

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, August 15, 2022

6:30 PM

Council Chambers

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

Members Not Present:

All Present

I) Introduction of Board Members

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

II) Minutes of the Previous Meeting: June 6, 2022

Ms. Taylor stated that line 93 of the June 6, 2022 meeting minutes says "...in keeping with the Autex Mazda brand so that customers recognize," and then it is dropped. The sentence needs an object. Customers recognize what? She asked if someone can listen to the recording and fill that in. Chair Gorman asked staff to follow up on that.

Mr. Welsh made a motion to approve the minutes of June 6, 2022, with line 93 corrected. Mr. Hoppock seconded the motion, which passed by unanimous vote.

III) Unfinished Business

Chair Gorman asked if there was any unfinished business. Mr. Rogers replied no.

IV) Hearings

- A. ZBA 22-12: Petitioner, Les Lynch of SPS Carpentry, LLC, requests a Variance for property located at 121 Davis St., Tax Map #584-046-000-000-000 that is in the Downtown Transition District and owned by Massoud, LLC of 105 Arch St, Keene.**

The Petitioner requests a Variance to permit the renovation from a single-family dwelling to a multiple family dwelling on an 11,325 sq. ft. lot where 13,400 sq. ft. is required, per Chapter 100, Article 4.6.1 of the Zoning Regulations.

Chair Gorman introduced ZBA 22-12 and asked to hear from staff.

Michael Hagan, Plans Examiner, stated that this building was built in 1870 and is located in the Downtown Transition District. He continued that it has 11,325 square feet where 13,400 square feet would be required. It has five bedrooms and would require four parking spaces for use as a two-family home.

John Rogers, Zoning Administrator added that for clarity, where it states that this is a single-family home converting to a multi-family, it would be a two-family home. He continued that as a two-family home, it would require the four parking spaces as Mr. Hagan mentioned.

Ms. Taylor stated that in reading the application, she sees that this is basically a six-bedroom home, and she assumes it would be one tenant per bedroom. She asked why it is not considered a lodging house. She knows that is not a permitted use in this district, but there could be a lodging house by Variance.

Mr. Rogers replied that if they were to use this as one unit without dividing it to two units, it would be a lodging house and they would be before the Board seeking a Variance for that use. He continued that he will let the Applicant speak to it, but he believes their intent is to separate this into two distinct units.

Ms. Taylor asked if this would meet the criteria for a lodging house if they did not have this application before them. Mr. Rogers replied that it depends, that the presence of six bedrooms does not necessarily make it a lodging house. Six bedrooms could still be a single-family home. It is based off the tenancy and the relationship between the occupants. For example, it could be a single family with eight children. If several people who were unrelated occupied it, then it would fit more as a lodging house. This has always been used as and considered a single-family home.

Ms. Taylor asked if he is saying that if there were six unrelated people using the various bedrooms, it would be closer to the definition of "lodging house," which would not be a permitted use. Mr. Rogers replied that is correct; it would require a license under the new Land Use Code.

Mr. Welsh asked for clarification in asking if the property has been rented to six tenants in the past, and those six are not family members, has the property been in violation of the Code. Mr. Rogers replied that is correct.

Mr. Hagan stated that for further clarification, a landlord is allowed to rent to up to four unrelated people, regardless of how many bedrooms exist, for a single-family home. Ms. Taylor replied though she recognizes that, her understanding of the application is that they have six bedrooms and six unrelated tenants who are quite possibly Keene State College students, so she wondered if the City considered it a lodging house and it was just in the wrong zone. That was the foundation of her question; she wanted to make sure she understood the Code correctly.

Chair Gorman thanked staff and asked to hear from the Applicant.

Les Lynch of Walpole stated that he is representing SPS Carpentry, business address PO Box 516, Walpole, NH. He continued that regarding the previous conversation, he would add that the current owners have recently purchased the property and this is their first go-round with signing tenants, and their goal is to not continue the practice of having more tenants than they are lawfully allowed. The Ordinance about four non-family members was the impetus for them choosing to subdivide and add a single-bedroom apartment rather than continuing to rent it in the way that the previous owners did.

Chair Gorman stated that Mr. Lynch is welcome to present however he likes, going through the Variance criteria or not, but the Board will be deliberating on each of the five criteria.

Mr. Lynch stated that City staff did a straightforward job of explaining the basic issue. He continued that the lot size is 11,325 square feet. The Downtown Transition District requires 13,400 square feet in order to subdivide this property. This property has five or six bedrooms, and there is no use for the fifth or six bedroom, if they are only allowed to rent to four non-family members. The plan (SPS Carpentry) decided on, in the best interest of the owners and hopefully the spirit of the Variance, is to divide a section of the first floor to create a one-bedroom, single-family apartment that is separated from the rest of the house. The house itself has been traditionally rented as a communal rental, and to his knowledge will continue that way. Bedrooms are rented individually and there are communal spaces, with predominantly college students expected as the tenants. The backside would be for either a single individual or a small family; the intent is for it to be less of a communal situation and more of an individual, private apartment. They would have to add parking spaces to meet that criterion, as suggested in the plans he submitted. The existing driveway is a stacked driveway though there is an additional lot to the right that is also part of the plot, where they would add the required parking spaces. There are several Code issues that they would be expected to follow, which he probably does not need to get into now.

Mr. Lynch continued that when he was first asked about whether this was feasible and he started researching, one of the first things he noticed was that on Davis St., there are ten other homes with lots smaller than this one, that have the multi-family classification. Thus, they assume there was a precedent to this Variance. He knows that with the way the Downtown Transition District has changed in the past years there was probably some grandfathering. He was not able to find a zoning hearing for any of those properties, so he is not sure how they got to that point. He could

not locate any records. The Massouds are inheriting this property with some questionable Ordinance adherence in the past, and given their plan to add additional buildings in the future, they really wanted to make sure this first one was done correctly. It was a matter of the four-person Ordinance or the single-family Ordinance and they chose to try to get a Variance from the single-family Ordinance so they can continue the property as a rental and add another suitable, well-kept unit to the side. They have greenlit a long list of improvements to the building itself, upgrading it both visually and structurally. He assumes that would add value to the property and the surrounding areas and that would be considered a positive for the endeavor itself.

Chair Gorman asked how many bedrooms will remain in the existing unit. Mr. Lynch replied that the existing unit will have four bedrooms, as it currently does, all second floor. He continued that the two bedrooms on the first floor, or the bedroom and the “utility room,” would be transitioned into the new apartment space. Thus, only the four bedrooms upstairs would remain in the original space.

Ms. Taylor asked Mr. Lynch to review the drawing in a more detail, continuing that even with a magnifying glass, she was not able to figure out the one provided in the agenda packet. Mr. Lynch replied that he has another drawing he can share, and he can describe what it shown on the screen. He continued that the steps, at the top of the screen, show the existing porch entrance that enters into the kitchen of what he will call the original apartment. By Code, that needs to be divided into a separate entrance for both apartments to meet the Fire Code. That will be a shared entrance for either apartment, on the first floor, and it will be secondary egress. The blank space is the existing kitchen and living room. He does have that floor plan, but because it is not being changed, he did not include it in what the Board is seeing. The new section, as you enter into the kitchen, is the current porch that will be renovated, insulated, and turned into a complete living space. The larger room to the back would be the living room of that space and the room closest to the blank space at the bottom is the master bedroom with an attached master bath.

Ms. Taylor asked about a rear entrance. Mr. Lynch replied yes, for secondary egress there would be an additional entrance off the back. He continued that however, the primary function of that would be access to the basement for utility purposes for tradespeople doing service, so they could do so without having to enter either of the tenant spaces. Ms. Taylor asked if it is also an entrance for the back. Mr. Lynch replied that it is an entrance for the basement stairs. It does not tie into the apartment and he misspoke earlier. It is a service entrance, essentially, because the water heater and electrical functions are all downstairs. Ms. Taylor asked where the secondary egress is, then. Mr. Lynch replied that both bedroom windows are expected to be large enough. Ms. Taylor asked if it is correct that the apartment will not exit out the back. Mr. Lynch replied that is correct; the plan is for it to be a service entrance, because with the shared basement space, there has to be a way to divide it and limit access.

Mr. Hoppock asked if it is correct that Mr. Lynch proposes four bedrooms be left alone on the second floor, with one on the first floor. Mr. Lynch replied yes. Mr. Hoppock asked if the blank space to the right is just a kitchen, because there is nothing in the drawings. Mr. Lynch replied it

is the existing kitchen, and that layout will remain unchanged. He continued that he has a full layout of the existing house if the Board wants to see it. Mr. Hoppock asked if he has the layout of the second floor. Mr. Lynch replied yes, and none of that is being changed, which is why he did not include it for the Board, but he does have it as part of the permitting process. Mr. Hoppock replied that he might want to look at it.

Ms. Taylor stated that assuming that the additional parking area will be paved, the application only indicates that it is a little over 5% increase of impervious coverage. Mr. Lynch replied that it is two additional parking spaces, and the plan is for Surepak, not tar, due to the location and the timeliness. He continued that if tar is required, they can upgrade to that, but it was not mentioned at the time. He reviewed the Code for what constitutes a parking spot and went to the minimum requirements for two additional parking spaces. What is provided as additional parking is the width of the driveway, which he believes is still counting as two static with a pass by, and qualifies as it currently sits. If that needs to be addressed, it can be, but that was his understanding of the requirements for parking.

Ms. Taylor asked staff how many parking spaces are required for this, and whether, under the Code, head-in/stacking parking is an issue. Mr. Rogers replied that with the two dwelling units, it would be a total of four parking spaces, that the Code does not have anything saying you cannot have stacking, but specified that the Code speaks to the location of the parking on the lot. He thinks what the Applicant is providing certainly would appear to meet the need of four parking spaces with probably some additional spaces if there is stacking. As problematic as stacking can be, the City does not have anything that prohibits it.

Ms. Taylor asked if there is no longer a requirement for a certain number of parking spaces based on bedrooms. Mr. Rogers replied that the parking requirements have never been based off bedrooms; it has been based off the dwelling unit itself, with two parking spaces per dwelling unit required in most of the City. Some districts only require one, and some districts do not require any. This district requires two per dwelling unit.

Chair Gorman stated that it is safe to assume that all of these issues will be sorted out through the permitting and inspection process. Mr. Rogers replied that is correct, they would be looking at the spaces, because there are specific sizes required. He continued that in this situation it would be an 8' x 18' area per parking space. From this drawing, it does appear that the Applicant has adequate room to provide that.

Chair Gorman asked if the Board had more questions. Hearing none, he asked Mr. Lynch if he had anything more to present. Mr. Lynch replied that he believes they have discussed the questions from the Board. He continued that if Mr. Hoppock wants to see the plans, he can bring them, to show the complete first and second floor layout.

Ms. Taylor stated that she would like to hear the Applicant go through the criteria.

Chair Gorman asked Mr. Hoppock if he wants to see the plans. Mr. Hoppock's response is inaudible.

Chair Gorman asked Mr. Lynch to go through the criteria. He explained the Board will be specifically deliberating on those, and the reason Ms. Taylor is making this request is because the Board needs to find just cause for each criterion to be granted fully. He asked Mr. Lynch to specifically spend time explaining the hardship criterion.

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

Mr. Lynch stated that there would be additions and improvements to this property that come with the addition. He continued that they are also working hard to adhere to Ordinances that may have been overlooked in the past, and it is in the public interest that the Massouds adhere to all Ordinances and are attempting to go through the proper channels to do so. They are also talking about adding a stable, single-family residence to the area, and another lodging option in a community where rental properties are at a premium and smaller, single-family rental properties are difficult to come by in a non-communal environment, especially in this location, which is primarily a rental neighborhood. He believes the entire street is considered rental properties.

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

Mr. Lynch stated that they are avoiding the extraneous lodging of stacking tenants on top of each other in properties not designed for it, especially one as old as this one is. Instead of stacking a six-bedroom house with tenants, they are taking the time to update it to a more modern approach that meets those Ordinances and even though the Ordinance is attempting to limit the expanse of that particular street, this, as a single-family home with six bedrooms, is actually the outlier in the neighborhood. As he mentioned earlier, ten other properties on this road are following this same Variance approach and have multi-family homes on smaller lots than the Massouds'.

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

Mr. Lynch stated that the Variance is offering the same opportunity to the Massouds that most of their neighbors are enjoying, while allowing a current "problem child" of the Ordinance system to be upgraded to a more appealing situation for the City.

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

Mr. Lynch stated that he apologizes if he repeats himself, but some of these criteria lend themselves to that. He continued that you can see the financial input the Massouds are putting into this building to improve the value and the overall state of the property. He has here a permit for about \$70,000 for interior, exterior, structural, electrical, and plumbing improvements to the building. In addition, the property now has owners who are much more concerned with the

upkeep and aesthetics of the property, which he can only see as a benefit to the values of the surrounding properties. The upkeep will make it a more visually appealing lot than what is currently there. He believes the Massouds' approach would extend to future actions on the property in addition to the current ones that are before the Board. For example, the garage is an eyesore on that street and is part of the long-term plan to be addressed as an improvement to the property. The Massouds bought the property knowing that it needed work, and they are doing a very diligent job, in his opinion, of following through on that.

5. *Unnecessary Hardship*

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

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

ii. The proposed use is a reasonable one because:

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

Mr. Lynch stated that his primary comment was the fact that as a five- or six-bedroom house, depending on how the Board chooses to qualify it, it cannot be used to its potential because of the need and attempt to follow the Ordinance. He continued that the idea would be to allow the Massouds to use the full square footage of the house in a way that is correct and proper and in following with the City's Ordinances, and to allow the Massouds to not have two rooms that are not rentable, as is their current situation. The Massouds liken their situation to similar ones on the street with properties that have either been grandfathered or granted a Variance. That is a precedent for them applying for this one.

Mr. Hoppock stated that he wants to ask staff about these ten other properties on the street. He continued that there is very little in the packet about that. He asked if these ten properties are non-conforming uses that are grandfathered, or if they received Variances in the past. He asked if anyone knows that history, and what the locations are in proximity to the Massouds' property.

Mr. Rogers replied that as the Applicant said, staff did not research the overall neighborhood. He continued that he assumes that many of those properties have pre-existing, non-conforming uses happening on them. Many lots in this district are rather small. This is one of the larger ones, in terms of square feet, in the neighborhood. There are some single-family homes and many rentals in the neighborhood, many on small lots.

Mr. Hoppock replied that that seems like a comfortable assumption, given the fact that it is a building from the 1870s. He continued that it would pre-exist zoning. Mr. Rogers agreed.

Mr. Hoppock asked the Applicant to tell the Board what he thinks the special conditions of the property are that distinguish it from the other properties.

Mr. Lynch replied that he thinks the individual, single-family apartment they are proposing would be quite dissimilar to any other single bedroom apartments in that space. He continued that it is a small square footage, and unlike some of the apartment buildings that are proliferated on that road, there are three, he believes, multi-unit apartment buildings, it is offering a single bedroom aesthetic that is attainable for people. Most of the spots are either communal living or rental of a full floor of a duplex. This is somewhat unique compared to the surrounding area, for someone looking for that sort of living arrangement.

Mr. Hoppock thanked Mr. Lynch for sharing the plans, and stated that it was helpful.

Chair Gorman asked if the Board had more questions for the Applicant. Hearing none, he thanked Mr. Lynch and asked for public input. He asked to hear first from people speaking in favor of this application. Hearing none, he asked to hear from people who are opposed to the application.

Frank DePippo of 33 Center Street stated that he has a question, asking what is the size of the required parking spaces and to confirm that they have to be at least 8'x18'. Mr. Rogers replied yes, and the parking spaces are required to be behind the front line of the house or behind the front setback.

Hearing no further public input, Chair Gorman closed the public hearing and asked the Board to deliberate on the criteria.

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

Mr. Welsh stated that he thinks the Applicant has made a good case that the intent of the Ordinance is to prevent stacking and to reduce sprawl, and so on and so forth, and none of these things can ever be perfectly accomplished. He continued that he thinks that the best case he has heard is that it would be less in violation of the Ordinance if this Variance were granted, than to continue the use of the property as it has been in the past.

Ms. Taylor stated that if this were granted, she does not believe it would alter the essential character of the neighborhood or threaten the public health, safety, or welfare. She continued that she thinks it would be in the public interest on those criteria.

Mr. Hoppock stated that he agrees, and the shortage of square footage is 2,075. He continued that in weighing that with everything else, they are decreasing a six-bedroom unit to a five-bedroom unit, and thereby potentially reducing the density of the building. He sees that as a plus, and he agrees with Ms. Taylor's points.

Chair Gorman stated that he agrees. He continued that it is important to keep in mind why the Board is here, and as Mr. Hoppock said, it is just north of a couple thousand square feet.

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

Mr. Hoppock stated that that the applicant made the point about how there is a lot of overlap in these factors, stating that it is intended to be that way. The gain to the public would be the reduction in density, from a six-bedroom unit to a five-bedroom unit. The loss to the individual, if it were denied, would be significant restriction on the uses available. He supposes the Massouds could use the place as a single-family residence, but what he gets from the Applicant's presentation is that that is probably not the highest and best use in this zone. It is somewhat of a close call, but the third factor weighs in favor of the Applicant, for the reasons stated.

Chair Gorman stated that he agrees, and would add that the benefit to the public is the years of deferred maintenance that has been neglected will be taken care of, due to the capital investment being made in the property, which would benefit the neighborhood. He continued that he is familiar with the neighborhood and it is primarily what Mr. Lynch says it is, two- to four-family college housing. The Applicant's property, at first blush, is the one that is lacking the most upkeep in the neighborhood. Thus, to give cause to have those improvements done, he thinks is a win-win for both the owner and the public.

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

Deliberation on this factor was discussed as part of criterion #2.

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

Chair Gorman stated that it gets somewhat repetitive, based on what he just said, it is probably (not possible to argue) that they are not raising the value of surrounding properties if they are going to put that amount of capital improvement into their own.

Mr. Hoppock stated that he cannot imagine a property where the application says between \$70,000 and \$80,000 worth of improvements is going to be invested, capital improvements, and it would not help the neighborhood to a degree. He cannot believe that it would not. He thinks this factor balances in favor of the Applicant as well.

5. *Unnecessary Hardship*

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

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

and

ii. The proposed use is a reasonable one because:

Ms. Taylor stated that as usual, she struggles with this particular criterion. She continued that in this case, as she has said on multiple occasions, all of the properties in this area are substandard. The remedy is not to, because all of the properties are substandard, grant a Variance. The remedy is to change the Zoning Ordinance. She does not believe that the lot size creates a special condition of the property, because as has been said, all the other properties are substandard. Thus, she is not sure what the special condition of the property is. She agrees that there is no particular relationship between what the Ordinance says and the properties on Davis St., but that does not make individual properties have a special condition. She is open to having someone convince her otherwise, but she has not heard anything yet that tells her there is a special condition of the property; albeit it would be nice to see the property fixed up and used appropriately.

Mr. Hoppock stated that he is having the same problem, questioning what is special about the property that distinguishes it from others. He does not think it is the lot size requirement. The Board heard a lot about this being the same as or very close to, the size of ten other properties. It is hard to get over that hurdle. Without the special condition being identified, the Board cannot do the balancing test here, to balance the impact of the Ordinance on the property to see if it creates the unnecessary hardship.

Chair Gorman stated that to him, the special condition is that this building has six bedrooms, and the Massouds did not build the house; it has been there for over 100 years. It was built as a six-bedroom, and as the world turns, six-bedroom houses are fairly obsolete these days. It is stuck in a college neighborhood, surrounded by properties that are not six-bedroom homes. They are primarily duplexes, rented to college students. To him, the special condition of the property is that is getting a lesser amount of allowable use than it was built for, and the remedy is to allow a conversion into two units so that it can be beneficial to the owner and also the community, because there is a housing shortage. It is very close to the square footage lot size requirements. He does not think a giant stretch is being made here.

Mr. Welsh stated that he agrees, further stating that one distinguishing factor it is that, although he is not sure about the history of the other houses, these have availed themselves to the remedy of becoming duplexes, either through Variances that the Board is not aware of, or during a period of time during which the Variances were not necessary. However, this one did not do that, though the current owners would be bringing it up to the standard of the rest of the neighborhood if the Board granted this Variance.

Ms. Taylor stated that she wants to add that regarding 5.A.ii., she thinks they can state for the record that regardless of whether or not the Board can find the hardship, the use would be reasonable. Chair Gorman agreed.

Mr. Hoppock stated that this application, in his mind, meets four of the five criteria. He continued that he is having a hard time saying that the six-bedroom concept creates a hardship, but he likes the way Chair Gorman phrased it, as ‘a six-bedroom house stuck in a college neighborhood.’ He asked if they know anything about those other properties, questioning if any have six bedrooms. The problem he is having is the record seems incomplete about that comparison, although, he can be persuaded.

Mr. Rogers replied that regarding the majority of the houses in that immediate area, there is a larger, multi-unit building next door. He continued that it is very doubtful that any of the other structures in that area have six bedrooms. Many of them, especially right across the street on Wilcox and Terrace Streets, mostly have single-family homes with a couple duplexes. The majority of them only have, going by his memory of providing inspections over the years, about four bedrooms and are family-type houses. He would be surprised if there were any other six-bedroom dwelling units within that neighborhood.

Chair Gorman replied that he could speak to that a bit, from his time as a Housing Inspector for the City. He continued that the house in question was overcrowded for years, and Code Enforcement did have to deal with that, because the person who previously owned it was just renting rooms. There are a handful of those houses around the City. He is unaware of any other houses with that many bedrooms, and he has been in most of them for inspections. There are some six-bedroom homes throughout the city, for sure, but not right in this vicinity. Most are single-family, four-bedroom homes, or two or more units.

Mr. Hoppock made a motion to approve ZBA 22-12. Mr. Welsh seconded the motion.

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

Granted with a vote of 5-0.

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

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

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

Granted with a vote of 5-0.

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

Granted with a vote of 5-0.

5. *Unnecessary Hardship*

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

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

The motion to approve ZBA 22-21 passed with a vote of 4-1. Ms. Taylor was opposed.

- B. ZBA 22-13: Petitioners, Brian & Amalia Harmon, requests a Variance for property located at 27-29 Center St., Tax Map #568-016-000-000 that is in the Downtown Transition District. The Petitioners requests a Variance to permit a multi-family dwelling with three units on a lot with 3,049 sq. ft. where 18,800 sq. ft. is required, per Chapter 100, Article 4.6.1 of the Zoning Regulations.**

Chair Gorman introduced ZBA 22-13 and asked to hear from staff.

Mr. Hagan stated that 27-29 Center St. is located in the Downtown Transition District. He continued that it is a brick building, built in 1920. It currently sits on 3,049 square feet where, if this Variance were granted, it would be required 18,800 square feet for a three unit building. This property received a Variance on September 7, 2021 to convert from an office building to a two-unit dwelling. In addition, four parking spaces were required, and a Variance was granted for three.

Mr. Welsh stated that the application before the Board is for the addition of another unit. He continued that they considered parking last time and asked if the Board should consider the addition of parking this time.

Mr. Rogers replied that staff spoke with the Applicant, who will be presenting the Board with a different alternative that is allowed under the Zoning Code. He continued that a section of the Zoning Code speaks to the ability to provide the required off-street parking as “remote parking,” meeting the parking requirements by leasing off-site spaces somewhere within 1000 feet of where the required parking is needed. He will let the Applicant speak to that, but he believes their intent is to seek the additional parking spaces that would be required if this dwelling unit were granted through that “remote parking” section of the Zoning Code.

Chair Gorman asked, for clarity, if it is correct that with the Variance the Board approved, the Applicant had two and a half spaces. Mr. Rogers replied that he believes that what they presented at the previous Variance request was that they had three and something spaces. The Variance that was granted, was for the one parking space that was lacking, because with that granted Variance was for the two dwelling units, which would require four spaces. With this new request, would require two more spaces, and again, they are proposing to provide it through the

remote parking section of the Zoning Code. Chair Gorman replied that it would be imperative for the Board to focus on these two, because they have already granted a Variance for the existing fourth one. Mr. Rogers replied that that would be his recommendation. Certainly if this Variance were to be approved, they could condition that approval on the Applicant meeting the parking demand for that third unit.

Chair Gorman asked if there were any more questions for staff. Hearing none, he asked to hear from the Applicant.

Brian Harmon and Amalia Harmon, of 184 Colby Road, Danville, introduced themselves. Mr. Harmon stated that he and Mrs. Harmon do understand, and they have two options for parking, but they do not have leases. He continued that they have not selected either of the two options, because they did not know where this Variance request would take them. Not having any previous knowledge of how best to prepare for the meeting, they did seek two particular areas for potential parking. They do not have those leases in hand. They would like time, if that were what the Board needs, to produce these leases or submit them somehow.

Mr. Rogers stated that just so the Board is aware, there is a whole process laid out in the Zoning Code for this parking lease agreement. He continued that there is an approval process that runs through the Community Development Department and ultimately is approved by the City Manager, if the Harmons are going to go with the remote parking.

Chair Gorman stated that he would like to ask the Board if they are comfortable moving forward with the application without a lease in hand, but perhaps making that a contingency, should they see fit to approve the application otherwise.

Ms. Taylor stated that if this moves forward, she thinks it would be appropriate to have that as a condition. Chair Gorman agreed. Mr. Hoppock agreed.

Chair Gorman asked the Harmons if they are prepared to continue. He continued that the Board would be happy to continue this application to the next scheduled meeting, if they want to make further preparations. Mr. Harmon replied that he thinks they would like the opportunity to postpone this to the next meeting if possible. Chair Gorman replied that he is comfortable with that but cannot speak for the entire Board. He continued that they would have to make a motion.

Ms. Taylor made a motion to move consideration of ZBA 22-13 to be considered further at the September meeting of the Zoning Board of Adjustment, at the Applicant's request. Mr. Hoppock seconded the motion.

Chair Gorman noted that a member of the public has a question regarding what the grounds of the continuance are. He continued that the grounds are the Applicant has requested such a continuance and the Board is comfortable with that. He asked the member of the public to introduce himself and ask his question.

Peter Espiefs stated that he lives next door to the Harmons and they have a common boundary. He continued that the Harmon's back boundary is his southern boundary. He is opposed to the Harmons' second request for a Variance.

Chair Gorman replied that if Mr. Espiefs comes to the next scheduled hearing, he could voice that opposition. Mr. Espiefs replied that he does not understand why they need to keep coming to the meetings. Chair Gorman replied that this is the first time they have come for this application, and because there was some confusion around the parking and how the Board would wish for the Applicant to proceed, collectively, they are attempting to make a decision to postpone this until next month. It should not have much of an impact on Mr. Espiefs, who will be offered the same opportunity to come speak then. If he cannot attend, he is welcome to submit something in writing.

Mr. Rogers added that the next Board meeting is Tuesday, September 6 at 6:30 PM, while the Board typically meets the first Monday of the month, Monday, September 5 is Labor Day.

A member of the public asked to speak. Chair Gorman asked that he please be brief, continuing that he does not want to get into the meat and potatoes of the application if they are not going to hear from the Applicant.

Frank DePippo, of Blue Spruce Ocean Holdings, stated that he owns the property next door at 33 Center St. and has for many years. He continued that never has anyone removed his fence. The Board was given a photograph showing the potential parking, and he is very uncomfortable with it. The photo shows his fence in place. Mr. DePippo continued to share his opinions about the building, the parking, and the application. Chair Gorman stated that he is not comfortable allowing Mr. DePippo to continue in such depth, given that the Board has not yet heard from the Applicant. He continued that if the Board were going to continue this hearing, they would love to hear all of Mr. DePippo's input at the next hearing. He hears that Mr. DePippo is dissatisfied with a decision the Board has already made regarding a previous Variance, but that has been done, and they are moving on to this hearing. If they move this hearing to next month, he urges Mr. DePippo to come to speak, or write a letter to the Board. They did not know the application would be proposed for continuance, but it is an attempt to be fair to everyone, including Mr. DePippo.

Mr. DePippo replied that he at least wants to submit a photograph he brought. Chair Gorman replied that he could submit it to City staff. Mr. DePippo continued to speak about his fence, and Chair Gorman stated that the topic is not the Board's purview and he encourages Mr. DePippo to reach out to the appropriate City staff members instead.

Chair Gorman called for a vote on the motion to continue ZBA 22-13 to the September 6, 2022 meeting. The motion passed unanimously.

Mr. Hoppock asked for the photographs to be circulated before the next meeting.

V) New Business

A. Introduction of Community Development Director, Jesse Rounds

Chair Gorman asked staff about new business for the next meeting. Mr. Rogers replied yes, there has been a change to the RSA, some of the land use requirements, and more about the meeting requirements and how notice of decisions are documented, which will take effect August 23. He continued that the City Attorney has just returned from vacation and will work on the discussion of how to move forward. This Board does a very good job with the finding of facts during their deliberations, but this new requirement requires the notice of decision have that detailed information as well. They have to figure out how to then take the information from the meetings and the Board dialogue then translate that to the notice of decision letter. Once they have an opportunity to speak with the City Attorney to discuss a process for staff, it will be presented before the Board. Since it will be unfinished business, it can happen at the start of the meeting, so that moving forward into the public hearings, if there are any changes to the way the Board needs to handle their deliberations, they can do so. The Board does a good job discussing the findings of fact for the minutes, saying why they are voting the way that they are.

Ms. Taylor stated that it sounds like the Board will have to formalize their findings of fact, but she thought there was also a change in the time limits for making final approval. She continued that her question is whether any of these changes require the Board to change its rules of procedure. She asked Mr. Rogers to look into that. Mr. Rogers replied that that will be part of the conversation with the City Attorney. He continued that regarding the changes to the time, that might be a change that needs to be made to the rules of procedure. Once the Board receives an application there is then a time limit for how long they have to hear an application, which applies to the Planning Board, too. He does not necessarily believe this time limitation will have a big effect on the way they accept applications and hear them, but it is something that will probably require a change to the rules of procedure.

VI) Communications and Miscellaneous

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Gorman adjourned the meeting at 7:39 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk