

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 4, 2024

6:30 PM

**Council Chamber,
City Hall**

Members Present:

Jane Taylor, Vice Chair
Richard Clough
Edward Guyot
Zack LeRoy

Staff Present:

Evan Clements, Deputy Zoning
Administrator/Planner
Mari Brunner, Acting Zoning
Administrator/Senior Planner

Members Not Present:

Joseph Hoppock, Vice Chair

I) Introduction of Board Members

Vice Chair Taylor called the meeting to order at 6:30 PM. Roll call was conducted.

II) Minutes of the Previous Meeting – August 19, 2024 and October 7, 2024

Vice Chair Taylor noted a correction to the August 19 meeting minutes: line 869 states, “*Mr. Guyot stated that given that the other properties are primarily parking in nature, he does not see how this development and the parking challenge here would affect those in any way.*” She continued that she would like to clarify that to say, “*Mr. Guyot stated that given that the other properties to the south are primarily parking in nature [...]*”. The properties to the east and west are residential with some business.

Mr. Clough made a motion to approve the meeting minutes of August 19, 2024, as amended, and the meeting minutes of October 7, 2024. Mr. Guyot seconded the motion, which passed by unanimous vote.

III) Unfinished Business

Vice Chair Taylor asked if there was any unfinished business. Evan Clements, Planner, replied no.

IV) Hearings

- A) **ZBA-2024-26: Petitioner, Cathy Goodreau, of 690 Court St., requests a variance for property located at 70 Court St., Tax Map #568-041-000. This property is in the Downtown Transition District and is owned by Geno A. Ranaldi, of 75 Court St., Exeter, NH. The Petitioner requests a variance to operate an animal care business per Article 4.1.3 of the Zoning Regulations.**

Vice Chair Taylor introduced ZBA-2024-26. Mr. LeRoy stated that he would like the Board's permission to recuse himself from ZBA-2024-26 due to a conflict of interest. He continued that the owner of the building is a current client of his. Vice Chair Taylor asked if anyone on the Board objected to Mr. LeRoy's request for recusal. Hearing none, she asked for a vote. The Board voted unanimously to recuse Mr. LeRoy.

Mr. Clements stated that he needs to recuse himself from this application as well. He continued that his wife is an employee of the business in question. He has not been involved in this application at all.

Vice Chair Taylor asked to hear from staff.

Mari Brunner, Senior Planner, Acting Zoning Administrator, stated that 70 Court St. is an existing parcel with approximately half an acre and about 146 feet of frontage on Court St. in the Downtown Transition District. She continued that the lot is also in the Downtown Historic Overlay District, and it is the site of the historic Prentiss House, built in 1828. Two major additions were made to the original historic structure, one in the 1960s and one in the 1970s. Due to its age, architectural features, and history, the building is ranked as a Primary Resource. As such, it is subject to the strictest Historic District regulations. The site also contains a detached garage and a small shed. The applicant proposes operating an animal care facility within the basement of the main building. This use is not listed as a permitted use in the Downtown Transition District. The use definition is, *"An establishment that provides care for domestic animals, including veterinary offices for the treatment of animals where such animals may be boarded indoors during their convalescence, and pet grooming facilities. An animal care facility does not include kennels or animal training centers."*

Ms. Brunner continued that the subject property is surrounded by the Downtown Transition District. However, it is close to residential districts to the north, both high and low density, and more intense downtown districts to the south and east, including Downtown Limited and Downtown Core. Surrounding uses include a mix of offices and multi-family residential. The property was originally utilized as a parsonage and a single-family home, and later a residence with a doctor's office. Most recently, and for quite some time, it was used by the Keene Senior Center, which occupied the building from 1962 through earlier this year. A Variance was granted on this property in 1976 to waive the on-site parking requirements associated with one of the building expansions. The Senior Center sold the property earlier this year and the property has been vacant ever since.

Vice Chair Taylor asked what the parking requirements are for this particular use. She continued that her understanding is that the applicant only wants to use a portion of the building, and she is curious about what the parking requirements are, to see what will be left for the other uses, and whether there is the potential for seeing future variances in the building. Ms. Brunner stated that the parking requirement is three spaces per 1,000 square feet of gross floor area. She continued that she does not have the gross floor area of the space they want to use, but it is just the basement, not the full building.

Vice Chair Taylor asked if the Board had more questions for Ms. Brunner. Hearing none, she asked to hear from the applicant.

Cathy Goodreau of 305 Ashby Rd., New Ipswich, stated that she is the owner of Doggone Beautiful Pet Styling, of 690 Court St. She continued that she is looking for a Variance to operate the grooming business in the basement of 70 Court St. They will only use the basement and will not make changes to the building. No walls will come down; they will not add anything. Thus, they will maintain the historic nature of the building, not doing any renovations, but using it as it is. Doggone Beautiful has been in business in Keene for over 38 years. At the current location at 690 Court St., the veterinary business needs the space for expanding the veterinary business. The veterinarian has asked Doggone Beautiful to find another location by the end of December. Doggone Beautiful had struggled to find a location in Keene that would allow the business, until they found this space.

Ms. Goodreau continued that she and the owner of 70 Court St. each did a noise test from the basement. They brought her dog to the basement and had her bark, and from outside of the building, she (Ms. Goodreau) could not hear the barking. The basement is three quarters underground, with only a couple windows in the rear of the building above ground. The noise was not an issue. When the owner did the testing, he could not even hear the barking from the basement when he was on the first floor. It is a well-structured building. She does not think Doggone Beautiful would cause any more traffic to Court St. (with this move), since the business is already on Court St.

Ms. Goodreau continued that regarding the hardship, if Doggone Beautiful does not get the Variance, they would probably have to move the business outside of Keene, because they are having trouble finding a space in Keene. That would be a hardship for Doggone Beautiful and for the city of Keene, after the business has been here for 38 years. Present tonight are the previous two owners of Doggone Beautiful. Vice Chair Taylor replied that the most difficult criterion the Board always deals with is the Unnecessary Hardship, which is related to the particular use and the particular property. She continued that it is the relationship between the two, if that helps clarify it.

Vice Chair Taylor asked Ms. Goodreau what the approximate square footage is. Ms. Goodreau replied 2,000 square feet in the basement.

Vice Chair Taylor asked if the basement has all the facilities the business needs, such as water, air, and heat since basements vary. Ms. Goodreau replied yes, it has water, electricity, and everything they need. She continued that they would need to do some plumbing work, but they will not make changes other than taking out a sink to put in a couple tubs and maybe adding a couple of electrical outlets if needed. They would not make any major changes to the space other than painting.

Vice Chair Taylor asked Ms. Goodreau to describe the entrance, the traffic flow, and how people will go in and out. Ms. Goodreau replied that the building has a side entrance with a ramp, since it was a senior center, so there is ADA access for Doggone Beautiful's older clients. People will enter via the basement door down the ramp. When you enter the building, you can either take the ramp down to Doggone Beautiful, or a ramp up to the first floor, which is currently empty.

Vice Chair Taylor asked how many clients the business has at a time, and what happens if staff are not done with a client and animals are waiting to come in. Ms. Goodreau replied that they only have enough clients at a time for the groomers they have. She continued that they schedule clients accordingly. For example, if three groomers are working on a given day, three dogs would come in for grooming, and then the next set of dogs would come in. Doggone Beautiful will have a dedicated "10-minute drop-off" space, so people can park there, come in and drop off their dog, and leave. No people or dogs will be waiting outside. There will be no training or kennels. Everything will be done inside, in the basement.

Vice Chair Taylor asked if there would be space on site for the dogs to take care of their needs. Ms. Goodreau replied yes. She continued that typically, it is a small space on the grass, and Doggone Beautiful will put a garbage bin there and pet waste bags for clients to use before entering the building, as needed. Doggone Beautiful staff maintain that area on a daily basis, emptying the garbage and ensuring the area is cleaned. Vice Chair Taylor asked if that is okay with the landlord. Ms. Goodreau replied yes.

Vice Chair Taylor asked if Mr. Clough had questions. Mr. Clough replied not at this time. Vice Chair Taylor asked for public comment, beginning with anyone wishing to speak in opposition to the application. Hearing none, she asked if anyone wanted to speak in favor.

Linda Claflin of 7 Dewey Circle, Haydenville, MA, stated that she is the founder of Doggone Beautiful, begun in 1986. She continued that many people in Keene have been clients for generations. Some are now elderly, and this ramp would be wonderful for them to access the business. The hours are 8:30 AM to 3:00 PM, with an occasional 8:00 start. Ending at 3:00 is good because they do not interfere with the school buses. Some clients come from Brattleboro and Bennington, VT and shop in Keene while their pets are being groomed. It is a fairly quiet atmosphere, with the exception of German Shepherds here and there who will bark.

Sofia Cunha-Vasconcelos stated that she owns and resides at 21 Summer St. and shares a boundary with the property in question. She continued that she believes her living space is the

closest building to the property. She has been a client of Doggone Beautiful for years, and it is very convenient for her to have the business right around the corner. She has been using their services for years, and there is never any waiting, and it is very quiet next to and as you enter the building. There are no noises from the existing building, and she cannot imagine it has more insulation than the one the business is hoping to enter. She hopes to be able to use Doggone Beautiful's services right around the corner from her own house.

Vice Chair Taylor asked if there was any more public comment. Ms. Brunner stated that some written comments were submitted. Vice Chair Taylor replied that the Board received nine written comments prior to the meeting, which are part of the record. She continued that the Board received several more. She asked Ms. Brunner to read them into the record.

Ms. Brunner stated that the following is from Kerry Carlisle at 111 Ridgewood Ave., Keene:

"Hi, I just wanted to let you know that I cannot attend the ZBA meeting on November 4, but I'm in favor of the variance for Doggone Beautiful at 70 Court St. I've lived in the Keene community all my life and they are a wonderful business.

Thank you very much, Kerry Carlisle."

Ms. Brunner continued that the following is from Gail Rose, without an address:

"This email is in support of Doggone Beautiful in order for them to get their variance."

Ms. Brunner continued that the following is from Irene Seder Shay, no address:

"Good morning, I wanted to send an email to express my support of Doggone Beautiful moving into the 70 Court St. location. As a property owner in Keene and Swanzey, I have no objection to this move and fully agree with it. Personally, it would be easier for me to drive to the 70 Court St. location. Since customers only drop off or pick up their animals from this business, I do not foresee any parking issues. Please let me know if you need any additional information from me."

Ms. Brunner continued that the following is from Jane P. Lane at 15 Russell St., Keene:

"Good afternoon, I understand that there is a hearing on Monday regarding the request by Doggone Beautiful, now located at 690 Court St., asking the City to adjust the personal service area so they have permission to operate their pet grooming business in the Downtown Transition area at 70 Court St. I have been a customer of many years at Doggone Beautiful, going back about 40 years, with many dogs over the years. As a matter of fact, the dog I currently own was groomed at Doggone Beautiful today. I am writing to encourage the Zoning Board to allow permission for this wonderful Keene business to remain in Keene and specifically on Court St. If noise is a concern, I can assure you that in all the years I've been to their business, I've never

heard barking carried out by the dogs there enjoying their 'spa day.' Thank you for listening, and again, I urge you to vote to allow Doggone Beautiful to move their business to 70 Court St."

Ms. Brunner continued that the last one not included in the packet is from Michael and Frances Kiser at 25 Avon St., Keene:

*"To whom it may concern,
We are writing this letter on behalf of Linda Claflin of Doggone Beautiful, who is having to move her business out of her current location at 690 Court St. She is trying to move to the vacant building at 70 Court St. They are requesting the Zoning Board to consider approving a Variance for this valuable pet grooming facility to move into the Downtown Transition Zone. We have been using Doggone Beautiful for our dog for the past 12 years and feel this business would be an asset being closer to the downtown area. As Keene business owner, we support local businesses and feel it would be a shame if they had to close their doors for an extended period of time or even permanently. Please help them continue to serve the Keene area with their successful business."*

Vice Chair Taylor (closed the public hearing) and asked the Board for their thoughts.

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

Mr. Clough stated that they have heard from many people who support this (Variance request), and he does not believe anything about this location would create anything contrary. He does not think the type of use would have any negative impact, if it is even noticeable.

Mr. Guyot stated that he agrees. He continued that the traffic counts seem low. Noise, as they heard from the applicant, should be minimal or nonexistent. The parking lot is large, so he thinks they have covered the minimum number of spots needed for the square footage. He is comfortable with the first criterion.

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

Vice Chair Taylor asked for thoughts on how this fits in the Downtown Transition District. Mr. Clough replied that is exactly it – it is a transition; it is a business with a very low impact. He continued that he thinks that is the definition of what a transition would be - a business, but with a low impact, which someone in a residential area would be looking for.

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

Vice Chair Taylor stated that this is the weighing criterion, and the benefit to the applicant should not be outweighed by the harm to the general public. She continued that she does not see any harm to the general public, and certainly, there would be detriment to the applicant if this were not allowed. If anything, it goes in favor of the applicant.

Mr. Guyot stated that he agrees, and from a community service perspective, that it needs to be factored in as well as a positive aspect of this.

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

Vice Chair Taylor stated that it is a vacant building, which does not help the value of this property or surrounding properties. She continued that even though this business is not a full use of the building, she cannot see how that could lower the value of the building or any surrounding properties. Mr. Guyot agreed.

Mr. Clough stated that the applicant's statement about taking care of the grounds means that the grounds will be observed at least daily, which is probably more than many rental properties. He continued that he would say that it is positive.

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.*

Vice Chair Taylor stated that this is always the difficult criterion for the Board. Mr. Clough stated that because the property has been used for the Senior Center and given staff's opening statements describing the property's additions and variances, (it is clear that) the building has been added to and does not conform to its original purpose. He continued that regarding 2,000 square feet of a usable basement, he cannot imagine many businesses thinking that it is a great location to use. This strange niche would be great to fill with something like Doggone Beautiful, which does not need a very aesthetically pleasing location. He does not think the (canine) clients will be concerned with their surroundings while being groomed. This is a very good use for a basement. The existing ramp is great for the long-term clients who need access to the building. He thinks this business fits very well with the space, which not many people would be looking to use in other ways.

Mr. Guyot asked if the unnecessary hardship is for the applicant or the property. Vice Chair Taylor replied how the use is applied to the property and its relationship to the Ordinance. She continued that the Downtown Transition Zone, as stated in the Land Development Code (LDC), is *"intended to accommodate a variety of residential open space and other low intensity uses in a mixed-use environment of attached and detached structures. Development within the Downtown Transition District is intended to complement and transition into existing residential neighborhoods adjacent to downtown Keene."* It seems to her that this is relatively low intensity use. It is probably lower intensity use than the Senior Center. As Mr. Clough said, it would truly

be a transitional use. For adjacent residential properties, this is not a high intensity commercial or retail use.

Vice Chair Taylor stated that a hardship is the nature of the building and the property itself. Regarding this particular use, the strict interpretation of the Zoning Ordinance does not make much sense to her. Due to the building where it is, its historic nature, and the limitations on its use, that creates a hardship by the property itself.

Mr. Guyot stated based on the nature of the property, the structure itself, he agrees.

Vice Chair Taylor stated that due to the nature of the building, there are only so many things you can do with it. She continued that it would be difficult, without further variances or modifications, to change the structure itself. It does not seem that there is much relationship between the Ordinance and the proposed use.

and

ii. The proposed use is a reasonable one.

Vice Chair Taylor stated that she thinks, from the Board's comments, that they feel it is a reasonable use. Mr. Guyot and Mr. Clough agreed.

Mr. Clough made a motion for the Zoning Board of Adjustment to approve ZBA-2024-26, a Variance for the property located at 70 Court St., Tax Map #568-041-000 in the Downtown Transition District. The Variance is to operate an animal care business per Article 4.1.3 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 3-0.

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

Met with a vote of 3-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 3-0.

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

Met with a vote of 3-0.

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 3-0.

The motion passed with a vote of 3-0.

B) ZBA-2024-27: Petitioner, George Hansel of Tailfeather Strategies, Keene, requests a variance for property located at 7 Aliber Place, Tax Map #590-093- 000. This property is in the Downtown Edge District and is owned by Jared Goodell of Keene. The Petitioner requests a variance for new construction within 20' of the minimum interior setback that is required when a parcel in the Downtown Edge District is abutting a parcel in the Downtown Transition District per Article 4.4.1.E of the Zoning Regulations.

Vice Chair Taylor introduced ZBA-2024-27. She noted that Mr. LeRoy and Mr. Clements have rejoined the meeting. She asked to hear from staff.

Mr. Clements stated that the subject property, 7 Aliber Place, is an existing .46-acre landlocked parcel with access to Marlboro St. via a private road named Aliber Place. He continued that the parcel contains an existing three-family dwelling, a single-family home, and a parking area. The parcel was recently two separate lots, commonly known as 3 Aliber Place and 15 Aliber Place, but they were merged to make way for recent development in the form of three duplex dwellings located on the western side of the parcel. The property received two Variances and a parking reduction Special Exception in August 2024 for this duplex project. Two Variances were relief from the built-to zone and the interior side yard setback requirement of 20 feet, since the property abuts the Downtown Transition District.

Mr. Clements continued that the subject property is adjacent to the Downtown Edge District to the northwest, north, and east, Downtown Transition to the west, and Residential Preservation to the south. Surrounding uses include the Historical Society of Cheshire County, Keene State Alumni Center to the west, residential duplex to the north and east, and single-family to the south. Multi-family and the Savings Bank of Walpole are located to the north on the other side of Marlboro St.

Vice Chair Taylor asked for confirmation that 7 Aliber Place and what the Board heard in August, titled 57 Marlboro St., are the same properties. Mr. Clements replied yes, that is correct. He continued that since the properties were combined, they received a new common address of 7 Aliber Place. It used to be 57 Marlboro St. and 15 Aliber Place.

Vice Chair Taylor asked Mr. Clements to explain or clarify why they are here tonight, since the Board has already given a Variance to modify that interior setback line to five feet. Mr. Clements replied that the applicant needs additional relief from the interior side yard setback, greater than what the Board approved in August. Vice Chair Taylor asked if it was thus a Variance from the Variance. Mr. Clements replied maybe with a modification to the existing Variance. He continued that the initial Variance set them at a five-foot setback instead of a 20-foot setback, and now they need additional relief to be closer to the property line than five feet.

Vice Chair Taylor asked to hear from the applicant.

George Hansel (of Tailfeather Strategies, on behalf of owner Jared Goodell) stated that he is before the Board again tonight in a rather unfortunate situation. He continued that the Board reviewed this parcel in August. It is on Marlboro St. but has no frontage, so that created a situation where they had to get special approval from the City Council to allow them to construct a new structure there, which they did. They came to the ZBA to get two Variances, one to allow them to build outside of the build-to zone, which would be Marlboro St. in this case, which is impossible because it was not on the parcel. The second Variance request was to build within the side interior setback, which the Zoning Code says must be at least 20 feet in this instance where you have the Downtown Edge District up against the district closer to Main St. They got a Special Exception for a parking reduction also. All of those were granted and they were ready to go. They went forward with building permits, which were granted. Then, they had a site survey done to confirm where everything was, and a lot of that initial information was taken in. The footings were put in for the foundations. The foundations were poured.

Mr. Hansel continued that right after that, they discovered that the lot line was about a foot to two feet closer than they thought. Thus, there was definitely a mistake on the developer's part, which they take responsibility for. Tonight, they are here to re-set on that Variance request regarding the side interior setback and present a new case for getting that Variance approved with a three-foot requirement instead of a five-foot requirement. Ultimately, he thinks there is a good argument to be made that there is no real functional difference to the public, whether it is three feet or five feet. He looked at the meeting minutes from August, and much of the discussion around the five-foot setback was related to the Building Code and fire safety requirements. Thus, to help remedy this situation, the developer has worked with City staff to come up with some measures to upgrade the structural walls and some of the features of the structure closest to that property line. This would add additional fire resistance and take away any safety concerns related to that extra foot or two feet of proximity to the property line. They feel at this time that they can go forward and if they receive this relief. It will not really change the interaction of these two structures to the public. A long-standing chain link fence on the

property will still allow circulation around the buildings without any problem. They do not feel that it will interact negatively with the neighbor or inhibit their ability to do much along that property line. As soon as this error was discovered, they reached out to the University System of NH to let them know about it, trying to be as proactive as possible.

Mr. Hansel continued that other than that, the request is the same as the one he brought to the Board in August, but he would like to go through the criteria again if that is appropriate.

Vice Chair Taylor replied that she wants to say something first. She continued that the criteria are essentially the same. In the minutes, she believes the five-foot concern was the concern between the buildings, not necessarily the concern to the interior setback line. One of the Board's jobs is to determine if the right kind of application is before them, and whether it is a Variance they should be hearing. She is not sure that this is the right application. They already have the application for the five-foot setback from the interior line, and of course, they have to look at hardship. The issue is that mistake does not necessarily equal hardship. It seems to her that this is a more appropriate request for an equitable waiver of dimensional requirements. It likely meets the criteria for presenting to the Board evidence of all the four criteria. The criteria are that the non-conformity was not discovered until after the structure was substantially completed or after a lot in violation had been sold to a bona fide purchaser; that the non-conformity was not an outcome of ignorance or bad faith but was caused by good faith error in measurement or calculation; that the non-conformity does not constitute a public or private nuisance, nor diminish the value or interfere with future uses of other property in the area; and that the cost of correction would far outweigh any public benefit to be gained.

Vice Chair Taylor continued that she drove by the property and noticed that it is not just the foundation – the buildings are up. She was surprised to see that the building had continued after the error was discovered. When she read the criteria (for equitable waiver of dimensional requirements), she was struck by how well it describes the applicant's circumstances. They do not necessarily have a hardship, because a mistake usually does not justify hardship. Before this application proceeds further, she wonders if Mr. Hansel is willing to either have them continue this application so he can discuss this potential with staff, or to withdraw the application and file an application for equitable waiver. She wants to give him the best shot for the correct legal process.

Mr. Hansel replied that he appreciates Vice Chair Taylor's comments. He continued that at this point, if it looks like they will not be successful in having the new Variance application approved, they will definitely request a continuance to explore other options. Regarding the hardship criteria, he certainly cannot argue with the Board that they need this accommodation due to a mistake they made. That would not be appropriate for the Board to approve. He would rather them look at this as if it were a new Variance request, and as if he had given them the plot plan with 3.5 feet instead of 5 feet and said they were going to beef up the walls on the property side if that were a concern. They would be able to address any of those public safety concerns that were brought up at the time. Ultimately, nothing else has changed about this request. Being a

foot off will not make a functional difference. He is certainly not arguing that it is a hardship for them because the foundations were poured.

Vice Chair Taylor replied that the building is pretty well up; she could not see from the street if all the buildings were up, but at least some of them are. Mr. Hansel replied that when he came with the original applications, they were trying to get these weather-tight so they could do work on the inside over the winter. The decision was made to move ahead and make sure those foundations were protected from the weather.

Vice Chair Taylor stated that she would like to get a sense of what the Board thinks. She continued that she does not think this necessarily meets the criteria for a Variance because the applicant is here based on a mistake, but that is her opinion.

Mr. Guyot replied that he agrees. He continued that it seems like an error. He asked Mr. Hansel to explain the sequence of events, regarding when the lot line issue was discovered, when the foundations were in, and when the building continued beyond this photograph, at which point he thinks the applicant knew of the error.

Mr. Hansel replied that they received approval from Planning, received a building permit, and went forward and got a professional survey. He continued that regarding the original information from that survey, he thinks the posts were found with a metal detector and some initial survey results came back and said it was a certain distance away from the fence. Then they put the foundations in, a few feet inside of that. Then, when it was all torn up and the posts were actually found, it was different. That was after the foundations were poured. It is difficult to find contractors to do this kind of work in the timeline that the developer wanted to do it. Having the foundations and forms put in and the foundations poured in the same day was a decision by the developer because they wanted to get the work done and did not know if they would be able to get the contractor back to do it later.

Mr. Guyot asked if that decision was made before there was knowledge of the error. Mr. Hansel replied that the knowledge of the error came a day or two after the foundations were in. Mr. Guyot asked if the decision to move forward with the foundation work was based on the knowledge that they had at the time of where the lot line was, and as far as they knew then, they were in compliance with it. Mr. Hansel replied yes, that is correct. He continued that to Vice Chair Taylor's point, he sees this as a good faith error and they could pursue relief using that other process, but he also sees the validity of resubmitting a Variance request that meets all the same criteria as the last one that was approved.

Vice Chair Taylor replied that her concern is that a Variance runs with the land, although she is not saying she thinks they will tear the buildings down, whereas an equitable waiver is just for the particular circumstance. She continued that if, for example, other buildings on that property came down and the owner wanted to replace them, they would be governed by that same five-foot interior setback line that the Board had already approved. However, if they change it, as a

Variance, to three feet or three and a half feet, then the other buildings on the site would be governed by that Variance. Her concern is that this is a very particular circumstance for these duplexes, and there are other structures that would be impacted by an interior lot line Variance.

Mr. Clough stated that because the mistake was specific to these buildings, he agrees with Vice Chair Taylor's assessment of it. He continued that he would be uncomfortable having a Variance that could be carried to other construction in the future. Although it is highly unlikely that would happen within their lifetime, the fact is that it is in perpetuity until it comes before the Board again.

Mr. Hansel stated that his response is, right now they can (build) within five feet, based on the Variance the Board granted. He continued that what he struggles with is whether the five feet or three feet makes any difference. In this case, he does not think it does, because there are no life safety issues to contend with. He agrees that the discussion in the meeting minutes was about five feet between the buildings, which would not be impacted either way with this method. They are open to going back. They are in limbo, which is not great. If the Board is agreeable to it, they would like to see this request approved tonight.

Vice Chair Taylor asked if it is correct that they are going forward with construction. Mr. Hansel replied not fully, he would say. He continued that they are trying to resolve this situation. Vice Chair Taylor stated that there are workers there working every day. Mr. Hansel replied to an adjacent building, which is also owned by the property owner.

Vice Chair Taylor asked if Mr. LeRoy had any comments, although she knew this is his first meeting and everything is new. Mr. LeRoy replied not specifically, as he is trying to understand the applicant's options, before he can interject with any questions or opinions.

Vice Chair Taylor stated that she would like to get a sense of the Board's thoughts on the Variance application before them. She cannot find a hardship, because it was a good faith mistake. She asked if the Board members think they should request the applicant [unfinished sentence].

Mr. Hansel stated that he has one more thing to add. He continued that a change in personal circumstances cannot be grounds for approving a Variance, in the sense that a person could not say, for example, "My mother-in-law moved in with me and now I need a bigger house," but the reverse is also true. Changes in personal circumstance cannot be grounds for denial of a Variance either. His view is that the evidence of the Variance request has to stand on its own, without any consideration of the applicant's personal circumstances. He wanted to put that out there, but he understands if the Board feels strongly in the (other) direction. They would need three affirmative votes to move forward, so if the majority of the Board members present do not feel good about this, he would prefer a continuance so he could try a different avenue.

Vice Chair Taylor replied that there is no reason why this could not be continued while Mr. Hansel explores the equitable waiver application with staff. She continued that even if the equitable waiver were to be denied, then, going down the rabbit hole of hypotheticals, he could still come back to the Board for a Variance.

Mr. Hansel asked if it is correct that if they continue this tonight, he could bring this back and present for this Variance request again without prejudice. Vice Chair Taylor replied that that is what she would suggest to the Board if they were willing to take that motion. She continued that then if Mr. Hansel wants, after discussing with staff, to come forward with an application for an equitable waiver, he could withdraw the Variance if the equitable waiver were approved.

Mr. Clements stated that he is finding himself in an odd position, because staff did have an initial conversation (with the applicant), and advice was given to the applicant when they received their building permit. He continued that staff always recommends not digging a foundation until you know where the property line is. Staff knew this site development would be tight. Part of the building permit process is a pre-pour inspection to make sure the forms are correct, and the depths are correct, and if the plans show re-bar, the Building Inspector checks to make sure the re-bar is in place before the concrete is poured. Those inspections never took place. The crew on the site made certain decisions to move faster than was maybe prudent. He is not trying to argue one way or against this application, but some assumptions were made about the chain link fence being the property line. Mr. Hansel's original site plan showed the property line at that chain link fence, when he did the Planning application. He asked if that is correct. Mr. Hansel replied that he does not remember exactly, but the admission of a mistake is not at issue here.

Vice Chair Taylor replied no, and she thinks there were potentially multiple mistakes, although she is not pinning it on anyone. Mr. Clements added that he is not trying to bully the applicant in any way by saying this. He continued that in his experience, an equitable waiver is for when a truly unforeseen circumstance has led to a result. Thus, he thought a Variance application made more sense in this situation, which is why they are here tonight with a Variance and not an equitable waiver. He is happy to be wrong, if the Board feels that an equitable waiver is more appropriate in this instance. He agrees that it is a much easier test for the applicant and concluded that it is up to the Board.

Vice Chair Taylor stated that today she read the statute, the LDC's Section 26.8 and the sections that follow, the State's ZBA handbook for local officials, and all the applicable case law. She continued that "good faith mistake" is really what governs. It seems to her that this fits the criteria, and as Mr. Clements said, it is a less onerous proof that the applicant must bring forth. In this instance, she is having trouble with the hardship portion of the Variance on the current application, which is why she suggests the equitable waiver.

Mr. Guyot stated that he leans toward the mistake side of this equation, but it seems to him that it is also a less risky path to have this Board continue the application (so the applicant can) go after

that waiver. He continued that the applicant could always come back. If they have the criteria for this kind of mistake, that (equitable waiver) seems like a less risky path for the applicant.

Vice Chair Taylor made a motion for the Zoning Board of Adjustment to continue ZBA-2024-27, for a Variance at 7 Aliber Place, to the next regular meeting on December 2, 2024, so the applicant can explore the opportunity of an application for an equitable waiver on the property. Mr. Clough seconded the motion, which passed by unanimous vote.

Vice Chair Taylor stated that she appreciates the dialogue, because it is beneficial to both the Board and the applicant.

V) New Business

Vice Chair Taylor asked if there was any new business. Mr. Clements replied no.

VI) Communications and Miscellaneous

Vice Chair Taylor asked if there were any communications or miscellaneous items. Mr. Clements replied no.

VII) Non-public Session (if required)

VIII) Adjournment

There being no further business, Vice Chair Taylor adjourned the meeting at 7:38 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk