

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, September 5, 2023

6:30 PM

**Council Chambers,
City Hall**

Members Present:

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

Staff Present:

Corinne Marcou, Zoning Clerk
Mike Hagan, Plans Examiner

Members Not Present:

Richard Clough

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 – August 7, 2023

Ms. Taylor gave corrections to the meeting minutes:

Line 54 – “too” should be “to.”

Line 174 – “not seating” should be “no seating.”

Mr. Gorman made a motion to approve the meeting minutes of August 7, 2023, with the two edits. Mr. Welsh seconded the motion, which passed by unanimous vote.

III) Unfinished Business

None.

IV) Hearings

A) ZBA 23-23: Petitioner, Live Free Recovery, LLC., represented by Chuck Ritchie of Fieldstone Land Consultants, PLLC, requests an Expansion for property located at 106 Roxbury St., Tax Map #569-066-000 and is in the Downtown Edge District. The Petitioner requests an expansion of a 16 bed residential drug/alcohol

treatment facility to a 28 bed residential drug/alcohol treatment facility. The expansion does not require any external changes to the building or site.

Chair Hoppock asked to hear from staff.

Plans Examiner Mike Hagan stated that 106 Roxbury St. is zoned Downtown Edge District that sits on .28 acres and is roughly 16,552 square feet and was built pre-1900. Currently, it is 3,587 square feet of residential use and 2,524 square feet of office use. A permit was issued in 1994 for this 16-bed residential treatment facility and as part of that permit, it was a seven-unit office building with one residential unit.

Mr. Hagan stated that regarding the Downtown Edge District, (the Land Development Code states), *“The Downtown Edge District provides for a heterogeneous mix of commercial and residential uses and varied development forms including areas of both walkable development as well as auto-oriented development on the edges of downtown Keene. This district accommodates this rich mixture, while providing for a transition into lower intensity commercial or residential development outside of the delineated downtown area.”*

Mr. Welsh asked, regarding the 16-bed facility, if the number 16 was a function of any limits on zoning for facilities of this sort in a prior Ordinance, or if it was just the number of beds they could get in the facility.

Mr. Hagan replied that there was no delineation in the zoning at the time. Now the current Land Development Code (LDC) defines the amount or number of beds for congregative living-type facilities. He continued that back then; it was more driven by the Building Code and at the time, “residential care” was (defined as) 16 (beds) and under, with many different requirements. Anything over 16 would require “institutional use,” which has a much higher standard for development in existing buildings and code requirements. In addition, licensing with the State of NH may have had something to do with it at the time.

Ms. Taylor stated that she is not sure, because of the various definitions of “residential treatment facility,” but Article 8 calls for a conditional use permit. She continued that she understands that at the moment they (Live Free Recovery) have a conditional license from the licensing board. She asked if Mr. Hagan could reconcile those two things.

Mr. Hagan replied that the conditional use permit would be for if it was a new facility. He continued that this is a pre-existing, non-conforming structure that has that use currently. The expansion of it would trigger some sort of review from Planning. They would have to go back and look at the records to see how much of a change in use it is, which may require Planning approval. At this time, a conditional use permit is only for new facilities.

Ms. Taylor asked if the Building Code currently has a limitation related to square feet of rooms or anything else. Mr. Hagan replied that there are requirements for if you want to use a building

in a certain way, it would be reviewed through the Building Department and the Fire Department.

Ms. Taylor asked if he means it does not necessarily address the number of bodies per square foot. Mr. Hagan replied that there is a calculation for that, but he does not know it off the top of his head, though this would be looked at as part of the permit review process. If the Board were to grant this, the Building Department and Fire Department would review it for all the other Code requirements.

Chair Hoppock stated that he has a question about the August 24, 2023, email from Corinne Marcou, Zoning Clerk, regarding "Section 46-565 - Licensing Board Review Procedures." He continued that he is not sure what Board that is, but sub paragraph A speaks to three criteria. The first one involves applicable building, fire, and safety codes. The second sounds more related to zoning, "*The use is of a character that does not produce noise, odors, glare, and/or vibration that would adversely affect surrounding areas.*" The third one speaks to public health and safety concerns in connection with traffic, pedestrians, infrastructure, and police and fire department actions. He asked what license (the applicant) holds from this licensing board, and what board it is. Ms. Marcou replied that it is the Congregate Living and Social Services Licensing Board (CLSS). She continued that those three items Chair Hoppock just read are the criteria that that Board uses to review its applications.

Chair Hoppock asked what license this applicant received, under those criteria. Ms. Marcou replied that at the August meeting of the CLSS, the applicant received a conditional license. She continued that the license is under the condition that the applicant receives this Expansion as well as a few other items that they have had to address.

Chair Hoppock asked if the conditional license becomes permanent at some point, or if it is subject to renewal periodically. Ms. Marcou replied that it is an annual renewal. Chair Hoppock asked if it is fair to say that these criteria just mentioned have to be looked at every year by the CLSS board. Ms. Marcou replied yes, and along with the review from the CLSS Board, annual inspections will happen between the Housing Inspector, the Fire Department, and the Police Department. Chair Hoppock asked if it is correct that the City works with the State licensing board and gives them information so they can do these reviews. Ms. Marcou replied that it is not State level; it is a City level board, one that is relatively new. Live Free Recovery has four locations, and this is their first license that they are applying for as this is one of their locations.

Chair Hoppock asked if there were any further questions for staff. Hearing none, he asked to hear from the applicant. He continued that the ZBA was aware at last month's meeting that Mr. Clough, unable to attend Tuesday meetings, would not be present tonight. The applicant is entitled to a five-member board, because it takes three affirmative votes to approve an application. If a vote is 2-2, it does not pass. The applicant has the right to request a five-member board and reschedule to the next meeting.

Mr. Gagne asked if the Board would be willing to meet again with the five members present if (there is a tie vote tonight). Chair Hoppock replied that if the applicant wants a five-member Board, they could adjourn this meeting and address his application from scratch at next month's meeting. He continued that to be clear, if the applicant asks for a continuance, it does not have any negative implications on his application. Mr. Gagne replied that there are some timeline issues at his end; he did not plan for coming back later. He continued that if it had been a few weeks ago, he might have been able to get the extension on certain items. He is not sure he would have that option now. Chair Hoppock replied that it is harder to do this over again once a vote is made, thus, he recommends caution with this decision. Mr. Gagne replied that they will move forward with the four-member Board. He continued that there are uncertainties, and he does not know if there would be benefits to (rescheduling this).

Chad Branon, Civil Engineer with Fieldstone Land Consultants, stated that he is sitting in for Chuck Ritchie, as Mr. Ritchie was the one who helped prepare the application for this project. He continued that with him tonight is Ryan Gagne from Live Free Recovery Services, LLC. As was stated, they are before the ZBA to seek approval for an Expansion of a non-conforming use. This non-conforming use has existed on the subject site since 1994. Live Free Recovery Services has been occupying the site and operating the 16-bed residential drug and alcohol treatment facility on the subject property for some time now. The proposed expansion is for up to 28 beds. A number of approvals and permits would have to still be secured with this application through other City departments, such as the Building Department and the Community Development Department. They understand that there will be additional work to be done if they are successful this evening with the ZBA, but they want to touch on some of the details of why they believe this building and site will adequately service this community's great need for additional space and treatment.

Mr. Branon continued that this property at 106 Roxbury St. is about .288 acres with 79 feet of frontage with on-site parking as well as parking on the street in front. Unique to this operation is that none of the clients are permitted to have vehicles on site; parking is only needed and utilized by staff. The proposal contemplates a number of improvements to the existing building, including ADA accessibility improvements. Exceeding a certain number of people in a building triggers the requirement to install a sprinkler system, which will be part of this improvement and expansion if the ZBA approves the Expansion request. Also included will be the installation of a commercial kitchen, as well as the typical renovations one would expect when improving a very large building with a square footage of about 11,000 sq. ft. Only a portion of the building is being used and occupied by the current facility.

Mr. Branon continued that they submitted floor plans that allocated potential space for bedrooms. The floor plan's purpose was to address what they understand was a concern raised on an application review level, regarding whether the building can support this expansion. That is why the footprint and the breakdown of the existing rooms in the building shows potential rooms for bedroom space. It is their understanding that the square footage requirement for bedrooms is that a one-bed room would require 70 square feet, a two-bed room would require

120 square feet, and a three-bed room would require 180 square feet. All labeling on the plans before the ZBA tonight breaks down different potentials for how the 28-bed expansion can be accomplished. This exhibit is intended to show that the building is large enough for the proposed expansion.

Ms. Taylor stated that since this (the floor plan) was presented to the ZBA this evening and not in advance, she believes the ZBA's rules require that they vote to accept it and make it part of the record. Chair Hoppock replied that they will do that at the end of the presentation, so as not to break the applicants' flow. Mr. Branon stated that Mr. Gagne provided this material via email late last week, but they brought 11"x17" copies tonight because they are more legible.

Mr. Branon continued that they think there is a significant need here. Mr. Gagne has other facilities in the city for which he has secured other licenses similar to this one and this is not the first license he is seeking. He provides a superb service to the community with different properties and facilities that address people's needs at different levels of treatment. He asked if Mr. Gagne wanted to speak to that.

Ryan Gagne, owner and CEO of Live Free Recovery Services, stated that they have been in business since 2015. He continued that they provide a wide variety of levels of care, from medical stabilization to 30-day residential programs to outpatient programs in Keene. They have sober living programs as well, in Keene and other areas of the state where there is a need. The Roxbury St. property was previously operated and under the same use and did have a license that Mr. Hagan explained before. He (Mr. Gagne) and Mr. Rogers (John Rogers, Zoning Administrator) found that the licenses for this property went back to the 1980's, with Marathon House and Phoenix House after that. Many Keene residents are aware of those two facilities operating in this location. When Live Free Recovery took over the location, it was due to financial instability that took place, and the property was in poor condition. Live Free Recovery did light interior renovations to take care of many items, to raise the standard for the people staying there so it met those needs. At that point, they had deferred many of the renovations they will be moving forward with after the approvals, in order to have those in a more secure, long-range financial plan.

Mr. Gagne continued that they began a process with NH Housing during the COVID process, when Live Free Recovery became aware of particular grants and funding available for the population they serve. That process has taken about 18 months, which is much longer than Live Free Recovery anticipated. Since then, another challenge was the change to the Zoning Code and, as Ms. Marcou was talking about, the licenses that have come in and some things like that. Now they are looking to be able to operate within that facility and continue the services they have been providing in and around Keene, being able to have additional occupancy for the (additional) need they very commonly find. Additional renovations will take place for this facility. Dating back to approximately May 2019, they put in the fire alarm system that rang right in with the Fire Department. Many other renovations were needed, such as replacing all the plumbing and all the electrical in the building and the full sprinkler system going in for all four

floors. The commercial kitchen is compliant with the State licensing they will apply for after those renovations are complete.

Mr. Gagne continued that up at 881 (Marlboro Rd.), they rent the building from Southwestern Community Services (SCS). Keith Thibault is here from SCS, where Live Free Recovery has acquired a “3.7 license” and also offers similar services here and a little bit more with medical stabilization. They have had a strong relationship with SCS and other agencies throughout the city, being able to provide these services, and working with local populations of people who are homeless and also struggle with substance use disorders. People can be with Live Free Recovery for anywhere from five to six months all the way to 18 months, step down into sober living, and eventually transition into apartments locally. That is the continuum of care that Live Free Recovery serves for Keene.

Chair Hoppock asked to hear about the criteria. Mr. Branon stated that Section 25.7 of the LDC outlines the requirements for the Expansion or Enlargement of a Non-conforming Use.

1. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.

Mr. Branon began that they stated in the application that the proposed expansion will certainly meet this criterion, because it will not require any exterior changes to the building or the site. He continued that the enlargement of the facility from 16 beds to 28 will just be an addition of beds on the inside of the treatment facility, and improvements and renovations on the inside of the facility. This allows for the visual appearance as it relates to the neighborhood and the abutting properties to remain the same, and as such, it should not have a negative impact or reduce any of the adjacent properties’ values. The operations on site do not permit clients to have vehicles, so there will not be an increase in vehicular traffic or intensity measurable to the neighborhood or surrounding public. They do not think there will be any obnoxious or offensive activities to the neighbors, as the existing site and the use is consistent. This will just provide additional service to the community, in an appropriate location that has been operating for some time now. To their knowledge, it has operated with no issues, (as determined by) their conversations with City staff.

2. There will be no nuisance or serious hazard to vehicles or pedestrians.

Mr. Branon stated that very similar to the first criterion, they are not proposing there would be any additional traffic. He continued that maybe a staff member or two, but certainly nothing measurable to the surrounding neighborhood. Because this expansion does not propose any new pavement and does not alter the vehicle or pedestrian traffic in any negative way, they believe that the existing traffic along Roxbury St. will remain as it currently does. The parking area on site will also remain as is. For these reasons, the proposed expansion should not create any nuisance or serious hazard to vehicles or pedestrians. Certainly internally, there will be improvement to this site, because the site will be brought into conformance with the ADA,

regarding pedestrian traffic. They will be addressing a number of safety elements by updating the existing structure.

Chair Hoppock stated that before he opens it up to questions, he would like to ask Mr. Branon or Mr. Gagne to speak about the availability of onsite parking. He continued that they had also mentioned some parking off site. He is trying to get an idea of the number of spots available on the property and on the street in the front.

Mr. Branon replied that his understanding is that there are about 10 parking spaces available in total. He continued that certainly that would be more than adequate for this facility. The expansion from 16 to 28 beds would probably require an additional staff member or two at most, based on (Fieldstone Land Consultants') conversations with Mr. Gagne. They do not anticipate any issues with (parking), but that is also an item that would be reviewed by the Planning Department. That is why they hope the Board would consider up to 28, and that way, if there were any concerns, they could address that. As Mr. Gagne shared with (Fieldstone Land Consultants) when they were preparing the application, the goal is to provide a service for 24 beds on site and try to plan for some expansion to 28, as there is a continuous need in the area.

Mr. Gagne stated that the idea behind it was to look at what the total number would actually be, instead of having to come back to the ZBA for an additional four more beds. He continued that if they were under what was possible for the building, they would go with that number, in hopes of not having to repeat this process (with the ZBA).

Chair Hoppock asked questions from the board.

Mr. Gorman stated that the board received the email five days ago. He continued that way back in the conversation, Mr. Branon mentioned that the property was 11,000 square feet and currently not being completely used with its 16-bed setup. He asked him to speak to what portion of it is being used, from a percentage or square footage perspective.

Mr. Gagne replied that there are currently quite a few office spaces. He continued that to back up, when Live Free Recovery first took over the location [from the previous entity operating in the building], there was far more than the allowed use that was there. The basement had people who were in some type of medical de-tox; "they" [the previous entity] did not have a license for that. There is only one room in the basement that is adequate for a bedroom, which he correctly labeled (on the floor plan). Anything (labeled) 'office space' on the first floor (plan) is currently being used as offices or for storage. On the existing first floor plan, the three offices are the front two rooms, and the adjoining room (seen on) the lower half (of the floor plan). Many of the rooms right now are being used as single occupancy, which spreads it out quite a bit. The third floor is not being occupied at all and Live Free Recovery has no plans to occupy the third floor in any way. Looking at the existing second floor, currently the top left corner labeled "bedroom space for three" is currently being used as an office. The room to the right of that is also

currently in use as an office. Thus, there is a significant amount of room not being used. Other rooms are singles, and another three rooms on the first floor are singles as well.

Mr. Gorman stated that the second part of his question is the bathrooms. He continued that it does not look like there is a substantial amount of bathrooms. He asked how many full bathrooms will be in the final (expansion). Mr. Gagne replied that there ends up being five full bathrooms. He continued that with 28 beds, they would be at 5.5 people per bathroom. State requirements are six individuals per bathroom, so they will meet State code for that. He was careful; he did not want to put future plans on here to confuse (it tonight). When he started labeling things, he realized the key would not make sense until he presented it. There is a lot of opportunity to create additional bathrooms. In addition, although it is not outlined here, one of the bathrooms is a double bathroom, with two showers and two separated bathroom stalls.

Mr. Gorman stated that his other question, for Mr. Hagan, is about parking, (thinking about) the potential for future use of this property that falls under the same category. He asked what the parking requirements are. Mr. Hagan replied that the Expansion portion of it would require .5 spaces per bed, per the LDC, Table 901. Mr. Gorman asked if that calculation is made on the difference between the two, so that when they go from 16 to 28 (beds), that is 12 (more beds), which would be six parking spaces. He asked how many would be required for the original 16 (beds). Mr. Hagan replied eight. Mr. Gorman replied that it is possible that this does not meet the parking requirements. Mr. Hagan replied that is correct.

Mr. Gagne asked Mr. Hagan to specify the parking requirements for which type. Mr. Hagan replied that currently there are two legal uses there. He continued that regarding the 2,000 square feet where the building splits in half, all of that was issued and is currently legal for office use only. The back portion was issued in 1994 for the residential care facility. That portion would require (something) different. There are two different requirements. They are reducing the amount of office space, but increasing the bed space, so they would have to do a calculation of what those are. To answer Mr. Gorman's question, just for the residential bed space, current Zoning requires half a parking space per bed. For 16 beds, the requirement is eight parking spaces just for that portion. The office use requires four parking spaces per 1,000 square feet. Thus, Live Free Recovery would need about 10 parking spaces for that. He stated that he could review the record again, but at the time, he saw 18 parking spaces, not the eight that Mr. Gagne represents. They would have to go back and look at the file, but it was side parking up against the abutment. The (application materials) show parking forward. What exists is non-conforming, and expanding it, they would have to meet those parking requirements.

Mr. Gorman stated that for the sake of tonight, and the ZBA's purpose, (parking) is not why they are here, but this will be addressed. Mr. Hagan replied yes, it will be addressed. Mr. Gorman asked if it is possible that this will come back (to the ZBA) for parking. Mr. Hagan replied that he cannot say at this time. He continued that for their proposed expansion to 28 beds, they are required to have 14 parking spaces for the residential care and four per 1,000 square feet (for the office use), which can get reduced, because it looks like they only have two or three office

spaces down below. That can substantially reduce the amount of parking they need there, and that can be put toward the residential care/institutional use.

Mr. Branon stated that it was their understanding that there have not been any parking issues with the site operating, because of the rules of the operation, but they can certainly address that with staff, and validate those 18 parking spaces. He continued that he does recall it being more (than eight) but does not want to misrepresent the number. He appreciates Mr. Hagan sharing the potential for 18. If there are actually 18 parking spaces, they could be very close to making that work. That could be a function of “up to” this number of beds, or they might have to come back to the ZBA.

Ms. Taylor stated that for the record, what the ZBA received via email was a partially filled out first floor plan without any legible labels. She continued that before they get into discussing it, she would like to clarify that this labeled plan is new to the ZBA this evening. There was another plan on the screen tonight that she had not seen. Ms. Marcou replied that what she had on the screen was what was emailed to her (Ms. Marcou) earlier just before the meeting. She continued that when she sent the ZBA the first initial floor plan that was in the body of the email; she had not seen the attachments. It was brought to her attention that those attachments had been sent to her, where she then added those attachments to the slide. They are all handwritten, done prior to it all being typed out and presented to the ZBA this evening. Thus, the versions she has on the screen are the same; it is just that it is handwritten, whereas what the ZBA sees is typed out. Ms. Taylor replied that she could tell the handwritten one that was on the screen was different, but she cannot read it. It is not very helpful. She continued that the ZBA should get all of this material on the record, to be in compliance with the rules.

Ms. Taylor made a motion for the Zoning Board of Adjustment to accept into the record the two sheets with the typewritten labeling as well as the handwritten exhibit. Mr. Gorman seconded the motion, which passed by unanimous vote.

Ms. Taylor stated that she understands the difficulties of trying to label what is going to be where, but one of the things that strikes her is that if they are eliminating all of those office spaces and turning them into bedrooms, her understanding is this is not just some place to live, but a treatment facility as well. She asked where the (other services) will be, such as consultation or whatever staff is allowed to do without being a medical clinic. Mr. Gagne asked if she was talking about future plans. Ms. Taylor replied yes.

Mr. Gagne replied that the offices that are labeled as “offices” now will remain the same. He continued that multiple modalities take place in treatment, and most common is group therapy. The five common areas will double as group settings. It is more relaxed that way, as opposed to institutional. The relaxed setting is far more effective than the institutional setting. There is also rotation of staff. Many times, what people do not take into consideration is that you have a multitude of (staff) shifts taking place, and these individuals (clients) are present 24/7. Once the first shift changes over to second shift, a new set of clinicians comes in and are meeting with

these individuals. Thus, their schedules are spread out over the course of an entire day. Over the course of those two shifts, all those individuals would not be going into those areas, for example, (just) from 8:00 AM to 2:00 PM. Treatment schedules go all the way until 10:00 or 11:00 PM. Staff continually have to maneuver through it and the way the treatment flows through. There is also the ability to utilize the kitchen and the dining room for experiential activities that take place for group therapy, life skills, and that type of thing.

Ms. Taylor stated that her understanding is that there is currently 24-hour staff on site. Mr. Gagne replied that was correct. Ms. Taylor asked if more staff members will be needed, if there are more beds, and where they will be in the facility, if they are just staff members and not necessarily treatment (providers). Mr. Gagne replied that typically they have peer staff, who interact with the clients the most. He continued that in any kind of treatment program, peer staff are the most important staff. They will work with the individuals on all areas of what comes up for them. Those peer staff are out with the clients, not in an office. They are sitting and chatting with clients, processing things with them, navigating treatment with them. In addition, clinical staff would be there, as well as what would be called “visiting staff.” For example, if someone was meeting with a medical practitioner for medication management, that person would come in and physically locate a space for maybe two hours. (Medical practitioners) are not there for an eight-hour shift. They will see (each) client for about 20 to 30 minutes. They do an initial psychological assessment and then meet weekly with the clients, which can take place via telehealth as well.

Ms. Taylor stated that her question is more about who is there at 2:00 AM. Mr. Gagne replied to the staff. Ms. Taylor asked if they were just sitting in a chair at 2:00 AM. Mr. Gagne replied that if she is asking where they will be sleeping, staff do not sleep. He continued that they have awake staff only. For 24/7 care, they have three shifts occupied by staff who are awake, because this is a population who need that. Sometimes clients who come to the facility are not medically well, (or become so at some) point in their stay, so they need eyes on them.

Ms. Taylor asked how many staff per number of clients. Mr. Gagne replied that he would have to do the math and it depends on the shift, but if they were fully occupied and there were 24 individuals, it would be about four or five staff during the day/first shift and six or seven with the visiting (clinicians). He continued that then it drops down to three (staff) and two for the overnight shift. Every (client) will be sleeping at that point. The second shift slows down before the shift even ends, as clients start to wind down and head into bed. Staff are good, and they do not have a lot of issues that pop up (overnight) that require additional/outside mediation.

Ms. Taylor stated that she is sure Live Free Recovery already has existing security. She asked Mr. Gagne to speak to that. She continued that she is sure there are clients who take medications that need to be secured as well. Mr. Gagne asked if she meant electronic security. Ms. Taylor replied not necessarily. Mr. Gagne replied that they do not have security guards. He continued that he has worked in this field for almost 16 years and has never worked for a facility (with that). This is not a locked place; people are there voluntarily. If someone wants to come to them

and is willing to do some work, the door is open, but they're also open to leave. The staff is fantastic in terms of mitigating and working with individuals, having a long track record of it. They do have security cameras to be able to monitor things that are taking place and have been operating in Keene since 2019 with the police showing up on site probably about six times. Typically, that is not due to a person's current behavior, but rather their background, such as a warrant that pops up from the year previous. Regarding medication, it is in a locked area behind another locked door, per State requirements. Live Free Recovery follows that protocol no matter what the level of care is, even if it is "overkill." They also have a security camera that is on, (focused) on the area of medication, and is unable to be (focused) out of sight of the medication, to monitor staff and clients' behavior with the medication. Thus, they have three things in place: the security camera, the staff, and the locked doors.

Ms. Taylor stated that all her questions are funneling into one concern, which is intensity of use. She continued that what she is trying to gauge through her various questions, which goes toward the whole concept of expanding a non-conforming use, is how the different intensity of going from 16 to 28 beds will impact the operation. She continued that it does not seem logical that it will have no impact.

Mr. Gagne replied that they would scale appropriately. He continued that if they have a process in place for 16 individuals, they will come close to doubling that in order to be able to [unfinished sentence]. He continued that it is really only during the most secure hours, the most intensive hours of treatment. From there, it is just a matter of going through and being able to have the appropriate staff for the number of individuals who are there. Ms. Taylor asked him to explain more. Mr. Gagne replied that if they were to take, what is currently happening at 16 beds, and appropriately move that number to the number they are proposing, they would be below doubling that same level of care that is provided. Meaning, if they are providing services to 16 individuals, they would simply provide that same service with the number of staff that would be required to provide the services to 28. For example, consider a nursing home, with a certain set number of individuals whom staff work with there. If the nursing home were to increase that number (of individuals), they would increase the staff ratio accordingly to the number of individuals of occupancy increase. He asked if that makes sense.

Ms. Taylor replied that makes sense, and that is why she was asking about the number of consultation rooms and things like that. Mr. Gagne replied that he should also add that right now with 16 individuals, they are also at a strange point because the number of individuals on a clinician's caseload would usually be much higher than it is now. Clinicians do not have a full caseload due to where Live Free Recovery is from an occupancy standpoint. Live Free Recovery proposes a service later down the road that is not currently being provided at the intensity they are talking about now.

Ms. Taylor stated that the (application) says "Live Free Recovery Services, LLC," but the City has it listed in its records as "106 Roxbury, LLC." She asked who that was. Mr. Gagne replied that 106 Roxbury, LLC is the real estate entity owned by himself as well. He continued that for

clarification, they might see multiple names of addresses that are for some of the other licenses they applied for. They have four licenses, one for 881 Marlboro Rd., one for 26 Water St., one for 361 Court St., and Roxbury St. They just had their final Fire Department walkthrough for all four locations, and they should be submitting those findings as they were able to address the issues that came up.

Chair Hoppock asked if the ZBA had any more questions. Hearing none, he asked for public comment. Hearing none, he asked if the applicants had anything further to add.

Mr. Branon stated that they understand that there is a path that needs to be taken to improve this property, with permits through the Building Department and potentially approval through Planning, and his client looks forward to navigating that process. He continued that a number of the conditions in the criteria are obviously presumptive on them addressing that criterion, meaning that they fully look forward – assuming tonight’s meeting is successful – to going through the process and securing these approvals in the appropriate manner.

Chair Hoppock stated that before closing the public hearing, he wants clarification about the parking issue, which befuddles him. He continued that assuming 28 beds are approved, Live Free Recovery must have 14 parking spaces for those 28 beds. He asked if that is correct. Mr. Hagan replied under current Zoning requirements, yes. Chair Hoppock asked how many parking spaces will be required for the office use when the plan that the ZBA has before them is implemented, because he is not concerned with future plans at the moment. Mr. Hagan replied that he has not seen a plan so he cannot give that calculation. He continued that he understands there is a rough drawing. It would be based upon the overall change. Staff would look at it as a department and address any of those. If Live Free Recovery is required to seek additional relief, they would come back to the ZBA for that. Chair Hoppock stated that by his math, there are 18 existing parking spaces that could be utilized. He continued that Mr. Hagan said 18, and the applicants said 10.

Mr. Branon stated that if they do the math and it is half space required for each bedroom, that is 14 as Chair Hoppock stated. He continued that if 18 (total existing) is the number, that would leave room for 1,000 square feet of office space. That is probably close to what is being proposed. He suggests that they need to satisfy the criteria or seek relief. There is always an element with parking that is difficult. He is not here tonight seeking relief, but this is often a discussion they have. Parking regulations are written for a broad spectrum of uses. This parking requirement is actually written for uses that allow people to have cars on site. As long as Live Free Recovery meets the calculation requirement there will be additional spaces available for staff, which he suspects is why Live Free Recovery has not run into any issues with parking on site. Some of the questions he heard tonight were surrounding that concern, to some extent, such as how many staff they will have for 28 beds compared to 16 beds. What he heard from Mr. Gagne is that some of that staff can take on a larger workload, so it is not a straight multiple. They (Fieldstone Land Consultants) fully believe that the parking that is provided here will be satisfactory. He understands the concern that came up during the initial review about whether

the site can support this expansion. That is why they are suggesting and maybe requesting that the ZBA consider some form of a motion to approve “up to 28,” assuming they meet the other criteria. Certainly, if there is a need and Live Free Recovery comes back before the ZBA it would be another request that they are not currently asking this evening. They believe the site will support the expansion they are proposing. They just must work through some other approvals.

Chair Hoppock stated that it sounds like at this stage of their planning, regarding the number of parking spaces to accommodate both the residential and the office use, whatever that may be, at the end of the day, they will have sufficient space to manage it. He continued that he did not even ask about off-site street parking, but he assumes there is some availability. Mr. Hagan replied that he believes there is some parking up the street off Roxbury St.

Chair Hoppock asked if there were any further questions. Hearing none, he closed the public hearing and asked the board to deliberate.

1. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.

Mr. Gorman stated that he does not see a problem with this criterion, for the simple reason that the use is not really changing. He continued that it is expanding, of course; that is why they are here. However, regarding what everyone else will experience, he does not think it will be much different. The property will not look different, thus not contributing to any erosion of value, and the use will be the same, thus not contributing to injurious, obnoxious, or offensive neighborhood activities.

Ms. Taylor stated that she is not sure she agrees. She continued that she does not necessarily think it will reduce the values, but she is concerned about increasing the intensity of use. There is so little outdoor space. You cannot keep people cooped up. They want to go out and about, and without cars, people will be walking all over. Her concern is simply the number of people outside, milling about, not necessarily doing anything wrong; it is just that there are a lot of people in a small area. You have to go a bit of a ways to get to any park or open space.

Mr. Welsh stated that he had two issues. He continued that first; it was so long ago that the prior board granted the Variance that they do not know what that prior board’s concerns were and whether the operation of the facility has been consistent with what they wanted. His second concern was along the lines of what Ms. Taylor was asking about, and her questions did a lot to clarify in his mind that this increase in scale is not one that will have the kind of negative impact that will go against the criteria the ZBA is asked to review. There would be that point somewhere, but he does not think 24 or 28 beds hit it. Thus, he is satisfied that he can vote for the first criterion.

Chair Hoppock stated that he agrees with all of that.

Mr. Gorman stated that as a footnote to that, 11,000 square feet with 28 bedrooms is a lot of square footage per bedroom. He continued that if you do the math, it is about 400 square feet.

Chair Hoppock replied that he agrees. He continued that it sounds like a well-managed use. History has been good, from what he has heard. He does not see anything about the expansion that would impact the values of neighborhood properties. He does not see anything that is injurious, obnoxious, or offensive to the neighborhood, based on what he has heard about the expansion.

2. There will be no nuisance or serious hazard to vehicles or pedestrians.

Chair Hoppock stated that this seems somewhat redundant, following the first criterion, but for the reasons just articulated, he agrees that there does not seem to be a nuisance or serious hazard presented by the expansion.

Mr. Gorman stated that he knows this is specific to Live Free Recovery's operation of business, but he would add that they do not allow clients to have cars, so that diminishes this potential impact, at least for the time being while it is being run that way.

Chair Hoppock stated that it does not sound like there is a great deal of traffic coming and going. He continued that Roxbury St. is very busy, and he does not know what the traffic flow is there but treating practitioners and counselors who come and go during the day (do not account for) much, in terms of volume.

3. Adequate or appropriate facilities will be provided for the proper operation of the proposed use.

Chair Hoppock stated that this seems to be more about the physical plant. Mr. Gorman stated that he thinks they have covered some of this tonight, and they keep coming around to the same answer that it is not up to the ZBA to determine some of these things, but because of the nature of this project, the Code Enforcement Department would make sure all those things are adequate. Regarding the use, there probably will be some requirements for incoming water and sewer, and again, the Building Department will handle that, and handle the parking. Electrical upgrades have to be done by Code as well. Thus, he thinks many of those issues will get handled by the Community Development Department.

Ms. Taylor stated that she agrees with Mr. Gorman, but her concern is still not completely allayed, regarding whether there will be adequate facilities for everything that will be going on, from residential to recreational to treatment. She continued that there may be adequate facilities for 16 or 20 people, but she is not convinced that there are for 28 people.

Chair Hoppock stated that earlier, they spoke about the licensing requirements. He asked Ms. Marcou what Section 46-565 part is of. Ms. Marcou replied that the Congregate Living and Social Services Licensing Board is under the City Ordinance. Chair Hoppock stated that to Mr. Gorman's point, many of these issues are being addressed by other City boards; Fire, Safety, and Building Codes; "noise pollution" Codes; and traffic issues by the Police and Fire Departments. Coupled with that level of oversight and the fact that the license has been approved conditionally for a year, he is satisfied that the Expansion request is not inappropriate.

Mr. Gorman made a motion for the Zoning Board of Adjustment to approve ZBA 23-23. Mr. Welsh seconded the motion.

1. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.

Granted with a vote of 4-0.

2. There will be no nuisance or serious hazard to vehicles or pedestrians.

Granted with a vote of 4-0.

3. Adequate or appropriate facilities will be provided for the proper operation of the proposed use.

Granted with a vote of 3-1. Ms. Taylor was opposed.

The motion to approve ZBA 23-23 was approved with a vote of 3-1. Ms. Taylor was opposed.

V) New Business

Chair Hoppock stated that he and Ms. Taylor have some new business. He continued that they would like the administration to disregard the New Hampshire Municipal Association's recommendation about not providing the abutters lists. He continued that that is a dangerous practice, in his opinion.

Mr. Gorman stated that he agrees, provided it is just a recommendation. Mr. Welsh replied that he agrees. Ms. Marcou stated that this is something staff will be having conversations about with the City Attorney.

Chair Hoppock stated that just so his position is clear, today the ZBA received the abutters list via email, and he saw a former client of his on that list. He continued that had he seen her in the audience tonight, he would have recused himself. Without that list, it never would have been brought to his attention.

Ms. Taylor stated that as she mentioned earlier, she does not think it should be up to members of any land use board to go searching and pull up their own abutters list to see if there are any conflicts when the applicant is required to provide it. She continued that if there is no change in law, case law, or statute that would advise them not to get abutters lists, regardless of whatever in-house conversations staff has with the City Attorney, the ZBA still should be getting the abutters lists. She does not think it is the staff's decision or even the City Attorney's decision. It is public information, and the ZBA should be able to have it prior to their meetings.

Chair Hoppock stated that they will leave the matter at this; their opinions have been voiced. He continued that as a board they have unanimously stated their concern and given reason for it.

Chair Hoppock asked if there was any other new business. There was no response.

VI) Communications and Miscellaneous

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

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Chair Hoppock adjourned the meeting at 7:48 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk