

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, October 3, 2022

6:30 PM

Council Chambers

Members Present:

Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh
Richard Clough

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Joshua Gorman, Chair

I) Introduction of Board Members

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

Mr. Hoppock stated that he has two announcements – first, the applicant for ZBA 22-13 asked to continue the matter. He asked for a motion.

Ms. Taylor made a motion to continue ZBA 22-13 to the next regularly scheduled ZBA meeting on November 7, 2022. Mr. Welsh seconded the motion.

Mr. Hoppock stated that the reason the applicant wants the continuance is that there are only four ZBA members tonight and the applicant wants five members. The motion passed unanimously.

Mr. Hoppock stated that the second announcement is that the applicant for ZBA 22-14 has withdrawn his petition. He continued that at the previous ZBA meeting, the public hearing on ZBA 22-14 concluded, and they had planned to deliberate on the matter tonight. However, with the applicant withdrawing his petition, there will be no further action from the ZBA. The withdrawal is without prejudice.

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

Ms. Taylor stated that she has the following edits:

- Line 45: the words “Notice of Discussion” should be “Notice of Decision.”

- Lines 88-89 read, "The second Variance was granted on October 3, 1994, to convert the home office apartments into offices only." She believes it should read "...to convert the apartments...", because it was not an issue of home offices when it was going from apartments to offices.

Mr. Hoppock stated that he recalls that about lines 88-89 and agrees with Ms. Taylor.

Ms. Taylor continued:

- Line 264 reads "...especially with the Sununu Center closed," but the Sununu Center is not scheduled to close until March of next year, so this should say "closing" instead of "closed."
- Lines 366-367 read, "He has been with the agency since 1998, other than a 2.5-year hiatus, when he returned was to close the Walpole, MA campus then to reopen it." There is something missing from this sentence and she does not know what it is supposed to say. She proposed having the minute taker review the recording to figure that out. Mr. Rogers agreed.
- Line 640 - "Hampton Hospital" should read "Hampstead Hospital."
- Line 1266 reads, "...he asks that sponsor of the group home, and be required to provide..." The comma and the word "and" should be deleted so that the phrase reads, "he asks that sponsors of the group home be required to provide..."

Mr. Hoppock stated that those corrections seem appropriate. He asked if anyone had objections. Hearing none, he asked if Ms. Taylor had any other edits for the Board to address. Ms. Taylor replied that there were just some basic typos.

Mr. Welsh made a motion to approve the meeting minutes of September 6, 2022 as amended. Mr. Clough seconded the motion, which passed by unanimous vote.

III) Unfinished Business

Mr. Hoppock asked staff if there was any unfinished business. Mr. Rogers replied no.

IV) Hearings

- Continued ZBA 22-13: Petitioners, Brian & Amalia Harmon, requests a Variance for property located at 27-29 Center St., Tax Map #568-016-000-000- 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.**
- WITHDRAWN: ZBA 22-14: Petitioner, The Home for Little Wanderers of 10 Guest St., Boston, MA, represented by BCM Environmental & Land Law, PLLC of 41 School St., Keene, requests a Variance for property located at 39 Summer St., Tax**

Map #568-037-000-000-000 that is in the Downtown Transition District and owned by William K. Schofield, 27 Dublin Rd., Jaffrey, NH. The Petitioner requests a Variance to permit a large group home for youth where a large group home is not a permitted use per Chapter 100, Table 4-1 and Table 8-1 of the Zoning Regulations.

C. ZBA 22-17: Petitioner, Sydney Janey, of 61 Summer St., requests a Variance for property located at 61 Summer St., Tax Map #568-034-000-000-000 that is in the Downtown Transition District, owned by Townsend Capital Trust. The Petitioner requests a Variance to permit a 4th residential unit on a 14,374.8 sq. ft. lot where 24,200 sq. ft. is required per Chapter 100, Article 4.6.1 of the Zoning Regulations.

Mr. Hoppock introduced ZBA 22-17 and asked to hear from staff.

Mr. Rogers stated that this property is on Summer St. in the Downtown Transition District (DT-T), abutted by the High Density District on three sides the north, south, and west. The DT-T is to the east of this property. In 2001, this property went to the Board, but it was really trying to make a determination about an administrative decision. It was ultimately determined that it was not an administrative decision that was before them, so the Board did not take any action. In the City's files, a Certificate of Occupancy (CO) that the Building Department issued in June 1999 shows this property having three apartments and the office. The DT-T purpose is *"intended to accommodate a variety of residential, open space, and other low intensity uses in a mixed use environment of attached and detached structures. Development within the DT-T is intended to complement and transition into an existing residential neighborhood adjacent to the downtown."*

Mr. Welsh stated that Mr. Rogers mentioned that High Density surrounds the property. He asked which directions. Mr. Rogers replied west, north, and south, across the street. He continued that as seen on the screen, the property is on the corner of School St. and Summer St., which is where the High Density District connects. All the property on the other side of School St. and many of the properties to the north on School St. are in the High Density District.

Ms. Taylor asked if it is correct that in 1999 there was not a specific Variance. She continued that she is confused about what the Variance was. Mr. Rogers replied no, at that point in time, there was not. He continued that they were trying to see what was there; he noticed that there had been many different proposals for this building at that time, and at one point, it was to be mostly offices with maybe one apartment. They ultimately ended up landing on three apartments with one office. The Board at the time was dealing with an administrative decision that turned out not to be such. It was determined that the Board did not have the authorization or authority to hear the appeal at that time. Other than that, the City does not have many records for this property prior to the renovation resulting in the CO issued in 2001.

Ms. Taylor stated that she was trying to match what the requirements are in the Zoning Ordinance with the statements made in the application. She asked if Mr. Rogers could go into what is required, what there is, and what the Applicant is asking for.

Mr. Rogers replied that only dwelling units have a property square footage requirement associated with them. He continued that this property would be legal non-conforming, as a three-unit to begin with, because in the DT-T the first dwelling unit requires 8,000 square feet and each additional dwelling unit would be 5,400 square feet. Thus, even with the three dwelling units, they are short. He does not know what it was back in 2001 when they were granted that CO. Today, they are a legal non-conforming with 14,000 square feet, whereas the narrative talked about needing 24,000 square feet to be Code compliant.

Ms. Taylor asked what the four units would require. Mr. Rogers replied 24,200 square feet, where they currently have 14,374 square feet. Ms. Taylor asked if the part of the application that references the 2,074 square feet in the residential unit space, 2,800 square feet, is not relevant to the Board's review. Mr. Rogers replied no, under the Zoning Ordinance, they are only looking at the square footage of the overall property/land, not the structures.

Mr. Hoppock asked if the 1999 CO was issued for just three apartment units. Mr. Rogers replied three apartment units and one office. Mr. Hoppock stated that he is coming up with a 9,625.2 square foot shortage on the lot size, based on the application. Mr. Rogers replied that sounds correct.

Mr. Hoppock asked if there were further questions for Mr. Rogers. Hearing none, he asked to hear from the Applicant.

Sydney Janey and Celeste Janey, both of Townsend Capital Trust, 61 Summer St. introduced themselves. Sydney Janey stated that she originally came to the Board with a question about what the occupancy was. They purchased the property from the Pattavinas, the foot doctors currently using the office, who have plans to leave at the end of the year. Townsend Capital Trust purchased the property, intending for her mother to retire there from Boston. She (Celeste Janey) is a textile and fabric designer, and is handicapped. The building, beautifully located to downtown, is already equipped with first floor handicap access. It has an external handicap ramp and more than ample parking for the units already in the building. Thus, they are trying to make sure that they are compliant with all the rules and regulations of the new area that they will be residing in. She wanted to know when the Pattavinas switched from it being all residential to some residential and part commercial. That is when she came to the Board and found out that it was not necessarily very clear when it was switched to residential and commercial but she needed to come to the Board to have it back to all residential.

Celeste Janey stated that they also plan to renovate the garage area so it will be her studio. The back of the facility will have a studio and educational center. Sydney Janey stated that her mother is an educator.

Sydney Janey asked what else the Board needs from her, continuing that she has never attended a Board meeting. Mr. Hoppock replied that the Board has five criteria by which they judge every

application. He continued that Ms. Janey could read her application to them, and/or add anything else she wants to say.

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

Ms. Janey stated that it would allow a disabled person to live within the community. She continued that they would be converting the unit from commercial to residential, which would ultimately reduce street traffic. There would not be a lot of coming and going on the street during the day or night. Her mom is a quiet person and does many of her activities online. This property has ample off street parking. It has a paved driveway and parking in the back of the property. They are not proposing any structural changes or footprint changes; they are just trying to restore the property. The property was primarily a residential space, and is a historical house. It used to have a plaque in the lobby.

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

Ms. Janey stated that it is intended to accommodate a variety of residential and other low intensity uses in the existing residential neighborhood. She continued that currently, the street has single-family homes, multi-family homes, and commercial spaces, so this would fit right in with the spirit of the Ordinance and the use of the surrounding spaces.

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

Ms. Janey stated that it would allow someone with disabilities to live in/be part of the community.

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

Ms. Janey stated that she thinks the values of surrounding properties would be greatly enhanced. She continued that her mom is a world-traveled, published, highly sought after artist. She has had shows at the MFA (Museum of Fine Arts), in Ghana, and in New York City. She would be a great addition to the neighborhood and a valued member of the community. This would return the unit to a previous use, and would help cut back on traffic. At one point, Summer St. had two-way traffic all the way between Court St. and School St., and now it only has two-way traffic halfway. It seems like they were trying to mitigate some pass-through traffic on the street at one point. This might help cut down on additional pass-through traffic.

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:

Ms. Janey stated that this property was purchased with the intended purpose of using it as a primarily residential space, for her mom in her retirement. She continued that when the trust was looking for a property in this area her cousin had the mindset of looking for something that was accessible for (Celeste Janey), because mobility is a problem for her. She has been having a couple good months and thus does not have all of her apparatuses with her tonight, but usually she has assistive devices that she needs due to not being able to walk well. The first floor unit has a ramp on the outside, level ground, and ADA-compliant bathrooms. She and her family love old houses and she is passionate about restoring them. She wants her mom to have a safe, comfortable home. She herself was unaware that this was not zoned as residential use on purchase. Since being in the community, she and her family have looked at surrounding properties and discovered a lack of accommodations for people with disabilities in the immediate area. It would made staying here much harder if this Variance were denied. She continued that her mom really likes it here. They have to go back and forth a lot for her medical appointments, and she does not relish having to go back to Roxbury, MA, but she would have to make the move if they could not stay.

and

ii. The proposed use is a reasonable one because:

Ms. Janey stated that it was previously all residential. She continued that it was all a single-family home at one point.

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

Ms. Janey stated that the property is already made to accommodate a disabled person, with only a few modifications, which would be an overall benefit. Say, for her example, her mom decided to move to Florida, another person with mobility issues could easily rent the space. Thus, it would still be a benefit to the community, as a residential space for someone with mobility issues.

Ms. Taylor stated that this was purchased by a trust. She asked if Celeste Janey and Sydney Janey are the trust. Sydney Janey replied yes, 50/50 ownership.

Ms. Taylor asked if Sydney Janey would be moving here as well. Sydney Janey replied part-time and that she is a graphic designer with most of her clients are in Boston.

Ms. Taylor asked if the units are currently rented. Celeste Janey replied yes, two are rented and the other will be hers. Sydney Janey stated that the three units are currently rented, but one of the tenants – the doctor, who is using one of the residential units as well - is planning to leave at the end of the year, vacating the office and the residential unit.

Mr. Welsh stated that he has a technical question. He continued that Sydney Janey mentioned that there was sufficient parking for the residents of the house as it is now. He questioned if there were to be a fourth unit, would the current parking be sufficient. Mr. Rogers replied that from the renovations that happened in 2001 they have a plot plan, although he would not call it a site plan, which shows up to 14 parking spaces on the site as well as a couple spaces at the barn, though the Applicants did state they might do something with the barn. Fourteen spaces by far meets the Zoning requirement for parking.

Sydney Janey stated that for clarification, she does not know if there are 14 spaces. She continued that she counts at least 8 to 10. Mr. Hoppock replied that cars are bigger today than they were in 1999, so maybe Ms. Janey and Mr. Rogers are both right. He asked Mr. Rogers if that is the most recent plan, he has seen. Mr. Rogers replied that is what the Community Development Department has on file. He continued that this would require a minimum of eight parking spaces, and it sounds like that requirement are met.

Ms. Taylor stated that she has a question for Mr. Rogers. If the barn were to be renovated for use as a home office or studio, and if there were customers coming, would that need to come back to the Board for another Variance. Mr. Rogers replied that staff would need to look at exactly what is being proposed. He continued that there are certainly other uses that would be allowed in the existing district, as an example a home office with the occupant living there, that would be an allowed accessory use. If it were to be another type of office, there would be additional parking requirements. He would need more information to answer Ms. Taylor's question.

Mr. Hoppock asked to hear from the public, starting with people who are in favor of the application.

Tom Savastano of 75 Winter St. stated that he does not have anything to say for or against the application, but has a point of clarification. He continued that he thinks he heard Mr. Rogers say the property was surrounded by the High Density District, but he has a map from September 2021 that shows that the Low Density District is to the north, west, and south. Mr. Rogers replied that he apparently mixed up High and Low, and Mr. Savastano is correct, it is Low Density.

Anthony Tremblay of 67 Summer St. stated that he lives next door to this property, and is here to ask for clarification. He continued that the property currently has three apartments, plus the commercial space that is Dr. Pattavino's office, which is a two-story space. The application

appears to show that the fourth unit was to be the first floor. It is not clear to him what would happen to the second floor and whether the owners intend to continue to rent the third apartment, which is on the first floor. The back of the property has an apartment above the barn, a second apartment on the second floor (two rooms), and a small apartment under that. The main house's first floor has been the doctor offices and there has been living space on the second floor that has occasionally been occupied by members of the Pattavino family. He is not clear on what the Petitioner expects to happen to one of the existing apartments, and whether they might be in effect creating five units, as opposed to three plus the commercial space.

Chair Gorman stated that in a few minutes, he will invite the Applicants back to address that point, but first the Board will hear from any members of the public who wish to speak in opposition to the application.

Frank DePippo of 33 Center St. stated that he is not objecting, but has some questions for clarification. He continued that he does not understand the parking layout. He wants to know if there is adequate parking, because he is comparing this to the Applicant who is not here now, from 27 Center St., who was asking for three units and does not have adequate parking. He asks what the City's parking requirement is for this current request for four units. Mr. Rogers replied that the Zoning Code requires two parking spaces per dwelling unit. He continued that they eight parking spaces are required for four units, and by the Applicant's statement, there is a minimum of eight on site and perhaps more. The City has a plot plan showing upwards of 14 spaces from 2001. It appears that the Applicant meets the Zoning requirements for parking.

Mr. DePippo stated that at a prior meeting, Mr. Rogers had explained that parking spaces have to meet a size requirement. He asked if these spaces seem to meet the requirement. Mr. Rogers replied that he has not been to the site, but it is an existing condition, and if the Applicant is not making changes to the parking lot then what they have is what they have. If they were to build new, there are size requirements to be met, but this is an existing parking lot with the capability of at least eight spaces and possibly up to fourteen.

Mr. DePippo asked for clarification on whether the Applicant is doing away with any office or studio use in the building and swapping it out for a fourth residential unit. Mr. Hoppock replied that his understanding is that they are swapping out the office for the residential unit, but if he is wrong about that, the Applicant will have a chance to clarify. Mr. DePippo stated that he is not objecting; he just wanted clarity, because Sydney Janey said her mother is an artist and it sounds as though they are doing away with space that could be used as a studio/office in return for a dwelling unit.

Mr. Hoppock asked to hear from the Applicant again, regarding whether their intention is to get rid of the office space and convert it to the fourth residential unit.

Sydney Janey stated that what started this whole process was her attempt to get the property zoned all residential. She continued that the reasoning is that her mother will be on the first

floor, and she will be on the second floor. Yes, currently a tenant occupies two rooms of the second floor while the Pattavinos have the front part of what they call their office. Technically, however, that is supposed to be all one unit and the tenant is only paying to use two rooms of that one unit. Thus, that is the third unit. The Pattavinos took the rest of their unit and added it to their office. They are using it as a residential space, but it is zoned for commercial. Downstairs, the Pattavinos use it as commercial space for their office. It is upstairs/downstairs commercial zoned. A gentleman rents two rooms of the back of the second floor, as a unit. Another gentleman is on the first floor, underneath him, and then there is a unit above the barn. Sydney Janey stated that it is indeed confusing. It took her a long time to figure out how they reconfigured the house in the first place. She looked at the architectural plans and walked through the building several times, and it still took her a while to understand. She will probably have to consult an architect when they reconfigure that third unit on the second floor.

Mr. Hoppock asked if Ms. Janey wanted to add anything else in response to public comment.

Sydney Janey stated that her intention is to keep this house at four units. She continued that there would be legal ramifications for going from four to five units, and it would be quite expensive, requiring sprinklers, insurance, and so on and so forth. Her intention is to stay at four units, for many reasons.

Ms. Taylor stated that probably the most difficult criterion the Board has to review is in regards to hardship. She continued that she wonders if Ms. Janey had a specific statement to make regarding what she sees as the hardship that could get the Board to approve this application.

Sydney Janey replied she was told that the Board cannot make decisions based on financial issues, but that is a consideration for her in this matter. She continued that the property being “commercial” is a major financial problem for her.

Celeste Janey stated that she was a Kindergarten teacher for 34 years, which resulted long hospital stays with kidney failure, heart issues, and back issues related to sitting in child-sized chairs. She continued that she had to retire early from teaching due to her health issues. She could not afford her medication along with living in Boston, so she left and moved to Keene. She stated loves it here and found this house that had the ramps and accessible structure, and everything she could afford, but she could not afford the healthcare. Thus, she is going back and forth to Boston about once a week for healthcare, but here is a house she could possibly live in, with the ramps and the accessible structure, but it still needs a little work. She cannot afford to live in MA but she can afford the house here in Keene. Her daughter promised to help her with the house, but she cannot afford the house and the healthcare. Her son is helping, too. She does not like telling people about her health and finances, but this is a generosity from her children, and that is why she is here. They are trying to put this dream together.

Mr. Hoppock asked if there is any special condition of this property that stands out from the properties in the immediate area, which would make applying the lot size restriction unfair to this property. He continued that is another way to phrase the question in the fifth criterion.

Sydney Janey asked if it is correct that most of the properties in Keene, like in the DT-T and High Density District, would have to apply for a Variance if they were looking to go from commercial to residential or residential to commercial. Mr. Hoppock replied that what she is doing, though, is looking to increase residential unit size from three to four when the lot size is not big enough in this zone, stating this is the question before the Board. He is trying to understand if there is a special condition of Ms. Janey's property that makes the application of that lot size rule unfair to her.

Sydney Janey replied that her neighbors have what they have, and she cannot build up or build out. She continued that there is no way to increase the lot size. She assumes the lot size rule's intention is to avoid crowding. Mr. Hoppock replied yes, the intention is to restrict properties from being too densely populated. He continued that he is trying to see if Ms. Janey can identify a special condition that would make it unfair to the property to apply the lot size rule to the property's circumstances here. Ms. Janey replied that it was already all a residential property at one point. Mr. Hoppock replied that usually a special condition of a property would be, as an example, a large building on a small lot. Ms. Janey replied that this is a large house on a narrow lot, with a paved parking lot behind it, continuing that it is a skinny farmhouse on a narrow lot. Indicating the image on the screen, she showed the locations of the driveway, pavement, and grass. Mr. Hoppock asked if the northern boundary is mostly grass. Ms. Janey showed the grass and pavement again. She stated that if she wanted to go somewhere with the footprint of this house, she probably could not, because everything is spoken for.

Ms. Janey stated that looking at the overall square footage of the house versus the living area, where Mr. Hoppock stated that the application says 14,374.8 square feet. Ms. Janey replied that is correct. Mr. Hoppock replied that is a little over a third of an acre. Ms. Janey replied yes, it is a large house on a sliver of a piece of narrow property. She continued that she assumes this house was on a farm at one point and had a lot of land surrounding it, which the owners later sold off when they were building the town house, not thinking that they should probably keep some of it.

Mr. Welsh stated that one special condition is the existing ADA compliance of the first floor and the handicapped ramps. He continued that perhaps that would be seen as a special condition if it was turned into an apartment and one was seeking renters who did not need an ADA compliant space. That might be a limiting condition. He sees the ADA compliance as something positive, but he imagines that someone might see it as a negative, if there are, renovates and looking for occupation. Mr. Hoppock replied that without getting into deliberations prematurely, he is not sure how to answer that question, legally, but it would still have to have some relationship with the application of the Ordinance to this property, and he is not seeing that connection.

Mr. Hoppock asked if the Board had further questions for the Applicant. Hearing none, he asked if there was anything further, the Applicant wanted to add. Sydney Janey replied no.

Mr. Hoppock asked if anyone in the public had anything to add, based on the last round of public comments.

Jeananna Farrar of 59 School St. stated that it was music to her ears when they said they wanted to restore this home and live in it. She continued that it brings her back to the 1950's when she lived at 31 Summer St., and every house on that side of the street was a doctor's office and the families of the doctors lived in those homes. To restore this home and have it be a place where someone who has disabilities can live safely, after having served her profession for 34 years, would be lovely. She is concerned/wondering if they could get along with just the three apartments. If that is not a possibility, then she supposes they need to abide by the law or a Variance, she does not know. She would not be opposed to them living next door. If they could get along with the three apartments already in place, there would not be a problem.

Kristen Leach of 37 Middle St. and 24 Summer St. stated that her request is for the Board to understand that the individual decisions the Board makes have a collaborative consequence in the neighborhood. She continued that she knows they are hearing one story tonight, but there are three units to four, two units to three, and although a petition has been withdrawn, there will be a group home in this neighborhood that complies with Zoning. There will be a cell tower, too. She is bothered by the parking situation, which was not entirely about one-way traffic, but parking and permitted parking that she has no access to in front of her house. She cannot purchase it, because it is owned. She asks the Board to please consider her neighborhood, her street and her home. Everyone who has petitioned for a Variance has had great reasons, as do she and the other homeowners in the neighborhood.

Mr. Hoppock asked if there was any further public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Ms. Taylor stated that she does not believe it would be contrary to the public interest to add more residential uses, as opposed to office use, to this neighborhood.

Mr. Welsh stated that they heard testimony that at least as traffic and parking go, switching the use from commercial to residential would have a minimizing or less impactful effect on the neighborhood. He continued that he finds that a reasonable argument. He has a question for staff about that regarding the commercial office space, and if a Variance would be needed today. Mr. Rogers replied not in the DT-T, because it is an allowed use. He continued that as he stated before, there is not a density/square footage factor that is part of that.

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

Ms. Taylor stated that it does not appear that this would alter the essential character of the neighborhood or threaten the public health, safety, or welfare. She continued that there seems to be ample off street parking, which would be one of the public safety concerns.

Mr. Hoppock stated that he agrees with those comments. He continued that he thinks this is in the spirit of the Ordinance and is not contrary to the public interest, for the reasons stated. He thinks that there is no issue with parking, based on what they heard if the office space was converted to a fourth residential unit. His concern is the density problem would increase with the Variance would run with the land, questioning future uses. As the last speaker mentioned, what the Board does with each property in an area has a cumulative effect. Other properties will grow, too. That is his concern about this application.

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

Mr. Hoppock stated that he is trying to figure out if the loss to the individual would be outweighed by any gain to the public, and he is not convinced that it would. The loss to the individual would be significant, the ability to use the property as they deem fit within the Zoning. He thinks the third criterion is met.

Mr. Welsh stated that he agrees. He continued that he knows they are looking at the loss to the Applicant and the gain to the public, but the nature of the loss to the public is not something he is convinced is stronger than the gain. Mr. Welsh further stated that less traffic and adequate parking in the back of residential units are kinds of benefits to the property and the public. Looking forward, possible other uses for the commercial space could potentially have a more negative impact, depending on what they are.

Mr. Clough stated that he agrees. He continued that looking at the narrative, the size of the commercial space is almost 40% of the usable space. That is a large amount of space to dedicate to just one office. If someone were to go into that space, 2,000 square feet that could be cut up into many offices. Turning it residential, it relates to the hardship; such a large portion of this property is commercial or office.

Ms. Taylor stated that one of the things the Board has to weigh in the substantial justice factor is whether there would be some particular harm to the public and those consequences. When she tries to weigh it, from her knowledge of how much pedestrian and vehicular traffic there is from a residential use versus a commercial use, she thinks there is probably less of an impact from a residential use than from an ongoing commercial use.

Mr. Hoppock asked if she means thereby enhancing the gain to the public. Ms. Taylor replied yes. Mr. Hoppock replied that that makes sense to him, too.

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

Mr. Hoppock stated that he does not see any reason why this proposed use would affect property values in the area, just being a lot size versus a number of unit size. From the outside, nothing will change. They have already talked about how parking and traffic would not appear to have an impact on this property. For those two reasons, he does not think there would be any diminution of property values in the surrounding area if this application were approved.

Mr. Clough stated that he agrees, and looking forward to what it would be 30 years from now, there would not be a significant change in that usage, either. They are looking at two more vehicles because it was an additional residential unit. Again, there would not be much extra vehicular traffic or foot traffic.

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 when she was listening to the presentation, what immediately jumped into her mind was the Farrar case. She continued that one of the key issues in that particular case was that when you have a very large house that was residential, on a very small lot that in itself creates a type of hardship. She does not know if that is adequate to say that is a total interference with the reasonable use, but she does think that the size of the building – and she knows the Board has considered this with other properties – compared to the size of the physical property really does impede the use of the building. This is because it is unlikely that if that were to be re-converted to a single-family residential unit this would be before the Board, but it would be unlikely. She questioned if this property would not be a single-family residential unit, would it be reasonable, in this case, for it to be four units.

Mr. Hoppock asked Mr. Clough to elaborate on the size of the office space. Mr. Clough stated it struck him that the three units only had 2,800 square feet and the office space was 2,074 square feet, which is a strange proportion. They heard afterwards that the upstairs, which technically was part of the office, was also used as a pseudo-residential area. If they were being completely accurate, it would have almost been a fourth residential unit and a commercial unit underneath, to cut all that in half. He thinks that is what brought up some of the questions of how the second floor was being used, making this an odd situation. It seems to him that the front unit, first and second floor, are interconnected and count as one unit. It would possibly be quite difficult to repurpose that in a different way. That, to him, creates a hardship, because it is such a big space.

Mr. Hoppock stated that it appears to him that they have identified three potential special conditions: the size of the house compared to the size of the lot, the size of the building compared to the size of the lot, and the size of the office space to be converted in relation to the sizes of the other units. He continued that the question then becomes, what is the relationship of the Zoning Ordinance to those special conditions, how does that make it unfair to impose the Zoning Ordinance on this property and why does that create the unnecessary hardship. He is not sure if conversion costs are an appropriate consideration.

Ms. Taylor stated that she thinks the financial impact can be a consideration, although it certainly cannot be the sole consideration. The Board can consider it in the big picture, in relationship to other issues, such as such a large house on such a small lot. She questioned if you cannot undertake the effort to convert it into some sort of usable space, does that mean that it is not reasonable. She thinks she said that backwards. Mr. Hoppock replied that he understands what she means.

Mr. Welsh stated that he is still not sure if he understands, but he is still thinking about another special condition regarding the ADA compliance that is an existing condition of this building and whether if, in future uses, the existence of that ADA compliance is a liability or not. He questioned that for this use, the ADA is a benefit, but would that become a liability if it were to remain a commercial office space. If so, they would be looking at the necessity of converting the space away from ADA compliance, which is not necessary at this time. He will add that unfortunately, he is not sure what the relationship of that is to the lot size.

Mr. Hoppock stated that he is persuaded that the special conditions they identified are useful in this application. He continued that he appreciates the relationship between those special conditions and why they would make the application of the lot size part of the Zoning Ordinance unfair and burdensome. The Farrar case that Ms. Taylor was talking about states you can consider financial impact as one criterion in the big picture, and the big picture is that they are getting rid of the commercial use. The day-to-day traffic coming in and out of this place will be reduced over time, there will be one extra residential unit, and for the time being, one person will be living there. He understands that things may change in 30 years, but as Mr. Clough mentioned, in 20 or 30 years it will not be that much different if the uses remain. There is plenty of parking, streetwise and on the lot. He does not think there will be any cumulative effect on the neighborhood that would be detrimental to the neighborhood.

Ms. Taylor made a motion to approve ZBA 22-17 for a Variance for property located at 61 Summer St., Tax Map #568-034-000-000-000, in the Downtown Transition District, to permit a 4th residential unit on a 14,374.8 sq. ft. lot where 24,200 sq. ft. is required per Chapter 100, Article 4.6.1 of the Zoning Regulations. Mr. Clough seconded the motion.

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

Granted with a vote of 4-0.

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

Granted with a vote of 4-0.

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

Granted with a vote of 4-0.

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

Granted with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

Granted with a vote of 4-0.

and

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

Granted with a vote of 4-0.

The motion passed with a unanimous vote of 4-0.

V) New Business

Mr. Hoppock asked if there was any new business. Mr. Rogers replied no.

VI) Communications and Miscellaneous

Mr. Hoppock asked if there were any communications or miscellaneous items to address. Mr. Rogers replied no.

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Mr. Hoppock adjourned the meeting at 7:50 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk