

**City of Keene**  
**New Hampshire**

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

**Monday, May 6, 2024**

**6:30 PM**

**Council Chamber,  
City Hall**

**Members Present:**

Joseph Hoppock, Vice Chair  
Jane Taylor, Vice Chair  
Richard Clough  
Edward Guyot

**Staff Present:**

Corinne Marcou, Zoning Clerk  
Michael Hagan, Plans Examiner

**Members Not Present:**

David Weigle, Alternate

**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; and April 1, 2024**

Ms. Taylor made a motion to approve the meeting minutes of April 1, 2024. Mr. Guyot seconded the motion, which passed by unanimous vote.

**III) Unfinished Business**

Chair Hoppock asked if there was any unfinished business. Mr. Hagan replied no.

**IV) Hearings**

**A) Continued 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.**

Chair Hoppock asked if the Applicant wants to proceed with a four-member board. Ariane Ice replied yes.

Chair Hoppock asked to hear from staff, regarding the multiple applications for the same property.

Mr. Hagan stated that several applications are continued from last month, beginning with ZBA-2024-06, (a Variance) to allow multiple principal uses on one property. He continued that ZBA-2024-07 is to allow for a three-family where only a single-family is allowed in the Rural Zone, and ZBA-2024-08, a Variance for the scale house and accessory uses that go along with it. ZBA-2024-09 is for the agricultural retail store, and ZBA-2024-10 is for the accessory structure in the setback where 50 feet is required.

Mr. Hagan stated that this this property has a long, lengthy history with many decisions made by the ZBA. He continued that in 1974, this property was known as Palmer Lodge. On February 25, 1974, a request for a Special Exception for a multi-use campground was approved. He does not have a ZBA number for that. In 1979, it was a Hebrew Masonic Center and received a Variance on April 14, ZBA-79-38, for a church and conference center. In 1985, it became Whispering Pines and the Mountain Lodge, receiving a Special Exception on December 12, ZBA-84-52. In 1989, it received a Variance, ZBA-89-52, which altered some of the allowed uses on the property to include a hospital clinic, detoxification facility, and a lodging house. The property's most recent use, as of January 8, 1999, was the Otter Brook Community Center, which no Variances were needed for.

Mr. Hagan continued that the property is zoned Rural, sits on 24.38 acres, and has 14 buildings. The Applicants are seeking to make some alterations.

Ms. Taylor stated that the Applicants propose increasing the impervious surface and x`does not know what the proportion is in this Zone for this size property, asking if that is an issue. Mr. Hagan replied that he can look into it. He continued that at first glance, it does not seem to be an issue as they will be removing a lot of impervious coverage for trails, as well as three road loops, to reduce that. The Applicants have a lot of land to be able to cover the proposed use.

Chair Hoppock asked to hear from the Applicant.

Ariane Ice stated that she will have the engineering team give an overview of the property and how it all fits together, and then she will go through the Variance criteria.

Justin Daigneault from Granite Engineering stated that with him is Ariane Ice from Ice Legal, Jeff Merritt from Granite Engineering, Applicant Cody Gordon, and a couple representatives from Habitat for Humanity.

Mr. Daigneault stated that this project will revitalize the property at 21 Rt. 9. He continued that the ZBA members should have received three plan sheets. The second is an existing conditions survey of the subject property owned by G2 Holdings, LLC, referenced as Tax Map #215, and is

23.09 acres. When they submitted the application, there was a discrepancy, an issue with the town line. With the latest survey included in the package, it has a new area of 23.09 acres, with the client owning both pieces.

Ms. Taylor asked if the ZBA has all the information Mr. Daigneault is referring to. Mr. Hagan replied that it is on page 51 of 95 in the agenda packet.

Mr. Daigneault stated that on the first sheet, the one that shows the entire parcel in relationship to the other parcels, the property to the south is Granite Gorge. He continued that the Applicant owns the three abutting parcels. Lot 7 to the west, Tax Map #215-07, was permitted with a Special Exception for a gravel pit in August 2022. The Applicant is currently in the process of permitting an expansion of that pit that has its access further down on Rt. 9. As Mr. Hagan stated, the subject property was the Palmer Lodge in 1940. They referenced septic plans back to 1971. The site consisted of a main lodge, a couple of motels, a recreation building, and several cabins. The property was used as a Masonic Center in the late 1970's and was last used as a drug rehabilitation center and juvenile detention center. When the latter owned the property, they converted the existing lodge to office space. There will be a reference (in tonight's presentation) for that office space. The property has been vacant for nearly 20 years and has fallen into disrepair. The Applicant purchased the property in 2022.

Mr. Daigneault stated that the ZBA Site Plan sheet shows the Applicant's proposal, a change of use and revitalization of the property. The project would consist of renovating two buildings on the property and removing the rest. The first to be renovated would be the existing "office building," converted to an agricultural retail center. The retail center would consist of 32 parking spaces, an outdoor display area, and an outdoor material bay where people could come pick up loam, gravel, and other materials. All other onsite structures will be removed, including the majority of the parking area behind the proposed retail center, including the driveways. The intent is to clean up the property. The second building to be renovated is the one in the northwest portion of the site that was used as housing with 10 bedrooms with a common kitchen and bathrooms. The intent is to convert it into a three-unit, multi-family building. The purpose is primarily to serve the employees of the retail center or the adjacent gravel pit.

Mr. Daigneault continued that in the area of the existing commercial building, they will convert that and use the existing pavement with six parking spaces and a dumpster, to meet the City's parking requirements. This site has two entrances off Rt. 9 with the plan to utilize the existing entrances, which they will go to the NHDOT for regarding permits. The driveway on the left will be primarily used for the retail center and access to the multi-family building and the majority of the existing driveway will be reused. The driveway on the right will primarily be used by trucks checking in at the scale house with an at-grade scale so the Applicant can measure his materials and quantify everything he is selling at the agricultural retail center. He will be able to weigh there and then put his materials in the outdoor storage area, knowing exactly what quantity he is selling.

Mr. Daigneault stated that lastly, regarding the large, paved area that exists on the far right, the Applicant needs a Variance for outdoor storage within the setback. The Applicant currently has two storage containers used by Habitat for Humanity for storage of their equipment and furniture. That paved area is mainly in the setback, but the Applicant's intent is to place those storage containers on the parking area and give Habitat their own spot for storage.

Mr. Daigneault stated that in summary, the project will work in conjunction with the permitted gravel pit on the Applicant's lot next door with material generated from the pit to be sold at the retail center. He noted that the gravel pit has one access point. Customers looking to come in and pick up a couple yards of stone or loam have to use the same access as the gravel trucks, in the pit area. Having a designated spot on this (other) lot for (the customers coming for smaller quantities than the gravel trucks) will segregate it and make it safer. People would come in, stop at the retail store, and pay for their materials.

Mr. Daigneault continued that the Applicant needs the following Variances: multiple principal uses, multi-family, commercial use for the scale house, commercial use in the Rural Zone for the agricultural retail store, and accessory storage within the side setback.

Ms. Taylor stated that she did not understand there were supposed to be any retail sales at the gravel pit and was surprised by that. She continued that she was on the Board when that was presented, and retail was not a part of it.

Ms. Ice replied that the Applicant sees this as a separate project from the gravel pit. She continued that only a portion of one of the five Variances (before the Board tonight) is an accessory use to the gravel pit. The rest of them, including the agricultural retail store, are independent uses on this parcel. There is some connection because of what the Applicant is doing there, but it is a separate application and would stand alone. Ms. Taylor replied that she was just expressing her surprise to hear that there were retail transactions at the gravel pit, because that was not the ZBA's understanding when they awarded it, which is a separate issue.

Ms. Taylor asked what the Applicant plans for the internal movement on this site. She continued that with only one access point to the gravel pit, how the materials get from the gravel pit over to the storage areas.

Mr. Daigneault stated that on the site plan, the entrance to the left will be strictly for the agricultural retail center, and access for the people in the multi-family unit building. People would come in, go straight, and use the existing driveway, connecting into the existing parking lot. Ms. Taylor asked where people would go if they used that entrance to access the residential building. Mr. Daigneault indicated it on the plan and Ms. Marcou assisted with a laser pointer.

Ms. Taylor asked if the materials from the gravel pit will come in and out where it states, "proposed access to adjacent gravel pit." Mr. Daigneault replied yes, they will use that one exclusively to go through the scale house and get weighed, then go straight out onto Rt. 9 to

leave. Ms. Taylor asked if that would be one-way. Mr. Daigneault replied yes, and strictly for trucks and in addition, anything that would be stored in the outdoor material bays or brought down would be placed there using that same access. Customers coming to the retail center to purchase something inside the building or within the material bins will use the same entrance he just mentioned on the left. Thus, there is segregation between the retail center and the gravel operation.

Ms. Taylor stated that regarding the proposed outdoor storage, she drove by, and they look like movable boxes people can rent. She asked if it is correct that if they were to get a Variance for outdoor storage, they could replace those two trailers with other trailers on that site, owned by other people. Mr. Hagan replied that the City of Keene is currently working on a definition of these “mobile storage trailers” or “mobile storage boxes.” He continued that there are many different types. With this application, if the ZBA allowed the storage boxes in this location, the Applicant would need a permit as a permanent accessory structure and would need to comply with the requirements for that.

Mr. Hagan stated that (to answer Ms. Taylor’s earlier question), the impervious maximum is 20%. He continued that the application in the agenda packet identifies that they currently have 8.96% of impervious coverage and they propose 11.09%.

Ariane Ice stated that she will go through the Variance criteria for ZBA-2024-06, for a mix of commercial and residential primary uses on a single tract.

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

Ms. Ice stated that the first step in analyzing whether a Variance would be contrary to the public interest is to examine the Zoning Ordinance. She continued that the pathways to determine whether a Variance will violate a Zoning Ordinance or basic zoning objectives is to determine and examine whether the Variance would alter the essential character of the neighborhood and whether it would threaten the public health, safety, or welfare. Abutting this property is the 86-acre gravel pit operation to the west, owned and operated by G2 Holdings, who is the Applicant, and a 102-acre forested area owned by the same Applicant in Sullivan to the north.

Ms. Ice continued that this is a unique parcel as it is in Keene which abuts the towns of Sullivan and Roxbury. Directly across Rt. 9 to the south is Granite Gorge, which is in Roxbury and is a 141-acre ski area. Much of the area beyond these immediate neighbors is forested and undeveloped, but it also contains a smattering of single-family homes. As they will discuss in other applications, neither use is inconsistent with the essential character of the neighborhood. Given that the tract is now 12 times the minimum lot size for the Rural District, which is currently two acres, and that the distance between the proposed commercial site and the residential site is significantly more than the length of a football field, the fact that these are multiple uses on the tract will not be readily apparent.

She continued that additionally, this Variance would not threaten public health, safety, or welfare. Given the wide separation of the two uses, the allowance of these uses on a single tract would not present any additional public hazards. To the extent that this project contemplates the removal and renovation of derelict structures, it will improve the safety of the public in the area.

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

Ms. Ice stated that the Rural District is intended to provide areas of very low-density development, primarily of a residential or agricultural nature. She continued that the Rural District allows commercial and residential uses. The specific commercial and residential uses (proposed tonight) are very close to permitted uses. For the agricultural retail center, they are looking for a use that is an extension of a permitted use of greenhouse/nursery. Regarding the three-family dwelling, if the Applicant were applying under the conservation rules that allow for more conservation land and tighter density of housing, it would be allowed. They believe it meets the spirit of the Ordinance.

Ms. Ice continued that allowance of both uses will promote current goals of increasing the housing supply. For example, a current NH House Bill seeks, as one part of a multifaceted approach to resolve the housing shortage, to allow the use of new or rehabilitated housing units in a commercial zone. Here, the mixed use would be in a residential zone, but the effect would be to support the purposes of these recent changes in the Land Development Code (LDC), designed here to increase housing. That is obviously something the City has been looking at for a while. She understands the City might even be looking at moving the two-acre number downward. Thus, the Applicant feels that their application meets the spirit of the Ordinance.

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

Ms. Ice stated that the case of Malachy Glen Associates v. the Town of Chichester talked about how the only guiding rule for this substantial justice criterion is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. She continued that they look at whether the proposed development is consistent with the area's present use, and as discussed, both the proposed uses are consistent, not only with the permitted use but with the actual uses of the surrounding properties. Furthermore, both proposed uses are much closer to the permitted uses and the neighboring uses than the property's previous uses, such as a juvenile detention center. An independent dwelling for three families to live in, and an agricultural retail center fit nicely into the agricultural district.

Ms. Ice continued that in Harrington v. Town of Warner, the NH Supreme Court concluded that an applicant who sought to expand a manufactured housing park showed substantial justice would be done in granting the Variance because it would improve a dilapidated area of town and provide affordable housing in the area. Here, this project would renovate already existing dilapidated buildings for residential and commercial uses, thereby improving the overall tract by

removing the derelict structures. Additionally, residences on the same parcel as a commercial establishment would help increase the supply of affordable housing in the area.

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

Ms. Ice stated that the value of surrounding properties would not be diminished. She continued that the derelict structures on the property are an eyesore. Renovating and removing them would cause the values of surrounding properties to increase rather than decrease. All recreational and residential uses are sufficiently distant from the project property to be affected.

5. *Unnecessary Hardship*

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

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

Ms. Ice stated that the public purpose of the Ordinance, which is the separation of different uses for aesthetic and safety reasons, is met. She continued that that is the purpose of not having these multiple uses on one. Each of these uses involves the rehabilitation of the existing buildings; this makes it a unique property. Accordingly, the restriction applied to this property does not serve the public purpose in a fair and substantial way. The special conditions of the property cause the proposed use to be reasonable and the use does not alter the existing character of the neighborhood. The special condition is that this property is in a very rural area but has 14 structures on it.

Ms. Ice continued that it is appropriate to consider existing buildings as a special condition of a property, as was stated in the case *Harborside v. Parade Residence Hotel*, which cited *Farrar v. City of Keene*. That talked about a Variance sought to convert a large, historical, single use residence to a mixed use of two residences and an office space, and the size of the residence was relevant to determining whether the property was unique in its environment. Here, the existing buildings make the property different in a meaningful way from other properties in the area, and therefore, it is burdened more severely by the Zoning restriction. Denial of this Variance may restrict any feasible use of the building, resulting in further deterioration of the structures.

Ms. Ice continued that another special condition of the property is that it has always had some element of mixed residential and commercial use. They heard some of that from Mr. Hagan and Mr. Daigneault. The allowance of the Variance for the mixed use does not bring the property further out of conformance with Zoning standards. Instead, the overall project will bring the property closer to compliance with modern standards.

*and*

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

Ms. Ice stated that the proposed uses are reasonable, and very similar to the permitted uses. She continued that they meet the intent of the Ordinance and recent changes to encourage an increase in the housing supply. Here, the Applicant only needs to show that the proposed multiple uses are reasonable ones, and given the special conditions, they believe that as discussed above, the buildings make the use a reasonable one.

Chair Hoppock asked about the traffic, and the trucks hauling the gravel from the pit to this site. He asked how that will be regulated and how heavy they will be.

Cody Gordon, property owner, stated that the families who would be in the residence would have their own private road, so to speak, cutting up through the center of the property. He continued that they would not be impacted by the trucks going up on the truck road to the back of the pit. The residents in the house will be his employees, who will be at work during the day. You come off the driveway for the commercial end of things, go through the scale house and scale, drive up the hill, and go out into the gravel pit then you come down that way. That will mainly be for commercial vehicles, such as larger dump trucks and large landscape vehicles. All the homeowners (with smaller vehicles) would stay down at the bottom to not congest the road going up to the pit while bigger trucks are on it.

Chair Hoppock asked if the public will be able to get in and out of there on that road. Mr. Gordon replied yes. He continued that an approved, existing road goes up to his gravel pit. People are going up and down that. The commercial part will be (for) over a certain yardage or a certain size truck; they would be going back up into the pit versus staying down (below). The gravel pit expansion is separate from this.

Mr. Guyot asked if the access road to the existing pit would be abandoned and replaced by this new road. Mr. Gordon replied to no. He continued that he is not completely sure, but he would like to keep it for emergency access, because it is not ideal to have only one access up there. It would be safer to have two. The main access would be over the scale, for efficiency. When they (he and his employees) move product down, they lose ten to fifteen percent when they are loading it with a loader in the back of the truck and a person is taking it away, versus having someone pay by weight. With pay-by-weight, there are no complaints. Everyone, whether a homeowner or (commercial person) is getting the same amount, and he is being paid for what he sells. There would be the main entrance, and maybe his employees would use the other road. He would definitely keep both roads.

Mr. Guyot asked if that is the reason for having the scale on this property versus the current property with the gravel pit. Mr. Gordon replied that this would be set up better if he receives all these Variances, because the staff person in the scale house could come out and load the product



into a customer's pick-up truck, then go over to the scale house and scale a truck in. It would work better there where there is power and water, which the pit does not have.

Mr. Guyot asked if it is correct that it is to serve not only the commercial gravel traffic, but also the retail gravel traffic. Mr. Gordon replied yes.

Chair Hoppock asked if there were any further questions from the Board. Hearing none, he opened the public hearing and asked if there were any comments in opposition to the application. Hearing none, he asked if there were any comments in support.

Venkat Sadasivan of 28 Concord Hill Dr. stated that he is a board member and treasurer of the local Habitat for Humanity affiliate. He continued that the Habitat for Humanity board and volunteers all support this project. Habitat uses the two storage containers on this property, mainly to store building materials people donate to them. If Habitat can use the donations, they do, and if not, they sell them. Their long-term plan is to start a ReStore, which is for recycled and reused materials. Most successful Habitat chapters have a good ReStore operation. In two or three years, if everything works well, Habitat wants to start a ReStore operation and be successful in the Monadnock region. They build affordable workforce housing in the region. The board and volunteers strongly support Mr. Gordon and his team.

Ms. Taylor asked if the long-term plan is for the ReStore to be on this site or somewhere else. Mr. Sadasivan replied that they have had high-level discussions with Mr. Gordon, and he thinks Habitat's plan is to have something more permanent than a container. Ms. Taylor asked if it would be here at this site or somewhere else. Mr. Gordon replied to it would hopefully be here on the site's 20+ acres, but they have not figured out exactly where; maybe in Sullivan or Roxbury. Ms. Ice added that that is aspirational and not a part of tonight's application.

Chair Hoppock asked if there was any more public input. Hearing none, he asked if the Applicant had anything more to add. Ms. Ice replied to no. Chair Hoppock closed the public hearing and asked the Board to deliberate.

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

Chair Hoppock stated that this property has been sitting without any activity for over 20 years. He continued that he drives by it all the time and remembers when it was a juvenile detention center. The buildings are falling down, which this project seeks to correct. He thinks that is a huge public interest to consider. If those properties were located downtown, they would be occupied with who-knows-what, and he is surprised there is not trouble out there already. This is a chance to get rid of dilapidated properties and to restore the property, which is what the Applicant proposes to do.

Ms. Taylor stated that she respectfully disagrees. She continued that the property may have had many Variances and Special Exceptions in the past, but the ZBA has to take this as new. Her concern is the purpose of the Ordinance as written and as mentioned talks about low-density

development, predominantly residential or agricultural. She sees this as not being in the public interest because she does not think it will be any closer to what the purpose of this particular zoning district is, and she thinks it will not be advantageous to public health, safety, or welfare.

Chair Hoppock stated that in terms of altering the essential character of the neighborhood, it is to a degree serving a neighboring property owned by the same owner, but they have trucks going in and out of the gravel pit anyway. He continued that this project might shift that volume to the next property over, where the materials are weighed and transported out. The map shows that it has a separate exit onto Rt. 9. They did not hear anything about traffic, but he does not see anything that would really impact traffic in that area, because it is not usually congested in that area. Traffic is only heavy in the morning and at night at the end of the workday.

Chair Hoppock continued that he sees this as a public advantage, and not altering the essential character of the neighborhood, largely due to the size of the lot. Rounding up, it is 25 acres, spread out over a wide area. Given the size of the lot, he thinks they have done a very good job of making that separation. As the Applicant noted earlier, the other abutter is forested land to the north, and to the west is the gravel pit, and smattered around the area are various residential houses. A little further north on Rt. 9 are a few single-family homes, but they are too far away to be impacted by this. The gravel operation will be largely retail, from what he is hearing. An agricultural center is more like a garden store, selling loam and landscaping materials. He does not see that creating a heavy use on the property would impact quality of life in that area.

Ms. Taylor stated that she disagrees, because when they approved the Special Exception on the gravel pit, it was to be for commercial use. She continued that this is a tremendous expansion of use for commercial retail. It will be extremely visible. She is not saying what is there now is particularly beautiful, but it still, in her view, completely inconsistent with the intent of this Ordinance for this particular zoning district.

Mr. Guyot stated that he is in agreement with the Chair for the record, regarding the public benefit and public interest.

Mr. Clough stated that he is in general agreement with something that has the separation they are seeing here. He continued that he was on the Board also for the other Special Exception (regarding the gravel pit), and regarding the traffic, that is a 55 MPH zone. To the best of his knowledge, there is no extra spacing for passing people, if someone is pulling off. He does not know what the shoulder width is. He does not know if there were traffic studies about this. He remembers there were traffic studies regarding the gravel pit, about how many vehicles would be coming in. The ZBA agreed with that because it had a low number of vehicles. This could have high volumes at certain times, in a high-speed zone. He does not know what traffic-calming measures might be in place or could potentially be put in place for that element. That is his concern, broadly.

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

Chair Hoppock stated that this proposed use is not creating any additional uses beyond what is anticipated, residential and agricultural. He continued that regarding the gravel pit operation, he knows the weighing and scale house part of this is not particularly before the ZBA in this application. He regards that as an accessory use to the gravel pit next door. It serves a collateral purpose to that operation, and he does not think it impacts the agricultural or residential nature of the proposal for this application.

Chair Hoppock continued that there will be an expansion of housing with this project. With the size of the land, and those distances, there is no reason why there could not be even more in the future if this is successful for the Applicant. He does not expect to see a condo project out there, but it leaves room for (more housing). That seems to be what the Applicant suggests in some places (of the narrative) – “allowance of both uses will promote current goals of increasing the housing supply.” He agrees.

Chair Hoppock continued that he does not see alteration of the essential character of the neighborhood, for the reasons already explained. He does not see these operations presenting a danger in terms of public health, safety, or welfare. If the operations in the traffic study that Mr. Clough just mentioned on the gravel pit were carried over to this property, it would be impossible to see an increase. There is no more gravel going out of there than in the past, he does not imagine. He thinks the second criterion is satisfied.

Ms. Taylor stated that she again disagrees. She continued that a Special Exception is a use that is a permitted use as long as it meets certain criteria. A Variance is what a Variance does; it varies from the zoning; it needs to be justified by these criteria. She truly does not see how expanding a permitted commercial use to a use that will have retail, commercial, and residential is going to have the same results, in terms of traffic, visuals, or other aspects that the criteria contemplate. Three residential units far out of town will not solve the housing problem. It is a drop in the proverbial bucket.

Mr. Guyot stated that this will be onsite housing for employees of this facility, and presumably if they did not have onsite housing, they would have to find housing elsewhere. He continued that he agrees with Ms. Taylor that it is a small increment in solving a housing crisis, particularly workforce housing, but it at least is a step for workers on this property.

Chair Hoppock added that one could also consider what happens when you drop a pebble in a pond. He continued that they have had many cases with a few housing units here, a couple housing units there, and they add up eventually. He looks at this cumulatively.

Mr. Clough stated that this is an interesting split for him, because he completely supports the housing, and he thinks it makes perfect sense to put something like that in, but he is not sure about the commercial use. He continued that since those are both in this Variance, (he is unsure).

He could certainly vote for the housing element of this, but he is not sure about the commercial part.

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

Chair Hoppock stated that the gain to the public is that it provides housing; supplies an economic base for jobs, in connection with the agricultural retail center and the scale; and provides a place for a public service, which is an interesting twist in this project. He continued that he thinks the gain to the public is outweighed by any harm, if there is any, from the commercial side of this and he does not see harm from the commercial operation. The gain to the public is a gain, and the loss to the individual, if this project cannot go forward, is a piece of property that would be a loss to the public because it would sit there and look the way it has been looking for the past 20 years. He thinks there is a big benefit to having that corrected.

Ms. Taylor stated that she will not argue one way or the other on this particular criterion, but there is certainly nothing to prevent somebody, whether this owner or another owner, from going in and redeveloping that property that is more consistent with the Zoning.

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

Chair Hoppock stated that with this application, he does not think he has ever seen a shorter abutters' list. He continued that there are only five entities on the list, and the Applicant owns two of the properties around it, although that does not matter. The point the Applicant makes about cleaning up the property is important. That will improve the value of his own property as well as the surrounding ones. He does not think this criterion plays into the overall analysis very deeply, and if the Variance were granted, the values of the surrounding properties would not be diminished, from what he has seen.

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 as he sees it, the special conditions are the size of the lot; the number of buildings on it, which are "useless;" the separation between the two major proposed uses, residential and commercial scales, and agricultural retail center; and the roadway going in and out from the gravel pit. He thinks that does make the application of the Ordinance difficult for this property, such as there is no fair and substantial relationship existing between the purpose, which he believes the Applicant correctly identified is to maintain separation of different uses for

aesthetic and safety reasons. He does not see any safety reasons. If these operations are safely undertaken, there should be no problem in terms of public safety. The rehabilitation of the property and its separate uses, to his mind, indicate a public benefit that should be approved.

Ms. Taylor stated that she does not see the size as a special condition if you compare the size of this particular parcel with those around it. She continued that they are all fairly large. Except for the gravel pit, the other parcels are mostly undeveloped. Again, there is nothing that would prevent this from being developed more in conformance with the Zoning Ordinance. She also notes that both the Harborside case and the Farrar case concerned existing buildings. The Harborside Associates one was a sign case. If this was one or several massive buildings, she might think differently, but she does not feel in this case that the size creates a special condition, nor does she feel that the derelict condition of the buildings creates a special condition.

Mr. Guyot asked if the fact that it is a site with scattered buildings makes it unusual relative to the adjacent properties. He continued that that might create a hardship for this property. In that sense, it is unique. Chair Hoppock replied that that is a good point, but the Applicant is only saving two of the 14 buildings. He continued that most of them will be gone. Mr. Guyot replied yes, when the project is completed, but at the beginning of this application, it does create that unique aspect to the property, in his mind.

Ms. Taylor replied that her sense was that the intent is to demolish so many of the buildings that even if that were to be a special condition, removing the special condition is in the plan. She sees it from a different perspective.

Chair Hoppock stated that as he sees it, they will have a commercial and residential use on the property, keeping these two uses significantly separate from one another, and the parcel is large enough to allow that. He continued that perhaps Carroll Concrete in Swanzey is a good example of a similar situation. A big gravel pit operation is right by the high school and retail operations, on a much smaller land area. It works in harmony, as far as he can tell with the many times he drives by. That is what it will be like with this, with the agricultural retail store, which he does not believe will generate a lot of traffic. The space within the lot itself is large enough to keep (the uses) separate. To him, the ability to develop the property in a way that separates these uses is a special condition. As Ms. Taylor said, once you get to that point, those 12 other buildings are gone. They are preserving two buildings to make the scale house and the three-family residential dwelling in the northwest corner, which also has its own separate way to get in. The trucks will not go there but will go in and out on one road.

Mr. Guyot replied that he thinks the agricultural retail center is also a preserved building, so it would be three buildings. He continued that the scale house is being relocated. Chair Hoppock replied that his understanding is that the existing shed will be moved to where it says "relocated" on the plan. Mr. Guyot agreed.

Chair Hoppock stated that on the plan, he sees ample parking for all this activity. He continued that the special condition being the size of the lot that allows this kind of development is an important feature of it. It allows for safe distances between the uses.

Mr. Clough stated that he is not completely sure of the history, but he knew the O'Brien family who lived at this property in the interim. He continued that it was a family of four, and they did not know what to do with the property. The son would tell him about trying to do things like brush hog the property. He agrees that there is a special condition as it is very difficult to purpose all those existing buildings and it was too much for that family. It would need a major renovation of some sort. Many times, it is less expensive to take the buildings down, if they have no historical significance, because they are dangerous. The three buildings the Applicant is keeping are ones the O'Brien family utilized, so they were maintained a little more than the others. The outlying cabins and other buildings were too many for a four-person family.

Chair Hoppock replied that none of those outbuildings has been occupied for over 20 years. He continued that this seems to be a responsible management plan and project idea for the property, from his perspective.

Chair Hoppock asked if there were any more comments from the Board. Hearing none, he asked for a motion.

Ms. Taylor made a motion to approve ZBA-2024-06, Petitioner Ariane Ice of Ice Legal, who has requested a Variance for property located on 21 Rt. 9, Tax Map #218-008-000 in the Rural District, owned by G2 Holdings, 25 North St., Jaffrey, 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. Mr. Guyot seconded the motion.

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

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

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

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

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

*and*

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

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

The motion passed with a vote of 3-1. Ms. Taylor was opposed.

**B) Continued 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.**

Chair Hoppock introduced ZBA-2024-07 and asked if staff had anything further to add. Mr. Hagan replied to no.

Ms. Taylor stated that since there are multiple applications for this property, she would like it clarified for the record what this one is specifically for. Chair Hoppock replied to a Variance for a three-family residence. He asked to hear from Ms. Ice.

Ms. Ice stated that she has talked about the overall property, and it is in the application that this property is comprised of about 24.7 acres, abutting Rt. 9, located in the northeast corner of the city limits in the Rural District. G2 Holdings, LLC owns the parcels abutting and 2.5 sides of the triangular-shaped project property with one of those the site of the gravel pit. As already discussed tonight, this property used to be the Palmer Lodge, then a drug rehabilitation and juvenile detention center. Most recently, it was owned by a family who used multiple sites for housing.

Ms. Ice continued that this application is for renovation of the existing structure to be a three-family residence.

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

Ms. Ice stated that the Applicant does not believe it would be contrary to the public interest, because the requirement that it not be contrary to the public interest relates to the requirement

that the Variance be consistent with the spirit of the Ordinance. She continued that the two ways to determine whether a Variance will violate a Zoning Ordinance's basic zoning objectives are to examine whether the Variance would alter the essential character of the neighborhood and whether the Variance would threaten public health, safety, or welfare. She does not think the requirement is for the Variance to be advantageous to public health, safety, or welfare, just that it not threaten it.

Ms. Ice continued that they do not think the Variance would alter the essential character of the neighborhood as this parcel has an 86-acre gravel pit operation to its west and the Granite Gorge ski area is across to the south. Much of the area beyond is forested and undeveloped, with a smattering of single-family homes. This application is for one specific building on the property. The revised use of that building as a three-family dwelling would not be inconsistent with the surrounding uses like dwellings. It all falls within the character promoted by the Rural designation.

Ms. Ice continued that notably, the purpose of the recent change in the City of Keene from a five-acre to a two-acre minimum lot size in the Rural District is to encourage a greater density. The allowance of one three-family dwelling on a 24-acre tract will be consistent with that goal, yet it will maintain a far lower density than allowed if the property were subdivided. This property could be subdivided to 12 parcels, which could mean 12 dwellings.

Ms. Ice continued that the Variance does not threaten public health, safety, or welfare. To the extent that it contemplates removal and renovation of derelict structures, it will improve the safety of the public in that area.

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

Ms. Ice stated that if the Applicant can sufficiently demonstrate the spirit of the Ordinance is observed, this criterion should be approved. She continued that the Rural District is intended to provide areas of very low density. Three-family dwellings would be allowed in this District if they met the Conservation Residential Development (CRD) Subdivision regulations. For various reasons unique to what this property is, the Applicant does not think trying to do a CRD Subdivision is possible. However, it certainly meets the spirit of the CRD Subdivision regulation by allowing a three-family dwelling. The CRD Subdivision's purpose is to provide "*greater flexibility and creativity in the design of residential development... by allowing for clustering of dwelling units in a higher density.*" Here, the building to be renovated meets all the CRD frontage and setback requirements, and the limit of three dwellings per structure, which is in the Workforce Housing density incentive, Article 19.3.3. The tract is nearly 2.5 times the CRD minimum tract size and contains far more unused land than the open space requirements would demand. Under the CRD rules, the allowable density would be four times the dwelling units proposed here.



Ms. Ice continued that they feel that this proposed three-family unit very nearly meets all the residential requirements of Article 3.1.5. In essence, this waiver only seeks relief from the necessity for CRD Subdivision, where the proposed tract and building would otherwise meet all the fundamental CRD requirements. The three-family unit therefore meets the spirit of the Ordinance.

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

Ms. Ice stated that they think granting this Variance would do substantial justice. She continued that in the case of Harrington v. the Town of Warner, the applicant seeking to expand a manufactured housing park showed that substantial justice would be done in granting the Variance because it would improve a dilapidated area of town and provide affordable housing. Here, the project would renovate an already existing, dilapidated building for residential use and therefore increase housing in the area. It may not be a significant increase, but here they are balancing density issues with increased housing. This is an opportunity to, instead of creating new spaces, renovate an existing building to create a three-unit dwelling and remove the derelict structures.

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

Ms. Ice stated that the derelict structures are an eyesore. She continued that renovating the structures would cause the values to increase rather than decrease.

5. *Unnecessary Hardship*

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

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

Ms. Ice stated that the purpose of the Ordinance limiting the number of housing units in the Rural District is to encourage the building of housing while maintaining open space, and that purpose is met. She continued that the specific application of the Ordinance to this property, however, would not allow a three-family home without CRD Subdivision, even though it would meet or exceed the CRD requirements. The restriction applied to this property does not serve the public purpose in a fair and substantial way. They have talked about the special conditions of this property, and they do not alter the essential character of the neighborhood. One special condition is that it already has an existing building with a prior non-conforming use. It is appropriate to consider existing buildings as a special condition of the property. Here, the building makes the property different in a meaningful way from the other properties in the area and is therefore

burdened more severely by the Zoning restriction. The denial of this Variance may restrict any feasible use of this building, resulting in further deterioration of the site.

*and*

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

Ms. Ice stated that the proposed use is reasonable. She continued that it is very similar to permitted use, and it meets the intent of the Ordinance. Here, the Applicant merely needs to show that the proposed three-family residence is a reasonable use of the property, given the special conditions. They believe the existing building makes the use a reasonable one. Lastly, she will note that it *has* been used as a residence. They are just looking to expand it to a three-family dwelling.

Mr. Clough asked what the building's square footage is. Mr. Daigneault replied 3,174 square feet.

Chair Hoppock asked if there are fire suppression utilities in the area. Mr. Gordon replied that it already has it. He continued that the whole thing is sprinkled. Ms. Ice stated that it was used as a "commercial housing" site for many years and many purposes. He continued that the last family, whom Mr. Clough knew, was using the property in an odd way, as a single-family home. All other (owners) used it dormitory style.

Ms. Taylor stated that if she is reading the plan correctly, the road for the trucks that comes down from the gravel pit, and the road that comes up from Rt. 9 to go to the residential area, look to have "coexisted" at one point. She asked how those conflict points will be handled so that people going to the residential building will travel safely and the gravel trucks do not run into passenger vehicles. Mr. Daigneault replied that he thinks that could be handled with signage. Mr. Gordon added that the area where the two roads go together is wide and open, so vehicles are easily seen from either direction. He continued that once the other buildings are taken down, they will be able to regrade the slope a little to make it even more visible and make the road/driveway even wider so a vehicle going up and coming down can bypass it with no problem.

Ms. Ice stated that she will add that this project has to go through site plan review, and (the Planning Board) will be looking at issues such as traffic flow and many of these concerns that are raised. It will have to pass muster before it gets approved. Tonight, they should focus on the zoning criteria. If the ZBA approves this, the application will go to (the Planning Board), who will be looking carefully at safety issues such as traffic flow.

Chair Hoppock asked if being an employee of (Mr. Gordon's) business will be a requirement for living here. Mr. Gordon replied that he does not exactly know. He continued that he has 40 employees, and everyone needs housing. Ms. Ice replied that it would be safe to say that employees might get priority for housing, but it would not be a mandate.

Chair Hoppock asked if the Board had further comments. Hearing none, he asked for public comment in opposition to or in support of the application. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Ms. Taylor stated that with this application, she believes that granting the Variance would be in the public interest and that it does meet the spirit of the Ordinance, in large part for the reasons given. She continued that it is residential, which is a permitted use, and although she is not very familiar with the CRD requirements, it certainly has adequate space and meets a community need. She thinks it meets the first two criteria.

Chair Hoppock stated that he agrees with Ms. Taylor's comments.

Mr. Guyot stated that he agrees. He asked if the CRD is part of what the ZBA is voting on. Chair Hoppock replied no, they are only voting on the five criteria. Mr. Guyot asked if it is correct that the CRD is not a factor in this vote, just adjunct material. Chair Hoppock replied that it is not a factor in this vote. He thinks it is just a point the Applicant is making to show that under certain circumstances, the application would satisfy the spirit of the Ordinance.

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

Chair Hoppock stated that although this is only three residential units, he believes in the cumulative effect of housing units, and this benefits the public by adding to the housing stock. He continued that it may not be a huge jump in the numbers, but it is a step in that direction, and they add up. He believes the gain to the public is high, and the loss to the individual would be greater if denied. He does not see why this could not be approved, in terms of doing substantial justice. He agrees with the Applicant that the proposed use is much closer to the permitted uses and neighboring uses than the previous uses. They cited a detention center. He would rather have housing than a detention center.

Ms. Taylor stated that in terms of the scales of public benefit versus the owner benefit, she thinks in this case it is "pretty much a wash." She continued that she thinks the approval of three housing units in this location benefits the public, and it benefits the property owner. Perhaps it tips a little more in the direction of public benefit, because if the Applicant could not renovate this building as a three-family structure, it still could be used. Other portions of the property could still be used. She thinks it is overwhelmingly a public benefit in this case.

Chair Hoppock stated that the other piece is the cleanup of the property. He continued that it will be a much safer property with the dilapidated buildings removed.

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

Chair Hoppock stated that he does not see how approving this application would affect the surrounding properties at all. He continued that he does not think the fourth criterion is a problem as this project will not diminish property values; it will improve them when the property is improved.

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 conditions of the property that they discussed earlier justify the approval of this application as well. He continued that you could have a single-family residence here, but not a three-family residence, and the way this property is constructed, it seems to him that it is like a single-family residence patched together in one larger building. It appears to meet the CRD Subdivision requirements, which is just an illustration of the point that it is within the spirit of the Ordinance.

Ms. Taylor stated that she agrees. She continued that she thinks the salient point is there does not appear to be any fair or substantial relationship between the purpose of the Ordinance, which is a rural area with some residential use, and application of that provision to this property, because it is residential, and 24 acres certainly should be adequate to support three housing units. Chair Hoppock replied that he agrees and sees other ZBA members nodding.

Mr. Guyot made a motion to ZBA-2024-07, for property located at 21 Rt. 9, to address Article 3.1.5 to permit to renovate a three-family residence on this property. Mr. Clough seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

*and*

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

Met with a vote of 4-0.

The motion passed with a vote of 4-0.

Chair Hoppock stated that next on the agenda is ZBA-2024-08, 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.

Ms. Ice asked if it would make sense to address ZBA-2024-09 first, Variance for the agricultural retail store, since part of the scale house in ZBA-2024-08 is an accessory use to that building. Chair Hoppock agreed and stated that if there are no objections from the Board, they will address ZBA-2024-09 first.

**C) Continued 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.**

Chair Hoppock introduced ZBA-2024-09 and asked if staff had anything further to add regarding this application. Mr. Hagan replied to no. Chair Hoppock asked to hear from the Applicant.

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

Ms. Ice stated that the Variance would not be contrary to the public interest because the use of this property as an agricultural retail center would not be inconsistent with the surrounding

developed uses, which are commercial in character. She continued that this is particularly true regarding the sale of gravel pit products, which is currently a use of an abutting property. Thus, the Variance would not alter the essential character of the neighborhood. Additionally, this Variance would not threaten the public health, safety, or welfare. A retail establishment would not present any additional public hazards. To the extent it proposes to remove and renovate derelict structures, it will improve the safety of the public in that area.

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

Ms. Ice stated that Article 3.1.5 does not discourage commercial uses in this district. Rather, it allows more than any other residential district. It specifically encourages commercial uses that are consistent with a rural, agricultural environment. You see community gardens and farming in the permitted open space uses. More importantly, the permitted commercial uses, such as animal care facilities, kennels, and nurseries, are those that provide services and products residents in the rural district need. This proposed agricultural retail store, which would sell hardscaping tools and supplies, animal products, and be similar to “Agway with some hardscaping,” is exactly the type of commercial use contemplated by the Ordinance. This use will become even more important since the provision of these products, such as hardscape materials, will support the additional development encouraged by the recent move from the five- to two-acre minimum lot sizes in this district.

Ms. Ice continued that additionally, the proposed use includes, in large part, uses already permitted. For example, the agricultural retail store will include the operations of a greenhouse nursery, a permitted use defined as, “[a]n establishment where flowers, shrubbery, vegetables, trees, and other horticulture and floricultural products are propagated and sold and may include the sale of items directly to their care and maintenance.” The proposed operations that are beyond the most basic greenhouse/nursery business, such as selling the hardscaping tools and supplies and the animal care products, are still very similar to those of a greenhouse/nursery. They would attract the same or a similar customer base. Moreover, the sale of hardscaping supplies, such as gravel and crushed stone products, is the same as the permitted use with Special Exception in the Rural Zone of a gravel pit.

Ms. Ice continued that they feel very strongly that the spirit of the Ordinance is observed.

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

Ms. Ice stated that here, the proposed project would renovate the ramshackle main building for use as retail space and remove derelict structures around the property, which would do substantial justice.

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

Ms. Ice stated that if the Variance were granted, the values of surrounding properties would not be diminished, because the derelict structures are an eyesore. She continued that renovating them would cause the values to go up.

5. *Unnecessary Hardship*

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

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

Ms. Ice stated that the public purpose of the Ordinance, to encourage rural or agriculturally related businesses, would be met. She continued that the specific application of the Ordinance to this property, however, would not allow an agricultural retail store, even though it has many of the same elements as a permitted use (greenhouse/nursery). Accordingly, the restriction applied to this property does not serve the public purpose in a fair and substantial way. Here, the existing buildings make the property different in a meaningful way from the other properties in the area, and it is therefore burdened more severely by the Zoning restriction.

Ms. Ice continued that another special condition is its proximity to the Applicant's abutting gravel pit. This facilitates the delivery of gravel pit products to a location accessible to retail buyers, a fact that distinguishes it from commercially zoned properties that are far from the gravel pit.

*and*

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

Ms. Ice stated that the existing building in proximity to the Applicant's gravel pit makes the use reasonable.

Ms. Ice stated that in summary, the Applicant thinks it is a very similar use to what is already permitted in this Rural District. She continued that in fact, some of it already will be selling things that are related to nurseries or greenhouses, and the rest of the uses are very similar, not only in the customers who will use them, but in the way, customers would come and access them. An example is the hardscaping bays, which you will see in any nursery or Agway.

Ms. Taylor asked for clarification regarding the comparison to the greenhouse/nursery. She asked if this agricultural retail store will be selling that type of supply. Ms. Ice replied yes, one of the items G2 Holdings has identified it wants to sell in addition to hardscape and animal care products is plants. He continued that Mr. Gordon envisions a large area where greenhouse-grown plants would be sold.

Mr. Gordon stated that part of his whole thinking with the store is that G2 Holdings makes the products and thus wants to sell the products down at a closer location that is more visible for the public. He continued that in turn, it makes it easier and safer than having people going up to the gravel pit (as they) currently (do). If someone shows up in a pick-up truck and wants half a yard of stone, trying to load it with his big loader is hard. Whereas at the agricultural retail store, it would make more sense. At the store, he wants to sell stone products, mulches, hardscape-type products. He continued that the back has an old pool, which he wants to clean out and turn into a fishpond and hardscape the back of it so people can walk around to see different types of stone products on the ground. Behind that, up on the hill, would be a nursery with native plant species, where people can come in and buy them. He would put up a greenhouse and sell starter plants and similar items. In the store would be rakes, shovels, grass, fertilizers, grain, hay, and similar products. He wants the products he brings in to be USA-made. That is his game plan.

Chair Hoppock stated that he has a question about a comment made under the second criterion. He continued that they are suggesting that this additional development would be encouraged by the recent move from five- to two-acre minimum lot sizes in rural districts. He asked if that is correct. Ms. Ice replied that she was saying the agricultural retail store would service all those new homes and families moving in. She continued that the permitted uses in agriculture in the Rural District that are commercial tend to be businesses that are of added value to the community that is living right there, such as kennels and nurseries. This would certainly be an added value to all the new homes that will be built there and the new residents who will be living there as the density is increased in this district. That was the point they were trying to make.

Chair Hoppock asked for further questions from the Board. Hearing none, he asked for public comment in opposition to or support of the application. Hearing none, he closed the public hearing and asked the Board to deliberate.

Ms. Taylor stated that she is struggling a bit with the analogy to greenhouse/nursery. She continued that it appears to her, from everything they have heard on this and other applications, that the primary use will be commercial and retail sale of products produced by the gravel pit. She is struggling a bit because, it is on a separate lot, it cannot be an accessory use, it needs to be an independent use. Again, back to earlier discussions, she still has a concern with the scale of commercial and retail sale of products from the gravel pit and its impact in this zoning district.

Chair Hoppock stated that perhaps he is misinterpreting what the Applicants are saying, but they are just suggesting that greenhouses and nurseries are permitted commercial uses in a rural zone, which is true. He thinks that is the only point they were trying to make on that section of the application. The other concern is the degree of traffic, with customer activity. He asked if that is a correct understanding of Ms. Taylor's comments.

Ms. Taylor replied yes, the scale of the operation is a concern, but her understanding was that the similarity was to the greenhouse/nursery use and that there would be some of that with this particular use. Chair Hoppock replied that it sounds like there will be. Ms. Taylor replied that she



thinks the primary use of what has been presented will be the sale of hardscaping materials and supplies.

Mr. Guyot stated that the sale of the hardscaping materials supplied by the pit already exists. He continued that is how he sees it; this is just shifting to add a retail component versus a commercial component. Ms. Taylor replied that going back to earlier comments, there was not supposed to be any retail with the gravel pit operation when the ZBA approved the Special Exception. She continued that accessory use has to be on the same lot. Thus, this has to be a use that stands on its own merits, because it cannot be accessory to the pit itself, according to the legal terminology in the Code. Mr. Guyot replied that he understands that, but he is looking at it as an expansion to a retail level with this outlet, for this application. The scale brings in another factor, but they are not discussing that one just yet. He is looking at this as adding retail sales of hardscape materials, which are produced by the pit and delivered here as a separate step.

Chair Hoppock stated that he does not see that as an accessory use of the pit, because it is being brought in separately, as Mr. Guyot says. He continued that it is an approved use now, by virtue of the ZBA-2024-06 application. Ms. Taylor replied that what she is getting at is not just retail, but the actual commercial use expansion is of concern. She has a hard time with all the commercial use expansion that will involve the store and the scale that will be an accessory use to that store. It is hard for her to make an analogy to the greenhouse/nursery.

Mr. Guyot replied that he sees her point. He continued that as a counterpoint, he thinks the expansion of the commercial activity on this site, from the pit, in his mind is attached to the scale and the scale house, which the ZBA will discuss next. He is bifurcating that aspect of it.

Chair Hoppock replied that if you look at it in a sense that the scale and scale house's purpose would be for weighing the materials leaving that operation, he is right. He continued that the question there becomes whether it is accessory to the agricultural retail store or accessory to the gravel pit. That is a good question, and he does not know the answer. However, he thinks the similarity to a greenhouse or nursery does suggest that it meets the spirit of the Ordinance. Article 3.1.5 clearly permits greenhouse/nursery use. He does not disagree with the Applicant's comments that substantial justice is done, because it is a rural-oriented, commercial, and open space use. It is not going to interfere with the use of the properties in the surrounding areas and will not diminish the surrounding properties' values.

Chair Hoppock continued that the Applicant makes the point that the specific application of the Ordinance to the property would not allow an agricultural retail store even though it has many of the same elements as the permitted greenhouse/nursery. He knows the counter argument to that is the (hardscaping) that will be sold, and maybe that is a distinction with a difference. In the application of the rule to this property, he does not think its purpose is achieved in a fair and substantial way. He agrees with the Applicant's assessment.

Ms. Taylor stated that she is still thinking through his point, but she disagrees with the Applicant's statement that its proximity to the gravel pit creates a special condition. She continued that if it were a separate use it could exist, potentially, without it being in proximity to the gravel pit; that is just a bonus or a convenience.

Chair Hoppock replied that (the materials) could be shipped in from anywhere. Ms. Taylor replied that is right. Mr. Guyot stated that he agrees with that observation. Ms. Taylor stated that she has one more minor point, for the record, regarding the statement that a special condition of the property is that it has a commercial building with a prior non-conforming use. That prior use was by Variance, which is distinguishable from a non-conforming use. Chair Hoppock replied that he is not sure which Variance that is on the long list of ones Mr. Hagan gave them earlier, but it probably does not matter for their purposes now.

Chair Hoppock stated that he is still of the view that one of the special conditions of this property that allows this kind of development on it is its size. He continued that he knows that in relation to surrounding properties, the gravel pit is not as big as the forested area, which is undeveloped. This is very developed, in fact dilapidated and that is another special condition of the property to clean up. Hearing from the Applicant that it will be similar to an Agway, to him suggests a rural, commercial use, even if they are selling hardscape or gravel. He goes back to the Carroll Concrete example he talked about earlier; it is not an inconsistent use in that area. Ms. Taylor replied that they do not know what that zoning was or when it was approved, so it may have been different circumstances. Chair Hoppock replied that is true; he does not know what the zoning is in Swanzey. However, he looks at the area as it is developed, and it is not an issue for that area, that he can see and that area is far more developed than this area of Rt. 9.

Chair Hoppock stated that he thinks they have covered the criteria. He asked for a motion.

Mr. Clough made a motion to approve ZBA-2024-09, a Variance on a property located at 21 Rt. 9, Tax Map #218-008-000 in the Rural District, to permit the renovation of an existing structure to be an agricultural retail store per Article 3.1.5 of the Zoning Regulations. Mr. Guyot seconded the motion.

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

Met with a vote of 4-0.

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

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

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

*and*

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

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

The motion passed with a vote of 3-1. Ms. Taylor was opposed.

**D) Continued 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.**

Chair Hoppock introduced ZBA-2024-08 and asked if staff had any further information to share. Mr. Hagan replied to no. Chair Hoppock asked to hear from the Applicant.

Ms. Ice stated that in this application, they are looking at not whether commercial use should be allowed on this parcel that is zoned for residential, because the ZBA has already approved that tonight. She continued that it is more like the application they just approved; they need to look at whether this specific use of the scale house meets the criteria for a Variance. The relief they are seeking under Article 3.1.5 would consist of permitting this commercial use of a scale house and scale. The proposal consists of installing a truck scale as well as renovating and relocating an 874 square foot existing building to serve as the scale house. The scale and the scale house would be used to weigh sand, gravel, and crushed stone to customers of the agricultural retail store, which has already been approved. It would also be used to weigh the products of the abutting gravel pit.

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

Ms. Ice stated that the Applicant does not feel that it would be contrary to the public interest in this instance. She continued that much of the area beyond the immediate neighbors, which include the Granite Gorge ski area, the gravel pit, and some forested area owned by the Applicant, is forested and undeveloped, containing a smattering of single-family homes. The proposed weigh station would consist of an existing building and an in-ground scale that is flush with the road and therefore not readily visible from neighboring areas. The Variance therefore would present very little change to the aesthetics of the site, and as such would not alter the essential character of the neighborhood. Moreover, to the extent that the character of the immediate neighborhood is influenced by the existing gravel pit operation next door, a weigh station is standard for many gravel pits and would not alter the character of the surroundings. It would not threaten public health, safety, or welfare, given the wide separation between the types of uses. The allowance of the use of a single tract would not present any additional public hazards. To the extent that the overall proposed project contemplates the removal and renovation of derelict structures, it will improve the safety in the area.

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

Ms. Ice stated that the specific proposed use here is both an accessory to the commercial use of the agricultural retail store and an extension of the permitted open space use of the gravel pit next door. She continued that the weigh station meets the accessory use criteria of the Code because with respect to the agricultural retail store, the proposed use is incidental; subordinate in area, extent, and purpose; located on the same site; and does not preexist the principal use. The weigh station would not create a public or private nuisance.

Ms. Ice continued that to the extent that the gravel pit next door would also use the weigh station, the spirit of the Ordinance would be observed, since the Rural District permits gravel pit operations with Special Exception. Since a weigh station is clearly incidental and customarily found in connection with the principal use of a gravel pit, it should meet the criteria of an accessory use of the existing gravel pit, except for the same site requirement correctly pointed out by Ms. Taylor. They (the Applicant) are not saying it is an accessory use to the gravel pit, because it would not meet the accessory use requirement to be located on the same site. However, they feel it meets the spirit of the Ordinance, because other than having the parcel lines drawn so the gravel pit is “here” and this (subject property) is “here,” the same site requirements would be met. The importance of the same site requirement here is highly attenuated, given that the abutting gravel pit and the subject property have the same owner and may be treated as though they have been merged.

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

Ms. Ice stated that granting the Variance would do substantial justice because this would renovate an existing dilapidated building to use as the scale house.

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

Ms. Ice stated that renovating the structures would cause the surrounding properties' values to go up. She continued that all recreational and residential uses in the general area are sufficiently distant from the subject property to be unaffected. The scale itself will have no effect on the values of surrounding properties, since it will be flush with the road and will present virtually no change to the neighborhood aesthetic, nor would the weigh station change the existing level of truck traffic to the gravel pit.

5. *Unnecessary Hardship*

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

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

Ms. Ice stated that a special condition is that it has a deteriorating existing building with a prior non-conforming use. She continued that it is appropriate to consider existing buildings as a special condition. Here, the existing building makes the property different from other properties in the area and it is therefore burdened more severely by the restriction. Denial of the Variance may restrict any feasible use of the building, resulting in further deterioration of the structure on the site.

*and*

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

Ms. Ice stated that the Applicant needs to show that the proposed use is reasonable, given the special conditions. She continued that as discussed; the existing building makes the use a reasonable one. Additionally, the weigh station is a reasonable accessory use for the agricultural retail store and would be for the gravel pit, aside from the "same parcel" requirement.

Ms. Taylor asked how they will schedule use of the scale between commercial use and retail use. Mr. Gordon replied that regarding coordinating from this (subject property) to the gravel pit, this (weigh station) has a certain number of bunks with 20 yards each bunk, which one truck can hold. If someone comes, for example, and buys three quarter stone and some loam, and those piles run out in a morning, you can go with two trucks and fill them back up again. That is that and you do not necessarily need to touch it right now. Then, normal commercial trucks can run over during the day, and fill up when that shuts down for the day, or whenever.

Ms. Taylor asked how it works when a retail customer comes in. She continued that Mr. Gordon knows a certain area holds X amount of loam, rock, or whatever. She asked how he knows how much the customer is loading into his or her truck, without weighing it. Mr. Gordon replied that he and his employees scale for themselves to put the materials into those bunks, and there is an

equation for tons to yardage. He continued that the bucket on the mini loader, skid steer, tractor, or whatever has scaled it has a stamp right on the bucket that says, "one cubic yard." Then the customer pulls in with a pick-up truck, loads it up with that bucket, and they (know it is) a yard that goes out.

Ms. Taylor asked if it is correct that they are not weighing the individual retail customers' vehicles. Mr. Gordon replied that is correct. He continued that they are weighing (the material) as it goes in, so they can more accurately allocate to make sure that the customer is not putting in (the wrong amount). He continued that if there are 20 yards of material in a pile and five trucks come in a day, each holding one yard, and the pile empties, that would indicate a problem he would need to address. That is more how they would be using the scale.

Chair Hoppock asked what is inside a scale house asking Mr. Gordon to describe what a person would see if they walked into one. Mr. Gordon replied that Cold River, for example, or other scale houses, have trays of different products. He continued that everything his company sells would be right there. Chair Hoppock asked if it is pre-weighed materials. Mr. Gordon replied yes, anything in general, so you can see what you have. He continued that scale houses typically have a computer to print out a slip and a place to take payments, a mini-computer for the scale, the scale itself outside, and typically something like a 5-gallon bucket of each product to show what each product is. Thus, if someone comes in without being sure of what they want, they can look at the products and choose what they want without having to walk too far or get out of their vehicle up in the quarry or pit.

Chair Hoppock asked if the scale house is for warehousing the pre-weighed material until someone buys it. Mr. Gordon replied no, just for samples of the materials, so people could see them. Ms. Ice added that the scale house is only 800 square feet, which is small. Mr. Gordon agreed and added that there would also be an employee operating the scale house, a person who sits inside and goes out to load the vehicles of the customers who come. Ms. Ice added that it would be more akin to a guardhouse, with the employee there and some basic information. She continued that the weigh station is mainly there to house the computer for the scale and to take payment.

Chair Hoppock asked what equipment they use to load something like a pick-up truck. Mr. Gordon replied something like a skid steer with a small bucket. He continued that currently they are using a 10-yard loader, with a bucket approximately the size of the bench the ZBA members are on. It is massive, and difficult to load small vehicles with.

Chair Hoppock asked what the size of the scale is and how deep underground it goes. Mr. Gordon replied that the size of the scale usually runs about 14 feet wide by 60-75 feet long, depending on what you get. He continued that you could picture a tractor trailer truck on it. A truck comes onto the scale empty, gets weighed, gets loaded, gets weighed again; then a slip for tonnage is generated, and the driver pays for the tonnage.

Ms. Taylor asked, in the operation itself, what happens if a commercial truck customer wants a whole truckload of gravel. She asked if the employee weighs the truck first, then the driver drives up to the gravel pit and loads then returns to the scale to be weighed again. Mr. Gordon replied that they weigh the vehicle empty, then they go up to the pit and get loaded, and come back to get weighed again, to determine the tonnage on the truck.

Mr. Guyot asked if it is fair to say that the majority of the use of the scale will be for commercial truck traffic versus retail customers for the hardscape material. Mr. Gordon replied yes, probably, because if a commercial truck is taking 18 yards at a time, to lose 10% of 18 yards every day or every truck obviously adds up more than selling maybe 20 yards of loam a week or that type of a thing. Mr. Guyot replied that the purpose of it is clear to him. He continued that it seems, based on the application and Mr. Gordon's description, that the use of the scale will be more for commercial purposes.

Ms. Ice replied that she thinks they are both commercial purposes. She continued that one is the retail commercial purposes. She thinks Mr. Gordon's overall desire is to build the retail store to be successful. Percentagewise, of course the big trucks are always going to be there. However, having a scale already is a rarity and a great feature just for the gravel side of things. Being able to use that to help Mr. Gordon with his bay, so when the retail customers come you can know exactly what you are getting and they can get it to them quickly, can really help grow that side of the business, too. Thus, she thinks it is hard to say, now, how important the scale will be to the growth of the retail store. The gravel pit is operating, so it is easier to know, day one. Mr. Gordon agreed.

Mr. Guyot asked Mr. Gordon how many trucks he has in and out of the pit in a day. Mr. Gordon replied that it depends on the season. He continued that in the winter, it could be five trucks a day. Tomorrow's schedule, on the other hand, has 70 loads running out of the pit. Today, there were 20. It is relative. The gravel pit sells its products to about 10 area towns. (Crews from) the towns will call, for example, that they are (back to work) since the roads are dry and they need X amount of yards. It fluctuates. On the original permit they did, they were talking about an average of 50-60 trucks a day over the course of the year. He thinks they will have to go back to the NHDOT and Planning Board, but he thinks when they got the approval on the gravel pit itself, there were about 27,000 cars a day going by on Rt. 9. Their increase of, say, 60 loads a day, increases that by less than a percent. It was nearly unnoticeable.

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

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

Chair Hoppock stated that he thinks the best he can say about this application is that it would not be *contrary* to the public interest, whereas some of the other applications were *in* the public interest. He continued that the test is whether it is contrary, not whether it is in. He agrees that

the weigh station will probably have no visual or aesthetic impact on the neighborhood. He was glad to hear details about the traffic, and he does not believe it would alter the essential character of the neighborhood, either.

Ms. Taylor stated that she has some concerns regarding public interest and the spirit of the Ordinance. She continued that she sees this, essentially, as an expansion of the gravel pit use. Yes, there is the retail operation and the mixed use, but she has serious concerns about the conflicts on the single tract, with the retail and commercial. She understands the attempts to segregate by transportation and use, but she is not entirely convinced. She thinks there are serious public safety concerns.

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

Ms. Taylor stated that she thinks this is not in the spirit of the Ordinance, because she thinks it is basically one way to get around expanding the gravel pit operations.

Chair Hoppock stated that he would agree with that if it were not true that Mr. Gordon could buy gravel from somewhere else and bring it in, and then retail it there. He continued that that is the distinction he makes in his mind. Yes, it is next door (to the gravel pit), and it does appear to be accessory to a next-door operation, but you fall back to the realization that the materials could theoretically be shipped in from anywhere. That part of it does not concern him as much. Given the number of trucks going in and out of there, based on what Mr. Gordon said, it does not sound like the impact on Rt. 9 would be an impact at all. The test is whether the Variance would not be contrary to the public interest. Nothing here suggests to him that it would be contrary to the public interest. He does not see a safety issue. There is no alteration to the essential character of the neighborhood. He does not see anything that puts it *in* the public interest, but that is not the test.

Ms. Taylor stated that she was trying to make the point that she does find that it is contrary to the public interest, because of what she considers serious safety concerns.

Chair Hoppock stated that the Applicant makes the observation that the Rural District allows both commercial and residential uses. He continued that looking at Article 3.1, that is true, although the commercial uses are greenhouse/nursey, bed and breakfast, animal care facilities, and kennels, under "Open Space Uses," they see gravel pits and community gardens. There is something he is not sure how to reconcile. He does not think it matters where the gravel comes from if it comes from off the property. The Applicant is processing, weighing, and sorting it at his property. Thus, while it smacks of an accessory use of a neighboring property, he is just not that bothered by it. Given the nature of the commercial uses that are permitted, he is not sure this is not within the spirit of the Ordinance. He thinks it is. Suggesting a merger of the two lots might be going a bit too far, but that is not what they are doing here.



Ms. Taylor stated that Chair Hoppock might be correct that the accessory use and the merger discussions are not that relevant to this. She continued that the reasons she has concerns about it not being within the spirit of the Ordinance is because while it is true that the gravel pit is approved, that is by Special Exception, which is an allowed use. Here, this is not the gravel pit, but it (the scale and scale house) probably would not be there if the Applicant did not have the gravel pit next door. She cannot say that for certain, because as Chair Hoppock said, you could come in with a commercial type of use with a scale to weigh gravel without the gravel pit. However, she still thinks it is more of the use than the Ordinance contemplates. She does not think it can be stretched to the greenhouse/nursery use. It certainly does not meet any of the definitions or restrictions on gravel pits. She does not see any way that it is within the spirit of the Ordinance.

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

Chair Hoppock stated that criteria three, he is not sure at all how the proposed use is consistent with not only the permitted use, but also the actual uses. He continued that he is having a hard time with that one, too.

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

Chair Hoppock stated that he does not think there is any issue with this criterion, with respect to property values being diminished in this 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 with respect to the scales and the scale house, he is not sure there are special conditions on the property that make the application of the Ordinance problematic to this property with respect to those two items.

Ms. Taylor stated that the statement in here might be considering an extended accessory use in connection with the abutting gravel pit. She continued that it is her way of thinking that does absolutely nothing to establish hardship; it establishes convenience. She cannot make the link to hardship, not for this particular use. Chair Hoppock agreed.

*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. Guyot stated that certainly all these points are valid, relative to the issues they have discussed before regarding the existing buildings being deteriorated. He continued that however, he cannot get his head around how those previously stated issues relate to adding the scale.

Chair Hoppock replied or the scale house. Mr. Guyot replied that the scale house is an existing structure being removed and rehabilitated, but he has a hard time getting the scale into (5.B). Chair Hoppock replied that it is hard to find it.

Chair Hoppock asked for a motion.

Mr. Guyot made a motion to approve ZBA-24-08, for 21 Rt. 9, a Variance to allow permitted use under Article 3.1.5 for a truck scale and scale house.

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

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

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

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

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

The vote was 2-2. Ms. Taylor and Chair Hoppock were opposed.

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

Met with a vote of 4-0.

*5. Unnecessary Hardship*

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

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

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.*

Not met with a vote of 0-4.

The motion to approve ZBA-2024-08 failed with a vote of 0-4.

Ms. Taylor made a motion to deny ZBA-2024-08, for a Variance for a property located at 21 Rt. 9, Tax Map #218-008-000 in the Rural District, owned by G2 Holdings, 25 North St., Jaffrey, to permit a commercial and accessory use of a truck scale and scale house, per Article 3.1.5 of the Zoning Regulations. Mr. Clough seconded the motion, which passed with a vote of 4-0.

**E) Continued 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 introduced ZBA-2024-10. He asked if staff had anything to add. Mr. Hagan replied to no. Chair Hoppock asked to hear from the Applicant.

Ariane Ice stated that this application seeks Variance relief from Articles 3.1.2 and 8.4.1.C of the LDC, which do not allow accessory structures in the 50-foot setback in the Rural District. She continued that this relief would consist of permitting the accessory use of storage structures on an existing paved area located in the setback from the lot line between the subject property and another parcel owned by the Applicant. The storage structures would be Conex containers for the storage and sale of building materials by Habitat for Humanity. As storage for building materials, the structures would be an accessory to the agricultural retail store, which would sell related tools and supplies.

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

Ms. Ice stated that it would not be contrary to the public interest because the immediate neighbors include the gravel pit operation to the west, the forested area owned by the Applicant in Sullivan to the north, the Granite Gorge ski area in Roxbury, and a smattering of single-family

homes. The character surrounding is diverse and widely separated uses, a character that would not be altered by storage structures. Additionally, the Variance would not threaten the public health, safety, or welfare. Given the wide separation between the types of uses in the general area, the allowance of accessory structures in the setback would not present any additional public hazards.

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

Ms. Ice stated that importantly, the structures would be in a setback from the Applicant's own property, a 50-foot-wide strip that extends between the existing paved area where the structures would be located and Rt. 9. This wooded, non-buildable, 50-foot strip serves several purposes in meeting the spirit of the Ordinance. It largely shields the paved area from view for the passersby on Rt. 9, such that the structures would not contribute to any appearance of overcrowding or negative aesthetic. It eliminates the concern that structures in the setback would interfere with the neighbors' rights, and it provides a 50-foot buffer between the storage area and Rt. 9, which satisfies the public safety purposes of separating vehicular traffic from stationary objects. Thus, the purposes of the setback requirement are met since the subject property and the buffering strip have the same owner and may be treated for these purposes as though they have been merged. Finally, the overall project reduces the number of structures on the parcels, such that the storage structures would not contribute to crowding or the appearance of crowding.

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

Ms. Ice stated that granting the Variance would do substantial justice because it would improve a dilapidated area of town, (and) provide affordable housing. She continued that all the Variance factors, particularly substantial justice, and hardship, present a balancing of public benefits or detriments against the private benefits or detriments of the landowner. Here, granting the Variance benefits the public, because it assists a charitable, non-profit organization, Habitat for Humanity, with little or no corresponding public detriment.

Ms. Ice asked that the ZBA refer to the record of the public comments tonight in support of this project by the board member from Habitat for Humanity. Chair Hoppock replied that they will be noted.

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

Ms. Ice stated that as discussed, the structures will be largely shielded from view of the road and neighboring properties. She continued that it would not create a negative aesthetic that would diminish the values of surrounding properties, many of which belong to the Applicant. When viewed as but one part of the overall project that will renovate and restore the derelict structures, granting the Variance would cause the values of the surrounding properties to increase rather than decrease. All residential and recreational properties in the general area not owned by the

Applicant are sufficiently distant from the subject property, such that there would be no appreciable effect on value.

5. *Unnecessary Hardship*

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

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

Ms. Ice stated that special conditions of the property cause the use to be reasonable and the use does not alter the essential character of the neighborhood. She continued that one special condition of the property is the area for the storage structures is a paved area already in the setback. It is appropriate to consider an existing manmade feature as a special condition of the property, see *Harborside v. Parade Residence Hotel*. Here, the paved area makes the property different in a meaningful way from the other properties in the area and is therefore burdened more severely by the Zoning restriction. Denial of the Variance restricts any feasible use of the paved area.

*and*

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

Ms. Ice stated that the proposed use is reasonable. She continued that it meets the intent of the Ordinance. The Applicant merely needs to show it is a reasonable use.

Chair Hoppock asked what the dimensions of the paved area are, and how long it has been there. Mr. Daigneault replied that he believes that was done when Rt. 9 was being redone by NHDOT. Chair Hoppock asked if that was about five years ago, when NHDOT put that pad down when they stored some of their construction equipment. Mr. Daigneault replied yes. Jeff Merritt from Granite Engineering stated that it is about 150 feet by 50 feet at its widest point, and then “necks down to the west.”

Chair Hoppock asked how far the pad itself encroaches if it was the whole thing. Mr. Merritt replied not entirely, but almost. He continued that there is about eight feet of the pad that is beyond the setback. Chair Hoppock replied that it sounds like eight feet of the pad is okay.

Chair Hoppock asked how long Habitat has been using the space. Mr. Gordon replied less than a year. He continued that he thinks they did one or two sales there this fall. The Habitat president asked (to use the space), and he talked about it with him, and he (Mr. Gordon) said agreed. Chair Hoppock asked if there would be any issue with conditioning any approval on only them (Habitat) using the space. Mr. Gordon replied that that is all he plans and is seeking this Variance for that. Chair Hoppock replied that he understands and admires Mr. Gordon for doing this. He

continued that he is just trying to find a way to make it work. Ms. Ice stated that the answer is yes, Mr. Gordon would agree to condition it. Mr. Gordon replied yes.

Ms. Taylor stated that she thinks they can only do a Variance related to conditions of the land. She continued that they cannot do it related to the ownership or the people using it. Chair Hoppock replied that that is what he was afraid of.

Mr. Gordon stated that he was not planning to have the land used by anyone, but then Habitat came to him with the request, and he agreed because it was for a good cause. If it were not for Habitat (making the request), he would not be doing it at all, so it is not like if Habitat moves out someone else would move in.

Ms. Taylor stated that she has a question about the introduction's statement that "*As storage for building materials, the structures would be accessory to the agricultural retail store.*" She asked how (that is). Ms. Ice replied that it is because the proposed use by Habitat is to sell the building materials stored there, so they have sales on a regular basis. The board member was talking about the ReSale stores. The most successful Habitat chapters have this element because it fits with their model. Habitat can only use some of the donations they receive, and the surplus can be sold. An agricultural retail store will have different supplies, and this fits nicely with that.

Ms. Taylor replied that she is familiar with ReStores. She continued that her experience with them is that they sell whatever has been donated to them, and the donations Habitat receives are not usually new products. She was curious about whether this agricultural retail store will also sell used items, in addition to new. Mr. Gordon replied no, the store would only sell new products. He continued that (Habitat) sells used and "new old stock." Ms. Ice replied that her understanding is that it is not all used. She continued that just to be clear and to not pigeonhole, there may be no intent to sell used products (in the agricultural retail store), but it has some interesting elements to it with hardscape. There may be some opportunity. She thinks it would be more accurate to say Mr. Gordon does not foresee selling used products at the present time, but he does not know what will happen in the future, other than Habitat materials. Mr. Gordon replied that he sells asphalt regrinds, which is asphalt that used to be on the road, then ground. He continued that the question is whether that is new or used.

Ms. Taylor asked Mr. Hagan if these structures/boxes need to be an accessory to something else, or if they can be standalone uses. Mr. Hagan replied that his understanding is that the way the Applicant is proposing the use, and the way the Applicant is asking for the Variance, is accessory to the store use. He continued that it is another entity selling used products. Ms. Taylor replied that she is asking what the Zoning Ordinance allows. Mr. Hagan replied that when it was presented it was an "accessory storage structure" for the products. He continued that the mention tonight of selling retail items from the storage box is new to him. Storing materials and selling them online is perfectly fine. However, the information that has been presented tonight is different from what was presented to him originally. He cannot answer Ms. Taylor's question at the moment; he would have to look at it again.

Ms. Taylor stated that what she is getting at is, if you have for example, Lot A with no structures and just open land, and you put a couple of MI-BOX storage containers on, she wonders if the Zoning Ordinance would permit that, or if the storage containers would have to be accessory to something. Chair Hoppock replied that they need to be incidental to another primary use. Mr. Hagan replied that it depends on what you are using them for and how you are using them. He continued that as he mentioned earlier, the City is looking to clarify that. The only place that the Ordinance mentions “motor vehicle storage” or “storage trailers,” or anticipates these types of uses, is Article 8.4, Accessory Structures. It is page 8-25, under “I. Motor vehicle or trailer storage.” The Community Development Department is working to come up with and identify these uses and where they sit in the Ordinance, or whether they do not fit in the Ordinance and thus are not permitted. They think they found a way, because they are so popular and used in many different places, so the City has to identify them somehow. They will not just go away; they will continue to be a new use and a major use, as they are affordable. They are identified in the Building Code as structures that can be used, and how to evaluate them for permanent use buildings. As far as the storage containers in this instance, storage containers can be used as an accessory use to this main use. As the ZBA has heard testimony tonight, the Applicant is looking to use it as a separate use. He thinks the Variance still covers that separate use; under the Variance they are asking for.

Ms. Taylor asked, in the Code, whether they were looking at this under subsection I.1.c. Mr. Hagan replied yes. Ms. Taylor replied that subsection I.1.c says, *“The use of trailers and/or vehicles, either registered or unregistered, for the storage or warehousing of goods or materials is not a permitted accessory use and is prohibited in all zones. This section shall not limit or prohibit registered trailers [ ... ]”* She continued that that is ambiguous. Mr. Hagan replied that is why a policy is needed, and staff are working diligently to try to get that out. He continued that they want to get the wording right, so they do not need to backtrack or change it. They hope to have something out soon. They want to have a clear, consistent path for everyone for these. If the City is going to permit these, if someone has a “mobile storage structure” on a piece property, they have to go through the same requirements. If it is a commercial property, depending on the size of the structures, you would have to go through site plan review and get approval for them, and a building permit, because they are not a temporary structure. They are a permanent structure and should meet all the requirements that come with permanent structures. You can see how this morphs into a bigger discussion and they want to make sure they touch on all the points. For tonight’s application, the way it was proposed was a storage structure, and as mentioned before, there is no policy at this time. It is anticipated that they would use these as structures, and they would need to go through the permit process.

Chair Hoppock asked how far they are within the setback. Mr. Daigneault replied that they are 40 feet, so, within 10. Chair Hoppock asked if he meant they are within 10 feet from the outer limits of the setback. Mr. Daigneault replied yes. Chair Hoppock replied that that means if you move the structures 11 feet back, this would not be an issue. Mr. Daigneault agreed. He continued that then you only have eight feet of pavement. Chair Hoppock asked if they needed

the pavement. Mr. Daigneault replied yes if they want to keep the (structures) on the pavement. Chair Hoppock asked if the pavement is needed to store these structures on. Mr. Gordon replied not, but it would be preferable. Chair Hoppock replied that he gets that, and it would probably be drier, too.

Ms. Taylor stated that she drove by the other day, and she knows it was represented in the application that they (the storage structures) are not that visible, but to her they were “pretty stark.” They are closer to the road than she thought they would be, which she supposes is why they are here (before the Board), because the structures are in the setback. She continued that the structures seemed to be very visible, and she got confused when she read the application. Mr. Gordon replied that they are being relocated. Mr. Daigneault stated that the proposal is to relocate them. Mr. Gordon stated that where they are sitting now, is “up proud” of where they are actually putting them. They would be putting them out around the corner.

Ms. Taylor replied that now she is more confused. She asked if the application before the ZBA is for where the storage containers are, or where they will be. Mr. Gordon replied yes.

Chair Hoppock asked if the Board had any more comments for the Applicants. Hearing none, he asked for public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

Chair Hoppock stated that this application is for a good cause. He continued that you know immediately when you read the application that Mr. Gordon is not doing this to benefit himself; he is trying to help Habitat for Humanity, which is admirable. He continued that however, the problem is the Zoning Ordinance. In his view, this application does not meet the Variance criteria. It is not contrary to the public interest, and it probably will not alter the essential character of the neighborhood. The justice it does is that it helps a non-profit that helps people in need. It will not affect the surrounding properties. However, as with the other application, this “hits the rocks” when it comes to the unnecessary hardship criterion. If they move the structures back eight feet, the problem goes away, at least for the time being, until they (the City) can figure out Article 8.4, *“The use of trailers and/or vehicles, either registered or unregistered, for the storage or warehousing of goods or materials is not a permitted accessory use and is prohibited in all zones.”* He continued that he is not sure if these containers can be considered vehicles or even trailers, but they are certainly warehousing goods or materials in a container-like object. Thus, he is not sure the setback is even the issue here.

Ms. Taylor stated that she has another question for Mr. Hagan, going back to her original question, whether a storage container would be allowed if it were not an accessory use. Mr. Hagan replied yes. He continued that if it were a permanent structure, and permitted as a permanent structure, as part of your business or an accessory use to your business, you can permit a Conex to be a structure on that location, used accessory to the main business, as a building. That is where they need to redefine the use of it, because the Code now addresses these types of structures to be used. Again, they are kind of mixing building and zoning here. In terms



of Zoning, if they consider it a structure, it can be used as an accessory structure. Chair Hoppock asked if he means like a shed. Mr. Hagan replied yes, but it has to meet [Building] Code requirements and go through the permitting process.

Ms. Taylor stated that she has a question for the Applicant. Chair Hoppock opened the public hearing so Ms. Taylor could ask her question.

Ms. Taylor stated that if the Board were to vote on this application and deny it, the Applicant would not be able to bring it back. Her question to the Applicant, so long as the Chair agrees, is whether the Applicant would be willing to withdraw the application without prejudice, and potentially find a location for the storage trailers that is not within the setback. She continued that they can then concern themselves with Code Enforcement to see if the containers could be permitted as structures.

Ms. Ice asked for a couple of minutes to consult with her client. Chair Hoppock agreed.

Ms. Ice stated that after consultation with her client, they have decided to withdraw the application for the setback Variance, without prejudice.

Chair Hoppock stated that for the record, ZBA-2024-10 is withdrawn by the Applicant without prejudice to a right to bring it forward if she so chooses.

**F) ZBA-2024-11: Petitioner, John Noonan of Fieldstone Land Consultants, 206 Elm St., Milford, requests a Variance for property located at 510 Washington St., Tax Map 532-003-000, is in the Commerce District and is owned by OM 510 Washington Street, LLC, 5 Patriot Lane, Wilbraham, MA. The Petitioner requests a Variance to permit the rear setback of 19.1 feet where 50 feet is required per Article 5.1.2 of the Zoning Regulations.**

Chair Hoppock introduced ZBA-2024-11 and asked to hear from staff.

Mr. Hagan stated that this property has a lengthy history of Variances and Special Exceptions. He continued that 510 Washington St., zoned Commerce, is located on .744 acres. It currently has a retail store, vehicle fueling station, and a laundromat with a total building area of 2,172 square feet. The history goes back in the City's file to a Special Exception granted on March 11, 1975. Another Special Exception was granted in 1977, ZBA-77-20, for a miniature golf business. It already had the laundromat and an ice cream shop. In 2010, two Variances he could not get the details on were approved, ZBA-10-30. In 2011, a Variance on March 7 was approved, ZBA-11-14. A fifth Variance was granted on July 6, 2015, ZBA-15-09, for electronically-activated signs.

Ms. Taylor asked if it is correct that the vehicle fueling station was added at some point. Mr. Hagan replied yes, and he imagines that it had something to do with the 2010 and 2011 Variances, which are about six months apart. He continued that maybe it was the station first and

then the sign; he is not sure. Ms. Taylor asked if that is a permitted use. Mr. Hagan replied that things have changed a little bit now. He continued that under the new LDC, yes, a vehicle fueling station is allowed in the Commerce Zone. To give history to the Variance application before the Board tonight, this is part of the LDC changes. This was one of the added requirements, going from 50 feet in the rear. It used to be an additional ten feet to any residential, but the new LDC increased it.

Ms. Taylor asked what he means by “additional ten feet.” Mr. Hagan replied that on page 5-2, under “5.1 Commerce” is “5.1.2 Dimensions and Siting.” He continued that it says that the minimum rear setback if abutting residential district is 50 feet. Before the adoption of this LDC, this was actually in another section. Staff brought the information into this section so people would not have to go looking for it. It used to be that if a commercial property abutted a residential property, it was an additional 10-foot (requirement). That used to be in the same section as identifying corner lots and setback requirements.

Chair Hoppock asked if the Board had any further questions for staff. Hearing none, he asked to hear from the Applicant.

John Noonan of Fieldstone Land Consultants stated that for 510 Washington St., they are seeking a Variance for encroaching the rear setback. He continued that as Mr. Hagan mentioned, the setback was 20 feet, but because it abuts residential, it is 50 feet. The rear property is owned by the Tousley Trust, it is an unconventional residential property listed on the tax card as “apartment/commercial.” And it is not your typical single-family home with 14 units on the property. They are looking for the closest corner of the proposed building to be 19.1 feet from the back rear lot. The lot is not exactly square, so the other corner of the building is a little further than 19.1 and meets the 20-foot just barely. It is about 20 feet at the northwest corner, but the closest corner proposed is 19.1 feet. Based on the 50-foot setback, they are encroaching 31.4 feet on the rear.

Mr. Noonan stated that the existing use is Dinkbee’s Gas Station and Convenience Store. He continued that they are looking to expand and add another station for filling. If they do two gas stations, one on each side, and potentially two diesel stations, one on each side, it would potentially be going from four filling stations to eight, but it would be three (places) where cars would park. You have seen the combination (stations) where you can choose between gas and diesel fuels. They are looking to raze or demolish the existing building, build a new building with two units. Currently, the convenience store and laundromat are combined in one unit and it is small, so they have never been able to do a food option or have restrooms for customers (in the convenience store). The laundromat is also small. They want to separate those uses and have a larger convenience store, potentially with a hot and cold food option instead of just packaged goods and have more parking. They have increased parking along one side, to have six parking spaces on the southern portion, dedicated more to the employees. It would separate where clientele is coming in versus employees, whereas currently employees park in front of the building.

Mr. Noonan continued that overall, the site is 79.6% impervious. This (proposal) has a slight reduction of 5.5%, which would be 74.1% impervious. Municipal water and sewer serve this location. There are utilities that cross and crossing agreements currently in the deed for allowing to that multi-use/multi-tenant residential to the rear; those would remain. They are calling them out in the plan, so when this goes to the Planning Board, they would either finalize the easements where they are, or keep it as a rather “blanket” easement.

Mr. Noonan continued that he thinks people are familiar with this property on Washington St., which serves that end of town very well, as there are no other gas station options on that side. He continued that it serves Rt. 9 drivers’ needs to fill up with gas.

Chair Hoppock asked if it is correct that the dumpster enclosure is well within the setback. Mr. Noonan replied yes. He continued that (where Chair Hoppock is looking on the plan) is where the dumpsters currently reside. They are not enclosed. In talking with the former owner, he believes the dumpsters have always been in that location. If this goes to site plan review, the Applicant knows the (Planning Board) will want an enclosure, so they propose keeping the dumpsters in the same location and putting an enclosure around them.

Chair Hoppock replied that he cannot see where the setback line is on this plan. Mr. Noonan stated that he will bring the plan closer to show the Board. He indicated the color-coded lines showing the setbacks, and the dumpster location. He continued that the Applicant is thinking of using fencing for the enclosure. A special feature of the property is that there is “almost an island of commerce zoning,” and an area of low-density residential. Mr. Noonan pointed to the plan to show these two areas in relation to one another, explaining that that is what drives the 50-foot (minimum setback requirement) instead of 20 feet. He continued that (this) corner meets the 20 feet, and (this corner) is 19.1 feet.

Chair Hoppock asked if it is correct that they are not factoring in the dumpster enclosure right now, because it is pre-existing. Mr. Noonan shook his head no, and replied that there is no enclosure now, but that is the location of the existing dumpster. He continued that if that were to require a Variance, they could either go for it when they go to the Planning Board or look at maybe an alternative for screening, such as landscaping.

Ms. Taylor stated that the current plan shows, if she is reading it correctly, a gravel road around the building. Mr. Noonan replied yes, to the existing conditions, indicating the location of the building and the pavement out to the back of the building. He continued that it juts out toward the Tousley Trust property. The smaller, dashed line out to the dumpster location is gravel, then a gravel half driveway comes back to the Tousley Trust property. Ms. Taylor asked if that gravel road/pathway that exists now has a use. She continued that she assumes it is going away. Mr. Noonan replied yes, it is going away. He continued that they are expanding the building out in that area. He showed where they propose the pavement ending, and where the current gravel area would be grass.

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

Mr. Noonan stated that granting the Variance for the reduced rear setback would not be contrary to the public interest. He continued that the Commerce District is intended to provide an area for intense commercial development that is predominantly accessed by vehicles. The subject parcel is a standalone property for this district in this area. The residential abutters to the rear are atypical. One, Lot 519-037, is an undeveloped wood lot with no frontage on any public way and the assessing records list it as Land Use Code 700 – Forest White Pine. He showed the area and continued that it is owned by the Fox Trail Farm, LLC. The other rear abutter, Lot 531-045, is a multi-family commercial development with 14 cottage-style apartments. The assessing record describes this property as Land Use Code 108 – Apartments-Commercial.

Mr. Noonan continued that the general public purpose of the Ordinance is to separate the commercial use from residential uses. The rear abutters are not typical residential use; they are more commercial. For these reasons, and because the proposed Variance would not alter the essential character of the neighborhood, or threaten public health, safety, or welfare, or otherwise injure public rights, the Applicant believes granting the proposed Variance would not be contrary to the public interest.

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

Mr. Noonan stated that granting the Variance would observe the spirit of the Ordinance because it would allow this commercial property to be redeveloped. He continued that intense commercial development is the purpose of the Commerce District. The spirit of the Ordinance is to separate commercial uses from residential uses. While the abutting properties to the rear of the subject parcel are zoned as residential, in practice, these properties are not in keeping with the typical residential uses. One of the parcels to the rear is a wooded lot and the other is a 14-unit, multi-family dwelling. For these reasons, and because the Variance would not alter the essential character of the neighborhood, or threaten public health, safety, or welfare, or otherwise injure public rights, the Applicant believes granting the proposed Variance would observe the spirit of the Ordinance.

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

Mr. Noonan stated that granting the Variance for reduced rear setback would do substantial justice because the redevelopment of this property would benefit the Applicant and the general public by replacing the aging structure and layout with a modern facility that complies with current standards and regulations. He continued that granting the Variance would allow for the redevelopment of this property, the expansion of the convenience store that serves many neighborhood residents, and additional gas pumps. The public would realize no appreciable gain for denying the Variance.

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

Mr. Noonan stated that the Variance allows for the existing use to continue in a new, expanded facility. He continued that there is no evidence that a reduction to the rear setback would diminish surrounding properties' values. In their experience, new development and investment in communities often results in positive impacts to property values. They would foresee that with the renovation and redevelopment of this property.

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. Noonan stated that the property has special conditions that distinguish it from other properties in the area. He continued that as previously stated, the subject property is the only property amongst its immediate neighbors that is in the Commerce District. This property has the only vehicle fueling station in this part of the city, and the only fueling station available for people traversing Rt. 9 from the east. This property's store and gas station serve important functions for the immediate neighborhood and for travelers from outside the neighborhood. The property is in need of modernization and expansion to keep up with the demand for the services in this area.

Mr. Noonan continued that the general purpose of the Ordinance is to prevent the proximity of unlike uses from being detrimental to property owners. The specific application of the rear setback requirement on this property, to further separate an existing use in an altered footprint, does not align with the general public purpose of the Ordinance. Due to the special conditions of this property, the Zoning restriction as applied to this property does not serve its purpose in a fair or substantial way.

*and*

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

Mr. Noonan stated that the proposed use is a reasonable one because it will replace an existing, aging facility with a new facility that complies with modern standards.

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. Noonan stated that the special conditions of the property as previously set forth distinguish this property from other properties in the area and prevent the property from being developed in strict conformance with the Ordinance. He continued that a Variance is therefore necessary to enable reasonable use of it, because the zoning of the property and its lack of proximity to other properties in its zoning district limit the developmental potential of this property in strict conformance with the Ordinance. The Variance for a reduced rear setback is reasonable because it meets the spirit of the Ordinance, it will not diminish the values of surrounding properties, and it will do substantial justice to the property owner and the general public.

Ms. Taylor asked where the road access is for the 14 cottage-style units on the abutting parcel. Mr. Noonan replied that currently, they have a blanket easement that calls out that it is 20 feet wide at the southern portion of the property. He continued that it comes off Washington St. and comes along at an angle on the southern portion, crosses the pavement, and then gravel then comes across the back, indicating on the plan where people travel. He continued that the plan shows a proposed crossing easement in the center line, based on the center line of the drive aisle. Ms. Taylor asked if it is correct that that is a vehicular easement. Mr. Noonan replied yes. He continued that in talking with the abutters, Toby Tousley, if they go forward with the site plan following this Variance, they would either do it as a blanket easement or, like this, call it out with varying distances. The easement would remain to allow the (residents) to access through the property.

Chair Hoppock asked if it is correct that it is not a public way. Mr. Noonan replied that was correct and that it is a blanket easement allowing (residents) to travel the southern route to get to the property. Chair Hoppock asked if they can currently go around the existing building and exit the convenience store parking lot that way, onto the private right-of-way and then onto Washington St. Mr. Noonan replied yes, it is a gravel path behind there, and they can currently drive where there is space behind the existing building. He continued that in addition, people exiting “this” could loop through “there,” which would go away with the proposed plan as it stands now.

Chair Hoppock asked if the Board had any further questions. Hearing none, he noted that this would be the time for public comment, but no members of the public are present.

Mr. Hagan stated that Board Clerk, Ms. Marcou found some information about the previous Variances for this property. He continued that the 2010 one was a Variance approved to allow for a 15-foot setback where 30 feet was required. The 2011 one was an appeal of an administrative decision, and the administrative decision was upheld. Chair Hoppock asked if Mr. Hagan knows what side of the building the setback was on, regarding the 2010 Variance. Mr. Hagan replied to no. He continued that the new LDC allows for a lesser setback than what was required when the 2011 Variance was given. On page 9-9, Table 9-2: Travel & Parking Surface

Setbacks shows the requirements are less than what was required at the time the 2011 Variance was given. Under this, it would be less than 30,000 square feet, so the setback would be eight. Even if it were the 30,000 foot, two-acre parking lot area, it would still only be ten. There was a minor reduction.

Ms. Taylor stated that they like to phrase these as to what the incursion into the setback is. She asked if it is roughly correct that this is hoping to be 21 feet into the setback. Mr. Noonan replied 31.4 feet into the setback, because it is a 50-foot setback, and they are 19.1 feet from the proposed building to the rear property line. Ms. Taylor stated that when the Board makes a motion, she would like to suggest that they make it so that it states, "not more than 31.4 feet into the setback." Chair Hoppock replied that he is getting 15.5 feet on it, though. Mr. Noonan stated that 31.4 feet is up at "this" portion, indicating on the plan. He continued that it should be 30.9, would be the largest. Up "here," he indicated on the plan, it meets 20 feet. It would be 30.9 feet.

Chair Hoppock asked if 30.9 feet would be the deepest incursion into the setback. Mr. Noonan replied yes.

Chair Hoppock closed the public hearing and asked the Board to deliberate.

Chair Hoppock stated that it seems to him that this property is unusually shaped and small. He continued that a lot behind it, on the side they are discussing, is landlocked. And the other one, it makes sense to call it atypical.

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

Chair Hoppock stated that he does not think this is contrary to the public interest.

Ms. Taylor stated that she thinks in some ways it would be *in* the public interest, because if you eliminate that gravel road that goes around the back, it provides a safer environment if you turn that area into grass. (It would be) safer for the abutters or for people who are using the business, especially at night.

Chair Hoppock stated that eliminating the gravel drive also would create more of a buffer for noise from the street and business. He continued that Ms. Taylor was right.

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

Chair Hoppock stated that this is a Commerce District. He continued that its purpose is to allow for commercial development, and this is a property surrounded by residential low density. It makes it difficult to allow this property to achieve the purpose of the Commerce District. That might be a special condition more than anything else, but it seems to him that that also supports the spirit of the Ordinance, regarding what the owner is trying to do.

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

Chair Hoppock stated that he does not see any gain to the public that outweighs the harm to the owner, if this were denied, because that would prevent the redevelopment he is proposing.

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

Chair Hoppock stated that he agrees with the Applicant. He continued that he does not see any prospect for surrounding properties' values being diminished in light of what is proposed. What is proposed would probably improve the neighborhood and improve the services this place would offer in the future. He has gone there for gas, and it is crowded.

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 in his view, there are no shortages of special conditions. He continued that the placement of this property in connection with the Zoning boundaries illustrates his point. The Low Density Zone is to the north, west, and south. It abuts one landlocked property. Forcing this property owner into a 50-foot setback when everyone around them has 20 feet, and given the width of the property, you really cannot develop it. He supposes that is why the building is so small now.

Mr. Clough stated that he agrees, and the 50-foot setback really does jump out at you when it is like a quarter of the property, or 30%. He continued that he does not know how they would be able to do anything with the property.

Mr. Clough made a motion to approve ZBA-2024-11, a Variance for a property located at 510 Washington St., Tax Map #532-003-000, located in the Commerce District, requesting a Variance to permit the rear setback of 19.1 feet where 50 feet is required per Article 5.1.2 of the Zoning Regulations. The encroachment will be no greater than 30.9 feet. Ms. Taylor seconded the motion.

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

Met with a vote of 4-0.



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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

*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.*

Met with a vote of 4-0.

The motion to approve ZBA-2024-11 passed with a vote of 4-0.

V) **New Business**

VI) **Communications and Miscellaneous**

VII) **Non-Public Session (if required)**

VIII) **Adjournment**

There being no further business, Chair Hoppock adjourned the meeting at 10:43 PM.

Respectfully submitted by,

ZBA Meeting Minutes  
May 6, 2024

ADOPTED

Britta Reida, Minute Taker

Reviewed and edited by,  
Corinne Marcou, Board Clerk