

**City of Keene
New Hampshire**

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES**

Monday, August 5, 2019

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Jane Taylor, Vice Chair
Joseph Hoppock
Michael Welsh
Michael Remy, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Joshua Greenwald
Jeffrey Stevens, Alternate
Louise Zerba, Alternate

I. Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM, welcomed the public, explained the rules of procedure, and introduced the Board members.

II. Minutes of the Previous Meeting – June 3, 2019

Vice Chair Taylor noted two typos in the minutes. On page two, “Mr. Hoppock said the application was withdraw without prejudice at the last hearing,” should be corrected as, “Mr. Hoppock said the application was to withdraw without prejudice at the last hearing.” On page six, “She said she thought the Board knew that alternates do no vote unless they are called to replace a regular member,” should be corrected as, “She said she thought the Board knew that alternates do not vote unless they are called to replace a regular member.”

Mr. Hoppock moved to approve the minutes of June 3, 2019 as amended, which Mr. Welsh seconded and the Zoning Board of Adjustment carried unanimously.

III. Unfinished Business

Mr. Rogers reported no unfinished business.

IV. Hearings:

Chair Gorman noted the first three applications were for the same property but the Board would hear and vote on each application individually.

ZBA 19-08:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests a Variance for property located at 105 Castle St., Keene, Tax Map Parcel #567-006- 000-000, which is in the Medium Density District. The Petitioner requests a Variance to permit more dwelling units than allowed per minimum lot dimension requirements per Section 102- 791, Basic Zone Dimensional Requirements.

Chair Gorman requested staff comments. Mr. Rogers used a map to demonstrate the location of this property at 105 Castle Street, relative to River Street and Ashuelot Street; it is the first building on the right when turning upon Castle Street. Mr. Rogers demonstrated that this portion of Castle Street has recently been turned over to the property owner by the City. Approximately half of the building (2,000 sf) was used by the Housing Authority as offices, which were considered an accessory use of the property; they now have offices on Court Street. Still, the property owner wanted to continue renting that space for offices and was granted a Variance to do so. The owners now propose to demolish the building and build a new one on the site with approximately 30 additional dwelling units. However, the lot is not large enough square footage to allow additional dwelling units. This first application is to request a Variance for lot dimension deficiency. Mr. Rogers welcomed questions.

Mr. Welsh noted the meeting packet listed the lot as 10 acres and asked if that represents the entire property with all the buildings; Mr. Rogers replied in the affirmative. Mr. Welsh then asked if the Board is looking at the number of residences on the lot as the combined number of living units for all the buildings; Mr. Rogers replied in the affirmative.

Vice Chair Taylor asked if the City has calculated how many dwelling units are allowed on the 10 acres. Mr. Rogers replied in the affirmative and though he did not have the figure with him to reference, he thought it was 105 dwelling units allowed on 10 acres. Mr. Hoppock referenced the third application (ZBA 19-10), which listed 104 dwelling units permitted; Mr. Rogers agreed it is either 104 or 105 and the Board continued discussion referencing the assumed 104 units allowed. Vice Chair Taylor asked if the calculated 104 units is not including the proposed new 30 units; Mr. Rogers replied in the affirmative. Vice Chair Taylor asked if the owner received any Variances when the building was originally constructed. Mr. Rogers said he tried to research that far back but found no information; he assumed it was built prior to the current lot dimension standards. Those current 104 dwelling units would be nonconforming to the lot dimensions there now. The applicant would be expanding that nonconformity, which is not allowed under the Zoning Code if it is dealing with lot dimensions. One cannot just enlarge a nonconforming use, which Mr. Rogers said is why the applicant sought a Variance as opposed to an expansion of a nonconforming use for the lot size.

Chair Gorman asked how many dwelling units would be permitted in a conforming setting. Mr. Rogers offered to work on that calculation while the Board heard this first application; he recalled that this property is in the Medium Density Zone, where 8,000 sf are required for the first dwelling unit and then an additional 5,400 sf for every added dwelling unit.

Vice Chair Taylor stated that the building exists in its current use by virtue of a Variance; if the building is demolished, she asked if the Variance would go away. Mr. Rogers replied in the affirmative. He said the Office Variance would go away from what he has seen of the applicant's intended use, with the proposed new residential building with accessory uses by the Keene Housing Authority to keep Meals on Wheels there for residents, in addition to a maintenance area. Vice Chair Taylor questioned the unrelated office use and if that use would go away with this new Variance on the property. Mr. Rogers said those office uses would go away, in his opinion, with the demolition of the building.

Mr. Hoppock asked, on the theory that a Variance runs with the land and is not personal, if it would be cleaner to vacate the Variance as a part of any approval granted. Mr. Rogers said that was a good recommendation for the Board to consider because it could be a clearer path that limits room for different interpretation in the long-term, which Mr. Hoppock agreed is a concern.

Chair Gorman opened the public hearing and welcomed the Executive Director of Keene Housing, Josh Meehan (of 65 Langley Road, Keene), and Brett Sanderson of Stevens & Associates, P.C. (of PO Box 1586 Brattleboro, VT). Mr. Meehan spoke to why he proposes tearing down an existing building to construct a new one. He recalled a few years ago when Keene Housing took possession of this portion of Castle Street from the City because they own all of the surrounding properties. There are currently 104 units in the building at 105 Castle Street. The current units are mostly studio and one-bedroom apartments occupied by the elderly, disabled, and families; Mr. Meehan said tenants do not have to be elderly or disabled, but the size of the units lend to that demographic.

Mr. Meehan continued saying there is a huge demand for affordable housing in Keene, primarily from elderly and disabled residents. At 105 Castle Street, Mr. Meehan said he hopes to address this demand. Of the current 104 units, three are fully handicap accessible. Keene Housing's goal as an organization is to develop as much accessible housing as possible. He cited data that shows residents in this region are getting older than in other parts of the country; with that data in mind, he plans to build mostly one-bedroom units. There are currently elderly and disabled on the waiting list, who can expect to wait approximately four years before a unit is available. Today, Mr. Meehan said for all the different housing programs the organization offers, there are 3,206 families waiting for affordable housing. He said the demand is high, the cost of construction is high as well, and funding is limited. Because Keene Housing owns the land and the road it sits on, Mr. Meehan said it makes sense for their mission and role in the community to develop more units.

Chair Gorman asked how many of the proposed units would be handicap accessible. Mr. Meehan said the project is not yet in the design phase, so it is too early to know how many will be fully accessible. Mr. Meehan noted that new developments typically designate five percent as fully accessible units. Irrespective of what happens in the design phase, Mr. Meehan said this development would have well above five percent fully accessible units. Keene Housing's goal is to build as many fully accessible units as possible, but there are cost caps on the nature of their funding. Remaining units will have helpful amenities (e.g., grab bars and roll-in shower units) that are fully compliant with the American Disability Association (ADA) standards. Mr. Sanderson agreed that any units that are not fully accessible would be constructed as adaptable units, meaning they can more easily be upgraded to fully accessible units in the future. He said the concept site plan included with the application assumes that all units will be fully accessible; if that is not possible because of cost, they will decrease the amount. First, Mr. Sanderson said they needed to determine with the Board if they can fit what they want to build at 105 Castle Street.

Mr. Welsh asked the applicant to clarify the description in application number eight, which mentions minimum lot dimension requirements per Section 102-791 of the Zoning Ordinance. He questioned if that is a linear dimension. Mr. Rogers said it is an area dimension. Mr. Rogers also provided the calculation demonstrating that 80 units would be allowed on the applicant's current lot size. Mr. Sanderson noted the unique feature that Castle Street was absorbed into this lot, but he was unsure if the street dimension was included in the application. Mr. Rogers said the numbers on the application are very similar to what records the Assessing Department has on this property. Mr. Rogers said it fair to assume the square feet numbers are close.

Mr. Hoppock noted there are already 104 units on the property and the applicant wants to add 30, which would equal 134 units, minus the 80 Mr. Rogers cited within the Code. Based on that calculation, Mr. Hoppock asked if the applicant intends to add 54 units over the limit; Mr. Sanderson replied in the affirmative.

Mr. Remy asked if there is a reason the applicant wants to drive that high on the ADA compliant demographic with 30 new units. Mr. Meehan said there is a constant demand from the demographic for accessible housing and the more Keene Housing can prepare for that demand, it will be better for the organization and the community. Mr. Meehan said the cost of not providing someone accessibility in their existing home increases the likelihood the elderly will enter assisted living sooner, which is exponentially more expensive than affordable accessible housing. He concluded saying it is more efficient to build many accessible units to meet the affordable housing demand now.

Vice Chair Taylor asked the difference between accessible and adaptable units. Mr. Sanderson said that in adaptable apartments: bathrooms must have showers of a certain size but they do not have to be roll-in, bathrooms are smaller and do not have to be wheelchair accessible, and kitchen counters do not accommodate wheelchairs.

There are some features that adaptable units must have, such as door widths. Vice Chair Taylor asked if structural changes would be necessary to convert adaptable units to accessible units. Mr. Sanderson said it depends on the unit layout but added that adaptable units are very close to fully accessible. Chair Gorman asked what the difference is between a regular unit and an adaptable unit, if not everything that makes a unit accessible is present. Mr. Sanderson said he is a Civil Engineer and less familiar with this aspect of development. Chair Gorman thought adaptable just means you can change it later if you feel like it, which is similar to almost any regular unit. Mr. Sanderson said there is a space requirement for wheel chairs to be able to enter adaptable units. Chair Gorman asked, if an adaptable unit's bathroom is too small for a wheelchair radius, if structural changes would be required; Mr. Sanderson replied in the affirmative.

Mr. Remy noted the application stated there would be no impacts on the neighboring property values and he asked if there were evaluations to confirm that. Mr. Sanderson said it is an opinion statement.

Chair Gorman questioned if the standard five percent threshold is cumulative. He noted that the three accessible units of the current 104 only account for three percent. He asked if the applicant needs to make-up the remaining two percent required for the current units in addition to the five percent required for the new units. Mr. Meehan said his goal is always to surpass those minimums; he said the percentages are irrelevant because he guaranteed more than five accessible units and anything remaining will be designed to be as adaptable as possible. Mr. Sanderson said the five percent threshold is mainly for the purposes for funding family housing, whereas this development is intended more as senior housing and will likely have than required. Mr. Meehan added that a significant portion of the people Keene Housing serves use walkers or canes (less are in wheelchairs) and the intention to accommodate all of those needs whether the unit is fully ADA compliant.

Mr. Hoppock asked if there have been traffic or pedestrian analyses; he did not see mention in any of the applications, which is concerning with demographics reliant on wheelchairs and walkers. Mr. Meehan said the organization owns the entire dead-end part of Castle Street and rebuilt the road the accommodate curb cuts designed to accommodate the populations living on that road. Mr. Meehan provided an example of how curb cuts better meet resident needs today. Mr. Hoppock asked how much vehicle and pedestrian usage there is currently on Castle Street. Mr. Sanderson said there was no study yet and said before designing the entire building, the applicant was before Board to understand if this project is even a possibility. He said the application and designs before the Board were a conceptual plan, not a finished plan. The current parking lot has 20 spaces, which is more for existing personnel than residents. Mr. Sanderson said 15-18 spaces would be eliminated with the change of use from office to senior housing (for which one parking space is required per every two units). If the outcome is 15 spaces, he feels it is comparable to the current traffic. Chair Gorman asked if the applicant currently complies with City standards for parking lots (52

spaces for 104 units). Mr. Sanderson replied that there are approximately 90 spaces now.

Vice Chair Taylor asked the applicant to clarify that Harper Acres is not dedicated to the elderly, but this proposed building will be; Mr. Meehan replied in the affirmative.

Mr. Remy recalled the applicant talking about a cost measure for going from fully accessible to adaptable. He asked, if the applicant made the choice from a cost perspective to go adaptable, if that cost perspective would fit more units in same area so each unit is smaller, or would it be to make cost adjustments to the quality of the products for the user. Mr. Sanderson said the project architect anticipates a roughly five to 10 percent square area reduction to go to an adaptable unit. He said there is a cost associated with the square footage as well as materials. He added that it is hard to upgrade a unit to fully accessible in the future if the proposed square footage for construction is reduced; Mr. Meehan agreed. Mr. Sanderson also recalled that this building was developed in 1969, long before ADA standards took effect in 1991. The age of the building contributes to why they need to rebuild; Mr. Sanderson said the existing infrastructure there would be challenging to upgrade to adaptable or accessible units.

The Mr. Sanderson reviewed the five criteria for this application:

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

Mr. Sanderson said granting the Variance for the 105 Castle Street would not be contrary to public interest. The site is part of Harper Acres, a dense established senior housing community; the entire property has undergone recent site improvements to make it more efficient for the elderly residents and to help calm traffic. Due to the location of the site, it is largely out of view from the public eye and is on a dead-end road that is now owned and maintained by Keene Housing, however, it is in reasonable proximity to downtown. The building at 105 Castle St. is currently nonconforming and the proposed use change would still leave Harper Acres nonconforming with respect to the Minimum Lot Dimensions. However, by granting the Variance and allowing the current building to be removed, the site can eliminate a nonconforming use and implement an appealing energy efficient building that will add to the number of fully accessible units at Harper Acres, and help satisfy the drastic need for accessible senior housing in the greater Keene area.

Mr. Hoppock asked if and how this application and adding 30 units would change the essential character of the neighborhood. He thinks Mr. Sanderson's response to the first criteria misses that point. Mr. Sanderson said it is already a senior housing area, it was constructed before zoning regulations, and it is a dead-end street; Mr. Sanderson said therefore, the neighborhood is not part of a public street, except at the corner where there is an existing building, which will be replaced with a building that respects the essential character of the neighborhood.

Mr. Remy asked if the building is visible from public view. Mr. Sanderson said the whole property is less visible, but that building on the corner is. Mr. Remy said, in looking at the square footage overlays, the proposed building looks significantly larger than the existing building. Mr. Sanderson agreed that the proposed building is longer.

2. *If the variance were granted, the spirit of the ordinance would be observed because:*

Mr. Sanderson said that if the Variance were granted and the proposed building approved, the spirit of the Ordinance would still be maintained. The proposed building would be visually appealing, energy efficient, and fit within the fabric of the neighborhood while fulfilling a housing hardship for seniors in the area. The proposed building would remove a nonconforming use at the site and allow Harper Acres to add to its number of fully accessible senior housing units, while staying within the already established senior community.

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

Mr. Sanderson said the Variance would be a step in the right direction to help alleviate the great need for senior housing in the area. The Variance would allow the current nonconforming building to be removed and replaced with an energy efficiently designed building, constructed within the current constraints. By granting the Variance, Mr. Sanderson said Harper Acres would be more conforming to the number of ADA units required, and to the goal of Keene Housing.

Vice Chair Taylor said, she did not understand how the building would become more conforming. Mr. Sanderson said it would become more conforming by eliminating the nonconforming office use. Chair Gorman said at the same time, though, the applicant is increasing a nonconforming use. Vice Chair Taylor said the rationale did not seem logical to her. Mr. Meehan said that businesses run out of the offices currently, which is a nonconforming use, and while it would be nonconforming by increasing the density, it would be solely for residential and related purposes.

Respectfully, Chair Gorman said there were three applications for Variances before the Board for this property. Thus, he suggested ending the conversation about being more conforming or losing a nonconforming use because ultimately, the proposed use will be nonconforming in several ways. Mr. Sanderson said when looking at enlarging a nonconforming use, they were trying to speak to the Chairman's point.

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

Mr. Sanderson said granting the Variance would not negatively affect the surrounding neighborhood in an obnoxious or offensive way. Most of the property is contained within the Harper Acres site and the proposed new building would be visually

appealing and fit with the surrounding neighborhood. The recent traffic calming on the dead-end road of Castle Street limits the speed of cars going to and from the site; the nature of elderly drivers is to drive less than other demographics. Mr. Sanderson said the applicant proposed parking at the site that will be located behind the building, out of site from the general public and surrounding properties.

5. *Unnecessary Hardship*

- a. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*

Mr. Sanderson said that if approved, the building would be constructed to add to the number of accessible units within the constraints of the site. The proposed building would fit the residential architecture style on Castle Street and in Harper Acres, and will provide no unfavorable relationship, in the applicant's opinion, between the general public purposes of the ordinance provision.

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

Mr. Sanderson said the proposed use is reasonable because it will remove a current nonconforming use and replace it with additional accessible senior housing at an established senior housing community. The location of the site on Castle Street, in an existing senior housing complex, will allow the new building to blend well with the surrounding senior housing and residential 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. Sanderson said the property was constructed prior to the development of ADA rules. Therefore, the only way to create fully compliant accessible units would be to renovate or rehabilitate the existing building. He said retrofitting the existing building to become ADA compliant and fully accessible would be a hardship from a cost perspective and could result in a loss of valuable resources (senior housing units). Given the context of the site and neighborhood, the applicant believes the proposed building and use is reasonable and will allow Keene Housing to move in the direction of bringing Harper Acres into conformance with the required ADA units. This building will be a step in the right direction to providing adequate accessible senior housing for the greater Keene area that is in close proximity to downtown Keene, with public transportation available, as well as services and basic residential needs.

Mr. Sanderson and the applicant reminded the Board of Section 674:33 of the NH Local Land Use Planning and Regulatory powers: "*V. Notwithstanding subparagraph I(a)(2), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises ...*"

Chair Gorman advised the applicant to hold discussion of the site plan until the Board heard the subsequent application related to building size.

Mr. Hoppock asked the applicant to explain the special conditions of this property and how they are distinguished from other properties in the area; he did not understand based on the application materials. Mr. Sanderson said the special conditions the applicant is trying to accommodate are the ADA units. Chair Gorman did not understand how that answer makes the property more special than surrounding properties. Mr. Sanderson said from a density perspective, that the property is unusual because it is very large compared to most residential properties in the district. He said the district's density requirement creates a hardship when trying to use this property to its maximum potential. Mr. Sanderson reiterated that this proposed use would be more conforming than the current use by increasing the number of accessible units.

Vice Chair Taylor asked the number of fully accessible units proposed. Mr. Sanderson said the site and building plans allow them all to be fully accessible if financially possible. Vice Chair Taylor said that the Board really has no guidance on if three of 30 units or 30 of 30 units are accessible, if one is more of a fully accessible building than the other is. She said the Board needed clarity in order to apply that provision to whether the building really will be fully accessible. Mr. Sanderson said with this plan the building would be fully accessible and the applicant hopes it will be financially possible to have 30 fully ADA accessible units, which would be the best scenario. Mr. Meehan reiterated that they hope to reach 30 fully accessible units but there is a cost to that and coming to the Board was their first step before spending serious money on development; a lot has gone into predevelopment already. To have more than a standard affordable unit, Mr. Meehan said with 100% certainty that all proposed units will have certain accessible features such as grab bars, light switches, and roll-in showers to accommodate many disabilities, including intellectual disabilities.

Mr. Remy referred to Criteria V.b. and asked staff if that is relevant in this context or more so if a Variance is needed to rebuild an existing unit. Mr. Rogers cited NH RSA Section 674:33, "*V. Notwithstanding subparagraph I(a)(2), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided*

that: (a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance. (b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.”

Mr. Rogers continued saying that based on the statute quoted, there is certainly flexibility for the Board to make determinations. Mr. Hoppock said his problem with applying that provision to this application is that no particular person was identified. He was not convinced that provision applied to this application. The provision allows waiving a hardship requirement, which he was not prepared to do. Vice Chair Taylor said she asked about the number of units because that provision is linked to a condition of the premises and she had yet to hear anything that links the condition of the premises to needing the Variance for handicap accessibility. She said they may need a Variance to construct the building to increase the number of units, but they would need a Variance to do so even if none of the units were handicap accessible. She agreed with Mr. Hoppock that she was unsure that provision applies to this application. Chair Gorman said that provision is a specific situation of the property, but there are already 104 units, so he thought some could be converted to handicap. The Chairman recognized the applicant's comments about costs, but stated that the Board does not consider financial hardship from a zoning perspective. He thinks that provision might be more applicable when, for example, someone must enter setbacks for a specific person that has become disabled. He said waiving a hardship is a big request to ask the Board to do.

Chair Gorman said he wanted to see more of a case made very specifically on the five criteria because that, and only that, is what the Board votes on. He suggested the applicant request to continue the hearing without prejudice, so they could return more prepared to make solid arguments for those five provisions. Vice Chair Taylor asked if it was valuable to hear public comments on the record specifically for this first application. Chair Gorman held comments because the public did not have full answers yet and the applicant was entitled to fully answer the Board's questions before the public weighs in.

Chair Gorman said, personally, that he wanted to see more information about the specifics of the building if the Board is to heavily consider accessibility. He felt the Board needed to see more numbers to understand. Mr. Meehan said it would be challenging to arrive at a total development cost without knowing a bit more about what the Board would require. He could not guarantee 30 fully accessible units because, for example, the Board might come back asking for little changes, such as the footprint is too big or something needs to be lowered, which would impact the organizer's ability to present a full development cost. The Chairman rescinded his request because he understood the applicant's point.

Mr. Hoppock noted there were members of the public present who might not be able to attend the next meeting and suggested the Board might hear their comments. He

added that the five criteria are in the law and there are a lot of cases about what these criteria require. Those are the questions the applicant was being asked and in Mr. Hoppock's view, there was a lot of missing information to meet a request for voting. Mr. Remy questioned if the information was just not there, missing, or withheld; members of the Board indicated they understood his point. Mr. Meehan said the Board's points were well-taken and he requested time to ensure the applications are more articulate, to take into consideration the criteria more, and to feel they presented their best case.

Vice Chair Taylor noted that if the Board decides to continue the application, the public unable attend the next hearing can submit a written position statement to the Zoning Clerk. Mr. Meehan said that if neighbors have concerns he wants to hear them and try to accommodate them as much as possible.

Hearing the applicant's request, Mr. Hoppock moved to continue ZBA 19-08 until the Tuesday, September 3, 2019 ZBA meeting. He encouraged members of the public to submit written comments. Vice Chair Taylor seconded the motion to continue.

Mr. Welsh said this application (ZBA 19-08) was fairly light on details the Board commented on, like the number of units. Some information relevant to the first application was not written until the third application, for example. He thought he would have to vote on an abstraction. He encouraged the applicant to underscore those important figures when revising this first application or to consider how the array of applications could be combined. Vice Chair Taylor said in staffs defense that they have to work with the Ordinance as it is written; Mr. Welsh said perhaps it is easier to go one-by-one, he was unsure. Chair Gorman thought they had to hear applications one-by-one. If continuing this application, Vice Chair Taylor suggested voting on each application individually.

On a vote of 5-0, the Zoning Board of Adjustment continued ZBA 19-08 until the Tuesday, September 3, 2019 meeting.

The Chairman said that, theoretically, the revised application should be better and he encouraged members of the public to attend the next meeting or submit comments to the Zoning Clerk.

ZBA 19-09:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests an Enlargement of a Nonconforming Use for property located at 105 Castle Street, Keene, Tax Map Parcel #567-006-000-000, which is in the Medium Density District. The Petitioner requests an Enlargement of a Nonconforming Use to remove a nonconforming office use at 105 Castle St., and replace with an additional 30 senior housing units. Adding the units to the lot will be an enlargement of a nonconforming use, which is an apartment building greater than three units. 105 Castle St. currently has and will continue to have, maintenance space for Harper Acres. Meals on Wheels space and community space.

There will be a reduction level of nonconformity in other respects by eliminating the commercial office.

Chair Gorman opened the public hearing and recognized the applicant, Mr. Meehan, who requested a continuance. Vice Chair Taylor made the following motion, which Mr. Hoppock seconded.

On a vote of 5-0, the Zoning Board of Adjustment continued ZBA 19-09 until the Tuesday, September 3, 2019 meeting.

ZBA 19-10: Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests a Variance for property located at 105 Castle Street, Keene, Tax Map Parcel #567- 006-000-000, which is in the Medium Density District. The Petitioner requests a Variance for property located at 105 Castle St. to construct a 38 foot 2 ½-story building to be built in the Medium Density District per Section 102-791 of the Zoning Code.

Chair Gorman opened the public hearing and recognized the applicant, Mr. Meehan, who requested a continuance. Mr. Remy made the following motion, which Mr. Hoppock seconded.

On a vote of 5-0, the Zoning Board of Adjustment continued ZBA 19-10 until the Tuesday, September 3, 2019 meeting.

ZBA 19-11: Petitioner, The Colonial Theater Group, Inc., of 95 Main St., Keene, requests a Special Exception for property located at 89 Main St., Tax Map Parcel #575-008-000 (001 thru 007) which is in the Central Business District. The Petitioner requests a Special Exception from Zoning Ordinance Section 102-791, the Basic Zone Dimensional Requirements; Central Business District maximum building height of 55 feet to 75 feet.

Chair Gorman requested staff comments and Mr. Rogers used a map to demonstrate the location of the Colonial Theater, for which the owners propose renovations and an addition to the building that calls for increasing the building height. Within the Zoning Code, there is a specific height threshold for buildings in the Central Business District, but there are allowances if a special exception is sought to increase that height, which is what the applicant was before the Board to request. Mr. Rogers referenced the Basic Zone Dimensional Requirements table and footnote b with the normal special exception criteria at the end of the Zoning Code that the applicant must address. The Board was looking at the nine criteria in total.

Vice Chair Taylor asked if there are any other buildings in the downtown that are 75' tall. Mr. Rogers said the tallest building that might reach 75' tall would be the building wrapping around the corner from Main Street to Roxbury Street. He did not believe the Carriage House or the old Sentinel building were that height.

Chair Gorman called a four-minute recess.

Chair Gorman opened the public hearing and welcomed Charles Michal (of Weller & Michal Architects, Harrisville, NH) on behalf of the Colonial Theater Group. Also present were Tad Schrantz (Development Committee Chair) and Alec Doyle (Executive Director of the Colonial Theater). Mr. Michal said this application was to seek a special exception to expand the height of a portion of the existing Colonial Theater building, which first opened nearly 100 years ago. While the project does involve expansion of the building's footprint (where the site plan did show additional square feet backstage), the only question before the Board was the height increase. He said the height increase has nothing to do with aesthetics or a desire to make internal changes to the theater. Instead, the increase is driven by a technical need, which he used photographs to explain; the photos displayed existing conditions of a theater similar to the Colonial that uses the same conditions as today.

Today, Mr. Michal explained that the theater relies on a hemp and sandbag system to lift and hold production materials, like lights. The Colonial is operated by skilled employees from an intermediate platform above the stage that is accessed by a tall vertical, precarious ladder. Mr. Michal said the proposed expansion would accommodate a modern rail system with pulleys and a walking grid that will make maintenance above the stage safer and allow more space on the stage and in the theater. He demonstrated details of the two systems using the photos displayed. The proposed expansion will be taller than the existing building to accommodate the modern equipment. The proposed renovation stays within allow 75' available in the Central Business District under special exception from the ZBA.

Mr. Michal addressed the first four criteria for special exception.

- 1. The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use.*

Mr. Michal said the proposed use is the same as the current use of the existing building. He said this requirement is satisfied as the proposed increase in building height is necessary to allow the continued competitive use of this special purpose building as a modern theater/performance venue. The use category has not changed from the original 1923 use of the property that is already allowed at this location.

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

Mr. Michal said the approval of the special exception, in the applicant's view, does not reduce the value of any property in the district and is not injurious, offensive, or obnoxious to the neighborhood. He added that this requirement is satisfied because the 15' height increase above the existing stage house roof will have no impact on the Main Street facade and views of the building. They do not believe any abutters' views

would be impacted by the height increase nor do they anticipate reduction to neighboring property values.

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

Mr. Michal said this requirement is satisfied because increasing the roof height by 18% of the building footprint does not impact either vehicle or pedestrian traffic, because it does not change the use of the building.

4. *This requirement is satisfied as the requested Special Exception places no increased burden on sewer, water, parking or other facilities necessary for the proper operation of the Theater.*

Mr. Michal said this requirement is satisfied, as the requested special exception places no increased burden on sewer, water, parking, or other facilities necessary for the proper operation of the theater. He stated affirmatively that adequate services are provided for this use.

Mr. Michal continued addressing the additional five criteria for a special exception for a height increase. He referenced a memo included in the meeting packet that speaks to these five points. He read the responses to each criteria.

1. *There is adequate carrying capacity on public roads serving the proposed project site to accommodate traffic associated with and anticipated for the proposed project. It shall be the responsibility of the applicant to demonstrate such capacity, the demonstration or proof of which shall include affirmative letters from the state department of transportation, if state roads are within 1,000 linear feet of the proposed project site, and the city engineer and police chief. Traffic studies may be required by the board in its discretion at the applicant's expense in addition to the foregoing; and*

Mr. Michal said there is adequate carrying capacity on public roads serving the proposed project site to accommodate traffic associated with and anticipated for the proposed project, as the special exception requested does not increase the capacity of the building nor change its current use. Increasing the roof height by 18% of the building footprint does not affect either vehicle or pedestrian traffic.

2. *All parking requirements can be satisfied on site. A waiver of on-site parking requirements in accordance with division 7 of article V of this chapter pertaining to off-street parking regulations may not be granted. In the central business zone only, parking capacity requirements may be satisfied on site or off site in accordance with division 7 of article V of this chapter, provided that the applicant demonstrates to the satisfaction of the zoning board of adjustment that there is adequate capacity in the proposed off-site parking location, whether a private or public parking area, for the parking required of the use under this chapter. The mere presence of a nearby public parking lot*

shall not in and of itself be a sufficient demonstration of adequate parking capacity in the off-site parking location to accommodate the required parking for the use.

Mr. Michal said parking requirements are satisfied as no increased parking is necessitated by the height increase, which simply accommodates the modern, current-day technology and equipment suitable for a live performance theater. [In the Central Business Zone, parking capacity requirements may be satisfied on site or off site in accordance with Division 7 of Article V.]

3. *The design of the proposed building is attractive and compatible with adjacent buildings and those in the vicinity, does not unreasonably obstruct vistas of hills that can be seen from any public ways on the valley floor, or the light and air available to adjacent buildings; and*

Mr. Michal said the design of the proposed remodeling is attractive and compatible with adjacent buildings and those in the vicinity, does not unreasonably obstruct vistas of hills that can be seen from any public ways on the valley floor, or the light and air available to adjacent buildings.

4. *Adequate capacity and availability of emergency services exists; and*

Mr. Michal said adequate capacity and availability of emergency services exist, as this is an existing use unchanged by the proposed height increase. The height increase does not introduce a higher occupied floor level than currently exists, and only increases the volume of the stage house for the theater.

5. *Adequate existing sewer and water are available to serve the proposed building.*

Mr. Michal concluded saying that adequate existing sewer and water are available to serve the building.

Vice Chair Taylor asked Mr. Michal to demonstrate, using visuals, not where the height increase will be but how deep the height increase will continue from the back of the existing building forward. Mr. Michal shared a handout of a flat side architectural drawing, demonstrated the stage house location, and showed where the height increased is proposed. Vice Chair Taylor clarified asking how broad the height increase would be toward Main Street. Mr. Michal said height increase will span the full width of the building but will not go any closer to Main Street than the high part of the current stage.

Vice Chair Taylor recalled the need for emergency services access. She asked if an emergency exit would be required to reach the new work area. Mr. Michal said reaching existing ladders requires starting with a single rung-over-rung ladder up 20' and walking along a wooden catwalk to the stage wall. The future equipment will

require adding to the back of the building, where the mechanical equipment is now that will be moved to the roof. Mr. Michal said the backstage would have an elevator and conventional stair system allowing employees to reach the platform without negotiating a tall ladder. Similar access will be available on the far side, creating two exits on the back of the building to within the volume of the backstage. Vice Chair Taylor asked whether there is a need for any emergency egress on the top and if that changes anything structurally. Mr. Michal said the applicants are providing what is required by Code as a part of the design.

Chair Gorman closed the public hearing.

Mr. Hoppock said that it was generally a clean application and he was satisfied that all five criteria were met. He supported the application. Chair Gorman said he has much greater respect for the work that goes on precariously backstage currently.

Vice Chair Taylor said her major concern was, given the height, that appropriate provisions were being made for any kind of emergency to allow employees to leave the premises. Chair Gorman thought the City Code would dictate that. Vice Chair Taylor said she had not a clue what the City Code requires for that type of facility. Mr. Rogers said the Chairman was correct that this work would require a Building Permit and would be subject to the state building and fire codes, which would address some of Vice Chair Taylor's concerns.

Mr. Welsh said he approved of the well-developed application. This was his first experience seeing this amazing backstage work also. He imagined the Code is more so focused on instances of adding a story of living space or a restaurant on a building roof; something different from this application. He supported the application.

Chair Gorman agreed and reiterated this is just mechanical space and does not add to a previous use and will not adversely affect the neighborhood or community. To the contrary, the Chairman thought this project was great for the community.

Mr. Remy expressed no concerns as long as height is covered in the fire code.

Mr. Hoppock moved to approve ZBA 19-11 without condition, which Chair Gorman seconded.

The Board reviewed the nine criteria for a special exception for a height increase.

- 1. The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use.*

Vice Chair Taylor said the proposed use is an allowed use already and she expressed no concern. Mr. Hoppock thought the location dedicated to stage functioning was appropriate.

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

Mr. Hoppock agreed with the statement. Vice Chair Taylor added that factually, the district is commercial and the height increase would not impact a specific commercial use. She said the expansion is not on Main Street so she expressed no concern for neighboring impact or value reduction. Chair Gorman agreed that the theater adds value to the district and other merchants on Main Street. He said the City is lucky to have such a historic theater.

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

Mr. Hoppock agreed with the statement. Vice Chair Taylor did not identify any impact on vehicles or pedestrians.

- 4. This requirement is satisfied as the requested Special Exception places no increased burden on sewer, water, parking or other facilities necessary for the proper operation of the Theater.*

Chair Gorman felt the Board had determined already that this project is not adding people, only mechanical space. He continued to the five criteria for increasing height.

- 1. There is adequate carrying capacity on public roads serving the proposed project site to accommodate traffic associated with and anticipated for the proposed project. It shall be the responsibility of the applicant to demonstrate such capacity, the demonstration or proof of which shall include affirmative letters from the state department of transportation, if state roads are within 1,000 linear feet of the proposed project site, and the city engineer and police chief. Traffic studies may be required by the board in its discretion at the applicant's expense in addition to the foregoing; and*

Mr. Hoppock thinks it is satisfied that this project will have no impact on the carrying capacity of public roads. Vice Chair Taylor agreed.

- 2. All parking requirements can be satisfied on site. A waiver of on-site parking requirements in accordance with division 7 of article V of this chapter pertaining to off-street parking regulations may not be granted. In the central business zone only, parking capacity requirements may be satisfied on site or off site in accordance with division 7 of article V of this chapter, provided that the applicant demonstrates to the satisfaction of the zoning board of adjustment that there is adequate capacity in the proposed off-site parking location, whether a private or public parking area, for the parking required of the use under this chapter. The mere presence of a nearby public parking lot shall not in and of itself be a sufficient demonstration of adequate parking capacity in the off-site parking location to accommodate the required parking for the use.*

Vice Chair Taylor said there is no change in number of seats in the facility so the parking requirements have not changed. Mr. Hoppock said there might even be fewer workers if new equipment reduces staffing needs.

3. *The design of the proposed building is attractive and compatible with adjacent buildings and those in the vicinity, does not unreasonably obstruct vistas of hills that can be seen from any public ways on the valley floor, or the light and air available to adjacent buildings; and*

Chair Gorman said that this project would not unreasonably obstruct anything.

4. *Adequate capacity and availability of emergency services exists; and*

Vice Chair Taylor said the only information missing is if the ladder truck can reach that 75', but if it reaches the Central Square Terrace, then it should be able to reach the top of the new theater structure as well. She said it was somewhat of an assumption on her part.

5. *Adequate existing sewer and water are available to serve the proposed building.*

Mr. Hoppock saw no questions on this criteria.

The Chairman recognized the criteria reviewed, a motion, and a second to approve this special exception.

On a vote of 5-0, the Zoning Board of Adjustment approved ZBA 19-11.

V. New Business
a. Amendments to the Rules of Procedure

Mr. Rogers recalled some changes to the rules of procedure that can be found as a draft in the meeting packet.

- On page 62 of 73, there was a change in the meeting room.
- On page 64 of 73, the new department name is reflected.
- On page 65 of 73, edits were made to reflect the bill passed in the NH RSA that changed the timeframe required to hear if someone applies for a rehearing. A motion for rehearing is spoken to a few places in the rules and it says 30 days; the new NH RSA allows 45 days, which in the City's opinion is better and gives more time if someone were to apply for rehearing immediately after the decision is made, when there could be challenges scheduling a special ZBA meeting.

On page 69 of 73, Vice Chair Taylor noted a highlighted portion of a sentence. Mr. Rogers said that highlight was his personal note, included by mistake. Any changes

presented to the Board in the meeting packet were evidenced by red strikethroughs. If an applicant receives a decision and requests a motion for rehearing, the Board now has 45 days to make a decision whether to rehear the petition. If the Board decides to rehear, then it still has 30 days to actually re-hold the public hearing; Mr. Rogers confirmed.

Mr. Hoppock asked, on page 65 of 73 (b) of the meeting packet, if staff ever have issues with incomplete applications. He provided the example of the previous hearing and if square footage were left blank because an applicant did not know, he asked if staff reject the application. Mr. Rogers replied in the affirmative that if specific information were missing related to the lot, then staff would reach out to the applicant immediately to get that information. Mr. Hoppock asked if staff is satisfied with how the rules read and Mr. Rogers replied in the affirmative.

Vice Chair Taylor said that unfortunately for Zoning Boards there is no statutory guidance on a completed application, though Mr. Hoppock said that guidance is available for Planning Boards. Vice Chair Taylor referenced the last page of the meeting packet that read: "public hearing shall be held within 45 days of recent notice of the appeal." She said notice of the appeal is the application and the rule just says when staff receives the application, so she questioned if staff review those forms with applicants to determine if there is adequate information to move forward. Mr. Rogers said that is typical staff protocol, though the Board could also determine an application is missing information through discussion, such as what happened in ZBA 19-08. Chair Gorman agreed he did not think that application was incomplete, but inadequate. Vice Chair Taylor added that from the Board's perspective, there was inadequate information to determine if the applicant can carry the burden of proof, which is a completely different standard than what staff is looking at. Mr. Hoppock agreed.

Vice Chair Taylor made the following motion, which Mr. Hoppock seconded.

On a vote of 5-0, the Zoning Board of Adjustment adopted the revised rules of procedure as presented.

Mr. Welsh questioned and Mr. Rogers clarified that the motion referred to the strikethrough items and red text demonstrated in the draft rules in the meeting packet.

b. Alternates Removing Themselves from the Decision Process

Mr. Rogers recalled new business brought by Vice Chair Taylor about how the rules are currently written for alternate members and their being present at the podium with the regular members and a part of the initial discussion during public hearing. Once the public hearing is closed, alternates are supposed to remove themselves from further discussion. At the June 2019 meeting, Chair Gorman encountered this situation by asking an alternate's input during a public hearing. This led to discussion as to if rules of procedure can change to allow alternates to still participate in discussion after the public hearing is closed. In a brief conversation with the City Attorney and in reviewing

the NH RSA's that Vice Chair Taylor mentioned, it appears to be at the Board's discretion to alter the rules of procedure.

Chair Gorman supported changing the rules given the amount of effort and energy Mr. Remy has dedicated to these meetings; the Chairman values and welcomes his input. Vice Chair Taylor said the only thing to do differently is, if alternates were allowed to participate in the deliberations prior to the vote, the Chair would need to specify at the beginning of a hearing that the alternate is participating as such but will not vote. Mr. Rogers thinks it might already be stated as such in the rules. Vice Chair Taylor agreed and added that, having been on a Zoning Board before the change in statute that allowed alternates to participate fully in the discussion and after the change, she thinks there is a tremendous amount of added value to the discussion. She also thinks it gives a fairer opportunity to the applicant to have diverse perspectives reviewing applications. Mr. Welsh agreed the change would be beneficial; he noted it is just eliminating the sentence, "*once the board moves into deliberations.*" He said it is not just a good idea because of valuable contributions from alternates but also because it eliminates a clunky necessary step the Board would otherwise have to take, that could be a problem if overlooked. Mr. Welsh supported eliminating that sentence.

Based on the Board's comments, staff agreed to review the rules of procedure and determine how to strike that line from the rules, while keeping in mind Vice Chair Taylor's comment about keeping apparent that the alternate is present as such, not as a voting member. Staff will bring revised rules of procedure to the September 3, 2019 meeting.

- VI. **Communications & Miscellaneous:**
- VII. **Non Public Session: (if required)**
- VIII. **Adjournment**

Hearing no further business, Chair Gorman adjourned the meeting at 8:29 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Taker
August 21, 2019