

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, September 7, 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 and explained the procedures of the meeting. Roll call was conducted.

II) Minutes of the Previous Meeting – August 2, 2021

Ms. Taylor made a motion to approve the meeting minutes of August 2, 2021. Mr. Hoppock seconded the motion, which passed by unanimous vote.

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

Mr. Rogers stated that based on the last meeting's discussion and the wording Mr. Gaudio sent to staff; staff recommends the Board adopt the change to the Rules of Procedure using the language they have before them in the agenda packet.

Ms. Taylor stated that when she brought up the topic originally, she wanted a time limit for submission and consequences for not submitting within the time limit. She continued that she thinks this does both. Regarding "within 10 days," the use of the word "within" is not precise enough for her, but she can live with it so they can get going with this.

Chair Gorman asked if she had a different word. Ms. Taylor replied something like "not less than 10 days," but if everyone else agrees with this language, she will go along.

Chair Gorman asked if anyone else had feedback. Hearing none, he made the following motion, which was seconded by Mr. Hoppock.

By a vote of 5-0, the Zoning Board of Adjustment approves the new language:

“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 will 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 until the next scheduled meeting to allow adequate time to review the supplemental information.”

IV) Hearings

A) ZBA 21-14: Petitioner, Ells Electric, LLC, of Spofford, NH, owned by James L. and Beverly A. Ells of Spofford, NH, requests a Variance for property located at 90-92 Victoria St., Tax Map #589-022- 000-000-000 that is in the Business Growth and Re-Use District. The Petitioner requests a Variance to permit a single-family resident where it is not a permitted use per Section 102-771 of the Zoning Ordinance.

B) ZBA 21-19: Petitioner, Ells Electric, LLC, of Spofford, NH, owned by James L. and Beverly A. Ells of Spofford, NH, requests a Variance for property located at 90-92 Victoria St., Tax Map #589-022- 000-000-000 that is in the Business Growth and Re-Use District. The Petitioner requests a Variance to permit a 19 foot frontage where 50 feet is required per Section 102-821 of the Zoning Ordinance.

Chair Gorman stated that he suggests the Board hear the facts on both applications from the applicant and then they can deliberate on each separately.

Chair Gorman asked to hear from City staff regarding ZBA 21-14. Mr. Rogers stated that this piece of property is currently in the Business Growth and Re-Use District (BGR). He continued that a nonconforming mixed use is occurring on the lot that is at the very end of Victoria St. The first building on the lot is a warehouse and office space, which Ells Electric uses, and the building further in the back is a single-family home. These uses have been occurring on the property for as long as the City’s records indicate. The Applicant wants to sub-divide the lot and is applying to the Board for two reasons. First, the single-family home is not an allowed use in the BGR District, so by separating this, it will become the primary use on its own lot, hence the first Variance. Second, even though the BGR District does not have a frontage requirement, the current City Code requires a residential use to have a 50-foot frontage, hence the second application before the Board for this property. The Chair has asked to hear both of these at the same time because they go hand in hand.

Ms. Taylor asked if both applications are approved, and are subdivided, would both lots and the current structures all conform to the Zoning requirements. Mr. Rogers replied not necessarily, because there are some already-existing nonconformities. There are obviously some setback

issues with the single-family home. The only concern with the subdivision, is the 50-foot frontage. The rest would either be conforming or be an existing nonconformity.

Ms. Taylor replied that per her calculations, there would be two conforming lots, regarding the sizes. Mr. Rogers replied that is correct. He continued that the other lot dimensional requirements for size would be met.

Ms. Taylor stated that she is not sure this is a question for Mr. Rogers or the Applicant, but regarding the materials submitted, even though Google calls it "Victoria St. Extension," it does not appear to be a public road to the front of the warehouse and the single-family home. The proposed driveway, the 19-foot wide area, provides frontage but does not provide a driveway, because of the wetlands. She asked if that creates an access problem under any of the Zoning Codes.

Mr. Rogers replied that he does not see it raising an issue, but if the Board approves the application, they might condition some sort of easement. He continued that currently, since this is all one lot, it is a common driveway for the two uses. He stated that with the subdivision, the driveway will mostly be on one property, with the second lot in need of an easement, if the lots change ownership.

Mr. Welsh asked for clarification as to where the 19-foot and 38-foot frontages are. Mr. Rogers replied that the end of Victoria St. runs into the property. He continued that the property line would be more evident for the Board when the Applicant does their presentation.

Mr. Gaudio asked for clarification as to the lower section of the lot, and if that would be subdivided with the house. Mr. Rogers replied that he believes the Applicant submitted the subdivision plans showing the new, proposed property lines for the Board to consider and could clarify more during their presentation.

Chair Gorman asked if anyone had more questions for Mr. Rogers. Hearing none, he asked to hear from the Applicant.

John Noonan of 35 Church St., Fitzwilliam, NH, stated that he is here from Fieldstone Land Consultants on behalf of Ells Electric. He continued that Ells Electric is looking to do a boundary line adjustment, not so much a subdivision, of the two lots they currently own. Lot #23 is currently half an acre in size and has no road frontage, making a nonconforming landlocked lot. Ells Electric would do a boundary line adjustment, separating the residential use from the commercial use, proposing 1.3 acres for the residential lot, #589-023. Access to that residential lot would continue on the existing driveway, which crosses the front of the commercial Ells Electric building. He continued that an easement for future use can be created in case it was not the same owner. The commercial lot would share the frontage that currently exists, which is only 39 feet. The plan would roughly split that frontage in half with 19 feet to the residential lot and 20 feet to the commercial lot. However, the long piece along the western side of the lot that goes

across the wetlands would not be used. They would use the current, existing, shared driveway. It would end up being proposed as 0.7 acres for lot #589-022.

Mr. Noonan stated that he will address the Variance criteria.

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

Mr. Noonan stated that granting the Variance would not change the uses of the two existing buildings, but would allow the uses to exist on separate properties. He continued that the granting of this Variance would also eliminate an existing, nonconforming lot with no road frontage and allow for the productive use of both properties. This proposal will not require any site work or major site improvements, as all infrastructure already exists. There is no proposed change to the business, the impervious services, or the existing house. Existing vegetation will remain, providing the same visual appearance of the neighborhood. Granting this Variance will not be contrary to the public interest, as this project will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

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

Mr. Noonan stated that the intent of this section is to create an additional downtown zoning district to enhance the economic vitality of the area by redeveloping new technology companies as well as clean manufacturing, processing, assembling, and wholesale businesses within a walkable, human-scaled place. This proposal for the site will continue to provide the neighborhood with a business with economic vitality. The proposed lot with residential use will be out of the main area of the additional area adjacent to Marlboro St. The lots will meet all the dimensional standards and will be in harmony with the neighborhood. This proposal will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

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

Mr. Noonan stated that granting the Variance would allow the landowner to reasonably utilize lot #589-023, which currently has no frontage on a public road and lies vacant, and would allow the separation of the commercial and residential areas. Granting this Variance would do substantial justice by utilizing the undeveloped land for the residential use. The location of the existing lot with no frontage and proposed residential lot is currently not viable for additional commercial or industrial use. They are also out of the main downtown area near the highest traffic volumes. This makes the location best suited for a residential dwelling, particularly for owners of businesses nearby. In other words, a denial of this Variance request would be an injustice to his client, as there would be no apparent gain to the public for denying the application.

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

Mr. Noonan stated that the proposed lot line revision does not include any additional structures to be built or impact to the streetscape. There will be no clearing of trees. For all these reasons,

they do not believe that the proposed lot line adjustment, separation of the uses, would have any negative impacts on the value of the surrounding properties.

5. *Unnecessary Hardship*

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

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

Mr. Noonan stated that this application proposes to address special conditions of the two properties that distinguish it from other properties in the area. He continued that one property currently exists with a commercial and residential use, which hinders the growth of the commercial business, as financing and insuring properties with the mixed-use is more difficult. The other property is a landlocked, isolated property, which will be made conforming as part of this proposal. The general public purpose of the Ordinance intends to create conditions suitable to co-exist to adjacent residential neighborhoods as well as to provide location-sensitive transitions between neighborhoods and uses along Marlboro St. The proposed lot line adjustment is on the outskirts of the BGR District and will provide a transition toward the residential neighborhoods nearby. Lot #589-023 is unique in that it has no frontage on the public road. The lot line adjustment will provide frontage to the lot and it will become a residential lot. This proposal does not introduce any new uses to the neighborhood; it simply proposes to rework the lot lines to allow for separation of the uses. Separation of the uses will allow the commercial property to be improved and will simplify the financing and insurance requirements. Improvements to these properties will improve the neighborhood and tax base for the City. For these reasons, he and his client do not believe that a fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property.

and

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

Mr. Noonan stated that he and his client believe that the proposed use is a reasonable one, for all the reasons previously stated, and as outlined below. He continued that granting this Variance would allow for productive use of the existing properties. The existing properties' improvements already exist, so there would be no changes to the neighborhood. Separating the uses onto two properties would be in harmony with the neighborhood and surrounding areas, as the neighborhood consists of a mixture of uses. The residential use would not be contrary to the public interest, as this project would not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. This proposal would, in their opinion, observe the spirit of the Ordinance and its intent. This project would have no measurable negative impacts on the surroundings or subject property values. The separation of the uses would allow an existing business to obtain financing and to make improvements to the commercial building.

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. Noonan stated that the lot is approximately half an acre and has no frontage on a public road and lot #589-022 is 1.5 acres with a mixed-use of commercial and residential. Lot #589-023 could not be reasonably accessed from Victoria St., since there is wetlands per the Keene GIS. It has no frontage. In order to make a reasonable use the property lot line adjustment is proposed to include the residential dwelling from lot #589-022 as part of this lot. In addition to the frontage on Victoria St., lot #589-023 will be accessible along the front of lot #589-022. These are special conditions that distinguish it from other properties in the area. Due to these conditions, they believe the property is reasonably suited to the proposed use and is an existing use. They are thereby requesting a Variance from Section 102-771.1 to enable residential use on a subject property.

Mr. Rogers asked if the Board agrees to hear Mr. Noonan's narratives on both applications. The Board agreed. Chair Gorman asked if Mr. Noonan could point out any narrative that changed in Mr. Noonan's second application, though they seem both very similar. Mr. Noonan replied that most of it is the same as the other application.

Chair Gorman asked if there are any specific points that Mr. Noonan would make relative to the second application. He continued that Mr. Noonan said they want split the frontage. Mr. Noonan replied yes, they split the frontage as close as they could to half. He continued that the commercial use does not require frontage; however, they figured that having that frontage and splitting it in half, the current frontage that is there for the lot does not meet the 50-foot for residential anyway.

Mr. Gaudio stated that regarding the portion of the lot that is just a strip, to the west of #22, it appears that #23 comes up around it. He asked if that is correct. Mr. Noonan replied yes, the rectangular area is the commercial lot, and that small strip that Mr. Gaudio mentioned would be straight down Victoria St. He continued that that has wetlands going across it so there will not be any use across that. That is to provide the frontage to the residential lot. On the other side is the small piece of frontage to the commercial lot.

Mr. Gaudio asked if that is the 19-foot frontage, not the driveway. Mr. Noonan replied no, the half of the driveway would be the 20 feet to the commercial lot, and then an easement would need to be granted for the residential lot to cross the commercial lot. Mr. Noonan replied that the start of the driveway at Victoria St. is split on the frontage between the two lots, 19 feet and 20 feet.

Mr. Gaudio asked, if the driveway were split, wouldn't the end of the driveway also be part of the frontage. Mr. Noonan replied that the frontage is 19 feet to the residential lot, with the 20 feet of frontage at the end. The easement would end up being across the commercial lot, for the residential lot.

Mr. Hoppock asked Mr. Noonan to show the driveway on the diagram. Mr. Noonan did so and stated that the current driveway to the residential lot will remain there; the easement will be across where the driveway crosses in front of the parking lot in front of Ells Electric.

Mr. Gaudio stated that the part of #23 that is below the wetlands is inaccessible because of the wetlands. He continued that it couldn't be developed or used. Mr. Noonan replied that is correct. He continued that the back lot, which is nonconforming, landlocked with no frontage, becomes a portion of the residential lot. There is no proposed development and the house gets a larger lot.

Ms. Taylor stated that the southeast portion of the property, has an indentation/notch. She asked if that was part of the original lot or where that belongs in relation to the application. Mr. Noonan replied that it is not part of either of these subdivided parcels. Ms. Taylor asked if it belongs to a completely different parcel. Mr. Noonan replied yes.

Ms. Taylor stated that the wetlands are obvious on this map. She asked if the blue indicates floodplain. Mr. Noonan replied yes.

Ms. Taylor stated a question for Mr. Rogers – she is not as familiar with the Planning rules and regulations for lot line adjustments and asked if this would be a minor subdivision. Mr. Rogers replied for clarity, there are three lots currently and what the Applicant is proposing would create two lots. He continued that as the Applicant stated, it would be more of a boundary line adjustment, which would still need to go to the Planning Board, but it is a very basic application.

Mr. Welsh stated that the answer has been alluded to in the narrative in the materials provided, but his question is “Why?”, why go to the effort of making these changes. The narrative suggests that separating the uses can allow the commercial property to be improved, which would simplify the financing and insurance requirements. He asked if Mr. Noonan could elucidate.

Mr. Noonan replied that in looking to do improvements to the Ells Electric building, they have found it more difficult and more expensive to get insurance because of the mixed use of residential with the commercial. It is more cost prohibitive to get a loan for upgrades with the mixed use. Separating the use makes it cleaner and more affordable.

Mr. Hoppock asked Mr. Rogers if there is a statutory requirement that dictates that markers or identifiers on the ground in the property description have to be obliterated or lost and the lot line adjustment would have to clarify that. Mr. Rogers replied that he is not aware of anything like that.

Chair Gorman asked if there were any further questions. Hearing none, he asked for public comment and explained the procedures for participation. Hearing no public comment, he closed the public hearing.

Chair Gorman asked the Board to deliberate. He stated that they could deliberate on both applications together but need to vote on each separately.

Ms. Taylor replied that her concern is that if both applications are approved, there will be the residential lot with no access if the residential lot is sold. If the Board moves forward with a motion to approve, she would recommend a condition requiring an easement across the driveway that extends from Victoria St. to the residential property, to ensure access. Chair Gorman replied in agreement.

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

Mr. Welsh stated that he thinks the Applicant has made a good argument that the public would not really even notice the difference, and this is a reasonable request from the Applicant.

Mr. Gaudio stated that he looked through the section of the Ordinance to try to figure out why a single-family home was not included, to see if it was intended to be eliminated, and he does not think it was. He continued that he thinks they simply just did not put it in. The permitted uses lists a “home occupation” which would need a home. He continued that multiple dwellings are also a permitted use. Thus, he thinks this fits in with the general purpose of the Ordinance.

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

Mr. Gaudio stated that his comments regarding the first criterion are applicable to this as well.

Mr. Hoppock stated that he agrees that the proposal does not change or affect the essential character of the neighborhood or threaten public health, safety, or welfare. He continued that he agrees that the second criterion are met.

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

Mr. Hoppock stated that the injustice to the owner is the problem they heard about, the difficulties with property insurance and financing. He continued that would be an injustice without any corresponding gain to the public; thus, he thinks it is an injustice to deny this Variance.

Chair Gorman stated in agreement. He continued that he thinks this application may clean things up a bit for the property, given that the situation already exists. This just makes it more of what it already is.

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

Chair Gorman stated that Mr. Noonan made a good case for the fact that exterior aesthetics are not really changing.

Ms. Taylor stated that even though they do not have any direct evidence on this, it might actually increase the values of the surrounding property by having these distinguished as separate uses. Chair Gorman replied in agreement.

5. *Unnecessary Hardship*

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

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

Mr. Gaudio stated that there are unique special conditions of the property; it is a house behind a commercial building, without a street going in front of it. He continued that going back to the previous point that he made, no fair and substantial relationship exists between the general purpose of the Ordinance, “home occupation” and “home office,” are permitted uses, so there is no necessary reason to be strict on the application of it.

and

ii. The proposed use is a reasonable one.

Mr. Gaudio stated that the use has been there and it seems reasonable to continue it.

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.*

Chair Gorman stated that they do not need to cover (B), given that they have agreed that the criteria in subparagraph (A) are established. He asked for a motion.

Ms. Taylor stated that she would like to add a condition, regarding access, to motions for both applications, so it is clear that they run in parallel.

Ms. Taylor made a motion to approve ZBA 21-14, 90-92 Victoria St., for Ells Electric, LLC of Spofford, NH, for a Variance for property at 90-92 Victoria St., Tax Map #589-022- 000-000-000 that is in the Business Growth and Re-Use District to permit a single-family residence where it is not a permitted use per Section 102-771 of the Zoning Ordinance, with the condition that should the properties change hands, there be an easement along the northern boundary of the

properties to ensure that there is access to what is proposed to be #589-023. Mr. Hoppock seconded the motion.

Ms. Taylor stated that she conditioned it on if and when the properties change hands for the basic reason that legally you cannot give an easement to yourself, and both properties are currently owned by the same party.

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 21-14 with the condition passed by a unanimous vote of 5-0.

Ms. Taylor made a motion to approve ZBA 21-19 for property at 90-92 Victoria St., petitioned by Ells Electric, LLC, for a Variance for property Tax Map #589-022-000-000-000 that is in the Business Growth and Re-Use District to permit 19-foot frontage where 50 feet is required per Section 102-821 of the Zoning Ordinance, with a condition that should the property ever be transferred subsequent to the subdivision that there be an easement to ensure access to what will be parcel #589-023. Mr. Hoppock seconded the motion.

Mr. Hoppock asked if Ms. Taylor wants the correction, “subsequent to the lot line adjustment” instead of “subdivision.” Ms. Taylor replied that she thinks a lot line adjustment is a subdivision.

Mr. Hoppock replied that he is fine with it either way. Ms. Taylor replied that she is fine with it saying “subdivision” or “lot line adjustment.”

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 21-19 with the condition passed with a unanimous vote of 5-0.

A) ZBA 21-15: Petitioner, Amerco Real Estate Company, of 2727 North Central Ave, Phoenix, AZ, requests a Variance for property located at 0 Krif Rd. and 472 Winchester St., Tax Map #115-019- 000-000-000 and 115-020-000-000-000 that is in the Commerce Limited District. The Petitioner requests a Variance to permit the construction of a roof to provide cover to vehicles, encroaching the building setback per Section 102-791 of the Zoning Ordinance.

Chair Gorman asked to hear from City staff. Mr. Rogers stated that this property is on the corner of Winchester St. and Krif Rd. He continued that it was previously the Clark Distributors building. There is a proposal for U-Haul to utilize this space and part of that proposal is to create a roof area for when vehicles, U-Hauls and tractor-trailer trucks and more, return to the property, so employees can have an area in which to clean the vehicles to get them ready to be back on the rental line. The area they are proposing is within the side setback on Krif Rd. The Applicant will

have elevations to show the Board where they are proposing this. There is a 20-foot requirement for the side setback in this district, Commerce Limited.

Ms. Taylor asked with the 20-foot side setback, if they are encroaching by 16 feet, which means they are going to be within 4 feet of the lot line. She asked if that is correct. Mr. Rogers replied in the affirmative.

Ms. Taylor asked if Mr. Rogers knows if there are plans to change the curb cuts, driveway entrances or exits. Mr. Rogers replied that the Applicant would have to speak to that. Ms. Taylor replied that her only reason for asking is that if this application is approved, and there is a curb, whether or not there are sightline issues.

Chair Gorman asked if there were any further questions. Hearing none, he asked to hear from the applicant.

John Noonan of Fieldstone Land Consultants stated that he is here on behalf of Amerco Real Estate Company to seek a Variance from Section 102-791 for building a proposed marquee-type roof that would encroach on the building setback. He continued that it would encroach 16 feet, and it is correct that it would be 4 feet from the property line along Krif Rd. and there will be no change to any curb cuts. They submitted the overall concept/site plan of what would go before the Planning Board. They will build some other parking lots, and storage to the south side. Highlighted on the drawing is the 20'x40' marquee-style roof. Initially, the Applicant wanted an awning or canopy style, and a canopy or awning is allowed to be within the setback. However, with the snow load and the size 20' off of the building wall, it will have to be a supported, structural roof. There is existing pavement under this location, so they are utilizing the existing driveway. Trucks would be returned here, and this location also is where they would be doing installations on customers' vehicles, such as towing bars or hitches. Customers would be able to drop off their vehicles and not have to go out in inclement weather. Also, when customers come to drop off a rented vehicle, the employees can go out and clean it to get it ready for the next person or to be put back in the display area. This Variance is for encroaching on that setback along Krif Rd.

Mr. Gaudio asked if the north side would have a wall or just a couple of posts. Mr. Noonan replied just posts; there will not be a wall or enclosure.

Ms. Taylor asked about "work" or "installations" done underneath the canopy, if it is only within four feet of the lot line and there is nothing there. Mr. Noonan replied that the installations would be done inside of the existing building. He continued that they would then drive it around for the customer to pick it up.

Ms. Taylor replied that her concern, based on the safety issues, is that between the north side of where the end of the covered area would be and the street there is not much room. She continued that if someone gets out of a vehicle and opens the door and steps out, they are right in the road.

Mr. Noonan replied that they are four feet from the edge of the property line, not the edge of the pavement. Ms. Taylor replied that there is not a sidewalk there. Mr. Noonan replied no. Ms. Taylor replied that then they are basically on the road.

Mr. Rogers stated that he believes there is a grass median between the edge of their current pavement and the road pavement. Ms. Taylor asked if the edge of the pavement is the lot line. Mr. Rogers replied no. Ms. Taylor asked if the grass area is within their lot. Mr. Rogers replied that he believes some of the grass area may be within their lot, but some of it is in the right-of-way.

Mr. Noonan replied that there is a small portion within the property. He continued that the edge of the pavement on their property, the subject parcel, is very close to the lot line. The grass strip is mostly in the right-of-way.

Chair Gorman asked approximately how wide the grass strip is. Mr. Noonan replied approximately 10 feet wide.

Mr. Hoppock asked what the distance is from the end of the roof to the where the edge of the pavement on Krif Rd. begins. Mr. Noonan replied that they are four feet from the property line, from the edge of the roof to the property line there is probably about eight feet, so it is about 12 feet or so. Mr. Hoppock asked if he means the road edge. Mr. Noonan replied yes.

Mr. Hoppock stated that Mr. Gaudio asked about the posts supporting the roof. He continued that there would not be any sight issues if they were to use the access on the far right-hand side of the lot, the northeast side. They would not have any sight issues with those posts or the roof, if someone was trying to make a left-hand turn. He asked if that is correct. Mr. Noonan replied that it would be far enough back. He continued that for a sight distance it is typically 10 feet from the intersection. That roof and the posts supporting the roof would be further back than 10 feet.

Mr. Noonan went through the Variance criteria.

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

Mr. Noonan stated that if the Variance were granted it would not be contrary to the public interest, as it is a feature of the building that will provide cover for customers picking up vehicles from the business. He continued that the roof will not hinder public access by blocking travel ways or sidewalks. The roof will be constructed within the subject property and only encroach the building setback line by 16 feet. The roof will fit in with the surrounding commercial and industrial businesses and not be viewed as a hindrance to the public. The general public health, safety, or welfare will not be impacted by the structure.

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

Mr. Noonan stated that this roof structure would be a permanent, 20'x40', supported roof attached to an existing building, considered a covered parking space. If the Variance were

granted, the spirit and intent of the Ordinance would be observed, as the roof is not a building and will enhance the safety and convenient access to the site. The design of the structure will match surrounding commercial buildings and improve the aesthetics of the existing building, in observation of the spirit of the Ordinance.

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

Mr. Noonan stated that it will allow the business owner to provide customers a covered area to pick up or drop off vehicles. He continued that in the northeast, this, the ability to remain out of the inclement weather is a nice customer benefit, and it will attract more customers to the business. The public will not lose anything as a result of the Variance being granted. In fact, the public will gain and have an economically viable business in this existing building, and the roof will provide increased safety for those utilizing the site.

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

Mr. Noonan stated that the construction of the roof will be fitting in design with the existing building and aesthetically pleasing. The covered parking space will not diminish the value of the surrounding properties and will add a point of interest to the existing building. The proposed use in the section of the building will bring a thriving business to the surrounding commercial and industrial area, and potentially increase values to the surrounding properties. The site will be used by an economically viable business, as it was in the past, and ensure a future tax base that will benefit the City and surrounding properties.

5. *Unnecessary Hardship*

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

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

Mr. Noonan stated that the proposal to construct a roof on the existing building wall will be an attractive feature to customers of U-Haul. He continued that this feature will help to increase and maintain customers to the business, and if denied, could hinder business potential. The proposed use is compatible with the surrounding businesses, such as car dealerships, and the roof is consistent with the intended commercial use by the Zoning regulations. The applicant has a special condition in redevelopment of the site, which will use the existing buildings, paved travel aisles, and parking lots. This feature will enhance the safety of those using it and will be perceived as an enhancement to the building by the public.

and

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

Mr. Noonan stated that there are special conditions on the property that limit the ability to comply with all Zoning setbacks. In order to utilize the existing buildings, paved travel ways, and install a marquee roof, the setback cannot be met. Canopies and awnings are excluded from building setbacks; however, this marquee will be part of the building structure. Although this is a roof for vehicles, it provides the same use as a canopy or awning. The roof will lie within the subject property and will not impact City or abutters' properties. Based on the Commerce Limited zoning, and location of the property, they believe this to be a reasonable proposal that is consistent with the Zoning intent. It is in the interest of the public that commercial sites are able to be redeveloped and secure a future tax base.

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. Noonan stated that if a Variance is not established, there is not enough space between the existing building wall and setback line to construct a roof for a covered parking area. Utilizing existing buildings does not provide the flexibility to relocate it to meet the setbacks. This is a special condition of the property. The intent of the roof was to provide customers a driveway to pick up vehicles from the business and it will be an attraction to the business. It will also help the showroom stand out from the other sections of the building, visually directing customers on where to enter the business. If the roof overhang is not installed there is potential to not attract or retain as many customers. This would be an unnecessary hardship on the operations of the business. The feature will provide many benefits to the business owner and their customers, without having any negative or detrimental impact on the public or the surrounding properties.

Mr. Welsh stated that he is struggling with whether the question he is about to ask is within the purview of this Board or the Planning Board, but he knows that features like aesthetics, such as the marquee design that Mr. Noonan mentioned, are typically items the Planning Board would look at as part of their site plan. He continued that he wonders if the elevations that go along with the drawings are under production, or if the Planning Board is slated to consider those things. Mr. Noonan replied that they have not designed any architectural elevations on this. He continued that he knows they are working on all the architectural elevations for the entire proposal to go to the Planning Board.

Mr. Welsh stated that a concern he is hearing from this Board is that one small design feature along those lines, which is that it not be a wall that supports the overhang, but that it be posts or columns, to allow more visibility around the structure. He continued that he does not know if he would make a condition of his approval, but that is something he is interested in seeing. Mr. Noonan replied that he could bring that back to the Applicant and have them bring that up with the architect and see if there is a way to have it supported from above and not have posts.

However, 20' is a fairly large structure to not have posts. Mr. Welsh replied that if posts make is safer, that is better than walls.

Ms. Taylor stated that she is having a hard time reading the diagram. She asked Mr. Noonan to walk them through it. She continued that she understands where they want to put the canopy, and can see "climate control and display parking," but she cannot tell what is where with the rest of it. She recalls that the portion shaded in charcoal was loading docks when this was Clark Distributers.

Mr. Noonan showed the portion of the parking lot that remains parking lot, and stated that it would be restriped. He continued that the entry points will remain the same, and pointed them out on the diagram, along Winchester St. and Krif Rd. He continued that that the existing Clark Distributers building becomes a climate-controlled building with storage units. Another existing building is proposed where they do installation of hitches and where customers would go in to rent a U-Haul vehicle. The canopy is proposed to be off that building. Another building is proposed for storage, the larger U-Haul-type boxes that would be rented out. A loading dock would be off the side of that building. The gray area in the back that Ms. Taylor mentioned has a parking lot along the Winchester St. frontage. That would be for display of vehicles. The U-Haul box trucks would be along that frontage. That would not be any customer or employee parking. In the back, the area would be used for parking, to meet the parking requirements, and if anyone was trying to access toward the south, that is where all the storage units are. They are typical self-storage units, not climate-controlled.

Ms. Taylor replied that the loading docks, in other words, are going away. Mr. Noonan replied that the loading docks on the Krif Rd. side of the building remain. He continued that that parking is not changing; they will restripe it. The loading docks will stay. Ms. Taylor asked if they would still be backing in big trucks the way that Clarks Distributers used to. Mr. Noonan replied no. He continued that the trucks they are proposing are larger trucks, tractor-trailer WE50 or 65 size, and would be coming to the proposed dock, going down around the storage units, looping back to back up to the docks.

Mr. Gaudio asked if the green-striped area is a proposed building or parking lot. Mr. Noonan replied proposed building.

Mr. Gaudio stated that Mr. Noonan said it would be "impossible" to put the area that they are suggesting for the overhang anywhere else. He asked to him explain why that is, and why it could not go at the end of the addition on the right side.

Mr. Noonan replied that that would just be warehouse. He continued that the existing building is where the main display area is, where a customer would go in to rent something. He showed the location that is for just bringing the containers in and out, the larger boxes that they drop at homes or commercial sites. Thus, they would not have customers going to the proposed building. They are coming to use either the existing building shown in red, or a different area. The most traffic in and out would be to the existing building.

Mr. Gaudio replied that is by choice and asked why they could not move it and put it over to be the front part setback of the new construction. He continued that what he is getting at is that there is a choice. The Applicant has made one choice but Mr. Noonan has not explained the other choice.

Mr. Noonan replied that the higher building is going to be stacked units. He continued that this building does not have the roof height to allow them to do what they want to do for storage inside with racking. This portion of the building is all that is conducive to doing the customer-facing side. They also want it facing Krif Rd. and toward Winchester St.

Mr. Gaudio stated that he is not sure he understands why they could not put things in other places. He continued that they are making choices. He is not sure why the choices are being made that way.

Mr. Noonan showed on the drawing where most of the people going into this building are going to be parking. He stated that the Applicant wants people to either drop off or pick up in the location along the face of the building. The proposed building is going to have a higher roof, whereas the other does not have a roof high enough to give up the space.

Chair Gorman asked if it is safe to say that one of the reasons for their choice of location for this overhang is to create a façade for the customer base that has visibility on the primary streets. Mr. Noonan replied yes, it would be visible from Winchester St. or as you turn onto Krif Rd. or into the parking lot. Customers would know, visually, where to go. Chair Gorman asked if it is safe to say that they probably could put the overhang somewhere else as Mr. Gaudio is suggesting, but that it would not accommodate their total wish list of having visibility and a customer entrance at that visibility. Mr. Noonan replied that is correct. He continued that it is hard to see in the drawing, but there is ADA parking right in front.

Mr. Hoppock stated that to go back to Mr. Gaudio's point, he is looking at the "proposed loading area" on the drawing, which has a thatched rectangle. He asked why that could not be the canopy. Mr. Noonan replied that is an area where someone would bring their own personal truck or rented truck to load or unload items to or from the climate-controlled storage spaces. Mr. Hoppock asked if he means the customers can haul their own items into their units inside the building. Mr. Noonan replied that customers would unload their trucks there, to bring items into the climate-controlled building. Mr. Hoppock asked if Mr. Noonan is saying his client does not want to use any space in the climate-controlled facility for U-Haul conversions or services. Mr. Noonan replied that is correct.

Ms. Taylor stated that earlier, Mr. Noonan mentioned that conversions or tow-bar installations would be done inside. She asked where that is. Mr. Noonan showed the building on the drawing. Ms. Taylor asked if that is an existing portion of building. Mr. Noonan replied yes.

Ms. Taylor stated that the front of the building is the only portion she had ever been in, along Winchester St. She continued that those were offices and a reception area. She asked if that will

be turned into a climate-controlled storage area, or if there is a reason why they cannot use that for customers. What she thinks the Board members are all getting at is that this seems like a design *choice*. One of the things the Board has to decide is whether there is something special about the property that it cannot use it in the way intended. She is struggling with that issue and is looking for an explanation.

Mr. Noonan replied that given the height of the building, the set-up of this existing building was more conducive to doing the U-Haul-type front. He continued that the entire building in the front is all climate-controlled. They are converting that entire building and will be putting elevators on the inside and the back of the building to access the height of the building. They will install two levels of climate-controlled space. The main driveway that everyone will drive down was the best place and the most high-used place where all the vehicles driving to and from the showroom.

Chair Gorman asked if there were any further questions for Mr. Noonan. Hearing none, he asked for public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Mr. Welsh stated that when he thinks of the public interest, he thinks of public health, safety, and welfare. He continued that since there is not a sidewalk to encroach or any likelihood that the public is going to be on the site except for to rent something and use the business, safety is just a visual sightline on turns and driving. He is convinced that feature of safety is not at risk and that the general welfare of the public is not at risk from the proposal as he sees it.

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

Mr. Gaudio stated that he has concerns about whether the spirit of the Ordinance would be observed. He continued that the spirit of the Ordinance is to have the 20-foot side setback. The point he is making would also go to uniqueness of the property/the fifth criterion. He is not sure that the spirit of the Ordinance is going to be observed, because they are putting the roof in the setback and he is struggling to find the reason for that.

Ms. Taylor stated that she agrees and is not sure this is within the spirit of the Ordinance, either. Part of that is because when that area was developed, with the 20-foot setback and the grassy verge, it was supposed to be somewhat aesthetically pleasing and make sure that commercial/industrial facilities were not right on top of the street. Thus, she has some concerns here. She drove to this area, and the grassy area did not look that wide.

Chair Gorman stated that the fact that this structure is going to be completely open impacts the second criterion for him. He continued that if they could have a canopy or an awning, he is not sure there is a stark difference between that and a roof system with two posts. If it was an enclosed structure, he could see the point Ms. Taylor raised. The openness, though, discontinues

some of the aesthetics concern and the encroachment concern, to a degree. He can come to grips with the second criterion being met, but it gets murky for him in the fifth criterion, when they talk about this “being the only choice.” He will argue that it might be the *best* choice for the Applicant, but as the Board members have all said, it is not the *only* one. It is not the best for compliance with the Zoning Ordinance.

Mr. Hoppock stated that he could live with the second criterion being met for the reasons Chair Gorman stated. He continued that he does not see this proposed alteration impacting the essential character of the neighborhood, and like Mr. Welsh, he does not see a significant safety issue, but he agrees that the fifth criterion is problematic.

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

Ms. Taylor stated that to her this is a “break even” situation. Yes, it is nice to be under cover and not have to put your hood up, but it is not that big of a deal one way or the other.

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

Chair Gorman stated that he does not see any negative impact to surrounding properties, based on the proposal and what he anticipates this would look like, and especially with the Planning Board’s involvement in the aesthetics, if the Variance were granted.

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. Hoppock stated that without getting into the relationship between the general public purpose of the Ordinance and its application to this property, he is having a hard time seeing or understanding what the special condition of the property is in the first place, and, if there is one, how it is distinguished from other properties in the area. He does not think that was adequately developed. He does not think this criterion is met at all.

Mr. Gaudio stated that he agrees with Mr. Hoppock. He continued that there are still choices that could be made, and he does not understand why other choices were not selected in order to comply with the Ordinance rather than to need a Variance.

Ms. Taylor stated that she agrees with what has been said so far. She continued that it seems this is a matter of business convenience, and not necessarily meeting the standard that they have to meet, under the Variance criteria.

and

ii. The proposed use is a reasonable one because:

Ms. Taylor stated that given what was presented to the Board, it is not necessarily a reasonable proposal.

Mr. Hoppock stated that he would add that given the other choices that are available, it is not a reasonable choice to propose.

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.

Chair Gorman stated that he thinks the Board has adequately covered this. He continued that they do think the property can have its overhang built, just not in that specific location.

Mr. Hoppock made a motion to approve ZBA 21-15 to permit a Variance to allow the construction of a roof to provide cover to vehicles, encroaching the building setback per Section 102-791 of the Zoning Ordinance. This is on Tax Map #115-019-000-000-000 and #115-020-000-000-000 which is in the Commerce Limited District. Mr. Welsh 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 3-2.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-1.

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*

Not met with a vote of 0-5.

- 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.*

Not met with a vote of 0-5.

The motion to approve ZBA 21-15 failed with a vote of 0-5.

Chair Gorman made a motion to deny ZBA 21-15. Mr. Hoppock seconded the motion, which passed by a vote of 5-0.

B) ZBA 21-16: Petitioner, Enterprise Rent-A-Car Company of Boston, LLC, of 10 Navigator Rd., Londonderry, NH, requests a Variance for property located at 453 Winchester St., Keene, owned by 449 and 453 Winchester Street, LLC, of 549 US Highway 1 Bypass, Portsmouth, NH, Tax Map #115- 026-001-000-000 that is in the Industrial District. The Petitioner requests a Variance to permit a motor vehicle rental business where it is not a permitted use per Section 102-632 of the Zoning Ordinance.

Chair Gorman asked to hear from City staff. Mr. Rogers stated that this property is just a little further north of the Krif Rd. intersection, in the Industrial Zone, which does not allow a motor vehicle rental business. Regarding the visuals, staff may have taken a photo of the wrong building. There are two buildings on this property. He will let the Applicant explain, but he thinks where they are seeking to have the rental business is in the building shown in front, closest to Winchester St.

Mr. Welsh stated that he thinks the Applicant and others know, there is a car rental business on Winchester St., fairly close to this. He asked if that is in the same district, and if that business applied for a Variance. Mr. Rogers replied yes, there is a U-Save Car Rental just south of this property. He continued that he does not know the history of the property and that it has been there quite a while.

Ms. Taylor stated that she went to look at the property, which is listed as “453 Winchester St.” on the application, but apparently, 453 is the back building, and the frontage on Winchester St. is

449, so she got confused as to which property the application is for. She continued that on the “Zoning Exhibit Plan,” it looks like this is going to be the subject of a subdivision. She asked, going back to what the Board heard earlier, does that create a lot with no frontage on a public road.

Mr. Rogers replied that the Applicant could clearly answer this question. He continued that he believes there was a subdivision at one point in time that subdivided the property from the collision repair business that is behind these buildings. He thinks that is the picture in the agenda packet, hence the confusion from staff. He does not know if there is another proposed subdivision.

Ms. Taylor stated that her question, regarding the picture in the agenda packet, it that also lists the commercial building that fronts on Winchester St. as “449.” She continued that she was confused about which property the application is referencing. Mr. Rogers replied that he shares that confusion and he would ask the Applicant to speak to that.

Ms. Taylor stated that the reason she was asking about whether there will be a subdivision and whether this will create a property that does not have frontage on a city street was because the Zoning Exhibit Plan is dated August 18, 2021. She thought it was current.

Mr. Rogers stated that the plan on the screen right now must have been the subdivision he was speaking of, which occurred when they subdivided off the repair business out back, because they are showing “proposed boundary lines,” which are now there as current, actual boundary lines. There are two buildings on that one piece of property. Ms. Taylor replied that she would reserve her questions for the applicant, because that only confused her more.

John Noonan of Fieldstone Land Consultants, 35 Church St., Fitzwilliam, NH, stated that he is here on behalf of Enterprise Rent-A-Car Company of Boston, LLC. He continued that the base plan that they used for their exhibit was the proposed subdivision that was already done. They are not proposing any new lot lines; this is what was given to them as a base plan. The “proposed boundary lines” are now existing boundary lines. The commercial building that has 4,000 square feet is #453 Winchester St., which is the rear building and is the building Enterprise is looking to rent and use as a rental car business. The building that is on the frontage of Winchester St., #449, is not in play in the application.

Ms. Taylor stated that not being an engineer or a surveyor, she would like to know what the line is that goes through. Mr. Noonan replied that those are on the base plan; the lines that she sees crossing are overhead wires, preexisting electric.

Ms. Taylor asked if it is correct that the parcel that includes #453 and #449 is a single parcel with two separate buildings. Mr. Noonan replied yes. Ms. Taylor asked if it is correct that this application only concerns #453, the rear building. Mr. Noonan replied yes. He continued that Enterprise is looking to rent one of the buildings for a rental car business. He continued that #449

is separate. What the landowner does with that is separate from this application entirely. It is two commercial buildings on one lot.

Mr. Hoppock asked how one gets to #453 from Winchester St. Mr. Noonan replied that they have an easement on the northern drive where they can cross and get to the building. He continued that he is sure some traffic goes up the other right-of-way that goes to the back business as well.

Mr. Hoppock stated that where it says "Proposed Boundary Line," there is a course of distance north 71, 5 minutes and 42 seconds west. He asked, if the area between those two lines a paved area. Mr. Noonan replied yes. Mr. Hoppock stated that then there is a right turn to the rear side of the property, the western boundary. Mr. Noonan replied yes, and that is a separate property and business behind there.

Mr. Gaudio asked if those buildings have an easement across that area. Mr. Noonan replied that he does not know if they have an easement crossing the southern side, but they have an easement crossing through the north.

Ms. Taylor stated that there appears to be a 10-foot wide easement on the subject property, but the property that is not in play, to the north, has a 20-foot wide easement. Mr. Noonan replied yes. Ms. Taylor replied that 10 feet is rather narrow, and she hopes no one puts up a fence in the middle between the two easements, as she is concerned about access. Mr. Noonan replied that Fieldstone did not do the survey on this; this is the subdivision plan that was provided to them as the base plan. Thus, he does not know if there is an existing easement on that south boundary where it goes to the rear lot. It appears that most of the traffic uses that way.

Mr. Noonan stated that he will go through the criteria.

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

Mr. Noonan stated that granting this Variance would allow for the productive use of the existing property. He continued that it requires similar site improvements as the existing automotive repair shop. This will not be contrary to the public interest, as it will provide a service to the public, who may be having repairs done to their vehicle at the nearby repair shop. Granting this Variance would not be contrary to the public interest as this project will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

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

Mr. Noonan stated that the intent of the Industrial District is to provide for manufacturing, processing, assembling, wholesaling, transportation-oriented activities and related services, such as trucking, warehousing, refueling depots. Retail sales and offices are intended to only be accessory to the main uses in the district. The proposal for the site is consistent with the surrounding areas, as another car and truck rental business was approved two sites south of the subject parcel. This project will meet all of the dimensional standards and will be in harmony

with the neighborhood. A motor vehicle rental business is a key component to transportation-oriented businesses, providing transportation for those with vehicles being repaired by nearby mechanic shops or automobile dealerships. This proposal will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

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

Mr. Noonan stated that granting this Variance would allow the landowner to reasonably utilize the property with a use that is compatible with the surrounding uses. He continued that granting the Variance would do substantial justice, as there will be a clear benefit and gain to the project and his client, with no loss to the public. In other words, a denial of the Variance request would be an injustice to his client, as there would be no apparent gain to the public by denying the application.

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

Mr. Noonan stated that the subject parcel has fallen into disrepair, as it has been vacant for an extended period. He continued that as the property is already suited for vehicle storage and no major improvements are required, effort can be focused into repairing the buildings on site and returning them to a proper function. A rental business also produces less noise pollution than an auto repair shop. For all of these reasons, they do not believe that the conversion of the property to a motor vehicle rental service use would have any negative impacts on the values of surrounding properties.

5. *Unnecessary Hardship*

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

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

Mr. Noonan stated that the subject property is a 1.41-acre site with existing improvements. The size of the property, along with the size and location of the existing improvements, are ideal for his client's proposed business. The structure in the rear has bay doors that can easily be used for preparation of vehicles for future renters and the front building is conducive to the administrative needs. The subject site will allow his client to get the business up and running much quicker than if major construction was needed. The proposed Enterprise rental company also does lots of work with companies in the area. A closer rental location would reduce traffic congestion throughout the city. For the reasons outlined above, they do not believe that a fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property.

ii. The proposed use is a reasonable one because:

Mr. Noonan stated that they believe the proposed use is a reasonable one for all the reasons previously stated. The following is an outline of why they believe the proposed use is reasonable: granting the Variance would allow for the productive use of the existing property. The existing buildings and improvements are conducive to a vehicle rental property, without major improvements needed. The proposed use as a motor vehicle rental space would be in harmony with the neighborhood. The motor vehicle rental use would not be contrary to the public interest, as this project will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. This proposal, in their opinion, would observe the spirit of the Ordinance and its intent. This project would have no measurable negative impacts on the surroundings or the property values.

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. Noonan stated that the subject property is 1.4 acres per the reference plan and is developed with two structures and plenty of paved parking areas for rental vehicle storage. This is a unique lot, as it has two main structures. One structure has bay doors that could accommodate vehicles and the other is an office and administrative area. It is uncommon to find a parcel with these conditions that so adequately suit the needs for a rental development. These are all special conditions of the property that distinguish it from other properties in the area. Due to the conditions, they believe the property is reasonably suited for the proposed use. They are thereby requesting a Variance from Section 102-632 to enable a motor vehicle rental use on the subject property.

Mr. Rogers stated that to answer the Board's question regarding the original subdivision plan, one of the notes on the plan says the common driveway and all the easements will be recorded as a deeded easement. He believes that the driveway seen on the southern side that was created is a deeded easement for this property. It is part of the subdivision plan.

Mr. Hoppock asked if Mr. Noonan is saying that the size of the property and the existing improvements on the property being conducive to his client's needs is the special condition. Mr. Noonan replied yes.

Ms. Taylor asked, based on Section 102-631, if this is being viewed as a retail sales undertaking. She continued that to her, vehicle rental is the "transportation-related activity." Mr. Rogers replied that the Community Development Department and previous Zoning Administrators have always viewed car rental as a "retail service."

Mr. Hoppock asked when the car rental business two sites down was approved. Mr. Rogers replied that he does not know what the approval process was; he did not do the research on that. He did not pull the history on that property to see how or when that came into play.

Chair Gorman asked if there were any further questions. Hearing none, he opened the public hearing and explained the procedures for public comment.

Becky Marcinkevich, of 10 Navigator Rd., Londonderry, NH, stated that she is the Properties and Facilities Manager for Enterprise Rent-A-Car. She continued that since there was some discussion about access she wanted to clarify that that southern road is a driveway and is shared by all three properties. There is a multi-tenant sign on the corner of that street, used for all three of the buildings, which Enterprise would be using. She has some renderings but does not know if the Board wants to see them now. The renderings were not submitted previously, but they show what the site looks like and what the Enterprise sign would look like. Chair Gorman replied that if she distributed those renderings he would be happy to take a look.

Ms. Marcinkevich continued that to clarify, this is rental only. The use would not include sales at this property. She is happy to answer questions. Enterprise is in favor of this and looks forward to operating from a larger location than the one where they are currently located.

Chair Gorman asked if there was any further comment. Hearing none, he closed the public hearing and asked for Board deliberation.

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

Ms. Taylor stated that she does not see anything that would make it contrary to the public interest. She continued that it is similar to a use that is a couple hundred yards away. That area has significant use of motor vehicle related activities.

Mr. Welsh stated that he agrees, and he would extend his agreement to his reasons for thinking it is not in violation of the spirit of the Ordinance, either.

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

Chair Gorman stated that he agrees with Mr. Welsh. He continued that he thinks this use is in line with many uses in the area, which are similar to what is being asked for here, such as collision repair facilities, auto dealerships, repair facilities, and so on and so forth. He thinks this use compliments many of those activities for 'one stop shopping.' As the applicant indicated, when you are getting your car fixed it is great to have a place to rent one nearby.

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

Ms. Taylor stated that for the reasons they have previously stated, with so many motor vehicle related businesses in the area, it is hard to find any argument that there would be a loss to the public.

Mr. Gaudio stated that a reasonable use of the property gives the owner a chance to use the property and he does not see any real downside to the public.

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

Chair Gorman stated that he cannot see how they would be. He continued that it is a use that is aligned with a lot of activity in that area. It is a building that already exists, and the Applicant's proposed use arguably is going to, as Mr. Noonan stated, allow for the upkeep and improvement of the existing structure. Thus, if anything, it may add to surrounding property values.

Mr. Hoppock replied that is very possible.

5. *Unnecessary Hardship*

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

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

Mr. Hoppock stated that the problem he is having with this one is that he does not think a special condition of the property amounts to the conduciveness of the features to the owner's intended application.

Ms. Taylor stated that she sees the nature of the property itself as creating the special condition, not necessarily related to the use, but just with the layout of the properties and the two commercial buildings. That, in and of itself, creates a special condition.

Chair Gorman stated that he agrees with Ms. Taylor. He continued that he thinks this property is undeniably unique, for the reasons she just set forth.

Ms. Taylor stated that she would add to that unique in its setting. She is sure there are other properties within the city that have similar issues.

and

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

Mr. Gaudio stated that he thinks the proposed use is reasonable, and he thinks the third criterion says that a motor vehicle facility will be in harmony with the neighborhood. They have been saying that throughout the rest of their discussion. Chair Gorman agreed.

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.

Chair Gorman stated that he thinks they already covered (A) meeting the criteria. They spoke to some special conditions of the property and its uniqueness, so that could fit into (B), too.

Mr. Gaudio stated that regarding (B), he is not sure the conditions are so severe that it cannot be used for anything else.

Mr. Hoppock made a motion to approve ZBA 21-16 for a Variance to permit a motor vehicle rental business where it is not a permitted use per Section 102-632 of the Zoning Ordinance on Tax Map #115-026-001-000-000 in the Industrial Zone.

Mr. Rogers stated that for the Board's consideration, they might want to condition this to that specific building that the applicant is referencing. He continued that the motion just stated would be for the whole lot, and both buildings could have that use.

Mr. Hoppock added to his motion conditioned upon the Variance being applicable only to building #453. Mr. Welsh 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 because:*

and

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

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

Met with a vote of 5-0.

The motion to approve ZBA 21-16 passed with a unanimous vote of 5-0.

Chair Gorman recessed the meeting from approximately 8:35 to 8:40 PM.

C) ZBA 21-17: Petitioner, Brian and Amalia Harmon of 184 Colby Rd., Danville, NH, request a Variance for property located at 27-29 Center St., Tax Map #568-016-000-000-000 that is in the Office District. The Petitioner requests a Variance for a residential use of this property with only 3,049.2 sq. ft. rather than the required 13,400 sq. ft. per Section 102-791 of the Zoning Code.

D) ZBA 21-18: Petitioner, Brian and Amalia Harmon of 184 Colby Rd., Danville, NH, request a Variance for property located at 27-29 Center St., Tax Map #568-016-000-000-000 that is in the Office District. The Petitioner requests a variance for residential housing with three and a third parking spaces rather than the required four per Section 102-793 of the Zoning Code.

Chair Gorman stated that with the Board's permission, they would hear applications ZBA 21-17 and ZBA 21-18 together, provided the Applicant agree. The Board and the Applicant agreed.

Chair Gorman asked to hear from City staff. Mr. Rogers stated that this property at Center St. is just off the downtown area. Center St. runs on the other side of the courthouse. The whole structure is currently an Office Use. He continued that the Board will see that this property is on a relatively small lot of just over 3,000 square feet. The drawing shows the structure in blue and the yellow is the driveway and three parking spaces. Currently it is non-conforming for parking, for the office, under current parking standards. It is an existing non-conformity happening on this site. The Office Use is an allowed use, as is one- or two-family dwelling. He does not know the exact square footage of the building itself, but it is probably even more non-compliant than what the Applicant is asking for today, since it would only be four spaces needed. The Office Use requires one parking space per 200 square feet. What the Applicant is requesting could make this more conforming to Code. However, since there is a change of use occurring they are to meet the off-site parking requirements. In the Office District, 8,000 square feet of lot size is needed for the first dwelling unit, and an additional 5,400 square feet for an additional unit, hence the requirement of 13,400 square feet in order to convert into a two-family dwelling as the Applicant is proposing.

Ms. Taylor stated that as she read the Ordinance, single, duplex, and multi-family are all permitted in this zone. She continued that thus, there is not an issue of whether it is a conforming use, it is just as size issue. She asked if that is correct. Mr. Rogers replied yes.

Ms. Taylor stated that her question, not being familiar with Planning Board site plan regulations, is if there is a change of use, is a site plan required. Mr. Rogers replied that a change of use could be an initial trigger. He continued that the Community Development Director does have the ability at times to do provide an approval administratively. In regards to a project like this, another item to consider, which he thinks the Applicant speaks to, is traffic. For example, if there is an additional number of car trips happening, that would be another trigger to involve the Planning Board. He cannot speak to whether this would have to go to the Planning Board or if it would be handled administratively.

Ms. Taylor stated that since they are looking at both of these applications at the same time, is it correct that four parking spaces are needed for a two-family dwelling. Mr. Rogers replied that is correct.

Mr. Gaudio asked what the square footage of the units would be, asking details to each unit. Mr. Rogers replied that he does not know what the proposed layout of the building would be. The Building Code and Zoning Code do not have specifics about the square footage per occupant in a residential dwelling. Obviously, bedroom counts can be reviewed, but it is unknown the number of people per bedroom. They do not have a specific number to attach to this.

Mr. Welsh asked if this were a vacant lot and they were looking to adhere to existing setbacks for this zone, what are those setbacks. Mr. Rogers replied that this property is non-conforming in many ways, including the front setback, side setback, and rear setback. All of the setbacks would probably be non-conforming. The minimum lot size in the Office District is 8,000 square feet. Thus, if this were vacant, in order to construct anything at all, the applicant would have to come before the Board and would be seeking multiple Variances. The Office District has a 15 foot front setback, 15 foot rear setback, and 10 foot side setback. The Applicant might be compliant on the west side of the property, but they do not conform to the rest of the setbacks at this point.

Mr. Welsh stated that it is hard to imagine a practical, functional building that would actually be in compliance with all of those setbacks, on this particular property. Mr. Rogers replied that he thinks that is true of many of the buildings that are in this neighborhood. He continued that you could see in the drawing that many of the buildings are pretty close to the property lines. That is allowed once you get to the Central Business District, but this is just off that, in the Office District, and that is where those setbacks come into play.

Amalia Harmon and Brian Harmon of 184 Colby Rd., Danville, NH, introduced themselves. Ms. Harmon stated that they are requesting to have a residential use because it is currently office space, and nobody needs or is looking for office space right now. She continued that the tenants who were there left on their own accord because they could work from home. Thus, she and Mr. Harmon need to pivot into another direction. For the past year, the newspapers have been full of news that 'Keene has a housing shortage' and 'NH has a housing shortage,' especially two- and three-bedroom units for families. She and Mr. Harmon would like to provide that for this area.

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

Ms. Harmon stated that Keene is currently experiencing a housing shortage crisis. She continued that this Variance to change the use to residential is needed by this community. The essential character of the neighborhood would not be altered. There are several residential buildings on that street on the same side. There are five buildings in total and three are multi-family.

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

Ms. Harmon stated that the proposed construction change of use of the property is necessary and reasonable use for this property. There are several articles analyzing housing in Keene, including *There's no Place Like Home*, which someone in the Community Development Department worked on. Their concern was that it is not going to get better.

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

Ms. Harmon stated that it gives housing that is much needed, and assists the revitalization of the area by providing more housing for young professionals. In an article from June 3, 2021, Casey McDermott of New Hampshire Public Radio (NHPR) reported,

“Apartment vacancy rates are low. Local businesses are struggling to find places for their employees to live, including the hospital, which is struggling for more specialists to meet the community needs.”

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

Ms. Harmon stated that it is a gorgeous brick building. Well-maintained and restored to its beauty, it will be amazing. Page 7 of *There's No Place Like Home* says, “*Cities that attract and maintain young professionals thrive,*” and that is self-evident. This property, as a residential property, will only increase the surrounding property [values] and improve the security and longevity of Keene's 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:*
and

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

Ms. Harmon stated that as an office space, it is antiquated. It is not necessary in this area at this time. Many professionals are able to work from home. Keene needs more housing. Being so close to downtown, regarding the second Variance they are requesting, it have “three and a third” parking spaces. This works for people who have small cars or do not need cars because they can

walk. Even the Hannaford grocery store is less than a 20-minute walk. Everything else is much closer, which is a benefit.

- 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. Harmon stated that because it is not needed as office space, she and Mr. Harmon do not know what they could do with the building and do not want to have an empty building. They want to conform to the community's need for more housing and attract young professionals to help the economy of Keene thrive.

Mr. Gaudio asked how many bedrooms would be in the apartments. He continued that he is trying to get an idea of the size of the apartments. Ms. Harmon replied that it could be two to three bedrooms in each unit. She continued that they are thinking of families, such as two parents in one room, a kids' room, and an office. Mr. Gaudio asked what it would be as if they were renting the apartments to students, which is one of the things they are making a big point of in their materials. If there are three bedrooms, they could have three students, and at least one of them is likely to have a car. Mr. Harmon replied that students are not their target. Mr. Gaudio replied that the materials they sent in were really aimed at students' needs. They should think about how many cars are actually going to be there, at night when people want to park. If there are two apartments with two to three bedrooms, there could be many cars.

Ms. Harmon replied that they hope the tenants will be families and that they would be sharing cars. She continued that the location is rather far from the KSC campus and students were not their target. They were thinking of young professionals, such as people who have already graduated and are working in the area.

Mr. Gaudio replied that spouses or domestic partners would be more likely to share, but single individuals are not likely to share a car, he assumes. Therefore, there would be more cars.

Mr. Harmon stated that he has a three-bedroom home and the third bedroom is an office. He continued that they are just in the beginning stages of their plans, but going through the process as necessary. They want to follow through with this meeting with the Zoning Board and then they can make final decisions. They want to be available for people in need of housing. Students are not their target.

Mr. Hoppock asked, if they were going to have two or three bedrooms in each dwelling unit, how many square feet would each dwelling unit be. Mr. Harmon replied approximately 1,500 square feet. Mr. Hoppock asked if that is just fitting it into the footprint of the building. Mr. Harmon replied yes, no additions or modifications, because it is also in the Historic District. They talked with Mari Brunner and Tara Kessler from the Community Development

Department, so they know they have to conform to the Historic District regulations. That is what drew them to this building; it stands out among others in the neighborhood. This is what he does for a living; he is a mason by trade.

Ms. Taylor stated that she understands that this was offices. She asked how many rooms there were, approximately. Ms. Harmon replied six upstairs and six downstairs. Ms. Taylor asked if they would gut it and reconfigure it into apartments. She continued that she has never been in the building, so she is trying to get a sense of it. Mr. Harmon replied that with the two floors, the intention is to do an upper- and lower-level unit, up to Code, with fire separation, egress, etc. They are working on the design and he thinks it is coming along really well. There would be a kitchen and living room, and regarding the rooms, no bearing walls will be touched. The work needed is to add closets and storage space. There is a full basement as well.

Ms. Taylor stated that regarding parking, she is trying to match up the picture with what they are seeing on the screen. She continued that the picture in the agenda packet has a rutted, grassy/gravel space. She asked if that is where the parking is. Mr. Harmon replied yes. Ms. Taylor asked if that is a walkway next to it and then the parking. Ms. Harmon replied that it is a handicapped ramp that will be removed. Ms. Taylor asked if it is three stacked spaces. Ms. Harmon replied yes. Ms. Taylor stated that if they were given a Variance for the building and the parking, obviously they could have their target audience for tenants, but reasons, they cannot deny someone who wants to rent it. She asked how the Harmons would handle it if people had four cars instead of three. Mr. Harmon replied that there is a lot behind the park across the street from the Fire Station, and they are still in talks with Mike Hagen, Plans Examiner for the Community Development Department. They are hoping for the Variance here for the three, to get started. Ms. Taylor replied that is beyond the Harmons' control. She continued that she asks these questions because she knows winter parking is well enforced in the city.

Chair Gorman stated that regarding Ms. Taylor's parking questions, it is not atypical for a landlord to have parking restrictions in a lease agreement. He continued that they may or may not know the legality of such, but he does know it is common practice. They could feasibly rent to someone who has 18 cars, but they may only permit the tenant to have two on the property. It would be grounds for not accepting someone as a tenant, if they had 18 cars, because the Harmons cannot accommodate 18 cars. There is the ability for the property owner to have a finite target where they just cannot have tenants with several cars, because they cannot accommodate those needs.

Chair Gorman stated that he guesses this building is roughly 3,000 square feet. He continued that for 2,000 square feet of office space, you need one parking space. Even if you had common areas of 1,000 feet, you would have 2,000 square feet of office space and thus need 10 parking spaces. From his vantage point, this property is a quagmire that existed long before any of these rules, and it is not going to be in compliance to be anything, meeting the current Zoning Ordinance. He thinks for a two-family apartment building, four cars would be normal. If it were a 3,000 square foot office building, they would have several more cars, and people coming and going, or unsuccessful tenants. He sees the argument for this parking Variance actually being less invasive

than what currently exists, which is an office building. He also thinks the building is laid out nicely to be a duplex. He has not been inside, but given his knowledge of buildings and the way the exterior is set up, it looks like it would accommodate one unit on each floor quite nicely. He asked if that is accurate.

Ms. Harmon replied that she thinks in the past it was split into two residential units, side by side. She and Mr. Harmon plan on the two units being top and bottom.

Chair Gorman stated that the Harmons talked a lot about the need for housing in Keene, but he was curious whether they have more specific information to this property and the hardships it presents, not necessarily the needs of the entire city. Ms. Harmon asked if he means the hardship if the Variance is not approved. Chair Gorman replied yes, just the general state of this property and how difficult it would be for them to overcome finding an adequate use for it. Ms. Harmon replied that as Chair Gorman said, if it is office space, they need seven more parking spaces. They are not going to find that. Also, no one is looking for office space.

Mr. Welsh stated that is excellent movement toward the point he is interested in. He asked as the Harmons lost the tenants, who were able to work from home, were others clamoring to get into the office space. Ms. Harmon replied that they did talk with people and used word of mouth, and found that no one really needs office space because they can work from home. Mr. Harmon replied that even their insurance agent, who is insuring that vacant building, is permanently working from home and said that the rest of the office is to follow. That office is two doors down, across the street from the subject property.

Ms. Harmon asked if the Board saw the article by Mayor George Hansel, which she and Mr. Harmon added to their submitted materials. Mr. Harmon added that the Mayor's quote in the Keene Sentinel rang a bell: *"I have a lot of confidence in Keene and the surrounding areas being an attractive place to live, for a lot of people. We have great schools, excellent job opportunities, and amazing recreational opportunities. But we need to create paths forward for people and involving building new housing."* She continued that she and Mr. Harmon requested that he be here tonight, but he was unable to attend.

Chair Gorman asked if there were any further questions for the applicants. Hearing none, he asked for public input.

Peter Espieffs, of 29 Middle St., stated that his backyard adjoins the rear of the property. The rear of their property is his property line. He does not have any objection to apartments, as long as they are kept under control. He does not want many disruptive people there. The Harmons are in that business and know what they are doing, and have been doing it for quite a few years. They have spoken with him about this and he does not have any objection to the building becoming apartments.

Hearing no further comments, Chair Gorman closed the public hearing. The Board deliberated on the criteria.

Ms. Taylor asked if they are discussing both applications together and then voting separately. Chair Gorman replied yes. He continued that if the first is denied it will negate the need for a vote on the second, because the parking would become not relevant if the use were not approved.

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

Ms. Taylor stated that it seems that it would not be contrary to the public interest because, first, it is better to have an occupied building than a vacant building. She continued that second, as has been mentioned, there is certainly a need for residential housing, and the Board has heard a great deal of discussion about trying to bring residential housing back toward the city center, as opposed to building on vacant land.

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

Mr. Hoppock stated that they are looking at two questions: public health, safety, and welfare; and whether the proposed use would alter the essential character of the neighborhood. He continued that his view is that this is a very small lot on which the Applicants want to place potentially a great number of people. He thinks there is a density problem, and Mr. Gaudio brought up the car/parking problem, which could exacerbate it. There is a risk that if this application were approved it *would* alter the essential character of the neighborhood, in that it would increase population density and motor vehicle density, and that would impact public health, safety, and welfare. The biggest problem here is the size. These houses are all right up to each other. None of them meets the setback requirements. That is a potential fire hazard and there are other hazards there as well.

Chair Gorman asked Mr. Hoppock if he think that those problems exist no matter what the use is. He continued that he is hard-pressed to know what use, if not this one, would not create similar problems. Mr. Hoppock replied that he cannot think of any, but it was an office use for years. He continued that the lack of interest in an office use is a market-driven condition, which he sympathizes with, but he is not sure that is applicable to what the Board has to look at, in terms of public health, safety, and welfare. He is concerned about the density of people and cars. However, he sees Chair Gorman's point.

Mr. Welsh stated that regarding the parking and the density, he is convinced by the argument that there are parking issues regardless of the use, and this use may be the one that presents the least. The density issue strikes him as potentially real, but potentially not negative. It could be add to the liveliness, viability, and nature of the downtown area in a positive way. While it is possible that it could flip, he tends to think that the target audience of renters and the possibility of them being the kind of people who like the downtown area, inclines it toward a positive outcome.

Mr. Gaudio stated that he is not particularly concerned about the density of the population. He continued that he is concerned about the density of the cars and the narrowness of the streets.

Ms. Taylor stated that she thinks it does not change the essential character of the neighborhood, in large part because there is already a great deal of residential use in that area, including several multi-family and single-family dwellings. She does not think it impacts in that area. It is a good point that if these were rented offices, there would be a greater need for parking than there would be with two residential units. There may be an issue, but she does not think it is up to the Board to judge what type of tenants and how many cars each tenant has etc.

Chair Gorman stated that from his personal perspective and some of his personal experiences, he thinks they could have a bad tenant in a good situation, and a good tenant in a bad situation and it is completely unpredictable. However, it can be mitigated by the property owner or the landlord in whatever diligence they are willing to do. He thinks this is a case where the property owners need to be vigilant and diligent no matter what use the building has, just because it is an anomaly to have a building that takes most of its lot size just with its footprint. That may exist in bigger cities, but they do not see it a lot in Keene. He does think a property owner for this building is going to have to be finicky to succeed. He thinks that will be the case no matter what the use is.

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

Mr. Hoppock stated that putting the property back to some reasonable use would be a gain to the public. He continued that he could see the injustice to the owner, in terms of not being able to find office use. He thinks denying it would be an injustice to the owners.

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

Ms. Taylor stated that it appears from what has been presented to the Board that renovation and restoration of this property to a useful purpose would increase the value, not just of this property, but also of the neighborhood. Chair Gorman stated that he agrees.

Mr. Welsh stated that that they heard from a surrounding property owner, who does not seem concerned with diminishing value.

Chair Gorman stated that he drove by this building and thinks it has a lot of historic charm. He continued that he is glad to hear it is protected by the Historic District. With a little work, it will be beautiful, which would raise values in the neighborhood.

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:*

Ms. Taylor stated that it is definitely a reasonable use of the property. She continued that there are many small properties in this area, but this, perhaps, is the smallest, which creates a special condition in and of itself. Anyone would be hard pressed to use this particular building on this particular piece of property without obtaining some form of Variance.

Mr. Gaudio asked if that is Ms. Taylor's argument for the residential use with only 3,049.2 square feet, or the three and a third parking spaces. He continued that in other words, the three cars problem is caused by the smallness of the lot and the special condition of this property.

Ms. Taylor replied that she is saying both, because of the requirement of a minimum of 8,000 square feet, without that, you have to seek a Variance, which is one issue. She continued that the other is with parking. If the property is kept to office space, many more parking spaces are needed, thus it applies to both.

Mr. Hoppock stated that except for the fact that the special condition of this property is its building size in relation to the size of the lot, that does create the parking problem, but he thinks that special condition renders the relationship between the general public purpose of the Ordinance and its application to this property less tight. He continued that he does not see a fair and substantial relationship between the two in a hard and fast way. He also thinks that the same special condition can preclude any reasonable use if you rule out office use. The problem with the office use is it is non-conforming office use. They do not need those parking spaces for this property. He asked Mr. Rogers if that is correct.

Mr. Rogers replied that is correct, because it is already a current use. He continued that the parking comes about whenever there is a change of use. Thus, if it were to change to any other use, even an allowed use within that district, the parking comes into play. Without the change of use, the parking does not.

Chair Gorman replied that it does not come into play from a Variance standpoint, but it comes into play in reality. He continued that people still would need to park there. Thus, it may not require a Variance, and the use could continue, but it may provide for the creation of a problem. Mr. Hoppock replied yes, and he sees how this application could ameliorate that problem to a high degree.

Mr. Welsh stated that they have heard testimony and a bit of evidence that its continuation of use as an office would not necessarily be successful.

Chair Gorman replied that he agrees with Mr. Hoppock a bit, in that prevailing market conditions are not really something the Board should ultimately consider, as they could change.

Ms. Taylor replied that economic factors cannot be the sole determining factor in whether a Variance is granted, but they can certainly be a consideration. She continued that she also sees this as, in some ways, being a less intense use than office, not because a Variance may not be

needed for parking issues, but also because it is likely to have fewer people, fewer traffic, fewer car trips, etc.

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. Gaudio stated that regarding (B) this may be a case, an unusual one, where such a special condition does not permit a use, unless they just razed the building and turned it into parking. Chair Gorman replied that he does not even know if parking would be a permitted use. Mr. Hoppock replied that the point on (B) is that it cannot be *reasonably* used. He continued that the Applicants have made a case that they cannot reasonably use it as an office space because nobody wants to use it which is reasonable to him. In addition, a Variance is therefore necessary to enable a reasonable use, such as residential. He thinks Mr. Gaudio has a good point.

Mr. Gaudio stated that they may have a circumstance of (B) being applicable. Chair Gorman replied that he agrees.

Mr. Hoppock asked if the Board wants to impose a parking condition on this, or limitation. He continued that he is not sure if he has an answer. Chair Gorman replied that they could, but he does not know about the scope of enforcement.

Mr. Rogers stated that many times when they see an issue with parking, people park on their lawns due to not having enough spaces. That will not occur here. They would have to be parked on the neighbors' lawns. It is up to the Board, but he does not think a condition about parking would be required, because it would almost be self-regulating, between the tenants and the property owners. Mr. Hoppock replied that he is happy with that.

Ms. Taylor stated that she would hesitate to put that kind of condition on because she does not think it is within the Board's charge to tell a property owner how to resolve a parking issue. She continued that they would know that if this were granted, they would have to find a parking space. How they do that is not up to the Board.

Mr. Gaudio stated that he does not think a parking condition is a good idea. He continued that it would be difficult to enforce.

Chair Gorman stated that he, too, would see problems in the ability to police it. He continued that he also thinks there is merit to what Mr. Rogers is saying. If they park anywhere, it would have to be in their living room, because there is really nowhere else. The property regulates itself in that sense. He also thinks the Master Plan alludes repeatedly to bikeable and walkable downtown living. Hopefully, the Harmons can find some young professionals, if this gets approved, who have one car per unit.

Mr. Gaudio asked if on-street parking is permissible here. Mr. Rogers replied that it is not allowed during certain periods, like the winter parking ban, and a maintenance period during the warmer months when you cannot park on the street overnight. He continued that there are changes coming to parking, which might change some of those things.

Mr. Hoppock made a motion to approve ZBA 21-17 to permit a residential use with only 3,049.2 square feet where 13,400 square feet is required per Section 102-791 of the Zoning Ordinance for the property at 27-29 Center St, Tax Map #568-016-000-000-000. Mr. Gaudio 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 because:*
and

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

Met with a vote of 5-0.

The motion to approve ZBA 21-17 passed with a unanimous vote of 5-0.

Chair Gorman made a motion to approve ZBA 21-18 where the petitioner requests a Variance to permit three parking spaces rather than four; this is required for residential housing per Section 102-793 of the Zoning Ordinance. Mr. Hoppock 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 because:*

and

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

Met with a vote of 5-0.

The motion to approve ZBA 21-18 passed with a unanimous vote of 5-0.

II) New Business

III) Communications and Miscellaneous

IV) Non-public Session (if required)

V) Adjournment

There being no further business, Chair Gorman adjourned the meeting at 9:41 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk