

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

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

**Monday, October 7, 2024**

**6:30 PM**

**Council Chamber,  
City Hall**

**Members Present:**

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

**Staff Present:**

Evan Clements, Planner, Deputy Zoning  
Administrator

**Members Not Present:**

*All Present*

**I) Introduction of Board Members**

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

**II) Minutes of the Previous Meeting – September 3, 2024**

Ms. Taylor noted the following corrections to the meeting minutes of September 3, 2024:

Lines 31 and 32: The sentence reads “...*applicant is not present and questioned what next steps the Board to take Evan Clements...*,” and should read, “...*what next steps the Board should take. Evan Clements...*”

Chair Hoppock stated that he agrees with that correction.

Ms. Taylor made a motion to approve the meeting minutes of September 3, 2024, as amended. Mr. Clough seconded the motion, which passed by unanimous vote.

**III) Unfinished Business**

Chair Hoppock stated that he is not aware of any unfinished business.

**IV) Hearings**

- A) **Continued ZBA-2024-19: Petitioner, Timothy Sampson, of Sampson Architects, PLLC, requests a variance for property located at 143 Main St.,**

**Tax Map #584- 061-000. This property is in the Downtown Core District and is owned by 143 Main St., LLC, of West Swanzey. The Petitioner requests a variance to permit a two family/duplex where not permitted per Table 4-1 of the Zoning Regulations.**

Chair Hoppock introduced ZBA-2024-19. He asked if a representative of the applicant is present tonight. Mr. Clements replied that he does not see anyone in the audience for the application at this time.

Chair Hoppock stated that he is not willing to continue this again, and he does not think there is enough information in the application to make a decision. Ms. Taylor stated that she thinks she made her position clear at the last meeting.

Ms. Taylor made a motion for the Zoning Board of Adjustment to deny ZBA-2024-19 for a Variance for a property located at 143 Main St., Tax Map #584-061-000, in the Downtown Core District. Mr. Guyot seconded the motion.

Chair Hoppock stated that at the last ZBA meeting, the applicant did not appear and failed to give the courtesy of a phone call or email. He continued that while he thinks the application is sufficient to state an application under the Variance statute, he would have questions for the applicant, had he appeared. In his view, there is insufficient information in the application itself for the Board to act on the application. He will thus vote in favor of the motion.

Chair Hoppock asked for others' thoughts. Mr. Guyot replied that Chair Hoppock gave a good summary, and he agrees.

The motion passed by unanimous vote.

Mr. Clements asked if the motion was a denial with no prejudice. Chair Hoppock replied no, there is no reservation of prejudice. Mr. Clements asked if the applicant would be able to reapply with sufficient information presented. Chair Hoppock replied if he has a change of circumstance or meets the Morgenstern criteria, then yes.

Ms. Taylor stated that it is basically the Fisher rule down through the ages. Chair Hoppock replied yes, the [*Fisher v. Dover*] case.

- B) ZBA-2024-24: Petitioner, Garry Emge requests a variance for property located at 42 Reservoir St., Tax Map 571-006-000. This property is in the Medium Density District. The Petitioner requests a variance to replace entrance steps 7.57 feet from the front setback where 50 feet is required per Article 3.5.2 of the Zoning Regulations.**

Chair Hoppock introduced ZBA-2024-24 and asked to hear from staff.

Mr. Clements stated that the subject property is an existing .374-acre parcel located at 42 Reservoir St. in the Medium Density District. He continued that the property contains an existing approximately 3,000-square foot, two-family home, built in 1890 with a detached 342-square foot garage. The property has approximately 200 feet of frontage along Reservoir St. The property is surrounded by the Medium Density District on the north, south, and west; with the Conservation District to the east. Surrounding uses are residential, with Robin Hood Park and the reservoir directly to the east of the property. The existing structures on the property appear to be non-conforming, as they are located partially within the front yard setback. Section 3.5.2, Dimensions and Siting, of the Land Development Code (LDC), requires a 15-foot front setback, and the structures appear to be closer to 10 feet from the property line.

Mr. Clements continued that according to the submitted application, the existing masonry front steps are located 7.57 feet from the front property line. The front steps are considered to be a structure that is exempt from the front yard setback requirements, per Section 1.3.3, Setbacks and Build-To Dimensions, subsection A.4.a.i of the LDC. Also exempt under this section are access landings up to 25 square feet, structures necessary to afford access for persons with physical disabilities, and awnings. Due to the proposal to install the new porch and roof overhang with ground-mounted support posts and 54 square feet of landing area, this design does not qualify for any of the exemptions he just listed to the front yard setback, and a Variance is required to move forward.

Chair Hoppock asked Mr. Clements to repeat the frontage on Reservoir St. Mr. Clements replied about 258 feet.

Ms. Taylor stated that the agenda indicated the “...*front setback where 50 feet is required.*” She asked if it is correct that it should say “15 feet.” Mr. Clements replied yes, the agenda has a typo.

Chair Hoppock asked to hear from the applicant.

Garry Emge stated that he has lived at 42 Reservoir St. for 35 years. He continued that the purpose of the Variance is to replace existing front masonry structure of 6’1” x 6’2”, 38 square feet, with a new structure that includes a 5’2” x 10’4” wood deck and a 6’2” x 12’4” roof, supported by four columns. The existing masonry structure is in serious need of repair or replacement. The new structure would not extend further from the building to the street than the existing structure does. The only difference would be that the width of the structure would be enlarged from 6’1” to about 10’4.” The residence does not meet the current setback requirements, so a Zoning Variance is sought.

Mr. Emge stated that there would be no effect on anyone other than some intermittent construction noise, usually between 9:00 AM and 3:00 PM on weekdays, with possibly an occasional Saturday. The proposed structure would be contained within the footprint, excluding the steps to the street, as does the existing masonry structure. Other than the steps that lead up to

the deck, the main structure would not intrude further into the setback. The current masonry structure is 7.57 feet to the property line and the proposed structure would be the same. The new structure would provide cover from rain, ice, and snow that the existing structure does not. “Curb appeal” would be enhanced, and the City of Keene would probably get a slight assessment increase.

Mr. Emge continued that in his estimation, surrounding properties’ values would be enhanced as a result of the removal of the masonry structure which has come to be in bad shape over the years, due to sagging and cracked concrete. All of the properties on Reservoir St. currently encroach on the existing front setback. This includes the City of Keene’s Robin Hood pool structure. There is a relatively insignificant addition to the front of the residence, 54 square feet versus the current 38 square feet.

Mr. Emge continued that this Variance would allow a new roof structure to protect the front entrance from weather and remove space constraint for possible future ramp access in an attempt to “age proof” the property. That space might be required for ramp access because a current elderly occupant, other than himself, is experiencing mobility and balance issues that might have to be addressed in the future.

Ms. Taylor stated that she realizes the steps themselves are exempt from the setback requirements, but she could not figure out from the drawings exactly where the steps will be off the proposed deck. Mr. Emge replied that the steps would come right off the front of the proposed deck. He continued that he has drawings with him if Ms. Taylor wants to see them. He thought he had submitted them. Ms. Taylor replied that the Board has some drawings; she does not know if there are additional ones. She asked how far the bottom of the new steps will be from the street or the property line. Mr. Emge replied that it would go out approximately a foot more than the deck. He continued that the roof would stay within the limits of the current structure, which has an overhang, and the steps would only protrude about a foot beyond that.

Ms. Taylor asked if Mr. Emge looked at the possibility of having the steps or potential ramp coming off the side of this proposed deck. Mr. Emge replied yes, he looked at it, and his preference would be to come directly off the front. He continued that the walkway is there, and it did not seem like it would lend itself very well to steps coming out of either side. If a ramp were required at some point, a ramp would probably go up the side. Ms. Taylor replied that that was going to be her next question, because she knows there is not a lot of room to put something there between the houses and the street. She continued that she does not think there is a sidewalk there. In the summer, there is a lot of traffic.

Ms. Taylor asked, regarding the construction impacts, how Mr. Emge would propose to control the construction vehicles, because they would be impeding traffic for the other residents. She continued that there is no place else to put them. Mr. Emge replied that it is true. He continued that this job will not be a major undertaking. He built houses about 50 years ago, and he would do all this work himself. He has one vehicle and a trailer, which would be there no matter what.

As you come off the steps, there may be six feet to the front setback, but there is quite a bit more grass/lawn area until you actually get to the road. He does not know the exact number.

Ms. Taylor asked if he is not necessarily contemplating having a cement truck coming in. Mr. Emge replied no, he will mix the cement himself. He continued that this is a rather low budget, low-key endeavor.

Ms. Taylor asked if Mr. Emge would object to a condition saying Mr. Emge would not enclose this deck, so that it would not become another part of the house itself. Mr. Emge replied certainly [not], as he had nothing like that in mind. He continued that it would be all open, other than porch columns and maybe a bench or something similar. There would be nothing enclosed.

Ms. Taylor asked Mr. Clements if it is correct that this project does not meet the level requiring it to go before the Planning Board. Mr. Clements replied that it is correct. He continued that if the Variance were granted, the next step would be a building permit to perform the work.

Chair Hoppock stated that Mr. Emge said the house itself is within the setback. He continued that he is trying to get an idea of where the house footprint sits in relation to the setback. Mr. Emge replied that he did not have the exact answer, but he thought it was about 12 feet. Chair Hoppock asked if it would thus be two or three feet within it. Mr. Emge replied yes. He continued that the house is 13.5 feet from the setback. The deck and porch roof are 6.2, so it is about 7.5 feet from the front setback. Then adding one stair tread of about 10 or 11 inches makes it about 7 feet. Chair Hoppock replied that that gets to where it is now at 7.57 feet. He asked if that is how Mr. Emge arrived at that. Mr. Emge replied yes.

Chair Hoppock asked if Mr. Emge knows if the other houses on Reservoir St. are similarly situated, in terms of the footprint being within the setback. Mr. Emge replied that they all are. He continued that the pool building across the street might have about one foot of setback; it is right on the street, according to the GIS information.

Chair Hoppock asked what the lot size is. Mr. Clements replied .374 (acres).

Mr. Clough stated that to clarify, adding 7.57 and 6.1 is how he came up with 13.6 away from the line. Chair Hoppock replied yes, that makes sense to him now.

Ms. Taylor stated that looking at the application and the map on the screen, she of course does not know how the house is configured. She asked if there was any other entryway to the house. Mr. Emge replied yes, there is a side porch. He continued that facing the front of the house, there are steps leading down and a side porch to the left. There is a basement entrance to the upper apartment level where he lives. That porch has an entrance to the lower apartment, too. From the street, the house looks fairly small, but it sits on the side of a hill, and it is a fairly big structure if viewed from the back.

Ms. Taylor stated that one of the reasons she asked that question is because she is looking at the hardship criterion, one of the Board's most difficult criteria to deal with. The issue is a deck, not the front steps. They need to determine whether there is any logical place to put that deck, which is why she asked if there is another entryway. Mr. Emge replied that there is a porch. He continued that you go down steep stairs from the street level to get to it.

Chair Hoppock asked if that is an enclosed porch, and if it is on the left side of the house. Mr. Emge replied yes to both. He continued that it is enclosed because at some point, someone added storm windows around it. It is not a living space, as it is not heated, and it can only be used as a porch.

Mr. Clough stated that he has a question, following up on the entrances. He continued that from the street view, (it appears that) someone in a wheelchair could only get to that level from the ramp from the outside. Everything on the inside would be staircases. The other entrance is literally a floor down. Mr. Emge replied yes. Mr. Clough continued that it would be very inconvenient to try to figure out how to (do something), and an elevator would be needed. Mr. Emge agreed. He continued that his speculation about the future, again, is that that (ramp) might be needed.

Mr. Emge stated that his final comment is that he has to do something with the front steps, which have gotten to the point where they need to be repaired or replaced. He continued that his preference is that if he is going to spend the time and money to do the job he really wants to do, the way he thinks it should be done.

Chair Hoppock asked if the Board had any further questions for the applicant.

Mr. Clough stated that regarding the question of noise, the demolition would be (with a) hammer and possibly a jackhammer. Mr. Emge replied that he doubts it would be a jackhammer. Mr. Clough asked if it would be a sledgehammer. Mr. Emge replied yes. Mr. Clough asked if it is correct, then, that the construction noise would be that of a pneumatic nail gun or nails (being hit) by hand. Mr. Emge replied yes, and saws. Mr. Clough replied that it would be sounds that you actually hear around the neighborhood, especially on a weekend. Mr. Emge replied that the noise will be between 9:00 AM and 3:00 PM, because he will not be out there too early in the morning, and he does not work eight hours a day.

Chair Hoppock asked if there was any public comment, either for or against the application. Hearing none, he closed the public hearing and asked the Board to deliberate.

Chair Hoppock stated that he does not see anything about the application that would jeopardize public safety in any way. He continued that there will be plenty of sight distance view, on either side of the property as you are coming and going from it. He does not think the porch would impair that view. The setback would be designed, in part, to prevent something like that from happening and to protect against encroaching the road too close, which he does not think would

happen, either. Thus, some of the purposes of this Zoning restriction are not germane to this application.

Ms. Taylor stated that as she mentioned earlier, something the Board really needs to examine is what the hardship is. She continued that her thoughts on that are that (Mr. Emge) is not about to move the house to rebuild the steps. It (the hardship) is the lot itself as it is an unusual shape. The house was clearly built many years ago, and it was built too close to Reservoir St. for current Zoning. It is what it is. Her only concern – which she mentions without casting aspersions on the applicant, because it is something the Board has seen before – is that people who build decks (often) like to enclose them a few years later. If the Board moves to approve this application, she would like to add a condition, as the Board has done in the past, for the deck to remain open and not be enclosed, so it does not become additional living space.

Ms. Taylor continued that she agrees with Chair Hoppock that there does not seem to be any threat to public health, safety, or welfare. There is certainly detriment to the applicant if he is not able to do this. She can see that improving the entryway is improving the value of the property. She thinks this application demonstrates why there are Variances, as there are times when you definitely need relief from the Zoning Ordinance.

Mr. Guyot stated that given the age of the property, he presumes that the Zoning Ordinance came into play well after when the house was built. Chair Hoppock replied yes. Mr. Guyot continued that since the house predates the regulations that create special circumstances, he would call a hardship, in addition to Ms. Taylor's comments.

Chair Hoppock replied that he agrees that hardship is created by the lot's configuration, size, and topography, in conjunction with the house's placement. He continued that the unusual topography is such that you start at the first floor, go down the hill, and there are two floors.

Chair Hoppock stated that (regarding the fourth criterion), if anything, Mr. Emge will increase the value of his own home, and with that, the surrounding properties' values will (likely increase as well). He continued that he does not see any problem with diminished property values. He agrees with Ms. Taylor that any loss Mr. Emge would suffer as a result of a denial would not be outweighed by any gain to the public for denying the Variance. Thus, he thinks the application meets that (third) criterion, too. Again, he sees no public health or safety concern here. Mr. Emge will not alter the essential character of the neighborhood by putting in a porch. He agrees with Ms. Taylor's proposed condition of not enclosing the porch. He does not see anything that would make this (proposal) contrary to the public interest; he sees the opposite. The public interest is served when property owners can utilize their property in a fair and reasonable way, which is what Mr. Emge has come to the Board to ask for. He is inclined to support this, with the condition of non-enclosure.

Mr. Clements asked Chair Hoppock to again articulate his reasoning for the spirit of the Ordinance being observed. Chair Hoppock replied that the spirit of the ordinance goes to issues

of public health, safety, and welfare and whether the Variance, if granted, would alter the essential character of the neighborhood. He does not see either one of those things happening here. Consistent with his other remarks, he thinks an un-enclosed porch and a new set of stairs would increase safety, for both the occupants and visitors. It would not alter the essential character of the neighborhood, and would in fact help improve the values there, in the long run. That is with or without a ramp, which he is not worried about right now.

Ms. Taylor stated that to add to that, the density requirements are to provide for medium intensity residential use, and this (proposal) is definitely not changing that. She continued that thus, as she sees it, it is within the spirit of the Ordinance.

Chair Hoppock asked if there were any further comments. Hearing none, he asked for a motion.

Ms. Taylor made a motion for the Zoning Board of Adjustment to approve the request for a Variance, ZBA-2024-24, for property located at 42 Reservoir St., Tax Map #571-006-000, with a request to replace the entrance steps 7.57 feet from the front setback where 15 feet is required per Article 3.5.2 of the Zoning regulations, with a condition that the proposed deck not be enclosed. 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 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*



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.

- C) **ZBA-2024-25: Petitioner, Jennifer Shay, of 190 Nutting Rd., Jaffrey, requests a variance for property located at 973 Marlboro Rd., Tax Map #249-004-000. This property is in the Rural District and is owned by BTD Properties, LLC, of Palm Beach Gardens, FL. The Petitioner requests a variance to operate a light retail establishment in the Rural District per Article 8.3.2.AD of the Zoning Regulations.**

Chair Hoppock introduced ZBA-2024-25 and asked to hear from staff.

Mr. Clements stated that the subject property is an existing, approximately 1.9-acre parcel at 973 Marlboro Rd. in the Rural District. He continued that the property contains an existing 6,970-foot building, constructed in 2003. The current use is a mixed use, office and single-family residence. The property is split by the Marlborough/Keene municipal boundary, with approximately 1.1 acres of the lot residing in Keene and the remaining .8 acres in Marlborough. The building itself is also split by the municipal boundary, with the residential use on the Keene side and the office use bisected by both Keene and Marlborough. The property is surrounded by the Rural District to the north and west, and by Marlborough's R-2 residential district to the south and east. Surrounding uses include single-family residential to the north, vacant parcels to the west, with the Cheshire County Correctional Facility located approximately 1,300 feet to the west of NH Rt. 101.

Mr. Clements continued that the property has been utilized in various commercial uses throughout its history. The most recent use was a private, behavioral school for children with learning and behavioral challenges. Before that, it was a model log home and sales operation for log home construction. The existing building was constructed for that purpose in 2003. Throughout its history, the property has also received approval for a restaurant use, a convenience store sometime in the mid-1980's, and commercial aspects that go even further back into the 1970's. Land use authority between Marlborough and Keene for this property has been murky. When the current building was constructed, there was an agreement between the two communities that Keene would be responsible for permitting that project. Staff have been working to reaffirm that agreement for future projects and to give the property owner some clarity, particularly where they should be going for building permits.

Mr. Clements continued that as this Board is aware, this property recently became before them for the Live Free Recovery facility. They got approval to operate that business from the Keene ZBA then went to the Town of Marlborough for a Special Exception. It seems that the practice is

still currently that any use of the property outside of a residential use is going before both municipalities for land use approvals.

Chair Hoppock asked what happened in Marlborough for the Special Exception. Mr. Clements replied that the Marlborough Zoning Board denied it on a 2-2 vote. He continued that the applicant chose not to move forward any further with that application.

Chair Hoppock asked if it is correct that the Live Free Recovery model is set aside for the moment. Mr. Clements replied yes, he believes they are no longer planning to purchase the property. The property is back for sale, and the current applicant is hoping to purchase it for her proposed use.

Ms. Taylor stated that she is unfamiliar with the Marlborough Zoning Ordinance. She asked what it permits in the R-2 zone. She asked if this would have to go before the Marlborough board again if this is not a permitted use. Mr. Clements replied that he is not sure. He continued that he is not familiar, either, with the Marlborough Zoning Ordinance. Ms. Shay might have an answer to that.

Chair Hoppock asked if there were any further questions for Mr. Clements. Hearing none, he asked to hear from the applicant.

Jennifer Shay of 190 Nutting Rd., Jaffrey, stated that she will read the written narrative:

*“The property this proposed variance is related to is located on State highway route 101 within a mile from downtown Marlborough with the closest structure on the same side of the road in the other direction being the Cheshire County House of Corrections in Keene. The current owner of the property is BTD Properties LLC and prospective owner JLS Properties LLC, operated by Jennifer Shay, the applicant for this variance. The purpose of the proposed variance is to allow a retail consignment and multi-dealer shop fitting the description of 8.3.2.AD Retail Establishment, Light, to operate on the premises of this unique mixed use residential/commercial property. A log cabin turned into a quintessential New England boutique outlet that would, in addition to having antiques and consignment, invite local artisans, crafters, and goods producers to sell their products as part of the group shop. An establishment that embodies the community around it and takes part in fundraisers for local non-profits and school groups. The most recent use of the property was as a school serving the behavioral health sector, operating under the use definition of offices. Retail use has been approved for this property previously for a convenience store to operate in the building. As the need for office space has been greatly reduced since the COVID pandemic, the owner has struggled to fill the space or sell it under the current Zoning restrictions for its use.”*

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

Ms. Shay stated that the proposed business to operate on the property would not be a high volume, large-scale operation that would produce excessive traffic or noise pollution negatively

affecting residential properties in the area. She continued that the property is not in a densely populated family neighborhood; it is on NH Rt. 101. With dedicated entrance and exit and ample parking, this property suits a small retail operation well. Hours of operation would be limited to that customary of a small community, while considering seasonal changes. In addition to the retail business that would operate on the property, the residential unit will be utilized in that capacity as a residential dwelling, as intended by the current Zoning.

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

Ms. Shay stated that the existing form along NH Rt. 101 is a mix of residential and small businesses, many homebased businesses operating within a short distance of the property. She continued that a boutique shop of the nature of the one being proposed in the setting of a log cabin fits well with this low-density neighborhood. While the property sits in the Residential District and part of the existing structure will be used for retail purposes, the residential portion of the building will be utilized as residential.

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

Ms. Shay stated that granting the variance would allow a small, community-oriented venture to inhabit a currently unoccupied space that has historically had issues with occupancy due to Zoning restrictions as well as being a mixed use of both commercial and residential property with the buildings physically connected.

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

Ms. Shay stated that the property would be utilized, well cared for, and maintained with both the commercial and residential units occupied. She continued that in its current state of not having any tenants, the unoccupied building has the potential to negatively affect property values for surrounding properties should their owners wish to sell. With the County jail just down the road, this small business would help to create a buffer between the residential homes and the penal institution.

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*

Ms. Shay stated that the standard use for residential property is typically single-family occupancy in low traffic areas, which this property does not conform to. She continued that the

unique makeup of this property being a large log cabin housing a residence and commercial space sitting directly on NH Rt. 101, as well as the significant restrictions on options for renovation due to its structure, render the property unsuitable for the majority of currently permitted uses. With the large parking area designed for traffic moving around the site and the interior commercial space plotted for offices, this property has been designed for commercial use.

*and*

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

Ms. Shay stated that the type of business being presented is a small, community-friendly operation that would be in harmony with the directly surrounding area where many home-based businesses operate. She continued that few uses for this particular structure would fit the definition of “residential” and utilize both the commercial and residential units. The residential unit would be used residentially, as intended by the current Zoning, while the commercial section of the building would be utilized in a low impact, community-focused manner. No significant changes would be made to the exterior of the building, with only minor interior renovation to accommodate the retail business.

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

Ms. Shay stated that strict conformity would render a majority of the property unusable. She continued that in this instance, the property is partly commercial and partly residential. If strictly conforming to Code, not even duplex residential units would be allowed. For the entirety of this property to be fully utilized and conform to Code, more than half of the interior square footage would require renovation to convert it and the center corridor connecting the two distinct buildings to an unusually large single-family detached residential structure. Single-family structures rarely require the amount of parking currently provided at this site. With a good portion of the non-structured space taken up with paved driveway, an unusually small amount of green space is available for the square footage this property would consume as a single-family residence. Historically, many variances have been approved for this property, which denotes in and of itself that the property is far beyond the ability to use for purely residential purposes without extensive modifications.

Ms. Taylor stated that she is a little confused, because the Board’s first charge is to decide whether this is the right application and whether the Board needs to hear it. She continued that she is looking at the definition of “Retail establishment, light,” and looking at Section 3.1.5, Permitted Uses, “residential use, single-family.” In “commercial uses,” it lists “Retail establishment, light, subject to a conditional use permit.” She wonders why this is before the

Board. She asked Mr. Clements if it was because of the mixed use, and if he could clarify this confusion for the Board.

Mr. Clements replied that the Code Ms. Taylor is referring to relates to the City's Cottage Court Overlay conditional use permit design scheme, which allows for limited commercial activity within a cottage court development, under some rather strict use standards. He continued that the applicant is seeking a Variance to allow traditional, light retail use, not constrained by the use standards in the cottage court, because she is not proposing a cottage court.

Ms. Taylor replied that the Board does not have a copy of that updated Ordinance, so the conditional use permit she is looking at is on page 3-2. She asked if that is a different conditional use permit requirement than the cottage court. Mr. Clements replied that the only way retail is allowed in a residential zoning district is through the cottage court conditional use permit. Ms. Taylor replied that the Board does not have a copy of that change. Mr. Clements replied yes, that is correct; he has the new copies here for the Board. Ms. Taylor replied that he can understand her confusion, then – if the Board does not have the proper materials to look at, it is hard to figure out. Mr. Clements replied that when staff were looking at this application, they were aware of it. He continued that he apologizes for not giving the Board a heads up about it. This is for unrestrained, light retail use, without a conditional use permit. For example, one of the use standards for the cottage court is that retail space is limited to 1,000 square feet of gross floor area. This (proposal tonight) is significantly greater than that.

Ms. Taylor asked if the new cottage court Ordinance is for more than one residential unit. Mr. Clements replied yes, and retail can only be on the first floor when there is residential above it, and it needs to be on the corner of an existing public road. He continued that there are significant constraints that would make it so it would not be a viable option for the applicant. The applicant would not be able to get a cottage court conditional use permit without significant investment and modification.

Ms. Taylor asked if cottage court applies when there is only a single residence. Mr. Clements replied no. Ms. Taylor stated that there is only one residence at issue here. Mr. Clements replied that it is correct. He continued that what he is trying to say is that the cottage court is not germane to this application. Ms. Taylor replied right, which is why she was curious about the conditional use permit only being applicable to cottage courts. Mr. Clements replied that it is correct, for retail in a residential district at this time. Ms. Taylor replied that it does not make sense to her; maybe it will when the Board has the updated Ordinance.

Mr. Guyot stated that he is seeking clarification on the square footage for retail and the square footage for residential. Mr. Clements replied that the whole building is about 7,000 square feet, and he thinks it is approximately 3,500 square feet commercial, in the office use, and the remainder being residential. He continued that he thinks the applicant might have information about this. Ms. Shay replied about 2,400 for the commercial and about 1,600 for the residential, for a total of about 4,100 square feet.

Mr. Clements replied that that is a heated, livable area. He continued that then there is a 1,200 square foot basement in there, for example, a wood deck and a framed open porch, which gets up to about 7,000 square feet of total building area.

Mr. Guyot asked if it is correct that the retail space is about 2,400 square feet. Mr. Clements replied yes.

Ms. Taylor asked, regarding the retail use, if it will all be interior, or if Ms. Shay plans to have any exterior displays or outdoor “kiosks” or sales areas. Ms. Shay replied that there is an outdoor play area, fenced, and she does plan to have gardening things out there, such as pots and trellises. The Planning staff have answered many hypothetical questions for her and helped her to think a lot. For example, she might want to put rocking chairs on the front deck, and put price tags on them, but have them there for people to be able to sit in and enjoy while, for example, waiting for their spouse who is inside browsing. In front, near the sign, she would like to do a seasonal display. Maybe in the summer she would have something that looks like a farm, with something like metal farm animals, and in the fall, she would have scarecrows and a bale of hay. She would also like to take part in the Marlborough town-wide yard sale and be able to use outdoor space to do that. To the Keene side of the structure is the residence that has the deck off it, and a grassy area. She would like to use that area, potentially, to set up for yard sale-type items, as well as in the front area.

Ms. Shay continued that the topic of traffic and people stopping on Rt. 101 has been brought up to her, and (the need) to keep people from stopping on Rt. 101. There is not much of a breakdown lane there, in terms of paved surface, but there is quite a bit of gravel area before the lawn starts. She will have to get into the permitting processes and figure out what is required from all the different aspects, but she was thinking she could put out orange cones right before the grass, to keep people from stopping on the side of Rt. 101. They would not be in the breakdown lane; theoretically, they would be on the grass out of the way, but it would keep people from stopping there. Maybe she would have people directed with a bigger sign into the parking area. There are 21 parking spaces, which are plenty of parking spaces for people to be able to come in and view things at the yard sale. (That would) keep them from parking on Rt. 101 in that type of event.

Chair Hoppock asked if she knows what the speed limit is there as you are approaching the property. Ms. Shay replied that it goes from 30 to 35 mph and then to 40 mph right in there. Chair Hoppock asked if it is correct that the speed limit drops as you are heading into Marlborough. Ms. Shay replied yes.

Chair Hoppock stated that he drove by the other day. Referring to the picture, he indicated the driveway and asked if it is a U-shape. He asked if there was another entrance. Ms. Shay replied that the entrance is on the Keene side and the exit is on the Marlborough side, and they are marked “enter only” and “exit only.”

Chair Hoppock asked Ms. Shay to explain how she proposes to manage traffic. He continued that having 21 parking spaces is a plus. Ms. Shay replied that she hopes people come to the entrance and exit at the exit. She continued that there is a rather wide area [in the parking area], with the original site plans had parking on both sides, along the front of the building and Rt. 101. There are no parking spaces on the side of Rt. 101 (currently), so there is plenty of room on that side for people to come in and maneuver their vehicles around there. There is an accessible space marked, and the space in front of the accessible entrance is no parking. She asked what else Chair Hoppock is looking for with this question.

Chair Hoppock replied that he was just looking for her thoughts regarding managing the traffic. Ms. Shay replied that there appears to be plenty of space for delivery trucks to park directly behind, on the Rt. 101 side where the sign would be, but in the parking lot. She continued that a UPS truck could easily fit there, and there would still be room for people to easily back out of and pull into the parking spaces, even with the truck behind them.

Ms. Taylor asked Mr. Clements if the City of Keene has regulations for yard sales. Mr. Clements replied that he does not think Zoning Ordinance has yard sale regulations, but there might be something in the Sign Code about yard sale signs. He continued that there might be something in the City's Code of Ordinances saying someone can have three yard sales per year, but that is just a guess.

Ms. Taylor replied that she is asking because with a split property, it is possible the City would have some limitation on yard sales that would be different from the Town of Marlborough's, which would impact on the layout of the retail business.

Mr. Clements stated that the site plan on the screen right now is from the model log home. He showed the line depicting the municipal boundary and continued that while more of the office/commercial use is "there," most of the site itself is on the Keene side.

Ms. Taylor stated that the site plan is from 2003, and she does not have the expertise to determine whether what was on the site plan has changed, other than the building itself, which is consistent with what it was built for. Regarding whatever other things might be in the site plan, like grass, she asked if Mr. Clements knows if this site plan is relatively consistent with what is there now. Mr. Clements replied that he believes it to be fairly accurate. He continued that he drives by the property every day while coming and going into the city, so he has had a chance to look at it. A possible change is that he does not think this site plan shows the stockade fence/playground area that the behavioral health use installed. Otherwise, it is fundamentally the same site. Chair Hoppock asked if that is the fence in the picture that goes to the left of the building. Mr. Clements replied yes.

Chair Hoppock asked if Ms. Shay proposes any changes to the structure of the building. Ms. Shay replied minor modifications to the commercial side. She continued that she would like to

take out some of the walls, which would need permitting. It has a radiant heating floor, so she does not want to do too much modification. She is thinking of taking some of the walls down to half walls, to open it up more. Her contractor came in to look at it and said there would not be any issues, structurally, with removing any of the walls, because there is nothing (about the wall) supporting the weight of the roof. However, she also wants some wall space to be able to display things for the retail use. She needs wall space, because she does not want to destroy the property by putting holes in to hang things on the logs of the log cabin. With some of those interior walls with the office spaces, she would like to open it up, to deter theft. If she left all the enclosed spaces as they are and put items for sale in there, more of it would be (stolen) that would be if the walls were opened.

Ms. Taylor asked Ms. Shay to talk about the proposed hours, whether it would be seasonal or year-round, her employees, and that kind of information. Ms. Shay replied that she does not plan to start with any employees. She continued that (it will be) her, her 83-year-old mother, occasionally her sister, and some friends stopping in and helping out here and there. She does not picture this as a big retail operation anytime soon, if at all. She might need to hire one or two employees in the first year; she is not sure, though she was not planning on it. She talked with the City Engineer and had him do a traffic trip generation (analysis), and according to that, it is 119 vehicle trips generated per day. That is based on five employees. Five (of the 119 vehicle trips) would be employees, 10 would be residential, and 104 would be “general retail.” Staff said that is the category it would go in. She does not know how that relates to a one-to-one for the size of the business she is planning, but for the square footage, that is what it calculates out too.

Ms. Shay continued that regarding hours, she was thinking approximately 10:00 AM to 5:00 or 6:00 PM, four or five days a week. In the winter, she would not be open later than 4:00 or 5:00 PM. In the summer, she would probably be open until 6:00 or 7:00 PM. It would definitely be closed one or two days a week and the schedule will change based on business. If it is not busy, the open flag comes down, and if she stays not busy for a couple of weeks, she would change the official hours. She does not know yet what the demand will be, so she would want some flexibility in (the hours), but she does not want to be open late at night or early in the morning, except maybe on the Marlborough town-wide yard sale day when people come early.

Chair Hoppock asked if Ms. Shay plans any changes to the outside of the building. Ms. Shay replied no. Chair Hoppock asked if it would have the same appearance. Ms. Shay replied yes, although she is excited to decorate for each holiday. She continued that she would love to put garlands on the posts and things of that nature. She probably wants the ability to have some retail items out on the front porch. She might have a “Welcome to the cabin” sign with or without a price tag; maybe she would want to keep it. She would want to be able to put things inside the fenced area, and possibly on the outside of the fenced area. For example, antique metal signs that would be for retail, not signs advertising the business. She wants it to be tasteful; she does “not want to have a junkyard.” She is very clear on that. She wants it to look clean and orderly and be a place where it is not only her own items or antiques that are sold there. She would like to see community members rent group space to sell their crafts. One example she went over with the



Planning staff was people wanting to sell jams and jellies. Her understanding is that any food, whether prepared or not, would require a health permit and health inspection. This is very new to her; she worked in tech her whole life, and this is a career change for her. She will be looking to the Planning staff for guidance on what she needs to do and how to do it.

Ms. Taylor asked Mr. Clements what the rules are for outside storage in this zone. Mr. Clements replied that there are no clear prohibitions or allowances. He continued that the “Retail, light” definition is silent. “Retail, heavy” discusses outdoor display areas, and to him, “retail, heavy” is something like Home Depot, which puts out snow blowers before the winter and ride-on tractors before the summer, for example, with a large garden center. He (suggests) giving the applicant some guidance on what would be an appropriate amount of outdoor retail space, if the Board so chooses to grant that allowance, and then when they get into the Planning side, they can designate an area on the site plan, for example, where that is allowed. Then if it begins to creep in the future, they can bring it back under control.

Ms. Taylor replied that that goes to the questions earlier on square footage. It is hard to know what a reasonable condition is on that kind of limitation, if they are unsure of what the square footage is for the various locations on the property. She asked Ms. Shay to further explain to the Board where any outdoor retail would be, other than on the porch she described, and what she would consider “outdoor retail space and “outdoor storage space.”

Ms. Shay replied that “outdoor retail” versus “outdoor storage” is difficult. She continued that the things in the fenced area would be regularly for sale, and customers would be out there looking at things themselves, picking items up and bringing them into the store to purchase them. She does not know if that is “storage” or “retail space.” When she thinks of storage, she thinks of something like a storage closet or a MyBox, which she understands could only be there (at the store) for 30 days, which is fine, because it would probably only take a day or two to unload. Another example of storage is if she takes all her Christmas items out, has the space decorated for Christmas and sells Christmas items, then puts it into storage when Christmas is over. She is not sure she would consider that outdoor area “storage,” because everything in it would be actively for sale at that time.

Mr. Clements stated that the Planning Board has regulations related to the screening of things. “Standards Related to Service Areas” is more related to things like dumpster enclosures. In this instance, for outdoor retail, you want customers to be able to see the items that are available for purchase, whereas with storage, you probably do not want items to be easily seen from the public right-of-way to reduce the threat of theft. Maybe the distinction is ‘screened from the public right-of-way’ versus ‘visible from the public right-of-way,’ for the retail use.

Ms. Taylor stated that what she is getting at is the distinction between what is available for retail use and what is, for example, being stashed some place for next year and is not available on a day-to-day basis, whether it is pop-up canopies for yard sales or Christmas items being put away in January. She is curious about how that will be handled. Ms. Shay replied that there is 2,400

square feet of retail space inside the commercial area. She continued that she would probably leave one of those rooms walled off for office and storage, which will not be accessible to the public.

Chair Hoppock asked if it is correct that there is also a basement. Ms. Shay replied that the basement is in the residence. She continued that she will probably store personal belongings there, not business items. She might rent that side of the building to someone who resides there as it is a three-bedroom, freestanding house. She is not getting rid of her house in Jaffrey, because she lives a mile away from her 83-year-old mother. However, both of her children live in Keene, so at some point, she will probably live in that residence. For now, she needs to have the residence available to her while she moves in and spends a lot of time there setting up the business, but after that, she might rent out part of or all of it.

Mr. Guyot asked for clarification on “AD. Retail Establishment, Light” relative to the size of the retail space, which says, “3,500 square feet in gross floor area.” He asked if it is safe to assume that that means interior floor, meaning what is going to be the retail side of the building, or if it also includes exterior retail space. He is trying to get a good understanding of the total amount of square footage that will be devoted to retail as they are talking about a fenced area being a potential retail space for garden-type products.

Ms. Shay replied that part of the 2,400 square feet of interior retail space will not be used.

Mr. Clements stated that the Use Standard states, “*In the Neighborhood Business District, light retail establishments shall occupy less than 3,500 sf in gross floor area.*” He continued that currently, if the Variance were approved with no conditions, there would be no limiting factor like that. If the office space is about 2,400 square feet, they could say 2,400 square feet inside and no more than X amount of exterior retail square footage, which would give the applicant the flexibility to choose where to allot that additional retail square footage on the site plan.

Mr. Guyot replied that his question was more about the rule that says (no more than) 3,500 square feet of gross floor space. His presumption is that that is interior. Mr. Clements replied that it is correct. Mr. Guyot replied that with 2,400 square feet inside and (the limit being) 3,500 square feet, that gives 1,100 square feet. He continued that Ms. Shay said the interior would probably not be 2,400 square feet because she might have part of the space closed for storage or an office. He is trying to understand, if there is to be outside retail space, how that interfaces with the standard of 3,500 square feet of interior space, relative to the application.

Mr. Clements replied that the application is not subject to that 3,500 square feet number, because this is not the Neighborhood Business District. He continued that as it stands, there is no limit; it is not allowed at all. That is what he meant when he said that if the Variance were to be passed to allow for a light retail use with no conditions, there would be no limit on the amount of square footage the use could occupy.

Mr. Guyot replied that he is confused, because the proposed use is under 8.3.2.AD, which is why he was bringing it up. Mr. Clements replied yes, that is correct, because that is the definition of the use. He continued that within the definition of the use are those specific use standards that apply only when the business is in a specific district.

Ms. Taylor asked if it is correct, then that this will require a new site plan and go before the Planning Board. Mr. Clements replied not necessarily, although some level of planning review will be required. Ms. Taylor asked if that includes a site plan. Mr. Clements replied that if the traffic generation is under the threshold and there are no exterior changes, it might be able to be done through an administrative planning review. Legally, that is not a site plan review, however, it is some sort of planning oversight. There are three levels of (review), with certain thresholds. The next tier up is the Minor Project Review Committee, which is a technical advisory committee that *is* site plan review. It is a public body, comprised of City staff, and they do site plan reviews of the projects. Usually that is (for projects with) 10,000 square feet of impervious surface, a certain number of square foot building addition, and things like that. Generally speaking, a project like this is just reviewed by staff.

Ms. Taylor asked if it is correct that change of use, by itself, does not trigger. Mr. Clements replied that it is correct, not necessarily. Ms. Taylor asked if that includes exterior use as well as interior. Mr. Clements replied that they do not look at the interior of the building, just the exterior. He continued that they would want some sort of updated site plan, but it would not necessarily be something prepared by a surveyor or with a professional engineering stamp. They would want some kind of scaled plan to show where on the property changes are being made. Specific to this application, they would want to see a designated outdoor retail area, so that displays cannot just wander aimlessly around the property. It keeps things a little more orderly, and it assures the property owner that staff know what is going on and that they are comfortable with it. On the City's end, staff are not constantly chasing the property owner down when things are moving around.

Chair Hoppock stated that he heard comments about keeping the retail on the light side. He asked Ms. Shay if it is correct that right now, she is looking at 2,400 square feet of interior retail space. Ms. Shay replied yes, with the exception of whatever she does for a storage room/office area. Chair Hoppock replied that they can set that aside; office/storage would not be included in his comments. He continued that it would just be the floor space dedicated to retail. He asked if the 2,400 square feet is the total space she has there. Ms. Shay replied on the commercial side of the building. Chair Hoppock stated that within that 2,400 feet, she would have to use some of that space for her office and storage, so it would be less than 2,400 square feet for retail. Ms. Shay replied that it is correct.

Chair Hoppock asked if she would be okay with a condition that limited her retail space to 2,400 square feet, which would not include office space, and it would not include storage space. Ms. Shay replied that she would appreciate it if the number could include the fenced area and the porch. She continued that those two areas would be regular retail areas, versus, for example, the

space where she would set up tables once a year for the town-wide yard sale. The question then is whether the seasonal display she puts out front would be considered retail space, or just her seasonable displays. She is not sure how the Board would consider it.

Chair Hoppock asked what the approximate square footage of the porch and fenced area are. Ms. Shay replied that she does not know. Mr. Guyot replied [inaudible]. Ms. Taylor stated that the site plan currently shows that in addition to that 6'x70' (porch) area the office space is 2,240 square feet. She continued that she is not sure whether Ms. Shay's 2,400 square feet figure includes the porch. Ms. Shay replied that she wonders if it actually included the first floor bedroom in the residence, because they were using that bedroom as an office. Ms. Taylor asked if she meant when it was the model home. Ms. Shay replied yes. Ms. Taylor replied that it does not appear that way on the site plan, because it gives dimensions for the footprint of the model home. She continued that she cannot be certain, but she thinks that is separate.

Mr. Clements stated that the assessor's page has the front porch as 70'x6', which is 420 square feet for the porch, and 70'x29' (for the other space). Ms. Taylor replied that the site plan shows 70'x32'. Mr. Clements replied that it is another 2,030'. Mr. Guyot replied [inaudible]. Mr. Clements replied that the assessing might be the interior walls, so they will lose a couple of feet back and forth. He continued that for the sake of understanding this, they are talking about the office side, not including the covered entryway that separates the uses, and the front porch, which is about 2,450 square feet (total).

Ms. Shay stated that regarding the entryway connector in between, she would probably want to include that in retail, but there will not actually be retail floor space there. She continued that she was considering using that area for people to bring their consignment items in. Regular customers would come through the front door in the middle of the commercial side of the building. To keep people who are bringing in consignment items separate, she would have them use that entrance. That is also the accessible entrance and would obviously be the retail entrance for anyone who needed accessible entrance.

Mr. Clements stated that the enclosed playground area is probably somewhere between 900 and 1,300 square feet. He continued that that is a rough estimate.

Chair Hoppock asked if it is correct that the "connector" they are talking about is the space shown on the plan that is about 12 feet long, connecting the model home and the retail side. Ms. Shay replied yes. Chair Hoppock asked if it is correct that that would be storage for consignments. Ms. Shay replied that it would be where people who are consigning their products come in and drop off their products. Chair Hoppock asked if Ms. Shay would then process the items from there. Ms. Shay replied yes and put them into the retail space. Chair Hoppock asked if it is correct that Ms. Shay would not consider that connector to be retail space. Ms. Shay replied that it is correct; it would be more like temporary storage.

Mr. Guyot stated that the 2,240 square footage appears to be exterior measurements, as opposed to the interior measurement. He continued that the 32'x70' gets you to 22'x40', which is stated on the plan. That is larger than what the actual interior space will be. Adding 22'x40' plus the 420 square feet of porch gives 2,660 square feet that potentially could be retail on that part of the building. They have determined the 12-foot entryway will be storage. If the fenced area is approximately 900 to 1,300 square feet, they could say it is 1,000 square feet. If they add that 1,000 square feet – which will not necessarily be used for retail but *could* be – to the 2,660 square feet, then the absolute maximum available for retail would be 3,660 square feet. They know that it will be reduced, and they know that number is high. He is trying to get a rough estimate, because they know the 2,240 square feet figure is exterior and they know the interior is smaller.

Ms. Taylor stated that she would like some clarification. Her understanding is that the applicant would like additional outside retail space and considers that outdoor, fenced area as a separate outdoor retail space. She asked if that is correct. Ms. Shay replied that it is a three-season retail space versus where she would do seasonal displays out front. She would do a Christmas display where the big sign is, on that area, and for the town-wide yard sale she would set up tables in that area, or on the side over by the residence where there is a porch.

Ms. Taylor stated that her concern is whether there is a reasonable way to both limit and identify a location for the outside retail. She continued that she understands Ms. Shay's desire to have outdoor retail, but it cannot be completely unregulated. With the zoning as it currently is, it is wide open.

Ms. Shay stated that the fenced area is a square box, easily measurable. She continued that the porch is easily measurable. She asked if they had any measurements for the island in the parking lot. She wonders if there is a way they could define a square footage that could be allowed in that area, and what would be reasonable for that area. Chair Hoppock replied that from the 2003 site plan, he cannot tell what the area of that island is.

Ms. Taylor stated that her concern there – although she defers to staff – is that she does not know how temporary things are, but that would be within the setback. She does not know if that creates other issues for the Planning staff. Mr. Clements replied that just from a site circulation and pedestrian safety aspect, he would not want any kind of retail activity there. He continued that it is the Rural Zone, so the setback is 50 feet. The snow storage area cannot be encumbered by year-round retail. That said, any kind of seasonal retail would be removed by the time snow storage is needed. There is also a fair amount of topography in play on the property, as well as the tree line.

Mr. Clements continued that realistically, the only part of the property is “here” (he indicated on the drawing) behind the setback and appears to be unencumbered by topography or any development.

Chair Hoppock asked if it is correct that that space is on the residential side. Mr. Clements replied yes. Chair Hoppock replied that that might not be convenient for the retail operation.

Chair Hoppock asked about the fence on the left side. He continued that the picture does not make the length clear. He asked how long it is, and if they know the area behind the fence, as he assumes that is the area Ms. Shay is talking about outside retail. Ms. Shay replied to the fenced area that is attached to the building. She continued that it would be great to attach things to the other fence, but she does not think the neighbor would appreciate it, and she would like to be neighborly. Chair Hoppock replied that he only sees one fence in the picture, so that is what he is asking about. She talked about using “the area by the fence” for outdoor retail. Ms. Shay replied that right now there is the play area. Chair Hoppock asked if that is behind the fence. Ms. Shay replied that there is the fence that goes along the property border on that side, which she believes is what is shown in the site plan. She continued that what is not shown in the site plan is the stockade fence that encloses the play area on the Marlborough side of the building. Ms. Taylor replied that the Board cannot really tell that from the picture or the site plan. Chair Hoppock replied that there is a fence labeled and trash storage bin, but he cannot find those two items, either. The fence that is there now in the picture is not on the site plan. It was put up afterwards. Ms. Shay replied that it is correct.

Chair Hoppock stated that what he is trying to understand is what is behind the fence, which if looking at the property on the left side of the building, at the end of the retail space. He asked if that is the play area. Ms. Shay replied yes, it is a three-sided fence. She continued that you go out of the building into the fenced area, which is totally enclosed. Chair Hoppock asked if the play area is all that is in there right now. Ms. Shay replied that they took the gym equipment out, so it is just a big lot of recycled rubber, which was the flooring of the play area, and a sandbox in the middle.

Mr. Clements stated that it is about 1,000 square feet, using the 2021 aerial image. Chair Hoppock replied that if they use that 1,000 square feet figure and add it to the 2,660 square feet that is 3,660 square feet of potential retail space. He agrees with Mr. Guyot’s calculations.

Mr. Guyot replied that that is on the high side. He asked if Mr. Clements has the Assessor’s interior measurements, so they could refine this. Mr. Clements replied yes, interior measurements are 2,030 square feet for the commercial space, which is not too far off. With that, it is about 3,400 square feet.

Ms. Taylor stated that if they are trying to narrow the usable, external area to a square footage, they will not get it exact. She continued that whether they should say it should be limited to a specific area and leave that to Planning staff to determine how much of a specific area, or a percentage of the internal space, she does not know. They will not be successful at trying to design square footage.

Chair Hoppock asked where this goes next, if the Board approves the Variance. He asked if it goes to the Keene Planning Board and Marlborough's Zoning Board. Ms. Shay replied that the Marlborough Zoning Board is scheduled for Wednesday, October 16, at 6:00 PM and she is seeking a Special Exception, meeting with Zoning [Board] and Planning [Board] at the same time. Chair Hoppock asked what the Keene Planning Board's role is here. Mr. Clements replied that he does not think this will go to the Keene Planning Board, so if the ZBA is worried about the amount of outdoor retail utilization, they need to figure it out here.

Chair Hoppock stated that in terms of the interior retail, the applicant said she will need an office and storage in there. He asked if the ZBA needs to worry about regulating how much retail goes inside versus outside. Mr. Clements replied no.

Ms. Taylor stated that she was concerned about anyone trying to designate exact square footage without the Board having more information. She continued that she was more concerned with either limiting it to a percentage – such as 50% of the internal, 60%, or something along those lines - as well as the location on the site.

Mr. Clements asked which is more important, the footprint of the exterior retail use, or the location of that exterior retail use. Chair Hoppock replied both. Mr. Clements replied that the existing 50-foot setback will make it so that permanent structures have to be 50 feet from the property line. Thus, temporary tables going up with displays for a yard sale or a temporary artisan goods display would be less regulated by that 50-foot setback. However, if the Board wanted to say she could have 50% of her total interior retail space as the maximum for the exterior retail space, that gives the applicant an understanding of the amount of space she can work with, and then she can decide where on the property that will go. Then she can show that on the site plan and beholden to that location, and amend that location much easier, instead of having to come back to amend the Variance.

Ms. Taylor asked why they could not do both, regarding Chair Hoppock's statement that both are important. Mr. Clements replied that it is up to the Board.

Chair Hoppock stated that to clarify his thoughts, he does not think the applicant putting tables out there for a day would be a problem. He continued that he does not want to tell the applicant where to put things, like "inside the fence where the playground was." If the Board tells her, hypothetically, that she is limited to 2,400 square feet of exterior retail space, the applicant can figure out where it is, so long as it is not in the setback. To him, that makes more sense than the Board telling her where to put it. Mr. Clements replied that it is his recommendation as well for the Board to set a ratio or come up with a square footage amount that the applicant and Board are comfortable with, then let the applicant's business needs dictate where she is going to utilize that square footage.

Chair Hoppock asked if anyone had further questions for the applicant, before the Board goes into deliberations, which they are almost already doing.

Ms. Shay asked if the Board would consider defining “inside retail space,” “permanent outdoor retail space,” and “temporary outside retail space.” She continued that for permanent outdoor retail space, she would like the fenced area that was previously the play area, and the front porch. Then, temporary outdoor retail space could be square footage, which could be in XYZ space as long as it is not in the setback.

Chair Hoppock asked what “temporary” means, such as a day or a week. Ms. Shay replied one day, a weekend, or a week. She continued that the town-wide yard sale is usually for two or three days. (Maybe) there are some other event in town, Girl Scouts selling cookies for a weekend, or youth doing a car wash. She does not know what type of events she will end up holding. She will talk with Planning staff to make sure everything she tries is within the guidelines.

Chair Hoppock stated that setting aside the “temporary outdoor retail space” for a moment, and doing nothing about that, he wants to know what would happen if the Board approved outdoor retail up to the front porch and the fenced-in area on the left side of the property. His question for Mr. Clements is whether that is enough detail for enforcement, and his question for Ms. Shay is whether that is enough detail for what she needs.

Ms. Shay replied that her question would be how she would get the other things approved, such as participation in the town-wide yard sale. She asked what process she would have to go through. Chair Hoppock replied that he does not know, but he thinks she would not need to do anything. He continued that the temporary outdoor retail would be at her discretion, when she wanted. He does not think the ZBA can regulate temporary retail. He is not comfortable with saying she could have X number square feet of outdoor retail, because he has no idea what it will be, and if it is up for a day or a weekend, he assumes it will come down at night and she would not leave it out overnight. Ms. Shay replied that she probably would, covered with a tarp.

Ms. Shay stated that that it sounds like the idea of having a holiday/seasonal display would not be allowed in the island area, such as scarecrows and a bale of hay. Mr. Clements replied that decorations and landscaping are different from retail. He continued that if it were retail, there would be people wandering around and looking at things, not paying attention to the parking lot and State highway next to them. Ms. Shay doing decorative landscaping or displays that are relatively stagnant, which people are not directly interacting with (would be different).

Mr. Clements stated that the City issues periodic event licenses for events such as a car wash, yard sale, or Girl Scouts. He continued that that is not necessarily something the ZBA needs to figure out. Ms. Shay replied that it is something she needs to figure out if she needs to get some type of permit in order to have Girl Scouts selling cookies. Mr. Clements replied yes, a temporary event license would cover that. He continued that this (what is before the ZBA) is more about the permanent use of the property. If confining the permanent, year-round, outdoor retail to the front porch and the fence-in area would be sufficient for Ms. Shay’s needs, then temporary events are easier to handle. This is more about the fact that if this Variance is approved, the next person she sells the property will be able to have these special rules, as would



the owner after that. Thus, there have to be limits. Maybe it is the outdoor area, the front porch, and then 250 additional square feet of outdoor retail space that is outside of the yard setbacks. That would give her a little bit of flexible space. The ZBA really needs to look at the permanent future use of the property, more than temporary, occasional uses.

Chair Hoppock stated that hearing no further questions for the applicant, he asks if anyone from the public wishes to speak for or against the application. Hearing none, he closed the public hearing and asked the Board to deliberate.

Ms. Taylor stated that strangely enough, she thinks this is one application that does not necessarily hinge on the unnecessary hardship criterion. She continued that she has concerns regarding public safety. She will give her overall thoughts rather than address individual criteria. She does not have any concerns with the inside retail, the outside retail on the porch, or behind the fenced area. She thinks the Board needs to designate an area for the outside retail that is not within that front island setback area, because of safety concerns, and not within the parking lot or paved area. Potentially, that additional outdoor retail could go on the western side. Maybe 250 additional square feet, as Mr. Clements suggested, is a nice round number, but again, she would want to designate a location for that additional outdoor retail that is not on the porch or behind the fence.

Chair Hoppock asked, for clarity, if she meant outside retail behind the fence and on the porch that is over and above the 250 square feet. Ms. Taylor replied yes. Chair Hoppock replied that he does not have an issue with that.

Mr. Guyot stated that he thinks the 50-foot setback forces the 250 feet of what he will call “variable space” up to the building, into that quadrant on the west side/Keene side. He continued that the 50-foot setback, if he is reading the plan correctly, is very close to the porch. Ms. Taylor replied yes, but the 50-foot setback does not address temporary structures. She continued that her concern is, again, from a safety perspective. She does not think the front island area should be used for outdoor retail. She thinks an area on the western side could be used, potentially a small area on the eastern side where the mailbox and dumpster are shown, but she is not sure. She would leave the layout to the applicant. However, she does think the Board should quantify the amount and location of the outside, temporary retail space that is not the porch and not the fence-in area.

Mr. Clements stated that part of the site plan Planning review is the safe use of the property. He continued that (examples would be) encumbering parking spaces or driving aisles. They do not generally allow things like that. Maybe specifying ‘not in the parking area’ and ‘not in the center island’ would be enough. That gives the applicant the flexibility to work with Planning staff to identify a safe place for the (temporary outdoor retail).

Ms. Taylor replied yes, that is basically what she was trying to say. She continued that she was trying to demonstrate that outdoor temporary retail could go in other areas.

Chair Hoppock asked if Mr. Clements, by “Planning,” means the Planning Board, that lower-tier group, or the administrative level he mentioned before. Mr. Clements replied that whether it is the administrative review with staff looking at site plans, or the Minor Project Review Committee, they are still following the Planning Board’s site plan regulations. If a proposal requires a deviation or a waiver from those regulations, they must go to the Planning Board. The Planning Board is the only body with the authority to grant those concessions. Especially with the administrative review, it must check all the boxes, or it gets (elevated to the next tier).

Ms. Taylor stated that the issue she raised is directed at the public health and safety portion of the Board’s considerations. She continued that for the number of times the Board has seen this particular piece of property before them, she thinks the property itself creates a hardship for whoever is trying to develop and use the property, so she will not linger long on (that criterion). She does not think this proposal is necessarily against the public interest, so long as it is regulated to the extent that they consider the public health and safety. That is why she suggested the condition on the outdoor retail.

Ms. Taylor continued that the other condition she thinks they should consider is that it would all be contingent on also getting approval from the Town of Marlborough. She thinks that is what the Board said last time (this property was before them). Chair Hoppock replied that he does recall that.

Chair Hoppock replied that he agrees with Ms. Taylor’s suggestions, especially to minimize any concerns about public safety. He continued that he does not think granting the Variance would be contrary to the public interest, because “retail, light” is consistent with what exists out there, in many ways. There are many uses along that strip. Regarding the spirit of the Ordinance and the safety issues, it is along a major highway, and the things the Board is talking about will reduce the number of people outside at any one time, and they will be away from the roadway because of what they are doing. He thinks it will ameliorate those safety concerns. Even temporary kiosks will not alter the essential character of the neighborhood. It might even enhance the commercial value of it. There would be great injustice to the applicant, not outweighed by any public gain if it were denied. He does not see any evidence, nor can he imagine any, that would indicate there would be diminished property values in the neighborhood if this were approved. The characteristics of this property are such that there is a connected commercial and residential use, which one does not see often. It is split by a town/city line, and he cannot remember another piece of property the Board has ever had with that problem. In her application, the applicant describes it as “the unique makeup of this property,” which he thinks is the “understatement of the year.” Many qualities of this property make it difficult to regulate. It would be unfair to apply retail prohibition to the property, given the property’s unique features. He agrees that the conditions the Board is discussing would be appropriate conditions of approval.

Chair Hoppock asked if Mr. Guyot or Mr. Clough had anything to add. Hearing none, he asked for a motion.

Ms. Taylor made a motion for the Zoning Board of Adjustment to approve ZBA-2024-25 for a Variance for a property located at 973 Marlboro Rd., Tax Map 249-004-000, to operate a light retail establishment in the Rural District per Article 8.3.2.AD of the Zoning Regulations, with the conditions:

- Approval is contingent on having the necessary Zoning approval from the Town of Marlborough
- Outdoor, temporary, seasonal retail is limited to approximately 250 square feet, so long as it is not on the front island between the two entrances or in the parking lot. The outdoor, temporary, seasonal retail does not include the porches or the fenced-in areas of the property.

Chair Hoppock asked if, for clarification, retail can occur on the porch or in the fenced-in area without regard to the 250 feet. Ms. Taylor replied yes, that is her intent.

Mr. Clough seconded the motion.

Mr. Clements asked if they want to include in the condition that outdoor retail is allowed on the porch and in the fence-in area. Chair Hoppock replied that he thinks they did, with his clarifying question. He continued that outside retail is permitted on the porch and inside the fenced-in area without regard to the 250 square feet limit. There will be no outdoor retail on the island or in the parking lot. He asked if that is how everyone understood it.

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.*

Met with a vote of 4-0.

*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.

**V) New Business**

Mr. Clements distributed copies of corrected copies of the Land Development Code to the Board.

**VI) Communications and Miscellaneous**

Mr. Clements stated that there are no communications or miscellaneous items.

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

**VIII) Adjournment**

There being no further business, Chair Hoppock adjourned the meeting at 8:49 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker

Reviewed and edited by,  
Corinne Marcou, Board Clerk