
158 Pellegrino.

159
160 Mr. Pellegrino stated that the plan is for two-bedroom units, somewhere around 700 to 850
161 square feet. Chair Hoppock asked if that is consistent with the three existing units. Mr.

162 Pellegrino replied that he thinks the larger unit downstairs is about 1,100 square feet. He
163 continued that the other ones are closer to the range of 700 to 800 square feet.

164
165 Chair Hoppock asked if there were any further questions for the applicant. Hearing none, he
166 asked for public input. Hearing none, he closed the public hearing and asked the Board to
167 deliberate on the criteria.

168
169 *1. Such approval would not reduce the value of any property within the district, nor otherwise*
170 *be injurious, obnoxious, or offensive to the neighborhood.*

171
172 Ms. Taylor stated that she has driven past this many times and that it is fairly secluded; it is not
173 something “in your face” as you drive by it. She suggests that probably nothing would be
174 injurious, obnoxious, or offensive to the neighborhood. It is set back from the road, it is set back
175 from the surrounding development, and if anything, it will increase the value, just by the way
176 Keene’s tax structure works.

177
178 Chair Hoppock stated that he agrees. He continued that certainly, it is secluded, and certainly, it
179 is a large enough lot to accommodate two extra units of the modest size described. He agrees
180 that the first criterion is met.

181
182 *2. There will be no nuisance or serious hazard to vehicles or pedestrians.*

183
184 Chair Hoppock stated that he does not find any basis for finding a nuisance or serious hazard to
185 vehicles or pedestrians. He continued that according to the plan, it is easy in, easy out from the
186 parking area to the south Main St. access road. He does not see a particular issue with getting
187 onto that road, although sometimes it is crowded with traffic, but that would be true of every lot
188 along that street. He does not find that the second criterion is a problem.

189
190 Mr. Gorman stated that he agrees with Ms. Taylor’s comments and Chair Hoppock’s comments,
191 about the first two criteria.

192
193 *3. Adequate and appropriate facilities will be provided for the proper operation of the proposed*
194 *use.*

195
196 Mr. Gorman stated that this is on a busy, well-traveled road, so he thinks the facilities are fine.
197 He continued that the water/sewer utilities clearly would be adequate, given that they are
198 municipal. He thinks this is a perfect location for an expansion of this type of use, especially
199 since the structure already exists. As the applicant stated, there is a void for housing that they
200 need to try to fill, and they need to try to do it wisely, which he thinks this is a perfect
201 opportunity for.

202
203 Chair Hoppock stated that also, Attorney Christensen spoke of how these two units take the
204 pressure off more rural areas, which is a point well taken.

205 Ms. Taylor stated that regarding safety and facilities, going from three units to five probably puts
206 it in a different (category) regarding the Building Code, but that is something that will be
207 reviewed. She continued that if the building suddenly needs to have sprinklers installed, for
208 example, that is beyond the ZBA's purview.

209
210 Mr. Gorman made a motion to approve ZBA 23-25. Mr. Clough seconded the motion.

211
212 *1. Such approval would not reduce the value of any property within the district, nor otherwise*
213 *be injurious, obnoxious, or offensive to the neighborhood.*

214
215 Met with a vote of 5-0.

216
217 *2. There will be no nuisance or serious hazard to vehicles or pedestrians.*

218
219 Met with a vote of 5-0.

220
221 *3. Adequate and appropriate facilities will be provided for the proper operation of the proposed*
222 *use.*

223
224 Met with a vote of 5-0.

225
226 The motion to approve ZBA 23-25 passed with a vote of 5-0.

227
228 **B) ZBA 23-28: Petitioner, Charles and April Weed requests a Variance for**
229 **property located at 28 Damon Ct., Tax Map #553-039-000 and is in the High Density**
230 **District. The Petitioner requests the construction of an attached carport, 12' x 24',**
231 **that will extend approximately one foot from the property line where [10]' is**
232 **required per Article 3.6.2 of the Zoning Regulations.**

233
234 Chair Hoppock introduced ZBA 23-28 and asked to hear from staff.

235
236 Mr. Hagan stated that 28 Damon Ct. is in the High Density District, with a lot size of .38 acres, is
237 approximately 16,552 square feet, and is a single-family home with approximately 16,007 square
238 feet of living space. There are no ZBA decisions found on record. One thing to note for the
239 record is that the advertisement said a 15-foot side setback, but it is actually a 10-foot side
240 setback required for this zone.

241
242 Chair Hoppock asked to hear from the Petitioner.

243
244 Charles Weed stated that their (his and his wife, April Weed's) hope is to provide some safety
245 and shelter for vehicles on their driveway, which they have used for 30 years. He continued that
246 their new roof and flashing was done professionally, and they also insulated their attic, but it will
247 still have icefalls. On February 25, 2023, two cars were damaged at the same time by icefalls.

248 They want to continue to use the driveway and don't want to put additional impermeable
249 surfaces, or additional structures, on the property. They think the optimal way of doing it is with
250 a carport. They have gone out for plans with both a steel building and with Williams
251 Construction Company. They have not received an estimate back but he thinks they will see
252 them soon. They did not want to do anything before they had approval.

253

254 Mr. Weed continued that they will not change the footprint of the property at all. He continued
255 that he wishes it were more than a foot from the edge of the driveway, but that is how it fits.
256 Their neighbor seems to be delighted with the idea. He (the Weeds' neighbor) has a large side
257 yard, which he assumes will absorb ice and snow, because it always has. There would be no
258 change or effect to the neighbors' property that he can visualize. This (carport) would probably
259 improve the value of their (the Weeds') house a bit, certainly (by improving) the health and
260 safety of the existing occupants. He assumes that in general, it will improve the nature of the
261 neighborhood.

262

263 April Weed stated that if she were a (ZBA member), a question that would come to her mind
264 would be, "Why now?" She continued that it all boils down to the new roof they had installed,
265 she believes, because they had never had problems with this driveway before, with snow coming
266 down on cars. As a consequence of the new roof, they had metal flashing put across the bottom,
267 and they did not see the (problem of the falling snow) coming. It took out two cars belonging to
268 family members. She and Mr. Weed are the proud winners of the NH Public Radio car raffle,
269 and they have a brand new car that they really want to keep safe. Not to mention, they (are
270 concerned with the safety of) the people walking down the driveway.

271

272 Chair Hoppock stated that page 51 of 58 (of the ZBA's agenda packet) shows a photo of the
273 Weeds' proposed carport roof. He asked if that will be a solid roof or if it would allow things to
274 fall through it, which he assumes it would not.

275

276 Mr. Weed replied that it will be solid. He continued that he has spoken with the metal
277 fabrication people and they said, "It sounds to me like you need to have the highest standard
278 possible for such a building. It will increase your cost a little bit," but, they understand that ice
279 and snow has some weight.

280

281 Chair Hoppock asked if the right side will be open. Mr. Weed replied yes, both the leaving side
282 and entering side will be open. Chair Hoppock asked if that means three sides will be open.

283 Mrs. Weed replied yes.

284

285 Chair Hoppock asked if the carport's base will be a slab, gravel, or some other surface. Mr.
286 Weed replied that his wife put in eight tons of hardpack this summer. He continued that they
287 have never had anything other than hardpack on it before, so they just put it on there.

288

289 Chair Hoppock asked, regarding the setback limitation, if it is the roofline that brings them to the
290 one-foot part, or if it is something else, such as the posts. Mr. Weed replied that he thinks the
291 footings and the exterior posts would be within one foot.

292
293 Mr. Gorman asked where the overhang would extend to. He continued that technically, that is
294 what they should be applying for a setback for – the furthestmost point of the structure. Meaning,
295 the roof overhangs *over* the posts. He asked if they know what the overhang is. Mr. Weed
296 replied no. He continued that he thinks it has to do with the contractors' plans.

297
298 Mr. Gorman replied that he thinks that technically, the ZBA would need to hear what it is going
299 to be. Chair Hoppock replied that to avoid any problems in the future, they should be as close as
300 possible. Mr. Hagan replied that it would be up to the Board to give a number, so that when staff
301 issues a building permit, they can base it off that.

302
303 Mr. Gorman stated that he has a question for the applicant, then. He continued that he assumes
304 they want some sort of overhang, but they probably do not want to shrink this down to any
305 smaller than it already is. He asks what they would anticipate accomplishing their needs for two
306 vehicles with an overhang. He asked if they would be able to come within the one foot, or if
307 they would be asking for more. Mrs. Weed replied that their cars would not be side by side; they
308 would be parked one behind the other. That would leave plenty of room for that.

309
310 Mr. Gorman replied that if they had to, they could put the posts, say, 18 inches from the line with
311 a six-inch overhang. He asked if that is correct. Mr. Weed replied that he believes so. Mr.
312 Gorman asked if that means Mr. and Mrs. Weed would be comfortable moving forward with a
313 foot as the setback from the furthestmost point of the structure. Mr. Weed replied that he thinks
314 so.

315
316 Mr. Rogers stated that just to be clear, when staff does the setbacks, they measure to the furthest
317 point of the structure, as the Board is correctly interpreting. He continued that if one foot is what
318 were to be granted tonight, Mr. Hagan would be looking to see that that overhang is at one foot
319 or more from the setback. It is very important to make sure that it is clear that that is where the
320 measurement would be taken from: the furthest point of the structure. In this case, on the
321 diagram in front of the Board, it would be the drip edge.

322
323 Chair Hoppock stated that if he is hearing the applicants correctly, they could live with the one
324 foot.

325
326 Mr. Weigle asked if the Weeds or the contractor is planning to put anything at the bottom, such
327 as spikes, to help break up the ice that falls. Mr. Weed asked if he means on the flashing. Mr.
328 Weigle replied that he means onto the carport. He continued that he heard them say their
329 neighbor is fine with it, but there might still be sheets of ice coming off. Mr. Weed replied that if
330 the building permit makes that suggestion, he thinks it would be perfectly appropriate.

331

332 Mr. Hagan stated that the Building Code does not require that. He continued that it would be left
333 up to the Board to decide if they feel that is needed. The Board could make that a stipulation and
334 staff could add it to the building permit. The Ordinance requires the applicant to make sure
335 water and snow does not go onto other properties. This is a solution the Board or applicant could
336 put forth.

337
338 Mr. Weed stated that he thinks the carport roof would have about a 12 10 pitch to the roof. Thus,
339 there would be a two-foot drop between the house and the outer edge. It is not as steep as the
340 roof above it, which has the icefalls.

341
342 Mr. Welsh stated that regarding the provided diagram, the shallower slope does not seem to lend
343 itself to the same kind of catastrophic ice pouring off. He continued that he thinks much of the
344 ice and snow that falls on this roof will stay on the roof until it melts, and then run off as water.
345 That would mean the drip line would be where water comes off, as opposed to lots of snow
346 tumbling further than the roofline.

347
348 Mrs. Weed stated that because it would be a lower down/shorter roof, snow would not have as
349 far to go. She continued that it would not be as catastrophic as Mr. Welsh said, when it lands.

350
351 Mr. Gorman stated that he thinks that what the Weeds are experiencing is, they had the snow belt
352 put on, the aluminum at the base of the roof. He continued that the ice and snow actually
353 accelerate off that, by design, so they do not get ice dams. The snow will then land on the shed
354 roof, which will be the style of the carport's roof, and will likely stay there, unless they were to
355 put a metal roof on that shed roof. Then it would avalanche into the neighbors' property. He
356 thinks that as long as it is an asphalt-style roof, it will just retain most of that snow, as Mr. Welsh
357 said, and just have a melt off until spring. His only concern is the potential discharge of snow
358 into the neighbors' property in the event of a metal roof. He would probably be opposed to a
359 metal roof on that structure, for the sake of keeping the snow on the Weeds' property.

360
361 Mr. Rogers stated that for clarity, depending on how the Board were to approve this tonight, they
362 could consider some conditions. He continued that he heard them ask about whether this is
363 open-sided, so (a condition could be) that it has to stay open-sided. He would also point out that
364 this is an unheated space. Thus, snow will not shed off like it does off the house, which is
365 heated. Regardless of how well insulated a building is, heat loss happens, and snow slides. It is
366 not as likely to happen from (the carport) in this situation. The Board could consider that as well
367 as what Mr. Gorman spoke to, regarding how if this were a metal roof, maybe some of the
368 guards that Mr. Weigle mentioned could be required to be installed to hold the snow on that and
369 keep it off the neighbors' property. If the Board is inclined to approve this, they can do so and
370 address some of these concerns with some possible conditions.

371
372 Chair Hoppock stated that he is trying to envision what a condition would be. He asked if an
373 asphalt roof could be a condition. Mr. Gorman replied yes or a metal with a snow guard.

374

375 Chair Hoppock asked if this goes to site plan review. He continued that he does not think so.

376

377 Ms. Taylor stated that she is hesitant to tell an applicant how to build something. She continued
378 that on the other hand, she thinks the Board could have a more general condition that it be
379 constructed in such a fashion that the snow would not discharge onto the abutters' property.

380

381 Chair Hoppock asked if that would be okay for enforcement purposes, from the administration's
382 perspective. Mr. Rogers replied yes, he thinks the department could work with that as the
383 building permit is issued. He continued that they will certainly be looking at this Variance, since
384 they normally would not allow this building permit, but if this Variance were granted, they
385 would certainly take that into consideration during the approval process.

386

387 Chair Hoppock asked if the applicants had anything else to add. Mr. Weed replied no. Chair
388 Hoppock asked for public comment. Hearing none, he closed the public hearing and asked the
389 Board to deliberate.

390

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

392

393 Mr. Welsh stated that he cannot see how this proposal is contrary to the public interest, provided
394 concerns about snow melt going into the neighbors' property are addressed. He continued that it
395 does not detract from property values. It provides no nuisance to the neighbors, and given the
396 talk about car damage, it strikes him that this is also a safety issue. It would be bad to be a
397 person walking underneath that (roof) when the snow fell. He thinks it is consistent with the first
398 criterion.

399

400 Mr. Gorman stated that he thinks it being open-sided on all sides helps with the public interest,
401 too. He continued that it is not as if they are putting a completely enclosed structure right on
402 their property line. They are simply trying to put cover over the roof of their cars. Thus, it is a
403 little different than, say, an addition.

404

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

406

407 Chair Hoppock stated that in a residential zone, albeit High Density, it is something that you
408 would normally see in the neighborhood. He continued that thus, it is consistent with the
409 Ordinance, in terms of a garage or other place for a car.

410

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

412

413 Chair Hoppock stated that to further Mr. Welsh's comment, in terms of doing substantial justice,
414 the harm to this applicant if it were to be denied would be significant and not outweighed by any
415 gain to the public, for the reasons the Weeds explained - the safety to their property and safety to
416 others who are in the area, and the minimal impact it would have on the neighbor, given the
417 configuration of the carport and the slant of the roof. He thinks the third criterion is satisfied.

418
419 4. *If the Variance were granted, the values of the surrounding properties would not be*
420 *diminished.*

421
422 Chair Hoppock stated that he cannot even imagine a diminution of property values based on this.

423
424 5. *Unnecessary Hardship*
425 A. *Owing to special conditions of the property that distinguish it from other*
426 *properties in the area, denial of the variance would result in unnecessary hardship*
427 *because*

428 i. *No fair and substantial relationship exists between the general public*
429 *purposes of the ordinance provision and the specific application of that provision*
430 *to the property*

431 *and*

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

433
434 Chair Hoppock stated that he would say a special condition of the lot is the space between the
435 home and the property line; it is tight. The driveway looks like it has been there for quite some
436 time. He continued that he read in the application that these folks have lived there for over 30
437 years, and have always used this as a parking area. He thinks the special condition of the lot
438 meets the unnecessary hardship criterion.

439
440 Mr. Gorman stated that he agrees and adds that it would be an undue burden on the property
441 owner (if this were not approved). Their only other solution would be to create a new driveway
442 or park their cars somewhere else. He continued that as Chair Hoppock said, this is the way the
443 driveway is set up and it has worked for them for over 30 years. This is rather where the carport
444 needs to go, based on the configuration of the property.

445
446 Chair Hoppock stated that in looking at the pictures, he cannot imagine where else a carport
447 could go.

448
449 Mr. Gorman made a motion to approve ZBA 23-28, for a Variance to construct a carport, with a
450 one-foot side setback, with the following conditions:

- 451 • The carport will remain open on three sides.
452 • Petitioners make their best effort to maintain the snowfall on their own property.

453 Ms. Taylor seconded the motion.

454
455 1. *Granting the Variance would not be contrary to the public interest.*

456
457 Met with a vote of 5-0.

458
459 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

460
461 Met with a vote of 5-0.
462
463 3. *Granting the Variance would do substantial justice.*
464
465 Met with a vote of 5-0.
466
467 4. *If the Variance were granted, the values of the surrounding properties would not be*
468 *diminished.*
469
470 Met with a vote of 5-0.
471
472 5. *Unnecessary Hardship*
473 A. *Owing to special conditions of the property that distinguish it from other*
474 *properties in the area, denial of the variance would result in unnecessary hardship*
475 *because*
476 i. *No fair and substantial relationship exists between the general public*
477 *purposes of the ordinance provision and the specific application of that provision*
478 *to the property*
479
480 Met with a vote of 5-0.
481
482 *and*
483 ii. *The proposed use is a reasonable one.*
484
485 Met with a vote of 5-0.
486
487 The motion to approve ZBA 23-28 passed with a vote of 5-0.
488
489 **V) New Business**
490
491 Chair Hoppock stated that he extends a heartfelt thank you to Mr. Gorman for serving on the
492 Board for so long. He continued that the Board would miss him. Mr. Gorman replied that it has
493 been his pleasure and he will miss them as well.
494
495 **VI) Communications and Miscellaneous**
496
497 None.
498
499 **VII) Non-Public Session (if required)**
500
501 None.
502

503 **VIII) Adjournment**

504

505 There being no further business, Chair Hoppock adjourned the meeting at 7:21 PM.

506

507 Respectfully submitted by,

508 Britta Reida, Minute Taker

509

510 Reviewed and edited by,

511 Corinne Marcou, Board Clerk

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ZONING BOARD OF ADJUSTMENT 2024 MEETING SCHEDULE

DEADLINE DATE	MEETING DATE*
December 15, 2023	January 2, 2024*
January 19, 2024	February 5, 2024
February 16, 2024	March 4, 2024
March 15, 2024	April 1, 2024
April 19, 2024	May 6, 2024
May 17, 2024	June 3, 2024
June 14, 2024	July 1, 2024
July 19, 2024	August 5, 2024
August 16, 2024	September 3, 2024*
September 20, 2024	October 7, 2024
October 18, 2024	November 4, 2024
November 15, 2024	December 2, 2024
December 20, 2024	January 6, 2025

*January & September meetings are scheduled for Tuesday due to the holiday.

**All meetings begin at 6:30 PM and are held on the first Monday of each month in the Council Chambers, 2nd fl City Hall, unless stated otherwise.

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CITY OF KEENE
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE

I. GENERAL RULES

- A. **Authority:** These rules of procedure are adopted under the Authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the zoning ordinance and map of the City of Keene. The Zoning Board of Adjustment (ZBA) shall have and shall exercise all of the powers enumerated in RSA 674:33, or as otherwise provided by State statute and City Ordinances.
- B. **Purpose:** The purpose of these rules is to provide guidance to the City of Keene Zoning Board of Adjustment (“Board”) and all persons participating in proceedings held before the Board, and to allow for the orderly and efficient handling of all matters within the jurisdiction of the Board. Proceedings are not to be strictly governed by formal rules of evidence or parliamentary procedure. Instead, these rules are designed so that all parties interested in an application will be allowed a reasonable opportunity to fully participate and share their views, facts, evidence, and opinions for the Board’s consideration in reaching an appropriate decision. The Board is authorized, by a vote of two-thirds (2/3) of the five (5) member Board, to vote at any meeting to suspend, supplement, alter, or amend any specific rule or procedure, as may be appropriate in a particular matter, in order to best accomplish this purpose.
- C. **Officers:** All officers of the Board, including up to five (5) alternate members, shall be appointed by the Mayor of the City of Keene pursuant to RSA 673:6, and applicable City Ordinance.
- a. A *Chair* shall be elected annually by a majority vote of the Board in the month of January. The *Chair* shall preside over all meetings and hearings, appoint such committees as directed by the Board, and shall affix their signature in the name of the Board.
 - b. A *Vice-Chair* shall be elected annually by a majority vote of the Board in the month of January. The *Vice-Chair* shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair.
 - c. A *Clerk* (who shall not be a Board member) shall be appointed by the City of Keene Zoning Administrator, to maintain a record of all meetings, transactions, and decisions of the Board, and perform such other duties as the Board may direct by resolution and otherwise assist the Board.

- d. The *Chair* and *Vice-Chair* shall serve for a one (1) year term and shall be eligible for re-election and shall continue to serve until annual elections are next held.
- D. **Members and Alternates:** Up to five (5) alternate members may be appointed by the Mayor of the City of Keene, pursuant to RSA 637:6, and applicable City Ordinance to serve whenever a regular member of the Board is unable to fulfill that member's responsibilities.
- a. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member, or who have not been appointed by the Chair to temporarily fill the unexpired term of a vacancy, may participate with the Board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters, and the public. Alternates shall not be allowed to make or second motions. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the Chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.
 - b. Members must reside in the community and are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Clerk as soon as possible. Members, including the Chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.
- E. **Meetings:** Regular meetings shall be held in the Council Chambers, at 3 Washington Street, Keene, New Hampshire, on the first Monday of each month unless otherwise duly noticed by the Clerk. Other meetings may be held on the call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.
- a. **Quorum:** A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.
 - i. The Clerk shall make every effort to ensure that all five (5) members, and one (1) or two (2) alternates, are present for the consideration of any appeal or application.
 - ii. If any regular Board member is absent from any meeting or hearing, or disqualifies them self from sitting on a particular case, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.

- iii. If there are less than five (5) members (including alternates) available, the Clerk, shall give the option to the applicant to proceed or not prior to the scheduled meetings. Should the applicant choose to proceed with less than five (5) members present that shall not solely constitute grounds for a re-hearing should the application be denied. All decisions of the Board shall require the concurrence of at least three (3) members. The option to request to reschedule a meeting of less than five (5) members is not absolute, and the Board may, at its discretion, proceed to consider an application with less than a five (5) member Board.
- b. **Public Hearing Limits:** The Board shall not open a new or continued public hearing after 10:00 p.m.
- c. **Disqualification:** If any member finds it necessary to disqualify (or recuse) themselves from sitting in a particular case, as provided in RSA 673:14, they shall notify the Clerk as soon as possible so that an alternate may be requested to sit in their place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.
 - i. Either the Chair or the member disqualifying before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall step down from the Board table during the public hearing and during deliberation on the case.
 - ii. Any interested person appearing in a proceeding, having any information or reason to believe that a Board member should be disqualified, shall notify the Chair as soon as possible and in any event before the commencement of such public hearing.
 - iii. Any Board member or other interested party may, in accordance with RSA 673:14, prior to the commencement of any public hearing, request the Board to make the determination as to whether or not such Board member should be disqualified.
 - iv. In deciding issues of disqualification, the Board shall be guided by RSA 500-A:12, pertaining to jury selection and the requirement that jurors shall be “indifferent,” as well as the City of Keene Code of Ordinances §2-1111, *et seq.* (“Conflict of Interest”).
- d. **Voting:** Unless otherwise required by law (i.e. RSA 674:33, III) all actions before the Board (including appropriate findings of fact) shall require only

a majority vote of those members acting on any matter. All members hearing a matter shall vote; abstention shall not be allowed.

e. **Order of Business:** The order of business for regular meeting shall be as follows:

- i. Call to order by the Chair
- ii. Roll call by the Chair
- iii. Minutes of previous meeting
- iv. Unfinished business
- v. Public hearing
- vi. New business
- vii. Communications and miscellaneous
- viii. Other business
- ix. Non-public session (if required)
- x. Adjournment

(Note: although this is the usual order of business, the Board may change the order of business after the roll call in order to accommodate efficiency or the public.)

f. **Nonpublic Sessions:** All deliberations of the Board shall be held in public. Nonpublic sessions shall be held only as necessary and in strict compliance with the provisions of RSA 91-A. The Board may also adjourn, as needed, to meet with its attorney to receive legal advice, which will not constitute a nonpublic session pursuant to RSA 91-A.

II. PROCEDURES FOR FILING APPLICATIONS

A. Application/Decision

a. **Applications:** The original application forms may be obtained from either the Clerk or the Community Development Department. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Clerk who shall record the date of receipt over their signature. The forms provided by the City must be used; correctness of the information supplied shall be the responsibility of the petitioner at all times. Applications should be identified as one of the following: Appeal of an Administrative Decision, ~~Change of a Non-Conforming Use~~, *Enlargement or Expansion of a Non-Conforming Use*, Equitable Waiver of Dimensional Requirements, Special Exception, *Extension*, and Variance. All forms and fees prescribed herein and revisions thereof shall be adopted by the Board and shall become part of these Rules of Procedure.

i. Applications to Appeal from an Administrative Decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision or when such decision becomes known or reasonably

should have been known, by the petitioner as determined by the Board.

- b. A public hearing shall be held within ninety (90) days of the receipt of an application, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If a zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief. Public notice of public hearings on each application shall be published in the local newspaper and shall be posted at two locations, of which one posting may be on the City internet website, not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, all applicable provisions of the zoning ordinance, the type of appeal being made, and the date, time, and place of the hearing.
 - i. Personal notice shall be made by Certified Mail to the applicant and to all abutters and holders of conservation, preservation or agricultural preservation restrictions not less than five (5) days before the date of the hearing.
- c. **Plot Plans:** A scale drawing showing the location and dimensions of all structures and open spaces on the subject lot and on the adjacent lots. Plans need not be professionally drawn, but must be a sufficient and accurate representation of the property. Plans deemed to be insufficient by the Clerk shall be returned, and no public hearing shall be scheduled until the receipt of an acceptable plan. The plot plan is to be a minimum of 8 ½ x 11 inches.
- d. **Abutter Notification Materials:** For the purpose of abutter notification, the following items shall be submitted with the application:
 - i. An abutters list that includes *the property owner, applicant and if applicable, authorized agent*, all owners of properties that directly abut and/or that are across the street or stream from the parcel(s) that will be subject to review, ~~and~~ all owners of properties located within two hundred (200) feet of the parcel(s) *and holders of conservation, preservation, or agricultural preservation restrictions* that will be subject to review. The certified list shall include all property owner names, property street addresses, property tax map parcel numbers, and mailing addresses if different from the property address. In the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association as defined in RSA 356-B:3, XXIII.

- ii. Two (2) sets of legible mailing labels (Avery size 5160 or equivalent) for each abutter and including the owner of the property that will be subject to review and his/her designated agent(s).
- iii. A check in an amount sufficient to cover the cost of legal notice advertising and mailing of certified letters to abutters.
- e. In accordance with RSA 676:5, IV, each application shall require the payment of an application fee to be determined by the Board, together with fees that may be required for investigative studies, document review or other administrative costs and expenses.

B. Other Requirements

- a. **Appeals of Administrative Decisions:** An appeal from an administrative decision, filed in accordance with RSA 676:5, shall be filed within thirty (30) days of such decision.
- b. **Person Authorized to Submit Applications:** To submit a proper application, an applicant must be one of the following persons:
 - i. The title or record owner of the subject property, or such owner's duly authorized agent, and signed as such on the application form.
 - ii. The holder of a valid Purchase & Sales Agreement or the holder of a valid Option for the purchase of the subject property (with a signed written consent of the title or record owner of such property, or such owner's duly authorized agent).
- c. **Documentation of Title or Authority to Appeal:** The Board may require the holder of record title to submit documentary evidence as to Petitioner's title and holders of Purchase and Sale Agreements or Options may be required to submit evidence that they are valid holders of such agreements before the Board will consider their application.
- d. **Inadequate Application:** Any Petitioner who submits an application, plans and/or exhibits that are deemed inadequate by the Clerk shall not be scheduled for a hearing before the Board until such time as the Clerk receives adequate plans or exhibits and application.
- e. **Floor Plans:** When, in the opinion of the Community Development Department, floor plans are necessary in the case of conversions or renovations to an existing structure, Petitioner shall furnish interior floor plans to scale. Floor plans need not be professionally drawn, but must be a sufficient and accurate representation of the floor plan.

- C. **Deadline for filing:** All required information under these rules must be submitted to the Clerk before the scheduled deadlines to be submitted to the Board. The

submittal deadline shall be no less than seventeen (17) days' prior to the next months meeting. The application will not be placed on the Agenda until all of the required information is received in a format acceptable to the Clerk.

- D. **Notification to Abutters and Public:** The Clerk will set a date, time, and place for a public hearing and shall notify the applicant and all abutters within two hundred (200) feet of the property (using the notification materials required by Paragraph A.d.i., above) by Certified Mail, and shall cause a public notice of the hearing to be published in a newspaper of general circulation in the area, at least five (5) days' prior to the date fixed for the hearing on the application (RSA 676:7, I). Pursuant to RSA 676:7, II, the public hearing shall be held within forty-five (45) days of the receipt of a properly completed application (Paragraph A.b. above).
- E. **Fees:** The petitioner shall pay to the Clerk a non-refundable filing fee of One Hundred Dollars (\$100.00), at the time of filing. Additionally, reimbursement of the cost to notify each abutter, owner, and applicant by Certified Mail based on the current USPS postal rate and to publish a legal notice advertisement in the local newspaper, a fee of Sixty-Two Dollars (\$62.00) must be paid at the time of filing.
- F. **Assistance by City Staff:** The Zoning Administrator will be available to assist the applicant with the application form, drawings and plans. If necessary, clarification of the Zoning Ordinance can be obtained from the Zoning Administrator, but the City will not provide legal advice as part of the application process.
- G. **Procedural Compliance:** Unless any objection is specifically raised or procedural defect otherwise noticed during a public hearing, the Board shall assume that any application has been properly filed and that due notice has been given as required by these Rules of Procedure, Keene's Zoning Ordinance, and State statutes.
- H. **Consent to Inspection:** Upon filing any application, the owner of the affected land implicitly consents to inspection of property and building by City staff and Board members upon reasonable prior notice and at a reasonable time. In the event that such inspection is refused when requested, the application shall be dismissed without prejudice by the Board.
- I. **Supplemental Information:** If an applicant or applicant's agent submits supplemental information pertaining to an application within (10) days prior to the public hearing at which the application is to be heard, the board shall consider during the meeting and decide by majority vote, whether to accept the supplemental information for consideration at the meeting, or to continue the application to the next scheduled meeting to allow adequate time to review the supplemental information.

III. CONDUCT OF PUBLIC HEARINGS

- A. **Conduct:** The conduct of public hearings shall be governed by the following rules unless otherwise directed by the Chair:

- a. The Chair shall call the hearing in session, introduce the Board members, and review the previous meetings minutes for corrections.
- b. The Chair shall read the application and report on how public notice and personal notice were given and where appropriate, summarize the legal requirements that must be met by the applicant in order to obtain the relief requested.
- c. The Chair will ask the Staff Liaison to report on the first case, identified by case number.
- d. Members of the Board may ask questions at any point during testimony.
- e. Each person who appears shall be required to state his name, address, and indicate whether he is a party to the case or an agent or counsel of a party to the case.
- f. Any member of the Board, through the Chair, may request any party to the case to speak a second time. The Chair may impose reasonable time restrictions on individuals who wish to speak.
- g. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
- h. The applicant shall be called first to present his appeal.
- i. Those appearing in favor of the appeal shall be allowed to speak.
- j. Those in opposition to the appeal shall be allowed to speak.
- k. The applicant and those in favor shall be allowed to speak in rebuttal.
- l. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- m. The Board will accept any evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance and State zoning law.
- n. After all parties have been afforded a reasonable opportunity to testify, the public hearing shall be declared closed by the Chair and no further testimony will be received from the applicant or any other parties (other than minor technical or procedural information as may be needed from City staff), unless the Board, on its own motion, shall reopen the public hearing to receive additional testimony or information. If the hearing is reopened, all interested parties shall be given the opportunity to speak to the issue requiring the reopening. All deliberations and decisions made by the Board

- G. **Records:** The records of the Board shall be kept by the Clerk and made available for public inspection from the Clerk at City Hall, 4th floor, Community Development Department, in accordance with RSA 673:17.
- a. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made. RSA 676:3.
 - b. Minutes of all meetings including names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within five (5) business days of the public meeting. RSA 91-A:2, II.
 - c. The official record of the Zoning Board of Adjustment proceedings shall be the minutes after they have been approved (with corrections, if required) by the Board at a subsequent meeting.

IV. MISCELLANEOUS

- A. **Amendments:** Rules of Procedure shall be adopted or amended by a majority vote at a regular meeting of the Board provided that such new rules or amendments are proposed and discussed prior to the meeting at which the vote is to be taken and shall be placed on file with the City Clerk and be available for public inspection pursuant to RSA 676:1.
- B. **Waivers:** Any portion of these rules of procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.
- C. **Joint Meetings and Hearings:** RSA 676:2, provides that the Board of Adjustment may hold joint meetings or hearings with other land use Boards, including the Planning Board, the Historic District Commission, the Building Code Board of Appeals, and the inspector of buildings, and that each Board shall have discretion as to whether or not to hold a joint meeting with any other land use Board.
- a. Joint business meetings with any other land use Board may be held at any time when called jointly by the Chair of the two (2) Boards.
 - b. A public hearing on any appeal to the Board of adjustment will be held jointly with another Board **only** under the following conditions:
 - c. The joint public hearing must be a formal public hearing on appeals to both Boards regarding the same subject matter; and
 - i. If the other Board is the Planning Board, RSA 676:2, requires that the Planning Board Chair shall chair the joint hearing. If the other

Board is not the Planning Board, then the Board of Adjustment Chair shall chair the joint hearing; and

- ii. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other Board, shall be followed; and
- iii. The other Board shall concur in these conditions.

Originally Adopted: May 3, 1993
Revised: October 3, 1994
Revised: February 3, 2003
Revised: May 2, 2005
Revised: August 7, 2006
Revised: December 5, 2011
Revised: June 5, 2017
Revised: September 3, 2019
Revised: April 20, 2021
Revised: September 7, 2021
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Revised:

