City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, April 1, 2024 **6:30 PM** **Council Chamber, City Hall**

Members Present:
Joseph Hoppock, Chair
Jane Taylor, Vice Chair
Richard Clough
Edward Guyot
David Weigle, Alternate

Staff Present:
Corinne Marcou, Zoning Clerk
Michael 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 – March 4, 2024

Ms. Taylor made a motion to approve the meeting minutes of March 4, 2024. Mr. Clough seconded the motion, which passed by unanimous vote.

III) Unfinished Business

A) Rules of Procedure Updates

B) Fee Schedule Proposal

Chair Hoppock stated that the ZBA will skip over the unfinished business tonight due to the lengthy agenda.

IV) Hearings

A) ZBA-2024-06: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a mix of commercial and

residential uses on a single 24.38 acre tract per Article 8.1.3 of the Zoning Regulations.

B) ZBA-2024-07: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an existing structure to be a three family residence per Article 3.1.5 of the Zoning Regulations.

C) ZBA-2024-08: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a commercial and accessory use of a truck scale and scale house per Article 3.1.5 of the Zoning Regulations.

D) ZBA-2024-09: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an existing structure to be an agricultural retail store per Article 3.1.5 of the Zoning Regulations

E) ZBA-2024-10: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map#218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the use of accessory storage structures in the 50 ft. setback as measured from an abutting parcel owned by the Applicant per Article 3.1.2 & 8.4.1.C of the Zoning Regulations.

Chair Hoppock stated that the Petitioner for ZBA-2024-06, ZBA-2024-07, ZBA-2024-08, ZBA-2024-09, and ZBA-2024-10 has asked to be moved to the next meeting. Michael Hagan, Plans Examiner, replied that is correct.

Chair Hoppock opened the hearings for ZBA-2024-06, ZBA-2024-07, ZBA-2024-08, ZBA-2024-09, and ZBA-2024-10. He asked for a motion to continue.

Mr. Clough made a motion to continue ZBA-2024-06, ZBA-2024-07, ZBA-2024-08, ZBA-2024-09, and ZBA-2024-10, property address 21 Route 9, Keene, Tax Map #218-008-000, owned by G2 Holdings, 25 North St., Jaffrey, NH, to the May 6, 2024 meeting of the Zoning Board of Adjustment. Ms. Taylor seconded the motion, which passed by unanimous vote.

F) <u>Continued ZBA-2024-02:</u> Petitioner, Thomas Hanna of BCM Environmental and Land Law, PLLC, Keene, requests a Variance for property located at 19 Grove St., Tax Map #585-055-000, is in the Residential Preservation District, and is owned by 1925 Grove Street, LLC, 295 Seaver Rd., Harrisville. The Petitioner requests a Variance to permit the conversion of a legally non-conforming office use to a third apartment unit in the Residential Preservation District per Article 3.2.5 of the Zoning Regulations.

Chair Hoppock asked to hear from staff.

Michael Hagan, Plans Examiner, stated that this property at 19 Grove St., with .23 acres, is zoned Residential Preservation District. He continued that current uses are office with 1,248 square feet of space; storage with 3,917 square feet of space; and two residential units with a combined 1,248 square feet; totaling 6,423 square feet of habitable and storage area. A Variance from April 15, 1975, ZBA-75-19, was to convert the small grocery store into office space for the coal and oil company business.

Ms. Taylor asked if the building, since it does not meet any of the setbacks, is preexisting non-conforming. Mr. Hagan replied yes.

Chair Hoppock asked to hear from the Petitioner.

Tom Hanna of BCM Environmental and Land Law, PLLC, stated that he represents 1925 Grove St., LLC. He continued that with him tonight is its principal, Nancy Chabott, the widow of Tom Chabott. When the Chabott family moved from Canada to Keene, Eli Chabott purchased 19 Grove St. in 1892. Tara Kessler of BCM found a Keene Sentinel ad from March 16, 1896 showing that Eli Chabott sold groceries from 19 Grove St. as early as 1896. He did so for half a century, and at some point, added coal to his store inventory, along with a loading dock and barn. In the early 1970s, Eli Chabott's sons, Tom and Ted, purchased the property and turned the first floor into the office of Chabott Coal and Oil. The Variance in April 1975 must have been related to that. Sometime between 1970 and 1975, they converted the third-floor finished attic to an apartment. Thus, there was the Chabott Coal and Oil office on the first floor and two one-room apartments on the second and third floors, which continue to this day.

Mr. Hanna continued that in 2016, Chabott Coal and Oil sold the business to Ciardelli Oil, which stayed in those offices until the fall of 2019 before moving to another Keene location. From the fall of 2019 to October of 2023, the first floor was rented to a chiropractor. Then, Nancy Chabott worked with Josh Greenwald, of Greenwald Realty, in an effort to find an office tenant.

On Friday he (Mr. Hanna) emailed (the City) an email from Josh Greenwald, dated March 28, regarding his unsuccessful efforts to find an office tenant. Mr. Greenwald had zero inquiries. Nancy Chabott told him (Mr. Hanna) that Mr. Greenwald brought forth a vaping business as a prospective tenant, but she determined that that was not a good fit for her upstairs residential tenants or the neighborhood, in her view. In February or March, Ms. Chabott inquired whether

she could have an apartment, learned she would need a Variance, and retained BCM Environmental and Land Law.

Mr. Hanna continued that they are seeking a Variance to convert the first floor from a legally non-conforming office to an apartment. Until 2021 when the Land Development Code (LDC) was adopted, a provision in the Ordinance allowed a conversion of a legally non-conforming use to another non-conforming use without the need for a Variance. He believes it was in the nature of a Special Exception. Since that option was no longer available to them, they are proceeding with the Variance from Section 3.2.5.

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

Mr. Hanna stated that they believe the proposed apartment would be less impactful than the office use, especially from a traffic point of view. He continued that Ms. Kessler provided the ZBA with an analysis she obtained by reviewing the ITE Trip Generation Manual. The combination of the three apartments, as opposed to the office use and two apartments, would reduce the traffic by approximately one half. In addition, it will reduce the parking demand as is set forth in the City's Zoning Ordinance that requires nine parking spaces, which is five spaces for the office, based on the square footage, and two spaces for each apartment. Only five spaces are available. The conversion would technically require six spaces. The five spaces will be maintained and there will be a reduced need/demand based on the first floor's change of use.

Mr. Hanna continued that Sec. 9.2.8 is a "quirky provision" that gives credit for the deficiencies in current parking requirements. The existing deficiency is negative four, because nine were required and five exist, and if you apply that deficiency to the required six onsite spaces for the proposed three dwelling units, then the onsite parking requirement for the proposed multi-family use would be two parking spaces. It seems absurd, but it does not really matter, because the five existing parking spaces will continue to exist and be used for the multi-family house. He raises this because there is a good argument under the Ordinance that the conversion will bring the property into compliance with the parking requirement.

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

Mr. Hanna stated that he lists several reasons why he thinks this is the case. He continued that the spirit of the Residential Preservation District relates to the downgrading of the residential intensity from multi-family to single family. The proposed conversion of the first floor will reduce the traffic impact by about half, making it more compatible with residential use, and it will reduce the parking demand. This will be residential use instead of office use, in a residential zone, which is more compatible. Adding the third apartment results in the elimination of two non-conformities in the Zoning Ordinance. One is office use, and the other is the provision that prohibits mixed uses from residential districts. This would no longer be a mixed use and would no longer be the non-conforming office.

3. Granting the Variance would do substantial justice.

Mr. Hanna stated that he suggests the applicant would suffer harm by being compelled to retain the office space, which would likely remain empty. Alternatively, Mrs. Cabott would have an office use that is not suitable. In the five or six months that Mr. Greenwald has actively marketed the property, he has had zero interest. Mrs. Chabott has been unable to find a compatible commercial tenant. Conversely, the public does not gain by prohibiting this Variance, whether the space stays as an office or is empty. Moreover, the public gains by having another housing opportunity. Clearly, that benefit is of great need these days.

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

Mr. Hanna stated that he submitted a colored map (to the ZBA) on Friday, "Land Uses Surrounding 19 Grove St." He continued that given what that shows, it would be hard to argue that converting this apartment would diminish the values of surrounding properties, when approximately 20 of the properties in the general neighborhood and 14 on Grove St. are already two-, three-, or four-family homes. Moreover, Grove St. is not what he would call a "single-family residential street," or an appropriate one. It is a high-traffic street with higher speed than is preferred, and most houses are close to the road. It is clear to him that the values of the surrounding properties would not be diminished by making this mixed use building a three-unit. It would reduce traffic, as he said previously. The historic pattern of this neighborhood has been two- and multi-family units.

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. Hanna stated that this is a three-story building, and many of the buildings in this area are not. He continued that it might technically be two and a half stories; he is not sure. It has an unusual history going back 130 years, beginning as one of the earliest or the earliest grocery stores in Keene, then becoming the Chabott Coal and Oil business with related activities. It had a barn, loading dock, and a commercial garage for storing trucks. This very large building covers almost all the property. There is space for cars in the front and a strip of grass along the north side, but no room for a yard, especially if it were a single-family home. The building goes all the way back to the rear.

Mr. Hanna continued that the long history of mixed uses since the 1890's is a special condition. The building footprint covers more than 60% of the lot, which is unusually large compared to even the other multi-family houses in the neighborhood. The property has limited parking, which is not necessarily the same condition that afflicts the neighborhood's other properties. These special conditions distinguish 19 Grove St. from the other properties in the area. It would be an extreme hardship, and unreasonable, to force the 19 Grove St. building to transition to a single-family home. That will not happen in this neighborhood, and particularly not with this house, because of the building's size, lack of land, and cost of conversion. That would apply to all the properties in the area. He thinks Grove St. itself is a special situation, as it has higher traffic than most.

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. Hanna continued that for reasons stated, he believes there is no fair and substantial relationship between the general public purposes of the single family zoning ordinance [Residential Preservation District] that was adopted in 2017 and the specific application of that provision to the property, to the extent that the goal in 2017 when the Ordinance was adopted was to convert this whole area to single family residential. The goal is flawed, for a number of reasons, and unattainable, in his professional opinion. He knows Ms. Kessler agrees. He believes the goal was developed to protect the large neighborhood from college housing. The goal was developed prior to 2017 as people became aggravated, Med Kopczynski being one of them, with college housing. At the time, Keene State College (KSC)'s enrollment was approximately 4,300 or 4,500 students. Enrollment has decreased annually since 2017, to 2,863 students in the fall of 2023 and then to 2,733 students this semester. That is a reduction of 1,500+ students. As indicated above and shown on the map of land uses surrounding Grove St., about 20 of the neighborhood properties are two- and multi-family homes and have been that way historically. Grove St. itself is not conducive to single-family residences.

Mr. Hanna stated that he wants to address the principle enunciated in the Simplex Technologies case from 2001, one of the standard milestone cases in zoning law, which sets forth the proposition that zoning ordinances must reflect the current character of the neighborhood. That case is 145 N.H. 727. An earlier case, Belanger v. City of Nashua, had the same kind of holding that the character of the neighborhood had to be maintained with the new ordinance. The Residential Preservation District is and always will be inconsistent with the Grove St. neighborhood's character. He wants to emphasize that neither Simplex nor Belanger were overruled. They did form the genesis of a revised statute in 2007. In 2008, he must acknowledge, the [Nine A. v. Town of Chesterfield] case stated, *"The current character of a neighborhood does not necessarily preclude a town from enacting an ordinance targeted at altering the neighborhood's character when a sufficient basis exists to do so."* The key language in his view is *"when a sufficient basis exists to do so."* While Simplex was not overruled, it was distinguished by Nine A. The question he puts to the ZBA, what is a "sufficient basis" for altering the character of a neighborhood with a Zoning Ordinance. In Nine A, it was the preservation of Spofford Lake. Yes, the proposed development that required a Variance was consistent with the neighborhood next to Spofford Lake, and in that case and under Simplex, since it was consistent with the character of the neighborhood, the Variance should have been granted. However, the court said in Nine A. that the preservation of a jewel and an incredible natural resource such as Spofford Lake is a sufficient basis to target an area and change it notwithstanding its character. That the need to preserve a natural resource outweighed the fact that the character of a neighborhood should control a zoning ordinance.

However, Mr. Hanna continued, that is not the case in this situation. He hopes the ZBA agrees with him and does not know how they could not. This is not a unique resource or an environmental concern. Spofford Lake, for a substantial part of Chesterfield, is a critical resource, a major tax resource, and of major recreational benefit to the community. This provided a sufficient basis for a zoning ordinance that addressed that and attempted to preserve

Spofford Lake. Here (with the Residential Preservation District) is an effort to address college housing. It was, in his opinion, "over the top" in (what it was) trying to dictate to a neighborhood that has been multi-family for 100 years, on a fast-paced bypass type of highway, Marlboro St. to Community Way and Marlboro St. to Water St., and has houses close to the (street). The idea of converting those houses to single-family homes to address college housing was not sufficient justification that takes you out of the Simplex standard that says zoning ordinances must conform to the character of the neighborhood.

and

ii. The proposed use is a reasonable one.

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

Mr. Hanna stated that he did not address B. in writing, but he will put it in front of them in case it provides justification for granting this Variance. He continued that the reasonable use is, for all the reasons he has indicated, this house in particular is not readily convertible to a single-family home, given its characteristics. He previously recounted the special conditions that exist with this property, which distinguish it from the characteristics of the area. The ZBA could grant the Variance on that basis, but again, he thinks he has made the case in the first part (A).

Ms. Taylor stated that she has questions about parking. She continued that a picture in the packet, on page 40 of 147, in its key, shows driveways in front of and on both sides of the building. However, the pictures that were submitted, on page 41 of 147, show the grassy area Mr. Hanna described. She is confused about where the five parking spaces are.

Mr. Hanna replied that the driveway on the right side of 19 Grove St. does not belong to 19 Grove St. He continued that three parking spaces are in front of the building, including one handicapped space, with the rear of the cars normally facing Grove St. The lower photograph on page 41 shows the two parking spaces on the south side of the building.

Ms. Taylor asked if the handicapped space is on that parcel. Mr. Hanna replied to the right of the striped section, in front of the main door. Ms. Taylor replied that she thought it was one of the three that Mr. Hanna said were in front. Mr. Hanna replied yes, it is. He continued that it was required when it was an office space, but he does not think it would be required as an apartment. Ms. Taylor replied that that is out of the ZBA's jurisdiction.

Ms. Taylor stated that her other question about parking is regarding the first criterion, when Mr. Hanna talked about parking on "25 Rear Grove St." She continued that she is not sure if that is truly "accessory" because it is on a different parcel, but besides that, what if at some stage that parcel is not in common ownership and that parking cannot be used. Mr. Hanna replied that that is correct – if that back lot is sold, since it is a separate lot, then it cannot be used for 19 Grove St. However, 19 Grove St. required nine parking spaces but always only had five, and now it [the

conversion] will reduce the number of required spaces from nine to six, and it will still have the parking spaces.

Ms. Taylor replied that is much clearer. She continued that her last question is regarding her trying to understand the building. Mr. Hanna had said there were trucks at the loading dock. She asked him to indicate in a picture where that had been located. Mr. Hanna replied that page 42 has a photo in the lower right. He continued that the entire building on the right is barn and garage and is substantially behind the living area of the house.

Ms. Taylor asked if the plan is to convert that into the apartment. Mr. Hanna replied no, it will stay as a barn and not change at all. He continued that the only part being converted is the office space, which will be converted to two bedrooms. Page 41 shows the front of the building on the first floor with two bay windows facing Grove St. Behind the one on the right would be a kitchen area, and to your left on the south is a living room; it is a combined kitchen/living/dining room. On the north side behind the kitchen are two bathrooms, one half and one full. There is also a very small room on that side that would be converted into a laundry room.

Ms. Taylor stated that she knows Mr. Hanna tried to explain this to the Board, but she wants to ask (staff), under that provision, to have five parking spaces. She asked if that is how it works. Mr. Hagan replied not only under that provision, but under another as well. He continued that it would require a letter, a signature, and some other (elements), and he could go through that list with the Board, but yes, they have options. [Section 9.2.7 has] a procedure for requesting an "Administrative Reduction" and outlines the criteria, if they wanted to request that, to have two for each, but they would fall under the other section as well, for that specific requirement Mr. Hanna stated.

Mr. Clough asked if the front entrance would be considered the entrance just for the downstairs apartment. Mr. Hanna replied yes. Mr. Clough asked if it would thus be necessary to have handicapped parking in the front. Mr. Hanna replied that as he mentioned earlier, he does not think so. Mr. Clough asked if eliminating those stripes would give enough space to create two parking spaces there, because it would only be dedicated to that one entrance. Mr. Hanna replied possibly.

Mr. Hagan stated that going from a two-family to a three-family or going from a commercial use to a residential use, as a three-family, the requirement for a handicapped space is not there yet. He continued that you would have to exceed six dwelling units, he believes, to be required to have handicapped parking space.

Mr. Clough asked if there is a width requirement for each parking space. Mr. Hagan replied yes, 9'x18', or 8'x18' with one foot between spaces. He continued that the current handicapped space looks large, and they could probably split that space to make up some more [parking spaces] on the right-hand side, as long as it met the minimum requirements. However, they need to maintain egress requirements out of a building, and they could not have a car in front (if it means not) having enough path to get out of the building. Mr. Clough asked if there is a width requirement for that ingress/egress space. Mr. Hagan replied 42 inches for commercial use. Mr. Clough replied that it thus might be close to getting four parking spaces in front, but he cannot tell from

the photographs. Mr. Hagan replied that they can take a look. He continued that the applicant does meet the requirements under the Ordinance.

Mr. Hagan stated that to follow up with Ms. Taylor's comments about the remaining use, the back use will only be used for the apartments. Mr. Hanna replied no, the back use will be as it has always been used by family and friends, for storage. The conversion of the apartment is a one-to-one conversion from the office to the apartment and has no impact on the rest of the building. Mr. Hagan asked if it is correct that it will still be considered as and used as storage for (people other than) the residents. It cannot be an accessory use to the main use. He wants to clarify that the applicant wants to keep the portion of the Variance that was granted in 1975 for storage in that area. Mr. Hanna replied yes, that is correct.

Chair Hoppock asked if the space Mr. Hanna was talking about that will not be used for this conversion is shown in the bottom photo on page 42. Mr. Hanna replied yes. Chair Hoppock replied that it looks like more than five cars could fit there. Mr. Hanna replied that is a separate lot. Chair Hoppock replied that that was his next question, because on page 40, the boundary line on the left side highlighted yellow area is the back of the building shown in the photo. Mr. Hanna replied yes, and the back of the lot. He continued that the property of almost all parking lot is a third lot that Mrs. Chabott owns, which is a vacant lot. Mr. Weigle asked if that is what he referred to as 53 on the chart. Mr. Hanna replied yes.

Ms. Taylor asked Mr. Hagan how the ZBA granting a Variance to allow three residential units in this building would impact the storage and garage section. She asked if it is still considered 'residential' even if someone who is using it is not living on the property. Mr. Hagan replied that is where he wanted some clarification for the record, so they can make sure that after this is done, they do not need to go back for another Variance to allow for a use. He continued that the way it was presented was that this was going to be converted to a three-family and that is all it will be used for, so those barns would be accessory to the main use. If not, they are a separate commercial use, or continue to be a separate commercial use, for storage for someone who does not live on the property. They had a 1975 Variance to allow for it, and if they want to continue to use it and just convert the office space to residential, that is fine.

Ms. Taylor asked Mr. Hanna to speak to that. Mr. Hanna replied that he cannot say anything better than what Mr. Hagan just said. He continued that the barn and the storage area and two large garage entrances will not be used directly by the apartment tenants, but those spaces will continue to be used by the (Chabott) family, specifically Mrs. Chabott's three sons. It is a valuable space that will not just suddenly remain empty. It is accessed by the other lot, which will probably dictate that the other lot will not be sold soon.

Chair Hoppock asked if there were any further questions from the ZBA. Hearing none, he asked if anyone from the public wished to speak in opposition to the application. Hearing none, he continued that the ZBA received a letter in opposition. He read it into the record:

"Dear Board Members,

Unfortunately, my wife and I are unable to attend the meeting of March 04, 2024, due to a previous commitment."

Chair Hoppock stated that this case was originally scheduled for March 4. He continued reading the letter:

"Had we been able to attend the meeting we would have testified our opposition to the variance request. We have seen far too many variances issued in our neighborhood that have not been positive.

We feel the variance request fails the follow two prongs of the variance test: (b) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; (c) the variance is consistent with the spirit of the ordinance. If you examine the intent of the Residential Preservation District, it is to return the neighborhood to single-family. The building in question has a long history in its present form of mixed use with the former Chabot Coal operating from there for many years. Uses may revert to the day when Grove St. was a vibrant mix of housing and business. Grove St. today is a highway that connects Water St. to Marlboro St. We believe that before <u>any</u> changes be made to uses including by variance, the Grove St. blocks be reviewed as part of the planning processes used to create the Land Development Code. The first part of that process created the Downtown Districts including the Edge Districts. Grove Street Block as well as Blake Street Block were promised to be reviewed for inclusion in an Edge District. It seems that there are no plans to conduct that review as presently Community Development staff is concentrating on the next Master Plan.

Sincerely,
Medard and Dawn Kopczynski"

Chair Hoppock stated that that is the only opposition they have. Mr. Hanna stated that to be clear, he has addressed all the Variance criteria in some detail. He continued that Mr. Kopczynski's last sentence was, *"It seems that there are no plans to conduct that review as presently, Community Development staff is concentrating on the next Master Plan."* Although it does not matter what they are concentrating on, there is no plan at present to review this Ordinance any further. The ZBA does not get to set a moratorium on the granting of Variances, and they cannot stop the clock. If the applicant meets the criteria in April 2024 and deserves a Variance, then it should be awarded.

Chair Hoppock asked if anyone from the public wished to speak in support of the application. Hearing none, he continued that the ZBA received the following letter in support:

"Good afternoon, Attorney Hanna,

I am writing in support of 19 Grove St. being approved a Variance for change of use for the 1st floor space from Office to Residential. I was hired as the Listing Agent for the space in October 2023 when Dr. Brooks Seaman vacated the property. The anticipation was to secure another tenant interested in utilizing the space as an office. The listing most recently expired on March 3,

2024. I had zero inquiries in the office rental despite aggressive marketing and being reasonably priced. Finding a viable tenant proved to be unsuccessful due to the following reasons.

1. Small office market is extremely small
2. Offices in space were too small
3. The location is primarily residential multi-family buildings

There is a high need for residential rentals in Keene. The highest and best use for that space going forward is as an apartment. It fits the neighborhood and is the highest and best use for the space in my opinion.

Joshua A. Greenwald"

Chair Hoppock asked if Mr. Hanna wanted to respond. Mr. Hanna replied no.

Chair Hoppock stated that hearing no further comments, they will close the public hearing and proceed to deliberations.

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

Ms. Taylor stated that she tends to agree with Mr. Hanna's statement that this will be less impactful in the area than the office use. She continued that she remembers when it was the coal and oil business, and it was a busy office. She can see it having a reduction in automobile traffic and possibly a reduction in foot traffic as well. She does not think it is contrary to the public interest.

Chair Hoppock stated that he agrees. He continued that there is also the benefit of increasing the housing stock, even if only by one unit, with less traffic than office use and reduced parking requirements. He agrees that it would not be contrary to the public interest in this case.

Mr. Guyot stated that it seems like this change brings the property in closer alignment with the other residences, as has been pointed out, so it is moving in the right direction.

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

Chair Hoppock stated that he does not see any violation of the Ordinance's basic zoning objective. He continued that in fact, it (the Variance) probably brings it (the property) closer in line with the intent of the Ordinance. It brings it closer to a single-family environment, getting rid of the mixed use and the office use. That brings it closer to the spirit of the Ordinance. He does not see any impact on health, safety, or welfare in connection with this application.

Ms. Taylor stated that she thinks this is one of the more difficult ones, because the Ordinance clearly states it wants to move toward single-family, but by the same token, it is still going from office to residential and eliminating the mixed use. She does not know if it is going in the right direction, but it is perhaps a little more in conformance with the Ordinance.

Chair Hoppock stated that he agrees with Ms. Taylor and sees other ZBA members nodding.

3. Granting the Variance would do substantial justice.

Ms. Taylor stated that the basic measure here is whether the public benefit outweighs any loss to the owner, and she thinks this one is clear. The public benefit of adding a housing unit, as opposed to the owner having a vacant property, so she thinks there is a public benefit.

Chair Hoppock replied yes, especially when you consider the public benefit derived from not having a vacant property just sitting there. He continued that having another housing unit available on the market is also a public benefit.

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

Chair Hoppock asked if anyone sees a diminution problem here. Mr. Weigle replied that it is almost the opposite if they convert it over. He continued that he is speculating, but if they are reducing the number of people traffic from commercial mixed use it would also probably reduce the traffic on the road and bring it closer to a residential street.

Chair Hoppock stated that the "Land Uses Surrounding 19 Grove St." map gives a good picture of the neighborhood. He continued that it (19 Grove St.) is a large lot size and a large building in relation to that lot size. The surrounding buildings all appear to be much smaller but have similar uses, as multi-family units. He does not see how that could translate into a property diminution problem anywhere in this neighborhood.

Ms. Taylor stated that she thinks it has the potential to increase value, because for starters, they will not have vacant property. She continued that in addition, increased tax revenue will probably come from it if it is occupied as a residential unit.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Chair Hoppock asked if anyone wants to identify those special conditions. He continued that he thinks Mr. Hanna did a thorough job of that. He mentioned one, large building size in relation to large lot size, with not much room on the sides or front. Mr. Hanna also mentioned that this appears to be a three-story structure.

Ms. Taylor stated that one of the first things she noticed when she read this application originally was how inconsistent the applicable Zoning Ordinance was to this street/area. She continued that

she thinks that does, in and of itself, create a hardship. The test is whether no fair and substantial relationship exists between the general public purpose of the Ordinance and the specific application of the provision to the property. She cannot see much relationship between the purpose of this Ordinance provision to any of the properties there. That, in and of itself, creates a hardship.

Chair Hoppock replied that since the neighborhood does not look like anything described in the purpose, that is a good point. He continued that he agrees.

Ms. Taylor made a motion to approve ZBA-2024-02, the request for a Variance to convert a legally non-conforming office use to a third apartment for property located at 19 Grove St., Tax Map #585-055-000, in the Residential Preservation District, per Section 3.2.5 of the Zoning Regulations. Mr. Weigle 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-2024-02 passed with a vote of 5-0.

G) <u>ZBA-2024-03:</u> Petitioner, Ryan Coyne of Sandri Realty, LLC of 400 Chapman St., Greenfield, MA, requests a Variance for property located at 345 Winchester St., Tax Map #111-027-000, is in the Commerce District, and owned by

Sandri Realty, LLC, of 400 Chapman St., Greenfield, MA. The Petitioner requests a Variance to permit the conversion of analog pricing signs to digital, electronically activated changeable copy sign per Article 10.3., Table 10-2 of the Zoning Regulations.

Chair Hoppock asked to hear from staff.

Mr. Hagan stated that this property at 345 Winchester St. is zoned Commerce and is on .6 acres. He continued that the current use is retail sales and a vehicle fueling station. The current store size is 1,980 square feet, and the canopy size is 352 square feet. The only Variance he could find in the file was from March 7, 2011, ZBA-11-08, for a mechanically operated sign. Currently the Petitioner is applying for an electronically operated sign. They have a Variance for the current, mechanically operated sign. Like any Variance, it stays with the property. The ZBA can do conditions that the Petitioner no longer use a mechanically operated sign, but by way of the future, he does not anticipate seeing many.

Ms. Taylor asked if her understanding is that this application is for a replacement, or an additional sign. Mr. Hagan replied that (an additional sign) is what the application was submitted for. He continued that there is no indication that the Petitioner will no longer ever use (the mechanically operated sign), but certainly the ZBA can ask to hear from the Petitioner and make a condition as they see fit.

Chair Hoppock asked if Mr. Coyne was here.

Mark Trumbull stated that he is here from Sandri Energy. He continued that they are doing a "Sunoco image upgrade" for the sign. They will have the same size signs as the ones in the photo and they will be static signs, not flickering.

Ms. Taylor asked if it will be a replacement or an additional sign. Mr. Trumbull replied that it will not be an additional sign. He continued that it will be the same sign as the one that is there, just reimaged to (what is shown in the image). Ms. Taylor replied that it sounds like they are replacing what is there. Mr. Trumbull replied yes.

Chair Hoppock asked Mr. Trumbull to speak to the criteria. Mr. Trumbull replied that what they (Sandri) want to do is, like the other (gas) stations, offer two different signs, one showing a discount on the price. They want to upgrade the sign with the purpose of drawing in more customers at the location.

Chair Hoppock stated that he sees in the application that part of the reason is their desire to use the current technology. Mr. Trumbull replied that is correct, with LEDs.

Chair Hoppock stated that they also want to reduce employee risk. Mr. Trumbull replied yes. Chair Hoppock asked Mr. Trumbull to talk about how it reduces employee risk. Mr. Trumbull replied that by showing the price differences on the signs, many customers do not understand that, but as far as the risk, there is not much at all. Chair Hoppock asked if there is danger in employees going out there and hand changing the signs. Mr. Trumbull replied no, because it will

be digital, and they can do it from inside the store. Chair Hoppock asked if it is correct that currently, they do not have that electronic benefit. Mr. Trumbull replied no, they use an old mechanical one. Chair Hoppock asked if it is correct that the new proposal would reduce that risk. Mr. Trumbull replied yes. He continued that the box was out back in the office.

Ms. Taylor asked Mr. Trumbull to clarify which portions of the sign will be changeable. She asked if it would be just the price. Mr. Trumbull replied yes, just the price. He continued that they would have a little box out back that changes it automatically to show the discount. One would be the regular price and right below it would be the discounted price.

Ms. Taylor asked if it is two-sided. Mr. Trumbull replied yes, just like the current one. Ms. Taylor asked if it is correct that they would change it as needed. She continued that for example, if the price and discount does not change for a week, they would not change the (sign). Mr. Trumbull replied that they only change it if there is a decrease or increase in the gas price.

Chair Hoppock referred to photos on page 60 of the agenda packet and asked if it is correct that none of these signs would block traffic, because they are up high. Mr. Trumbull replied that is correct. Chair Hoppock asked if the signs emit noise or odors. Mr. Trumbull replied not at all.

Ms. Taylor stated that the ZBA needs to consider the unnecessary hardship criterion. She continued that (the Petitioner) wrote *"not applicable,"* but the ZBA needs to be able to find that there is a hardship in order to approve a Variance as it is a requirement. Mr. Trumbull replied that Sandri wants to be like the other gas stations that already have LED signs showing the discounts. He continued that Sandri is not able to do that, and gas prices (do change), which they are unable to advertise.

Mr. Guyot asked if the Sunoco marketing standards require this type of change. Mr. Trumbull replied yes, they have to follow Sunoco's images. Mr. Guyot asked if not changing the image would result in hardship to Sandri's marketing. Mr. Trumbull replied yes, definitely.

Mr. Weigle asked if the current sign is backlit by fluorescents or some other method. Mr. Trumbull replied that the one presently there is just lit. He continued that it is mechanical, and old. Mr. Weigle asked if it was something the employees would have to go out and change if the bulbs (go out). Mr. Trumbull replied that they have to go outside in front of it to get it to change. Mr. Weigle asked if to sustain the illumination of the mechanical sign someone would have to go out there on a lift or ladder to physically change it. Mr. Trumbull replied it is mechanical and sometimes they have to go out underneath it. He continued that they used to be able to do it right inside the location, but the system is old, and mechanical and is not LED. Mr. Weigle asked if it is correct that the new one will provide reliability and eliminate the need for employees to get on ladders. Mr. Trumbull replied yes.

Ms. Taylor asked what it would mean for the business if the Variance was not granted. Mr. Trumbull replied that they would not be "up with Sunoco imaging." He continued that it would just be an older-looking station.

Mr. Clough asked if the brightness of the sign adjusts for nighttime versus daytime, and if it is programmed to do that. Mr. Trumbull replied that all it does is light up the numbers, like in the picture. He continued that LEDs are not very bright like the old style were.

Chair Hoppock asked if there are any other gas stations near this one on Winchester St. Mr. Trumbull replied no, most of them are on West St. He continued that almost all of them have LED (signs), with the discount and everything else, just like the (photo).

Chair Hoppock asked if Mr. Trumbull thinks the approval of this Variance would impact the values of any properties surrounding this property. Mr. Trumbull replied yes, he thinks so; it will look much nicer, more in form with the other stations. He continued that most definitely the lighting would. Chair Hoppock asked if the lighting would interfere with anyone else's use in the neighborhood. Mr. Trumbull replied no, not at all.

Ms. Taylor asked Mr. Hagan if the current sign meets the Zoning requirements. Mr. Hagan replied he cannot answer that, but he can say that if what the Petitioner proposes, the signs remain the same size as the existing ones, they would be allowed to be put back up there, even if it were a non-conforming sign. It is legally non-conforming, so if the business were to change out those cabinets, they would be able to do that without requiring another Variance, due to the legal non-conformity of it.

Chair Hoppock asked what he means by "cabinets." Mr. Hagan replied to the boxes on the sides, like where you see "24 hours" (in the photo). He continued that typically they are faced. He has not seen the application other than pictures. Typically, this is something they go over in the review process. They would look at the existing file and try to verify the size. If not, they would ask the applicant for the existing size, and allow the applicant to replace it with the same size. From what he understands, they will turn that (sign in the photo that says) "3.55" vertical and remain the same size. Chair Hoppock replied that is what the "after" picture appears to show. Mr. Hagan replied yes, they would be required to meet that, or come for another Variance if they could not. Currently, the way it is written and was proposed, and the staff's understanding, is that it will conform to what is already there, and the applicant would be able to do that under the Ordinance.

Mr. Guyot asked if this Variance is required. Mr. Hagan replied they are seeking a Variance because the Ordinance does not allow this type of signage. He continued that if the applicant wanted to put up another mechanical sign, which they have a Variance for, (they could). The current sign was not allowed because it was a mechanical sign. The term in the Ordinance is "animated," which can mean activated by wind, or electronically or mechanically activated. Currently, the Ordinance allows drive-up menu board signs to be electronically activated. That is the only exemption the Ordinance has for electronically activated signs. The fueling has not been brought up to that standard yet.

Chair Hoppock asked Mr. Trumbull how it would hurt the business if this Variance were not granted. Mr. Trumbull replied that the image would not be up to where it should be for Sunoco. He continued that it would tremendously impact the business's ability to offer discounts, because they could show the regular price (above) and (below, the discount you could get) if you have the

Sunoco app to get 10 cents off per gallon. It would be more competitive with the other locations, too.

Mr. Weigle stated that previously Mr. Trumbull mentioned the business had a reduction in the number of gallons (sold), compared to other local stations that have upgraded their signs. He asked if this trend of lower sales is likely to continue if the business does not upgrade its signs. Mr. Trumbull replied yes because they are not advertising their discounts at all. He continued that they just offer whatever Sunoco does on their signs, but showing the discounts on the signs is a big thing.

Chair Hoppock asked if it is fair to say that the public would benefit from the information Sandri is posting, knowing when the discount is available. Mr. Trumbull replied most definitely. He continued that it (the sign) would constantly show it. You always put up the big price when you have increases, when you are showing a discount down below, people look for that, especially when they are shopping. Just the sign alone is nice looking, too, which improves the property.

Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked if anyone from the public wanted to speak in opposition to or in favor of this application. Hearing none, he asked if the Board members have enough information in order to act on this. He continued that they would close the public hearing and move to deliberations.

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

Chair Hoppock stated that he does not think the application is contrary to the public interest, because first, it offers information the public is interested in knowing. He continued that second, the applicant spoke about reducing risk of injury to employees, in terms of having to repeatedly go out there to change the signs. He continued that that procedure would be eliminated.

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

Chair Hoppock stated that he does not see that there will be any risk to public health, safety, or welfare. He continued that the lights will not be bright, and there will be no noise or odor. It will not change the character of the neighborhood in that particular area because there is a lot of commerce there.

3. Granting the Variance would do substantial justice.

Chair Hoppock stated that the harm to the owner would be high and not outweighed by any corresponding public benefit [if the Variance were denied]. He continued that the public has the benefit of more information rather than less, especially when it is related to pricing information.

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

Chair Hoppock stated that from listening to the applicant and from the Board talking about it, he does not see anything in this application that would result in surrounding properties losing value over this sign application.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Chair Hoppock stated that the special condition of the property that distinguishes it from other properties is that this is a station that would be at a disadvantage if it were not allowed to do what every other gas station in the city is allowed to do. He continued that that is what makes this property different. If one property is going to be allowed to have these signs, then it ought to be even-handed and applied fairly. This is a special condition that distinguishes this property from other similar properties, and the application of the sign ordinance to the property would cause an unnecessary hardship for that reason. He thinks the test is met.

Mr. Guyot stated that he will add that he heard Sunoco has certain marketing standards that may not be met without changing the signs. He continued that depending on the relationship between Sandri and Sunoco, with their agreement, there could be additional hardship there.

Chair Hoppock replied that he is not sure that is a lawful hardship, but it does tie into the problem of competition and the dissimilarity between this property and other properties. He continued that (Ms. Taylor) once spoke of a case involving financial hardship; he thinks the Harrington case but cannot remember. There is a limited set of circumstances where you can consider financial hardship in a commonsense way, but for a zoning hardship to exist there has to be something special about the property that distinguishes it from others in the area, and the hardship is created when the Ordinance is applied. That is why he is trying to compare this to similarly situated gas stations, convenience stores, or both.

Ms. Taylor stated that financial impacts are a consideration. She continued that she thinks the standard is that it cannot be the *sole* consideration. Something else the ZBA has not yet discussed is the gas station's location. The way it presents itself to the public has changed greatly over the year or 18 months during (nearby) construction, and now there is the roundabout. One of the things that contributes to hardship is the visibility issue. Cars are looking at the property and its signs from a completely different angle from what they did when it was originally erected. That does contribute. In this application it is not any one thing; she thinks there are several factors that contribute to the hardship, one being its visibility and how the way the public can look at the property has changed over time.

Chair Hoppock stated that he agrees with that perspective.

Ms. Taylor made a motion to approve ZBA-2024-03 for property at 345 Winchester St., Tax Map #111-027-000, in the Commerce District, for a Variance to permit an electronically activated, changeable copy sign, which is otherwise not allowed per Article 10.3 Table 10-2 of the Zoning Regulations. Mr. Clough 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-2024-03 passed with a vote of 5-0.

H) <u>ZBA-2024-04:</u> Petitioner, ReVision Energy, Inc., of 7A Commercial Dr., Brentwood requests a Variance for property located at 521 Park Ave., Tax Map #227-027-000, is in the Conservation District and is owned by the City of Keene. The Petitioner requests a Variance to permit the installation of a large scale solar energy system on undeveloped land in the Conservation District per Article 7.3.5 of the Zoning Regulations.

I) <u>ZBA-2024-05:</u> Petitioner, ReVision Energy, Inc., of 7A Commercial Dr., Brentwood, requests a Variance for property located at 521 Park Ave., Tax Map #227-027-000, is in the Conservation District and is owned by the City of Keene. The Petitioner requests a Variance to permit the installation of a large scale solar energy system within the 50 ft setback required in the Conservation District and for large

scale solar energy systems in the Solar Energy System Ordinance per Article 7.3.5 & 16.2.3 of the Zoning Regulations.

Chair Hoppock stated that they will open ZBA-2024-04 and ZBA-2024-05 together, then vote on each separately. He asked to hear from staff.

Mr. Hagan stated that 521 Park Ave. is a 46-acre property in the Conservation Zone. He continued that it houses the Monadnock View Cemetery and its 4,800 square foot maintenance building, and the Monadnock View Community Garden with its 60 plots. The City put aside six additional plots for the Community Kitchen to grow its vegetables. He could not find any ZBA applications on file for this property.

Chair Hoppock asked to hear from the Petitioner.

Jason Reimers of BCM Environmental and Land Law stated that he represents ReVision Energy. He continued that with him tonight is Megan Ulin of ReVision Energy, and Tara Kessler of BCM, who helped prepare the application.

Mr. Reimers continued that they are seeking a use Variance and a dimensional Variance. The first is a Variance from Section 7.3.5 to permit the use of this property, and the second is for relief from the 50-foot setback. If the Variances are granted, they would need a Conditional Use Permit from the Planning Board as well. He notes that the City brought this property to Revisions attention for this use.

Megan Ulin stated that she is a Solar Project Developer with ReVision Energy, an employee-owned Certified B Corporation. She continued that they are guided by their mission and values of building a better world through solar power. They operate out of two offices in NH, in Brentwood and Enfield. They had the privilege of working with the City of Keene on two prior municipal projects, for the Wastewater Treatment Plant and the Public Works Department, as well as many small businesses and residents through their day-to-day work and Solarize Monadnock a few years ago. ReVision applauds the City for its goal of transitioning to 100% clean energy by 2030, and they are excited for opportunities for partnership, which has brought them here today.

Ms. Ulin continued that ReVision has an agreement with the City of Keene to explore development opportunities on an unused section of the Monadnock View Cemetery parcel. It would be a "large-scale solar energy system" under the (LDC). It is about 59,000 square feet or 1.3 acres, which is a small section of the overall parcel. The power would be used by the City of Keene or leased to benefit the Keene community through a community solar farm model. The project would be a fixed ground-mounted system with no moving parts. ReVision proposes screening as shown in the site plan to meet the guidelines for solar energy systems in the (LDC).

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

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

Mr. Reimers stated that for the use Variance, the first two criteria are related, and he will address them together. He continued that this project satisfies both, as it will not be contrary to the public interest, and it will observe the spirit of the Ordinance. As the NH Supreme Court has said, two ways of looking at this are whether it will alter the essential character of the locality or neighborhood, or whether it would threaten public health, safety, or welfare, and this Variance would do neither one. The array would be located on an unused part of the cemetery that has existing underground utilities that make this area unsuitable for burials. He spoke with Andy Bohannon, now Deputy City Manager, who was involved with identifying this property for solar use. He identified it as a good candidate for solar. A letter of intent is attached to one of the Variance applications that is signed by the City. It describes four properties in Keene that would be suitable for solar.

Mr. Reimers continued that the utilities that run through this part of the cemetery seem to include electricity, sewer, and water. They serve the facilities building for the cemetery and for the Recreation Department. Mr. Bohannon told him that when the nearby Parkwood Apartments were developed at the same time as the facilities building, it made sense to run the utilities through the field and over toward Parkwood. The site plan ReVision submitted shows the area where these utilities are that would essentially run through the middle of the solar field. He went out there a few times and he agrees that this is not one of the better-looking parts of the cemetery. It is close to the maintenance building, which has a lot of City trucks parked nearby, stacks of picnic tables waiting for summer, and a large pile of granite curbing waiting to be reused. It is not a scenic area. This area will never be used for burials, mainly because of the utilities, but also because it is not a desired part of the cemetery. Mr. Bohannon told him that it is less desirable from a burial standpoint because it is tucked away and not visible from the road.

Mr. Reimers continued that as Mr. Hagan said, part of this area is used as a community garden, shown on the site plan on page 87. You can see part of the community gardens to the north of the proposed solar area. He learned that even with the solar array being located here, there is still room for another row of community gardens. He does not think there is a plan for that now, but if they want to expand that in the future, the solar array would not prevent it.

Mr. Reimers asked if anyone needed clarification about anything on the site plan. Ms. Taylor asked how high the arrays are. Mr. Reimers replied 14 feet.

Mr. Reimers stated that the proposed area is ideal for solar. He continued that it is already cleared, perfectly flat, and between the utility building and the Parkwood Apartments' carports. You can see the carports on the plan, the three long buildings within 10 feet of the property line and is out of sight from most of the gravesites. On the Parkwood Apartments side, the solar array will be blocked by the carports, which are about 15- to 20-feet high with a pitched roof. In addition, right on the property line behind the carports is a row of existing mature trees about 35-feet tall. ReVision proposes putting the solar array up against the edge of the field.

Mr. Reimers continued that using this area for a solar system will not alter the essential character of the neighborhood. There are two ways to determine the existing character of a neighborhood. First, look at what is there and how it is being used. Second, look at the Zoning Ordinance and what *can* be used there. This field is a mixed-use area. Surrounding this field are the Parkwood

Apartments, Cedarcrest Center for children with disabilities, First Church of Keene, and the cemetery. The field itself is tucked away and largely hidden from view. For those reasons, adding solar to this mixed-use area will not alter the character of the neighborhood. He thinks adding a beneficial use and putting this land to its highest, best use for the community would complement the neighborhood.

Mr. Reimers continued that Section 7.3.5, which ReVision is seeking a Variance from, only allows three uses in the Conservation District: cemetery, conservation area, and telecommunications facilities. All three uses are passive in nature, and so is a solar array. This area not only will not be used for cemetery purposes, one of the three permitted uses, it also does not have the qualities of a conservation area, another of the permitted uses. "Conservation area" is defined in the Ordinance as *"an area of undeveloped open space that preserves and protects natural features, wildlife, and critical environmental features, as well as sites of historical or cultural significance and may include opportunities for passive recreation such as hiking trails and lookout structures and environmental education facilities."* This area does not have any of that as it is a flat field. He has been there twice and has never seen people on it. The Parkwood Apartment residents do not use it, because they are blocked by the carports; there might even be a fence in between.

Mr. Reimers continued that looking at the three allowed uses, this use will not displace either the cemetery use or conservation area use, because it is just not suitable for that, and this use is similar to the third allowed use, telecommunications facility. Because a telecommunications facility is allowed here, he would submit that a solar array is similar and would not alter the character of the neighborhood. This use will also not threaten public health, safety, or welfare; there will not be a danger to anyone. Solar panels do not make noticeable noise. They do not have glare. They are hidden from view by existing trees, carports, and a proposed fence and proposed vegetation screening. The ground below them will remain pervious. Rather than threatening public health, safety, or welfare, this system is a benefit to the public. The letter of intent signed by the City and ReVision discusses the City's renewable energy goals and the desirability of the system. Thus, the City Council has already declared this system to be, in their opinion, in the public good and not a threat to public health, safety, or welfare.

Mr. Reimers continued that for all those reasons, the applicant satisfies the first two Variance criteria.

3. Granting the Variance would do substantial justice.

Mr. Reimers stated that substantial justice is a balancing act, regarding the loss to the applicant and landowner if the Variance is denied versus the gain to the general public. He continued that denying the Variance will not result in any gain to the general public, and he thinks a denial would not benefit the public, because the public interest here is to help Keene reach its goal of 100% renewable energy by 2030. The public would lose out if this Variance were denied. Denial would also cause a loss for the landowner, which is the City of Keene, for a few reasons. This is a cemetery, but this portion is not suitable for cemetery uses and is not needed for community gardens, so a denial would deprive the City of the best use of this portion of the cemetery. It

would also make it more difficult for the City to reach its renewable energy goal. For those reasons, the substantial justice criterion would be satisfied by granting the Variance.

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

Mr. Reimers stated that this array will not diminish property values. He continued that the array will be screened from view from the Parkwood Apartments by the existing trees and carports. There will be minimal views to the north, northeast, and south sides, because they will install vegetative buffers. It will not have any impact on surrounding properties since it is a passive use. The surrounding properties being a mix of high-density residential, commercial, and institutional land lend to that conclusion. The Parkwood Apartments are in a High Density I Zone, and Cedarcrest and the Baptist church are in a Low Density Zone. Thus, more intensive uses are already happening all around. Given the passive nature of the proposed solar energy system and its limited impact on the adjacent mixed-use area, the value of surrounding properties will not be diminished by this 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

Mr. Reimers stated that this is a unique property with several special conditions. He continued that first, the property is in the Conservation District, which only allows three uses by right. Second, being part of a cemetery, it is special in that it is not suitable for cemetery use, due to the underground utilities, and it will never be used for burials. That makes it unique. It is also unsuitable for conservation area use, due to the lack of important natural or cultural features. It is not even very scenic. Third, this portion of the cemetery is unique because it is flat and clear of trees and vegetation, and already contains a vegetative buffer and carports that already screen the area. All that makes it a unique site that is distinguished from other properties in the surrounding area.

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. Reimers stated that if Section 7.3.5 of the Zoning Ordinance were strictly enforced, this land would be practically unusable, due to the limited uses allowed in the district and due to the special conditions of this portion of the parcel. Denying the Variance would not further the purposes of Section 7.3.5, which is to protect land areas that are *"identified as necessary to preserve as open space because of their critical or delicate environmental nature,"* by allowing for only certain passive uses. Because this portion of the property does not contain any of those attributes, there is not a fair and substantial relationship between the Ordinance limitation and the application of that limitation to this property.

and

ii. The proposed use is a reasonable one.

Mr. Reimers stated that (the proposed use is a reasonable one) for all the reasons he has stated – (the area is) flat, tucked away, and cannot be used for much else; and it (s use as a solar array) will help the City meet its goals. He continued that finding suitable areas is not easy. The City has identified this one. He has not seen anything that would make this use unreasonable.

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

Mr. Reimers stated that he does not think it is necessary to use this alternative unnecessary hardship test, because the applicant satisfies the primary test, but (he will say) that this area cannot be used without this Variance. He continued that (one could say) a telecommunications facility might come along, but that has not happened, and solar is a better use.

Mr. Reimers stated that he will move on to the dimensional Variance and try not to repeat himself, but many of the attributes of and limitations of the site are overlapping with the two Variances. The applicable setback here is 50 feet. That is the provision the applicant is seeking relief from. Two sections set forth this 50-foot setback, 16.2.3 and 7.3.2.

Mr. Reimers continued that ReVision proposes a perimeter fence around the entire solar field. It would be 15 feet from the boundary to the west, the Parkwood Apartments side; and 10 feet from the north property line with Cedarcrest. Along the Parkwood Apartments side, the first thing in the setback would be the six-foot tall fence, and on the north side with Cedarcrest, the first thing you would see would be the new vegetative screening, which would be in between the fence and Cedarcrest. The fence will go along around the entire solar field and the solar array itself would be 10 to 12 feet within the fence. According to his calculations, the array itself would be 25 to 27 feet from the west property line and 20 to 22 feet from the north property line.

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

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

Mr. Reimers stated that relaxing the setback would not be contrary to the public interest and it would observe the spirit of the Ordinance. He continued that the Parkwood carports are on the west side, within 10 feet of the line. A line of mature trees is between the carports and the fence. Those two screening elements will block the view from the apartments. There is no benefit to the apartments to place the array or the fence further from the carports or existing trees because the apartment residents do not use the field and he does not think they can even see it. Having the (array) closer to the property line, instead of the middle of the field, means getting more of the benefits of the screening of the tall trees and carports.

Mr. Reimers continued that on the Cedarcrest side, the view will be mostly blocked by vegetative screening and the fence. The general purpose of setbacks is to ensure an adequate buffer between structures and neighboring parcels to mitigate potential impacts such as noise and overcrowding, and to lessen visual impacts of the solar array. Enforcing this setback will not protect neighbors from noise, traffic, overcrowding, or visual impact, because it will be screened. Again, noise is not an issue. He has solar panels at his house, and they do not make any noise. Denying the Variance would not further the purposes of the setbacks.

Mr. Reimers continued that this Variance would not be contrary to the public interest because it will be screened, it is a passive land use, and it will not alter the charter of the neighborhood or threaten public health or safety to have the (array) closer to the property line.

3. Granting the Variance would do substantial justice.

Mr. Reimers stated that any loss to the individual that is not outweighed by a gain to the general public is an injustice. He continued that that would occur here if the Variance were denied. This part of the cemetery cannot be used for cemetery purposes, and the field is an ideal place for (solar). Granting the Variance will allow the property owner and the City to expand its renewable energy sources and use its property in the best way. The solar energy system cannot be located further north or northeast because of the existing community gardens. The question was asked whether that was possible, and the City did not want to, neither does ReVision. That is why it is pushed up closer to the property lines. Not allowing this in this location will cause injustice to both ReVision and the City, without any gain to the public.

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

Mr. Reimers stated that given the limited impact of the proposed solar energy system on the adjacent properties and its proximity to higher intensity residential, commercial, and institutional uses, granting the setback will not diminish the value of any surrounding properties. He continued that it will be fully screened both with the existing buffer and the proposed fence and vegetative buffers. For those reasons, the surrounding properties are well protected and insulated from this solar array.

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. Reimers stated that he has gone through the elements that make this a truly unique property in this mixed-use neighborhood. He continued that the City is considerably limited in how it can use this land, due to the use limitations of the district, the 50-foot setback, the existing underground utilities, and the existing community gardens. It (the array) cannot be moved further

away because the system has to be of a certain size to make it a worthwhile endeavor to justify the utility connection costs. If this array were forced to be within the 50-foot setbacks it would not work, given the other constraints on the property. Given the property's attributes and constraints, there is no fair and substantial relationship between the setback provision and applying it here.

and

ii. The proposed use is a reasonable one.

Mr. Reimers stated that the use is reasonable for a variety of reasons.

Mr. Weigle asked what the height is of the vegetative screening to the south. Ms. Ulin replied that she does not think they specified a height or which plantings. She continued that that would be determined during the site plan review stage. She expects the plantings would be at least six feet tall, mitigating most but not all the view of the panels.

Mr. Weigle stated that the panels are aimed southeast at 15-degree angles. He asked if that would cause glare or glint down toward the buildings to the southeast. He continued that the Parkwood Apartments are right next to it, but the panels are angled in the other direction. Ms. Ulin replied that the panels are coated with an anti-reflective surface, so glare is extremely minimal. Mr. Reimers stated that they have photos showing the existing line of trees, and you can sort of see the carports behind them.

Mr. Clough stated that he thinks the cemetery is southeast as well, so that is where the glare would be going. Mr. Reimers replied that there is no glare from the solar system he has at home. He continued that whatever that coating does, it works.

Chair Hoppock asked why the City is even here. Mr. Reimers asked if he means because the City is exempt from Zoning regulations. Chair Hoppock replied yes. Mr. Reimers replied that he does not know exactly, but what he understands – and he does not remember who told him this – is that the City prefers this be properly vetted through the Variance process. Until the City exercises its right of first refusal to own and control the array, it is Revisions project.

Ms. Taylor stated that she was going to ask whether ReVision was leasing it and then the City is buying it, because that would get them out of RSA 674:54 (Governmental Land Uses). Mr. Reimers replied that he can explain some of how it works if the ZBA wants. Ms. Taylor replied no, that is okay; she will leave it up to others in the City.

Ms. Taylor stated that she assumes they will need to have special power lines or something similar for this energy to be transmitted. She asked where those would be located.

Ms. Ulin replied that the current proposal is a three-phase extension coming in from Park Ave. behind the last row of headstones. She continued that it would be underground and connecting to utility infrastructure for the solar array. Ms. Taylor replied that she is a little concerned; within the boundary is a row of trees. Ms. Ulin replied that it would be between the row of trees and the gravesites. She continued that it is a tight location, but they have trenched there previously to

bring in a communications line. ReVision would obtain City Council approval to be within that proximity to the gravesites. That is one option. There has also been interest from the neighboring non-profit, Cedarcrest. If that interest is renewed it would be different. She cannot speak to the current level of interest. If the Variance is granted tonight that may be a possibility for Cedarcrest; they might be interested.

Ms. Taylor asked what the access will be for construction and maintenance if the Variance gets approved and this goes through the process and gets constructed. Ms. Ulin replied that the access would be through the existing cemetery road.

Ms. Taylor stated that she also was concerned about the reflections and hopes that anti-glare coating works. She continued that one more concern she has is the generality of ReVision saying they just want to be within the 50-foot setback. Usually, the ZBA's practice has been to say, "Not more than X feet to the setback." She asked if they would object, were the ZBA to approve this Variance, to the ZBA limiting it (to a certain distance). First, she should ask if a six-foot fence is considered a "structure."

Mr. Hagan replied not in accordance with zoning, but anything over six feet is considered a structure under the Building Code. Ms. Taylor asked if it is "six feet" or "over six feet." Mr. Hagan replied, "over six feet." Ms. Taylor replied that a six-foot fence, then, would not be considered a structure. Mr. Hagan replied not according to the Zoning Ordinance. Ms. Taylor replied that if the Building Code says it is a structure, it is a structure, so the ZBA needs to consider whether they are going to limit the distance. For example, to the west, "Not less than 25 feet from the western property line," and "not less than 20 feet from the northern property line" or something similar.

Mr. Hagan replied that as a follow-up to the question, fences are exempt from setback requirements. He continued that this information is in the LDC starting on page 1.4, continuing to page 1.5, as follows - Section 1.3 is "Rules of Measurement and Exceptions." Under that, 1.3.3 is "Setbacks and Build-To Dimensions." Under that is "A. Building Setback." Under that is "4. Structure Setback Exceptions," and under that is "a. the following may be excluded from required setbacks," and under that is "vi. Fences."

Ms. Taylor replied that that answers her question. Mr. Hagan replied that Building and Zoning are two different things, and the fence will be treated as a structure and will have to meet all the snow and wind load requirements, but for zoning, it is exempt.

Ms. Taylor stated that going back to her original question for the applicant, she wants to know if ReVision has any objection to the ZBA putting a number on the amount they can violate the setback. Because if the ZBA just says, "Sure, you can have a Variance to violate the 50-foot setback," ReVision could put it six inches from the setback.

Mr. Reimers replied that ReVision has no objection to (the ZBA putting a number on it), as long as they are all talking about what the right number is. He continued that he thinks ReVision is looking for "no closer than 25 feet" on the west/Parkwood side, for the edge of the array. On the north/Cedarcrest side, they want to be "no closer than 20 feet."

Chair Hoppock asked if it is correct that those are the only two sides in question. Mr. Reimer replied yes, it is much more than 50 feet from the Baptist church side, and it is completely screened.

Mr. Guyot stated that on the Cedarcrest side, 25 feet is a very short distance because of the angle of the lot lines. He continued that the lot line to Cedarcrest is not parallel with the fencing or the array. Thus, the violation of the 50-foot buffer seems to be only at that intersecting corner. He asked if he is reading that correctly. Mr. Reimer replied he thinks that is right; that is just the closest pinch point and then it veers away.

Mr. Weigle stated that they spoke about the construction access point. He asked if they could speak about the continuing maintenance, such as whether these will need to be replaced in a certain timeframe. Ms. Ulin replied that continuing maintenance is typically minimal for sites like this. She continued that ReVision would expect about two to four service visits per year for an annual inspection and verification. The panels are warrantied for 25 years, and they are typically expected to last upwards of 40 years. Some electrical equipment, like inverters, have a shorter life and would be replaced sometime within that timeframe. There will not be much disturbance to the site for maintenance, maybe one electrician's van.

Mr. Weigle stated that it appears they labeled the underground utility lines. He asked if the plan is to construct solar panels over that area, too, or if they are excluding that area because of having to dig supports for the 14-footers. Ms. Ulin replied that the area south of the last row of panels is excluded to allow for space from the screening, so the panels are not shaded. She continued that the route in the middle is excluded because of the underground utility lines that are there. They do not want to hit those with foundations.

Ms. Taylor asked how high these are off the ground. Ms. Ulin replied that the lower edge is three feet off the ground. She continued that they are fixed by ground screws that go into the ground and racking's are attached to that, so the lower edge is at three feet and the upper edge is no more than 14 feet. Ms. Taylor asked if they are just on poles, not on a slab or something else. Ms. Ulin replied that they are not on a slab; they are giant screws that go into the ground and then they affix the racking structure to those screws.

Ms. Taylor asked what happens to the ground underneath the arrays. Ms. Ulin replied that the ground screws cause minimal disturbance; there is only disturbance where they enter the ground. She continued that once the array's commercial lifespan is over it can be fully decommissioned. Everything can be removed from the site. Ms. Taylor replied that she is thinking about the maintenance, too, of the grass, weeds, and ponding. Ms. Ulin replied that they will not be changing the grade of the site, so there should not be any negative impacts resulting from the installation of the ground screws. ReVision maintains its sites, if it ends up being owned by ReVision, or if the City owns it, maintenance falls to the City, but typically just mowing within the site would take care of any maintenance.

Chair Hoppock asked what the Planning Board step is that Mr. Reimers mentioned at the beginning. Mr. Reimers replied a Conditional Use Permit would need to be obtained. He continued that Article 16 states, *"Unless located in the Industrial District, medium-scale or*

large-scale ground-mounted solar energy systems shall require a Conditional Use Permit by the Planning Board." He will note that this is technically a large-scale solar system, but it is on the lower end of "large." The Conditional Use Permit addresses height, setbacks, visual buffer, lot coverage, noise and glare, environmental issues, security, and landscaping.

Chair Hoppock asked if it is correct that they do not expect any landscaping issues with this site, which is flat. Mr. Reimer replied that is correct; the site could not be flatter.

Chair Hoppock asked if there were any further questions from the Board. Hearing none, he continued that he does not see anyone from the public, so they will close the public hearing and move to deliberations. They will begin with ZBA-2024-04.

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

Chair Hoppock stated that he agrees that granting the Variance would not be contrary to the public interest, for all the reasons Mr. Reimers explained, including, as expressed in the letter of intent and the public purpose for which it is trying to accomplish and in the "green manner" in which it is trying to accomplish it. The fact that the City Council has acted on this means something, in terms of public interest.

Ms. Taylor stated that she agrees that this type of solar array is of benefit to the City, so it is certainly in the public interest.

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

Ms. Taylor stated that she is a little concerned about it meeting the spirit of the Ordinance, although maybe someone could convince her that it does.

Chair Hoppock replied that there are three uses allowed in the Conservation District – cemetery, telecommunications, and conservation area. He continued that is a rather restrictive batch. This is an interesting alternate use for a piece of cemetery land that cannot be used for cemetery land. He never imagined that there was any cemetery land that could not be used for cemetery. Keeping in mind the limited availability for use here, and what the ZBA heard about it not being a danger to public health, safety, or welfare, the glare reduction, the lack of noise, the lack of pollution, the minimal maintenance, he believes all of that to be true. The height of the panels is low enough that you could be standing to the left of the carports and would not even know the solar panels were there if you did not know it in advance. There will be no glare, nothing to disturb anyone's quiet or to create a nuisance of any kind to the neighbors. One of the neighbors, Cedarcrest, seems to want to get involved with this in some fashion. Perhaps this would be a way for Cedarcrest to get energy; he does not know. It (the solar array) will not change/affect the character of the neighborhood. It is hard to describe a neighborhood that is mostly a cemetery and apartments, which are screened off anyway. He does not think it will be a danger of any kind and will not affect the spirit of the Ordinance.

Ms. Taylor stated that she thinks this is another case where the character of the neighborhood does not match the Zoning Ordinance and the permitted uses. She continued that they had seen that this evening more than once.

Chair Hoppock replied that it is not hard to figure out why the City zoned this as Conservation District. He continued that the cemetery has been there for more than 50 years. Thus, they zoned it as Conservation, and this piece was caught up in it, and there are only three allowed uses.

Mr. Guyot stated that regarding this meeting the spirit of the Ordinance, he got comfortable with that with the passive nature of this activity. He continued that he thinks the applicant mentioned it as well, trying to correlate solar with telecommunications facility, which is also rather passive, as are cemetery and conversation are passive.

Chair Hoppock replied that all those uses being passive, by definition, means you do not alter or disrupt the character of the neighborhood. Mr. Guyot replied that he agrees.

3. Granting the Variance would do substantial justice.

Chair Hoppock stated that as he sees it, the benefit to the public is the public stands to gain significantly from this project if it succeeds.

Ms. Taylor stated that in some ways, the owner and the public are one and the same.

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

Chair Hoppock stated that he does not see anything that gives the Board trouble with this criterion.

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:

Chair Hoppock stated that he agrees with the applicant's counsel that the limited nature of permitted uses in this area creates a special condition. He continued that going back to the passive nature of the use, this application of the Ordinance for this use does not make sense.

Ms. Taylor stated that the applicant's attorney made the point that denying the Variance would not further the purposes of the Ordinance. She continued that she thinks that is what she was concerned about earlier when she was talking about the spirit of the Ordinance, and she thinks it is true. There does not seem to be much relationship between the way that this property is zoned and what you can do with it.

Chair Hoppock stated that there is an aerial photo on page 75 of 147 (in the agenda packet). He continued that Mr. Reimers mentioned this would be on the lower side of (the definition of) large-scale solar array, but it is still a large piece of land that cannot be used for cemetery, and no one can/wants to use it for the other allowed uses. He continued that it does not make sense as conservation land because of what is underneath it. It makes sense to use it for something productive that is passive, quiet, and non-polluting.

Mr. Weigle made a motion to approve ZBA-2024-04, Petitioner ReVision Energy, Inc., of 7A Commercial Dr., Brentwood's request for a Variance for property located at 521 Park Ave., Tax Map #227-027-000, in the Conservation District, owned by the City of Keene. The Petitioner requests a Variance to permit the installation of a large-scale solar energy system on undeveloped land in the Conservation District per Article 7.3.5 of the Zoning Regulations. Ms. Taylor 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-2024-04 passed with a vote of 5-0.

Turning to ZBA-2024-05, Chair Hoppock asked if it is correct that on the west side, the array would be "no more than 25 feet from the boundary line," and on the north side, it is "no closer than 20 feet." He continued that they heard before that a fence is not a structure for purposes of

zoning. Mr. Hagan replied that again, the Ordinance clearly states that fences are exempt from setbacks.

Tara Kessler of BCM Environmental Planning and Land Law stated that it is the edge of the solar panel and not the array. She continued that the Ordinance defines "solar footprint" to include the perimeter fence around the array. She wants it to be clear that the measurement is from the setback to the edge of the solar panels, not the array itself, because the definition of "solar footprint" includes the fence around the array.

1. Granting the Variance would not be contrary to the public interest.
2. If the Variance were granted, the spirit of the Ordinance would be observed.

Chair Hoppock stated that much of the analysis of ZBA-2024-05 overlaps with the analysis of ZBA-2024-04, in terms of the public interest, because of the space they have available in this area.

Ms. Taylor replied that what they have to consider here is that at least on the west side is the existence of the buffer of the trees and carport on the adjacent property, and on the north side there will be, or possibly is, vegetation. She continued that that goes to whether it is in the public interest. By one token, if the ZBA approves the solar array as being in the public interest then they have to determine whether putting the solar array that close to the property line within the setback is in the public interest. She would say that because of the aspect of the surrounding properties, there will be no negative impact and it would be in the public interest.

Chair Hoppock added, because it supports the overall project, and he agrees with that. Putting the structures within that distance, 25 feet on the west side and 20 feet on the north side, does not create a public health, safety, or welfare issue or alter the essential character of the neighborhood.

3. Granting the Variance would do substantial justice.

Ms. Taylor stated that since the applicant and the property owner are one and the same, by the same token, the ZBA has to look at the general public. She continued that there will be a benefit to the general public as well as to the property owner.

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

Chair Hoppock stated that he does not see any property diminution issues here.

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:

Chair Hoppock stated that the special conditions here might be a little different (than with ZBA-2024-04), although he does not think they need to be. He continued that they have the buffers of the carports and trees, which justify further encroachment – not for further than 50 feet, not the 20 or 25 feet they are talking about. He believes those are special conditions of this property that distinguish it.

Ms. Taylor stated that usually when she is looking at a setback violation, she looks at whether there is any other reasonable location that would avoid an incursion into the setback, and she thinks they have heard a good deal of evidence that there is no practical way to site the solar array without going into the setback. She continued that she thinks that, in and of itself, creates a hardship.

Chair Hoppock made a motion to approve ZBA-2024-05, the request of Petitioner ReVision Energy, Inc., of 7A Commercial Dr., Brentwood, for a Variance for property located at 521 Park Ave., Tax Map #227-027-000, in the Conservation District, owned by the City of Keene. The Petitioner requests a Variance to permit the installation of a large-scale solar energy system within the 50-foot setback required in the Conservation District and for large-scale solar energy systems in the Solar Energy System Ordinance per Article 7.3.5 & 16.2.3 of the Zoning Regulations, on the following conditions: on the west side, the setback will be encroached no more than 25 feet from the edge of the solar panel, and on the north side no closer than 20 feet from the edge of the solar panel. Mr. Clough 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-2024-05 passed with a vote of 5-0.

II) Unfinished Business

Chair Hoppock asked if anyone objects to tabling the Rules of Procedure Updates and Fee Schedule Proposal for next time. Corinne Marcou, Zoning Clerk, replied that next month's agenda will have at least five applications and the meeting might be long. She continued that last month, Evan Clements, Planner, told the Board about how the Fee Schedule Proposal and the Rules of Procedure changes, specifically for notifying abutters, are part of a larger, overall Ordinance update that staff hopes to have collectively with the other regulatory boards as well.

Chair Hoppock replied that he thinks that means the ZBA should address this tonight.

Ms. Taylor stated that she did not have time to go line by line to see what had changed in the latest iteration (of the Rules of Procedure), but after last month's discussions, she thinks the ZBA is in agreement with all the language. They had a lengthy discussion on III.C regarding the Notice of Decisions, and there is revised language at the end of that section, which she is fine with. She asked if there are any other changes that the Board did not review last month. Ms. Marcou replied no, that was the only change. Ms. Taylor replied that she would be fine with voting to approve these changes.

Ms. Taylor made a motion to approve the changes to the Zoning Board of Adjustment's Rules of Procedure as presented. Mr. Guyot seconded the motion.

Chair Hoppock asked for discussion. Hearing none, he called for a vote. The motion passed unanimously.

Chair Hoppock asked if they need to address the fee changes. Mr. Hagan replied that (the $250) was included in the Rules of Procedure changes. Ms. Taylor asked if that was the only fee change. Ms. Marcou replied that as discussed with Mr. Clements last month, the other change was staff's proposal to move away from Certified Mail and move to Certificate of Mail, which will be a decrease based on USPS rates. The only fee change would be the fee for the application, from $100 to $250. Ms. Taylor asked if there are then no additional fees. Ms. Marcou replied that staff proposes keeping the legal notice fee of $62 as is. Chair Hoppock asked if that is because they expect to save money with this new Certificate of Mailing. Ms. Marcou

replied that in while researching the fee schedule, they learned of other municipalities' legal fees, which cover the basic information that the City of Keene, too, needs to provide to the public, which has kept more in line with the City of Keene's fee for the legal notice (in the Keene Sentinel), currently. Staff's changes, internally, have kept the fees relatively in line with what they charge currently.

Ms. Taylor replied that she recalls that the last time they looked at the fees, Ms. Marcou had revised the content of the legal advertising, which cut down on the bulk. Ms. Marcou replied yes, that is correct.

III) Communications and Miscellaneous

IV) Non-public Session (if required)

V) Adjournment

There being no further business, Chair Hoppock adjourned the meeting at 9:31 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk