City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 1, 2023 **6:30 PM** **Council Chambers, City Hall**

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

Staff Present:
John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Mike Hagan, Plans Examiner

Members Not Present:
All Present

I) Introduction of Board Members

Chair Hoppock 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: November 7, 2022 and April 3, 2023

Chair Hoppock stated that he has gone over the November 7 meeting minutes and does not know how to fill in any blanks. Mr. Welsh and Ms. Taylor stated that they were not present on November 7. Ms. Taylor stated that they have had this same conversation at many meetings now, and she wonders if they should just adopt the minutes as is, if they cannot fill in any blanks. Mr. Gorman replied that he cannot fill in any blanks either, and, would be willing to adopt the minutes as is. He continued that he is comfortable, in reviewing them, that they are adequate.

Mr. Gorman made a motion to approve the meeting minutes of November 7, 2022. Chair Hoppock seconded the motion, which passed by a vote of 3-0. Ms. Taylor and Mr. Welsh abstained.

Ms. Taylor stated that regarding the April 3 minutes, line 588 says, "Seventy three paid parking spaces," and she thinks the word "paid" should be removed. She continued that they are not charging for any parking spaces. Mr. Gorman stated that he will abstain because he was not here on April 3.

Mr. Welsh made a motion to approve the April 3, 2023, meeting minutes as amended. Chair Hoppock seconded the motion, which passed with a vote of 4-0. Mr. Gorman abstained.

III) Unfinished Business

Chair Hoppock asked Zoning Administrator John Rogers about the issue of the 2-2 vote from the last meeting. Mr. Rogers replied that staff received an email from the applicant asking for that application to be withdrawn without prejudice. Chair Hoppock replied that for the record, that is ZBA 23-09. Mr. Rogers replied yes, for the ADU on Page St. Chair Hoppock replied that that is on the agenda for tonight, so they will skip ahead and note that it is withdrawn without prejudice.

Mr. Rogers stated that there is no other unfinished business.

IV) Hearings

A. Continued ZBA 23-03: Petitioner, Samson Associates, LLC, and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a Variance for property located at 32 Optical Ave., Tax Map #113-006-000-000-000 and is in the Industrial Park District. The Petitioner requests to permit self-storage units on a lot in the Industrial Park District where self-storage units are not listed as a permitted use per Chapter 100, Article 6.3.5 of the Zoning Regulations.

Chair Hoppock introduced ZBA 23-03 and asked to hear from Mr. Phippard.

Jim Phippard stated that he is here on behalf of Samson Associates, LLC, who are requesting, for the last time, that this application be continued to the June 5 meeting. He continued that he was contacted through his (the Putnam's) attorney, Tom Hanna, by the Putnams, requesting that this be delayed to the June meeting. His client wants to be a good neighbor and agreed to postpone this further, trying to accommodate the abutter.

Chair Hoppock stated that there is an agreement between the applicant and one of the abutters to put it off to June 5. Mr. Phippard replied that is correct.

Mr. Gorman made a motion to continue ZBA 23-03 to June 5, 2023. Ms. Taylor seconded the motion, which passed by unanimous vote.

B. Continued ZBA 23-04: Petitioner, Samson Associates, LLC, and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a Variance for property located at 32 Optical Ave., Tax Map #113-006-000-000-000 and is in the Industrial Park District. The Petitioner requests to permit a vehicle fueling station on a lot in the Industrial District where vehicle fueling station is not a permitted use per Chapter 100, Article 6.3.5 of the Zoning Regulations.

Chair Hoppock introduced ZBA 23-04 and asked to hear from Mr. Phippard.

Mr. Phippard stated that it is the same explanation; they are asking for this to be continued to June 5, at the request of an abutter his client is trying to accommodate.

Mr. Gorman made a motion to continue ZBA 23-04. Ms. Taylor seconded the motion, which passed by unanimous vote.

C. <u>Withdrawn ZBA 23-09:</u> Petitioners, Jeffrey William Tighe-Conway and Matthew Conway and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a Variance for property located at 8 Page St., Tax Map #553-018-000-000-000, is in the Medium Density District. The Petitioner requests a building with two dwelling units to have three parking spaces where four parking spaces (2 spaces per dwelling unit) are required per Chapter 100, Article 9.2, Table 9-1, Minimum On-site Parking Requirements of the Zoning Regulations.

Chair Hoppock stated that they already addressed this.

D. <u>Continued ZBA 23-11:</u> Petitioner, Keene Meadow Solar Station, LLC, of Boston MA, represented by A. Eli Leino of Bernstein, Shur, Sawyer & Nelson of Manchester NH, requests a Variance for property located at 0 Gilsum Rd., Tax Map #214-001-000-000-000, is in the Rural District and is owned by D-L-C Spofford, LLC of Stuart, FL. The Petitioner requests to permit a 30-acre large Page 1 of 135 scale ground mounted solar energy system where 20 acres is allowed per Chapter 100, Article 8.3.7.C.2.b of the Zoning Regulations.

Ms. Taylor stated that she needs to recuse herself for this, because she is on the board of the Monadnock Conservancy, and they are an abutter.

Chair Hoppock introduced ZBA 23-11 and asked to hear from staff.

Plans Examiner Mike Hagan stated that 0 Gilsum Rd. is located in the Rural District and is 178 acres. There are currently no buildings and no ZBA applications on file. They are asking for 30 acres where a maximum of 20 acres is allowed in this Zone for a solar system.

Mr. Welsh stated that the Conservation Commission has reviewed this application and spoken with this applicant before. He asked Mr. Hagan to explain the purview of the Conservation Commission's review of this application and, if possible, report any decisions they made.

Mr. Rogers replied that he knows there has been some conversation, but he does not know if the Conservation Commission has come up with an actual deliberation. He is not aware and does not have that information readily available.

Chair Hoppock asked to hear from the applicant.

Eli Leino from Bernstein and Shur stated that Ari Jackson joins him tonight from the applicant, Glenvale Solar, and Keene Meadow Solar, a subsidiary. He continued that he had brought Mr. Jackson tonight to describe this project, the company, and why they chose this location in Keene. Those might not be part of the five criteria but are relevant for this Board to get a sense of what is happening.

Mr. Leino continued that all solar projects classified as "large scale," which is up to 20 acres under the City's Zoning Ordinance, require a Conditional Use Permit (CUP) through the Planning Board (PB). As part of that, the Conservation Commission gets to make recommendations. Since the applicant will have [requirements from the] NH Department of Environmental Services (NHDES), depending on wetlands and so on and so forth, the Conservation Commission gets copies of any of those applications to the State. It is not a jurisdictional role, but they are the local contact for that piece, so the State actions go through the local Conservation Commission. He and his client had an informational meeting with the Conservation Commission on March 20 to discuss the project, under no obligation other than the fact that they understand that this is something that matters deeply in Keene and specifically to the Conservation Commission. He thinks it is important to have a sense of what is going on here and of what goes through the Board, why they submitted a site plan where they have asked for one thing – and the Board members can clearly look at and see that they need a setback Variance, and so on and so forth – and why they have bifurcated their applications. In large part, they are before the Board with an area Variance to ask for greater than 20 acres for solar, but before they have a ruling from the Board, it is financially unfeasible for them to design this whole project down to the ground scale, knowing where all the vernal pools are and so on and so forth. They have started with the mapping, have an engineer and a wetlands scientist engaged, and are working to get their ducks in a row. However, they are at the point where they have an idea of what they want to do and a sense of the size. They will need to start discussing interconnections with the utilities, and so on and so forth. At this point in the application, that is why they are before the Board for this area Variance.

Mr. Leino stated that before he gets into the five criteria, he wants to allow Ari Jackson to speak about the application, how (the company) picks projects generally, how they found this site, and their desire to work in this municipality.

Ari Jackson stated that he is a Senior Director of Development with Glenvale Solar. He continued that Glenvale Solar is a leading, independent developer of utility-scale solar and energy storage projects in New England. They are a team of 15, with offices in Portland, ME and Boston, MA. The founding principle of the company is that generating clean, reliable energy does not have to come at a premium. They pursue this goal by selecting a small number of compelling projects that bring benefits to the local community and have the ability to generate affordable electricity. They currently have in their portfolio six advanced projects, five of which are in Maine. Two they expect to enter construction later this year and early into next year.

Keene Meadow Solar Station would be their first NH project, and as currently designed, includes 50 megawatts of solar generation and 50 megawatts of battery electric storage. In its first year of operation, it would generate enough energy to power approximately 14,000 NH homes as well as offset the CO2 equivalent of approximately 88,000 acres of mature forest. It is located at the intersection of two transmission corridors between Old Gilsum Rd. and Rt. 10, making it a compelling project. They have an extensive process by which they review sites to select which to pursue that includes a review of natural resources, soils, the viability of interconnection, and so on and so forth. This project meets the criteria for this type of development, bringing many benefits to Keene as well as playing an important role in the state's transition to renewable energy. Glenvale Solar understands that this needs a Variance, which is why they are here today.

Mr. Leino stated that before he gets into the five criteria, he thinks it is important to think about what the City's Ordinance has. He continued that from their preliminary design meetings with Mr. Rogers and other staff members, it seemed to him like "20 acres" was a number that was picked because it seems like a nice, big number but is not too big; it is a good, round number that would work. On this site, it is a bit too small to be logical to use. If you had a 25-acre lot in the middle of town and put up a 20-acre solar project, you would have to clear a buffer because these need clear access to the sun in order to work. Thus, 20 acres sounds big, but if you were to start putting those downtown, it is rather unfeasible. There are not many parcels like this, and it makes sense here, because the neighborhood has two transmission lines already, which helps with infrastructure connections. There are also two reasonably large roadways. He was driving down the hill from Nelson, looking to see what you can see while driving on Rt. 9 back into the city, and there is the front row of trees and then an elevation change, but you do not see too deeply into the site. A large enough parcel gives the opportunity to retain some mature tree buffer and have additional uses. They know the trees and trails here are important to people. On a large enough parcel, they can have a highly generating solar facility and also reroute some of the nature trails that people like. They can figure out ways to make this productive for both the owners and applicant and make it still viable for the city as a recreational use. That is who they are and what they are trying to do.

Mr. Gorman asked staff in which zones throughout the city these solar facilities are permitted. He asked if the size criteria are consistent with this one, or if it varies. He continued that it is fine if Mr. Leino continues his presentation while staff find that information.

Chair Hoppock stated that Mr. Leino mentioned the junction of two transmission lines. He asked who maintains those lines and how they would be used. Mr. Jackson replied that one is owned by Eversource, and the other is owned by National Grid. He continued that the presence of the existing electric infrastructure would allow for the energy generated by the projects to be put onto the grid. Part of the design is a substation for the project, which would interconnect to the existing transmission lines. Chair Hoppock asked if it is correct that they would do that on site. Mr. Jackson replied yes, to avoid the construction of transmission lines for the purpose of interconnection.

Mr. Leino replied that that was part of how the applicant chose this site. He continued that it is unique to see two utility-scale transmission corridors intersect each other at a spot (like this). Historically on this site there have been considerations of more traditional development. He does not know that this site works particularly well to perc septic systems. He knows the City has not desired to extend municipal services out that way. Though zoned rural residential, there is an opportunity, on paper, to subdivide this and build a road and put many house lots out there, but it is not hugely feasible. It would be a difficult site for that, which makes it a very valuable site for this kind of use, which is lower intensity than houses, school buses, septic systems, and so on and so forth. It creates an interesting buffer use between the conservation lands that surround it. This site will not have many people activities and will be maintained about twice a year with brush cutting. Otherwise, it just sits there and passively generates clean electricity.

Mr. Rogers stated that to answer Mr. Gorman's question, large-scale solar systems are allowed in the Rural District, the BGR District, Corporate Park, Industrial, and Industrial Park Districts. He continued that all except for Industrial would require a CUP through the PB. The Industrial District is the only zone where it is allowed by right.

Mr. Welsh stated that the applicant proposes accessing the site through Old Gilsum Rd. from the south. He asked if they considered accessing it from the northern part of Old Gilsum Rd. He sees what looks like a road coming off Rt. 10 and heading up to the substation. He asked if that is really a road, or if it is a canal, waterway, or something else. Mr. Leino replied that it appears to be delineated wetlands. He continued that in terms of the access on Old Gilsum Rd., the Conservation Commission also raised that question, and it is on the applicant's radar. He does not have a good answer for Mr. Welsh right now, but they are considering it as part of a more definitive site plan. They are still in the preliminary phases.

Mr. Leino went through the five criteria.

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

Mr. Leino stated that over two Mayoral regimes the City made a decision, which has been accepted throughout the city, that green energy is a good thing for the public interest and that it is an opportunity to reduce reliance on fossil fuels, which is a nice move into the future for Keene, Cheshire County, and NH at large. A goal of the Sustainable Energy Plan is to go entirely to renewable energy by 2030, and if the City is going to meet those lofty goals it requires permitting uses like this. It would be a hard argument to say that providing green energy is not in the public interest. He and his client certainly believe that it is. As such, they believe this project meets that criterion.

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

Mr. Leino stated that taken in conjunction with criterion 1, the Ordinance appears to be promoting clean energy in appropriate locations. He continued that that is why that 20-acre

amount seems to have been picked; it seemed like a reasonable choice to not be too small. Everyone (in this meeting) is currently in a building that has solar panels on the roof. Those certainly have a benefit for the building and provide a good feeling when you see them, but they do not make a huge dent toward that 2030 goal of reducing fossil fuel energy. That requires permitting large projects like this. The Ordinance clearly has considered that they need green energy options, and they need to be in reasonable places. A CUP is included in this project, so this will be thoroughly vetted by the PB. His clients expect to be back in front of the ZBA once they have a more definitive site plan. Certainly, they can see, as already mentioned, a couple of places they are going to need relief. The City, through conservation, through the State, through this Board, and through the PB, will have many opportunities to look at this project to make sure it conforms to the goals of the Ordinance and the various Resolutions that have been passed in the Clean Energy Plan. He and his clients believe it is in the spirit of the Ordinance to be able to permit some of these larger projects in the city.

3. Granting the Variance would do substantial justice because:

Mr. Leino stated that this is the balancing test of private rights and public benefits. He continued that with some projects you have to figure out if it is going to hurt the public, and if so, if it would hurt the public less than it would help the private applicant. Here, the public benefits are great, in that it provides clean energy to the region and will be a tax generator with very few, if any, public services required. They will not be educating kids here, will not be adding municipal services, will not be plowing, and so on and so forth. There is no cost to the City other than the fact that this will produce tax revenue, and during creation and installation, it creates a large number of construction jobs. The private benefits to the owners and applicant are evident. The owners of this lot have leased the property to Glenvale Solar, who does a good job with this, picks reasonable projects, and works hard to make sure they are as good as possible for generations, for the municipality, and so on and so forth. In terms of balancing the goods, it is good on both sides of the ledger. It achieves substantial justice through that balancing framework.

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

Mr. Leino stated that this is an interesting location, by two of the major thoroughfares into the city. He continued that they have proposed a project with 30 acres of solar on one lot and 135 acres on the other, and with clearing, roadways, and so on and so forth, it ends up being about 240 acres of disturbed land on 480 acres of the two parcels combined. Thus, they are using about half the space, meaning that there are woodland buffers, and they are being careful to do proper wetlands delineations and being mindful of those issues. They have the opportunity to make sure they do not put this in a spot where it is visible to neighbors. It is also a very sparse part of the city. Beyond the recreation uses, there are not hugely active uses, so no one will have to look at this from their window, the way they would if you were building 20 acres downtown. They understand that people appreciate the trail networks, but this is privately owned land, so it

is understandable that the owners, and now through the applicant, would like a viable use for this. The neighboring lots are generally in conservation, and the Goose Pond area is an important recreational area for the city. This is a nice buffer option from Rt. 10 and Rt. 9, to know they have something that is not going to add a lot of people or aggressive construction over the course of years, [which they would have] if one were to build a subdivision with a proper roadway through there. It will be low impact, and beneficial for the neighbors 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:

Mr. Leino stated that this is a unique property in Keene. He continued that he grew up here, so he is familiar with the area, and he was trying to figure out which other parcels in the city feel like this one. The people at Glenvale look for parcels that make sense to redevelop as solar. If you think about where there are wide, open parcels that do not have a more active use, you run into things like farms and uses they would rather not redevelop as solar, because those already do have a viable use. This spot is very difficult to develop as a single-family home or any of the other allowed residential uses in this zone. Glenvale tries to find a place where they are not taking land that could be put to better use, and to put in something that benefits the public and the community through green energy installation. Out of curiosity, he was looking for parcels around these sizes, a combined 480 acres. He continued that the Keene Country Club is only 148 acres. This is a big, unique parcel where really nothing is developed, situated on Old Gilsum Rd., a class VI road, unmaintained by the City. There are not many great options for something that could be developed here. It is a unique site, a difficult lot, and lacks value for almost all the other uses. This is something where they can provide a good and reasonable use.

Mr. Leino continued that in terms of the unnecessary hardship, putting 20 acres of solar panels onto the amount of acres they have seems like a waste of the entire parcel, in that it would be burdened by the transmission lines and by a small solar panel, and not really usable for anything else. It feels unreasonable to use such a small percentage of the parcel for solar. He guesses there would be an opportunity to build a subdivision road, subdivide many 20- to 25-acre parcels, and do this. They have that alternative, which is not required under the Malachy Glen standard, the Simplex standard, or any of the cases that lead to their hardship definitions, but that is an unreasonable use of capital. Breaking this down so that you can build something reasonable with relief here [would mean taking] all those extra steps that do not do any good for the community. A roadway certainly is not generating green energy, if they had to put one in to try to make this a usable parcel. The 20 acres would not be a reasonable use based on the unique circumstances of this being near a couple highways, near two transmission lines, and in a perfect spot where no one is going to see it and it will not emit noise. It is a great spot for solar.

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:

Mr. Leino stated that the proposed use is reasonable in that in the Malachy Glen case they discussed the fact that an allowed use is inherently reasonable. Solar, large-scale, is an allowed use. The City knows and has codified it into the Ordinance that they want to promote green energy and solar uses. Based on both the Ordinance and the case law, it is an inherently reasonable use.

Mr. Welsh stated that he is glad Mr. Leino brought up the hypothetical of subdividing and going about it that way and staying within 20 acres, because he wondered about that himself. He asked if Mr. Leino could further describe that process. He asked if the process would be to have a road built, then get PB approval for the application for subdivision in 20+/- acre parcels, and then purchase those parcels and build solar panels on them.

Mr. Leino replied that the case law has held that just because there is an alternate method does not mean that there is not a hardship. He continued that he looked at this briefly, because he is a land use attorney, is interested in this, and likes considering what you can do on these parcels. There would be a couple difficulties in doing so. For starters, Old Gilsum Rd. is class VI and seems to mostly be a borderline cart path. They staked it to figure out what the right-of-way looked like. To build off a class VI road, a subdivision-approved road, they would have to build to City standards. Certainly, there are waiver options for all of this, and they can continue rolling the dominoes, but they get into more and more things that take them farther and farther from "reasonable," when with this relief, they could just build what makes sense, rather than having multiple parcels without the setbacks. Mr. Jackson could speak to this better, but the more you spread these out, even if you were to build the exact same amount of solar panels around town, you lose efficiency.

Mr. Jackson stated that this goes back to the founding principle of generating clean, reliable energy that is also affordable. He continued that part of that involves achieving economies of scale. Pursuing a larger project, they can get more energy generation out of a smaller footprint, and have fewer interconnections, which contributes to reducing the cost of electricity. Generating the same amount of energy that this project would generate from [a project with multiple] 20-acre parcels, would require a far larger footprint. Part of that is related to the buffers that would need to be around the project to allow the sun to hit the panels. Thus, more projects would have a greater perimeter. There would also be more of a need to interconnect into the existing electric grid. That is one of the single largest costs of a project, significantly driving up the cost of energy sold to customers. The company's thinking, in pursuing these types of projects, is specifically to drive down the costs of clean energy. Mr. Leino added, drive down the costs of clean energy to the end users, which would be residents of NH.

Mr. Gorman asked if it is safe to say that the whole subdivision route, which would be acceptable from a Zoning perspective, is not only not equitable but would probably have more

impact on the biodiversity that exists in these areas. Mr. Leino replied that he thinks it is fair to say that. He continued that they have an environmental scientist and engineers on this, so lawyers are probably not the best equipped for this, but he can say that this has been designed in such a way that they can try to avoid as much of the wetlands as they can, being mindful of NHDES regulations and the Conservation Commission's concerns. They will comply with the regulations and make sure the site works. In contrast, if they were to divide this into 20-, 25-, and 30-acre parcels, it is unclear where those boundaries would be. If you build a center road, the way you do with subdivision plans…[unfinished sentence]. Mr. Gorman replied that at the end of the day, they would have more roads, more infrastructure, and more impact on the natural surroundings. Mr. Leino replied that he thinks that is a strong probability.

Chair Hoppock asked what Mr. Leino would say is the general public purpose of the Ordinance that his clients want to vary. Mr. Leino replied that he thinks the public purpose of Keene's Solar Ordinance is to have properly sized solar arrays in correct locations in the city, and he thinks that works in conjunction with the CUP. He continued that it gives the City another chance to make sure these are sited correctly and are not just anywhere they can fit 20 acres of solar panels. He thinks that the Variance is required because the 20 acres makes sense on a 30-acre or 40-acre parcel, but this is a unique parcel that is so much larger than what was considered in the Ordinance, that the Ordinance stops being reasonable.

Chair Hoppock stated that regarding the application form, under "Section 2. Property Information," he is confused about why the permeable lot coverage is at 0%, when solar panels are going to cover several hundred acres. Mr. Leino replied that he would argue that he does not have it as 0%, he has it as not answered, in part because they do not have the final determination or final site plans. Chair Hoppock replied that he stands corrected; Mr. Leino has 0% for existing and does not have anything answered (beyond that).

Mr. Rogers stated that solar is unique, in terms of trying to figure out what the impervious coverage would be, because the panels are not actually preventing water from migrating into the ground. He continued that under the City's Ordinances, instead of looking at impervious surfaces, for the solar footprint they look at the percentage that it is covering just in general, not calling it impervious. There is a limitation - 70% of the site would be able to be covered by the panels, with the understanding that the actual impervious coverage percentage would be a very low number, since the panels are not preventing the water from making it into the ground.

Chair Hoppock asked if that is because the panels are not covering the ground, as demonstrated by the picture. Mr. Rogers replied that is correct; what they will see in most cases are ground-mounted panels, with a pole mounted with some foundation structure, but it is not like the whole panel is covering the ground itself. He continued that the applicant could speak more about this.

Chair Hoppock asked if that 70% would be exceeded if the Board grants this Variance. Mr. Rogers replied no, as the applicant spoke to before, the total between the two lots was closer to

about 50%. He continued that that is still without an actual design in front of them, but he believes the application mentioned 50%.
Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked if the applicant had anything further to add. Mr. Leino stated that he thanks the Board and hopes they will consider that this Variance is just a first step, and there is a lot of vetting still to be done. He continued that this Variance would give them the opportunity to design a great project here so that it could be built. Mr. Jackson stated that he echoes that and thanks the Board. He continued that his company believes this project to be very compelling in its use and he appreciates the Board's consideration.

Chair Hoppock asked for public comment, beginning with people opposed to the project.

Bob King of 42 Hurricane Rd. stated that he has been in the renewable energy field for his entire professional life. He continued that he is a professional engineer, and one of his companies owns the solar project at Keene's Wastewater Treatment Plant, which he is told is the largest solar project in the county at 1,360 kilowatts DC. He spoke to the Earth Day rally last weekend and challenged people to break his company's record for having the largest solar plant in the county. He followed that up by saying, "As long as you site it in the right location," not in the middle of a forest. He commends Mr. Jackson for his vision and for suggesting large-scale solar, but he thinks putting it in the middle of a forest – which happens to be in a prime conservation focal area – is not the right site. It leads to forest fragmentation. Mr. Gorman mentioned biodiversity, and together with the climate crisis is the biodiversity crisis. Protecting our forests and wild places is key to the future for non-human species as well as humans.

Mr. King continued that as an engineer, he will point out a few other things. Mr. Leino implied that this is the most efficient way to do solar, but he does not think that is true. He thinks it is more efficient, from a technical standpoint, to have solar on individual household rooftops. It is more *profitable* to have it in one large conglomeration. He has nothing against the profit motive, as he is a capitalist himself, but they should be clear that it is more efficient to generate electricity where it is being used, if their goal is to help Keene Community Power and power the homes and businesses in Keene. Thus, his final comment is that the place for this kind of solar is on all the rooftops, particularly those of big box stores and smaller homes, and in parking lots, on canopies, at the landfill in Keene, at any brownfields the city has, and so on and so forth. He did some research, and in MA, where Glenvale Solar is headquartered, Mass Audubon, Mass DOER (Division of Energy Resources), and USEPA all discourage this kind of solar development in favor of what he just listed - parking lots, rooftops, abandoned gravel pits, landfills, and so on and so forth. He hopes the Board considers this as they consider this Variance.

Ryan Owens read the following statement:

"Thank you for the opportunity to provide comments in opposition to these requested variances. My name is Ryan Owens, and I speak on behalf of the Monadnock Conservancy, of which I am the Executive Director. The Monadnock Conservancy is a non-profit land conservation trust

based in Keene, with an office at 15 Eagle Ct., and serving the greater Monadnock region. To date, we have conserved more than 23,000 acres of forests, farms, and wetlands across the region in order to perpetuate the public benefits these properties provide in their primarily undeveloped state. This includes more than 500 acres of permanently conserved forest immediately north of this proposed development.

The Conservancy applauds the City's goal of sourcing all electricity from 100% renewable sources by 2030, and there are likely many locations around the city where we would support the development of solar on the scale of this proposal and even larger. The location chosen for Keene Meadow Solar Station, however, being remote, intact forest and surrounded by conservation land, is not one of them. We oppose granting the requested variances for the following reasons, which correspond to the criteria that must be met for the variances to be granted:

Criterion 1:
In claiming that granting the variance would not be contrary to the public interest, the applicant correctly states that their project would help meet the City's clean energy goals, thereby serving a public interest. Nevertheless, there are several ways in which granting the variance would be contrary to the public interest."

Mr. Ryan asked if it is correct that the Board members were provided with maps he submitted in advance. Chair Hoppock asked if it is correct that he submitted them today. Mr. Ryan replied yes.

Mr. Ryan continued:

"As shown in Map 1, directly to the west and south of the proposed development is the City of Keene's 1,044-acre Greater Goose Pond Forest, and directly to the north is the Monadnock Conservancy's 518- acre Maynard Forest. The establishment, expansion, and management of these forests represents a significant, sustained public and charitable investment in the public interest served by these properties and this area of Keene, in particular the public benefit of forests and the ecosystem services they provide, including clean water, wildlife habitat, a sustainable supply of forest products, and recreation.

The City's conservation intentions for the Goose Pond Forest, as expressed through master plans, have been clear ever since Goose Pond was retired as a public drinking water source in the early 1980s. What followed was a period of rapid expansion of the Forest through the proactive acquisition of adjoining properties, and, in 2019, the City made its intentions irrevocable by granting a permanent conservation easement on the entire property to the Society for the Protection of NH Forests.

By clearing and developing a swath of forest on the scale proposed immediately adjacent to and between the Goose Pond and Maynard Forests, the Keene Meadow Solar project would harm the ecological integrity and function of these and other surrounding forests.

The wildlife habitat values of the lots that are the subject of these applications and the greater area are particularly significant. As shown in Map 2, the entire area proposed to be impacted by this development is ranked in the top three tiers of wildlife habitat quality in the NH Wildlife Action Plan, a publication of the NH Department of Fish & Game, and more than half the area is in the top two tiers. These, in turn, are part of a larger block of priority habitat to the north and west; only two other areas of Keene host high-quality habitat on this scale. The entire block functions as an ecological unit, so, when one part is compromised by development, the function and value of the entire block is diminished.

The protection of wildlife habitat is a matter of public interest, and the 20-acre solar limit in the ordinance helps to serve that interest in locations of high habitat value. As such, granting the variances would be contrary to the public interest.

As shown in Map 3, the subject area is part of a network of priority wildlife habitat blocks linked by wildlife corridors. At a larger scale, both the proposed project site and the adjacent conserved forests anchor the southern end on an important north-south corridor, which is itself part of a larger network of corridors extending from the northern edge of downtown Keene to conserved land in Surry, Gilsum, Sullivan, Stoddard, and beyond. Such corridors are critical not only for seasonal wildlife movement, but also for long-term needs for habitats to shift north in response to climate change. Granting the requested variances disrupts the continuity and function of these corridors, and, therefore, harms the public interest served by them.

Criterion 2:
In claiming that the spirit of the ordinance would be observed if the variances were granted, the applicant states that the goal of the ordinance "appears to be promoting green energy projects in appropriate locations." While this is likely true, it is equally likely that the 20-acre solar footprint cap was also an expression of the goal, or spirit, of the ordinance. That is, while the ordinance seeks to promote solar energy, it also seeks to limit its impact on the landscape. As such, to exceed this limit to such a large degree clearly runs counter to the spirit of the ordinance.

Criteria 3-4:
In addressing Criteria 3 and 4, the applicant claims that neighboring properties will not be harmed because the solar installations will be screened from view and are far from the nearest residential development. As the owner of a neighboring property, we disagree.

Though the solar project, if built at the proposed scale, may not diminish the monetary value of surrounding properties, for the reasons explained previously, it will unquestionably diminish their ecological value.

Criterion 5:
In claiming unnecessary hardship, the applicant describes the properties as unique due to the presence of wetlands and the lack of access to roads, public water, and public sewer. However, Criterion 5 challenges the applicant to distinguish their property from other properties in the area, and these same limitations of wetlands, access, and utilities apply to nearly every property in that part of Keene.

The applicant also argues that the application of the 20-acre limit in the ordinance to their property fails to advance the purpose and intent of the ordinance and that their proposed use is reasonable. Again, they seem to be asserting that the only purpose and intention of the ordinance is to advance solar development, failing to acknowledge that the included 20-acre limit is just as significant an expression of purpose and intent. Had the ordinance not intended to limit the footprint of solar development, it would not have included such a limit."

Mr. Ryan stated that he urges the Board to decline to grant these Variances.

Anne Faulkner of 42 Hurricane Rd. stated that the Board has heard some technical ideas from Mr. King, and some scientific thoughts from Mr. Owens, and she agrees with all of them. She continued that she has a couple things to add, one aesthetic and one emotional. Regarding looking at solar panels, the applicants have talked about how hiding it in the woods is great because no one has to see it. She feels like people should be able to see where their energy comes from and they should be proud to see solar panels on their roofs, alongside their highways, at the landfill, and so on and so forth. They should not have to hide these things. Part of embracing their clean energy future is to see where their energy comes from. Her emotional reaction to the applicants saying there is "no other viable alternative for this land" is that growing trees, sequestering carbon, supporting wildlife, and recreation are viable uses. They might not have the financial return of a solar farm, but they are of public value.

Ms. Faulkner stated that she has been wondering if the Community Development Department, or someone else, has done an inventory of prospective sites in Keene where someone could have a 20-acre or 10-acre (solar project), or just rooftops, and whether the City has looked at the landfill (as a potential site). It is great that the City has these goals for renewable energy, and she wonders if they have done any mapping of what the options are in Keene.

Mr. Rogers replied that staff has not done an overall inventory, but with the Land Development Code (LDC), they took into consideration allowing for and trying to expand the ability for rooftop solar to occur, making it more of an accessory-type use that would be allowed on basically any piece of property as long as it is accessory to the uses on that property. Doing an overall inventory of available lots or locations (for solar) is not something they had expanded into.

Chair Hoppock asked if there were any other comments in opposition. Corinne Marcou, Zoning Clerk, replied that the Board received a letter in opposition from Eloise Clark.

Chair Hoppock read the letter into the record:

"I would like to comment on the proposed Zoning changes to the Rural District at 0 Gilsum Rd. in Keene to accommodate the development of Keene Meadow Solar Station. Lynn M. Thomas and Cynthia Brown Richards are the landowners requesting the changes. This is an enormous, industrial-scale development in the Rural District. According to the packet we received at the Keene Conservation Commission meeting, the development will encompass 240 acres. This includes 75 acres of solar panel modules alone, plus batteries and inverters, a substation, roads, storage areas, cleared areas, and buffers between and around the modules. Allowing a development of this scale will set the precedent for other areas of the Rural District to be developed, perhaps with less desirable industries. Once the precedent is set, the door will be open to other development. Storm water management will be a challenge with the creation of such a large area of impermeable surface. Excessive runoff of precipitation to the east would impact the Beaver Brook watershed. To the west, it will impact the greater Goose Pond forest. Flooding can be an issue for the valley floor of Keene. The best protection from increased flooding in Keene is to keep the steep hillsides and upland areas forested.

Site preparation:
Converting land from forest to meadow involves removing the tree stumps over many acres. Bulldozing removes and disturbs productive forest soils. Loss of both forest cover and soils eliminates the existing, intact, healthy ecosystem. For example, salamanders spend most of the year in these upland soils that would be eliminated. Much of their population would be unable to return to the existing vernal pools. Old Gilsum Rd. would need to be upgraded to accommodate heavy machinery during construction. It would also need to be maintained so truck traffic can access the site for maintenance. The road is used by many pedestrians and bicyclists, creating a conflict in use. The greater Goose Pond forest and surrounding area is heavily used for recreational purposes by large numbers of people. An industrial facility is not compatible.

Power generation:
Because of the nature of the electrical grid, power generated at the site would flow into the larger electrical stream. It would not necessarily go directly to Keene.

My recommendations:

1. Keep the healthy forest intact. Young trees will continue to sequester or absorb carbon from the atmosphere at an accelerated rate for the first 60 years of their growth. Mature trees will store carbon for centuries beyond the 40-year lifespan of this installation.
2. Encourage solar development in waste areas such as the former Kingsbury site. The Keene Transfer and Recycling Station has sunny areas perfect for an installation. Many commercial parking lots sit half full of vehicles. Light industry is often surrounded by large acreage. For example, the area proposed for storage units on Optical Ave. Why not solar installations there? Please use these areas first.

3. Building rooftops. There are many acres of commercial, manufacturing, and residential rooftops that could house solar panels. With proper battery storage, these sites could spawn a movement toward decentralized electric grid. This type of energy generation would be less subject to the recent outages that have affected so many in recent months.

Thank you for your attention to this letter. I recognize you have a difficult choice to make.

Sincerely,
Eloise Clark
1185 Roxbury Rd., Keene, NH"

Chair Hoppock asked for further comments in opposition. Hearing none, he asked for comments in support. Hearing none, he invited the applicant to give rebuttal.

Mr. Leino stated that wildlife movement corridors were brought up, and that is an important part of any development project, including this one. A couple things have been considered here; as mentioned, they have a wildlife scientist on staff for this project. He can tell them definitively that the fencing around this will be a type that any animal smaller than deer can get through, so that migration corridors and that central wetlands area, and so on and so forth, will all be kept intact with proper buffers and that is something that the applicant has considered. There was a question about the unique nature of these parcels, because there is a bunch of forested, less developed parcels in the area. This is the only location in the area that has two transmission lines intersecting. In terms of visuals, he does not disagree, and in terms of what Ms. Clark said about putting (solar) in town, they are at City Hall here and he thinks it is great to have them on top of garages. It is a good job for everyone to do their part, and they are certainly not trying to hide these (solar panels) because they do not think it is a good idea to promote green energy. As mentioned previously, there are trails, and the public has been welcome to this site and will remain so. If they want to walk, he is sure they can make trails so people can see the glory that is a large solar facility, if that is something they want to do, but the solar facility will not be visible from the road.

Mr. Leino continued that regarding Ms. Clark's letter, the Board knows this, but for the benefit of the public, the Board is a non-precedential body. Just because Keene Meadow Solar gets something does not mean their neighbor gets it, too. Just because you can build a deck with a Variance to allow a foot into the setback, it does not change the Zoning in the city. He feels for what the abutters have said, and they do recognize the benefit of conversation forests. This forest has been extensively logged. It is an active use. They are talking about conservation restrictions on neighboring lots, which are a wonderful, beneficial thing for the city and the state, but this is private property. Certain uses are allowed by right on this property, including single-family residential development. With the acreage they discussed, the owners could figure out a way, if they wanted, to put that in there. It would be a lot of site work and expense and would be very disruptive, whereas solar allows the water to run under (the solar panels), allows the wildlife corridors to exist, and is trimmed twice a year, but it is a shrub wetland that would

remain for all those areas, making it a good use. He understands that the abutters would prefer this be a forest in perpetuity and be used for conservation land, but it is private property, so unless the City wants to take it, that is really not what is in front of the Board tonight.

Chair Hoppock asked if there were any other comments in support. Hearing none, he offered time for Mr. Jackson for rebuttal.

Mr. Jackson stated that he will not try to respond to the individual points, but from a broad level, he outlined the founding principle of the company, which is to generate clean, reliable energy at an affordable cost. Many of the views expressed are ones the company also scrutinizes its projects with, in looking at how to build projects in New England, which is a difficult region to build projects in, as well as how to preserve as many of the same values that they have that have been expressed. This site, in the company's view, is still a compelling site that has the viability for construction, based on both its interconnection as well as the economies of scale that would allow it to sell electricity affordably as well as be financed and actually be built.

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

Mr. Leino stated that Keene Meadow Solar has two similar applications tonight. He asked if the Board wants to discuss the second application, too, and vote on them in tandem. Chair Hoppock replied that they will vote on them separately, but if Mr. Leino wants to discuss the second one prior to the Board deliberating on the first, that is fine. Mr. Gorman suggested Mr. Leino highlight any differences in the second application, and the Board can assume that what Mr. Leino and Mr. Jackson said regarding ZBA 23-11 also applies to ZBA 23-12. Mr. Leino agreed.

Chair Hoppock re-opened the public hearing and introduced ZBA 23-12.

Mr. Hagan stated that this is 135 acres, and there are no buildings, and no ZBA applications on file. Mr. Gorman asked what the allowed uses are for this property. Mr. Hagan replied that he will get that information while the applicants speak.

Mr. Leino stated that for the sake of completeness of the record, he would like his and Mr. Jackson's testimony on the previous hearing to be brought into this. He continued that the sites are abutting. The parcel has been preliminarily designed as one total use of the 480 acres. This would be 130 acres of solar on a 302-acre parcel, and there are transmission corridors, and so on and so forth. He does not think he needs to belabor the point if the Board feels that the testimony from the previous hearing was enough to allow them to adequately discuss the five criteria.

Mr. Welsh stated that part of the Variance that is sought is a relief for access by a Class VI highway so that they can apply for street access permit. He asked if that is something the Board would grant. Chair Hoppock replied that he thought it was for subdivisions in residential areas. There is a statute on that.

Mr. Rogers stated that access to this would need to be granted through the City Council. He continued that the applicant is aware of that, and it would be a process further down. The statute Chair Hoppock is referring to would allow the development of a Class VI road but it does require the approval of the City Council.

Chair Hoppock asked if that is part of the CUP. Mr. Leino replied that it is its own piece. He continued that the preliminary application references that, and then as they know, he re-noticed the 0 Gilsum Rd. because he had a scrivener's error and had referred to them both as "Old Gilsum Rd.," so he took out that piece. He was curious to see if it would come up. He was not very familiar with the City's comprehensive Land Use Code, as opposed to it being a Zoning Ordinance, so he saw a provision in there and thought, "I need relief from that; therefore, I will apply for a Variance." Mr. Rogers correctly told him, and they had some spirited discussion about how that is in the comprehensive code but is under the City Council's jurisdiction. Thus, he does not need relief from that. They also had a lively discussion of road frontage versus frontage, which are different in the City's Ordinance, and they reached the point where it is determined that they do not need that tonight.

Chair Hoppock asked if Mr. Leino wanted to add anything else regarding ZBA 23-12. Mr. Leino replied no, he believes that citing the testimony previously given is sufficient. There is not much more he can add unless the Board has questions. Chair Hoppock asked if the Board had questions. Hearing none, he (opened the public hearing) and asked for comments in opposition, as long as they are not repetitive.

Mr. Hagan stated that he has an answer to Mr. Gorman's question: permitted uses in the Rural Zone, under Section 3.1.5, are *"Residential uses: dwelling, manufactured housing; dwelling, single family; manufactured housing park."* He continued that commercial uses are *"animal care facility; bed and breakfast with a Special Exception; greenhouse/nursery; kennel."* Congregate living uses are *"[group home], small, with a CUP."* Open space uses are *"cemetery; community garden; conservation area; farming; golf course, gravel pit with a Special Exception."* Infrastructure uses are small solar, medium solar, and large solar, and telecommunications facility.

Chair Hoppock asked for non-repetitive public comment in opposition.

Bob King of 42 Hurricane Rd. stated that he opposes this Variance for the same reasons.

Ryan Owens of the Monadnock Conservancy at 15 Eagle Ct. stated that he would like his comments to apply to both applications.

Anne Faulkner of 42 Hurricane Rd. stated that she has the same comments.

Chair Hoppock invited the applicants to give rebuttal.

Mr. Leino stated that they have the same rebuttal.

Chair Hoppock asked for any public comment in favor. Hearing none, he closed the public hearing and asked the Board to deliberate on both applications, taking them separately.

Chair Hoppock stated that overall, without focusing on any of the criteria, he is persuaded that there is a public interest involved in this application and it is supportive of that interest. He continued that there is a Master Plan in the City with the idea towards green energy and this plan does promote that. He is comfortable with the applicant's responses regarding wildlife and forest management, and he knows it will get a further look down the road. He thinks the balancing test strikes in a remarkably unusual way, in that the public and private benefits are both impacted, and they are not negatively impacted, in his view.

Chair Hoppock continued that the hardship piece is the most interesting, with the size of the lots, and the fact that these transmission lines are there. They have not seen a description of a property similar to that. He is considering all those things in this application. Regarding the fourth criteria, he does not see much diminution of surrounding property values from this application; he does not see any evidence of that happening.

Mr. Gorman asked to address each criterion individually, for the record, especially in light of the recent legislation regarding that.

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

Mr. Gorman stated that this is a tough one. He continued that he appreciates the efforts of the Monadnock Conservancy, and he appreciates hiking in these woods himself. He also appreciates the balancing act they find themselves in, with the consumption of fossil fuels and life the way we know it, realizing they have a well-established realization that our impact is negative and there are viable solutions, solar power being one of them. He thinks that where land is currently not being used for any practical purpose, albeit good conservation land, it is pointed out and noted that it is private land and not subject to the opinions of conservationists beyond what the laws state. It is great that there is so much land conserved around this land. It is great that efforts will be made to preserve what can be preserved and still provide the community with the energy it needs in a more sustainable fashion. For those reasons, he thinks this does support the public interest.

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

Mr. Gorman stated that he cannot help but note that all three size solar structures are allowed in this zone, so he thinks the spirit of the Ordinance is certainly to propagate or promote solar activity in this zone. He continued that regarding the size exception, he thinks the lay of the land speaks, and the abundance of land, in correlation with the 20-acre amount that is allowed, is

cause for exception. This is a nearly 300-acre plot and will have 30 acres of solar power, so, he can get his head around the second criterion.

3. Granting the Variance would do substantial justice.

Mr. Gorman stated that he does not know how else they could use this land in a way that would not have an adverse impact on the environment. He continued that that is why he requested to understand what other uses are allowed, and as they made their way through the list, he found that all of them would impact the natural habitat. Justice, allowing use of the property, would be served reasonably here with the solar farm.

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

Mr. Gorman stated that the values would not be diminutized, in his estimation. He continued that the Board did not really hear any argument or basis that would indicate so.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Mr. Gorman stated that he thinks the unique nature of the property does provide hardship. The location of the other electrical power stations makes it a very viable and reasonable use, and he thinks the other allowed uses are not as reasonable. He thinks this land does create some hardship and this use alleviates the hardship.

Mr. Welsh stated that what stuck in his mind as he was reading this application was the scale of the difference between what the Code permits and what they are asking for. He continued that at points in the narrative and the applicant's presentation, he heard some definition of what the public interest is in this situation. More than anything else, the LDC defines that public interest for the purpose of the Board, and it says, "20 acres." He was listening to the presentation and trying to figure out why 20 acres (was chosen) instead of an endless amount of acres, or 50 acres, or something that would decrease the margin of the scale between what is being asked and what is permitted, and he did not hear why 20 is the number. He is also hearing that adherence to 20 is potentially feasible but very expensive, and if actually pursued, probably more harmful to some of the conservation values that he thinks the 20-acre limit aims to protect, than permitting a larger scale. Thus, he is persuaded that granting the Variance would not be contrary to the public interest.

Mr. Welsh continued that the spirit of the Ordinance is the resolution versus the LDC. There is an argument here that "If one, then two" in the application, that if the first criterion is satisfied then the second criterion is as well. He is not sure he buys that, but it is interesting. Regarding the diminishment of value to surrounding landowners, he finds it compelling that there is value in conservation value of the surrounding properties, and he is not sure that is not measured or argued for here, but he is not sure where that argument ends in other areas where people are making applications, too. He is not sure where his head is on diminishment of value. The others, he is eager to hear, and is still thinking.

Chair Hoppock stated that regarding the fourth criteria and the issue of value, unfortunately, the law is clear about "value" meaning "monetary." He continued that it does not really address intangible value like conservation land, enjoyment of natural beauty, and so on and so forth. He feels confined by that definition, in terms of how he is assessing it.

Chair Hoppock continued that the special conditions of the property seem to be the size and the coincidental location of the intersection of the power lines. The 20-acre limitation seems to him to have been arrived at when they look at the average size of a Rural District lot. It would have been better if it had been proportional, but it is not, so they cannot address that. To him, there is no fair and substantial relationship between the limit of 20 acres and the size of the land. In fact, it creates unnecessary hardship, because there is a lot of room on this land to do what the applicants want to do. Overall, it will have very little impact, in terms of the imperviousness of the ground and the way they will manage other features of the land, like wildlife migration and the water flows. He does not agree with Ms. Clark's comments about water flow and flooding. In any event, he finds the unnecessary hardship criterion satisfied here.

Mr. Gorman stated that he agrees with Chair Hoppock and Mr. Welsh that there is, undoubtedly, an impact to the conservation land by developing this. He continued that he just does not think it is financial, as Chair Hoppock suggested. The fourth criterion asks, specifically, about the financial value of surrounding properties. Chair Hoppock replied that if you put a landfill in a residential neighborhood, it would hurt property values, yes.

Mr. Welsh replied that it is helpful for him to know that there is case law establishing "financial value" as the criteria. He continued that if someone places a permanent object in a particular lot, like a house or other development, and it is not pleasant to look at but does not do anything to the property values, one could make an argument that it diminishes the use or enjoyment of one's property. However, if financial value is the basis, that is different.

Chair Hoppock replied that he thinks they mean financial value when this is discussed in the cases. Mr. Gorman replied that he would say that maybe, if you were going to have some sort of other, non-financial impact – such as rightful, peaceful enjoyment - you could probably place that under the first criterion regarding public interest. Mr. Welsh stated that what people enjoy about all this land is the ability to walk on it, exercise, and see nature, and it does not sound like the applicant intends to limit that. He continued that it sounds like there is some room for

movement, as the application moves forward, to consider those kinds of uses. Chair Hoppock replied that from that perspective, there will certainly be other opportunities for people who care about those issues to speak their mind. He continued that the Board's focus is quite narrow.

Chair Hoppock asked if anyone had anything further to add to the deliberations. Hearing none, he called for a vote on the criteria.

Mr. Gorman made a motion to approve ZBA 23-11. Chair Hoppock seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-0.

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

Met with a vote of 3-1. Mr. Clough was opposed.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Met with a vote of 4-0.

The motion to approve ZBA 23-11 passed with a vote of 3-1. Mr. Clough was opposed.

E. <u>Continued ZBA 23-12:</u> Petitioner, Keene Meadow Solar Station, LLC, of Boston MA, represented by A. Eli Leino of Bernstein, Shur, Sawyer & Nelson of Manchester NH, requests a Variance for property located at 0 Old Gilsum Rd., Tax Map #213-006-000-000-000, is in the Rural District and is owned by Platts Lot, LLC

of West Swanzey, NH. The Petitioner requests to permit a 135 acre large scale ground mounted solar energy system where 20 acres is allowed per Chapter 100, Article 8.3.7.C.2.b of the Zoning Regulations.

Mr. Gorman stated that the record should reflect the Board's comments on the five criteria for ZBA 23-11 as applying to ZBA 23-12 as well. Chair Hoppock agreed.

Mr. Gorman made a motion to approve ZBA 23-12. Chair Hoppock seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-0.

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

Met with a vote of 3-1. Mr. Clough was opposed.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Met with a vote of 4-0.

The motion to approve ZBA 23-12 passed with a vote of 3-1. Mr. Clough was opposed.

The ZBA recessed at 8:05 PM and returned to order at 8:10 PM.

F. <u>ZBA 23-14:</u> Petitioner, Monadnock Affordable Housing Corp. of 831 Court St., Keene, represented by Stephen Bragdon of 82 Court St., requests a Variance for

property located at 438 Washington St., Tax Map #531-054-000-000-000, is in the Low Density District and is owned by the Community College System of New Hampshire of 28 College Dr., Concord, NH. The Petitioner requests a Variance to allow buildings which cover more than 35% of the lot, impervious surfaces of more than 45% coverage, and less than 55% green/open space per Chapter 100, Article 3.3.3 of the Zoning Regulations.

Chair Hoppock introduced ZBA 23-14 and asked to hear from staff.

Mr. Hagan stated that 438 Washington St. is located in the Low Density District. He continued that the existing building was built in 1926. The square footage is 19,417. Three Variances were granted in March, ZBA 23-06 for multi-family use, ZBA 23-07 for area coverage, as well ZBA 23-08 for a Special Exception for parking.

Chair Hoppock stated for the record that Ms. Taylor is back.

Chair Hoppock asked to hear from the applicant.

Stephen Bragdon of 51 Railroad St. stated that he is representing Monadnock Affordable Housing Corporation, which is a subsidiary of Keene Housing. He continued that he and Josh Meehan are here because they made a mistake at the earlier meeting, in that the plan did not include a common area for all of the residents. He will let Mr. Meehan talk about the necessity for that.

Mr. Meehan stated that technically, they had a common area (in the plan), but it was not big enough, so they had to increase the size of the community room. He continued that all of (Monadnock Affordable Housing Corporation's) properties that were built recently, and any that rely on the low income housing tax credit program for investment for capital to build the properties, are required to have a community space. They had a community space, but long story short, they want to make it a little bigger and have a bathroom attached to it, and an office. Thus, they are coming back to the Board to increase, with a less than 2% increase from what they came to the Board with last time. They do not need the 2% they are asking for; they need slightly less than that. However, asking for 2% means that if they need to push the room out a couple more feet for some reason not yet known, they will be covered. They would not have to come back to the Board again to ask for another .2% or whatever it is.

Mr. Bragdon stated that they can show the Board the area in question, on the plan. He continued that it is on the right side of the bottom part of the plan. One of the plans they submitted does show the plan from before, and the new one shows the area that they are increasing. He thinks it is the one on the left, but he is having trouble seeing it from where he is sitting. The bottom line is they are increasing the building by 1.3%. They are requesting a 2% waiver on all the areas that they asked for before - the impervious surface coverage, the building coverage, and the green area. The Board has granted them permission to go to 28% on the building coverage, with

impervious coverage of 64%, and green space coverage of 36%. They are asking for all of those to be increased by 2%. Again, they do not want to come back to the Board again if they make a small mistake. The actual change is a 1.3% increase. They are asking for 30% building coverage, impervious surface coverage of 66%, and open space/green area of 35% coverage. He asks that the Board members who were here for the previous hearing take into consideration what was said before. They are prepared to answer any questions at this point, or if the Board prefers, they can go quickly through the criteria.

Chair Hoppock asked Mr. Bragdon to go through the criteria for the record.

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

Mr. Bragdon stated that as was said at the previous meeting, this is the old Roosevelt School. He continued that it is unused in its current condition and is off the tax rolls. This allows some development of the property as the community has a significant need for housing. Allowing this development serves the public interest; it serves lower-income people. For that reason, it is not contrary to the public interest.

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

Mr. Bragdon stated that this is in the spirit of the Ordinance because the Master Plan talks about adoption of and the need for more housing. In addition, the housing density incentive in the Conservation Residential Development of the CRD points to support for this type of development and the support for reducing the area requirements if it does in fact serve the need of housing.

3. Granting the Variance would do substantial justice.

Mr. Bragdon stated that any loss to an individual that is not outweighed by a gain to the general public is an injustice. He continued that in this particular case, it is clear that the damage to an individual does not outweigh the general public's interest in this project.

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

Mr. Bragdon stated that at the present time, it is a dilapidated, unused building that serves no purpose. He continued that the new building would be much more beneficial to the neighborhood in its appearance and use.

5. Unnecessary Hardship

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

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

Mr. Bragdon stated that it would allow the use of this existing structure, which otherwise is virtually useless. He continued that the only use that could be made of this would be for some entity not subject to the Zoning Ordinance to buy it and turn it back into a school. Other than that, there is no other feasible way to make use of the premises that does not increase the impervious surface.

Mr. Welsh stated that he has a question/slight concern. He continued that Mr. Bragdon described the reason for changing the percentages in the application, and therefore the reason for being here, as the addition of a larger-sized common room. He noticed the application has a survey that recalculated the overall acreage of the site.

Mr. Bragdon replied that that is true. He continued that he specifically asked this, and regarding the decrease in the area of the lot that was determined after it was surveyed, from he thinks 3.7 to 3.13, these calculations were not based on that 3.7 value. They were based on the actual acreage that they found existed there when they did the survey. He saw that in there, too, and it was confusing.

Mr. Welsh asked if they are sure that the 2%, they are asking for will be enough margin. Mr. Bragdon replied that they certainly hope so.

Mr. Gorman asked if the federal mandates for these common spaces include a size mandate. Mr. Meehan replied yes, for the low income tax credit program that is administered by the NH Housing Finance Authority (NHFA), they determine what they like to see in an application. The NHFA lays out dimensions for community space with this is one larger than the minimum requirement. Again, they want to have a bathroom right there, and it is also important to have an office there so that when resident services are being delivered, which require a degree of privacy, a resident and the service coordinator have a private place to be.

Mr. Gorman stated that he has a second part to the same question. He continued that 1.3% is ambiguous to him because he cannot see any of these measurements. He asked how much square footage they are talking about. Mr. Meehan replied that he wishes he had the answer to that off the top of his head. Mr. Bragdon replied that he is not sure if it is on the plan. He continued that he would look.

Mr. Hagan stated that the total square footage of the lot is about 103,595, according to the plan. He continued that 1.3% is about 1,300 square feet of additional space. Those are not exact calculations. Mr. Gorman stated that 2% would be about 2,500 square feet, plus or minus. Mr. Hagan replied yes, a touch over 2,000 square feet.

Mr. Bragdon stated that they do not anticipate it being 2%. He continued that with what happened last time, they wish they had asked for a little more then.

Mr. Gorman asked how big, roughly, the initial room was, asking if they are doubling it, quadrupling it, or what. Mr. Meehan replied no, they are not doubling it. He continued that he does not have these numbers in his head, but (he thinks) a third. He takes responsibility for this; he asked the architects to change the plan.

Ms. Taylor stated that she has a couple of questions, to help her understand. She continued that the original plan had a community room. She cannot read these plans, either and asked if it is correct that what they are asking for is an increase in size for their convenience.

Mr. Meehan replied that he would say for the convenience of the residents who will be living there. Ms. Taylor replied that they cannot judge for the residents. Mr. Meehan replied that they are trying to accommodate the folks who will be living there, so that they have enough space for games, events, and activities that they typically see on the property. Ms. Taylor replied that her concern rises considering what the Board has to look at, and the criteria they have to meet, is that – and her comment would be the same whether (the increase) was 1% or 100% - they already have the Variance that allows them to do this community room, but they want an additional Variance so they can have a larger community room.

Mr. Bragdon stated that his answer to that is that this is a de minimis request, that it is a very small request. If they wanted to completely change this, he thinks that would be a valid argument, but it is something that was forgotten and was not included, and if it had been included, he believes it would have been granted. They are here just trying to make sure they comply with all the rules. Yes, this increases the size slightly, but it is de minimis.

Chair Hoppock asked if it is fair to say, in summary, that the same criteria/same rationale they used to obtain their earlier Variance is applicable here, and they would have asked for this amount previously, had they realized the mistake. Mr. Bragdon and Mr. Meehan replied yes. Chair Hoppock replied that in that case, nothing has changed, in terms of the reasons for the Variance. Mr. Bragdon replied it is the same, which is why he asked that they recognize that the same arguments from when the request was made originally apply here as well.

Chair Hoppock asked if there were any further questions. Hearing none, he continued that he does not see any members of the public present to give comment.

Ms. Taylor asked if the expanded community room that they want to construct will be in the same location as on the original plans the Board saw, or if this will change any configuration of the buildings. Mr. Meehan replied that he seems to remember that they had to move one of the apartments around a little bit to make it work, and that is part of the need for the change. Ms. Taylor asked which building. Mr. Meehan replied to the school building. Mr. Bragdon stated that he will pass around copies of the plan and circle the area in question.

Mr. Gorman stated that at the end of the day, it is not impacting the number of units, number of bedrooms, or anything like that. He continued that it has no material impact from a Zoning perspective, but maybe from someone else's viewpoint. Chair Hoppock asked if it is correct that they are not changing parking or square footage of rooms other than the common room. Mr. Gorman replied that the common room will be bigger and one of the apartments will be altered, but the number of sleeping rooms is unchanged. Mr. Meehan replied that nothing is changing other than having to reorient one of the apartments; that is exactly right.

Mr. Rogers indicated the plan on the screen and showed the area of the increase.

Chair Hoppock asked if anyone else had anything to add. Hearing none, he continued that there are no members of the public present, so he will close the public hearing and ask the Board to deliberate.

Mr. Gorman stated that he agrees with Mr. Bragdon that had the Board heard this presented this way, speaking for himself, the outcome would not have been any different. He continued that it would have been unbeknownst to him that this was even occurring. He would have just approved of the Variance, for all the same reasons that he did, regardless of the size of the community space that he did not really even know existed. He was more concerned with the number of units, parking, benefit to the public, and so on and so forth, all the issues they touched upon. Without belaboring all those points again, he would say for the record that his responses to all five criteria would be identical to his responses to them in ZBA 23-06 [ZBA 23-07] at the March meeting. He echoes all his sentiment from that, if that is appropriate.

Mr. Welsh stated that he had that question. He continued that it strikes him that everything they are hearing about tonight is, while he is glad the applicants are here, fairly de minimis. He does not recall any of this being the subject of the original deliberations that resulted in the Variance, and he does not see this really changing the Variance. He wonders if it is possible to bring their discussion and rationales forward from the March meeting and apply them to the reasons for approval here.

Chair Hoppock stated that he recalls that the public interest argument made, in terms of the public housing need, was strong and there was a lot of public support for that. Mr. Gorman replied that there was also talk about and support of the fact that this property is not viable for any other real purposeful use, and that a vacant property has a substantial amount of negative impact on the neighborhood.

Chair Hoppock stated that he recalls one abutter opposed - the neighbor who would look down on it. Mr. Gorman replied that the Board put in the screening contingency.

Ms. Taylor stated that she probably agrees with what has been said, but she thinks they need to create a record on this that is a little more specific. She continued that thus, she will briefly go through the criteria. Clearly, the ability to move forward with the public housing option on this

property is in the public interest, because of what they have said about the need for housing and the need for this particular type of housing. The spirit of the Ordinance will be observed. She thinks their reasoning was in part because this was kind of an orphaned piece of property on the City's records. It was an educational use and then sort of fell into a black hole. It would be redevelopment within the concept residential use. This is a transitional area with some multi-family housing nearby. She thinks it meets that (second criterion). Regarding substantial justice, she thinks it goes back to the public interest. She is not sure what the private benefit would be of staring at a rundown, empty building on a vacant lot. Regarding values, if this development will do anything, she thinks it may bring up the values of surrounding properties. She does not have anything other than personal knowledge to base that on; the Board has not necessarily had any kind of detailed information; however, property value will improve if you are not next to a vacant, derelict lot.

Ms. Taylor stated that the one question she had, which she thinks has been answered, goes to the unnecessary hardship. That is why she was asking questions regarding whether this was just convenient or whether it was a requirement. She thinks that was answered, because when you look at the configuration of the lot and look at where the increase in dimensions is going to be, she thinks it makes sense. It is definitely reasonable. The hardship would simply be that there would be no other place to put it without it having a negative impact on the development. Thus, she sees the hardship being a little bit different from what they had in ZBA 23-06 [ZBA 23-07], but she still thinks (this criterion) has been met.

Chair Hoppock stated that he agrees with all those remarks. He continued that he goes back to his prior comment – but for the mistake, it would be the same application.

Mr. Rogers stated that for clarification, ZBA 23-07 was the one that specifically dealt with lot coverages. He continued that there were multiple Variances.

Mr. Gorman made a motion to approve ZBA 23-14. Chair Hoppock seconded the motion.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 5-0.

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

Met with a vote of 5-0.

5. Unnecessary Hardship

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

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

Met with a vote of 5-0.

The motion to approve ZBA 23-14 passed unanimously.

Ms. Taylor stated that for the record, regarding the unnecessary hardship, the use is reasonable. Chair Hoppock agreed and asked for others' opinions. He continued that he sees everyone's heads nodding.

V) New Business

Chair Hoppock asked staff if there is new business.

Mr. Rogers stated that there is a request for the Board to have a special meeting on May 16 from an applicant who wishes to apply under Section 18.3.4. This is for a property that was non-conforming in many ways as it was a two-family home on a substandard lot as far as square footage. It did not even have enough square footage to be a single-family home, but it had a two-family home on it. It is on a corner lot, so it also had non-conforming setbacks, though he is not sure how many. This section of the Zoning Ordinance has an allowance for when there has been a disaster of some sort outside of the control of the owner, giving them the ability to rebuild, as long as a building permit has been issued within one year. May 24, 2022 was when the fire occurred at this structure. The structure has since been removed due to its being beyond repair, per the insurance company's determination. This section of Code says: *"In the event that any non-conforming structure is damaged or destroyed without any contributing fault by the property owner or tenant, it may be repaired or rebuilt to the same size and dimension as previously existed, provided that a building permit is obtained within one year following the damage or destruction, unless an additional one year extension is granted by the Zoning Board of Adjustment."*

Mr. Rogers continued that a new buyer is potentially interested in this lot. He is not sure if the property owner was aware of that time limit or not, but when they reached out to the City, staff

made them aware. They were not able to get onto the Board's monthly agenda in time. As such, there is a request for a special meeting if the Board is able to do so.

Chair Hoppock asked if what they want is an extension of that provision for another year, and if it is correct that they do not have a building permit yet. Mr. Rogers replied that is correct, that would be the application in front of the Board, if they were able to hold the special meeting on the 16th. The Zoning Code is silent on what criteria would need to be met for that extension to be granted, so it would be a Board decision.

Ms. Taylor asked if that means building in the same footprint and building the same type (of structure). Mr. Rogers replied that it does not necessarily need to be right in that exact same footprint. He continued that if they wanted to move it away from the corner a bit, they could. They can make it more conforming if they want but cannot make it any less conforming. For example, they could not move it closer to the street. Because it was previously non-conforming due to the use as a two-family, they would be allowed to rebuild a two-family home. They could put it right back in the same footprint or move it back to try to be less non-conforming with the setbacks.

Chair Hoppock asked if it is correct that the only issue for the Board would be whether to grant the one-year extension to get the building permit. Mr. Rogers replied that that is correct. He continued that staff has taken the stance that if the Board is so inclined to hold a special meeting, they would require the applicant to notice for that meeting any abutters, so the Board would be able to hear from abutters, since it is such a non-compliant lot in many ways. Staff felt uncomfortable not noticing this extension; they will be noticing abutters as they would with most other applications.

Chair Hoppock asked if, given that the only question is whether to extend the deadline for the building permit, the Code Enforcement staff are the ones who enforce what can go in there once the building permit is issued. He asked if it is correct that the Board does not decide what can be built. Mr. Rogers replied that that is correct and that staff would look at it and look at their records. They knew there was a two-family home there. They would have to do a little research on setbacks, but obviously, if the applicant told them they were going to move it back and over, that would make it a very simple application from staff's side.

Mr. Gorman asked if it is correct that if the Board did not hold this special meeting, the applicant would have to come in for a Variance for whatever they want to build there. Mr. Rogers replied that that is correct, that once May 24 passes, if the Board has not heard or granted any extension, at that point, a Variance would be required to do anything on that. It is a corner lot, and thus there are additional setback requirements that might be problematic. Even building a single-family home on that lot would require a Variance, if May 24 comes without an extension to the rebuild time period.

Mr. Gorman asked if May 24 is (one year) from the fire, or from the demolition of the remains. Mr. Rogers replied that it is one year from the fire, is the interpretation of the way it reads. Mr. Gorman replied that that determination makes sense to him, because otherwise, someone could just never demolish it and buy themselves a bunch of time. He continued that the only reason he asks is because if it was from the time of demolition, he would say the onus would be on the property owner for not having done anything yet, but if it is from the time of the event (fire), he can see how that would take a year. Mr. Rogers replied that the wording is *"a building permit is obtained within one year following the damage or destruction."*

Chair Hoppock asked if they needed to vote to have a special meeting. Mr. Rogers replied that they do not need to vote but could decide by consensus if a quorum is available May 16. They need to make sure a room would be available, which limits them, timewise. May 16 was the date that gave staff enough time to get a meeting room available and do the noticing properly.

Mr. Welsh stated that he will not be here on May 16, and that he gathers that the primary purpose of the meeting is to allow for this to be noticed and for the public to have an opportunity to respond to the Board's decision, which seems important. It seems like a decision the Board could make quickly. If there were no need for notice, he would be willing to put in his two cents right now and say yes, go for another year. Ms. Taylor replied that they cannot do that. Mr. Rogers replied that they cannot make a decision tonight, since it was not properly noticed and agendized. He continued that the applicant is aware that they might only be able to have a three-member Board (on the 16th) and want to move forward in any way they can.

Chair Hoppock stated that he will be available on May 16. Mr. Gorman stated that off the top of his head, he believes he is available as well. He continued that he could chime in via phone or Zoom if he had to. He assumes this will not even need a presentation; the meeting would be held mainly to see if the public shows any interest in the matter. Chair Hoppock added, or with compelling reason not to extend the deadline. Ms. Taylor stated that she can make it on the 16th. Mr. Clough stated that he is not available on Tuesdays.

Mr. Rogers stated that it looks like they will be able to offer a three-member Board. He continued that Mr. Gorman can let staff know as soon as possible. He will reach out to the applicant and get the process started. Mr. Gorman replied that he can let Ms. Marcou know definitively in the morning. He continued that if he cannot attend in person, he can attend remotely. Ms. Taylor asked if remote participation is still allowed/possible. Mr. Rogers replied that staff would take the lead from how the City Council has been doing it and follow their same process for a member of the Board to be able to participate, especially if it is a matter of them being able to get a quorum with short notice/time crunch.

Chair Hoppock asked when staff will find out about room availability. Ms. Marcou replied that they already have a room reserved – Room 22 on the 2nd floor of the Parks & Recreation Center.

VI) Communications and Miscellaneous

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

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Hoppock adjourned the meeting at 8:50 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Clerk