

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, October 5, 2020

6:30 PM

Remote Meeting via Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Michael Welsh
Jane Taylor
Joshua Greenwald
Arthur Gaudio, Alternate
Louise Zerba, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public body meetings) during the declared COVID-19 State of Emergency. He called the meeting to order at 6:34 PM.

I. Introduction of Board Members

Roll call was conducted.

II. Minutes of the Previous Meeting – September 15, 2020

Chair Gorman asked for comments on the minutes.

Ms. Taylor made a motion to postpone the minute's approval until the next meeting. She continued that the minutes are extensive. There are a few typos and other things and she would like to be able to alert staff to those and not take up meeting time with that right now. Chair Gorman seconded the motion.

Ms. Taylor stated that she would like to compliment the minute-taker and Ms. Marcou for getting the minutes out timely, especially when there were three separate meetings in a month. Chair Gorman stated that he would second that.

The motion passed by unanimous vote.

III. Unfinished Business

Mr. Rogers stated that Staff does not have any unfinished business to address.

IV. Hearings

a. **ZBA 20-17: Petitioner, Flyboy Realty, LLC of Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, of 185 Winchester St., Keene, requests a Variance for property located at 166 West Street, Tax Map #576-002-000; that is in the Central Business Limited District. The Petitioner requests a Variance for a new building on a lot that abuts Gilbo Avenue with a principal building façade which does not face Gilbo Avenue. Two principal building facades are proposed which will face the public parking areas on the east and north sides of the proposed new building per Section 102-1473.4 of the Zoning Ordinance where the principal building façade orients toward Gilbo Avenue.**

Chair Gorman opened ZBA 20-17 and asked Mr. Rogers to give comments.

Zoning Administrator Mr. Rogers stated that this property is located in Central Business Limited (CBL) District. He continued that the lot has frontage on West St. and Gilbo Ave. It previously was Friendly's Restaurant. The Applicant is proposing to renovate the building and construct a new building closer to the Gilbo Ave. frontage that will house apartments and business offices on the first floor, which are allowed uses in this district. This property is also within the Gilbo Ave. Overlay District, which does have more site-plan type criteria to address. Through the Purpose Statement of this overlay, the intent was to expand the "downtown feel" to this area. That is one of the reasons why the setbacks are much narrower in this area and they are looking to have buildings closer up to the streets and parking in the rear. The Applicant will speak to some of the issues by doing that in this situation both on this lot and in this location, since the City infrastructure has not been extended out to this area yet.

Mr. Hoppock asked Mr. Rogers to speak to the purpose of Section 102-1473.4. Mr. Rogers stated that these are the general regulations that have been put into place with this Overlay District, which states "*Lots with property boundaries that abut Gilbo Ave. shall orient new buildings such that the principal façades are oriented toward Gilbo Ave.*" He continued that the purpose of the Overlay District has a lot to do with pedestrians. The purpose of having the façade facing the street and the building being so close to the street is for pedestrians to be able to walk right into the building. Mr. Rogers will let the Applicant speak to why there is a hardship and to the details of the general regulations.

Mr. Welsh stated that Mr. Rogers discussed the fact that there was more infrastructure to the east of this block on Gilbo Ave, specifically sidewalks. He asked if there are any plans for expanding

that infrastructure to this location. Mr. Rogers replied that he would need to confirm this with the Public Works Director, though he guesses that it would not be anytime soon. He knows there is construction in the Gilbo Ave. area closer to Main St. but he does not know if there is anything in the Capital Improvement Projects closer to this area.

Ms. Taylor asked Mr. Rogers if it is allowable to have more than one primary building on a parcel in this zone, either the underlying or the overlay. Mr. Rogers replied yes, it is acceptable to have mixed-use and a couple buildings on the same lot. There are other buildings in this area similar to this. Ms. Taylor replied that she does not know if the other parcels are preexisting to the current zoning. She continued that “mixed use” can mean having mixed uses in the same building. She could not find anything in the Ordinance that permitted two primary uses on one parcel. Mr. Rogers replied that the mixed uses could be in the same building or on the same lot. He continued that this is seen quite often in the Commerce District. Ms. Taylor replied that this is CBL. Mr. Rogers stated that a previous Zoning Administrator made the determination that mixed use was allowed in this district, whether in the same building or the same lot, as long as they are permitted uses within that district. Ms. Taylor stated that she has a real concern about that because with Keene’s Zoning, if something is not expressly permitted, it is not permitted. Mr. Rogers replied that he agrees but in this situation, if they are meeting all the other setbacks, and are meeting the lot coverage, and between having multiple buildings on the same lot, then the Building Code comes into play which then there needs to be certain separations met and the such. Ms. Taylor replied that perhaps the Applicant can explain it, but she does not find anything that allows two primary buildings on one parcel in this zone, although she could have missed something. Mr. Rogers replied that he does not think she will find anywhere that states that about any zone, but in the Commerce District where there are multiple primary use buildings on one lot, and he doesn’t believe this is specifically called out either. But if they are meeting all the other Zoning requirements for setbacks and coverage, it would be allowed.

Ms. Taylor stated that in Section 102-1473 there are 15 requirements that need to be met. She asked if all the other requirements appear to be met. She continued that she assumes there is a parallel site plan application that needs to be applied to the Planning Board. She would like to know if criteria #4 is the only criteria with an issue for the project, because she would hate to need the Applicant back a second time. Mr. Rogers replied that she is correct; they do have an application submitted to the Planning Board. He continued that a lot of the 15 requirements in Section 102-1473 would not apply to this lot at all because some of them are also associated to the West St. frontage where the building already exists, and will only see interior renovations not structural changes. Yes, the Applicant does have a plan which will have to meet the rest of the requirements that do apply in this situation.

Ms. Taylor asked if Staff has determined if there is adequate parking once the project is complete. Mr. Rogers replied yes; Staff spoke with Mr. Phippard, and the owners were going to make adjustments to meet the correct requirements.

Ms. Zerba stated that her question relates to Mr. Welsh's, regarding the Arts Corridor and if there is a design that would include a sidewalk along Gilbo Ave. Mr. Rogers replied that he does not think the Arts Corridor was planned to come down to this property.

Chair Gorman asked if Board members had more questions. Hearing none, he opened the public hearing and explained how the public could participate. He asked James Phippard of Brickstone Land Use Consultants to speak, representing Flyboy Realty, LLC.

Mr. Phippard stated that Flyboy Realty purchased this property which is the former Friendly's Restaurant at 166 West St. The property is 1.03 acres in size. Describing from a displayed aerial photo, he explained this property is the CBL District with Historic and the Gilbo Avenue Design Overlay Districts. There are several conflicts that are created between the Zoning, Historic District, and Overlay requirements. They have sorted through most of these with some waivers still needed from the Historic District Commission for parking, which they only allow in the rear, and also a waiver for some of the building materials they are proposing. Regarding the Gilbo Ave. frontage, there is TD Bank to the left, and another bank, then an Armed Services recruitment center next door, also owned by the same owner of Flyboy Realty listed under a different name. There is no public sidewalk on either side of Gilbo Ave., and no public parking spaces on either side. The property line falls within three feet of the curb on the north side of Gilbo Ave. The Overlay District requires that they have a building with a front on Gilbo Ave. within five feet of the property line. Five feet is the maximum setback, not the minimum. They can comply with that but they feel that it creates an unsafe situation if they make that the main entrance into the building, since there is traffic and no public sidewalks. That is why they are applying for this Variance.

Mr. Phippard went through the five criteria.

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

Mr. Phippard stated that the Friendly's Restaurant has been closed for several months and then the property was sold where it still is sits vacant. He continued that a vacant building is not a positive influence on anything in the downtown area. To reutilize this property is definitely in the public interest. It is also in the public interest to make sure that ingress and egress can be done safely. If the building is located five feet from the property line, it is eight feet from the curb line, with no public sidewalk and people can walk out of the building and directly into the street, into traffic. That is an unacceptable, unsafe situation. He has been doing site plans in Keene for a very long time. Mr. Phippard stated that when he looked at this provision, it was difficult to construct this building safely. They would have to propose narrowing Gilbo Ave. in order to create room since the three-foot strip that the City owns is not enough room for a sidewalk. To fully comply with this Overlay, this project could not be done appropriately on this property and allow a reasonable use of the site. It is in the best public interest to not have the principal façade/main entry in and out directly on the street. Mr. Phippard stated they would relocate the façade on the north or east side of the property where it faces the public parking

areas on the property. That is in the best public interest, rather than following the criteria under 102-1473.4.

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

Mr. Phippard stated that the spirit of all Zoning Ordinances is to provide for the public health, safety, and welfare. He continued that creating a situation by a Zoning requirement that they feel is an unsafe situation is not meeting the Spirit of Ordinances in general. The Overlay District was adopted in 2011 with Keene's first real attempt at form-based zoning. The City wanted to dictate to a large degree how a building would look and be oriented on a property. In this particular case, because of the situation on Gilbo Ave., it did not work and it resulted in an unsafe situation. The rest of the general regulations under that Overlay District are ones the owner feels they do comply with and they do meet the intent of the Ordinance, especially under the "purpose" discussion under Section 102-1471. They are restoring the red brick on the former Friendly's building, which was painted white when the restaurant opened in the 1970s. Red brick is much more in keeping with the historic appearance of buildings in the downtown area. The architectural features of the building, like the pitched roof and the windows, create a pedestrian scale that is appropriate and with the red brick it will fit much better. The new building they are proposing will also use red brick on the first floor. The ground floor will be a single office user with the building design is just over 6,000 square feet. The second floor will be eight one-bedroom apartments, and that is where the mixed uses comes in.

Mr. Phippard continued that the former Friendly's building will also be office space for a single user. Offices and residential uses in the downtown area are completely in keeping with the uses in the Zoning in this area which the Applicant believes it fits very well. As the site gets developed they will be maintaining pedestrian access from West St. They are extending the existing sidewalk that crossed in front of the former restaurant building into the site to provide safe pedestrian access into the property and to both buildings. They will be changing the lighting to be more consistent with the current standards, full cut-off LED fixtures, very energy efficient lighting with low glare/light pollution. They will be adding landscaping, both internally in the parking lot, along the perimeters and adjacent to the new building. They think they do meet the spirit and intent of the Ordinance in this case.

3. Granting the Variance would do substantial justice because:

Mr. Phippard stated that they feel strongly that this project will do substantial justice because the owner can redevelop the property and utilize the vacant building to a productive office use. The owner is investing over \$3 million into this property so it will greatly improve the value the property. It will enhance the appearance of the property and that will help preserve the value of adjacent properties. There is no public benefit in denying this Variance, because this Variance would allow them to alleviate what would be a dangerous situation for the occupants and visitors.

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

Mr. Phippard stated that they are restoring the brick veneer on the former restaurant building, and it will be more compatible with the other buildings in downtown Keene. He continued that the investment of over \$3 million will add tremendously to this value and help enhance the value of adjacent properties. They think the mixed use of offices and apartments is compatible with other uses in the immediate vicinity and in the downtown area. Creating residences along with the offices brings more people to downtown, which will help continue to support the downtown economy.

5. *Unnecessary Hardship*

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

Mr. Phippard stated that the hardship was created inadvertently when the City adopted the Gilbo Avenue Overlay District. He continued that he participated in several meetings during the time when the City was proposing this overlay, and he thinks they were looking at extending the downtown theme along Gilbo Ave., with the wide sidewalks so people could stroll along looking at storefronts and visiting businesses up and down the street, with public parking on the street for the convenience of visiting those businesses. He thinks they (and he) did not anticipate the impact of the overlay to a property like 166 West St. and the situation that would result creates a legitimate safety issue which was not the intent of this Overlay. He could not come up with a way to meet that design intent and still fully utilize the property. They provide 60 parking spaces on the property, and that is what exists today. They had to reconfigure slightly to maintain that number, but they do meet the Zoning requirements for both the residential units and the office spaces, as they are proposing. Gilbo Ave. is a pretty wide street. There is a turning lane adjacent to the bank and this property, which is why the street is so wide here. It does not leave any right-of-way to add parking or add a sidewalk. This has created this unique situation in this portion of Gilbo Ave. that justifies the grounds as a hardship to justify the Variance they are proposing.

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

Mr. Phippard stated that they think this use is a reasonable one as it is a use permitted in the CBL Zone. It is a use of office spaces and apartments, which exist throughout the downtown area. They are providing adequate onsite parking and using City services. This is safe and reasonable for both pedestrians and vehicles.

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

Mr. Phippard stated that it is unreasonable to require this configuration as described under Section 102-1473, paragraph 4, that the primary facade be on Gilbo Ave frontage, because of the width of the right-of-way and the inability to provide a sidewalk and no buffer to prevent pedestrians and visitors to the building to walk out onto the street.

Mr. Phippard showed a slide of proposed elevations. He stated that the east elevation would be facing People's Bank. The main entry would be in the middle into the single office use on the entire ground floor. The two smaller depictions are the north and south elevations. The south elevation would face Gilbo Ave. which will have windows, a doorway, and a covered entry element; serving as an egress door, not a main entry into the apartments or the office. They did not want to encourage this in that location as it is too close to the street with no protection for pedestrians and occupants. The north elevation is the main entrance to an elevator lobby to the second floor and a stairwell to gain access to the eight apartments on the second floor. It is the rear of the building if you are looking at it from Gilbo Ave. The west elevation faces TD Bank. There are no doors, but there are several windows that reinforce that pedestrian scale. The larger windows on the second floor provide natural light to the apartments.

Mr. Phippard stated that the final slide is the proposed site plan. The building shaded in grey is on the Gilbo Ave. frontage. The building to the left is the former Friendly's. West St. is on the left and Gilbo Ave. is on the right. They oriented the building to be no more than five feet from the right-of-way, eight feet from the curb which does not leave enough space for a safe access on that side of the building. This site plan also depicts the parking area they are maintaining with a few more spaces added to get remain at 60 spaces. Landscaping will be added to the interior areas to provide shade and plantings adjacent to the buildings with the large trees along the property lines being preserved though two trees, planted in 1975, would be removed where the new building would be constructed. They are replacing those with four trees, two interior to the parking lot, one on the island by the curb cut at West St., and one on the island by the curb cut at Gilbo Ave.

Mr. Welsh asked Mr. Phippard to explain the difference between principal façade and another kind of façade. Mr. Phippard replied that a principal façade is the main entrance to a business or for a multi-unit residential property, the main entrance leading to a central corridor, as in this case, an elevator lobby. They are proposing two principal facades: the entrance to the office space on the ground floor, and the main entry to the apartments, on the left side of the building facing the former Friendly's which will be a handicapped accessible entry to an elevator lobby and a stairwell leading to the second floor. The façade facing Gilbo Ave. is a secondary façade; it does provide egress that is required from the office space and the residential units. It is not

intended to be a primary entry. He supposes someone could let a person in that way, but in general, that door would be locked from the outside, opened from the inside, and would not be intended to be a public entry.

Mr. Welsh asked if the Gilbo Ave. side were to be reconfigured with the sidewalk and other amenities that were imagined in the Overlay District, would it then be possible to revert that secondary nature of the façade on Gilbo Ave. into a principal façade? Mr. Phippard replied yes, and this was discussed the architect, Dan Bartlett. Their decision is this can then be identified as an entry to the apartments to the second floor, and it could also provide an entry to the offices on the ground floor. Mr. Welsh replied that externally, both sides look very similar to him. Mr. Phippard replied that is intentional. He continued that they are matching the architectural treatment for the entries in all three locations, even though this one is an egress, to allow for the conversion when it happens in the future.

Chair Gorman stated that Mr. Phippard said “when” it happens. He asked if Mr. Phippard knows something the Board does not, or if he is just speculating. Mr. Phippard replied that he is just speculating. He continued that the Public Works Department did not have a definitive answer for why there is no sidewalk in this area. He is speculating that it has to do with the width of the roadway, and that because of the turn lanes that were added, there was not enough space remaining of the right-of-way. The Center of Keene used to have a railroad track there and the railroad corridor occupied a lot of that area. The right-of-way to the north is not wide enough with only left three feet after they built the road. The Arts Corridor was intended to stop at School St. Other than that, Public Works did not have a plan (or at least, not a public plan) to extend the sidewalk. There is no sidewalk essentially from School St. all the way to West St. Everyone walks on the Center of Keene property to get through that area, then cross through the parking lots of the former Colony Mill Marketplace.

Chair Gorman stated that Mr. Phippard mentioned safety when talking about the first criterion, regarding the egress for exit/emergencies only. He asked if that exit will be labeled “Emergency Use Only” to prevent the very circumstance he described, of someone lunging out into traffic. Mr. Phippard replied that if you look at the southern building elevation you can see a guardrail across between the brick columns that prevents people from walking straight out. He continued that they purposefully did that and put the stairs to the right, which lead to a walkway back to the parking area on site. It will lead back to the sidewalk to the main entrance to the building.

Ms. Taylor thanked Chair Gorman for asking this as it answered a question she had and the concern of residents of the building to walk down stairs and directly into traffic. She continued that when she looked at the information in the agenda packet, she thought that the entrance on the long side that looks to be opposite handicapped spaces was the primary entrance. Her question is about the parking and accessibility. Mr. Phippard replied that the entry on the north is handicapped accessible, and right opposite those two handicapped spaces. The entry on the west, facing the former Friendly’s, has a ramp providing handicapped access to the elevator.

Those are the two primary entry points. They are allowed multiple primary facades in the Overlay District.

Ms. Taylor stated that Mr. Phippard referenced in his presentation that they were adding sidewalks internally to the parcel and maybe there is a subsequent plan that shows them. She asked if he can explain the location of where these would be. Mr. Phippard replied that there is a sidewalk proposed along the north side of the new building that extends from Gilbo Ave., going left, across the front of the building, wrapping around the end of the building, internal to the parking lot. There is a proposed sidewalk in front of the former Friendly's from West St. all the way to the main parking area, which is also a handicapped accessible area opposite those handicapped spaces.

Ms. Taylor stated that he mentioned that the basic pedestrian access would be from West St. She asked if people would then have to walk without any designated pedestrian area between the buildings through the parking lot. Mr. Phippard replied yes. He continued that West St. is where the only public sidewalk exists, so they wanted to maintain that length to get people safely into the site. He continued that they also realized that because the Center of Keene is directly across the street, occupants in these two buildings would most likely walk across Gilbo Ave. to get to the Center of Keene and their multiple and inviting uses. Mr. Phippard stated they felt the need to connect that sidewalk at the new building at least to Gilbo Ave. to lead people to a point where they can cross the street. Ms. Taylor stated her concerned about the safety for pedestrians, internally on the parcel. Mr. Phippard replied that they are maintaining the two speedbumps that exist in the parking lot currently since it is a straight drive from West St. to Gilbo Ave.; it is used as a cut-through by drivers trying to avoid the traffic light on School St. They are maintaining the speedbumps to help slow people down. They have also narrowed the width of the curb cut at West St. so people have to drive in much slower than they do currently. Also, the curb cut at Gilbo Ave. is being narrowed slightly with the hope this improves parking lot safety as well.

Ms. Taylor asked Mr. Phippard to elaborate on the question posed earlier to Mr. Rogers pertaining to the reference in the Ordinance which states there can be two primary buildings on the same parcel. She continued that she is not talking about pre-existing sites. Mr. Phippard replied that he does not think it is specifically listed in the Ordinance. He continued that there are a lot of similar issues throughout the City's Ordinances and it is probably one of the reasons why Staff is proposing the major re-draft of the regulations, to make things clearer and more consistent. In the past, Mr. Rogers is correct, the previous Zoning Administrators have all made this interpretation that where mixed uses are allowed; there is no restrictions to a single building on the property. With a proposed multi-use building, zoning criteria still have to comply such as all of the dimensional requirements, lot coverage, number of parking spaces, green space, and so on and so forth. Mr. Phippard stated this has been a consistent interpretation for as long as he can remember.

Ms. Zerba asked about the south-facing building, which looks like it is almost on the end of the property, specifically, she asked what are the setbacks. Mr. Phippard replied that the maximum

setback that the Overlay District allows is five feet. He continued that the entry element on that south façade is part of the structure, and it is five feet from the property line, eight feet from the curb line. Ms. Zerba asked if they proposed moving the building a bit to the north, so the cars on Gilbo Ave. would have a more visually appealing green space.

Mr. Phippard replied that a lot of options were proposed, including moving the building to the north and moving the curb cut on Gilbo Ave. to the south to create the zigzag pattern through the property, thinking that could help slow people down, but too many parking spaces would be lost. Since the plan proposed to the Board meets the parking requirements, and not wanting to apply for a second Variance, this idea was discarded. Another option was moving the building back from Gilbo Ave., to leave enough room to create a principal entry there, even though there was no parking nearby to support it as a principal entry, with the thought of add in a sidewalk. He continued that this is another conflict within the Overlay District, because paragraph five of Section 102-1474 states creating a sidewalk that *“shall be no less than 10 feet and no greater than 20 feet, depending on the highest volume of usage.”* In one instance it needs to be within five feet of the right-of-way and then if a sidewalk is put in, they cannot have the building within five feet because they have to have a ten-foot sidewalk. With this conflict, and that of the proposed plan they are discussing, Mr. Phippard chose to request a Variance with the proposed plan as he feels this would be best for the site. He continued that not many people are familiar with this Overlay District and to his knowledge, it has never been used. When he pointed it out to Staff they told him no one has ever used it. They told him they would have to look at it and call him back, before they could even talk with him about it. In the draft regulations that are coming, this Overlay District is being eliminated. So the inconsistencies that exist are being eliminated, and the provisions he now looks at as form-based zoning will appear in the new zone, Downtown Growth. He did look at many different configurations to try and comply as best as possible to meet the intent of the Ordinance. He thinks what the Board is looking at does the best job.

Mr. Gaudio asked what the existing building will be used for after the renovation. Mr. Phippard replied a single office user. Mr. Gaudio asked for clarification that the use would be retail. Mr. Phippard replied no.

Chair Gorman asked if Board members had more questions. Hearing none, he asked if there were questions from members of the public. He gave the information for how to participate via Zoom or phone. He asked if there was anyone calling in. Ms. Marcou replied no. Hearing no public input, Chair Gorman closed the public hearing. He stated that he will reopen the public hearing if needed to ask procedural or technical questions. The Board will now deliberate.

Mr. Greenwald made a motion to approve ZBA 20-17. Mr. Hoppock seconded.

The Board reviewed the five criteria.

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

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

Mr. Hoppock stated that the requirement that the Variance not be contrary to the public interest is related to the requirement that it be consistent with the Spirit of the Ordinance, so he will address criteria 1 and 2 together. He continued that regarding the Spirit of the Ordinance you have to see if the proposed Variance alters the essential character of the neighborhood. He finds that it does not. It is consistent with the uses around it to the south on Gilbo Ave. and to the north on West St. and on both sides. They also have to ask if the proposed Variance threatens public health, safety, and welfare, and he thinks it enhances public health, safety, and welfare, by virtue of what Mr. Phippard presented. A zoning requirement creates an unsafe situation due to the lack of sidewalks and parking on Gilbo Ave. He thinks Mr. Phippard is exactly right that people pulling out of the south side of the building, seven feet away from that relatively busy strip, is a safety hazard and this situation does create a situation that alleviates that safety hazard. He is in favor of the first two criteria.

Chair Gorman stated that he agrees. He continued that the stringency placed on this property are sort of collateral damage in terms of the intent of the Arts District and the walkability and the wish to expand the downtown feel. He does not think that applies very well to this property. Mr. Phippard articulated very well that it would actually create a dangerous situation.

Ms. Taylor stated that her concern is primarily a safety issue. She continued that it is a concern related to the internal flow of pedestrian traffic in the parcel in relationship to the buildings. She agrees that this Variance helps resolve one of the issues caused by the Overlay District, but she has safety concerns.

Mr. Welsh stated that he thinks about the public interest of Zoning, and the overarching phrase they keep in mind is “public health and safety,” and when various features of the Zoning Ordinances are contrary to that, they weigh which one is preeminent, and he says public health and safety in this instance is. He is comfortable in this case with the Variance for that measure, for the first criterion. He also thinks that Mr. Hoppock has eloquently made clear that the Spirit of the Ordinance, helping them place buildings that are consistent with the downtown character, is preserved.

3. Granting the Variance would do substantial justice.

Mr. Hoppock stated that he thinks the gain to the public is enhanced safety when this building is repurposed to its new use. He continued that it will be used for something, and whoever is using this building, entering from Gilbo Ave., will be deterred under this design from doing so, and the people who are living or working there will presumably be used to the idea at some point and not be crossing Gilbo Ave. on a regular basis. Thus, he thinks for reasons noted in regards to criteria 1 and 2, the gain to the public is increased safety. And there is no loss to the owner for doing it this way, so he think substantial justice is done.

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

Mr. Welsh stated that much as he might miss the Friendly's Restaurant, the site has become less and less nice to look at and walk across since its closing. This redevelopment will improve the property while adding value to the surrounding properties. He thinks it is fairly clear that this is a plus.

Mr. Greenwald stated that he welcomes any development of Gilbo Ave. and it will improve the value of the entire area. Chair Gorman stated that he agrees.

5. *Unnecessary Hardship*

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

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

and

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

- 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. Hoppock stated that he finds in this situation the general purpose of Section 102-1473.4 is to protect the safety of pedestrian traffic along Gilbo Ave. and as such, has no substantial or direct relationship to the application of this Ordinance to this specific site. He does think the special conditions of the property, namely the lack of sidewalk or parking on Gilbo Ave. and the remarks Mr. Phippard made about the southern piece of the building being eight feet from the curb line and four or five feet from the property line, create a special condition that allows for the Board to analyze the connection of the relationship between general purpose and specific application, and that increases the likelihood that this is an unnecessary hardship. He would favor criterion five.

Ms. Taylor stated that she agrees. She continued that it is very strange to find that the Zoning Ordinance itself really creates the hardship, not just with this property, but all the properties along that stretch of Gilbo Ave. The special condition is simply that the Zoning Ordinance does not really allow the property to be used. She agrees that there is not any fair and substantial relationship between the public purpose of the Ordinance and this particular application.

Chair Gorman stated that he agrees; perhaps there is unintended consequence there.

Chair Gorman asked if anyone had anything more to add. Hearing none, he called for a vote.

1. *Granting the Variance would not be contrary to the public interest.* Granted 5-0.
2. *If the Variance were granted, the spirit of the Ordinance would be observed.* Granted 5-0.
3. *Granting the Variance would do substantial justice.* Granted 5-0.
4. *If the Variance were granted, the values of the surrounding properties would not be diminished.* Granted 5-0.
5. *Unnecessary Hardship*
 - A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because*
 - i. *No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property because:*

and
 - ii. *The proposed use is a reasonable one.* Granted 5-0.

By a vote of 5-0, the Zoning Board of Adjustment approved ZBA 20-17.

- b. **ZBA 20-18: Petitioner, Ryan Gagne of 119 Clear Creek Way, Manchester, NH requests a Special Exception for property located at 15 Kit Street, Tax Map #110-017-000; that is in the Industrial District. The Petitioner requests a Special Exception per Section 102-632 to allow Office for professional purposes.**

Chair Gorman opened ZBA 20-18. He asked for Mr. Rogers's comments.

Mr. Rogers stated that this property is in the Industrial Zone, at the end of Kit St., behind the Best Western Hotel. He continued that permitted uses in the Industrial Zone, under Section 102-632, include office uses, by right, if it is part of a home office for insurance or publishing companies, or manufacturing firms. He continued that these offices were originally developed as part of what was once Concord Laboratories. Filtrine now owns and operates out of that building. C&S Wholesalers had been using the office space that is now currently vacant. The Applicant is proposing to occupy the first floor of this section, which would be allowed with a Special Exception under Section 102-632, which states "*offices for corporate, business, or professional purposes, provided that the office building occupied by a single office entity must be a minimum of 10,000 square feet; or a building that includes one or more occupants which is primarily office in nature must be a minimum of 20,000 square feet in size, and each other occupant must be a minimum of 5,000 square feet in size.*" He continued that his understanding is that they are going to be occupying the first floor, which has close to 8,000 square feet,

meeting that criteria though it does require a Special Exception. Mr. Rogers stated that since the previous use was a corporate-type office and the proposed new use will be a professional-type use, Staff felt that the Applicant needed to obtain a Special Exception. He continued that other criteria that needs to be met is that the proposed office use is non-retail and will not have customers or clients entering or leaving in large numbers during business hours. The Applicant will need to provide documentation to this criteria.

Chair Gorman thanked Mr. Rogers and asked if Board members had questions.

Ms. Taylor stated that she is confused by all the numbers in this section. She asked, how many square feet is the entire facility, and how many square feet is the proposed use. Mr. Rogers replied that he would have the applicant speak to the overall size of the building. He continued that his understanding is that they intend to occupy close to 8,000 square feet which still leaves a little over 5,000 square feet of existing office space in that building.

Ms. Taylor asked if the application is then for a Special Exception for a portion of the building, or for the entire building. She continued that she does not understand how you can have a Special Exception for just a portion of a building. Mr. Rogers replied that the Special Exception portion is really dealing with the traffic portion of the Ordinance. The Applicant will need to meet the requirement of not having a large volume of clients coming onto the site. If another tenant wanted to occupy the remaining 5,000 square feet of office space they could very well be required to come before the Board again for a Special Exception for that portion of the building. Ms. Taylor replied that now she is really confused and stated that maybe the Applicant can clarify. She stated her confusion to a Special Exception being granted for only a portion of a building. Meeting the criteria is a separate question. She further stated her confusion for the rest of the building and asked if in granting this petition, the rest of the building would revert to Industrial District uses. Mr. Rogers replied that he would say the remaining office space could revert back to the home office for the manufacturing company that is there, Filtrine, and/or if a different company that met the criteria allowed by right in that district, moved in, that would be allowed. He continued that if another company moved in that was corporate, business, or professional, they would be required to obtain a Special Exception. A lot of the criteria for a Special Exception lends itself to this additional requirement that the Applicant must submit the documentation regarding the number of pedestrian and vehicle trips as well make the Board aware that they are not a retail-type office that would have lots of customers entering and exiting. It would be based on the applicant looking to move into the vacant space for what the course of action would be for that portion of the building.

Ms. Taylor asked if what he is saying is that the building is partially occupied and this Special Exception request is for the unoccupied portion of the building. Mr. Rogers replied yes.

Mr. Gaudio stated that the materials say that the amount of vehicular traffic coming in was going to be substantially less than the former uses. He continued that now Mr. Rogers is pointing out that there are continuing uses. His question is whether “substantially less than” means less than

the 8,000 square feet usage or the entire building usage. If it is the latter, it would sort of be “piling on.” Mr. Rogers replied that that is a great question but it is one to ask the applicant and he suggested the Board to ask the Applicant for clarification on the traffic numbers they submitted. He continued that he thinks the Applicant used the Institute of Transportation and Engineers table, which provides the calculated trips for different types of uses in square footage. Mr. Rogers assumes they based that off of the proposed use but the applicant can speak to that.

Chair Gorman asked if Board members had more questions for Mr. Rogers. Hearing none, he opened the public hearing, and gave information about how members of the public could participate via Zoom or phone. He asked Ryan Gagne to speak.

Ryan Gagne, of 119 Clear Creek Way, Manchester, NH went through the five criteria.

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

Mr. Gagne stated that as a professional office use, this is similar to the authorized use of the home offices of insurance, publishing, and manufacturing companies. He continued that the location within the building has been used as office space by the owners and by tenants. They would use approximately 8,000 square feet on the first floor which is completely up fitted as office space with offices, a conference room, cubicles, and bathrooms.

- 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. Gagne stated that the space would continue to be used as an office. He continued that there are no developed abutting parcels in the Industrial District which would be impacted by the proposed use, so property values would not be impacted. The proposed use is similar to previous uses and is indoors so their use will not be injurious, obnoxious, or offensive to the neighborhood.

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

Mr. Gagne stated that they will have five to six employees which is considerably lower, to his knowledge, than the previous tenant which had more than 50. He continued that vehicle trips per day will be substantially lower than the previous tenant. As their use is less impactful than previous ones, there will be no nuisance or serious hazard to vehicles or pedestrians.

- 4. Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.*

Mr. Gagne stated that the site is serviced by public water and sewer. He continued that Kit St. is a City maintained road. There is ample parking on site to accommodate the use.

Chair Gorman asked if Mr. Gagne wanted him to read the traffic information into the record. Mr. Gagne replied that he defers to him. Chair Gorman read for the record:

“There will be five or six employees who will arrive for work in the morning and leave at the end of the day. Our employees do not leave the property as their work is contained within the office space. On occasion they may leave for lunch or to do an errand. Most employees have lunch in the work space as we will provide a complete break room for them. Clients will come to us via van and we anticipate one to two van trips in the morning and one to two van trips in the afternoon. Our trip generation will be five to six trips in the morning between 7:00 and 9:00 as employees arrive and then five to six exits at the end of the work day as employees exit. One to two van entrances and exits in the morning and one to two exits in the early afternoon and one to two exits at the end of the afternoon. As you can see from the provided data our use is not as varied as any of the supplied data sheets: General office building, small office building, or Medical/Dental Office Building. We do not have traffic coming and going consistently during the course of a 12 or 24 hour period. Our traffic is minimal and in tune with specific time periods.”

Chair Gorman asked if the Board had questions for Mr. Gagne. Mr. Hoppock asked what the scope of the business’s use is proposed to be and if it will encompass all of the first floor, and part of the second floor. Mr. Gagne replied that they are looking to occupy just the first floor of the current unoccupied space. Mr. Hoppock asked if it is all unused on the first floor. Mr. Gagne replied that the 8,000 square feet that is not being occupied by Filtrine is all unused. He continued that he does not know the exact square footage that Filtrine occupies. Mr. Hoppock asked what the prior use was. Mr. Gagne replied that he thinks it was a distribution and sales company. Mr. Hoppock asked if Mr. Gagne is comparing his use to insurance, manufacturing, and publishing use. Mr. Gagne replied yes, that was the closest comparison he could find. Mr. Hoppock stated that one allowable use in this district is research and development. He asked if Mr. Gagne imagines there would be offices associated with that, and if this would be similar to that as well. Mr. Gagne replied that he assumes there would be offices for a research and development use but he would not know specifically.

Ms. Taylor stated that it is hard to judge some of these criteria without knowing more about the proposed use. She asked if Mr. Gagne could explain it more. Mr. Gagne replied that the proposed use is to provide substance abuse counseling to outside residents of the community. Ms. Taylor asked if he means outpatient treatment not necessarily connected with a medical facility. Mr. Gagne replied that statement is correct. Ms. Taylor asked about the trip traffic as this is a busy road. Ms. Taylor stated that this data looks like generalized trip information by hour, out of a manual and asked Mr. Gagne for any specific trip information or impact information for this location in particular, the intersection of Kit St. and South Winchester St. Mr. Gagne replied no. Ms. Taylor asked if it is true then that this is general information out of a manual, not site-specific. Mr. Gagne replied that is correct.

Mr. Hoppock asked what kind of control Mr. Gagne has to make sure his clients come only by van. Mr. Gagne replied that his business provides transportation. Mr. Hoppock asked if he means no one will show up in a different car. Mr. Gagne replied that is correct.

Mr. Gaudio asked what Mr. Gagne means when he says there will be fewer vehicle trips per day than the previous tenant, does he mean compared to that 8,000 square feet, or the whole building. Mr. Gagne replied for the 8,000 square feet. The number he had been given was “about 40 to 50 trips” in and out when the previous tenant was there.

Chair Gorman asked if Board members had further questions. Hearing none, he thanked Mr. Gagne and asked if there were questions from members of the public. He again gave information about how members of the public could participate via phone or Zoom. Ms. Marcou stated that she does not see anyone trying to call in. Hearing no public comment, Chair Gorman closed the public hearing. He stated that if necessary he will reopen the public hearing to ask procedural or technical questions.

The Board deliberated on the criteria.

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

Mr. Hoppock stated that he thinks the proposed use is similar to one or more of the uses already authorized in the district and the applicant cites one, home offices of insurance, publishing, and manufacturing companies; and incidental warehouses and wholesale and retail offices. There was a prior use there involving C&S Wholesale Grocers, so that is consistent with history. He does not think it is a stretch to say that office use associated with research and development, which is a permitted use, would fit the category as well. A research and development use would probably have an office to go with it. He thinks the first criterion is met.

Ms. Taylor stated that she agrees with Mr. Hoppock. She continued that for the time she has lived in Keene, there has been always been office use in this building, sometimes as part of the primary function, sometimes with the immediately preceding use, separate from the primary function. She thinks it may not be exactly authorized but it very similar to both the historic use of this portion of the building as well as very similar to the authorized office-related uses.

Chair Gorman stated that he agrees.

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

Ms. Taylor stated that certainly she does not think this petition would reduce any property values. She continued that it is her understanding there will not be external changes to the

building, and it is similar to the prior use for that portion of the building. The value is always increased when a building is occupied instead of vacant.

Mr. Hoppock stated that he does not see information, nor does common sense dictate otherwise, that it would reduce the value of any property within the district and the proposed use is not injurious, obnoxious, or offensive to anyone or the neighborhood. He thinks this criterion is met.

Chair Gorman stated that he agrees. He continued that he is fairly certain surrounding properties might not even know the difference.

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

Mr. Hoppock stated that his only concern is if the applicant loses control over access to the building by his clients. He continued that he does not have any reason to doubt that the clients will come to them by van, as Mr. Gagne states. One thought he had, which may make him feel better but may be unnecessary, is to condition the approval on that promise, that the clients only access the facility via vans provided by the Applicant. He does not want to see the place inundated. There could be a use that overwhelms what the prior use was, in terms of volume. That is his only reservation but other than that he thinks that this meets the third criteria.

Chair Gorman stated that he agrees and has a similar concern, about people attending this treatment by foot or by car. He does not think they know about the Applicant's business model to know if that is something well within their control. It sounds like they want it to be in their control, though, so maybe a condition would assist them. Mr. Hoppock stated that he agrees.

Ms. Taylor stated that her primary concern is traffic-related; however, she does not think she would support such a condition. She continued that she thinks there are too many uncertainties and it is way too restrictive on the applicant to require that the clients only come by van. She has a serious issue with that.

Chair Gorman replied that his opinion is that it may not be restrictive; in fact, it is probably very difficult for the City to even police such a condition, however, it would give the Applicant means to control clients arriving at the site themselves if need be. He continued that he could look at it either way and sees Ms. Taylor's perspective as well.

Ms. Taylor stated that she could support some form of condition that required that there be supervision. She questioned the wording of the condition if a different vehicle is used than a van, as well as how it is workable to have that kind of condition.

Chair Gorman stated that he does not think they could condition that it must be a van, because they could transport people in a pick-up truck if they wanted to. The condition would be more relative to transportation being provided by the service, not by the clients. Wanting to provide more time to think about a condition, the Board continued.

4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.*

Chair Gorman stated that he these utilities exist currently on the property. Mr. Hoppock stated that he agrees.

Mr. Greenwald made a motion to accept ZBA 20-18. Mr. Welsh seconded the motion.

1. *The proposed use is similar to one or more of the uses already authorized in that district and is an appropriate location for such a use. Granted 5-0.*
2. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood. Granted 5-0.*
3. *There will be no nuisance or serious hazard to vehicles or pedestrians. Granted 5-0.*
4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use. Granted 5-0.*

The Board approved the Special Exception request for ZBA 20-18 by unanimous vote.

- c. **ZBA 20-19: Petitioner, Brett Cooke of 40 Brook Street, Keene requests a Variance for property located at 40 Brook Street, Tax Map #553-084-000; that is in the High Density District. The Petitioner requests a Variance for a side setback of five feet on the north side of the property to build a garage with an apartment per Section 102-791 of the Zoning Ordinance where ten feet is required.**

Chair Gorman opened ZBA 20-19 and asked Mr. Rogers to provide some background.

Mr. Rogers stated that this property is in the High Density District, located on Brook St., which is off of Beaver St. and connects to the street beside the old middle school. He continued that this is a neighborhood with a lot of single-family homes and also some two-family homes. The setback is a ten-foot setback. The Applicant is proposing to build a garage with an apartment above it, so it would be a three-family dwelling. It appears, from the Assessor's database, that the property owner has just enough square footage to have this third unit in the High Density District, where the first unit requires 6,000 square feet and each additional unit requires 5,000, which puts this at 16,000 square feet and Assessing shows 16,100 square feet. The house currently is non-conforming to the side setback with the house at about seven feet from the property line. The applicant is asking for this addition to have a five-foot setback instead of the ten-foot setback that is required.

Ms. Taylor asked if it is correct that the current house is seven feet from the sideline. Mr. Rogers replied yes, the drawing the Applicant provided shows the house is about 20 feet long and seven feet from the setback, where the addition they are proposing to attach to the existing house is 50 feet, plus a portion that attaches, of 13 feet.

Ms. Taylor stated that she found the houses in this area interesting. She continued that this was built in about 1894, which is similar to other houses in the area. Mr. Rogers replied yes, it is one of the older neighborhoods, close to the downtown area.

Mr. Greenwald asked about the proposed garage/apartment, requesting drawings of what the interior layout will look like, in terms of room dimensions. He also questioned what type of roofing will be used. Mr. Rogers replied no, that the drawings requested was not part of the application. He continued that the Applicant might have already applied for a building permit and then was told he needed to apply for this Variance.

Chair Gorman asked for clarification if this petition is for a third unit. Mr. Rogers replied yes, the existing house is a two-unit and this would be a third, the apartment being built over the garage. Chair Gorman replied that he then assumes that the permitting process would cover all necessary life safety code issues. Mr. Rogers replied yes, with the third unit being added, it brings in fire code issues that the Applicant would have to address with the building permit.

Ms. Taylor stated that Assessing shows that it is a single-family home and not a two-family home currently. She wonders how that discrepancy is resolved. Mr. Rogers replied that sometimes the Assessor's Department information is based on what they see on the ground, but the actual, official determination of what a residence has for units is the Community Development Department (CDD)'s files. He continued that the CDD has several building permits from over the years that have been issued, listing this house as a two-family. That is the legal determination of what the property has.

Ms. Taylor replied that she does not necessarily agree. She continued that that is an interesting description, listed as a single-family with the Community Development Department records showing it as a two-family. Mr. Rogers replied that many times this happens that the City Assessor cannot get into the building to see what the actual use is. He continued that it works the other way sometimes, too – sometimes the Department's records show that it is a single-family home but the City Assessor gets into the building and sees that it is a two-family home, which would mean that the homeowner did not get proper permits to make the conversion. In this case the Department does have some documentation where inspectors have been in the building from previous projects over the years.

Chair Gorman thanked Mr. Rogers for the clarification. He continued that he is familiar with that, too, and typically the Code documents are used over the Assessing documents. Mr. Greenwald agreed.

Chair Gorman asked if Board members had more questions. Hearing none, he thanked Mr. Rogers. He opened the public hearing and explained how members of the public could participate. He asked to hear from Brett Cooke.

Brett Cooke, of 40 Brooke St., stated that this is a single-family home. He continued that when he purchased it five years ago there was a small apartment upstairs but thought that was an illegal apartment, so he converted it back to a single-family home. Chair Gorman replied that that could be handled either way. He asked if what Mr. Cooke is saying alters his application in any way. Mr. Cooke replied no. Chair Gorman stated that his take on that is that Mr. Cooke has a legal two-family home right now that he opted to turn back into a single-family. He continued that Mr. Cooke could correct that with the Community Development Department during the permitting process, in which case Mr. Cooke would be held to the one- to two-family dwelling unit life safety code. With this revelation, the property would back down on the commercial representation of the property. He asked to hear from City Staff to make sure that is accurate.

Mr. Rogers replied yes, that is something that could be taken care of during the building permit process, however the outcome of the Variance. The Department would work with the Applicant to confirm that the property will remain a two-family home, the apartment being the second unit.

Ms. Taylor stated that she brought up the point because she was trying to understand the property. Whether it is a one- or two-family home is not really the issue before the Board, it is the dimensional requirements.

Chair Gorman asked Mr. Cooke to continue. Mr. Cooke went through the criteria.

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

Mr. Cooke stated that a garage apartment would partially be replacing the existing barn on site, which is somewhat of an eyesore and would be taken down upon completion of the garage. He continued that his addition would only bring value to his home and he assumes to surrounding homes, as it would enhance the property.

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

Mr. Cooke stated that the Spirit of the Ordinance would be observed as a setback Variance is consistent with most other buildings in the area. Many other buildings in the area have a similar or less of a setback. This would not be out of place.

3. Granting the Variance would do substantial justice because:

Mr. Cooke stated that the apartment is for his father to live in. He is getting on in age and it would be good to have him close by. This will allow him and his family to park in the garage and have access to the home from within.

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

Mr. Cooke stated that granting this Variance for a five foot setback for the garage/apartment will not diminish surrounding property values but would further enhance their values. The construction of the garage adds value to the neighborhood and upon completion of the garage the barn would be taken down.

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. Cooke stated that he is asking for this Variance because the property is only 66 feet wide. He continued that having enough room for a driveway and parking in front of the garage would require the five-foot setback. Also, the existing house is just five feet from the property line. The garage would only be two feet closer.

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

Mr. Cooke stated that the garage will have an apartment above it and this is the only place it can go because it has to be attached to the existing house because the narrow front part of the lot makes it difficult.

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. Cooke stated that this is the only place the garage/apartment can be placed, as it needs to be attached to the existing house. There are many multi-family homes in the area so this would not look out of place. A five-foot setback would be further back than many other buildings in this area.

Chair Gorman stated that he mentioned a lot of the homes in the area are multi-family. He asked for more information. Mr. Cooke replied that there are 17 homes on the street with nine single family, three are two-family, two are three-family, and there is a commercial apartment with five to eight units. Two of the single-family homes are college student rentals.

Chair Gorman stated that to be clear, the lot allows him to have a two-family home. That is not really why they are here tonight. He could even have a three-family unit if he wants. They need to stay focused on the fact that they are here about the setback.

Mr. Greenwald stated that he noticed the dimensions are 30 feet wide on one angle, which is creating the need for a five-foot setback. He question as to why not do 25 feet and have the necessary 10-foot setback. Mr. Cooke replied that they want to be able to park in the garage as well as have some space on the back wall for storage and hobbies – he does woodworking and works on cars, and needs room for that. Mr. Greenwald asked if it is accurate to say the extra space needed is more for the garage than the apartment. Mr. Cooke replied that he already had plans drawn up, when he thought the side setback was five feet. He continued that they thought about making it narrower but it made it more difficult for the one-bedroom apartment above with its open concept. Having it that narrow, with a stairway coming up, made it a lot more cramped, even though it was only a five foot difference making the interior much smaller.

Mr. Greenwald asked about the roofing materials because his main concern is the snow load that could fall onto the abutting property's cars. He asked the Applicant to explain. Mr. Cooke replied that they plan on standing seam roofing, except for the small portion that attaches to the house, which will be shingled roofing matching the house. They thought about the snow load and plan to put snow guard all along that side, to slow down the snow. It would go about a third of the way up the roof.

Mr. Welsh stated that he has a similar dimensional question regarding the 22-foot parking space length. He asked where does that parking space dimension come from and could that be reduced so the building could be moved to the left and away from the setback. Mr. Cooke replied that he thought about that; he does not know what the exact parking rule is, whether it is 18 feet or 20 feet. He continued that he put 22 feet down so there is a little bit of extra space. He did state that he has a big truck, about 21 feet long, and did not want it to be in the way of others parked in the yard. The five foot setback would allow the 22 feet. It could be less than 22 feet but the driveway could be a little wider. The driveway is currently eleven feet and this would make it nine feet, which gives him the 22 feet. The extra foot or so could go on either side.

Mr. Welsh asked how many bays they anticipate putting in the garage. Mr. Cooke replied four, two double doors. Mr. Welsh asked about the timing of the barn removal, questioning why it would be removed after the completion of the garage. Mr. Cooke replied that he would not have anywhere to store his classic cars, which he currently has in the barn and does not want out in the weather, so the demolition of the barn would be after the garage is finished.

Mr. Gaudio stated that Mr. Cooke put the 22 feet - or rather 17 feet, because he mentioned 17 feet in the application - in front of the garage. Mr. Gaudio then questioned why does the parking need to be there, why not across the driveway or at the end of the driveway on the left side of the lot. Mr. Cooke replied that like anyone, if you have a garage with garage doors, you would want to park in front of it. That is typical. Mr. Gaudio replied but that would relieve the issue of the

setback by putting the cars over there or using 17 feet as the alternate. Mr. Cooke replied that he does not know what the mandatory length is for a parking space; he was not able to find that in the Building Code. When he put down 17 feet that was without the Variance.

Chair Gorman asked Staff to speak to this. Mr. Rogers stated that the Zoning Code spells it out the requirement of 18 feet by 18 feet for non-retail parking spaces.

Mr. Cooke stated that at 17 feet, if he had that at the 10-foot setback, he would have to take the fence between his house and 34 Brook St. out, to have enough space on the driveway for 18 feet. Because he is a foot away from his property line and would need to take that extra foot to make it 18 feet and also have a nine foot driveway.

Mr. Gaudio stated that he can park the cars on the left side instead of the right side and that would not impact that at all. Mr. Cooke stated that he has parking for three vehicles on the left side. He continued that they have two trailers they were going to put in that area. Mr. Gaudio replied that that is fair bit of parking. Mr. Cooke replied yes, but most of it is driveway; from the road in it is probably 80 feet. But he cannot really park there; nobody would be able to get out. He has seven parking spaces, total.

Chair Gorman asked if Mr. Cooke could, with the elimination of the barn, put some more spaces pointing the other direction. Mr. Cooke replied possibly. He continued that once the barn is gone, that section of the property would become lawn. He continued that another reasoning for the request for the setback Variance is the height of the first floor of the existing building. Obviously the garage will be lower. And there is the ceiling height in the garage. In order to have the doorway into the transition room, the small attaching area would have to be five feet farther to the south, five feet longer, in order for it to meet up with the landing in the garage, in order to make it the height requirement of six feet by eight feet. It adds a whole lot more building than what they wanted.

Ms. Taylor asked if he has antique cars in the barn, stating that it looks like the barn is partially collapsed. Mr. Cooke replied no, it is on granite tiers. He continued that it is not in the greatest shape. It is currently the only place he has to put his cars and it is not ideal. Ms. Taylor stated that this is an interesting discussion, and what it boils down to is that where he is proposing to build this addition is a preference. She continued that it is not that he cannot build it in the setback, it is that he prefers not to. Mr. Cooke replied that he prefers not to, because instead of having seven parking spaces he would have three, because he cannot have 16-foot parking spaces. It would not work. It would be useless space. Ms. Taylor replied that he would be gaining a four-bay garage. She imagines he would keep at least a couple of cars in it. Mr. Cooke replied that he would not want the garage door to be opening and closing all day. Typically they park outside and then bring the cars in at night. Ms. Taylor asked if he is operating a business there. Mr. Cooke replied no, not at all. He continued that his father has an enclosed trailer for his motorcycle, which would be coming to the house once he moves in, and he himself has a utility trailer.

Ms. Taylor stated that it goes back to her original question that this is what Mr. Cooke really wants to do. It is not that he cannot build within the setback, it just would not be as convenient. Mr. Cooke replied that it would not be as convenient, and it would not make sense to kind of have parking space in front of a garage but not be able to park in front of it. It seems like space not well-used.

Ms. Taylor stated that she has a question for Mr. Rogers. Assuming for today that this is a single-family home and there is an addition with a living space, does that turn it into a two-family home, or does that make it an Attached Dwelling Unit (ADU). Mr. Rogers replied that the way the Applicant is proposing it, it would be a two-family home. He continued that if he decided to do an ADU, there would be additional paperwork because an ADU is required to be owner-occupied. The applicant would be meeting that criterion currently but the deed for future sales would have to indicate that one of the units be owner occupied. He does not know where the setbacks would have any play. At this point it would be considered a two-family home, as that is what the Applicant is applying for.

Chair Gorman asked if it would be too large for an ADU. Mr. Rogers replied that the living portion would be restricted to 800 square feet if it were an ADU.

Chair Gorman welcomed members of the public to speak. He continued that the Board has received some letters and has had time to review them.

Judy Russell, of 34 Brook St., stated that she sent a letter. She continued that when she counts, she only gets eleven houses on Brook St; she does not know where Mr. Cooke is getting 17. A lot of them are single-family homes, which is something to consider. The condition of his property has already brought down the value of the neighborhood. Her questions are, who is going to build this garage and how long will it take. She also questions who will live there after his father passes.

Chair Gorman stated that relative to this application, Mr. Cooke is allowed to have a two- or three-family home. He continued that Mr. Cooke would not have to say who will live there; it is simply a rental unit. Ms. Russell stated that he is asking for it as an in-law apartment and that is not what it would continue to be. Chair Gorman replied that he is actually just asking for an apartment. He continued that that is what the Board was just discussing – an ADU is a dwelling that the owner occupies and typically that is more of an in-law type setting. Mr. Cooke is requesting just a second unit, which he is allowed to have, so that is not why he is before the Board – he is before the Board because he is requesting to encroach on setbacks. That is primarily what the Board is focused on, as to whether the five criteria are met for the request.

Chair Gorman asked if Mr. Cooke wants to respond to Ms. Russell's comments and concerns. Mr. Cooke stated that Ms. Russell is his direct neighbor. He continued that the purpose of this meeting is to apply for a Variance, not to ask permission to build something. He and Ms. Russell have not seen eye to eye on things and he has not talked with her for quite some time. He does

not know where her comments are coming from. Chair Gorman replied that the Board wishes the two of them well in resolving their issues, but they will now stay focused on the application request.

Chair Gorman stated that he does not see any other members of the public wishing to speak. Ms. Marcou stated that she does not see anyone else calling in. Chair Gorman closed the public hearing. He stated that the Board will discuss and vote upon ZBA 20-19. If necessary he will reopen the public hearing to ask technical or procedural questions.

The Board deliberated on the findings of fact.

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

Mr. Hoppock stated that his first observation is that the neighborhood has a lot of structures in it, and there may be some disagreement about how many are single-family homes, but they are packed pretty close together. He continued that does not necessarily mean there is a lot of population density, but there are a lot of structures together. One of the purposes of the setback is to create some space between them for public safety reasons, such as fire containment and things of that nature. This application therefore does violate the basic Zoning objectives by creating safety issues, in terms of the space between properties. There is no reason why the proposed garage and apartment cannot be, as Mr. Gaudio suggested, a foot or two to the left. He does not think it satisfies the first criterion.

Mr. Greenwald stated that he agrees. He continued that he is very concerned about the snow load. He has dealt with properties that are right on top of the abutting property, and although snow guards do help, with standing seam metal, it is not enough. He has significant concerns about the proximity of the structure being only five feet, that it will not create enough space. He does not have a problem with the actual location of the addition, although the Applicant would like to have a substantial-sized garage, having it a couple more feet in could make it more compliant with the Ordinance and provide additional safety for the neighboring property, which is a two-family unit and probably has multiple cars.

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

Ms. Taylor stated that she would like to consider criteria one and two together. She continued that for the reasons Mr. Hoppock expressed, she believes this is contrary to the public interest, and it is not, in her opinion, within the Spirit of the Ordinance. It is in a compact and dense neighborhood of structures and the purpose of setbacks is, for a variety of reasons including density, to provide some separation. She does not think it meets the standards of criteria 1 or 2.

Chair Gorman stated that he agrees with Mr. Hoppock and Ms. Taylor, and Mr. Greenwald made some great points about the snow load. He continued, agreeing with tying these two criteria together, which leads into criterion 3.

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

Ms. Taylor stated that she does not think the private benefit outweighs the public interest in this particular circumstance. Chair Gorman agreed.

Mr. Hoppock agreed. He stated that buildings that close together do increase the risk of fire, so he does not think the gain to the public would be justified. Rather, there would be no benefit to the public; there would be a danger to the public.

Chair Gorman stated that he agrees and thinks that Mr. Cooke can reconfigure his plan to get the greater good for himself without having as much impact to his neighbors.

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

Chair Gorman stated that he does not agree. He thinks they actually could be, for the reasons stated in criteria 1 to 3. It is a big building; the footprint is a 15,000 square foot addition, but two stories, which has a square footage almost bigger than the existing house. Mr. Cooke is able to build that but he does not think he needs to build it so close to the boundaries. He thinks it may adversely impact the values, being that close to the property line.

5. *Unnecessary Hardship*

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

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

and

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

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. Hoppock stated that he does not find that there is any special condition for the property that affects the general purpose of the Ordinance and its application to the specific property. He continued that the width of the entrance to the property is, by design and choice, not necessarily by a special condition of the property. He does not find that this criterion is met.

Chair Gorman agreed and stated that Ms. Taylor touched on that when she asked the applicant if this is more of a wish list than a necessity.

Ms. Taylor stated that she echoes that she does not see a special condition of the property. If anything, it appears that this parcel is a larger square footage than many of the surrounding parcels. Just because all of the houses are close together and all of the parcels are small, that speaks to her that if there is a special condition to this it is just that it is bigger than the other parcels. This goes along the lines of, if he wants to build what he wants to build, he can still build it, just build it within the sideline setbacks.

Ms. Taylor made a motion to approve ZBA 20-19 at 40 Brook St. for a Variance to build on a side setback of five feet where ten feet are required on the north side of the property. Mr. Hoppock seconded the motion.

1. *Granting the Variance would not be contrary to the public interest.* Denied 5-0.
2. *If the Variance were granted, the spirit of the Ordinance would be observed.* Denied 5-0.
3. *Granting the Variance would do substantial justice.* Denied 5-0.
4. *If the Variance were granted, the values of the surrounding properties would not be diminished.* Denied 4-1. Mr. Greenwald voted in favor.
5. *Unnecessary Hardship*
 - A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property.*
and
 - ii. *The proposed use is a reasonable one.* Denied 5-0.
 - 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.* Denied 5-0.

The motion to approve ZBA 20-19 failed with a vote of 5-0.

Chair Gorman made a motion to deny ZBA 20-19. Mr. Hoppock seconded the motion, which passed by unanimous vote.

Chair Gorman wished Mr. Cooke good luck with his project. He stated that he hopes Mr. Cooke can find a way to make it work for himself.

- d. CONTINUED NOVEMBER 2, 2020 ZBA 20-16: Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester St., Keene, requests a Change of a Nonconforming Use for property located at 15 King Ct., Tax Map #122-022-000; that is in the Low Density District. The Petitioner requests a Change of a Nonconforming Use from a now vacant fitness center to a lodging house (homeless shelter).**

Ms. Marcou stated that this agenda item is a reminder that this petition will be continued on November 2. Mr. Hoppock asked if there has been a reconsideration in connection with any of the Hundred Nights applications. Ms. Marcou replied no, not yet. Mr. Hoppock asked if the deadline had passed. Ms. Marcou replied no, the 30 days started the day after the September 22 meeting and will end October 22, for a Motion to Rehear.

V. New Business

a. Board Member Term Expiration Dates and Term Limits

Mr. Rogers stated that so everyone knows where they stand with their terms for Board membership, Staff provided a list of term status's and expiration dates. He continued that hopefully Board members who are eligible for a second term will want to stay on. Brief discussion ensued.

VI. Communications and Miscellaneous

VII. Non-public Session (if required)

VIII. Adjournment

There being no further business, Chair Gorman adjourned the meeting at 9:16 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Staff edits submitted by,
Corinne Marcou