

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, August 2, 2021

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh
Arthur Gaudio

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

I) Introduction of Board Members

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

II) Minutes of the Previous Meeting - July 6, 2021

Ms. Taylor stated that she has corrections to the meeting minutes:

- Arthur Gaudio should be listed as a member, not “alternate member.”
- Lines 89 and 90: the words “became a mandate” should be “became amended.”
- Line 360 should read, “Mr. Hoppock stated that he did not hear Mr. Phippard elaborate,” not “Mr. Hoppock stated that he did not hear Mr. Hoppock elaborate.”

Mr. Hoppock made a motion to approve the minutes of July 6, 2021 as amended. Mr. Welsh seconded the motion, which passed by a unanimous vote of 4-0, with Mr. Gaudio not voting as he was not present at the July meeting.

III) Hearings:

A) ZBA 21-13: Petitioner, Cooper’s Crossroad, of 700 West St., Keene, requests a Variance for property located at 149 Hurricane Rd., Tax Map # 542-021-000-000-000 that is in the Low Density-1 District. The Petitioner requests a Variance to permit an outdoor recreational activity as a business; agricultural-related education activity per Section 102-372 of the Zoning Ordinance.

Chair Gorman asked to hear from staff. John Rogers, Zoning Administrator, stated that this property is on Hurricane Rd., which is off Arch St. He continued that contained in this is a 37-acre lot that currently has mostly barns for structures. In the past, it was the Elm Tree Research Center. He is not sure how the property is currently being used. The Low Density-1(LD-1) District is unique, with only two lots. Across the street from this property at 149 Hurricane Rd. is another large lot. The LD-1 District was created in 2001 and was meant as a transition district from the Low Density (LD) District, which surrounds 149 Hurricane Rd. The LD District is on the north and south of this property, and to the west, is the Rural District. Mr. Rogers continued that this is also on the edge of where the City utilities run, stopping just about at the end of this property and is an intent of this district. There are some allowances for requiring City water, if the Public Works Director determines there is enough pressure and volume. Mr. Rogers did state that if there is not sufficient water, a property can have a private well system. City sewer is a requirement in this district.

Mr. Rogers continued that what the Petitioner is requesting is not an allowed use as this district is meant as more of a residential-type district, with permitted uses including single-family homes, group homes, harvesting of forest products, historic site open to the public, home occupation, and non-commercial raising of farm animals.

Mr. Welsh stated that the “harvesting of forest products” struck him as possible use of the Elm Tree Research Project, which would have required a Special Exception. He asked if there was a Zoning Board decision to grant the Special Exception and if there were any conditions. Mr. Rogers replied not that he was able to find. He continued that he assumes that the Elm Tree Research most likely pre-dates this district.

Ms. Taylor stated that Mr. Rogers said this is “the end of the line” for water and sewer on Hurricane Rd. She asked for clarification as to whether there is water and sewer currently on the property. Mr. Rogers replied that City water and sewer runs right along the front of the property, but whether there is a service that runs onto this property is something he would have the Applicant respond.

Chair Gorman asked if there were further questions for Mr. Rogers. Hearing none, he asked to hear from the applicant. Susan Payton of 118 North Shore Rd., Spofford, NH, stated that she is a member of the Board of Directors of Cooper’s Crossroad, who is the Applicant for this request and the authorized agent for the Filtrine Manufacturing Company, Inc., who is the owner of Elm Farm on Hurricane Rd. She continued that she became involved with Cooper’s Crossroad because she believes in volunteerism and the mission of this worthy non-profit corporation. The organization is 100% volunteer-run. Cooper’s Crossroad entered into a lease with Filtrine Manufacturing effective June 1, 2021, in order to move its equine-related programs to a new location from its present location at Dusty Dog Farm on West St. in Keene. They subsequently learned they need a Zoning Variance in order to conduct the equine programs at Elm Farm. Elm Farm is still so clearly a farm, which they did not realize that need. Cooper’s Crossroad is requesting a Variance for their programs that will begin in late September. The Elm Farm’s

central location in Cheshire County provides convenient access to Cooper's Crossroad's programs for students in and around Keene. This is important from the standpoint of the students' daytime schedules. The Board will hear from the founder and president of Cooper's Crossroad, Christina Major, who will talk about the organization, its programs, and its plans for Elm Farm; and Jeff Payton, a volunteer, who will discuss the questions set forth in the application.

Christina Major, of 700 West St., stated that she is the founder and president of Cooper's Crossroad, a non-profit founded in 2017 to raise awareness of trauma and adverse childhood experiences. Some of their programs are Farming for Resilience and Pathways to Wellness, which they hope to continue at Elm Farm on Hurricane Rd. Elm Farm is an ideal facility for their program, in terms of the access, location, and size. After searching the Keene area and meeting with Peter Hansel, they were able to arrange a lease of a portion of the Elm Farm with its owner, the Filtrine Manufacturing Company. She knows from her meetings and many conversations with Mr. Hansel that he and Filtrine are pleased and excited to lease a portion of Elm Farm to Cooper's Crossroad to continue to conserve its agricultural focus and feel. The portion of the farm Cooper's Crossroad will lease is approximately 37 acres in size, which she said may be wrong though it might be about half of that and it includes a portion of the barn.

Ms. Major continued that the horses would be kept in two pastures that Cooper's Crossroad will create with fencing. One pasture and the riding ring, where they will do a lot of the work with their participants, will be located in a current open space visible from Hurricane Rd. The second pasture will be located in open space in the back of the leased property, which is not visible from Hurricane Rd. They have no plans to remove trees or vegetation. They will use the barn to store horse equipment/tack to groom the horses and teach the students. There will be a run-in shed near the barn and front pasture, approximately 14'x20', for the horses to get out of the bad weather and away from the bugs.

Ms. Major continued that Cooper's Crossroad's two programs teach the four core values of courage, gratitude, forgiveness, and compassion, with the outdoors and horses. They have worked since 2018 with Symonds School, Cutler Elementary School, Keene High School, Keene Middle School, and Ashuelot Valley Academy, even throughout the pandemic. The programs have been at Dusty Dog Farm on West St., which she operates and manages. However, due to the expanding business activity at Dusty Dog Farm, Cooper's Crossroad decided to look for a new location for its program. The search began with a desire to keep the program facility in the Keene area so it would be accessible to many schools in the area, whose students could benefit from the program. In addition, they were hoping to find a location close to Dusty Dog Farm, because many of their volunteers are associated with it.

Ms. Major continued that Farming for Resilience is open to students in elementary through high school who have experienced trauma or similar challenges. The benefit of this population working with animals and participating in farming activities has been demonstrated by research and literature. Cooper's Crossroad has received enormous encouragement and enthusiastic

support from participating schools. Their non-profit educational activity is small in scale with approximately 12 students who attend two sessions per week at Dusty Dog Farm. They plan to continue that program size at Elm Farm. They will keep two to four horses at the farm initially and most likely no more than seven or eight, depending on funding and qualified volunteers. Their lease allows them to keep up to ten horses at the property. The students and accompanying school aides are usually transported to the program in school vans. Public schools sometimes use a school bus. The program is not run during the winter when it is too cold. During these months, the horses will remain at Elm Farm and be tended to by Dusty Dog Farm staff and Cooper's Crossroad volunteers. Cooper's Crossroad was very excited when one of their students from Ashuelot Valley Academy graduated as valedictorian of his class this year. They would like to think that perhaps, in some small way, the Cooper's Crossroad program helped him to achieve that distinction.

Mr. Hoppock asked what the winter period is. Ms. Major replied that they would probably wrap up their fall sessions just after Thanksgiving and resume in April.

Ms. Taylor stated that Ms. Major referenced sheds, and the application says that they are open. She asked if the horses would be staying in open sheds in the winter. Ms. Major replied yes, they will have two to four horses in run-in sheds, which they will tuck themselves into in bad weather. She continued that she has managed horses throughout her life, and finds that horses are best suited to herd environments. To be most productive in the role that Cooper's Crossroad hopes for them to have, they hope for the horses to be happy in their environment. The plan is to keep them in a natural environment.

Ms. Taylor asked for a definition of a run in shed. Ms. Major replied that it is a three-sided, large shelter, which horses can go in to get out of the wind, precipitation, or bugs. She continued that horses naturally move in and out of the shelter to protect themselves from the elements.

Ms. Taylor stated that although this area no longer has winter the way it used to, she is trying to comprehend the care and well-being of horses in an open shed in winter, with the ice and snow and asked for clarification. Ms. Major replied that she is a career horsewoman and attuned to caring for horses in all elements. She continued that when horses are in a herd together, they care for themselves by going into a shelter. Thus, they are building a shelter where a small herd of horses would go into, to get out of the elements, that is accessible to them at all times. It is where Cooper's Crossroad would offer the horses their food and where they would have access to their water and a salt lick, and then they would have open pasture, so they could have access to the outdoors at all time. Horses are natural plains animals and herd animals.

Jeff Payton, of 118 North Shore Rd., Spofford, NH, stated that he is a volunteer with Cooper's Crossroad. He continued that he would review the five conditions set forth for a Variance. The activity planned for the Elm Farm is small in scale. The students, approximately 12 will arrive during the mid-day. They have two sessions per week planned, which means two trips to the barn by whatever mode of transportation the schools use. There will be two sheds built for the

horses. He knows from his own experience at Dusty Dog Farm that many horses spend the winter outside. Their coats grow long and shaggy, which keeps them warm without any risk. Cooper's Crossroads will add fencing to create a riding ring as described in the application with the space still open. There is a lot of vegetation buffer, trees, and wooded area around the property, which will not be disturbed by the proposed use.

Mr. Payton continued that regarding the questions for granting the Variance, they do not believe the Variance would be contrary to the public interest and they believe it would be consistent with the spirit of the Ordinance. The LD-1 District requires one acre of property. The property itself is 37 acres, owned by Filtrine Manufacturing. The portion that Cooper's Crossroad is leasing is approximately 14 acres. The activity will be limited in terms of the students coming and going and the number of horses. The space provided is adequate to conduct the activity. The desire in the LD-1 District is to maintain a low density, low intensity to the neighborhood, and Cooper's Crossing does not feel the proposed use would be adversely affecting. There will be minimal impact as they are not building any homes and will not have a lot of traffic in and out of the facility. That should be consistent with the spirit of the Ordinance.

Mr. Payton continued that regarding the "substantial justice" criterion, Cooper's Crossroad feels that both the public and the property owner will benefit. Preserving the openness and agricultural feel of the property and the neighborhood, as opposed to other uses to which the property may be put, is beneficial to the public and to the surrounding neighborhood. The property owner expressed a desire to conserve the space and to keep it open and agricultural. If the Zoning Board grants this Variance and permits this use, that will continue, which will be positive for the public, the neighborhood, and the property owners, who are excited by the idea that Cooper's Crossroad programs could happen at the Elm Farm.

Mr. Payton continued that regarding the question of whether Cooper's Crossroad will adversely affect the values of surrounding properties, they do not believe they will. The impact itself will be minimal in the area and they believe the properties will be improved. They have already started some cleanup with some piles of brush in the open space, which they will clear away to make room for pasture and for the riding ring. With the ongoing maintenance of the property, they believe surrounding property values will be enhanced from the current situation.

Mr. Payton continued that the last question in the application deals with the issue of hardship. There are special conditions that exist with respect to the Elm Farm. First of all, its size: it is a 37-acre farm and has historically always been so. The leased space is 14 acres, whereas the properties surrounding it are generally one-acre residential lots. This piece of property is thus different and distinct. The property's location is of benefit to the program, because it is centrally located, easily accessed by the schools, and because there is so much frontage to the Elm Farm. On the north side of Hurricane Rd., after about 1,200 ft., there is Elm Farm to the right and beyond that is a small house owned by Filtrine Manufacturing, and beyond that house is another large farm, also owned by the Hansel family. This property is quite different from the properties around it, which will allow the planned activity to have a minimal impact to the neighborhood.

The tree/vegetation buffer will not be disturbed, which will continue to shield the surrounding properties from the classes that will be held and the twice weekly, mid-day sessions.

Mr. Payton continued that lastly and perhaps most significantly, there is the barn. It is an old dairy barn and substantial in size, not like a backyard shed and will be put to good use if the Variance is granted. The plan is to store equipment needed to conduct the classes with the students. In the future, if need be and if funding to the organization permits, they can put some stalls into that space. As they indicated, that is not the current plan, but there is that opportunity.

Mr. Payton continued that the lease is for five years, with a renewable period of three years. Cooper's Crossroad is looking to be there and run this program and make these improvements for the near future. They think this is a reasonable use of the property because the Ordinance's goals of low density and low intensity will be met. If the rule was applied strictly, because this might technically be viewed as a business, though he would say it does not really rise to what one thinks of as a commercial, bustling activity, it will not adversely affect the neighborhood or the space. It will preserve the open space feel. Mr. Payton continued to not approve the variance would do harm to Filtrine. Their desire is to conserve this open space and not develop it. Cooper's Crossroad believes this is a good use of the property and will put what is now an underutilized barn and underutilized space to a beneficial use for this program.

Mr. Gaudio stated that regarding the business question, the application states that Cooper's Crossroad is requesting a Variance to permit "outdoor recreational activity as a business." He asked is the nature of Cooper's Crossroad that "business". Mr. Payton replied that his understanding is that while working with the Zoning staff, Cooper's Crossroad was trying to describe what activity they sought to bring to the farm, and staff explained it would be an appropriate description of the activity. They understand that it is not a residence and that the impact is minimal. The schools do pay to attend the program, so there is that element of a business.

Mr. Gaudio asked if it is correct that Cooper's Crossroad is a non-profit organization. Mr. Payton replied yes. Mr. Gaudio stated that Filtrine Manufacturing is a business, but they are the property owners, not the ones conducting the operation. He continued that he wonders why "business" was added. His concern is that if they grant a Variance for "outdoor recreational activity as a business," that is permanent. Someone could come to the Board in five or eight years and want to put in a theme park, for example, which is an "outdoor recreational activity." He is not sure why Cooper's Crossroad's activity is not simply "agricultural-related activity." Mr. Payton replied that if the Board feels it would be appropriate to adjust the wording of the use granted they could. He continued that Cooper's Crossroad's interest is to get this use approved. Regarding expanding what the Variance would allow Cooper's Crossroad would have no objection to appropriate wording to avoid that concern.

Chair Gorman asked Mr. Rogers to clarify his perspective on the use. Mr. Rogers stated that the definition section of the Zoning Code states "a non-commercial, outdoor, recreational activity"

means “outdoor recreation as a primary use of land for which no admission is charged.” Previous Zoning Administrators had determined similar businesses as this type of use, which is how staff came to put this in as “commercial.” They were not necessarily calling it a business; they were calling it a “commercial use,” because as stated, there is a fee paid for this service. Mr. Payton stated that the schools pay to participate in the program.

Ms. Taylor asked if this type of activity would have to go before the Planning Board. Mr. Rogers replied that his initial answer is yes. He continued that there is a Change of Use occurring and that is a standard which triggers a Planning Board review, but the Community Development Director has the ability to administratively approve it, if he chooses.

Mr. Hoppock stated that he observes that Cooper’s Crossroad’s primary purpose is educational. He continued that this is not profit making, not “business” or “commercial.” The focus and emphasis should be on education. He asked if Mr. Payton agrees. Mr. Payton replied yes.

Ms. Taylor stated that she understands the fee for service, regardless of what it is. She continued that she is not clear about some of the operations and asked Mr. Payton to describe it more, such as the hours of operation, the number of students they expect to serve and to explain the parking available, specifically how the busses will navigate the property. Mr. Payton asked Christina Major to respond.

Ms. Major stated that they have not run into any parking problems yet. She continued that they will have a single volunteer who will care for the animals twice a day, which is one car going in and out twice a day. The participants will generally come via small, staff-run vehicles. There is plenty of parking and there is an easy turnaround for the busses. The busses are the shorter kind, with 6 to 10 students. Any other vehicles that might come in with volunteers would be parked at on the property. About five to eight volunteers would come in as a group, twice weekly. Ms. Taylor asked if that means the volunteers gather as a group somewhere else and then drive to Cooper’s Crossroad. Ms. Major replied yes, most volunteers are associated with Dusty Dog Farm, which is minutes from Elm Farm. Volunteers would gather at Dusty Dog Farm to go to Cooper’s Crossroad.

Ms. Taylor stated that that does not answer her question about where things are located, asking for clarification as to where the cars be in relationship to the improvements planned on the property. Ms. Major replied that they are not planning to make changes to the property. Ms. Taylor asked about the sheds. Ms. Major replied that there is one shed building, hopefully, to be built. She continued that the parking is all on the property, with a place behind the barn to back up and turn around. Ms. Taylor replied that the application says two sheds. Ms. Major replied that is correct; if they have up to ten horses, which they are allowed, they would hope to have another shed built in the backfield.

Ms. Taylor stated that the biggest question of all, not knowing if this is going before the Planning Board, is where the manure pile will be. Ms. Major replied that when housing horses outdoors,

the manure is dragged. She continued that they have a tire drag, which tires are cut in half, to drag the manure to become composted into the soil. They compost it immediately, so there is no need for a manure pile. Ms. Taylor asked if that would be in the pastures where the horses are kept. Ms. Major replied yes, the manure is dragged and the pasture becomes fertilizer.

Mr. Rogers stated that the Applicant supplied with the locations of the two proposed run-in sheds indicated in red. Ms. Taylor replied that she has seen the map, but questioned where the entrance would be, where the cars would park, etc.

Mr. Rogers stated that if the Board were so inclined to grant this Variance, there is a section of the Zoning Code where this use is allowed in Rural and Agricultural districts. Section 102-1166 has conditions for this type of use, which might address some of Ms. Taylor's concerns, regardless of whether it went to the Planning Board.

Ms. Taylor asked if parents would ever be bringing children to the site, as opposed to just school vehicles. Ms. Major replied yes. Ms. Taylor asked if they would ever be holding horse shows of one type or another. Ms. Major replied that she does not think so.

Ms. Taylor asked what the hours of operation would be. Ms. Major replied 9:00 AM to 5:00 PM, Monday through Friday, given school hours. She continued that the horses need care seven days a week, which there will be volunteers there. Ms. Taylor asked how the operation would work in the summer when school is not in session. Ms. Major replied that there are two programs: Pathways to Wellness and Farming for Resilience. She continued that people could research the programs more on Cooper's Crossroad's website. Farming for Resilience targets the school system, and Pathways to Wellness was started as a result of people wanting more, and wanting one-on-one sessions. Cooper's Crossroad thus started one-on-one sessions, teaching the four core values of courage, gratitude, forgiveness, and compassion, through the use of horses and the outdoors. That is why they would have the one-on-one sessions and parents bringing their children, or adults bringing themselves to the farm. Pathways to Wellness is for all ages. It is in its infancy with two students so far. Ms. Taylor asked if all of these programs will be operating in this location. Ms. Major replied that there are two programs, Farming for Resiliency, and Pathways to Wellness, and they would be operating at this location.

Mr. Gaudio stated that the application says they expect to hold the educational activities for students twice a week, two sessions per day, mid-day, or four sessions per week. He asked how Ms. Major melds what she just stated with this schedule. Ms. Major replied that Pathways to Wellness is a different program. She continued that those two students would come once a week. Thus, at this point there would be six hours of operation per week. Mr. Gaudio further questioned if there will be an increase of more students moving forward. Ms. Major replied that yes, it is their hope to increase to potentially four students.

Chair Gorman asked if there were any further questions from the Board. Hearing none, he opened the public hearing and explained the procedures of participation.

Peter Hansel of 61 Bradford Rd. stated that he represents Filtrine Manufacturing Co., the owner of the site. He continued that to offer some background, in 2003 when the former owners of the Elm Farm changed the zoning from agricultural to LD-1, he and his family were concerned as his brother lives right next door. He himself has always been a fan of the Elm Farm and hated to see it turned into what could have been 20 or 30 houses. Fortunately, between the Elm Research Institute, which his father runs, and Filtrine Manufacturing Co., they were able to purchase the property. The primary objective was to keep it as a working farm, ideally, but at a minimum, as open space. They have operated under that principle for the last 18 years. The Elm Research Institute, which is devoted to preserving elm trees and providing a resistant form of elms around the country, operated there until this past spring, when they consolidated their operations in Walpole. That left a need for finding another use for this property. Fortunately, Ms. Major and the Cooper's Crossroad group approached him and Filtrine as they felt this would be an ideal operation for the approximately 14 or so acres that they would occupy. The remainder of the property, both on the north and south sides, is still owned by Filtrine and will be operated in such a way to maintain and improve the agricultural resource of that land. They would like to see it ultimately become a working farm again, as it was under the old Elm Farm and they have been working hard to do that. He thinks the Cooper's Crossroad's activities fit into the plan very well. It provides low impact for the community, for the neighbors on Hastings Ave., Trowbridge Rd., and Hurricane Rd. and will generate minimal traffic. Only about 14 acres will be utilized, and they are maintaining the buffers around the property to make it as least impactful as possible. Mr. Hansel concluded that he expresses his support for the Variance and hopes the Board allows it.

Joann Fenton of 16 Bradford Rd. stated that she would like to support the Variance. She continued that she lives right across the street from Ms. Major and Dusty Dog Farm, and is there frequently, walking with her grandchildren. She is impressed by the operation of the farm, as it is neat, clean, and organized. She has noticed that since the inception of the farm, the traffic has been negligible and is not an issue, in her opinion. Cooper's Crossroad has great programming and Ms. Major runs a fantastic operation.

Jim Hogancamp of 90 Felt Rd. stated that he is right at the intersection of Hurricane Rd. and is clearly in favor of Cooper's Crossroad's request. He continued that in the past year or two his neighborhood has had 50 to 75 sheep on a nearby property, eight hogs across the street, and four goats nearby, and on Felt Rd. there are five miniature horses. This certainly fits within the character of the neighborhood. Aside from that, the one item he is a little concerned with is the discussion about traffic. He has concern with this operation adding to the traffic problems that he feels the City is already neglecting. On Hurricane Rd., there are two 30 mph speed limit signs, and one on Felt Rd. He has yet to see even the Keene Police Department going 30 mph up or down Hurricane Rd. or Felt Rd. About one out of four cars neglect the stop sign at the intersection between the two. With the speeds being as they are on Hurricane Rd., he would love to see a three-way stop sign at Hastings Ave. and Hurricane Rd. There is nothing right now to slow down any of the traffic. He has yet to see, during the past three years, any enforcement action or any attempt at enforcement action in that area. Aside from this Variance request, which

he is completely in favor of, he would love to see the Board hand back to the City of Keene a concern with the speed and lack of due process in that area.

Chair Gorman stated that he suggests Mr. Hogancamp call the Public Works Department with his comments.

Mike Forrest of 7 Marguerite St. stated that his street is the first right off of Hastings Ave. He continued that as an abutter he has some concerns. One, if the Board deems it advisable to approve this application, if they do not put some checks and limits on what could happen, next year or in five or ten years. He would like the “outdoor activity as a business” be limited to the equine educational activities so that something like a rodeo cannot move in as that could be an “outdoor activity.” In addition, he would like to see a condition that it be limited to Monday through Friday. He does not think that is placing any burden on the applicant. They would have to come back to the Board to open up any Saturdays or Sundays. He would also like to see Cooper’s Crossroad submit a site plan. He thinks they need to have a plan approved by the Planning Board that would show what the parking and turnaround are. He knows they are not talking about the large school busses, but vans are bigger than a sedan and they need to make sure there is room to turn around.

Mr. Forrest continued that he is not comfortable with how they would deal with the horse manure. He reminds the Board that a brook runs through this property. It runs through residential property and empties into the Ice House Pond, or it might be called Bent Pond, which is dammed. He continued that there is potential for problems. He would like to see the number of horses limited to ten. He would like to see a condition that Cooper’s Crossroad cannot use the two access points onto Hastings Ave., which are not developed. The map shows that one is 50 feet and the other is 51 feet, from this property onto Hastings Ave., which is not set up for an intersection. He would like to somehow see what can be done if there are any odor problems as he feels it’s a concern in enjoying any outdoor activities on his property if there are excess odors. Mr. Forest continued that the Board has the authority to put conditions on an approval, which will protect the neighborhood and can be addressed either by the Applicant or by staff

Tom Provost of 15 Hastings Ave. stated that he is in favor of this and thinks it is a good thing, but has a couple concerns. He continued that the biggest concern is the confusing verbiage of the petition, such as the word “business”. Five or ten years from now, he does not want to be looking at someone wanting to put an industrial park across from his house. If they can narrow the petition to be specific for this function, he would give it his full support. The hours of operation, especially through the warmer months, should not be a problem. His other concern is that in years past when Elm Institute was there, when they fired up the outdoor boiler, it was a challenge to the neighborhood in terms of particulate air pollution, which was found to be choking. Mr. Provost continued, stating that he hopes that will not be reinstated in this scenario. He speaks not only as an abutter, but also as a physician anesthesiologist, when he says that that was not healthy. He hopes the Board will consider these issues.

Erin Edge stated that she is a direct abutter on Hurricane Rd. She continued that the previous two speakers addressed many of her concerns, though she stated that they were first told that the lease was for two years, and now she hears it is five years with a three-year renewal. She asked if that is correct.

Chair Gorman replied that he would not be able to speak to the business arrangement though he thinks five years was mentioned during the hearing. He stated that Cooper's Crossroad will have a chance for rebuttal and all questions will be then.

Ms. Edge stated that her question that was previously addressed is that granting this Variance opens the door for other commercial entities as well. She asked Chair Gorman to address that.

Chair Gorman replied that the Board could put conditions on any approved Variance. He continued that is why the Board asks for input, so that they can formulate an adequate decision. It is quite possible that if this were to be granted, which he cannot speak to because the Board has not discussed it yet, they could put conditions on it to limit what kind of business activity could be conducted in the future.

Ms. Edge stated that she looked into the programs currently occurring at Dusty Dog Farm and some of the horse-related ones are horse shows and a 5k with registration at 7:30 AM. She asked if any of these events are part of the Variance.

Chair Gorman replied that those seem like rather finite things. He asked if Ms. Edge is asking about things that happen at Dusty Dog Farm or with the non-profit itself. Ms. Edge replied that Dusty Dog Farm and the equine program are now separating. She continued that they are moving the horse part next door to her. Her concern is that while they might be finite, Cooper's Crossroad will have expanded programs, horse shows, and other kinds of related activities that will start at 7:30 AM. She asked if this Variance would allow special events like that.

Chair Gorman replied that he cannot predict what type of conditions the Board may or may not put on a decision they have not made, though once all public input has been heard and the Applicant is able to rebut, the Board will discuss this and render a decision. Whether that decision renders Cooper's Crossroad's ability to be open for certain times and certain events is something he cannot predict at this point. If Ms. Edge has a suggestion to make.

Ms. Edge replied that she does not have a suggestion; she just likes to be informed about what to expect. Her question is whether these special events will be allowed and what the parking will be like. Mr. Hoppock replied that he has similar questions, and the Applicants are listening to the public input and will have a chance to respond. Ms. Edge stated that she would also like a plan showing where the parking will be and where the actual disposal of horse manure will be.

Denise Hunt of 27 Hastings Ave. stated that she has been there for two years and agrees with most of her neighbors' previous comments. She continued that there is very little enforcement of

the speed limit on Hurricane Rd., Hastings Ave., or Arch St. and it is almost unbearable. Her main concern, however, is the number of horses to be kept on the property. She considers herself a career horseperson, having had horses since she was a child, having ridden and worked for different organizations. She would like to know where the water access will be and how it would be delivered if there were not any on the property, and where hay will be stored and how it will be delivered. Managing up to ten horses is a lot of management. She continued to ask how the manure would be dragged during the winter months. That seems like it might spread disease, bring flies, and spread the odor. She does not see how that is effective, although maybe it will be as manure takes time to compost, which she knows from her years with horses. When it composts it is profitable, or could be with ten horses, but she cannot envision ten horses in that space.

Chair Gorman asked if members of the public had any further questions or comments. Hearing none, he asked if the Applicant wanted to give any rebuttal to the issues that were raised.

Mr. Payton stated that he listened to and took notes regarding the voiced concerns. One person spoke to checks and limits on what could happen to the property if a recreational business is approved, and he believes that he and Ms. Major briefly touched on that before. Cooper's Crossroad has leased the property for five years with a renewal option for three years. Cooper's Crossroad is seeking to have the Variance approved for what it wishes to do and is not seeking to have a park or a rodeo. It is limited to the programs that Ms. Major described. Not all the equine activity that takes place at Dusty Dog Farm is moving to Elm Farm. That business and operation will stay at Dusty Dog Farm. They are only talking about the small, non-profit activity, which they described in the application. Dusty Dog Farm has 42 horses. They are talking about having up to 10, as permitted by the lease, and as indicated in the application, with the vision of two to four initially and potentially six or seven.

Chair Gorman asked if he understood that Cooper's Crossroad does not have objections to certain conditions being put on the Variance as long as it allows them to do solely what their intended purpose. Mr. Payton replied that is correct. He continued that if the conditions the Board might include with the Variance can address people's questions but at the same time permit Cooper's Crossroad activity to continue as described, then they would be happy.

Chair Gorman asked if Cooper's Crossroad would be doing horse shows. Ms. Major replied no.

Ms. Taylor asked if the Applicant has any objection to submitting a site plan regarding her earlier questions. She continued that she could not figure out what was going where, such as parking, deliveries, proximity to the brook, and so on and so forth. Many of those questions could be answered if there were some sort of site plan. That may be a Planning Board issue but that was the basis for her question earlier.

Mr. Payton replied that he could clarify some of those questions by pointing to locations on the map that is on the screen, such as entry points, and clarify where off Hurricane Rd. they would

be coming, where the barn and planned parking areas are, and where the two run-in sheds would appear. Chair Gorman agreed.

Ms. Major asked if she could give out copies of Cooper's Crossroad brochures. Chair Gorman replied that the Board cannot accept any more materials as part of this hearing, but she could distribute them to people in the room.

Mr. Payton stated that Attachment B in the application has a comparable map to what he is currently referring to on the screen. He showed Hurricane Rd. and stated that the access point for entering the program is immediately off Hurricane Rd. He showed the barn close to Hurricane Rd., and the parking area that currently exists at the barn, stating that it is immediately to the east on the side of the barn. There is hard pack parking space available in the back of the barn as well, to the north side. Exhibit B shows the locations of the run-in sheds. The first one to be built is in the front, to the northeast of the barn area. The riding ring and fenced pasture area will be approximately in the space as indicated on Attachment B. The second run-in shed and pasture area, if they do that, will be in the other space leased in the back area that is not visible from Hurricane Rd. due to the vegetation buffer.

Mr. Hoppock asked about the access areas via Hastings Ave. Mr. Payton replied that Cooper's Crossroad does not envision using that at all and it is not part of their lease. Mr. Hoppock replied that they do not know if it will be part of the lease later. He asked if Cooper's Crossroad could access Hastings Ave. through those alleyways. Mr. Payton replied no, it is a dense, vegetated area. He continued that if there were conditions imposed that said Cooper's Crossroad's use would not involve access to Hastings Ave. at those two points, that would be perfectly acceptable and they would understand.

Ms. Taylor stated that in looking at this map and the one from the City's website, she sees that where they are proposing the back pasture is probably the highest point of the leased area. She continued that obviously, things flow down to that brook, which is the basis of her concern with the manure. She asked for clarification on how the Applicant will manage the manure, dragging it over the highest point which flows to the brook and during the winter months.

Mr. Payton replied that it is his understanding that the manure disposal, as well as the location of the brook, was a concern of Cooper's Crossroad as well as Filtrine and Mr. Hansel. He continued that topic was discussed in detail. The pasture areas that Cooper's Crossroad will be creating will be at least 50 feet away from the brook in order to address those concerns. Best practices have been a consideration as they have thought about the project.

Ms. Major stated that the pastures are more than enough to house and feed horses, with the acreage and the number of horses they are hoping to have. She continued that she has been managing horses for decades and has not only composted manure and used it to spread on hayfields to make the hay more productive, but has also used manure to spread on the fields to make the fields more productive. They will fence an area at least a minimum of 50 feet away

from the watershed. A lot of shrubbery and trees surround the brook, which they have no interest in or need to touch. They will maintain the property in the way that she maintains property and she thanks those who spoke up earlier. Dusty Dog Farm is a beautiful, well-maintained, large horse facility right in the center of Keene. They have never had complaints about the property or the manure smell from any neighbors, nor any complaints about the way they maintain and care for the horses at the property, which would be under her management. She understands all of the concerns mentioned and she thanks everyone for all the questions.

Chair Gorman stated that he lives in the neighborhood of Dusty Dog Farm, is familiar with it, and bikes past it repeatedly. He has never noticed any odor. He asked how many acres Dusty Dog Farm is, so they can understand the size and scope of Dusty Dog Farm in comparison to what she proposes for Cooper's Crossroad. Ms. Major replied that Dusty Dog Farm is 108 acres. Chair Gorman asked how much of that space is actively used for horses. Ms. Major replied about 25 acres. Chair Gorman asked if it is correct that there are 42 horses at Dusty Dog Farm. Ms. Major replied yes. Chair Gorman asked if she composts all the manure at Dusty Dog Farm. Ms. Major replied yes. Chair Gorman asked what they do in the winter. Ms. Major replied they compost it. Chair Gorman asked if it is correct that they will be using 13 acres at this new location. Ms. Major replied yes, she believes so. Chair Gorman asked if it is correct that they will have ten horses. Ms. Major replied that would be the maximum. Chair Gorman stated that a similar horse-per-acre calculation would say that Dusty Dog Farm is probably more densely used than this proposed use. Ms. Major replied yes, there is no question about that, in every way.

Mr. Gaudio asked if they have any problems limiting the programs to the weekday hours of 9:00 AM to 5:00 PM as suggested. He continued that he is not referring to maintenance or anything of that nature that would have to be done all week. Ms. Major replied that she does not have objections but it does limit what Cooper's Crossroad can do for its population.

Chair Gorman asked if Ms. Major would object to having Cooper's Crossroad able to do some weekend activities if the hours were very regulated or limited. Ms. Major replied that there would be no problem. She continued that she just wants to be able to teach courage, gratitude, forgiveness, and compassion to this population.

Chair Gorman asked if there were any further questions or comments. Hearing none, he stated that he would allow one more comment from the public.

Mr. Forrest stated his reason for bringing up conditions is that whatever the Board grants creates a unique Zoning Ordinance for a piece of property and it goes with the property. It does not stop when business A goes out of business; it is there forever. The fact that the business that is there now does not want to do anything on weekends is not a reason to not address that issue by saying "You cannot have activities on the weekends." He does not have any idea what would be on that property three, five, or twenty years from now. The issues need to be looked at from a long-term perspective, not just that of the current property owner.

Chair Gorman replied that his point is well taken, and it is correct that this Variance goes with the property indefinitely. He continued that any conditions that are added to this Variance would also follow the property. Mr. Forrest stated that his understanding is that the present or future owner would have to come back to the Board to change conditions. Chair Gorman replied that is correct.

Mr. Hogancamp stated that an existing business on that property does have weekend workshops. He continued that he does not know how or why, and it has nothing to do with this Variance, but questioned how to legislate this new situation when there is already some use on weekends.

Mr. Provost stated that this sounds like a good concept and positive for the community. He continued that as an almost-abutting neighbor he has a vested interest in what happens to the property. He commends Filtrine for taking this at face value and wanting to utilize this in the fashion in which it has been utilized for the past 100 or so years. He would like to see this happen, but if the concerns articulated, could somehow be in the Variance, he would feel better.

Chair Gorman closed the public hearing. He called a recess from approximately 8:05 to 8:10 PM, when the Board reconvened to discuss the criteria.

Mr. Hoppock stated that he would like to begin by discussing conditions, with the assumption for the sake of discussion that the five criteria are satisfied. He continued that he listened to what everyone said and has a short list of proposed conditions. They are: (1) a limitation to permit the use to the extent that it does not exceed equine educational programs and a not-for-profit nature, (2) that the access would be by way of Hurricane Rd. only, and (3) that the hours of operation for the educational programs would be Monday through Friday from 9:00 AM to 5:00 PM. That would not include property maintenance or horse care, such as veterinary or stable cleaning, etc. He asked the Board members for comments or questions.

Ms. Taylor stated that she thinks the conditions have to relate specifically to the use and not the owners, so she can go along with the condition that it be for equine educational purposes, which is the use, but the non-profit status is more related to the owners. She continued that she would like to suggest an addition to Mr. Hoppock's proposed conditions: that it be operated in accordance with the State's best management practices for operation of horse barns, agricultural facilities, and so on and so forth, which she feels is a critical piece. She has a serious concern that there is an eight-foot drop between the proposed rear pasture and the brook, plus the fact that the rear pasture is very close to the residential properties on the back corner.

Chair Gorman asked if she knows if there is a governing body for that at the State level. Ms. Taylor replied yes, the NH Department of Agriculture, Markets, and Food.

Chair Gorman opened the public hearing and asked Ms. Major if she has knowledge of State-level oversight. Ms. Major replied no.

Ms. Taylor stated that from her prior life she has some familiarity and knows this does exist. Chair Gorman replied that if there is an entity that oversees it, and if they are going to include it as a condition, they should find this information.

Mr. Rogers stated that he found that there is a manual for Best Management Practices for Agriculture in NH that is under the Department of Agriculture and does speak to manure and other issues. He asked if this is what Ms. Taylor was referring.

Mr. Gaudio stated that he agrees with the conditions put forth. He continued that he is still bothered by the purpose of the Variance to begin with, as an “outdoor recreational activity as a business.” He proposes changing that to be specific and permit “an equine-related educational activity.” Mr. Welsh stated that he concurred with Mr. Gaudio.

Ms. Taylor asked if the City’s Code Enforcement Department would address it if there were some sort of odor problem. Mr. Rogers replied that a section within the City Ordinances speaks to manure storage and location. He continued that ultimately it could rise to the level of a concern at the NH Department of Environmental Services (NHDES) if it becomes an air quality issue, which falls under their authority. There is a City Ordinance that speaks to it as a “nuisance.”

Chair Gorman asked Mr. Rogers if a horse farm would be allowed if there were no educational component. Mr. Rogers replied no, not in this district. He continued that some districts allow for non-commercial raising of farm animals, but LD-1 does not.

The Board went through the criteria.

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

Mr. Hoppock stated that he does not think the proposed use would be contrary to the public interest, because it is consistent with the use of that property historically and, given the space available, it would be appropriate there. He continued that he is persuaded to a significant degree that although the uses are not the same at the Dusty Dog Farm, Chair Gorman’s comment about the number of horses per acre is logical. There are no neighbor complaints regarding Dusty Dog Farm and no one has raised the issue of odor, pollution from animal waste, or anything else of that nature affecting that neighborhood. He is persuaded that Cooper’s Crossroad will not be harmful to neighbors. He continued that the proposed use will be consistent with the spirit of the Ordinance in terms of uses allowed, and the programs would certainly be in the interest of public education and therefore not be contrary to the public interest. He has no problem with the first criterion.

Ms. Taylor stated that she has mixed feelings, in that while the proposed use may be in the public interest, the same density of residential property does not surround Dusty Dog Farm. Thus, she

is trying to balance the public interest of the proposed use against the close proximity on “two and a half sides” to rather small residential lots.

Mr. Gaudio stated that if the Board adopts the conditions discussed earlier, he thinks that would go a long way in resolving that kind of problem or issue and thus maintain the public interest.

Mr. Welsh stated that he is looking at the Ordinance, and if “public interest” is defined by the permitted uses, there are a number of them such as horse products, historic site open to the public, non-commercial raising of farm animals that sort of “nibble around the edges” of what they are getting at here, without naming it precisely. He thinks they are close to the intent of the Ordinance.

Chair Gorman stated that he agrees. He continued that if the intent of the Ordinance is to allow a farm and they are allowing sort of a farm, albeit for educational purposes, it will still be a farm.

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

Mr. Hoppock stated that this proposed use would not change the essential character of the neighborhood. He continued that he thinks the packet of materials submitted, the pictures and explanation by the applicants, make it clear that this will have minimal impact on the essential character of the neighborhood. He does not think it will change it at all. In fact, it will fit right into that area and it seems to be an appropriate location for the proposed use. To support Mr. Gaudio’s remarks, he thinks with the discussed conditions, assuming they are implemented, any concerns he would have, would be resolved, regarding alteration of the neighborhood, which he does not see in the first place.

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

Mr. Hoppock stated that this is about a balance, of no harm to the landowner versus the gain to the public. He continued that similar to a few other recent cases the Board has heard, there is an option for a “win/win.” The loss to the applicant would be significant; they would not be able to realize the offering of these two programs, whereas the gain to the public would be hardly measurable in light of that loss. He thinks granting the Variance would do substantial justice for that reason. Again, keeping in mind that the conditions they discussed would be appropriate limitations on any harm to the public. If there were any harm and again, he does not see any the conditions would obviate that harm.

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

Mr. Hoppock stated that he has never seen evidence of reduction of property values. He continued that they do not have any direct evidence that this application, if approved, would create any diminution of property values but he thinks with common sense it can be seen that it

would not. He does not see any danger or risk that surrounding property values would be harmed, especially if the conditions discussed were implemented.

Ms. Taylor stated that without conditions, there would be a potential for reduction in value. She continued that she sees this as having a fairly high potential for degradation of the environmental aspect. Conditions could ameliorate that. Again, they do not have any direct evidence, but not following best practices and polluting the stream would impact the downstream property values.

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 because:

Mr. Gaudio stated that with the proposed conditions, he believes that the general purpose of keeping a relatively open area for the use on this property, that the purpose of keeping it in a condition as it is essentially now, is maintained. This has been a farm for many years and it will continue to have the outward appearance as it does now, so there is no substantial relationship to this provision.

Ms. Taylor stated that based on the application, the only reason given that could constitute a special condition of the property might be the size and the fact that it was changed to LD-1 from the Agricultural District. She continued that to her, that puts it in a slightly different category. One NH Supreme Court case supports that point of view. However, in that particular case, which even involved horses, the property in question that was sizably larger than other properties was 100% surrounded by residential properties. The property to the northwest is all open space. She thinks it is a close call that the size may be a special condition of the property, but she does not think the other reasons given in the application meet that criteria.

Mr. Hoppock stated that he is persuaded that the size of the property and its configuration and the proposed use within it are special conditions of the property. He continued that he does not have any problem reaching that conclusion based on what he heard.

Mr. Welsh stated that he thinks they have heard, from the Applicant and some members of the public with concerns, that it is a reasonable use, and he thinks the conditions they are considering make it more reasonable and acceptable.

Ms. Taylor replied that it is reasonable, if they approve conditions.

- 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 if they approve (A) they do not need (B). Others agreed.

Mr. Hoppock made a motion to approve ZBA 21-13, subject to the following conditions; 1) the proposed use be limited to equine-related educational activity; 2) the hours of operation for the limited educational programs shall be Monday through Friday, 9:00 AM to 5:00 PM, excepting property maintenance and equine-related care; 3) the proposed use be operated in accordance with the best management practices for equine and agricultural uses according the NH Department of Agriculture, Markets, and Food's "Best Management Practice for the Handling of Agricultural Compost, Fertilizers, and Manure;" and 4) no access to the proposed use will be made via Hastings Ave. and only access by way of Hurricane Rd. shall be permitted.

Ms. Taylor asked if there was a question of just approving the Variance or, instead of approving a Variance "to permit an outdoor recreational activity," approve the Variance to permit "equine-related education as an outdoor recreational activity" or other wording. Mr. Hoppock replied that he did not mention "outdoor," he just said "equine-related, educational activity." Ms. Taylor asked if he said that as a condition or as part of the motion. Mr. Hoppock replied as a condition of approval. Chair Gorman asked how best to word this motion.

Mr. Gaudio asked how this would appear as a Variance. He questioned if the words "outdoor, recreational activity as a business" appear in it in the motion and if does, he would object. Mr. Hoppock replied that he did not say "outdoor." Mr. Gaudio replied that he meant, not as part of the conditions, which he agrees with. He wonders if it would say somewhere, on a list of Variances granted, "to permit an outdoor, recreational activity as a business." Mr. Hoppock replied that he did not use the word "business," either. Mr. Gaudio asked if that would be out of it. Mr. Hoppock replied yes. He reiterated his motion and conditions.

Ms. Taylor seconded the motion.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

3. *Granting the Variance would do substantial justice*

Met with a vote of 5-0.

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

Met with a vote of 5-0.

5. *Unnecessary Hardship*

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

Met with a vote of 5-0.

The motion to approve ZBA 21-13 with conditions passed with a unanimous vote of 5-0.

IV) Unfinished Business – Revisions to Zoning Board of Adjustment Regulations, Section II, I – Supplemental Information

Mr. Rogers stated that Corinne Marcou, Zoning Clerk, prepared a draft for the Board to review with the current language stated at the top of the page. After reviewing the meeting minutes and the conversations the Board had at last month's meeting, Ms. Marcou incorporated some of the thoughts the Board. One concern staff had was with the ten days addition where this falls on the day that Ms. Marcou mails the packets to the Board. Mr. Rogers further noted to the Board that they would receive the packet as scheduled with supplemental information sent electronically if more information is to come in later than the tenth day, which is normally a week after the deadline. Staff certainly does stress to applicants the need to submit all information to staff in order to distribute to the Board to review within significant time.

Mr. Hoppock replied that they seem to deal with this successfully. Mr. Rogers replied that was correct. He continued that his understanding is that the intent is to allow the Board to get the information as soon as possible so for review, instead of on the day of the meeting.

Ms. Taylor stated that she agrees with Mr. Hoppock about the ten days. She continued that the whole point of having ten days is to make people aware that they need to have the materials submitted on time. Her concern with the re-draft is there has to be some consequences, and the Board ought to be able to decide whether it wants to accept late submitted material. She

suggested to reverse the wording of *“Failure to do so may result in the additional information not being considered at the public hearing”* to *“The Board may vote to accept or not accept the additional material at the public hearing.”* Ms. Taylor continued that it should be clear that the option is for the Board to decide whether it wants to move forward.

Mr. Gaudio stated that he created a draft, which he read into the minutes: *“If an applicant or an applicant’s agent submits supplemental information pertaining to an application within 10 days prior to the public hearing at which the application is to be heard, the Board shall consider, during the meeting, and decide by majority vote whether to accept the supplemental information for consideration at the meeting or to continue the application to the next scheduled meeting to allow the City staff, Board, abutters, and other parties time to review the application’s information.”*

Ms. Taylor stated that this was a lot for her to absorb without reading it herself. She continued that if someone does not submit the supplemental information in a timely fashion, then it should be up to the Board whether to accept it. Chair Gorman stated that the Board could vote to not accept it, and just have the hearing. Ms. Taylor agreed then continued that is reason for her suggestion to reiterate the need for all information to be submitted collectively. Chair Gorman suggested wording that the Board reserves the right to reject or accept any supplemental information submitted at the meeting. Mr. Gaudio suggested, *“By majority vote, the Board may 1) reject, 2) accept, or 3) postpone.”* Chair Gorman replied that the third option would be “continue.”

Ms. Taylor asked if she could suggest that Mr. Gaudio submit his language to Mr. Rogers, because it is hard to consider it in the abstract. She continued that maybe Chair Gorman and Mr. Rogers could review the suggestion for further review.

Mr. Rogers replied that he is fine with Ms. Taylor’s suggestion. He continued that he still thinks the current language is sufficient and he does not see a problem. Maybe there is a way to institute that ten-day part into the current language, because he thinks the current language allows what the Board is discussing right now. It allows the Board to make a determination of whether the materials presented after the deadline is material or not. Chair Gorman replied that they are all options that the Board has exercised in the past. Ms. Taylor agreed, but part of the problem is how can the Board distinguish instantly whether late submitted material is relevant. Mr. Rogers replied that what they are proposing would still allow that to occur. He continued that regarding the current language, they already have an application deadline and anything submitted after that deadline is supplemental information. He continued that staff does try to send it to the Board electronically to give them as much time as possible to review it. Mr. Rogers stated that the one difference with the proposed language is that this would allow the Board to reject the supplemental information, regardless of the time prior to the meeting.

Mr. Hoppock replied that it also does one more thing; it puts the applicant on notice. Mr. Rogers replied that is a good point; it reinforces that deadline. He continued that even though they

currently do have a deadline, they have tried to be flexible and allow applicants to submit supplemental information.

Chair Gorman stated that he wonders if that is what the problem is. He continued that maybe they do not actually need new language, but need to do a better job of calling their own shots on what exists. Personally, he does not have a problem with the last-minute information, typically. If there is a barrage of supplemental information at the last minute with no time to review and process, then it would be time to potentially continue the meeting.

Ms. Taylor replied that for the Board members who work, it is not always possible. She continued that it is not just for the Board, either. She thinks it is helpful for the applicants to know that a deadline is real.

Mr. Welsh asked what the deadline is right now. Ms. Marcou replied that typically it is the 20th of the month, which is about 15 days before the meeting. She continued that when she sets the schedule in December for the next year, she starts from the January date of the meeting and works her way back. As Mr. Rogers stated, the week that the packet is mailed is typically the Friday after the deadline. From there, there is a week for the Board members to review everything, and then there is the meeting. It is a short deadline.

Mr. Welsh stated that it sounds like the deadline is about 14 days prior to the meeting. He continued that if they were to switch the language to 11 days instead of 10, it would eliminate the possibility that something came in on the 10th day/the Friday, after the packets had been mailed. This would eliminate Ms. Marcou emailing the Board members with emails for items that are actually within deadline. As opposed to something coming in one day later and her chasing them with emails for something that is not consistent with the deadline. What he thinks would be nice is to design the deadline such that anytime the Board members are being sent an email, it means that the information is late, and it will be subject to the consideration in Part B. He would suggest 11 or 12 days as the deadline.

Chair Gorman asked if that would be possible and questioned if that is before the deadline for submittal. Mr. Rogers replied that as Ms. Marcou said, traditionally the deadline is the third Friday of the month, then seven days later on the following Friday the packets are mailed to the Board. The time from the packets are mailed to the meeting is different, depending on, for example, if the first Monday of the month is a holiday, which would push the meeting to Tuesday. He suggests that if they want to enforce the deadline more strictly than they currently have, the Board would have to take a different process at the beginning of a meeting. Any information, regardless of whether Ms. Marcou received it and sent it to the Board members electronically a couple days or a week before the meeting, would be subject to a vote on whether to accept that supplemental information or not.

Ms. Taylor stated that the reason she originally suggested an out-of-phase timing, after the deadline for the application but before the packets went out, was simply because she knows that

they get applications in and staff says, for example, “Oops, you’re missing a map” and “You need to get such-and-such in as well,” so it allows the applicant to submit what he or she forgot the first time around. She suggests that they take these issues on a case-by-case basis. It would be unfair, and a problem, if at the beginning of the meetings the Board said, “Oh, we’re going to accept or reject all of the supplemental information.” They have to do it per application.

Mr. Rogers replied that that is what he is saying. Each piece could be voted on. If any supplemental information were late, the Board would need to have some sort of vote on whether to accept it, or not, and to decide whether they will continue the meeting. It adds quite a bit of changes, possibly, to the process the Board would have to go through at the start of an application.

Mr. Gaudio stated that they are talking about what the submission date is. He asked for confirmation that this is the third Friday of the month. Mr. Rogers replied that it falls into that timeframe, about the 20th of the month. Mr. Gaudio asked about February, when the timing creates a problem since ten days after Feb. 20 might fall after the date of the March meeting. Ms. Taylor replied that there is a February problem every year, regardless. Mr. Hoppock replied that even if they create that problem for themselves, they allow themselves the chance to fix it, and either continue the hearing or accept the information. He continued that if the supplemental information were not voluminous, like four pages, he would vote to accept it.

Mr. Gaudio suggested making the submission date the 15th of the month. Then, the ten days will not be a problem. Chair Gorman replied that he does not know if that is possible. He asked if it is correct that it is mandated by the State. Mr. Rogers replied that after receiving an application there is a certain amount of time they need to have a public hearing in, and there is a certain amount of days for abutter notification, and such. He continued that they are kind of up against that now, and Mr. Gaudio’s suggestion might help them there but hurt them on the other end, regarding getting the packets ready, because the meeting minutes would have to be read and taken care of. Chair Gorman replied that that would only give approximately 12 days. Mr. Gaudio replied that the 15th would be the submission date, not the date staff needs to mail the packet to the Board. They could mail the packets on the 20th or 21st. Mr. Rogers replied that he cautions them against changing the current application deadlines, because those have been instituted for decades.

Mr. Gaudio asked if other deadlines for other communities are similarly structured. Mr. Rogers replied that the Board has probably one of the shortest turnaround periods, and a lot of that is based off the notification per the RSA. The Board has a quick turnaround compared to the Planning Board, because they have to do quite a bit more, in terms of staff reports and such.

Ms. Taylor stated that she has worked with many zoning boards. She continued that she thinks the 10 days “fair warning,” as she would call it for want of a better description, is something that many communities do use, and many applicants are familiar with it from their work in other municipalities. Thus, it is not anything new or unusual. Again, she thinks it is important to have

something specific for an applicant to be aware of, with the ten days, as opposed to the “really, truly, exceptionally general” language that currently exists.

Mr. Hoppock replied that it gives them options, and puts the applicant on notice regarding what the Board’s options are. They will either take it, or push it back a month so they can review what the applicant gave them. That is the message he wants the Board to send the applicants. He thinks they have been doing fine whenever information comes in late, which does not happen often, but happens enough so that they want a way to deal with it. When late information comes in, staff gets it out, and has to send five extra emails. He hopes Board members’ spam folders do not catch those emails so they get lost, but other than that, he thinks it is working out okay. Ten days is a fair, round number.

Mr. Gaudio replied that the ten days is from the 20th of the month to the 30th and whatever couple extra days there are before the first Monday. What would be wrong with taking a third week? Nothing would be accepted after the application deadline, whatever that is, and then the Board could accept it, reject it, or postpone it. They would not have to put “ten days” in there; they could just use the application deadline.

Ms. Taylor asked, what does that do for staff when they get an application in on the day of the deadline and say to the applicant, “We need this additional map” or something else because the application is incomplete? Mr. Rogers replied that he thinks it is different if, upon review of an application, staff feels that it is missing something and staff asks for something else. The bigger concern is when the applicant him/herself throws something in at the last minute, like the traffic study. That hearing was delayed due to technical difficulties at the scheduled meeting, which meant the applicant had a little more time and came up with an additional report that they presented to the Board at the last minute. If staff is asking for information, they will ask for it quickly and get it into the packet that goes out to the Board. However, as Ms. Taylor said, sometimes it is a case-by-case situation, so having that flexibility is important, too.

Chair Gorman stated that he wants to avoid creating something that means they have to vote on this at every meeting, but it sounds like this would be the case. Ms. Taylor replied that with other zoning boards she is familiar with, this issue does not arise that often, but when it does, the board members vote on it. Mr. Hoppock replied that he does not think they necessarily need to vote on it at the beginning of the meeting. He continued that if the applicant has a traffic study, for example, that is 59 pages long, and they give it to the Board two days before the meeting, he is not going to read that and will let that be known. The applicant could also argue the point during the presentation and say, “Well, that traffic study includes X, Y, and Z,” and the Board will hear it that way. The Board could not stop that from happening. The applicant could give the conclusions from the report during the oral presentation, and they could give it the weight it deserves. If the applicant wants the Board to consider a report then they would agree to a continuance.

Mr. Hoppock stated that to move this along for tonight's purposes, he would like Mr. Gaudio to circulate his draft, which he thinks does track more precisely what B says. The Board should look at that, and then bring this to a head at the next meeting.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to decide this at the next meeting. Chair Gorman seconded the motion.

Mr. Rogers stated that on September 1 the new Land Development Code starts. He continued that there are some changes. One of the significant changes is regarding the Change of a Non-conforming Use to another Non-conforming Use. After reviewing the RSAs, staff felt that application process was not appropriate. He knows the Board has struggled with this in the past, and rightfully so. If that type of change of use were to come before the Board, it would come to the Board as a Variance, not as a Change of Non-conforming Use.

Ms. Taylor stated that when staff updated the Board on the Code changes, they promised copies of and training on the new Code. She asked if that would happen. Mr. Rogers replied yes, the books will be assembled and distributed with training. Currently, when someone comes in with questions, Staff reviews both the current and newly approved codes. If an application was to be submitted prior to September 1st they will go by the previous codes. Staff has noted a few errors and conflicting language in the new book, which Tara Kessler will bring forward to the Joint Planning Board/Planning, Licenses, and Development Committee in September. Once staff has a better handle those changes, they will incorporate the changes into the books and get copies to the Board.

Ms. Taylor stated that she hopes Staff will also help the Board work through those books. Mr. Rogers replied yes.

Ms. Taylor asked if they have applications for the September 6 meeting, would those be submitted before September 1 and thus still be using the previous Code. Mr. Rogers replied probably, yes. Ms. Taylor replied that they then do not need to worry about the new Code until October. Mr. Rogers replied yes. He continued that if the September agenda is light they could probably start some training during that meeting. It will take everyone some time to learn the new Code, with its different formatting, though it is easier to use

There being no further business, Chair Gorman adjourned the meeting at 9:04 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk