

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, March 7, 2022

6:30 PM

Council Chambers
City Hall

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh
Richard Clough

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Michael Hagan, Plans Examiner

I) Introduction of Board Members

Chair Gorman called the meeting to order at 6:00 PM and explained the procedures of the meeting. Roll call was conducted.

II) Minutes of the Previous Meeting – February 7, 2022

Mr. Hoppock made a motion to approve the minutes of February 7, 2022. Mr. Welsh seconded the motion, which passed by unanimous vote.

III) Unfinished Business

Chair Gorman asked City staff if there is any unfinished business. Zoning Administrator John Rogers replied no.

IV) Hearings

A) ZBA 22-03: Petitioner, Norman Miller, Jr. & Rebecca Miller, requests a Variance for property located at 1 Tanner Road, Tax Map #558-055-000-000-000 that is in the Low Density District. The Petitioner requests a Variance to install the in-ground pool/patio and utility pad five feet from the rear and five feet from the side of the property, per Chapter 100, Article 3.3.2 of the Zoning Regulations.

Chair Gorman introduced ZBA 22-03 and asked to hear from City staff.

Mr. Rogers stated that his recommendation, as the Zoning Administrator, is that this Applicant does not need to be before the Board for this Variance. He continued that the agenda packet has the proposed diagram of the pool, which staff, Mr. Hagan, noted something that was missed earlier, that this property is on a corner lot. In reviewing the proposed pool diagram, the initial

thought is that the “front” of the house is on Tanner Rd., and that that is where the front setback would be measured from, but as a corner lot, the frontage is actually on Arch St. The 90.96 feet is the shortest distance of the property, and by zoning definition, that becomes the front of the property, hence this is the front setback. With this clarification, this changes the measurements on the diagram. Staff thought that in the back where the proposed pool was going it would need a 20-foot setback, but the pool actually will only need a 10-foot setback, which you can see on the diagram that they are meeting. Eleven feet is the closest point and that is just where the wraparound concrete pad is going; that is not even to the pool. The pump house is only 7’x7’, which the Zoning Code allows one accessory structure within the rear or side setback as long as it is under 120 square feet. Section 1.3.3, Structural Setback Exceptions, covers that.

Mr. Rogers stated that he would put forth to the Board that they ask the Applicant if they are willing to withdraw this application without prejudice, allowing the Applicant to return to the Board if need be as they move forward with this project. He continued that it is the opinion of the Zoning Administrator that the Applicant does not need a Variance for the proposal they are demonstrating.

Ms. Taylor stated that she gets confused with the corner lots. She asked Mr. Rogers if that means that it has two sides, or two rears. Mr. Rogers replied that Arch St. is on the side of the right-hand side of the diagram, and that would be the front. The direction the house, which is on Tanner Road, is facing becomes the side setback. In addition, because it is a corner lot, that setback adjusts from 10 feet to 20 feet, but that is not the area they propose to work in at all. To the left of the house, as you are looking at it, is the rear of the lot. On the other side of the proposed pool is the second side setback, where they only need 10 feet. As proposed, they have a minimum of 11 feet, and that is to a 4-foot skirt around the pool. If you actually took the measurement to the pool, it would probably be closer to 15 feet. The Applicants are meeting the setback requirements, and they have that exception for the small accessory structure.

Ms. Taylor asked if this is another change, the Board has to absorb from the old Code. Mr. Rogers replied no, this is not a change. It was not realized this was a corner lot, and thankfully, Mr. Hagan noticed that just before the meeting. Recognizing that it is a corner lot changed the direction that they looked at the setbacks from, negating the need for this Variance.

Chair Gorman asked to hear from the Applicants. Norman Miller of 1 Tanner Rd. introduced himself. Chair Gorman apologized for the confusion and thanked Mr. Miller for coming. He asked if Mr. Miller would like to withdraw the application without prejudice, so that if something arises, he can reapply with the same application. Mr. Miller replied yes.

Mr. Hoppock made a motion to accept Mr. Miller’s request to withdraw ZBA 22-03 without prejudice, to his right to bring it forward if necessary. Ms. Taylor seconded the motion, which passed by unanimous vote.

B) ZBA 22-04: Petitioner, G2 Holdings, of 250 North Street, Jaffrey, NH, requests a Special Exception for property located at 0 Route 9, Keene, Tax Map #21-007-000- 000-000 that is in the Rural District. The Petitioner requests a Special Exception to permit a gravel pit use as defined in Chapter 100, Article 8.3.6.F, per Article 3.1.5, Permitted Uses in the Rural District of the Zoning Regulations.

Chair Gorman introduced ZBA 22-04 and asked to hear from staff.

Mr. Rogers stated that this is in the Rural District and the Applicant seeks a Special Exception for a gravel pit, an allowed use in that district with a Special Exception from the Board. He continued that the Board should note; this is changed in the new Land Development Code (LDC). Previously there were four criteria/questions for Special Exceptions. The new Code addresses many of the same questions but it is just broken apart more, into seven criteria.

Mr. Rogers continued that if the Board grants this Special Exception, this project would proceed to the Planning Board, which will review the new LDC section attributed to earth excavation. The Planning Board would look at additional criteria beyond the normal site plan criteria. That application would specifically review setbacks. Expanded setbacks are required both from the right-of-way and from any abutters and is more than normally be required in a Rural District, for obvious reasons. Driveway setbacks that are not necessarily under a normal development apply to this use, considering the type of traffic that a gravel pit can expect. There are additional surface water setbacks over and above what the Surface Water Ordinance requires, and vegetative buffers are required to be maintained, to address both sound and aesthetics. In addition, ground water quality benchmarks need to be met. The Applicant is testing any domestic wells within certain distances to determine specific baselines, to ensure that if a well is producing ten gallons per minute today, it will continue producing ten gallons per minute when the digging or blasting starts. Storm water management also needs to be addressed. Again, these are all items the Planning Board will be looking at, over and above a normal site plan.

Mr. Rogers continued that the LDC earth excavation section also has information about reclamation processes, so that when the Applicants are done with their work in the area they cannot just leave it with walls that pose a danger to people or other safety issues. There are best practice-type management steps that will need to be adhered too. Mr. Rogers continued that this Ordinance was adopted a while ago, when there was conversation about gravel pits or quarries starting, but as far as he is aware, this might be the first time someone has actually applied to the Board for this Special Exception.

Mr. Welsh stated that the list of items that the Planning Board review would consider was long, but he noticed in the narrative a discussion of a wetlands buffer and a desire to reduce it. He asked if that is something the Zoning Board would need to consider and approve the technical features of, or if the Planning Board or another Board would address that.

Mr. Rogers replied that he would have to review this once more, though the Surface Water Ordinance falls under this Board's authority, and in the Rural District, he believes that is 75 feet. If the Applicants were going to encroach on that, they would have to come before the Zoning Board. The surface water setbacks within the Planning Board criteria actually expands this to almost 250 feet.

Ms. Taylor stated that she has the same question. She continued that her concern is that this Board could approve a Special Exception, but they cannot approve a Variance from the Code as part of this application. She found it in Section 24.3.1, subsection D. She does not think the Planning Board has the ability to waive a Code provision, unless it says they can waive the Code provision. She would be concerned just to know, at this stage, if this will come back to this Board because the Applicant cannot meet a setback requirement.

Mr. Rogers replied that the earth excavation regulations are not actually in the Zoning Code. He continued that the Applicant is required to meet the Surface Water Ordinance, which is within the Zoning Code. This requirement is in the LDC but is outside the Zoning portion of it. Ms. Taylor might be correct that there is not the possibility of a waiver from this; though he would need to review once again for clarity. If there were not an exception for a waiver, then the 250 feet would need to be met, is his initial understanding.

Ms. Taylor stated that it is hard to tell, with this new LDC, where the Zoning Code ends and other items begin. In the table of contents, Definitions is the last section, and those definitions apply to the Zoning Ordinance. Mr. Rogers replied that he understands Ms. Taylor's frustration. He continued that the whole LDC includes many City Ordinances so everything relating to development is in one place, so people do not have to go back and forth between City Ordinances, the Zoning Ordinance, and the Planning Board Standards. He understands that the table of contents probably should be clearer, regarding where things end. The title on the table of contents right after Article 1 reads "Zoning Regulations" and then starts with Article 2, all the way to Article 18, and then the next one is Subdivision Regulations. That bolded title is the point at which it divides. Staff could create a better table of contents to make it more user-friendly.

Ms. Taylor replied that there are many sections, such as Subdivision Regulations, Site Development Standards, and Zoning Regulations, but there are other things, such as Application Procedures (Article 25) and Defined Terms (Article 28), that do apply to the Zoning Regulations. That is why she is confused. She would hate to think that Defined Terms do not apply to the Zoning Ordinance.

Mr. Rogers replied that he agrees, but an Applicant would probably be appealing an administrative decision if he (Mr. Rogers) interpreted the definition of a term differently. They would not be seeking a Variance from the Board. He continued that he understands what Ms. Taylor is saying, but he is not sure it matters if the definitions or the application process are in

the Zoning Code or not, because he does not think that is something an Applicant would be seeking relief from a Variance or Special Exception.

Ms. Taylor asked if Mr. Rogers could get clarification for the Board and report back at a subsequent meeting. She asked, when there is a setback requirement in another section, such as the excavation, and if there is no waiver process, does that setback requirement then come back to the Zoning Board? Mr. Rogers replied that he would check and see what process is available, if there is one, and let the Board know. The Applicant will have the same question.

Hearing no further questions for staff, Chair Gorman invited the Applicant to present.

Jeff Kevan from TF Moran, 48 Constitution Ave., Bedford, NH, stated that he is representing the Applicant, G2 Holdings, LLC. He continued that TF Moran did the survey of the plans in front of the Board. G2 Holdings purchased the 84-acre lot that is in map 215, lot 7. It is off Rt. 9, almost at the Keene/Sullivan town line. This is a very rural section, and for the most part surrounded by undeveloped land within four tenths of a mile of the site. G2 Holdings owns the property just to the east of this as well. There are no direct or adjacent abutters and no one very close to the site the gravel pit will be located. An existing driveway comes into the site from Rt. 9 as a previous owner had done some minor work on the property; there is a little platform about 15 to 20 feet from Rt. 9. In reviewing the general topography, there is a platform in the area in which the gravel pit is proposed, and then it climbs. It is probably a 3:1 slope all the way to the top of the hill. A ravine on the property is to the west, creating a small drainage way/wetlands. A ditch line runs along Rt. 9, so there is a small pocket of wetlands directly adjacent to Rt. 9 and there is a wetlands line on the west side. Mr. Kevan continued that there is about 2,200 linear feet of frontage on Rt. 9. The Applicant proposes an initial excavation of about five acres, to work within the initial gravel pit. Once that is complete, they would provide stabilization to that site then move to the next five acres. The total proposal is to open up ten acres.

Mr. Kevan continued that the Applicant's intention right now is to load potentially 30 to 40 trucks per day. They would operate from 7:00 AM to 5:00 PM, Monday through Friday, and might have some periodic, short hours on a Saturday. The gravel pit area proposed is about 1,950 ft. to the north of the nearest property line, and 1,600 ft. to the east, not counting the property that the Applicant owns. It is 590 ft. to the west, and 176 ft. to the south where the road is with the idea to use the existing driveway. The driveway is about 12 feet wide and comes down relatively steep, toward that pocket of wetlands in the front. They would maintain that lower edge of the road and expand it to 18 feet wide so that two trucks could get past each other. This would be a gated site and secured at night, with some type of secured container on site, to store fuel or blasting materials at the end of day.

Mr. Kevan continued that the Applicant proposes to capture runoff and bring it around to the lower part of the gravel pit where it would be detained and treated and released headed toward Rt. 9 and across to the river. They would maintain and treat everything on site. The initial approach, per Keene's regulations, is to stay above the seasonal high water table. Most gravel

pits do some blasting and they crush the rock and mix it with the over-burden. Any type of blasting would be smaller blasts, and controlled from a noise standpoint.

Mr. Kevan asked if there were any questions before he went into the standards.

Ms. Taylor stated that she does not think the map shown on the screen was in the agenda packet. Mr. Kevan replied that they provided it sometime last week. He continued that it is the same drawing, just with color. They wanted to illustrate that it is a wooded site and there are significant buffers. On the west side of the property is a natural berm between this site and the little stream that runs down. G2 Holdings would maintain that berm or hillside and work away from that, so the berm would help reduce sound and buffer any type of abutter might have. G2 Holdings owns the property to the east and proposes a small berm on that side as well. To the north is a mountain that protects that side. Driving by the site, the driveway isn't very visible, other than where you come in off Rt. 9. They would leave all that tree cover between them and the roadway just as is. Reasons why this is a good site for this type of use are A) the Rural District is the only district where it is permitted by Special Exception, and B) it is in the middle of an undeveloped piece of property with a natural buffer and land configuration around it that would protect it and provide buffering to abutters.

Mr. Hoppock asked if it is correct that there is no City water or sewer out there. Mr. Kevan replied that is correct. Mr. Hoppock asked what facilities they would provide for employees. Mr. Kevan replied there will probably be two or three employees and there would be port-a-potty facilities and eye wash facilities, and those type of safety features.

Mr. Kevan went through the criteria.

- A. The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, the LDC and the City's Comprehensive Master Plan, and complies with all applicable standards in the LDC for the particular use.*

Mr. Kevan stated that his understanding is that the Rural District is the only district a gravel pit is permitted in, by Special Exception. He continued that there is no City water or sewer. The Applicant's thought is that this would be a good spot for a solar field as a reclamation; that is years down the road. There are substantial setbacks and buffers for many of the adjacent properties. He gave the Board the dimensions to property lines, and they provided a second exhibit that showed the buildings they could find. It is about six tenths of a mile to the nearest building or house to the north; 2,000 feet to the east; 2,800 feet to the west, which is about half a mile; and 2,100 feet, about four tenths of a mile, across the roadway. Thus, they are well away from any adjacent structures and provide substantial distances to abutting properties. The intent of the Master Plan is to provide a long-term guide and resource for the community in making regulatory, zoning, and planning decisions and align with the community vision. The proposed use supports the Master Plan vision by siting this in a rural area well away from everything, with the natural features and environment that support the use very well, in terms of buffering and

keeping it away from other surrounding development. They feel that it fits within the Master Plan and the LDC regulations and meets the spirit and intent.

B. The proposed use will be established, maintained and operated so as not to endanger the public health, safety or welfare.

Mr. Kevan stated that they are addressing this, and will address this through the Planning Board processes and the NHDES RSA 155-E and Alteration of Terrain application, as those are required permits. He continued that the proposed use would not endanger public health, safety, or welfare. They are dealing with storm water, protecting that natural resource; they are providing vegetative buffers and berms that will buffer and screen any adjacent properties; and they will protect the natural features surrounding the site with these various design components. A geotechnical engineer is working on the geo-hydrologic study, and they are putting in the wells as required by the Code.

He continued that from a traffic standpoint, he understands that TF Moran missed that, but did provide the information. Their findings were that traffic is very insignificant. If you have 30 or 40 trips and two to three employees, you are looking at about eight new trips during the morning peak hour. They looked at, over the course of each hour during the day, roughly eight new trips. Right now, there are 3,700 trips per day on Rt. 9. This would be a less than 1% change. They would anticipate about 15 minutes between any new trip coming or going from the site, so it is a relatively minor impact. There is adequate sight line in both directions. They have spoken with the NH Department of Transportation (NHDOT), letting them know that they would be filing an application. Even though there is a driveway, you have to file for any type of change, so they will be going through NHDOT. The last component of that is traffic impacts or safety. They do not believe traffic will have any negative impact on the public health, safety, or welfare.

C. The proposed use will be established, maintained and operates so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property.

Mr. Kevan stated that where they have provided such significant buffers and distances from adjacent properties, they do not believe this will have any negative impact on the abutting properties. As they navigate the Planning Board process, sound features could be implemented. They feel that the forested buffers and the proposed berms will probably be adequate, but there are sound walls they can put up adjacent to the crusher to break the sound down. They will work with the Planning Board on any additional features that might be necessary.

D. The proposed use will be of a character that does not produce noise, odors, glare and/or vibration that adversely affects the surrounding area.

Mr. Kevan stated that with any type of blasting there are regulations that the blaster has to follow. He continued that there are certain areas and certain distances that they have to go in, to check wells, and do a pre-blast survey if there are people relatively close. They would take photos of the people's foundations and so on and so forth, for both parties' protection. They would want to know what it looks like before they do blasting, so if someone says, "I got a crack

in my foundation,” the blaster would know what it looked like before. They will do any pre-blasting surveys that are necessary, but that is based on distance and what have you. They do not believe they will have any negative effect. He continued that they can control noise and odors and that there is no glare associated with this use. This will all be dealt with through the process and with the proposed geotechnical work.

Mr. Hoppock asked about dust, while they are on the subject of noise and odor. Mr. Kevan replied that they would spray it down with water to control dust, and that is all part of the Alteration of Terrain requirement. A water truck would be on site and they would make sure to keep dust to a minimum. In addition, they would put down a stone driveway apron to clear the tires of the trucks that are coming and going, so they are not tracking dirt out onto the highway and having it wash off into adjacent ditch lines or wetlands. Mr. Rogers stated that the Planning Board would also be looking at dust.

E. The proposed use will not place an excessive burden on public improvements, facilities, services, or utilities.

Mr. Kevan stated that the only item the Applicant will have is traffic, and that is a minimal increase in traffic on Rt. 9. Again, they will go through the NHDOT for a permit.

F. The proposed use will not result in the destruction, loss or damage of any feature determined to be of significant natural, scenic or historic importance.

Mr. Kevan stated that nothing on the site is historic. He continued that they contacted the NH Historic Commission and they did a wildlife assessment on the property. Where they are leaving the tree coverage across the front of the property, it will not be an eyesore from Rt. 9 as you are driving in front of the site. They believe they will not result in any destruction, loss, or damage to any natural, scenic, or historic resources.

G. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.

Mr. Kevan stated that he touched base on this already.

Mr. Hoppock asked Mr. Kevan to elaborate on a remark he made regarding a 155-E application to the NHDES. Mr. Kevan replied that it will be in regards to very similar issues. He continued that the NHDES’s focus is largely on dust control, erosion, storm water treatment, and so on and so forth, and they will be concerned with the natural resources that are on three sides of this site. Mr. Hoppock asked if it is correct that it is also about protecting the water. Mr. Kevan replied yes.

Ms. Taylor stated that one of the maps had, in the notes, has a reference to the size and location of building services. She asked if there would be a building on this site. Mr. Kevan replied no, they are not proposing any building. He continued that they would have a storage unit to lock any type of blasting materials and/or fuels; they would all have to be contained and secured at night.

Ms. Taylor asked how long the Applicant thinks this gravel pit, if approved, will operate. Mr. Kevan replied that he guesses five to ten years. The Applicant does not currently know as it depends on business, what development is happening in the area, and the need for material.

Ms. Taylor stated that she does not pretend to understand the soil information they sent the Zoning Board, but her question is whether they know how deep they will be going from the existing surface level. Mr. Kevan replied that G2 Holdings would like to do approximately a 20-foot cut, but that may be reduced based on the geotechnical information. They did borings and know where ledge is, but they need to determine the exact depth of the seasonal high water table, which they are installing wells to determine. Right now, the plan shows about a 20-foot cut but that may shrink because they have to maintain separation between seasonal high water table and where they are excavating to. That is to protect the groundwater and to address concerns about the possibility of something from the blasting material going across the road to the river.

Chair Gorman asked if it is safe to say that it would not be more than 20 feet. Mr. Kevan replied that is correct; it would not be more than what they have shown. He continued that the depths vary slightly.

Ms. Taylor asked who checks up on the company, after the start blasting and removing material. Mr. Kevan replied that he does not know that they have “policing” procedures set up, but his guess is that something through the Planning Board process would identify that. He guesses that annually or every other year they would have to produce some information showing their progress.

Ms. Taylor replied that she was wondering how the people on site know that they have gone where they are supposed to. Mr. Kevan replied that a plan would be provided, and as is typical for contractors, they would use GPS equipment that tells them where they are horizontally and vertically. His guess is that the Planning Board may ask for some type of plan that indicates where they are at every year or two.

Ms. Taylor stated that one of her concerns - and again, the Board only got the traffic information that day - is one of those big trucks, which she know vary in size, going in or out every 15 minutes. She continued that this is a busy stretch of highway and trying to get in or out of the Otter Brook entrance on a summer day, is tough to make a turn coming in toward Keene. Which direction will these stone-hauling trucks be going? Mr. Kevan replied that it could be either direction. He continued that a passing zone begins about 350 feet to the west of this site and extends about 600 feet east of the driveway. This passing lane gives extra room for vehicles to turn and maneuver. Ms. Taylor replied that commenting from personal experience, one is not often able to use that passing lane, due to the volume of traffic.

Mr. Hoppock stated that Mr. Kevan had stated that the total will be ten acres but they will approach five acres first and then a second five acres when they are done with the first. He asked if the five to ten year estimate of how long the pit would last covers the entire ten acres. Mr. Kevan replied that it is just a guess, but yes, he was guessing that it would be within that range. He continued that he guesses there will be some timeline for updating any approvals they have.

For example, the Alteration of Terrain permit lasts five years, needing to renew with the NHDES. If you have over 100,000 square feet open, you have to file a storm water management report, which goes to the State, with the contractor keeping a copy, and he guesses that the City would want a copy, too. Each rainfall event, or once a week, they walk around and verify that erosion control measures are in place and functioning properly, and report that to the State and City and maintain records onsite.

Mr. Rogers stated that there is a requirement, under the standards the Planning Board will be reviewing, for the Community Development Department or their designee to conduct an annual inspection. There will be annual inspections to make sure the company is following the approved plan. Regarding Ms. Taylor's question about waivers, Article 24 speaks to the waiver authority of the Planning Board to grant waivers to the Article that covers earth excavation. The earth excavation permit starts at Article 25.19 and he will find where it speaks to the waiver process and get back to her with that number.

Ms. Taylor stated that Mr. Kevan talked about the berm on the east side and west side of the site. She continued that he acknowledged that it was steep, on the north side going uphill. She asked what they would do to prevent that from falling in. Mr. Kevan replied that there are about 10 to 12 feet of over-burden and then rock. He continued that they would have the rock face and then taper the over-burden, or the soil, back at 2:1 or 3:1, and they would have a cut-off ditch at the top. Any water coming off the top of that hill would be intercepted and brought around the excavation area, so it is not washing over the top and potentially washing out the soil slope. In addition, that soil slope would be stabilized with some type of matting and seeded periodically.

Ms. Taylor replied that she was just curious, because when they were widening that section of Rt. 9 in Roxbury, they were trying to do it and it kept falling down. She was wondering how that was handled so that kind of situation does not arise. Mr. Kevan replied that they are looking at intercepting water from the large hill/mountain and bringing it around that excavation open area and bringing it to the company's drainage system, where they can control and treat that runoff. In addition, primarily, the cut-off swale is to intercept run-off so it is not washing out the slope. The drainage system is just above the driveway at the base of the gravel pit, so it would intercept anything before it went to that driveway or to Rt. 9 or the wetlands below.

Chair Gorman stated that he does not know a lot about blasting, but Mr. Kevan mentioned that the nature of the blasting would be small in scale. He asked if that is for regulatory reasons or just preference. If it is preference, Chair Gorman questioned how could the Zoning Board be sure that preference would not change. Mr. Kevan replied that it would be part of the company's plan, part of the approval through the Planning Board. He continued that having the blasting be small in scale is for a couple different reasons – one, it controls the amount of vibration, because the deeper you go, the bigger the blast. They are also trying to control the noise and that smaller scale blasting is typically, what is proposed in this type of situation.

Chair Gorman asked if it is sort of an industry standard. Mr. Kevan replied that he is sure there are companies that drill and make bigger blasts, but this proposal is for smaller blasts. They are taking off sections of earth. Chair Gorman replied that those blast proposals would be part of the plan. Mr. Kevan replied yes, and the idea is that when they approach the design grade, they

would have a fractured or over-blasted section of approximately two feet, and then they would loam and seed over the top of it. That stabilizes. The reason for over-blast is to allow some water to work its way back into the soil and in through the ledge.

Mr. Hoppock stated that Mr. Kevan made a remark about the reclamation program perhaps involving solar power. Mr. Kevan replied yes, that is one thought, continuing that they have discussed it. At the end of this project, the land would be a nice, open area and they could look at some type of solar field.

Mr. Hoppock asked what the zoning impact of that kind of thing is, not that they can worry about it ten years from now. He asked if there is something in Article 8 referencing this. Mr. Rogers replied that a small-scale solar field would be allowed as a permitted use. He continued that a medium- or large-scale solar field would have to go before the Planning Board for a Conditional Use Permit.

Mr. Rogers stated that, in regards to Ms. Taylor's earlier question, the section for the waivers and exceptions is Article 25.9.13. Chair Gorman asked if Ms. Taylor had a follow-up question. Ms. Taylor replied no, she is not going to ask a question now, because she has not read that section and it would take her a while to do so.

Chair Gorman stated that since no one from the public is present, there is thus no public input, and he is closing the public hearing. He asked the Board to deliberate.

- A. The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, the LDC and the City's Comprehensive Master Plan, and complies with all applicable standards in the LDC for the particular use.*

Mr. Hoppock stated that in terms of spirit and intent, it is permitted by way of Special Exception in the zone, which is something to be recognized. He continued that the other applicable regulations would be significant. These are RSA 155-E, Planning Board regulations, and the NHDES. He believes it would meet those criteria as well, not just today, but as the project progresses. It is also nice to hear the annual inspection that Mr. Rogers mentioned.

Mr. Hoppock continued that he had a chance to read the traffic information, belatedly but before he arrived at tonight's meeting, and he agrees that it is probably a minimal impact. His experience on the road, before and after the Rt. 9 renovations, has not been like Ms. Taylor's, although it still can be well traveled. He does not see this as a significant burden on that traffic flow. He is not convinced that will be an issue.

Ms. Taylor asked, for clarification, if they are looking at the criteria in Article 25.6.6. Chair Gorman replied that his understanding is that they are following A through G. Ms. Taylor stated that Article 25.6.6 is not in the Zoning Ordinance. Chair Gorman asked Mr. Rogers if it is correct that Article 25.6.6 is what they are following. Mr. Rogers replied yes, this is the Approval Standards for a Special Exception. Ms. Taylor asked what Chair Gorman was reading from, if it was not Article 25.6.6. Chair Gorman replied that he was reading from the Applicant's list, but he believes it is the same criteria. He asked for further comment on A.

Ms. Taylor stated that she agrees with Mr. Hoppock that this appears to be consistent with the spirit and intent of the Zoning regulations.

B. The proposed use will be established, maintained and operated so as not to endanger the public health, safety or welfare.

Mr. Welsh stated that he thinks he has heard testimony, and a description of the proposed operating procedures, enough to convince him that they have fully considered the risk to the public health, safety, and welfare, and that they will take care of that.

Ms. Taylor stated this is one of the two criteria that concerns her. She continued that that is because the Board has seen some statements made, but she is not sure that they have seen the actual evidence. She realizes that the Planning Board will review it, but based on the information the Board has tonight, and her personal information, she does not know that the blasting will be appropriate for this location. She does not know all of those details on health and safety, not that she would need to know the final plan, but she thinks she would need to know more than she has heard tonight.

Mr. Hoppock stated that his view is that the Planning Board is the RSA 155-E regulator for the City. He continued that from what he can tell, it has detailed operational standards that the Applicant would have to meet, and they are subject to the annual inspection that Mr. Rogers mentioned. He thinks that regulations with respect to blasting, dust, and noise would be addressed as they went along, in terms of not just the operational plans when they are proposed and approved, but as it is operating as well, by virtue of those inspections. Once the operation is over, there is the significant reclamation issues that they would have to propose and have approved in advance of the expiration of the permit, under RSA 155-E. Thus, he thinks the criterion is satisfied, based on all the steps that are in place to ensure public health, safety, and welfare. The information they have tonight is probably the best available, in terms of what the Applicants know about what the project will entail. He agrees with Ms. Taylor that the “test boring” information was foreign to him and did not mean a thing, in terms of the application, but that is what they found and that is what they gave the Board. In terms of health and safety, he thinks the provisions in place to ensure that in an ongoing way satisfy him to a great degree that this criterion will be satisfied and is satisfied today.

Chair Gorman stated that he echoes Mr. Hoppock. There are regulatory restrictions through City Planning and NHDES. He agrees that some of the information the Board is being given is speculative, and as Ms. Taylor alluded to, that can be nice to hear but there are no guarantees. He continued that he does feel that there is enough regulation in place where it does become a guarantee at some point. That is probably the point where it goes through the Planning Board. He also thinks his concerns about blasting, noise, and so on and so forth are dimmed by the location, because there is so much area around this proposed use. There is not a lot of human activity near it. He does not think the noise will be disruptive to people, because they are not going to be there for the most part. There are not houses or much of anything other than forest. That certainly helps.

- C. The proposed use will be established, maintained and operates so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property.*

Ms. Taylor stated that it is not specifically adjacent, but the nearest area that would have any impact is Otter Brook Center, and she is not sure how occupied that is, how often, or what its current operations are. She continued that she thinks that unless they are doing blasting every half hour, it will not be a huge impact on the adjacent area.

Mr. Hoppock stated that he agrees with that, given the distances and the area that was mentioned.

- D. The proposed use will be of a character that does not produce noise, odors, glare and/or vibration that adversely affects the surrounding area.*

Chair Gorman stated that he feels that some of these criteria are tied together and redundant. Mr. Welsh agreed, and stated that the only thing he would add is that people might hear some blasting from the Otter Brook beach. He continued that however, from that location you often hear guns firing at the adjacent rifle range, too, so they will be competing with percussive sounds. It will not necessarily be inconsistent with what you would otherwise hear.

- E. The proposed use will not place an excessive burden on public improvements, facilities, services, or utilities.*

Mr. Hoppock stated that his first observation is that there are very few public utilities or services out there. He continued that there is a road, as they talked about. He does not think there will be a significant impact on that. He thinks this criterion will be met as well.

- F. The proposed use will not result in the destruction, loss or damage of any feature determined to be of significant natural, scenic or historic importance.*

Ms. Taylor stated that she thinks the Board has heard testimony that they have already had historic review and environmental studies of the area. She continued that from what she has heard, they have met this criterion.

- G. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.*

Chair Gorman stated that he thinks they covered this when reviewing criterion A., but invited anyone to contribute anything further.

Ms. Taylor stated that this is the other criterion that creates a problem for her. She continued that there is indication that it will not necessarily be a substantial increase in level of traffic. She does not know about the safety hazard or congestion. She is concerned about the number of trucks turning in and out of that road. The posted speed limit is 55 mph but she has not seen many drivers who go 55 mph on that stretch. It is usually 65 mph or higher.

Mr. Hoppock stated that the trip generation table, on the second page of the memorandum, seems to indicate that there will be three employees coming in the morning and leaving after 4:00 PM, and a host of traffic coming in and out hour by hour, roughly four vehicles per hour and two at the end of the day. He continued that during the course of the day, other than peak hours in the morning and evening, which can be significant, most of this traffic, will be during the day when the people who come into Keene in the morning and leave Keene in the evening will not even be using the road. That is usually after 5:00 PM, after these employees have already left. The report used the word “negligible” to describe the level of congestion, and he thinks that is true, based on the study. He regards it as a low impact, and not a source of any traffic congestion.

Chair Gorman stated that he would be inclined to agree. Ms. Taylor stated that they could agree to disagree, but her concern is not necessarily congestion; it is a safety hazard issue for her.

Chair Gorman stated that he does not know what the traffic count per diem is, but it is certainly high. He continued that when he looks at the percentage increase that this use may cause – an estimated four vehicles per hour on a road with a high traffic volume – he leans more towards what Mr. Hoppock is saying. He understands Ms. Taylor’s safety concerns, but thinks the passing lane helps. Traffic may move at 65 mph, but he does not think tri-axles do when they are entering and exiting a pit. That will force the speed of the average driver to adapt to what is going on, and he thinks it will all be adequate.

Mr. Hoppock asked, given the questions about regulatory oversight this project will experience moving forward, and whatever phases it will go through, such as the Planning Board and the NHDES, is it necessary to make this Special Exception, which is a use change, contingent on approval of all applicable regulatory authorities or is that just a given?

Mr. Rogers replied that it is up to the Board, but the very start of Article 24, which deals with the excavation permit, states that no one shall operate without obtaining that permit from the Planning Board. He continued that he does not see the need to condition that, because again, with all the criteria the Planning Board will be reviewing, many of the questions that arose tonight are ones that the Planning Board will address. That would be conditional of their permit. Mr. Hoppock replied that that is what RSA 155-E requires as well.

Ms. Taylor stated that she thinks it would not hurt, because they have RSA 155-E, the Planning Board, the NHDOT, and maybe NHDES, so the Zoning Board probably does not even know all of the permits that are involved in this. She would say that it is probably a good idea to condition it upon approval of all applicable permitting. Mr. Hoppock replied that he does not think it hurts, either.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 22-04, subject to the approval of all applicable regulatory authorities, to include but not be limited to the Planning Board and the New Hampshire Department of Environmental Services. Mr. Welsh seconded the motion.

- A. The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, the LDC, and the City's Comprehensive Master Plan, and complies with all applicable standards in the LDC for the particular use.*

Met with a vote of 5-0.

- B. The proposed use will be established, maintained and operated so as not to endanger the public health, safety or welfare.*

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

- C. The proposed use will be established, maintained and operates so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property.*

Met with a vote of 5-0.

- D. The proposed use will be of a character that does not produce noise, odors, glare and/or vibration that adversely affects the surrounding area.*

Met with a vote of 5-0.

- E. The proposed use will not place an excessive burden on public improvements, facilities, services, or utilities.*

Met with a vote of 5-0.

- F. The proposed use will not result in the destruction, loss or damage of any feature determined to be of significant natural, scenic or historic importance.*

Met with a vote of 5-0.

- G. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.*

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

The motion to approve ZBA-22-04 passed with a vote of 4-1. Ms. Taylor was opposed.

V) New Business

Chair Gorman asked if there was any new business. Mr. Rogers replied that there is no new business, but Ms. Marcou held a training about the changes in the LDC, and if any Board members want to sit down with her, him, and/or Mr. Hagan they are welcome too. He continued

that he appreciates the comments coming forth regarding the LDC, because this is a new format for everyone and they are still coming across items to address on a daily basis. He knows information can sometimes be hard to find in the document. He encourages anyone to reach out for a one-on-one or one-on-two type training.

Mr. Hoppock stated that tonight's case is a perfect example. He continued that he was unable to find the approval standards that G2 Holdings submitted, the new Special Exception criteria, anywhere in the LDC. His comment to Ms. Marcou today when he went for training was that the Code should have an index. She explained about elaborating on the table of contents, which might not hurt, either. An index would be a time-consuming task, because there is a lot to index. Mr. Rogers replied that he appreciates that feedback, because they want this to be user-friendly.

Ms. Taylor stated that it was helpful to sit with Ms. Marcou and go through the document. She continued that there were a few things she could not find, and that helped clarify it. She has concerns, as she pointed out earlier, about the fact that if a certain section is called the "Zoning Ordinance," they should not have definitions that apply to it considered not in the Zoning Ordinance. She continued that they should not have "Application Procedures," where the criteria for a Variance or Special Exception are found; they should be part of the Zoning Ordinance. She now understands much better what they were trying to do with this document, but it is inconsistent that the first 18 Articles are the Zoning Ordinance, when there is material in the rest of the Code that applies to the Zoning Ordinance.

Mr. Rogers replied that he understands what Ms. Taylor is saying, but they have to look at this as an overall document, a land development document, not just a zoning one. He continued that most applications before the Zoning Board would go before other boards as well. The application for ZBA 22-04, for example, will go in front of the Planning Board and then possibly to Mr. Hagan for building permits. The intent of this document was to answer the question "How do I apply for something?", so a person would not have to go to three different locations within the document to find an application for the Zoning Board then an application for the Planning Board. They were trying to put it all in one area. He understands Ms. Taylor's frustration that if they are talking about Zoning, then it should be in that area. Under "Definitions," all the uses are covered in the Zoning Code. Some of these things are areas that people will be looking for. Again, whether it is a Variance or Special Exception that is all within the Zoning Code. Someone is not necessarily going to seek a Variance from an application process or a definition. The use definition is absolutely part of the Zoning Code and already in the Zoning Code for that reason.

Chair Gorman stated that he sees the logic behind having a definition table that is applicable to everything, and then having a use definition that is specific to zoning. He continued that he sees the logic behind that so if someone is doing something with Planning (or Zoning or Historic), they know where to go for the definitions. He does not take exception to those definitions being outside of the zoning body, nor does he take exception to the applications being outside of it, because if he was applying for something, his preference would be to be able to find all of the

applications in one location, which is how the new document is designed. He thinks that these things have merit, but his question for Ms. Taylor is whether there is a specific reason she does not like it this way. Is it just because it is different? Or does she see possible legal issues regarding not having the zoning pieces inclusive in the zoning section?

Ms. Taylor replied that it is just that it is inconsistent to say the entire Zoning Ordinance is only the first 18 Articles of the document, and yet, it has to be read together with the rest of the document. She continued that she does not know if it will create legal issues, but it is a word of caution that they should not have blinders on and say that the Zoning Ordinance is the first 18 Articles and 19 through 28 are not relevant. She thinks they will find that they *are* relevant, as they found tonight when they had to look at the excavation section to really know what was going on. The criteria for the Special Exception are in Article 25. They need to look at it as a whole document, not just as narrowly as the Zoning Ordinance. That is what she is getting at.

Mr. Hoppock replied that the other side of that coin is that the more familiar they get with the document, the easier it is going to be. He continued that the learning curve is painful sometimes.

VI) Communications and Miscellaneous

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Gorman adjourned the meeting at 8:00 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk

Proofread by,
Jane Taylor, Board Member