

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, April 6, 2020

6:30 PM

Remote meeting via Zoom

Members Present:

Joshua Gorman, Chair
Arthur Gaudio, Alternate
Michael Welsh
Louise Zerba, Alternate
Jane Taylor

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Joseph Hoppock, Vice Chair
Joshua Greenwald

Chair Gorman called the remote meeting to order at 6:33 PM. He read a prepared statement explaining how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public body meetings) during the declared COVID-19 State of Emergency. He explained the procedures of the meeting and how the public can participate.

1) Introduction of Board Members

Roll call was conducted, with each board member stating their name, location, and who was in the room with them (if applicable). Louise Zerba, alternate, noted that she is standing in tonight for Joshua Greenwald.

2) Minutes of Previous Meeting – February 3, 2020

Chair Gorman asked if anyone had corrections to the meeting minutes.

Mr. Welsh stated that he was not present at the February 3rd meeting and thus will recuse himself from the discussion and vote. Ms. Zerba replied that she, too, was not at the meeting and will not be voting.

Ms. Taylor made a motion to approve the meeting minutes of February 3, 2020. Mr. Gaudio seconded the motion, which passed by a vote of 3-0. Ms. Zerba and Mr. Welsh abstained. Ms. Taylor asked how the public is able to know who is voting. Mr. Rogers replied that votes on motions will be done by roll call.

3) Unfinished Business

Chair Gorman stated that he is not aware of any unfinished business. Mr. Rogers stated that there is no unfinished business from previous meetings to be addressed tonight.

4) Hearings:

A. ZBA 20-06:/ Petitioner, Leah LaRock of 1041 Route 63, Spofford, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Variance for property located at 0 Daniels Hill Rd., Tax Map #238-003-000; that is in the Rural District. The Petitioner requests a Variance to permit a single family home to be built on a 1.8 acre lot where a 5 acre lot is required per Section 102-791 of the Zoning Ordinance.

Chair Gorman stated that Vice Chair Hoppock has recused himself from this petition and Art Gaudio, Alternate, will sit in for him. He continued that the petition will be read into the minutes by the Chair and heard by the Board. He gave the phone number the public can call if they would like to participate in the public hearing, and the phone number to call to report technical issues.

Chair Gorman welcomed staff to present comments and history on the petition.

Zoning Administrator John Rogers used a displayed map to explain the location of this property, which he stated is in the Rural District. He continued that Daniels Hill Road is off of Route 9 heading west toward Brattleboro. As you turn onto Daniels Hill Road this is the second lot, on the western part of that road. The Rural District requires a 5-acre lot. This one has only 1.8 acres. It has the appropriate frontage and building width for a single-family home to be built. The applicant is asking for a Variance based solely on the lot size.

Mr. Welsh stated that the site was granted a Variance in 2015, which was extended in 2017. He asked why the owner is seeking another Variance. He continued that there were three conditions on that original Variance, and asked if any of them were satisfied and if they still apply.

Mr. Rogers stated that this property did receive the original Variance and they came back and asked for an extension, and the ZBA granted it for two years, which ran out on November 7, 2019. He continued that the applicant would have to speak to that – maybe they just forgot that the Variance was going to expire. There were three conditions placed on that previous Variance.

Some of it was to safeguard against any possible surface water being diverted to the adjacent property. He can read those conditions, if the Board wants.

Ms. Taylor asked Mr. Rogers if this is, in essence, a request for a new Variance, not an extension. Mr. Rogers replied that with the way the rules of procedure are written, even extensions are considered new Variances.

Ms. Taylor stated that when she was looking at the maps online, she saw that to the west there is a small street and several lots. She asked if this lot was part of a subdivision at some stage. Mr. Rogers replied that the lots she is referring to are part of a Conservation Residential Development (CRD), a conservation development. He continued that the lot in question has been an existing lot as far back as he was able to track, probably well before there were lot size requirements.

Ms. Taylor asked to see the proposed site map again, which would show a north/directional indicator so she could tell what she was looking at. Displaying the proposed site map, Mr. Rogers stated that it looks like the house would not quite be parallel with Daniels Hill Road, but that would be the best way to try and orient yourself as to how the house would sit on that lot. Ms. Taylor replied yes, it would help her understand the application better.

Mr. Gaudio stated that on the prior map that was displayed, he noticed there is a house already to the east, on a 2-acre lot. He asked if that was built in accordance with a Variance, or if that was a preexisting use. Mr. Rogers replied that it was probably preexisting, predating any of the lot size requirements. He continued that that house has been there quite a while, but he did not research the history of that property very much.

Chair Gorman asked if there were other questions for Mr. Rogers. Hearing none, he thanked Mr. Rogers and welcomed Tim Sampson, representative of Leah LaRock, to present.

Mr. Sampson, presenting from his office at 103 Roxbury Street, stated that Michael Pappas is with him in his office for the second petition on the agenda. He continued that his client, Leah LaRock, is seeking a Variance to put a single-family home on a 1.8-acre lot, where five acres is required in the Rural District.

Mr. Sampson responded to the criteria for granting a Variance.

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

Mr. Sampson stated that granting the Variance would not be contrary to the public interest because the proposed use is a permitted use in the Rural Zone. Also, with the exception of lot size all zoning requirements can be met. The proposed use is consistent with the neighborhood.

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

Mr. Sampson stated that if the Variance were granted, the spirit of the Ordinance would be observed because the existing lot is small but in character with the neighborhood. He continued that the proposed development will also be consistent with the neighborhood. The spirit of the Ordinance is to prevent over-development. The single-family residence is within the spirit of the Ordinance.

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

Mr. Sampson stated that granting the Variance would do substantial justice because it would allow the owner to develop the lot in a manner that is consistent with adjacent lots.

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

Mr. Sampson stated that the proposed use is consistent with adjacent lots. The type, size, and scale are in keeping with the spirit of the Ordinance as well as 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 because:*

Mr. Sampson stated that the intent of the Ordinance is to prevent overdevelopment and maintain consistent scale and character. He continued that the only zoning requirement that cannot be met is the lot size. The property is large enough to maintain the character of the neighborhood.

And

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

Mr. Sampson stated that the proposed use is a reasonable one because it is actually an allowed use in the Rural Zone, and consistent with the neighborhood.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Mr. Sampson stated that of the permitted uses in the Rural District only a single-family dwelling would be consistent with the neighborhood. He continued that if a Variance is not granted the lot cannot be developed in the most reasonable manner, that being a single-family residence.

Mr. Sampson stated that they also submitted a small zoning analysis of the proposed footprint of the single-family residence they feel is consistent with the rest of the development on that road. That is the gist of what they are trying to do. He continued that they know it is a small lot. It has been an existing lot for a long time. In the past a Variance was granted and there was an extension made. He does not have 100% background as to why another extension was not sought. They realize there were conditions put on the property with the previous Variance approval, and they do not have any issue if those requirements were placed on the new Variance.

Mr. Welsh stated that he is glad to hear the conditions for the Variance are still agreeable. He asked if there have been meaningful changes to the conditions of the lot itself since the Variance granted in 2015. Mr. Sampson replied that the lot has remained pretty much untouched. He continued that Ms. LaRock does not have much experience in any sort of development. The lot was bought in 2007 or 2008 and the intent was to combine it with an adjacent lot, he believes the five-acre lot to the west, but that relationship had dissolved and Ms. LaRock was stuck with this piece of it.

Ms. Zerba asked if Mr. Sampson could address the conditions. Chair Gorman asked if she means the conditions adopted by the prior zoning approval. Ms. Zerba replied yes.

Mr. Sampson stated that the previous conditions were that prior to the granting of the building permit, the owner would install a 6-12" berm. He continued that the intent is to leave as much of the existing vegetation as they can. They are proposing fairly big setbacks. It is roughly 80 feet in both directions. The closest setback is about 170 feet. Down to Route 9 it is 120 feet. They propose setting the dwelling back, pretty much in the middle of the site and leaving as much of the vegetation in that setback, buffer to adjacent properties, as they can.

Ms. Zerba stated that her question in particular was regarding the buffer that the previous Zoning Board asked for, especially in regards to the water runoff to the adjacent property.

Mr. Sampson replied that that will all be taken care of if they receive approval for this Variance. He continued that the previous conditions will be met.

Mr. Rogers read aloud the conditions placed on the previous Variance:

1. Prior to granting of a building permit, the owner will install a 6" to 12" berm across the first Woods Road near Daniels Hill Road, and also across the second Woods Road located (easterly) towards Route 9 over the existing open area. In regards to the berm located (easterly) across the second Woods Road, this berm is to extend to the existing berm on the lot.

2. That the owner maintains a vegetated buffer of approximately 20 feet along the road frontage westerly of the driveway. The buffer does not need to be opaque but shall have a density similar to the existing vegetation. This buffer may include new or the existing trees.
3. Mr. Robert Hitchcock of SVE Associates will verify that the development of the property does not increase the runoff onto the abutting property to the East.

Ms. Zerba stated that she would like the third one addressed at some point to make sure that is still in effect.

Ms. Taylor stated that Mr. Sampson is an architect. She asked if they added the third condition to a new Variance, who would be doing that verification? Mr. Sampson replied probably Dave Bergeron, because Mr. Hitchcock is no longer practicing. Ms. Taylor asked what type of engineer he is. Mr. Sampson replied that he is a Land Use Consultant and does a lot of drainage calculations. Ms. Taylor replied that she thought Mr. Hitchcock was an engineer. Mr. Sampson replied that they perform similar functions. He continued that it could be someone like Tom Forest or someone else; it will be someone with licensed credentials.

Ms. Taylor stated that in the application Mr. Sampson submitted, the intent he stated was not necessarily the intent for the Rural District, so it confused her. She continued that the intent of the Rural District is “to provide for scattered, very low density development, predominantly of a residential or agricultural nature, which can be accommodated on the land without major disruptions of natural terrain, vegetation, water courses, or surface drainage.” She continued that she is sure that is why the previous Zoning Board was so concerned with drainage issues. Mr. Sampson replied that the intent would be to leave the site as intact as possible.

Mr. Gaudio stated that his question is mainly in regards to unnecessary hardship, and maybe applies to public interest. He continued that as Ms. Taylor was mentioning, the Rural District is in a conservation area and the intent of the five-acre zoning is to preserve that. He is looking to see why there is no fair and substantial relationship between the general purpose of the Ordinance’s five acres and the specific application of that provision to this property. Five acres seemed to be the intent to maintain that large lot, scattered housing. He asked if there is something more that he is not seeing. He continued that this would seem to be problematic for the conservation area.

Mr. Sampson replied that he believes the property is not within that conservation area. The lot goes back a long way. Mr. Gaudio replied that Mr. Sampson said the lot was purchased recently with the intent to combine it with the neighboring lot to the west. Mr. Sampson replied that that is correct, but that five-acre lot has since been sold to somebody else, by the person that Ms. LaRock was originally going to combine properties with. He continued that the lot in question is now “sort of an island unto itself.”

Mr. Gaudio stated that his concern is that this is a 1.8-acre Variance, and someone might request a two-acre or one acre Variance. He is looking for why this is a Variance issue, not a zone change issue. Where is the hardship for this particular lot? Why is it different? Mr. Sampson replied that without a Variance, the lot cannot be utilized as one of the allowed uses in the Rural District. He continued that his guess is that if Ms. LaRock is not allowed to put a house on the lot she will be stuck with an unsellable piece of property. There is no adjacent land she could combine this with. It is a less than two-acre lot that has existed for a long time, long before Ms. LaRock bought it. There is a flat area she could develop without altering contour. It does not need to be buried in the side of the hill.

Ms. Zerba asked if Mr. Sampson could speak to other adjacent properties that might be under the five-acre minimum. Mr. Sampson replied that the lot directly adjacent is two acres, and there is a development down the street with five or six lots built on a short road off Daniels Hill Road. Chair Gorman asked if it is possible that that is a planned urban development. Mr. Rogers replied that those are two-acre lots in the development a little further up, which is a CRD. He continued that they were allowed to build on a smaller lot. They put about 17 acres into conservation use. There is another property on the other side of Daniels Hill Road that is a substandard lot. As far as he could tell, looking at the map, there seem to be two other developed lots on that road that are less than five acres, not counting the properties in the CRD.

Chair Gorman asked if there were questions or comments from the public. He gave the phone number for members of the public to call. Hearing no one from the public wishing to speak, he closed the public hearing and stated that the Board would discuss and deliberate.

Ms. Taylor asked if they can begin by discussing the 5th criteria, unnecessary hardship, because she thinks that is where a lot of the testimony was focused.

5) Unnecessary Hardship

A) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because:

ii. The proposed use is a reasonable one because:

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.

Ms. Taylor stated that in her opinion, this really is an application that comes under 5B and not 5A. She thinks Mr. Gaudio made his point about finding a relationship between the general purpose of the Ordinance and the application of the provision but she does think the applicant has a point in noting that it is a reasonable use of the property and without the Variance there really is no other reasonable use. As with many Variance applications, this is the one that has the most questions surrounding it.

Chair Gorman agreed that 5B fits the application better. He continued that the land is probably completely unusable unless Ms. LaRock is allowed to build, as Mr. Sampson explained.

Mr. Welsh stated that he agrees with Ms. Taylor – there is no other use, it seems, for a small parcel that is located between the road and the highway and bound by those other two lots.

Mr. Gaudio stated that he agrees that it is 5B, too. Ms. Zerba stated that she would support the others' comments.

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

Ms. Taylor stated that she thinks the proposed use is consistent with the adjacent areas. She continued that they do not know what the plans are for the five acre lot on one side, but essentially, the properties on Daniels Hill Road are single-family residential or conservation land, so she does think it is consistent and therefore the property values would not be diminished.

Mr. Gaudio stated that he would not argue with that. Ms. Zerba stated that she concurs. Mr. Welsh and Chair Gorman agreed.

3) Granting the Variance would do substantial justice

Mr. Gaudio stated that this is a lot that seems to be fairly unique and no other use could be made of it, other than housing, so no substantial justice would occur if it were denied, so to grant it would do substantial justice.

Mr. Welsh stated that in conditions where they have seen the opinions of a prior Board granting a Variance and no changes to the conditions other than the expiration of the Variance, he is slow to put together any logic that would go against the judgment of that prior Board.

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

Ms. Zerba stated that she served on the Zoning Board during the last application and she would like to ensure that the same conditions appear if this Variance is granted, particularly the third one. She continued that she is concerned about the runoff to the other property, which is down the hill from the proposed application site.

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

Ms. Taylor stated that she does not think there is anything in the public benefit arena that would outweigh the request of the applicant to use this lot. Chair Gorman agreed. Mr. Gaudio agreed as well.

Ms. Taylor stated that even though she believes the applicant quoted the wrong intent section, she does not think the development of this lot goes completely against the intent of the Rural District, so long as there are conditions added to the motion, and even though this is a smaller lot than is anticipated by the Ordinance.

Ms. Taylor made the following motion, which was seconded by Mr. Welsh.

Move to approve ZBA 20-06, petitioner Leah LaRock of 1041 Route 63, Spofford, New Hampshire, for a Variance for property located at 0 Daniels Hill Road, Tax Map #238-003-000, which is in the Rural District. The petitioner is requesting permission for a single family home to be built on a 1.8-acre lot where a 5-acre lot is required per Section 102-791 of the Zoning Ordinance, and also with the following conditions:

1. Prior to granting of a building permit, the owner will install a 6” to 12” berm across the first Woods Road near Daniels Hill Road, and also across the second Woods Road located (easterly) towards Route 9 over the existing open area. In regards to the berm located (easterly) across the second Woods Road, this berm is to extend to the existing berm on the lot.
2. That the owner maintains a vegetated buffer of approximately 20 feet along the road frontage westerly of the driveway. The buffer does not need to be opaque but shall have a density similar to the existing vegetation. This buffer may include new or the existing trees.
3. That an appropriately credentialed soil engineer will verify that the development of the property does not increase the runoff onto the abutting property to the East and that that verification be in writing and made part of the record in the Community Development Department.

The Board voted on the findings of fact, via roll call vote.

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

Passed with a vote of 5-0.

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

Passed with a vote of 5-0.

3. *Granting the Variance would do substantial justice*

Passed with a vote of 5-0.

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

Passed with a vote of 5-0.

5. *Unnecessary Hardship*
 - 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.*

Passed with a vote of 5-0.

The motion to approve ZBA 20-06 passed with a vote of 5-0.

B. ZBA 20-07:/ Petitioner, 143 Main St., LLC of West Swanzey, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Change of Non-Conforming Use for property located at 143 Main St., Tax Map #584-061-000; that is in the Central Business Limited District. The Petitioner requests a Change of Non-Conforming Use to permit a multi-family dwelling with office use from a single-family dwelling.

Chair Gorman stated that Mr. Hoppock has recused himself from this petition and Mr. Gaudio is sitting in for him. He gave the phone number for public comment.

Chair Gorman read ZBA 20-07 into the minutes. Chair Gorman welcomed staff to present comments and history on the petition.

Mr. Rogers stated that this is located on Main Street, in the Central Business Limited (CBL) District. He continued that it is currently a single-family residence with an office. The office would be an allowed use in CBL District but the single-family dwelling is not an allowed use. Dwelling units are allowed but there is a minimum of four units required for this district. The mixed use would be allowed. The application is asking to change the nonconforming use from a single-family with an office to a two-family with an attached office.

Ms. Taylor stated that she was going through the Ordinance trying to understand what applied and what did not. She continued that this is obviously a very old structure. The single-family use probably predated the current zoning. She asked if it is correct that it is nonconforming because it existed before current zoning. Mr. Rogers replied yes, that is correct. Ms. Taylor stated that if a single-family residence is a preexisting nonconforming use, she is confused about why he says

single-family use is not allowed. Mr. Rogers replied yes, the single-family use is a preexisting, nonconforming use.

Ms. Taylor stated that she missed where it says that mixed use is allowed. Mr. Rogers replied that the intent statement of the Central Business District spells out that mixed uses are allowed and it has been interpreted by the previous Zoning Administrator that the intent applies to the CBL District as well.

Ms. Taylor stated that if the single-family use is preexisting nonconforming, that is fine. She asked how long the property has been vacant. Mr. Rogers replied that would be a question for the applicant.

Ms. Taylor asked if it has been vacant for an extended period of time, over a year, doesn't it need a Variance instead of a change from a nonconforming use? Mr. Rogers replied that it would not be his interpretation that it meets the abandonment clause of the nonconforming use section. He continued that there was no intent shown by the property owner. They did not change it to a permitted use. He would not interpret this structure as having gone through the abandonment requirements that are spelled out in the Zoning Code.

Ms. Taylor stated that she does not think this is the right application. She continued that she is not sure if this relatively new owner can speak to its abandonment from personal knowledge, so that is why she was asking staff.

Chair Gorman stated that his understanding is that this is a family-owned property, multi-generational, so the new owner may be able to attest to previous activity. Also, he is not sure that vacancy is abandonment. He continued that vacancy occurs sometimes just through the normal ebb and flow of economics. Abandonment occurs when you specifically abandon one use for another.

Ms. Taylor replied not necessarily. She continued that Section 102-202 says, "A nonconforming use shall be deemed abandoned if the use is discontinued for a period of one year." She continued that it then says "if the intent to discontinue was apparent." She knows the property was on the market for a long time. She does not know about the rest of the things; that is why she raised the question. They have to make sure they have the right kind of application in front of them.

Mr. Rogers stated that as the Zoning Administrator, he made the interpretation that the property did not meet the abandonment clause, based on "the intent of the owner to discontinue the use was apparent." As the Zoning Administrator his interpretation was that they had not gone through that process. That is why when asked, he/staff directed the applicant to go with the "change from one nonconforming use to another nonconforming use."

Chair Gorman stated that maybe they can get more information from the applicant, if Ms. Taylor

has more questions.

Mr. Gaudio stated that another map showed parking spaces in the rear. He asked if those are available for the occupants/tenants and if there are enough. Mr. Rogers replied yes, the lot behind the house is currently used for that building. He continued that the property owner would need to go through the section of the Zoning Code that is required for off-site parking since this is a separate lot, and they would be increasing the amount of parking spaces they are required to provide, if this change of nonconforming use was approved. With that proposed approval, there is a certain procedure they would have to go through. Specifically, through the section of the Zoning Code that does allow off-site parking.

Mr. Gaudio asked, if the Board were to approve this, should they have this as a condition for the change in the nonconforming use. Mr. Rogers replied that staff spoke with the applicants about how this might be something that is required, if the Board wants to add that as a condition. He can give them the section of the Zoning Code to reference.

Ms. Taylor stated that the CBL District requires on-site parking. She continued that she understands that the lot behind the property is owned by the same party, but the City cannot require them to merge lots, so what do they do? Do they need a Variance from the on-site parking? Mr. Rogers replied that there is a section of the Zoning Code that allows for the Zoning Administrator, if it is deemed that due to unusual circumstances the owner cannot provide onsite parking, to grant the possibility for off-site parking. He continued that it requires the approval/signature of the City Manager and requires a long-term lease to become part of the deed of that property. It is spelled out in the Code; he will find the section number for the Board.

Chair Gorman opened the public hearing and asked Mr. Sampson to present while Mr. Rogers found the Code section.

First, Mr. Rogers stated that he found the information to answer Ms. Taylor's question: Section 102-978, "Location of required spaces on other lot." He continued that if parking spaces cannot be provided on site this allows the Zoning Administrator to allow all or part of the required parking spaces to be on any other lot owned or leased by the owner of the building if such lot is within 300 feet of the building. There is a whole process to go through, including having the City Manager sign off. The City has done this in the past for other properties.

Ms. Zerba asked if Mr. Sampson can address how the owner will address the parking issue. Chair Gorman asked Mr. Sampson to begin by addressing criteria 1 and 2.

The Zoning Board of Adjustment may, in appropriate circumstances and with appropriate safeguards, permit a nonconforming use to be changed to another nonconforming use provided that the following criteria are met:

- 1. The changed use will be more in the spirit and intent of the Zoning Ordinance.*

Mr. Sampson stated that this lot is in the CBL District. He continued that the lot's current use is a single family residence, which is not currently allowable. Uses allowed include multi-family residence if there is a minimum of four, or a boarding house, and office space. The proposed use is mixed use, including two residential units and an office. The two residential units are similar to other uses permitted in the zone, such as a bed and breakfast and multi-family residence. The City of Keene's Master Plan's "Future Land Use and Policy" chapter shows this property in an area identified as "Downtown Neighborhood/Traditional Neighborhoods and Mixed Use." This section of the plan encourages these areas to be developed with a residential and mixed use development and "compatibility with historic areas." Allowing the owner the use of the property for a mix of uses that will include residential and office is more in keeping with the intent of the Ordinance than the current use of single-family residential.

2. The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.

Mr. Sampson stated that the changed use will not be more injurious, obnoxious, or offensive to the neighborhood because the surrounding area is a mix of uses including residential, professional offices, restaurants, and retail. He continued that the two residential units and office space will fit well with the existing neighborhood. The property directly to the south of this one contains residential units and several more exist on Davis Street to the west of the property. This is a unique property in the zone due to its age and construction and it is ranked as a primary resource in the Historic District Resource Ranking. Allowing the two residential units and office will allow the owner to maintain the historic look of the home. The two residential units and office space will be similar to other uses surrounding this property and will be more in keeping with the mixed uses in the neighborhood than the current use of single-family residential and will not be injurious, obnoxious, or offensive to the neighborhood.

Mr. Sampson stated that this is step one of a bigger project. He continued that about two years ago they went to the Historic District Commission (HDC) and received approval to do exterior renovations, some of which have happened, and some of which are still happening. They will go back in front of the HDC and the Planning Board to complete this process, long before they get a building permit.

Chair Gorman thanked Mr. Sampson and asked for comments or questions from the Board.

Ms. Taylor stated that she wanted to renew her question of how long has the property been vacant? Mr. Sampson replied that the current owner purchased it in January with a family member still living there at the time, so it has been less than six months.

Mr. Gaudio asked what the plans are with the parking, and the lot immediately to the rear, which apparently is a parking facility for this lot. Mr. Sampson replied that both lots are owned by the same person; they have been together in the package deal for quite a while. He continued that the owner realized the lot had to be tied to this one for parking purposes. In order to get approval from the Planning Board they have both lots shown in the same plan.

Mr. Gaudio asked if it would then be appropriate to have this be a condition, that the parking in the lot to the rear be approved by the Zoning Administrator. Mr. Sampson replied that however that comes to fruition it will need to be approved by the Planning Board anyhow. The Zoning Board can make it a condition but it is understood that being in the CBL District, parking needs to be provided. Chair Gorman stated that he thinks it may be a provision of the project, through the Community Development Department.

Ms. Taylor asked if Mr. Sampson knows if there is any particular reason the owner has not merged the two lots, since he owns both. She continued that that would save a lot on the regulatory side. Mr. Sampson replied that he does not have a reason from the owner. He continued that he assumes he is hesitant to combine the two properties until this is all said and done. He will want to see approval to his plans and then make a decision about whether to combine the lots.

Ms. Taylor asked if Mr. Pappas is still present with Mr. Sampson. Mr. Sampson replied yes. Ms. Taylor asked if he, as the manager of the LLC, can speak and address that point. Chair Gorman replied if Mr. Pappas wants to, he can.

Mike Pappas of 178 Prospect Street, Troy, NH, stated that these two lots have been separate forever, far before the zoning crept in around them. He continued that he wants to maybe have a lot line adjustment to these two parcels to keep them separate but to meet the requirements the Board is looking for. Maybe he would shrink the parking lot so it gives some parking to the 143 Main Street parcel and keeps them as two separate parcels.

Ms. Taylor stated that she appreciates him answering her question, because it gives the Board direction as to what kinds of conditions they need to address.

Ms. Zerba asked if based on the conditions proposed to exist, with two residential units and an office, how many parking spaces would be needed. Mr. Sampson replied four for the residential units (two per unit), and one per every 200 square feet for the office. He continued that it appears that there would be plenty of parking. That would be addressed through the permitting process to make sure they are providing parking requirements via Section 102-978 and/or with a lot line adjustment or a merge of the two properties. Any of those three options would meet the requirement.

Chair Gorman stated that it sounds like the applicant has some options here, and it is up to him for how to pursue them, as long as he satisfies the requirements of the Community Development Department. He asked staff if that is correct. Mr. Rogers replied yes.

Mr. Gaudio asked if it is correct that no one else has parking rights in this area and the parking is only available to this building. Mr. Sampson replied that that is correct. He continued that the

proposed office space would be about 800 square feet, so they would need less than five parking spots. The nine they have proposed in the drawing would be sufficient.

Chair Gorman stated that 4.5 parking spots would be needed for an office with 900 square feet. He asked how many parking spots are needed per residential unit. Mr. Sampson replied two. Chair Gorman asked if they would then need eight or nine parking spaces total. Mr. Sampson replied yes.

Ms. Zerba asked, regarding the Resource Ranking that currently exists, did Mr. Sampson say they had originally met with the HDC and they approved everything he is proposing. Mr. Sampson replied that his understanding is that the HDC does not have purview for the interior of the building. He continued that a while back they proposed tearing down the barn structure in the back because it was evaluated by a structural engineer to be very structurally unsound, but the owner did not want to do that and is rebuilding. They also received approval to replace all the windows, trim work, handrails, and balusters on the existing porch and alley, and to repaint the building and reroute portions of it. The intent, as approved back then, was to take slates off of the barn structure and use them on the main structure out front. They are keeping in line with all of that. He does not know if they showed the HDC the interior plan layout. Ms. Zerba replied that it is primarily the exterior that she is interested in.

Chair Gorman asked for public comment and again stated the phone number to call. Mr. Rogers stated that he and Ms. Marcou do not have any phone calls from the public. Chair Gorman closed the public hearing. He stated that the Board will discuss the petition, and if needed, he will reopen the public hearing to ask any technical or procedural questions of staff, the petitioner, or the public.

Chair Gorman stated that the Board will review the two criteria for A Change of Nonconforming Use, starting with number two:

- 2) *The changed use will not be injurious, obnoxious, or offensive to the neighborhood.*

Mr. Welsh stated that the applicant made a good case that surrounding uses will not be offended or find this change in use obnoxious. He continued that in fact it will be consistent with the kinds of uses the surrounding buildings have. Chair Gorman agreed.

Mr. Gaudio stated that he agrees that it would not be injurious, obnoxious, or offensive. He continued that it should be conditioned in some fashion about guarantee of the proper parking. Chair Gorman replied that they can probably put a condition in, if the Board wants, if they get toward the motion for approval.

Chair Gorman asked if there were other thoughts on the second criterion. Hearing none, he moved on to the first criterion.

1) The changed use will be more in the spirit and intent of the Zoning Ordinance.

Ms. Taylor stated that this is where she brings up her objection. She continued that as she brought up earlier, she is convinced that this is not the correct type of application. For a change of use, you want something that is, if not in conformity, then more in conformity. And this district specifically says, regardless of allowing mixed use, that if you have a multi-family dwelling it needs to be a minimum of four units. She does not object to what is being proposed; what she objects to is the form of the application.

Chair Gorman stated that perhaps he needs to reopen the public hearing because he wants to involve Mr. Rogers in the conversation. He continued that his understanding is that the decision is administrative, as to what use existed and what use is being asked for. With the Board's permission, he requested to reopen the public hearing.

Ms. Taylor stated that she objects. She continued that it is inappropriate to reopen the public hearing when they are in the middle of deliberations. Chair Gorman stated that he disagrees, and he does not know how they can continue this conversation if Ms. Taylor thinks it is the wrong hearing. He continued that he just read a statement saying he would reopen the public hearing at any time for questions for staff, and he has done that in the past.

Mr. Welsh stated that if it settles the question he is in favor of reopening the public hearing to hear from staff. Mr. Gaudio and Ms. Zerba agreed. Chair Gorman asked Ms. Taylor what she thought. Ms. Taylor replied that she is not in favor, but she is one person and there are other votes. Chair Gorman asked Ms. Taylor if she had any other solution. Ms. Taylor replied that with all due respect to Mr. Rogers, even if he restates his position, she can disagree with him and believes it is a reasonable disagreement.

Chair Gorman stated that his understanding is that Ms. Taylor is concerned with the abandonment of use. He asked if that is correct. Ms. Taylor replied no, her concern is that the Ordinance clearly states that a multi-family dwelling must have a minimum of four units. This petition is requesting two. Her concern is that she does not agree that requesting two units is appropriate for a Change of Nonconforming Use. Her personal view is that it is more appropriate as an application for a Variance. She is willing to be voted down but that is how she feels.

Mr. Welsh stated that it is an interesting point. He continued that they are looking at a change in nonconforming use, not a change from nonconforming to conforming, which is what it would be if they went to a four-unit dwelling plus the office. If they are looking at two non-conformances, what he always looks for when they are doing this is whether the trajectory between the two non-conformances is more toward the direction of conformity. And this is that. It is going from a single-family use, which is not permitted at all, to a multi-family use, even if it is not the right number, and an office. He is satisfied that they are heading in the right direction with the modification of the nonconformity the property is subject to.

Chair Gorman asked to hear from every Board member on this. He continued that he will first discuss his stance and then move on and then let Ms. Taylor weigh in again. His understanding is that the existing use of single-family is a nonconforming use, which has been grandfathered, and he suspects it has been that way long before the zoning. That might have been its original use upon construction. The property has an existing nonconforming use and the Board has a petition asking for a different nonconforming use. Thus, he thinks it is appropriate to have a hearing based on Change of a Nonconforming Use. He agrees with Mr. Welsh that it appears that this is headed toward more conformity if multi families are encouraged and mixed use is encouraged. They now have a single-family home and the applicant is proposing two dwelling units and an office. The owner is thereby accomplishing a mixed use, which is encouraged and inching closer to what the City considers a multi-family use of four units.

Mr. Gaudio stated that he agrees. He continued that this is a Change of Non-Conforming Use; it is not a change from nonconforming to conforming. It is a change from one nonconforming use to another nonconforming use, so he agrees that this is the right format and procedure.

Ms. Zerba stated that she agrees with Mr. Gaudio and Chair Gorman. She continued that the Board is being asked for a change from one nonconforming use to another so she supports what they are doing.

When Chair Gorman asked to hear from Ms. Taylor again, she stated that she does not need to repeat what she said earlier.

Chair Gorman stated that he does not see much benefit in reopening the public hearing now. Everyone has said their piece. He continued that he would welcome a motion.

Mr. Welsh made a motion to approve ZBA 20-07, a Change of Nonconforming Use for 143 Main Street, to permit multi-family dwelling with office space.

He asked if anyone had language to add regarding the parking. Chair Gorman suggested: "The parking requirements set forth in the Central Business District are satisfied through the procedures of the Community Development and Planning Department."

Mr. Welsh agreed. Ms. Taylor suggested they cite Section 102-978. Mr. Welsh agreed.

Mr. Welsh made the following updated motion, which was seconded by Mr. Gaudio.

Move to approve ZBA 20-07, a Change of Nonconforming Use for 143 Main Street, to permit multi-family dwelling with office space, with the parking requirements set forth in the Central Business District to be satisfied through the procedures of the Community Development and Planning Department and Section 102-978 of the Zoning Code.

The Board voted on the two criteria.

1) *The changed use will be more in the spirit and intent of the Zoning Ordinance.*

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

2) *The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.*

Passed with a vote of 5-0.

With a vote of 4-1, the motion to approve ZBA 20-07 passed. Ms. Taylor was opposed.

3) **New Business**

Mr. Rogers stated that there is no new business. He continued that he thanks everyone for their patience with this online meeting process. Chair Gorman thanked Mr. Rogers and Ms. Marcou for their hard work in facilitating this, and thanked the Board.

4) **Communications and Miscellaneous**

5) **Non Public Session (if required)**

6) **Adjournment**

There being no further business, Chair Gorman adjourned the meeting at 8:11 PM.

Respectfully submitted by,
Britta Reida, Minute Taker
April 11, 2020

Reviewed & edited by Corinne Marcou, Zoning Clerk
April 20, 2020