

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 1, 2021

6:30 PM

Council Chambers
City Hall

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Jane Taylor

I) Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the meeting.

II) Minutes of the Previous Meeting

Chair Gorman stated that there are no meeting minutes to review tonight.

III) Unfinished Business

Zoning Administrator John Rogers stated that Corinne Marcou, Zoning Clerk, provided the members with copies of the new Land Use Code. He continued that there is no other unfinished business.

IV) Hearings

A) ZBA 21-21: Petitioner, PSNH, d/b/a/ Eversource, of 13 Legends Dr., Hooksett, requests a Variance for property located at 115 Park Ave., Tax Map # 233-022-000-000-000 that is in the Conservation District. The Petitioner requests a Variance to permit a maximum impervious coverage not to exceed 23% where 20% is permitted in the Conservation District per Chapter 100, Article 7.3.3. of the Zoning Regulations

B) ZBA 21-22: Petitioner, PSNH, d/b/a/ Eversource, of 13 Legends Dr., Hooksett, requests a Variance for property located at 115 Park Ave., Tax Map # 233-022-000-000-000 that is in the Conservation District. The Petitioner requests a

Variance to permit a 40 foot tall electric enclosure where 35 feet is permitted in the Conservation District per Chapter 100, Article 7.3.4 of the Zoning Regulations

Chair Gorman asked to hear from City staff.

Mr. Rogers stated that this property is in the Conservation District. He continued that in 2014 it received two Variances. One was for the use, since this is not an allowed use in the Conservation District. The lot that was created from a subdivision off City property had no frontage, hence the need for the second Variance. The Petitioner is before the Board is seeking two new Variances they would need for what they are proposing.

Chair Gorman asked to hear from the Petitioner.

Jeremy Belanger stated that he is a Senior Project Engineer and a License Engineer with TF Moran, 48 Constitution Dr., Bedford. He continued that Connor Jennings of Eversource, 19 Production Ave., Keene, joins him tonight. A few more team members are participating virtually. Jennifer Codispoti from Community Relations will introduce the project.

Chair Gorman stated that he wants to give the Petitioner the option to run through both Variance requests cumulatively, if that would work better for their presentation. He continued that if they consider the two Variance requests to be extremely separate, the Board could hear separate dialogue for each one. Mr. Belanger replied that they would present both together.

Chair Gorman stated that for the record, there is only a four-member Board tonight. He wants to make sure the Petitioner is aware of the fact that one Board member is absent, and to confirm that the Petitioner still wants to proceed with the hearing this evening. Mr. Belanger replied that they would like to proceed.

Chair Gorman stated that the Petitioner can present both Variance requests together, but the Board will have to deliberate on each one individually and vote on each separately.

Jennifer Codispoti from Eversource, 13 Legends Dr., Hooksett, introduced another colleague, Kurt Nelson, Senior Specialist from the Licensing and Permitting Team. She stated that they will provide a brief overview of what Eversource proposes for the project at the substation, and then Mr. Belanger will go through more of the specific information on the Variance requests.

Ms. Codispoti stated that to provide some background as to why Eversource proposes these two Variances, they are looking to build an electric enclosure, to enclose additional equipment that they are looking to install at the substation. Specifically, they will be upgrading their control house and installing a synchronous condenser at the substation, which is a power-regulating device. The reason they need this project, specifically, is that the Independent System Operators of New England (ISO-NE) identified various reliability needs on the electric system in NH broken down into different geographical regions, and in the western region, ISO-NE identified

some voltage concerns. The identified solution, installing the synchronous condenser, will provide more voltage control, which will reduce the likelihood of outages and improve system reliability. The project schedule is on the permitting and engineering stage, which they plan to continue through the fall. Construction at the substation is not anticipated until approximately the third quarter of 2022. The work would take approximately a year to complete.

Mr. Belanger stated that the legal address of the site is 115 Park Ave. He showed the location on the map and its surroundings. He continued that as part of the proposed project, Eversource is looking to place the electrical enclosure within the existing gravel substation yard and then reconstruct what was formally a temporary gravel driveway that was installed as part of this original substation construction. A portion of that has been reconstructed as part of the ongoing D-108 line. The NH Department of Transportation (NHDOT) granted a temporary driveway permit, and there is gravel in a portion, which is part of the ongoing line work.

Mr. Belanger stated that the first Variance that they are asking relief from is Article 7.3.3., Maximum Impervious Lot Cover. He went through the Variance criteria.

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

Mr. Belanger stated that to be contrary to the public interest, a Variance must unduly, and in a marked degree, conflict with the Zoning Ordinance such that it violates the Ordinance's basic Zoning objectives. He continued that the requested Variance to allow minimal additional lot coverage to provide safe, secure access to the substation and adjacent utility transmission corridor, will not threaten the public health, safety, or welfare, but will enhance it by allowing for timelier access to both locations for emergency maintenance. Granting the Variance for the additional minimal lot coverage associated with improvements for safe, secure site access would not alter the essential character of the locality nor be contrary to the public interest, as it facilitates the adequate provision of electricity, an essential public requirement.

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

Mr. Belanger stated that the general purpose of the maximum lot coverage provision is to prevent adverse built conditions, such as buildings taking up too much space given the lot size and context of its surroundings, and to minimize storm water runoff from impervious surfaces, such as pavement or concrete, which can have adverse impacts on water quality. He continued that given the minimal increase in lot coverage to provide appropriate access improvements meeting safety and design standards set forth by the NHDOT and the American Association of State Highway and Transportation officials, as well as the appropriate provisions for storm water management, granting relief would not frustrate the purpose of the Ordinance and there would no hazard to public health, safety, or welfare. The lot coverage presented is consistent with the spirit of the Ordinance, as there would be no negative cumulative impact on granting similar Variances to others in the neighborhood who also share the same conditions as the subject property.

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

Mr. Belanger stated that the guiding factor for substantial justice is any loss to the individual that is not outweighed by a gain to the public is an injustice. He continued that under the specific design of the proposed site, the gain to the public would not outweigh the harm to the applicant, as the public is protected equally in either case. The proposed infrastructure improvements and associated lot coverage will allow Eversource the ability to continue to use the property for providing a safe, secure substation built in accordance with the national electrical safety code standards.

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

Mr. Belanger stated that specific to the Variance requested, Eversource has continuously operated the site as an electrical substation dating back to 2014. As the industrial character of the site has already been established, the value of the surrounding properties already reflects the intended use and no diminution in value would be expected from the authorization of the requested Variance.

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. Belanger stated that the overall purpose of the Ordinance is to promote the health, safety, and general welfare of the public. Relief from the maximum impervious lot coverage criteria as specified by the Ordinance can be provided without frustrating the purpose of the Ordinance, in that the overriding factor of safety of the public is observed. The existing storm water management system has been enhanced to provide adequate attenuation and treatment of storm water runoff associated with the proposed impervious surfaces. Special conditions pertaining to this property that distinguish it from other properties include the existing use of the site as an electrical substation, which requires an expansive gravel yard; its proximity to the existing transmission lines that need to be regulated; and the need for it to be located within the area it is intended to serve. Denial of the Variance would result in an unnecessary hardship for the owner and would not promote a public interest.

and

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

Mr. Belanger stated that the location and existing use of the property as an electrical substation makes the continued use of the property, to support an essential public utility, an appropriate selection. From a design standpoint, the proposed equipment to regulate and balance the voltage on the electric power transmission grid must be located at a transmission substation, and be sited

in the area it is intended to serve. This site accomplishes both objectives. Re-siting the substation elsewhere in the town would create an economic hardship for the applicant and present substantial electrical design challenges that could compromise the intent of the project.

Mr. Welsh stated that he has questions to gain clarity around what is impervious and what is not, on this site. He continued that the building is clearly impervious, and part of the 20-something percent that is there now and questioned if the rest is gravel. He asked Mr. Belanger to trace with his finger to show the existing impervious surface and the proposal for the new impervious surface.

Mr. Belanger replied that he has a handout to distribute, which is supplemental to what is in the agenda packet. He continued that the last photo in section 2 of the packet is aerial imagery that shows the property boundary in blue and the existing fencing in red. Google has not flown this since the construction of the substation yard, but the supplemental aerial image shows the existing substation yard in light blue, which is gravel. The red is the extent of the gravel that is currently in place associated with the line work, and the green is what Eversource proposes in post-construction. Where the gravel is and whether it has void space is a good question, which Eversource reviewed with Mr. Rogers ahead of time. Because the substation yard is designed for heavy vehicles and loads, it is compacted, and on a conservative standpoint, Eversource considers it all to be impervious.

Mr. Gaudio stated that he noticed that the map suggests there might be something that would help to ameliorate the potential runoff. He asked what Eversource is doing to ameliorate any excess runoff there might be as a result of adding the impermeable matter.

Mr. Belanger replied that in addition to the Variance request that is before the Board tonight, the project will also be going before the Planning Board for site plan review. The site has to conform to the City's regulations. An Alteration of Terrain (AoT) permit was granted during the original construction, so there will be an AoT permit associated with this component of construction. Currently there is an existing storm water management area. He showed the location on the image, and continued that there are two swales, and a culvert under the existing driveway. He indicated the area the runoff goes into, and the location of the storm water management area, and continued that Eversource will reconfigure it to pick up a portion of the driveway. As they progress forward, they tested it this week to determine their infiltrative rates and their seasonal high groundwater. They will have a second storm water management area. He showed its location. He continued that they would pitch the driveway away from the wetlands and toward the interior of the site where there will be a swale. The storm water management areas will collect and treat storm water to the standards of the New Hampshire Department of Environmental Services (NHDES).

Mr. Gaudio asked if it would be fair to say that the runoff pond and swales would be sufficient to take care of rain, such as the amount of rain that Keene had this past July and August, which might have been in the range of "once every 100 years."

Mr. Belanger replied that the systems have to be designed for AoT standards up to the 50-year storm event. He continued that Eversource always likes to do their due diligence and run their 100-year storm event to determine what will happen. There is nice, sandy material. They can create infiltration basins that will attenuate and treat the water runoff.

Mr. Gaudio asked, in regards to criterion 5A, if there are currently other substations or other sites that could be made into substations that would not have the kinds of problems, whether legal – such as the need for a Variance, or other legal issues – or physical. He questioned if this site is unique.

Mr. Belanger replied that this site is unique in the sense that it is the existing substation. He continued that only about half of the substation has equipment. The portion that Eversource would be putting this electrical enclosure in was always intended, down the line, to be able to accommodate additional infrastructure as the region grows and the demands grow. As for whether there could be other sites, he is not sure. He asked Ms. Codispoti to speak to that.

Ms. Codispoti replied that she would have to get back to the Board on that, because her understanding is that this site was chosen because of the region that they are looking at and the existing infrastructure. She continued that she could get some additional information to clarify that.

Mr. Gaudio replied that he was asking about other sites within the region; he was not thinking about a site across the state or anything like that.

Mr. Belanger stated that ISO-NE had identified specific substations that were the best options that were available; thus, Eversource is currently working on three of these in different regions of the state that they have previously constructed. TF Moran has worked with Eversource to do two of them. One is in Concord and one is in Saco Valley. They can find more information if the Board would like it.

Chair Gorman replied that he does not think the Board needs that, unless it is vital to Mr. Gaudio, who replied in the negative. Chair Gorman stated that the Board would rely on what they have this evening. If they hit any major hurdles during their deliberations and need more information, they could opt to continue this until they could ascertain said information.

Chair Gorman asked about the height of the structure. He continued that they have paid a lot of attention to the runoff, and it seems like efforts are being made to mitigate that. Judging by all the trees and knowing the area fairly well, he guesses that these are 70-foot trees and people will not even see the structure. He asked if that is accurate.

Mr. Belanger replied that where the substation is currently located, if you were standing on the sidelines along one of the baseball fields and looking down into the substation yard, you would

be able to see it. He continued that if you drive east along Rt. 12, pass the utility corridor, and turn back, he could not say you would not see it.

Chair Gorman stated that he would word his question better: is it accurate that the structure will be shielded substantially by the trees and that the structure will not be standing out there in the open? Mr. Belanger replied that is correct. He continued that this project does not involve any proposed tree clearing.

Mr. Hoppock stated that the application notes that the existing impervious coverage is 22% and they propose to not exceed 23%. He continued that the new Ordinance says it should not exceed 20%. He asked how they got up to 22%, if they are not supposed to exceed 20%, or if he is misreading it.

Mr. Belanger replied that Mr. Hoppock is correct. He continued that when the site was constructed the yard was right at 20%, shown in light blue in the photo. They wanted to make sure they accurately captured the current conditions, so when they went out to do the existing conditions survey, the red line shown on the photo is gravel, part of the D-108 line. That would be coming out. Thus, they would need the approval of the Variance for the 23% in order to leave this in the condition, but at the time of the existing condition survey, there was gravel out there and they wanted to make sure everything was out in the open.

Chair Gorman asked if Mr. Rogers could help clarify that. Mr. Rogers replied that the previous Zoning Code said 20% as well, so there has not been a change to the 20%. He continued that in looking at the approved site plan for this project after it received the original Variances, he saw no indication there that they would be over the impervious surface at that point in time. His understanding is that what Mr. Belanger is trying to say is that they incorporated part of the temporary drive that has been installed, both for the initial construction and now because of the work being done on the transmission lines and quite a bit of gravel was added for the vehicles to go back and forth. Obviously, at this point in time, if the Variance were denied, that impervious surface would have to be removed and taken back to 20% or less.

Mr. Rogers stated that Ms. Marcou was able to pull up the GIS mapping the City did in 2020, which shows the structures and the area. The current figuration of the site, without the temporary drive, is shown on the monitor.

Mr. Gaudio asked, in regards to the aerial imagery, if the spider-like structures that extend up are in excess of 40 feet. Mr. Belanger replied yes. Mr. Gaudio asked if it is correct that the roof of the building is lower than those taller structures. Mr. Belanger replied that is correct. He continued that he does not have the exact number in front of him, but he believes the transmission lines are between 60 and 70 feet tall.

Mr. Welsh asked if it is correct that the light blue area shown is the prior impervious surface, that is 20% of the site, and there is additional gravel heading out to the road, which is what puts it up

to 22% or 23%. Mr. Rogers replied that would be his assumption, but he would let the applicant speak to that. He continued that his understanding is that the current substation area in lighter blue would be the 20% or less, because that is quite a distance from that substation area out to the highway.

Mr. Belanger replied that is correct. He continued that the original construction was at the 20%. This would be the third time that a construction driveway has been placed in and then removed. If the Board was willing to grant this Variance, they then do not have to remove that driveway any time construction needs to be done. They try to minimize the number of entry points that they have off NHDOT's ways, so this is a good, central location. As you can see on the aerial imagery, between Rt.12 and Rt. 9 they can be used to access both the substation and the utility corridor

Chair Gorman asked if it would be safe to say that doing this road once and doing it right would create fewer runoff issues because it would be better engineered than a temporary road. Mr. Belanger replied yes. He continued that what is there now is a temporary driveway permit, and per the regulations, it is essentially anywhere from a 1.5" to 2.5" angular diameter and the main purpose of that is to collect material from construction vehicles so that it does not end up in the roadway. There is typically filter fabric underneath it to catch any fine sediment that may get down to the ground surface. What Eversource is proposing, and the full design will be part of the site plan package, is to build to NHDOT standards of six inches of gravel on top of 12 inches of gravel, compacted, super elevated, and with storm water directed to these new storm water management areas.

Mr. Rogers suggested that Chair Gorman have the applicant go through the criteria for ZBA 21-22 as well. Chair Gorman agreed.

Mr. Belanger stated that the second request is from Article 7.3.4, to allow a maximum building height not to exceed 40 feet where 35 feet is allowable within the Conservation District. He went through the criteria.

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

Mr. Belanger stated that to be contrary to the public interest, a Variance must unduly, and in a marked degree, conflict with the Zoning Ordinance such that it violates the Ordinance's basic Zoning objectives. Undue and marked conflict exist if granting the Variance would alter the essential character of the neighborhood or threaten public health, safety, or welfare. The height of the proposed electrical enclosure will not create hazards to the public health, safety, or welfare. While the structure is greater in height than a standard, single-story building, the required dimension is dictated by the required clear-distance between the electrical equipment and the structure that houses the units. The space above the equipment is not occupied and the building consists of only one story. As such, the additional height does not create a need for emergency responders to reach upper elevations of the structure for life safety.

He continued that the requested Variance would allow for electrical upgrades for a safe, secure transmission substation, for providing essential service to the public. Granting the Variance would not alter the essential character of the locality, as the site has been utilized for an essential public utility since construction in 2014. The site consists of existing utility structures in excess of the requested 40 feet in height. The site is abutted by City-owned property on three sides and NH Rt. 12 to the north. As such, the requested Variance will not negatively impact visual sight lines of residential abutting properties.

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

Mr. Belanger stated that it is assumed that the general intent of any height restriction is to secure public safety and provide for appropriate emergency response, provide adequate circulation of light and air, and protect the character of districts in the interests of the public in important views. As previously stated, life safety issues are mitigated by the structure having no occupied space above a single story, and the fact that the use of the site as an essential public utility electric substation has already been established. The proposed enclosure will have no negative impact on the character of the surrounding area. The Variance request fits within the spirit of the Zoning Ordinance in that the request will not create hazards to the public health, safety, or welfare, nor be detrimental to the use of or out of character with the adjacent neighborhood. Granting the Variance will not be contrary to the public interest, as it will facilitate the adequate transmission of electricity, an essential public requirement.

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

Mr. Belanger stated that the guiding factor for substantial justice is that any loss to the individual that is not outweighed by a gain to the public is an injustice. He continued that under the specific design of the proposed electrical enclosure, the gain to the public would not outweigh the harm to the applicant, as the public is protected equally in either case. The proposed infrastructure improvements will allow Eversource the ability to continue to use the property for the purposes of providing a safe, secure substation, built in accordance with National Electrical Safety Code (NESC) standards.

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

Mr. Belanger stated that specific to the Variance requested, Eversource has continuously operated the site as an electrical substation dating back to 2014. He continued that as the public utility character of the site has already been established, the value of the surrounding properties already reflects the intended use. As previously stated, the subject parcel does not have residential abutters and no diminution of value would be expected from the authorization of the requested Variance.

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. Belanger stated that the general purpose of the height limitation is to secure safety, to provide adequate circulation of light and air, and to protect the character of districts and the interests of the public in important views. He continued that since the height of the structure is a function of providing appropriate clearance distance from the proposed electrical equipment within the structure to the roof of the structure, its construction requires the height specified to accommodate the proposed electrical improvements. Relief from the maximum structure height criteria as specified by the Ordinance can be provided without frustrating the purpose of the Ordinance in that the overriding factor of the safety of the public is observed.

He continued that special conditions pertaining to this property that distinguish it from other properties include the existing use of the site as an electrical substation within the Conservation District, its proximity to the existing transmission lines that need to be regulated, and the need for it to be located within the area it is intended to serve. Denial of the Variance would result in an unnecessary hardship for the owner and would not promote a public interest.

and

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

Mr. Belanger stated that the location and the existing use of the property as an electrical substation makes the continued use of this property, to support an essential public utility, an appropriate selection. He continued that from a design standpoint, the proposed equipment to regulate and balance the voltage on the electric power transmission grid must be located at a transmission substation, and be sited in the area it is intended to serve. This site accomplishes both objectives. Re-siting the substation elsewhere in the city would not only create an economic hardship for the applicant, but also present substantial electrical design challenges that could compromise the intent of the project.

Mr. Belanger stated that something that is not included in this justification is that since the time Eversource submitted this, they were able to review the project with the Keene Fire Department (KFD) and the KFD did not have any objections to the request for the height above 35 feet. The KFD will do a full review as part of the site plan application.

Mr. Hoppock asked if it is correct that this structure will house the piece of equipment, Mr. Belanger described earlier, the synchronous condenser. Mr. Belanger replied that is correct. Mr. Hoppock asked what the rough dimensions are for that piece of equipment. Mr. Belanger replied that he does not have that information in front of him. He continued that the electrical design is ongoing. He could get the Board the dimensions. Mr. Hoppock replied that it is probably not

that important, but he questioned, given Mr. Belanger's mention of talking with the Keene Fire Department (KFD) what kind of fire suppression equipment will be installed in a building like this for that piece of equipment. He further questioned if it is typical sprinklers, or something else like powder. Mr. Belanger replied that he does not believe it is sprinklers, because Eversource is not proposing water be brought onto the site. He continued that he cannot speak to this directly, beyond that, but he could find out the information for the Board.

Ms. Codispoti stated that she could look into that as well and report back.

Chair Gorman asked Mr. Rogers if it is correct that fire suppression will be taken care of through a permitting process with the KFD and the Community Development Department. Mr. Rogers replied that is correct; those items would be addressed with the building permit application. He continued that also, as Mr. Belanger has mentioned, a lot of this is dictated by the electrical code and clearances to equipment. Some of this equipment probably has to have a lot of clearance between it and other equipment as well as personnel. That will all be dictated by the building code and electrical code.

Mr. Welsh stated that he is thinking about what will happen down the line. He asked if it is correct that there will be a site plan review, and that the enclosure itself, elevations, and so on and so forth, will go before the Planning Board. Mr. Rogers replied that it would either go before the Planning Board or the Minor Site Plan Review Committee (MSPR) that was created as a result of the new Land Development Code. It depends on whether this project meets the size criteria. The MSPR Committee also involves the KFD, City Engineer, and other expertise.

Chair Gorman asked if there were any further questions. Hearing none, he closed the public hearing and asked the Board to deliberate on ZBA 21-21.

1. *Granting the Variance would not be contrary to the public interest.*
2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Mr. Hoppock stated that he did not hear anything that would give him pause for concern about public health, safety, or welfare. He continued that he did hear, and tried to pay attention to, the explanation on the water management system, and he thinks it is probably satisfactory as to what their goals are. He is sure that whatever fine-tuning needs to be done can be done at the site plan review. He thinks the first two criteria are satisfied, based on that explanation.

Mr. Gaudio stated in agreement, adding that the value and importance of having continuous, uninterrupted electrical service goes a long way in that matter. Chair Gorman agreed.

Mr. Welsh stated that he would add that strict adherence to the 20% would involve tearing up the gravel and putting something new in, at some point in the future, at which point they may be getting into the kinds of measures that are contrary to the public interest.

Chair Gorman stated that he agrees, and he thinks forcing the re-creation of a temporary road is in spite of the intent. It wastes resources and energy.

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

Mr. Hoppock stated that he thinks the gain to the public is perhaps greater than what the applicant has emphasized. He continued that everyone has experienced a loss of power, and it takes hours and hours of work to get it back on. In his view, anything within reason that Eversource can do to improve the service would be a tremendous gain to the public. The other side of that coin is that when you devote a rather remote section of town to electrical substation service, as this area is,– and as the applicant said, there are no residential properties abutting this property, although there are Wheelock Park and the highways,– there is no one nearby to complain about noise. The Board did not hear anything about noise; he does not think there will be much noise associated with this. With a property so devoted to one specific use, the Board could not expect a request for any other use to come before them. Eversource will want to expand the use as the area grows, and it is natural to assume that the area is going to grow. The amount of impervious space may increase down the road; it is increasing a little bit tonight. What they do with that later on, maybe tonight is an indication of that, but 23% versus 20% is not a big concern to him. He thinks the harm to the applicant is great, and the harm to the public perhaps greater, if the Board does not approve this.

Chair Gorman stated that he agrees with Mr. Hoppock. He continued that the situation at this site already exists, so for the greater good of the public as well as the applicant, why not make it as good as can be. It is a substation and always will be, until Eversource decides it is not. If this is what needs to be done, he is inclined to support it.

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

Chair Gorman stated that they touched on the fact that there really are not the traditional type of surrounding properties. He continued that if there were residences all around, he would have a hard time with this one, but there are not.

Mr. Hoppock stated that one of the points the applicant made deserves repeating: this property has been used in this fashion as a substation since 2014, so with that use for that period of 6 or 7 years, the property values would already reflect that use. He continued that that makes sense to him. He does not find any diminution of property values here.

Mr. Welsh stated that he used to be an abutter to this property when it was being developed, because “abutter” was defined differently. He continued that in the time since 2014 when the substation has been built and went into use, his property value has gone up. The substation has not diminished the value at all.

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 he thinks the applicant did a good job identifying the special conditions of the property. He continued that those are the existing electrical substation, with an expansive gravel yard; its proximity to the transmission lines that it is hooked up to; and the need for these particular pieces of equipment to be at that site, which is what is intended for. Those are the definition of unique features to this site, thus, he is not troubled at all by those representations. It seems that the overall purpose of the impervious percentage requirement is not applicable to this site, or there is no significant relationship to it in this site, given its use, because the difference between 20% and 23% is so small, and the way Eversouce is going to manage the runoff cures that problem. He thinks not granting the Variance would cause a hardship, for those reasons. He finds criterion 5 is met.

Chair Gorman asked if anyone had further comment. Hearing none, he asked for a motion.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-21. Mr. Gaudio seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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.*

Met with a vote of 4-0.

The motion to approve ZBA 21-21 passed with a unanimous vote of 4-0.

Chair Gorman asked the Board to deliberate on ZBA 21-22.

- 1. Granting the Variance would not be contrary to the public interest.*
- 2. If the Variance were granted, the spirit of the Ordinance would be observed.*

Mr. Gaudio stated that his comments are the same as they were regarding ZBA 21-21. He continued that better assuring the delivery of electrical power without interruption is very valuable and beneficial to the public interest, thus, this would not be contrary to the public.

Mr. Hoppock stated that improving electrical service to the public without creating a risk of hazard to the public health, safety, or welfare and without altering the character of the area, which is what Eversource is proposing, is a plus. He continued that he finds the first two criteria are met.

Mr. Welsh stated that they have also discussed visuals as one potential detriment to the public interest, and dismissed that concern by some consideration of the trees surrounding and the height of the existing equipment.

Chair Gorman asked if the Board finds any merit in stipulating that the natural buffer must be preserved. Mr. Gaudio asked if it is within Eversource's ability to preserve it, questioning if the trees are on Eversource's land. Chair Gorman replied that is a good question. He continued that personally, he would contemplate putting something in the motion, just to ensure the buffer, but like Mr. Gaudio says, if you look at the boundary line, Eversource seems to have minimal control over it. He asked for others' thoughts.

Mr. Hoppock stated that he would not be opposed to reopening the public hearing to ask the applicant that one question. Chair Gorman agreed, opened the public hearing, and asked the applicant to speak to whether Eversource has ownership control over the trees, and whether a stipulation maintaining said trees would impede Eversource in any way.

Mr. Belanger stated that as shown on the layout plan, Eversource located its proposed drive within the existing utility corridor that is already clear of trees. He continued that Eversource has a standing vegetative maintenance with the required clear distances to the overhead

transmission lines. Thus, vegetative maintenance will occur in these corridors from time to time. However, as for their construction, they will not be touching the existing tree line. There is no topography on the imagery tonight, but because this is the wetlands and Tenant Swamp, which are about 10 feet lower than the berm, which is then 10 feet higher than the substation yard, it would bring Eversource no benefit to do any sort of tree clearing. As part of the original construction, Eversource planted a number of screening trees. He showed the location on the image and stated that many of the evergreens are less than 10 years old, and Eversource would prefer not to cut those down.

Chair Gorman thanked Mr. Belanger and closed the public hearing again.

Chair Gorman stated that he is fairly convinced that the natural buffer is being well managed and will continue to be so.

Mr. Hoppock stated that the gain to the public, as Mr. Gaudio mentioned, is significant, and the harm to the applicant if Eversource is not permitted to upgrade the substation in a way that makes sense could be significant. He thinks the third criterion is met, by virtue of the gain to the public. Chair Gorman agreed.

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

Chair Gorman stated that his comments are the same as for the fourth criterion in ZBA 21-21. Mr. Hoppock agreed.

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.*

Mr. Hoppock stated that the applicants did a fine job identifying the unique conditions of the property, given its unique use, and he thinks that with the height restriction there is a fire safety issue, and the light and air problem, but there is no one out in this location. There are no residential people abutting. There is traffic, but he does not think any of these height regulations have much application out there, when they are trying to consider constructing a building large enough house this equipment. He thinks an unnecessary hardship can be avoided by granting the Variance.

Mr. Welsh stated that he was on the Planning Board when this came through in 2014. He continued that regarding Mr. Gaudio's question about whether other sites were considered, he does not know the specifics, but he knows that a thorough assessment of alternative sites was

undertaken, including of the existing downtown site and others. None were as good as the current site. This was well thought out, and alternatives were considered and dismissed. It would be a hardship to find a different location.

Chair Gorman asked if there were any further comments. Hearing none, he asked for a motion.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-22. Mr. Welsh seconded the motion.

Mr. Hoppock stated that his motion is not subject to any conditions, because he is satisfied with what the Board has heard. Mr. Rogers replied that to clarify, the one condition that would be there would be the 40-foot building height restriction. Mr. Hoppock replied yes, that is what the motion is to approve. He meant he would not be adding a condition about the trees.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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.*

Met with a vote of 4-0.

The motion to approve ZBA 21-22 passed with a unanimous vote of 4-0.

V) New Business: New Land Development Code review

Mr. Rogers asked that the Board members to review the new Land Development Code and, at the next meeting, he and Ms. Marcou will have a summary of changes and can answer Board members' questions. Chair Gorman agreed.

VI) Communications and Miscellaneous

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Gorman adjourned the meeting at 7:35 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk