

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, April 20, 2021

6:30 PM

**Hybrid Meeting:
Council Chambers/via Zoom**

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public body meetings) during the declared COVID-19 State of Emergency. He called the meeting to order at 6:33 PM.

I. Introduction of Board Members

Roll call was conducted.

II. Minutes of the Previous Meeting – March 1, 2021

Ms. Taylor made a motion to adopt the March 1, 2021 meeting minutes as presented. Mr. Hoppock seconded the motion, which passed by unanimous vote.

III. Unfinished Business

Chair Gorman asked staff if there is any unfinished business. John Rogers, Zoning Administrator, replied in the negative.

IV. Hearings

a. ZBA 21-10: Petitioner, Monadnock Peer Support Agency of Keene, represented by Carol Slocum of The Masiello Group, requests a Variance for property located at 64 Beaver St., Tax Map # 553-035-000; that is in the Medium Density District. The Petitioner requests a Variance to permit a two dwelling

unit with a 12,200 sq. ft. lot where 13,400 sq. ft. is required per Section 102-791 of the Zoning Ordinance.

Chair Gorman asked to hear from staff. Mr. Rogers noted for the public, the shift of the order of agenda items. He continued that there was a request from an applicant's representative who had a prior meeting to attend to and asked for an adjustment in the order of the hearings; that is why ZBA 21-10 is first.

Mr. Rogers stated that 64 Beaver St. is off of Washington St. and this property is located in the Medium Density Zone. He continued that the High Density District is across the street, which has different lot size requirements. This property is before the Board because they have approximately 12,200 square feet and what they are requesting would require 13,400 square feet. They are short on the square footage requirements for two dwelling units. This property received, a Variance in 1987 for a two-family home without the required lot size, converting the property that August. In 1999, the Granite State Monarchs, an agency contracted with the State of New Hampshire to provide mental health services, took over the building. The Zoning Administrator at the time determined that the Monarchs were exempt from the City's Zoning Code from the State RSA 674:54 exemption category as they provided a governmental service. In 2000, the Monarchs received a building permit to change the use from a two-family to a business use under the Building Code. The applicant is currently before the Board requesting to have a two-family home back on this property, but again they are lacking the required lot square footage.

Chair Gorman asked for questions for Mr. Rogers.

Ms. Taylor stated that it is her opinion that if the property received a Variance for a two-family home in 1987, and Variances run with the land, even though in 2000 a portion of the house was converted to a business use, it did not need Zoning Board approval. If that is correct, she asked the reason why a second Variance was applied for as the property already has a Variance for a two-family home.

Mr. Rogers replied that since it had changed to another use, that Non-Conforming Use as a two-family home was eliminated. Ms. Taylor replied that Variances run with the land and are not eliminated. She continued that her question stands that if there is already a Variance for a two-family home, that underlying Variance, as far as she understands, continues and perhaps the Board does not need to hear this Variance request.

Chair Gorman asked Ms. Taylor what her thoughts are on Discontinuation of Use and if that should be a consideration. Ms. Taylor replied that her understanding is that it does not. She continued that of course, the law has been changed since then that a granted Variance has only so much time to act upon the approval. She continued that it is her understanding that would not affect a Variance that had already been granted.

Mr. Rogers stated that he would point to the Abandonment Section of the Zoning Code, Section 102-202. He continued that it could be considered abandoned, especially when the property owners changed the use of the building from what was permitted, with a Variance, to be a two-family to then obtain a permit to change the two-family to a business use. Mr. Rogers read Section 102-202;4, *“A non-conforming use has been changed to another use under proper permit from the Zoning Board of Adjustment.”* He continued stating that he would leave the decision to the Board that if a Variance is necessary or not, but as the Zoning Administrator, he stated that since the use was changed in 2000 with a change of use building permit, then the 1987 Variance would be eliminated under the Abandonment Clause.

Chair Gorman asked if it is correct that the clause states if the property is abandoned for one year, the non-conforming use goes away. Mr. Rogers replied that is correct. He continued reading the full Section 102-202, *“A non-conforming use shall be deemed abandoned if the use is discontinued for a period of one year. The building, structure, or property in which such use existed thereafter shall be used only in conformity to and with this chapter. A non-conforming use shall be considered abandoned when:*

- (1) The intent of the owner to discontinue the use is apparent;*
- (2) The characteristic equipment and furnishings of the non-conforming use have been removed;*
- (3) A non-conforming use is replaced by a conforming use; or*
- (4) A non-conforming use has been changed to another use under proper permit from the zoning board of adjustment.”*

Mr. Rogers stated that (1) to be the case as the property owners obtained a permit to change the use from a two-family, but he does not know if (2) has necessarily happened. He continued that regarding (3) and (4), the use was changed to another non-conforming use. Mr. Rogers further stated that based on the Zoning Administrator’s determination at the time; it was determined to be exempt from needing Board approval.

Ms. Taylor stated that her position would be that when a Variance is granted, you have a use under a Variance, which technically is not the same legally as a non-conforming use. She continued that she leaves that to others to comment.

Ms. Taylor stated that when she did a site visit to this property, she noticed two separate mailboxes. She asked if a portion of this structure is currently being used as a residence, or if any of it is currently being used for residential purposes. Mr. Rogers stated that the applicant would be able to answer that. He continued that his understanding is yes, there is still one rental apartment type of setting in the building, but again he would defer to the applicant.

Mr. Hoppock stated that he agrees with Ms. Taylor. He continued that there is a Variance that does run with the land, which was put into use in a timely fashion in 1987. He continued that Section 102-202 refers to a non-conforming use, which, by definition, is a use that is non-

conforming as a result of the enactment of the Zoning Ordinance, not the granting of a Variance. On its face, Section 102-202 is not applicable here. He does not believe this needs to be before the Board.

Mr. Gaudio asked if it is known what the Zoning Ordinance requirement was in 1987 and questioned what the square footage amount that was exceeded is the same. Mr. Rogers replied that it would appear that the square footage they were seeking relief from is the same now as it was in 1987. Mr. Gaudio replied that he then agrees with his prior two colleagues.

Mr. Hoppock made the following motion, which was seconded by Ms. Taylor.

On a vote of 5-0, the Zoning Board of Adjustment found that based on the Boards discussion, in terms of the history explained and the prior Variance from 1987, the property at 64 Beaver St. does not require an additional Variance to be a two-family home.

b. ZBA 21-09: Petitioner, Cheshire Medical Center of 550 Court St., Keene, represented by Tom Hanna, Esq. of BCM Environmental & Land Law, Keene, requests a Special Exception for property located at 62 Maple Ave., owned by 62 Maple Ave. Keene, LLC, Tax Map # 227-006-000; that is in the Industrial Park District. The Petitioner requests a Special Exception from Sections 102-661 and 102-662 for the Industrial Park District and Section 102-1111, Permitted Locations for Institutional Use of the Zoning Ordinance.

Chair Gorman asked to hear from City staff.

Mr. Rogers stated that this property is off Maple Ave., is a large building that has been a variety of insurance companies over the years, but it has been vacant as of late. It is in the Industrial Park District, which does not specifically list “clinic” as a permitted use, but does allow “institutional uses” in Section 102-1111-Permitted Uses for Institutional Uses. Maple Ave. is among the streets listed in this section of the Zoning Code. The applicant is before the Board today to request a Special Exception as required under the Zoning Code for this institutional use on Maple Ave.

Chair Gorman asked if anyone had questions for Mr. Rogers. Hearing none, he thanked Mr. Rogers for the information.

Ms. Taylor stated that she has a question for Chair Gorman. The Board members just received, late that afternoon, a complete or partial traffic study; she is not sure which, because she has not had a chance to look at it. She continued that she is concerned that since traffic is one of the considerations for a Special Exception, that without having the opportunity to review that traffic study or summary they just received, she is not sure she can judge appropriately on this application. She does not know if anyone else has that concern.

Chair Gorman replied that his thought would be relative to whether Mr. Hanna plans to present for information this evening.

Mr. Rogers stated that he would like to point out one thing that is a little unique for the Industrial Park District; there is criteria that requires any change of use to automatically present before the Planning Board for site plan review. Again, as Ms. Taylor stated, some of the criteria under the Special Exception definitely deals with traffic, so it would be the Board's prerogative to determine if they want to continue this application to another date so they have adequate time to review the information.

Jason Reimers, Tom Hanna's partner, stated that first, he apologizes for having this memo late. He continued that he sent it to the City just as soon as he and Mr. Hanna received it. However, in the slides that will be reviewed, they had already submitted the traffic tables with the traffic counts. He thinks this report is more just supplemental to those slides. Steve Pernaw prepared the report and is here tonight to speak and answer questions. He hopes that will be sufficient, but if the Board cannot make a decision tonight, they would ask to withdraw this report and rely on what they had already submitted and ask for a decision tonight.

Chair Gorman stated that he is comfortable moving forward either way. He asked to hear Ms. Taylor's thoughts. Ms. Taylor replied that she appreciates Mr. Reimer's offer that he will be presenting some of the same information, but it does kind of nag at the back of her brain that there is this document that she assumes was to be part of the record for tonight and she has not had a chance to look at it. Chair Gorman replied that if that is truly a sticking point for her and other Board members, he is happy to withdraw that document from the record and allow Mr. Reimers to proceed, as he has requested.

Mr. Hoppock stated that he would leave it up to the applicant's representative to decide how he wants to present this case. He continued that Mr. Reimers mentioned a reference to rounding out a traffic something in the materials the Board has, and he does not see that in the materials. He shares, to a degree, Ms. Taylor's concerns. He has not had time to read the document either. Chair Gorman replied the same. Mr. Hoppock stated that he is perfectly willing to let Mr. Reimers present the case as he sees fit, and that is the applicant's right.

Mr. Welsh stated that he has had 15-20 minutes to look over the document and he is comfortable with keeping it on the record, but he is also comfortable with taking it off the record, especially if that adds to the ability of his fellow Board members to deliberate and come to a decision.

Mr. Gaudio stated that he agrees with Mr. Welsh and has looked at the document. He continued that either way is okay with him.

Ms. Taylor stated that she has a general comment, not necessarily specific to this application. It would be helpful and more efficient if staff could request that applicants get the Board information that is going to be in their presentations in advance so the Board can make a

reasonable decision, as opposed to seeing something cold for the first time on a slide. This is something the Board deals with almost every month.

Mr. Rogers stated that as soon as staff receives any information from an applicant, it is sent to the Board. He continued that he couldn't control when an applicant submits information and he does not feel comfortable telling an applicant they cannot submit documentation for the Board to look at. It is the Board's decision, as they are doing tonight, trying to decide if they have had enough time to look at something.

Chair Gorman thanked Mr. Rogers. He continued that he knows there are instances when information is received last minute by the applicants. Mr. Rogers stated that again, this applicant will need to go to the Planning Board, so he is not sure if this traffic study was being developed more for the Planning Board and the applicant felt it might be additional information that the Zoning Board would like to see. That would be for the applicant to address.

Chair Gorman stated that he thinks the applicant was pretty clear that he wants to move forward. Ms. Taylor stated that she has a suggestion. If it is not in the Board's rules that there is a deadline for submitting information to be considered at a public hearing, perhaps the Board as a whole should consider whether it wants to add such a rule. Many municipalities do have that kind of rule included in their Zoning Board rules. It might be helpful, because that puts the applicants on notice and it gets the Board the information. Chair Gorman replied that historically, they have left it up to the Board's discretion.

Mr. Rogers stated that he quickly reviewed the Rules of Procedure, and he thinks Chair Gorman brought up a good point that if there is a rule it is still up to the Board's discretion as to continue the petition to allow the Board adequate time to review the new information. As the Board knows, sometimes one sheet of paper can have a lot of information on it that will take longer than 15 minutes to digest. This is certainly something they can discuss. Chair Gorman replied that perhaps they should take this up after they are done with the hearings. He continued that he is comfortable with the discretionary measures they have been using but if the Board feels differently he is happy to discuss it.

Chair Gorman stated that for the sake of this hearing, he wants to point out that the applicant was here in the beginning of the month and due to Internet connection failure, their hearing had been rescheduled late in the month and they have also stated that the Board can take the information or not. At this point, the only decision he needs from the Board is whether they are taking the information. He asked for a vote. Ms. Taylor stated that since three of them have not had an opportunity to look at the information and they are not able to take a 15 to 20 minute break now to read it, she thinks they should not consider the information. Chair Gorman replied that he is inclined to agree. He asked Mr. Reimers if he and his clients are okay with that. Mr. Reimers replied in the affirmative.

Chair Gorman stated that they will move forward, and the information that two Board members have reviewed and three have not is not for the record and should not be used to affect the decision.

Chair Gorman opened the public hearing and explained the procedures for participation. He asked to hear from Mr. Reimers, of BCM Environmental & Land Law, representative for Cheshire Medical Center.

Mr. Reimers stated that he and Tom Hanna represent Cheshire Medical Center and they are here tonight for an application for a Special Exception. As Mr. Rogers said, it was the former Peerless Insurance headquarters and then Liberty Insurance. He continued that it is a 50-acre site. The building is 147,000 square feet and Cheshire Medical Center has entered into a purchase and sale agreement that is contingent on Zoning approval. Cheshire Medical Center proposes institutional uses that are permitted by Special Exception under Article 4, Division 17, Section 102-662, which lists permitted uses in the Industrial Park District and under Section 102-11111, permitting institutional use all along Maple Ave. The proposed project includes moving some accessory support services and corporate offices, which are allowed by Special Exception under Section 102-662 as well.

Mr. Reimers stated that he has slides to go through to familiarize the Board with the building and grounds. He showed an exterior shot, and some of the parking and a woodland buffer. He showed a shot of the interior, stating that it is quite open, and ideal for Cheshire Medical Center to configure as needed. He showed the landscaping and outdoor eating area, the significant setback from Maple Ave., and an overview with the YMCA in the background. He continued that the impetus for this project is the creation of a new Family Medicine Residency that involves a clinic component and an educational component. Both the clinic and private school are included in the definition of "institutional use." In addition to the new family medicine clinic, Cheshire Medical Center will move other clinics to 62 Maple Ave. from the Court St. campus. Right now, space is tight on the existing campus, so the ability to move some of these clinics over will allow the Court St. campus to maximize its space. Some of the other clinics that may be moved to 62 Maple Ave. include pediatrics and physical therapy. As Dr. Don Caruso and Kathy Willbarger will explain, the planning for exactly which programs will move to 62 Maple Ave. will intensify once Zoning approval is obtained. Cheshire Medical Center does not own the building yet, which is contingent upon obtaining Zoning approval.

Mr. Reimers stated that, to back up, he will introduce the team here with him: Dr. Don Caruso is the CEO of Cheshire Medical Center, Kathryn Willbarger is the COO, Kevin Forrester is the Senior Director of Facilities and Support Operations, and their traffic expert, Steve Pernaw, is also here. Dr. Caruso and Ms. Willbarger will explain the plans for this building, and he will talk about the Special Exception requirements, and Mr. Pernaw will discuss traffic.

Mr. Reimers stated that he neglected to mention that the building will also contain childcare facilities for employees, which is permitted as a right under Section 102-662. He turned the presentation over to Dr. Caruso.

Dr. Caruso stated that he is a family physician and has been the CEO at Cheshire Medical Center for five years. He continued that regarding why they are purchasing this building and why they need this building, it is important to understand that Cheshire Medical Center is an anchor institution in this community. There are over 1,300 employees throughout the COVID-19 crisis, besides doing what they do and taking care of people with healthcare problems and also providing things that they do not do, which is public health; they did all of those things. The one key thing that most people do not know about Cheshire Medical Center is that they continue to economically bring care and services and dollars to this community by remaining open. That is unique in NH. Many hospitals cut back services significantly and laid staff off, and Cheshire Medical Center did not, which is economically important to this area. Cheshire Medical Center understands its responsibility to this community.

Dr. Caruso continued that it is important to know that in 1973 Cheshire Medical Center moved from lower Main St. to its current site on Court St. It is incredibly space constrained. They have gotten very capable at manipulating the space within the building but if you have ever tried to park there or get into the building at times when there is a lot of volume, you know it is quite difficult to get to where you need to go. When he came here in 1993, there were 30 physicians on staff. Now there over 150 physicians and over 50 associate providers. All of that is in the same physical footprint that has existed since 1973. Thus, when the former Peerless building became available they actively pursued it, in particular, because they know they need to be able to provide continued primary care in this community. To provide primary care, you need family physicians. Unfortunately, the number of family physicians are drying up. The cost and demand is increasing, so the ability to take care of rural towns is difficult.

Dr. Caruso explained why a Family Medicine Residency program is important, as it is where physicians who have completed their medical school training, but are not yet ready to practice medicine on their own. These physicians go through a program to understand how to take care of a specific specialty that they are then able to pursue as a physician practicing. The community needs a mechanism to bring family medicine physicians here. One method is a Family Medicine Residency program. Cheshire Medical Center knows that currently there is a huge demand in the population and the country. They are not able to meet the needs, and by 2035, Family Medicine Residency programs need to increase by about 21%. Having a Family Medicine Residency program will meet the needs for Keene and the region. By 2030, NH needs 333 new primary care physicians. There are currently only two Family Medicine Residency programs in the state, in Concord and Exeter. It is important for this portion of the state, because somewhere around 56% of trainees who come out of residency programs in family medicine stay within 100 miles. From Cheshire Medical Center's perspective, this is one way they can make sure that they continue to take care of the community long-term with primary care. The Dartmouth system is

willing to invest in it because they understand what this means for the community and the state, and that without primary care physicians, a place like Cheshire Medical Center becomes at risk.

Dr. Caruso continued that the interesting piece is that they really only need 25,000 square feet but the reality is they need more space beyond just a Family Medicine Residency program. The Family Medicine Residency program is the driver for them to make a decision on moving forward on a space like this one. He asked Ms. Willbarger to explain what else they are thinking about for that building.

Ms. Willbarger stated that they see this as a transformational opportunity for Cheshire Medical Center and the community. She continued that in addition to the Family Medicine Residency program they plan to use 62 Maple Ave. for both clinical and support services. At their main campus at 580 Court St., they currently are very challenged with space. As they have, new providers coming on board they struggle to find space for them. As they look to expand services, they are limited due to the lack of space. The bottom line is the immediate and longer-term growth strategy to serve our aging community that requires more space. Cheshire Medical Center's ability to build on their current campus is very limited and expensive. 62 Maple Ave. will allow them to move some clinical and support services off campus to Maple Ave., which will allow them to expand and add new services to their main campus. Possible services they can move to Maple Ave. are pediatrics, physical and occupational therapy, which are services there is a great demand for, and they are currently not able to meet with the space that they have, administration, human resources, education, finance, and potentially, the daycare for employees. In addition to moving some services to 62 Maple Ave., that frees up some space on the main campus to expand the clinical services. Some of those potential opportunities are expanding surgery, which could include an outpatient surgery center, orthopedics, cardiology, urology, and also, looking at inpatient expansion and potentially single rooms and shared programs with Dartmouth, such as a spine pain center or vein and vascular center.

Ms. Willbarger continued that as part of Cheshire Medical Center's Master Strategic Plan to serve the community over time, 62 Maple Ave. would provide the additional space needed. Without that additional space, Cheshire Medical Center would be challenged to meet the needs of the aging community.

Ms. Taylor stated that it does not seem like that long ago that the childcare center on Court St. was rebuilt and expanded. She asked if that would close down or if they would have childcare at both locations. Ms. Willbarger replied that that space was built about 20 years ago. If they move the daycare to 62 Maple Ave., the plan would be to use that space on campus for a potential outpatient or ambulatory surgery center. They would not have two daycares.

Chair Gorman asked if there were any other questions. Hearing none, he asked Mr. Reimers to continue.

Mr. Reimers went through the Special Exception criteria.

1. *The proposed use is similar to one or more of the uses already authorized in that district and is an appropriate location for that use.*

Mr. Reimers stated that the neighborhood already has numerous institutional uses, and the building was formerly corporate offices. He continued that there are three churches in the neighborhood, a private school, Keene Middle School, and a funeral home. There are commercial uses to the south. The pediatric facility Cedarcrest is across the street, which the Board should have received a letter from in support of granting a Special Exception for Cheshire Medical Center. The uses proposed for the new Cheshire Medical Center are similar to these existing uses and the corporate office portion of the project will be no different from what existed until the insurance company left. 62 Maple Ave. is an ideal location for this use. It will occupy an existing vacant building. Parking already exists. It is one tenth of a mile from Rt. 12 and less than two miles from Cheshire Medical Center's main campus. The location is appropriate from a regional perspective, with Cheshire Medical Center firmly planted in Keene, opening a regionally important Family Medicine Residency program in an existing vacant building two miles from the main campus is ideal and this is a unique opportunity both for Cheshire Medical Center and for Keene.

2. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Mr. Reimers stated that there would be a similar impact as the prior insurance company use. He continued that like the insurance company use, all uses will take place inside, other than outside eating and things like that. The building is set back from the road and other properties, and there are vegetative buffers on at least two sides. Where there is not a vegetative buffer, there is a huge expanse of grass, in the front, and going over to the apartment buildings going toward the YMCA. The building already exists, is buffered from its neighbors, and the continued upkeep of the buildings and grounds will ensure that the surrounding properties will not be reduced in value.

3. *There will no nuisance or serious hazard to vehicles or pedestrians.*

Mr. Reimers stated that they expect that the impact on vehicles and pedestrians will be similar to the prior insurance company use. There is a sidewalk on the opposite side of Maple Ave. There will be no nuisance or hazard to vehicles or pedestrians. Mr. Pernaw will speak to the traffic as he has looked at the traffic related to the medical offices component in two different ways. He has looked at it from a square footage perspective as well as from the estimated number of employee's perspective, and his conclusion is that the PM peak traffic change from the prior insurance building use will range from 18 fewer cars from the prior use to 74 additional cars. The range that Mr. Pernaw estimates means there will be 18 less either PM peak trips per day or 74 more at the most. He continued that even the high end of this range would not create a nuisance or a hazard. Mr. Reimers state that as Mr. Rogers said, this will need to go before the Planning Board for approval as well.

4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.*

Mr. Reimers stated that this building is connected to City water and sewer. He continued that there is a substantial amount of parking. He continued, stating that there needs to be a correction with the parking calculations. The application stated there were 553 parking spaces but they conducted a hand count and there are actually 581, an increase of another 28 parking spaces. There are no infrastructure limitations in the way of Cheshire Medical Center using this building. It is an ideal location with a large enough building that is nicely sited on the property.

Ms. Taylor asked what would be the hours of operation, stating the former Peerless Insurance Company used to be 8:00 AM to 4:15 PM. She further asked if this would be a 24-hour operation. Dr. Caruso replied that it is not a 24-hour service; this is ambulatory practice only. He sees it running from about 7:30, 8:00 AM to 5:00, or 6:00 PM, which are the normal operating hours for their outpatient clinic buildings.

Stephen Pernaw of Stephen G. Pernaw & Company, Concord, NH stated he has been doing traffic studies in NH for over 30 years. He continued that he is a licensed, professional engineer and received national certification as a professional traffic operations engineer. When traffic studies conducted for the NH Department of Transportation (NHDOT), they require the use of the Institute of Transportation Engineers (ITE) Trip Generation Manual. That is the industry's "Bible." When contacted by Cheshire Medical Center, they was given the size of the building and the breakout in terms of how many square feet were going to be allocated to what type of use.

Mr. Pernaw explained that for the insurance category, the closest ITE Land Use category is "single tenant office building." He explained the estimates in the table, with the peak hours of about 7:00 to 8:00 or 8:00 to 9:00 AM and 4:00 to 5:00 or 5:00 to 6:00 PM. Each day could be a little different but that is standard. Using this Land Use Code and the gross floor area of the building, he was able to come up with some reasonable estimates on what that former insurance company generated. Next, he explained the breakout he received by Cheshire Medical Center – clinical office, administration offices, and the childcare facility. Based on the slides shown, he explained that the highlighted boxed-in area is kind of a "worst case situation." Under this scenario, they expect that the proposed use would generate 74 additional vehicle trips over that one-hour period than the former insurance company. That does not mean that the peak hour volume on Maple Ave. is going to increase by 74. Certainly, most will travel toward Rt. 12 and people will head in the other direction toward downtown. That 74 will end up split at some point.

Mr. Pernaw continued that when he presented this table to Cheshire Medical Center they questioned the medical office trip rates to be high. He stated that he checked his math, and yes, this is what they came up with for 50,000 square feet. However, there is another way in ITE to estimate trips – rather than using gross floor area, there are also trip rates and trip equations that

use the number of employees as the independent variable. He received that information, and created a new table, with estimates based on 81 employees. That number came from Cheshire Medical Center as their estimate for staff. There are a lot less trips to the medical office if they use that particular independent variable, to the point where they could say there could be an actual reduction in peak hour trips. Minus 18 sounds nice, but from his perspective as a Traffic Operations Engineer, he calls it a wash. Every day, every site generates a different number of trips. It is probably a wash, or if they go with Table 1 estimates, an additional vehicle per minute during the peak hour period. Either way, they do not see this change in use as changing the traffic picture very much on Maple Ave.

Mr. Pernaw continued that when he was told of the 81 employees, he went back to ITE and calculated the national average of how many employees per thousand square feet, as a reasonableness check. He further explained that this proposed location will have a lot fewer employees per thousand square feet than the national average, hence the trip reduction on Table 2. If asked as an independent Traffic Consultant which table he leans toward, he thinks Table 2 is much more representative of what is really going to happen, because it is based on site-specific, Keene information, whereas the Table 1 estimates are simply based on the area of the building.

Ms. Taylor asked if the information on the two tables presented is one table is about square footage and the other is about employees. She further questioned if Table 2 uses the employees for the medical office building, does that take into account patients. Mr. Pernaw replied in the affirmative. He continued that the independent variable covers all trips. ITE provides engineers these two different methods and they say "use your best engineering judgment; there is no right or wrong." The estimate of 80 trips at peak hours covers everyone – patients, employees, and service vehicles. These trip rates come from counts at actual medical office building sites.

Ms. Taylor further questioned the table for the former insurance company who had varied numbers of employees, with at one point between 500 and 600 employees on site. Mr. Pernaw replied that he was unaware of that information. Ms. Taylor replied that at the end of the day, it probably does not make much difference for this, but she just wanted it mentioned.

Mr. Welsh stated that one other factor in the trips is that there are two driveways separated by couple hundred. He continued, stating that takes some of the pressure away from what would otherwise be a one-driveway situation and seems to make the numbers even more sustainable. He asked if that impression is correct.

Mr. Pernaw replied yes, he believes so. He continued that most people coming in from Rt. 12 will take that first driveway and head to the parking lot on the north side of the building, and he expects most employees, coming from the other direction, would come in the south driveway. Thus, Mr. Welsh is right, as this is two different sites since there are two different driveways. That +74 or -18 is going to be distributed between those two driveways. That, again, vehicles

will be distributed between which way they are traveling. Traffic will be diminished, as there are two driveways and two directions to go.

Mr. Reimers stated that Cheshire Medical Center has information from the former Facilities Manager of Peerless that in 1999 they had 750 employees.

Chair Gorman asked if there were any further questions from the Board. Hearing none, he thanked Mr. Reimers and Mr. Pernaw. He asked if there was any public comment and explained the procedures for participation. Seeing none, he closed the public hearing.

Chair Gorman stated that the Board would discuss and vote on ZBA 21-09.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-09 to grant a Special Exception from Sections 102-661 and 102-662 for the Industrial Park District and Section 102-1111, Permitted Locations for Institutional Use of the Zoning Ordinance. Mr. Welsh seconded the motion.

- 1. The proposed use is similar to one or more of the uses already authorized in that district and is an appropriate location for that use.*

Mr. Hoppock stated that he is persuaded that the proposed use is consistent with Cedarcrest, the schools, the churches, the funeral home, and other similar institutional uses on that street. He continued that he believes the first criterion is satisfied.

Ms. Taylor stated that she agrees with Mr. Hoppock that this is definitely consistent with the other uses.

Chair Gorman stated that he agrees with both of them. Mr. Gaudio stated that he agrees, also. Mr. Welsh stated that he agrees, too.

Met with a vote of 5-0.

- 2. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Chair Gorman stated that he thinks it is to the contrary. He thinks it will benefit the neighborhood and the entire community to have this type of use and situation that otherwise could be difficult to fill.

Mr. Hoppock stated that he agrees and would observe that the size of this site, as significant as it is and with the buffers around it, and the flow of traffic they talked about, all lead to the conclusion that there will no diminution of value on any of the properties in the district. He

continued that as Chair Gorman stated, it would probably lead to enhancement of value for the properties in the immediate neighborhood.

Ms. Taylor stated that in addition, as they have discussed in the past, especially since they have already found that this is a consistent use in the neighborhood, an occupied building contributes much more to the value of an area than an empty building. In addition, this is a very large empty building.

Met with a vote of 5-0.

3. There will no nuisance or serious hazard to vehicles or pedestrians.

Mr. Gaudio stated that there is no particular evidence of a nuisance or serious hazard to vehicles of pedestrians. He continued that the traffic information provided helps to reach that conclusion and considering there was a larger number of people employed before in this building, and could employ a large number of people in the future. Thus, he thinks this is a very reasonable usage of the property and maintenance of the traffic patterns.

Mr. Hoppock stated that he agrees with Mr. Gaudio. He continued that the biggest issue when he first read this application was traffic. After listening to Mr. Pernaw, he thinks it is a non-issue. He accepts Mr. Pernaw's numbers, calculations and analysis and does not think there would be any significant traffic impact with respect to the proposed use. He supports the fact that there is no nuisance or serious hazard to vehicles or pedestrians created by this proposed use.

Ms. Taylor stated that she agrees that she does not think traffic will be much of an issue. She continued that this is probably more of a Planning Board issue, but her only comment is that from her experience there were the occasional traffic accidents as people tried to exit that facility when it had a large number of employees. She hopes that the Planning Board would look at the lighting at the entrances and exits so that vehicles entering and exiting are well lit.

Met with a vote of 5-0.

4. Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.

Mr. Hoppock stated that there is no issue with respect to water or sewer. He continued that by virtue of the picture they saw, there is an enormous amount of parking, over 500 spaces. He thinks all of those appropriate facilities are sufficient for the proposed use and he approves that the application meets this criterion.

Chair Gorman stated that he agrees.

Ms. Taylor stated that her only concern is that as a medical facility, if they had any special waste needs that that would be addressed with whatever they need to do for the sewers.

Met with a vote of 5-0.

The motion to approve ZBA 21-09 passed with a vote of 5-0.

c. ZBA 21-08: Petitioner, Mint Car Wash of 435 Winchester St., Keene, represented by Jim Phippard of Brickstone Land Use Consultants, Keene, requests a Variance for properties located at 435 Winchester St., 433 Winchester St., and 0 Wetmore St., owned by MOC76 Realty Co, LLC, Tax Map #'s 115-029-000, 115-031-000, 115-030-000; that is in the Industrial, Commerce and High Density Districts. The Petitioner requests a Variance to permit a drive-thru carwash partially located within the High Density District where a drive in business is not a permitted use per Section 102-422 of the Zoning Ordinance.

Chair Gorman asked to hear from staff. Mr. Rogers stated that this location is on lower Winchester St. with the side street just to the north of the property is Wetmore St. While the Variance is for the property that is in the High Density Zone, this overall project will encompass the three lots listed on the application. The one corner lot on Wetmore St. is the Ocean Harvest building and directly behind that on a separate lot is the parking lot for the restaurant, and just south of Ocean Harvest is where the Mint Car Wash is located. Mint Car Wash is looking to demolish the current empty Ocean Harvest building, and build a new, very similar drive-through type car wash to what is existing on the lot to the south.

Mr. Rogers continued that it is unique in the fact that this project will encompass three different Zoning districts. The current car wash is actually in the Industrial Zone, and that project received a Variance from the Board in 2014 to allow that drive-through car wash to occur. Where the empty restaurant is, is in the Commerce District, and the parking lot is in the High Density District. He will let the applicant speak to the proposed site plan and how the building itself will actually cross over into the lot in High Density. His understanding from the applicant is at least the two lots would be merged to allow the building to cross property lines. His understanding is that they were going to merge all three lots into one.

Mr. Hoppock asked if the Wetmore St. area is Residential or Low Density. Mr. Rogers replied that the street is High Density.

Mr. Gaudio asked Mr. Rogers if he has any information on the history of the property in terms of the restaurant operating on two separate zoning lots. Mr. Rogers replied that is difficult to answer, as the building plans do not speak to the parking lot. He further stated that there are files from 1926 when Wetmore St. and Fairbanks St. were initially designed and those lots were all subdivided. The proposal was for that to go much further to the west than those roads currently

go with much smaller, high-density type lots. He does not know, along Rt. 10, when that was developed into the Commerce District or the Industrial District.

Mr. Gaudio asked if it is correct that the Ocean Harvest parking lot in the High Density District is not a permitted parking lot in that zone, even attached to a restaurant in the neighboring lot. Mr. Rogers replied he is correct, that would not be a permitted use. He continued that it certainly is pre-dating anything in the files, so it would be a non-conforming use for that lot.

Ms. Taylor stated that she is confused on the zoning and asked for clarification on the zoning district for Wetmore St. Mr. Rogers replied that this is the High Density District. Ms. Taylor questioned the application under the "lot characteristics" it has listed all three parcels. She wonders whether the dimensions listed are for all three parcels. She further questioned the "lot coverage by structures" and the figures change, but it does not look like that percentage would really apply to all three parcels.

Mr. Rogers replied that he would direct the question to the applicant's representative, Mr. Phippard. Ms. Taylor asked if she is correct in her understanding, the application is for lots 30 and 31. Mr. Rogers replied yes, that is correct. He continued that the Variance is for the parcel labeled lot 31, which is in the High Density District and lot 30 is in the Commerce District. The carwash would be an allowed use in the Commerce District, so the main portion of this request for the Variance is to lot 31. He thinks probably the applicant has included all the other information on the application because the intent is to merge all into one lot. It is confusing, as there will be three different Zoning districts on one lot.

Ms. Taylor stated that her other question, which might be for Mr. Phippard, is it looks like there is a parking lot behind the old Ocean Harvest and then there is a separate parking lot, are these both owned by the restaurant. Mr. Rogers replied that there is the one parking lot right behind the Ocean Harvest, and he assumes what Ms. Taylor is referring to is actually the secondary driveway into the current Mint Car Wash. That is on the lot the current car wash is on. Ms. Taylor replied no, she is looking at something else. There is probably parking then right behind the Ocean Harvest building as well as parking that is on this additional lot. Mr. Rogers replied that it is one complete parking lot, even though it is on two lots. It looks like one parking lot with two curb cuts.

Mr. Welsh asked Mr. Rogers if he has any idea about the traffic patterns into the current Mint Car Wash. He asked if people access by the driveway or if they typically access the car wash off Winchester St. Mr. Rogers replied that with the way the site is laid out it would appear that the majority of traffic enters from Winchester St. Some of the traffic exits probably from this facility onto Wetmore St., but again, he would let Mr. Phippard speak more in depth to that.

Chair Gorman asked if there were any further questions. Hearing none, he opened the public hearing and explained the procedures for participation.

Chair Gorman called for a two-minute break at 8:02 PM. The meeting resumed at 8:04 PM.

Chair Gorman asked to hear from Jim Phippard, of Brickstone Land Use Consultants.

Mr. Phippard stated that he is the representative of MOC76 Realty Company, LLC, owners of the property at 433 and 435 Winchester St. He will begin by answering the questions from the Board. He continued that there are three separate tracts of land, existing in three separate zones. He explained that 435 Winchester St. is the existing Mint Car Wash, which lies in the Industrial District. He continued that the corner of Winchester St. and Wetmore St. is the former Ocean Harvest restaurant and that is in the Commerce District. Above that, are two land areas; one is the parking lot for the former restaurant that is a separate tract and is in the High Density District. Above that is the existing driveway leading from Wetmore St. into the Mint Car Wash property that is part of the 435 Winchester St. tract however, it is in the High Density District. A lot of the confusion with this proposal before the Board comes from dealing with these different districts. They have different setback requirements and different lot coverage requirements, and a plan had to be developed that could comply with all of the zone dimensional requirements. He believes what they are proposing does that.

He continued that his clients propose to merge all three properties, so it will become one tract of land. He addressed Ms. Taylor's question on the lot dimensions listed on the application. He stated the plan is to merge all of those tracts so the dimensions, acreage, and lot coverage numbers represent the merged properties that will be 1.33 acres in size. The building coverage they are proposing is 7.4%, which is less than the lot coverage with the Mint Car Wash building that exists and the former Ocean Harvest restaurant. They are also proposing a slight decrease in the lot coverage because they are reducing the amount of paved area and building coverage on the combined property. This merged property does lie within the floodplain district, which will require Planning Board approval as well as a flood permit. Thus, they have a few more steps to go through if they do succeed in getting a Variance granted tonight.

Mr. Phippard continued that the proposed new building, which will be a smaller building closer to Wetmore St., would cross the old property line from Commerce District into the High Density District. He continued that the car wash is a permitted use in the Commerce District but not in the High Density District, hence the reason for the Variance.

He continued that regarding the site plan, it took a lot of work to get it to this point. The existing car wash has a curb cut on Winchester St. and a curb cut on Wetmore St. Mr. Phippard stated that he spent several hours watching traffic on the site. He continued that he was observing whether people utilize the curb cut on Wetmore St. or if most of the traffic is utilizing the Winchester St. curb cut. From his observation, most of the traffic does utilize the Winchester St. curb cut, driving straight into the property for one of the two tunnel washes in the existing building. Vehicles queue side by side, turn the corner to the left, and approach the kiosk to pay for their wash and then enter the building, exiting toward Winchester St. There are vacuum

stations adjacent to Winchester St. and those will remain in place. They are not proposing to add any vacuums on the Ocean Harvest site or the High Density District lot.

He continued that they are proposing to utilize the curb cut, however, on Wetmore St. That existing curb cut's use is limited with a few cars that came in via Wetmore St. to approach the car wash because there was a line of cars backing up toward Winchester St. Depending on the time of day, people have learned of the Wetmore St. entrance to gain easy access to the kiosk area and the car wash. The new car wash, however, will rely on the Wetmore St. curb cut as its primary access and egress. There are two existing driveways that lead from Wetmore St. into the Ocean Harvest property today, one, which is closer to the restaurant building and the other in the existing parking lot building in the High Density District land. They are proposing to close both of those curb cuts utilizing only the Wetmore St. curb cut. A car entering the site to go to this new car wash will enter via Wetmore St., turn left into the site, turn left into the queuing lanes, and there are two lanes approaching the car wash entry that merge into one lane. The intent for this new building will be a single tunnel with customers entering the car wash from Wetmore St. then exiting the building turning right back to Wetmore St. and back to Winchester St. The existing car wash will continue to use primarily the Winchester St. curb cut. They have been in existence for a little over five years, so that is the pattern that has developed and that everyone knows and relies on.

Mr. Phippard stated that he will go through the individual criteria, but asked the Board if there were any questions.

Mr. Gaudio asked if it is correct that traffic for the new wash will come in from Wetmore St., curb around, and go back out Wetmore St. Mr. Phippard replied in the affirmative. Mr. Gaudio stated that that is a very short piece of land for a queue for the wash, just the width of the lot. Mr. Phippard replied that it is a tight lot. He continued that because they allow two lanes for queuing, approaching the kiosk, and then they merge into a single lane to enter the tunnel, the total queuing distance is over 300 feet. They can queue a maximum of 13 cars without blocking the driveway leading out to Wetmore St. That is with no cars queuing into the public right-of-way.

Mr. Gaudio asked if it is correct that they are going to keep the entrance and exit on Winchester St. Mr. Phippard replied that is correct that the Winchester St. curb cut will remain.

Mr. Gaudio asked if there is anything to prevent people from queuing up out on Wetmore St. Mr. Phippard replied that they provide adequate stacking with 13 cars in the queue. Based on the timing of the car wash, the 13th car in the queue takes 40 minutes from that position to get through the car wash tunnel. Their experience at the site has been that customer's will not wait that long, seeing the line, they decide to come back another time. Even though there are two tunnels, there is a maximum queuing of 13 cars as well, which keeps the cars on the lot. They do not back up into Winchester St. and cars that are approaching the car wash seeing the line have room to turn around by the vacuums and go back out on Winchester St. to leave the site.

Chair Gorman asked if Mr. Phippard is stating that what is currently there for the Mint Car Wash can queue 13 cars and that they are not experiencing trouble on Winchester St. Mr. Phippard replied that is correct. Chair Gorman replied that it would seem to reason that they would even be lightening that load with yet another car wash, so now they could queue cumulatively up to 26 cars before any back up on either street. Mr. Phippard replied yes, actually more than 26 cars, because there is additional distance from the end of the 13th car in the queue to have the entire length of the driveway getting out to Wetmore St. and then would have additional driveway length backing toward Winchester St. However, their experience has been that because of the length of time, customers are not going to wait. Mr. Phippard stated that with the additional tunnel, they are hoping to alleviate the wait time and not have queues that long, accommodating the public need.

Ms. Taylor stated that she also has concerns about safety and traffic. She asked if there is any plan that would prevent a car entering from Winchester St. trying to make that sharp turn to go into the proposed car wash, or from a car entering the site from Wetmore St. wanting to cross over to the existing car wash. She is concerned about those traffic conflicts and also concerned about an increased number of vehicles turning out of Wetmore St. onto Winchester St., especially left-hand turns. She realizes that left-hand turns are a now permitted use from Wetmore St., but she is concerned about additional increases in the vehicle count and asked if any traffic studies have done.

Mr. Phippard replied that they have taken a hard look at that, and are working with Mr. Stephen Pernaw, who the Board heard from on the Maple Ave petition. He continued that Planning Board approval will be needed and that traffic is a big concern with City staff. He has been in communication with the City Engineer and the City Planner about these issues. They recognize that Winchester St. during peak hours is very busy with approximately 17,000 or 18,000 vehicles per day and is the second busiest street in the city compared to West St. Mr. Phippard did state that the State of New Hampshire does have as part of its Ten Year Plan, additional improvements for this section of Winchester St. in 2025. For now, once the roundabout was added at Winchester St. and Rt. 101 that dramatically improved the through movements on Winchester St. and greatly improved capacity for through movements. However, it had the opposite effect for the side streets connecting to Winchester St. These side streets saw a level of service deteriorate, especially during peak hours, after the roundabout was constructed due to the roundabout allowing the free flow of traffic through that intersection and the elimination of the traffic signals, which eliminated the gaps from the signals. During the red phase in the traffic signals, there were gaps created on Winchester St. allowing the traffic from these side streets to get in and out with less difficulty. Regarding the level of service at the intersection of Wetmore St. and Winchester St., a traffic study was done in 2012 for the initial car wash development, even though it was not built until 2014 and 2015. The initial study showed that the side streets were already at a level of service "F" during the peak hours. With the construction of the roundabout that condition was exacerbated, the level of service has not changed. However, the length of delays to make a left-hand turn during those peak hour periods was exacerbated and the length of time was increased. This will add to that, no question. Nevertheless, whether it is a restaurant

use on the property or a different use, the experience level of service will still be an “F”. During peak hour, unless there is an unusual gap created, it is difficult to make a left turn. Mr. Phippard estimates that the State DOT will create a second roundabout at the south end of Winchester St. with a median down the center of the street, which will eliminate the left hand conflicts. In the meantime, he and his clients recognize the issue, knowing it will remain an “F”; and will be addressing this with the Planning Board.

Mr. Phippard continued that Mint Car Wash is hoping to have a maximum of 100 washes per day in the new car wash, which would add 200 vehicle trips on their busiest day. That adds up to about 26 vehicle trips during the peak hour in the afternoon, and knowing people will experience long delays attempting to turn left. They are very aware of the situation and have the same concern. He continued stating they know the Planning Board will have the same concern, as will the State.

Ms. Taylor her concerns are in regards to internal movements and the safety involved, and attached to that are the size of vehicles that can safely navigate the property. She would hate to see someone try to enter from Winchester St., do a quick, sharp turn to get to the proposed car wash then create a backup for everyone. Mr. Phippard replied in agreement and had a similar concern when reviewing this layout. He continued that the position of the proposed building was situated in different positions in order to accommodate that particular turning movement. They think that people who enter the property from Winchester St. will stay in those lines and go straight ahead, but if they do not, and they turn to the right, a passenger car can make that turn and enter the entering lane closest to Wetmore St. They have done a turn analysis using Auto Turn software to show that that could be safely accommodated. He agrees with this issue, and the Planning Board will review this as well. Mr. Phippard stated that he does not have access to that Auto Turn software plan, but did recognize Ms. Taylor’s concern. He thinks that turning movement is unlikely to happen, since once a car gets to that distance in the queue, there is only four cars ahead of them to get into the tunnel, so he thinks they are going to wait and complete that movement, unless there are no cars waiting to go into the newly-constructed tunnel wash.

Ms. Taylor asked what size vehicle the proposed new car wash would be intended. Mr. Phippard replied cars and pick-up trucks.

Mr. Hoppock asked for clarification from Mr. Phippard about a curb cut being closed. Mr. Phippard stated that there are two existing curb cuts from Wetmore St. into the Ocean Harvest property. He continued that both of those curb cuts will be closed and they will be using only the existing curb cut shown above that, leading to the left from Wetmore St. into the site. Mr. Hoppock asked, just to be clear, if it is the one, above that where the High Density District is labeled on the driveway. Mr. Phippard replied in the affirmative. Mr. Hoppock asked if it is correct if that is the one driveway to remain open. Mr. Phippard yes, that will remain open; it was constructed in 1963 with the original Benny’s Auto Body that used to occupy the Industrial lot where the existing Mint Car Wash is located.

Chair Gorman stated that it is kind of a given, as Mr. Phippard has agreed and as the Board has expressed, that the situation on Winchester St. is less than desirable, as is the situation for a left-hand turn out of Wetmore St., due to the Winchester St. traffic. Chair Gorman asked if there was any basic speculation of the number of traffic the restaurant may have handled if it was running at full capacity as he is attempting to compare the two establishment traffic patterns.

Mr. Phippard replied yes, the traffic patterns were reviewed. He continued that it was a seafood restaurant with 50 seats, open for lunch and dinner seven days a week with take-out. Using the ITE Trip Generation Manual and talking with Mr. Pernaw, the projected traffic for the restaurant use was reviewed. Actual trip counts could not be done as the restaurant closed in 2019 but based on the size of the restaurant and the number of seats, they estimated approximately 200 vehicle trips per day. Mr. Phippard did state that the old Ocean Harvest was open only for lunch and dinner, generally 11:00 AM to 9:00 PM. The proposed car wash would be open from 7:00 AM to 6:00 PM. Those hours are slightly different from the restaurant, opening earlier in the morning and closing earlier in the evening. The 200 vehicle trips for the car wash would be spread over a different time of day. That works to the car wash's advantage in the morning, but not in the evening, just because of the existing conditions on lower Winchester St.

Chair Gorman asked for clarification on the estimate of 100 car washes per day, asking if it is based on the productivity of the existing one. Mr. Phippard replied that it is based on the productivity of the existing Mint Car Wash and the design of the car wash facility. Car washes are designed to offer different types of cleaning cycles, but they also can design the timing of a wash cycle. In this area, it has worked well for the existing Mint Car Wash to design most of their cycles to be 1.5-2 minutes in duration with the maximum time of 3 minutes, depending on the number of features asked for in the wash, waxing and finishing. The number of car wash cycles that can be accommodated between the hours of 7:00 AM and 6:00 PM was reviewed as well as customer comments, with the current proposed design they estimated 100 car washes a day.

Ms. Taylor asked if that is 100 car washes per day for the new facility or 100 car washes per day combined. Mr. Phippard replied for the new facility. Ms. Taylor asked what the number is for the existing building. Mr. Phippard replied that the existing facility has two tunnels, which can handle 200-300 washes on their busiest days though there is no peak day or time; it is weather-dependent. In the winter, they are very busy on sunny, dry days. Based on the five years' history of the current car wash, the maximum number of cars that were able to wash in one day was a little less than 300 cars.

Ms. Taylor asked that on a beautiful, sunny day, is it safe to say that with the new facility, the property could see a potential 400 cars per day. Mr. Phippard replied that yes, potentially. He continued that realistically it would be 300 to 350 on a day as Ms. Taylor described.

Ms. Taylor asked how many employees are there now and how many are anticipated. Mr. Phippard replied that employees work two shifts between 7:00 AM and 6:00 PM. He continued

that there are two employees in the existing facility and there will be one additional employee in the proposed car wash. Ms. Taylor asked where they park. Mr. Phippard replied that there are eight parking spaces on site, and the employees park on site. He continued that he sees one or two employees park on the side of the driveway leading out to Wetmore St. because no one else is using that driveway. Eight existing parking spaces is more than adequate as customers typically stay in their car, go through the car wash, and leave. Some people pull ahead to the vacuum stations close to Winchester St. and there are four parking spaces there to accommodate. People are generally done vacuuming in five to six minutes and leave the site.

Ms. Taylor stated that she was a little confused by the application's several mentions of a fence between this facility and the residential properties. She was confused whether the plan was just to maintain the existing fence or whether there is a plan to add additional fence or buffering. Mr. Phippard replied that the current plan is to maintain the existing fence. He indicated the fence on the site plan, explaining how it continues parallel to the existing driveway in the High Density District all the way to Wetmore St., then turns and runs parallel to Wetmore St. again. From that point, an existing five-foot high concrete wall provides an entry feature into the driveway. There is a post with a pedestal with a light on it. Then on the other side of the driveway that continues as it turns a corner to the left and because they do not own the Ocean Harvest property, that wall continues to the left all the way across the green area back to an existing wall around the yellow area going back toward Winchester St. That wall ends about halfway through the Commerce District area and then turns to vinyl fencing. The walls all remain except for the wall within the green area. The fencing on top of the green area remains in place. That is six-foot, solid fencing, which is part of the screening for the traffic and noise that comes from this type of facility.

Ms. Taylor stated that she just had not been able to tell whether the plan was to add fencing or leave the current fencing in place. Mr. Phippard stated that the Planning Board might require the addition of more fencing and screening along Wetmore St.

Chair Gorman asked if there were any further questions. Hearing none, he thanked Mr. Phippard and stated that Mr. Phippard can move on to the criteria.

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

Mr. Phippard stated that he believes this to be true. He continued that the existing Ocean Harvest property has been vacant for almost two years with the building is beginning to deteriorate. It is in everyone's best interest to allow a vacant, commercial property redeveloped and be a productive property, paying taxes in the City of Keene. It is in the public's interest to allow the car wash to redevelop this property to provide for the public need expressed to the car wash owners, to shorten the wait period, to shorten the queuing for the existing customer base and to continue to develop the customer base in this portion of the city. They think redeveloping this property is an important aspect to preserving the property values in the area.

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

Mr. Phippard stated that they believe the spirit of the Ordinance primarily is to protect public health, safety, and welfare. He continued that they think as the vacant property, formerly a restaurant and a commercial use, it would be in the spirit of the Ordinance to allow the redevelopment of this property and a new commercial use. This application is before the Board because that commercial use would extend, as it does today, into the High Density District. They want the building to extend into the High Density District. Today it is parking to support the commercial use in the commercially zoned property that is a unique feature of this property, but the spirit of the Ordinance would be to allow this redeveloped for a commercial use, as was originally intended, and does meet the spirit of the Ordinance.

He continued acknowledging that they will need to seek Planning Board approval and the additional screening or fencing may be a condition of their approval unless the Zoning Board feels the need to address it at this time. He and his client think that by maintaining the screening that is in place, the additional traffic experienced on that commercial driveway leading from Wetmore St. into the site is adequately screened from the residential neighborhood to the west. He is aware that the Board received a letter from a neighbor on Wetmore St.

Mr. Phippard showed a slide of the plan of the original properties. He continued that the area in purple is the former Ocean Harvest and Wetmore St. is the street above it, and Winchester St. is the street on the right. The lot numbered 435 is the old Benny's Auto Body building; that is not the car wash building that is there today. That is just an old representation on it now. The Board is familiar with where the driveway comes back out to Wetmore St. There is a residential home, #9 on this plan. The person there wrote a letter to the Board expressing concerns about the impact to their property if this is allowed to be redeveloped as proposed. He spent some time looking at that. He tried to hire a professional appraiser but given the real estate market these days, there are no professional appraisers available for months. In the letter, the resident expressed a concern that today their children can play in the street with light traffic on a quiet street. Mr. Phippard state that comment struck a note with him. He continued that he grew up in Keene 65 years ago on Pearl St. He and his brothers could play in the street, and they could play a whole football game before a car could come along, which is hard to imagine today. He is happy for the resident that it is that quiet on his street. He wants to point out that what Mint Car Wash is proposing would add some more vehicle trips on Wetmore St., but they would be turning left before getting to this resident's house. It would be across from the eastern portion of his property. However, this commercial driveway exists today, and has been there since 1963. It provided access to Benny's Auto Body and was regularly used. Benny's Auto Body was a client of his and he did two site plans for them, so he is very familiar with how Benny's Auto Body utilized the property. Since this has been an active commercial driveway since the 1960s, he feels that what Mint Car Wash is proposing is not inappropriate, given that the commercial use exists between that driveway and Winchester St.

Mr. Phippard continued that he then was concerned about noise, and whether noise was a legitimate factor to affect this resident's property values. He went to the site with a sound meter, to record sound levels to see what the effect is on that area. This resident purchased 9 Wetmore St. in 2019, four years after the construction of existing Mint Car Wash. The restaurant was still open, although it closed in 2019, so this resident was very familiar with the commercial operations fronting on Winchester St. leading to that property, and that did not deter him from purchasing the property. What he paid does not matter, although it was far more than what they say they assessed the property for. He thinks that is part of the evidence that this does not deter property values. He went there with a sound meter on two occasions, and went back the day of the Zoning Board meeting at noontime, which is a busier time for the existing car wash, and recorded sound levels. What he learned on both occasions is that the sound generated by the traffic on Winchester St. is the controlling factor. Depending on whether there were trucks or busses going by the volume of cars going by on Winchester St. determined what the noise levels were. He stood at the end of that driveway on Wetmore St. and the background sound levels – because the new car wash does not exist yet – were between 65 and 75 decibels. When cars went into the car wash, where the Benny's Auto Body building is located, approximately, you get additional noise from the car wash when the doors open. The sound levels did not change, and that is because the background levels are higher than the levels of noise generated by the car wash at that distance from the existing building.

Mr. Phippard continued that he went to the front of the property near Winchester St. Again, the Winchester St. traffic was generating levels between 80 and 100 decibels, constantly. If a tractor-trailer went by it was higher than 100 decibels. That high level of noise adjacent to Winchester St. is not going to change, with or without the new car wash. He contacted the company that manufactures the car wash facilities and asked for data on what sound levels to expect. The house at 9 Wetmore St. is about 135 feet away from the closest door for the car exiting the proposed new car wash. At that distance, the company predicted a sound level of 61 decibels, which is below the current levels and based on the background noise from the Winchester St. traffic. Thus, he does not feel that the new car wash will cause excessive noise.

Mr. Phippard stated that as for the spirit of the Ordinance, he thinks they are not introducing a use that is going to hurt the property values in the area. He thinks they are going to help preserve the property values in the area by maintaining the screening that is in place. He does not think it is necessary for any additional fencing, based on the evidence that he found at the site. Mr. Phippard states that he goes to the sites himself to collect the data and gain the evidence firsthand, so he is very comfortable representing to the Board that this will not increase the noise levels and by maintaining the screening that is existing, they will continue to meet the spirit of the Ordinance.

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

Mr. Phippard stated that he thinks that substantial justice will be done to allow the redevelopment of the property. This area of lower Winchester St. is not the high-end Commerce District of the city, but they do not want vacant buildings allowed to remain in place for a long

time. The restaurant directly across Wetmore St. from Ocean Harvest, Jim Eddie's, is also closed as it recently relocated, leaving a vacant building. Faced with another vacant building, it does do substantial justice to allow this property to redevelop, to maintain the property value for this property, and to benefit the car wash property by allowing them to expand their use, address the queueing issues that are affecting their customer base today. He hopes that the Board can make that finding for this criterion.

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

Mr. Phippard stated that he thinks he covered this pretty well – property values would not be diminished, because the noise levels are not increasing above the levels that exist there today. He continued that he thinks that is the primary concern.

Mr. Phippard indicated the proposed front elevation would face Winchester St. He continued that cars drive around the building on the left-hand side then turn to approach the tunnel wash. He indicated the view of the tunnel where it exits, to the driveway that leads to Wetmore St., is consistent with the other views and is a typical car wash building. Mr. Phippard stated these are unique structures, built entirely from recycled plastic, with a waterproof construction throughout, which will not rust or mold. He indicated the proposed side view of the building that will face the existing Mint Car Wash, will contain the mechanical equipment and the office area. He continued stating that the side of the building will have windows, allowing for the inside view of the carwash. The existing Mint Car Wash has been there over five years and looks like the day they opened. He concluded that the new construction on the building helps to enhance the value of this property and helps to enhance or support the values of surrounding properties.

5. *Unnecessary Hardship*
 - A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*

Mr. Phippard stated that he has been doing this for 44 years, and this is the first property he has worked on where one property lies in three different zones. He continued that they had to look at all of the zone dimensional requirements, and show Mr. Rogers that they could comply with the lot coverage for the setback requirements for each of those zones. That is what this plan is. This plan is something different for him, and a challenge, after such a long time being in business. He thinks those three zoning districts create a unique situation that does not exist anywhere else that he knows of in the City of Keene on one property. He knows they are creating that situation by merging the lots, but for the landowner, that is the best way for him to utilize this land. That is the easiest way for him to redevelop this property, make it productive, and maximize the value of

this property, not only for his purposes but for taxing purposes on the property as well. He thinks this unique situation justifies the Variance they are requesting to allow redevelop the property to another commercial use.

and

ii. The proposed use is a reasonable one because:

Mr. Phippard stated that he thinks it is a reasonable use because the car wash use already exists at the property adjacent to this. He continued that it has not caused a problem and has not been a nuisance and Mint Car Wash has allowed adequate queueing of cars, which seems to be the biggest type of issue that comes from these types of drive-through uses. It has operated very successfully there. This will allow the owner to improve the business, reduce the queueing, and improve the likelihood of long-term success for this property.

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

Mr. Phippard stated that if the criteria in subparagraph (A) were not met, he would be shocked, but if that is the case, the explanation of how subparagraph (B) applies is the same reasoning and he does not want to repeat himself. He thinks the Board sees and understands it. He thinks this will be a benefit to the City of Keene and this is a good use for the property.

Chair Gorman asked if anyone had more questions for Mr. Phippard. Hearing none, he thanked Mr. Phippard and welcomed public comment, explaining the procedures for participation and called upon the first attendee.

Chris Drakiotes of 8 Wetmore St. stated that he has been at that property for over 30 years and the property used to be his grandparents' and he has been familiar with it since the early 1960s. To give a little history on the Ocean Harvest, that was originally a house that he played in as a child. Eventually the property sold to become the Ocean Harvest Restaurant. At some point those owners approached Benny Kramer in addressing the expansion of their parking lot, who had no objections and the lot was paved. The access road off what used to be Benny's Auto and is now Mint Car Wash is correct though what was not mentioned was that this was a gated and locked access. This is where Benny's parked their tow truck and other vehicles with the main ingress and exit off Winchester St. Mr. Drakiotes continued noting that the number of cars utilizing the carwash over the weekend mentioned by the Petitioner seem a bit low. He stated that he can look out his back door on any weekend and the carwash is full and busy where the cars do not stop until at least 5:30 PM. He continued that on other note is the fence, which is nice, white and plastic that was installed when he and his neighbor were asked by the carwash to

remove some trees along the property line. He stated that he and his neighbors explained they would lose their sound deadening and would like to have something to replace the trees. The owners of the carwash offered to install the fence, that he reiterated was nice, but is hollow, plastic and echoes at times.

Mr. Drakiotes continued that his main concern is that he has gone through two floods on this property since he has been here. He questioned if the drainage has been addressed, as there are only a couple small drains in the area. He also knows that turning out onto Winchester St. is a problem. He has heard plans for it for years and as they said, he does turn right, then turns around at Fairfields, and comes back (in the other direction). He does not see that this is going to get any better. Hopefully, it will not get any worse. However, he has also found, realistically, that if there is a side street people can park on to get into the (car wash) they will park there and wait to get in. On Saturday and Sunday in good weather the car wash never stops. That might need to be addressed further with another look. Overall, he is not against the proposal, but he thinks there needs to be additional things that are studied, looked at, and addressed.

Chair Gorman asked if Board members had any questions for Mr. Drakiotes. Hearing none, he thanked Mr. Drakiotes for his comments.

Anthony Casey of 9 Wetmore St. stated that he wrote a letter to the Board and he hopes everyone had an opportunity to read it. Reviewing items on his letter, he addressed his main concerns with the proposal. He continued that he knows the Petitioner spent a lot of time reviewing the issues of sound, but the proposed car wash is significantly closer to his house than the current car wash. He knows the Petitioner said it was not any closer to any existing residential housing. Like the Petitioner said, he has several small children who can currently play in the street in front of their house, which is very nice, and adding a large, commercial exit, which, as his neighbor just said, never really was and is not even now a large exit, ingress, or egress, seems very dangerous. That is high volume traffic to be going in and out on a very small street, which, as has been stated ad nauseam, is very hard to get out of during peak hours.

Mr. Casey continued that he is not as against the proposal as his letter stated, he simply wanted certain issues to be addressed, specifically property values as there are a lot of them. Granting a Variance to a property that is right across the street from him and turning it from High Density to Industrial will affect his property values. He continued stating that he briefly spoke to an appraiser at the City, and he got the impression from them that essentially, granting the Variance will have an effect on neighboring property values as well as the long lines of cars. The Petitioner said 13 cars maximum would be queued at one time, but this is mentioning at one time, not all day. He continued that the carwash is truly right across the street from his home and stated he was looking at it as he was speaking. Mr. Casey stated that this proposal would have a damaging effect on his property value. He concluded stating that these are his main concerns, adding a large, and high-volume exit right across from his driveway, which he is not being hyperbolic about; it really is right across from his driveway. He is very against that.

Chair Gorman asked if the Board had any questions for Mr. Casey. Hearing none, he thanked Mr. Casey for his comments. He called on Mr. Phippard for any rebuttal.

Mr. Phippard stated that he would address the flooding question. He explained that the proposed plan for the new car wash building would be on the right of the existing carwash that is on the left. He continued that all of this property, all three lots, are entirely within the hundred-year floodplain. Flooding is a legitimate issue, and the City does require a permit for Mint Car Wash to alter any development on this property. The Flood Ordinance requires that they construct a new car wash building at least one foot higher than the hundred-year flood elevation. That means bringing fill into the property to raise the pad site under the new car wash building to the required elevation. To get permission to do that, they have to offset that fill by removing material from the property to balance the cut and fill. As long as they can balance the cut and fill, or provide more cut than they are filling, then they are not eliminating flood storage. They are not exacerbating the flood elevation. Mr. Phippard explained that to accomplish this, first, the green space to the right of the proposed car wash building, in between that building and Wetmore St., will be excavated then created stone-lined swale, which will provide part of the flood storage required to offset the fill need on site. To the left of the existing Mint Car Wash is a large green area, which will be lowered a foot to provide the balance of the storage that needed to offset the fill needed to build. The City does require a flood permit, which will require certification by a licensed land surveyor and a professional engineer. Mr. Phippard continued that the drainage on the property was reviewed extensively. The current drainage exits the existing driveway from Wetmore St. through the culvert into a catch basin in Wetmore St. at the northeast corner of the driveway where it meets Wetmore St. That drainage pattern will continue. On the main site itself, an infiltration area to the east side of the new building, between the building and Winchester St. will be added. He continued that onsite testing occurred and it has been determined the seasonal high water table as well as determined the ability of the soil to infiltrate storm water runoff and did the same system on the existing car wash site. It works very well and has for the last five years. He stated that a similar system would be provided on the new site, which will reduce runoff from the property over what exists at the site today that will improve drainage overall in the neighborhood.

Mr. Phippard stated that he is disappointed that the vinyl fence is questionable for adequacy by Mr. Drakiotes but he is happy to talk with him about it, if they can do something to improve it. They are certainly willing to consider that. He continued that he disagrees with Mr. Casey's comments that the carwash is not directly opposite his driveway, which is a bit further in on Wetmore St. to the right. The driveway for Mint Car Wash is a bit to the east, closer to Winchester St. Thus, he is challenging Mr. Casey's statement. He agrees that this will make a change in the neighborhood and he does not recommend that children be allowed to continue playing in the street. Traffic for the car wash should not be driving by Mr. Casey's house; cars should be turning before they get to his house, and when they exit they turn right to go to Winchester St., but still he recommends Mr. Casey no longer allow the children to play in the street. He himself did it when he was a kid, as did many others 60 years ago, but life has changed. He does not think the rest of the neighborhood will be affected by traffic. People have

no reason to continue down Wetmore St. or to use Fairbanks St. to get to the car wash. Mint Car Wash is providing adequate stacking on both sites, so cars should not be backing up into the street or clogging the driveways. Mr. Phippard stated that he is glad to hear Mr. Casey is not bothered by the current sounds that exist at the property. He thinks when you live in an area like this, and he himself used to live in an area on Winchester St. where his office is today, the noise becomes part of the background.

Mr. Phippard continued that he hopes he addressed most of Mr. Drakiotes' and Mr. Casey's concerns and stated he is happy to talk with both of them. If the Board grants this Variance, the project will proceed to the Planning Board, which these discussions will continue. He hopes the Board can approve this Variance request.

Chair Gorman asked if anyone had further questions for Mr. Phippard. Hearing none, he thanked Mr. Phippard. He asked for Mr. Casey's letter read into the record. Mr. Rogers replied yes, and read the letter as follows:

"March 30, 2021

To Whom it may concern:

As an abutter to the proposed zoning variance at 433 Winchester street (ZBA 21-08), I would really appreciate if my concerns could be heard by the board. As a recent homeowner this is all quite new to me and so I do beg your pardon for any slip-ups in etiquette.

As a father of 3 young children all aged under 5, I often play with them in the street in front of our house for a few hours a day through all 4 seasons and the idea of an increase in traffic through our small neighborhood is worrying. Already, we have had a few near misses with cars zipping out of the Mint Carwash driveway without looking and I am very worried about an increase in traffic, amongst other things.

*In the pages below, I have copied and pasted the application from Mint Carwash for the variance, which I obtained from the City of Keene website. Any variation in the text from the original is a result of me correcting formatting errors from my sloppy paste job and not an attempt to change the meaning. I have highlighted the sections of the application that I have taken issue with and replied to them in **bold text** below each paragraph, for the convenience of the reader. I realize that such a format can be seen as un-professional and possibly sarcastic, but I could not think of a better or clearer way to make my concerns known.*

I realize that I live on a residential lot on the edge of the commercial zone but I would like to avoid any further encroachment of the busy commerce district onto the small residential street where my children play.

I would really appreciate your kind consideration of my worries.

Sincerely,

- Anthony Casey”

Mr. Rogers stated that regarding Mr. Phippard’s response to the first criterion, Mr. Casey highlighted the text “It will improve public safety at the site” and added the following:

“My issue with this is that the plans show that the driveway, exiting onto an area of Wetmore Street where my three small children play. Currently, this driveway is not a major ingress or egress point for the carwash but the plans show that it will be one of 2 main entrances. Traffic will increase substantially on a small residential street, which is already and increasingly difficult to exit during peak traffic hours, not improving public safety but diminishing it.”

Mr. Rogers continued that for the second criterion, Mr. Casey highlighted Mr. Phippard’s statement *“The spirit of the ordinance in this case is to protect the public health, safety and welfare,”* And *“This existing driveway is also on High Density zoned land. Continuing west on Wetmore Street are residential homes. To protect the homes from noise and to provide screening, a six foot high solid fence was constructed along the west side of the driveway and along the rear property lines of the Mint Carwash site,”* and *“It will also maintain the screen fencing which will help to protect property values in the neighborhood.”*

Mr. Casey’s words in response were:

“If this is the spirit of the ordinance, I would ask that the variance not be granted, per my previous comments. I would also like to point out for the future that the applicant states that neighboring property values could decrease, due to an unscreened high-volume carwash abutting.”

Mr. Rogers continued that for the third criterion, Mr. Casey highlighted the following from Mr. Phippard:

“...will improve traffic safety leading into the site. The new carwash will not be closer to the existing residential homes to the west of the site than the existing carwash, and it will be screened with the six foot solid fencing along the west side of the site. As such, it will not reduce property values.”

Mr. Casey’s response is:

“I disagree that adding a major commercial exit to a residential street, where small children play is an improvement to public safety. As for the statement that the proposed new carwash will not be closer to any existing residential homes; it is simply false. I will assume that this was an oversite but since my house is almost twice as close to the proposed site of the new tunnel as to the existing ones, I find this assumption hard to maintain. A comparison of a map with the proposed plan will show this to be true, as will the picture included on page #38 of the meeting agenda, which was taken directly in line with my driveway. To the point about property values not being reduced due to the existing screening, I would say that there was no mention in the

proposal for the screening of my own property, which is directly across the street. I would argue that granting the variance would not do substantial justice, but rather injustice.”

Mr. Rogers stated that for the fourth criterion, Mr. Casey highlighted the following that Mr. Phippard wrote:

“This will improve traffic safety at the site.” and “The new carwash tunnel is no closer to the residential properties than the existing carwash. This proposal will enhance the appearance of the property and help to maintain property values in this area. Approving the variance will not result in a threat to public safety or be a nuisance to vehicles and pedestrians. It will allow a project which will enhance the value of [...] the neighborhood.”

Mr. Casey’s response is:

“As I stated above, the new carwash tunnel is substantially closer to my house and property than the existing one. Already from the existing carwash, there is a strong smell of soap on my property; an effect which would only be increased dramatically with an additional carwash tunnel in such close proximity to my property. The noise increase from a busy carwash versus a restaurant parking lot would be substantial also. Further, the removal of the current restaurant building and the removal of several tall pine trees on the commercial lot will deprive my property of the current screening it enjoys from the car dealerships and the busy traffic of Winchester Street. I would also add that there is no mention in the proposal of any new screening from the carwash itself for my property, which is directly across the street, and as the applicant has stated could negatively impact my property value. Finally, queuing lines of cars, directly across the street and a high volume traffic entrance and exit 20 feet from my property can only negatively impact its value in addition to the other concerns I have raised. The granting of the variance itself would also negatively impact my property value as it will effectively push the commerce district still further up residential Wetmore Street.”

Mr. Rogers continued that regarding what Mr. Phippard wrote about the fifth criterion, subparagraph (A)(i), Mr. Casey highlighted:

“...parking lot lies within the High Density district. The zoning at this location has never been altered to reflect this historic commercial use. A variance is necessary to allow the continued use of the site for a commercial use. It would be unfair and unreasonable to deny the variance for this proposal when a commercial use has existed at this site for over 60 years.”

Mr. Casey’s response was:

“Historic commercial use or not, if the spirit of the ordinance is to protect public safety, this could be best done by not granting the variance. Historically, the restaurant parking lot never supported a high volume of all-day drive-through traffic. I do not feel that it is unfair and unreasonable to advocate for the safety of my children, the maintaining of my property value and the safety of my neighborhood as a whole.”

Regarding subparagraph (A)(ii), Mr. Casey highlighted:

“It will improve traffic safety at the site, and it will not diminish surrounding property values.”

Mr. Casey’s response was:

“As I have stated, I believe it demonstrably true that both traffic safety and property values will be negatively impacted if the variance is granted.”

Mr. Rogers continued that regarding subparagraph (B), Mr. Casey highlighted:

“The existence of three zoning districts on such a small land area creates a special condition which makes it nearly impossible to bring into compliance.”

Mr. Casey’s response was:

“Taken in isolation, this makes sense but not when weighed against the needs of the people living directly across the street. If the part of Wetmore Street was zoned High Density to protect public safety, it should remain so.”

With Mr. Rogers having finished reading the letter, Chair Gorman asked Mr. Phippard for final input to give in regards to that letter.

Mr. Phippard stated that Mr. Casey’s letter stated that he (Mr. Phippard) was in error stating that the new car wash would not be closer to his home, and Mr. Casey was correct about that. He continued that he (Mr. Phippard) focused on 8 Wetmore St., which the car wash will not be any closer to, but yes, the proposed new car wash will be closer to 9 Wetmore St. It will be 135 feet away from Mr. Casey’s home and approximately 70 feet closer than the existing car wash building will be. He wants this corrected for the record: the abutter was correct and he himself was in error when he made that statement.

Chair Gorman asked if there were any further questions from the Board. Hearing none, he thanked Phippard. He asked if there was any further public comment. Seeing none, closed the public hearing

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

Ms. Taylor stated that she has real, serious concerns about traffic in this area, Wetmore St. and Winchester St. especially with the new proposed use at the volume indicated, she stated she has a hard time seeing how this would be in the public interest.

Mr. Hoppock stated that he agrees with Ms. Taylor. He continued that he thinks this does alter the essential character of the neighborhood and does threaten the public health, safety, and welfare of the people in the neighborhood. He has a hard time seeing it otherwise, given the traffic volume expected.

Chair Gorman stated that he is inclined to agree. He continued that as much as he understands the complications of that commercial property that was Ocean Harvest and the need to find a viable use. He continued that at 2.5 minutes per car wash, it could be incessant and over burdensome.

Mr. Gaudio stated that he has a similar concern and is concerned about the traffic that might start piling up on Wetmore St. one way or another.

Mr. Welsh stated that he agrees with the concern about the backed up traffic on Wetmore St. He continued that he does find, that some of the argument about drivers seeing that there is such a long wait, likely 40 minutes for a 10-minute car wash, there is something compelling there. He is thinking about the alternative, which is a currently permitted restaurant or facility of that sort, which is likely to generate a good amount of traffic also. Frankly, he is torn on this one and sees both sides.

Chair Gorman thanked Mr. Welsh for those good points.

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

Ms. Taylor stated that her concerns are very similar to her concerns regarding the public interest. She continued that it is not just traffic, but also an overburden for this piece of property, even if it is to be merged to the existing carwash lot. She concluded that it is too much for the property as it is proposed.

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

Mr. Hoppock stated that the gain to the public for denying this Variance is significant in terms of safety and density management, as Ms. Taylor said, and the potential for overflow onto Wetmore St. and Winchester St. He continued that he thinks the gain to the public is greater than the loss to the individual, if any. He does not believe this factor is satisfied either.

Ms. Taylor stated that she agrees with Mr. Hoppock, but would almost say it in the reverse: she thinks the loss to the public of the traffic issues and overburdening this property significantly outweigh the cost to the property owner.

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

Chair Gorman stated that the empty Ocean Harvest property, or any empty commercial property can in fact weigh on surrounding property values, and the wish is to keep the commercial properties full for a healthy, prosperous community. However, uses a comparison model of a house next to a restaurant with a parking lot, compared to picturing a house next to a car wash with two lanes that could potentially flow out into the street and tax the roadways, there is valid

argument for that diminution the property values, compared to a restaurant-type use. Thus, he thinks that the values of the direct abutters could in fact be diminutive by this.

Mr. Hoppock replied that he agrees. He continued that he sees Mr. Casey's perspective on this and appreciates his remarks in that regard. He does not disagree with Mr. Casey's remarks about the possible diminution of his property value.

5. *Unnecessary Hardship*

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

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

Mr. Gaudio stated that he thinks in this case, there is a fair and substantial relationship between the general public purposes of the Ordinance, which is to protect those who live nearby from the traffic and density issues, and the specific application to this property does not relieve that. He does not think it qualifies under 5(A).

Mr. Hoppock agreed and added another point that he agreed with Mr. Phippard that the three-zone configuration of these lots do suggest a unique condition, but that unique condition does not establish that there is no fair and substantial relationship existing between the overall public purpose of the provision and its application to the property. In fact, as Mr. Gaudio suggested, there is a direct connection in the relationship. He does not think the hardship criterion is satisfied.

and

The proposed use is a reasonable one because:

Ms. Taylor agreed with Mr. Hoppock and Mr. Gaudio and added that she does not find that this proposed use is reasonable, necessarily, given the location and the other issues that they have described regarding density, traffic, etc.

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

Mr. Gaudio stated that this is actually in the nature of a self-inflicted hardship. He continued that the property owner purchased the property knowing of the situation.

Ms. Taylor stated that her understanding of 5(B) is that essentially this would apply if there was no way to use the property in conformance with the Ordinance, and even though she agrees that there are two parcels at issue, she suspects that there could be a use for the former Ocean Harvest property that would be in conformity with the Ordinance. And again, as Mr. Gaudio said, there is something of a self-inflicted hardship here by purchasing the property before trying to get the approvals.

Mr. Welsh stated that he will register his unease here. He continued that he does think they are dealing with a very particularly conditioned piece of land and that if they did break it up into three properties, two of them would be non-conforming and he is not sure how they would construct conforming uses on that patchwork. But again, he is conflicted more than he is compelled about the hardship.

Ms. Taylor made a motion for the Zoning Board of Adjustment to approve ZBA 21-08, property at 435 Winchester St., 433 Winchester St., and 0 Wetmore St., owned by MOC76 Realty Company LLC, Tax Map #'s 115-029-000, 115-031-000, 115-030-000; that is in the Industrial, Commerce and High Density Districts, for a Variance to permit a drive-thru carwash partially located within the High Density District where a drive in business is not a permitted use per Section 102-422 of the Zoning Ordinance. Mr. Hoppock seconded the motion.

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

Not met with a vote of 1-4. Mr. Welsh was in favor.

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

Not met with a vote of 1-4. Mr. Welsh was in favor.

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

Not met with a vote of 1-4. Mr. Welsh was in favor.

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

Not met with a vote of 0-5.

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

- i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*
- and*
- ii. *The proposed use is a reasonable one because:*

Not met with a vote of 1-4. Mr. Welsh was in favor.

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

Not met with a vote of 1-4. Mr. Welsh was in favor.

The motion to approve ZBA 21-08 failed with a vote of 0-5.

Mr. Hoppock made the following motion to deny ZBA 21-08, seconded by Ms. Taylor.

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 21-08.

V. New Business

a. Department Review of Board and Commission Legal Ad Fees

Mr. Rogers stated that at the last meeting staff talked with the Board about reviewing the legal ad fees. He continued that Zoning Clerk, Corinne Marcou, has conducted the research and has information to review with the Board. Staff are recommending that the Board review these increases to cover additional costs both to the advertising in the Keene Sentinel as well as the costs for the additional number of ad lines due to the pandemic. He continued stating that the meetings moving forward might involve offering a Zoom option for member of the Board and the public even when the meetings return to in-person. Mr. Rogers concluded that currently this topic is on a City Council committee agenda on more time.

Ms. Marcou stated that during the budget process earlier this year, it was discovered that the legal ad costs were exceeding what had been projected for the year. She continued that it was discovered that for the public notice in the newspaper, the first paragraph has added quite a few lines that are required per the COVID-19 State of Emergency, as does the last paragraph, which has increased the ad costs. She continued that what was also realized was the increased cost of these lines set by the Sentinel. The set dollar amount that is currently collected for the public notice is \$25, which was set in 2017 when the Sentinel was charging \$1.35 per line. She stated that she recently spoke with the Sentinel who will be raising their ad costs to \$1.60 beginning May 1st. Staff has done the analysis of the regulatory boards, which are the Zoning Board of

Adjustment, Planning Board, and the Historic District Commission. These boards require the legal notice posted in the newspaper. The analysis provided an average of two applications per legal notice. Each application roughly takes 77 lines, multiplied by \$1.60, divided by the two public hearings, which is the \$62 cost they are proposing and asking the Board to approve. As Mr. Rogers stated, they are moving forward with hybrid meetings, continuing with the Zoom platform, which will minimize some of the language that is required for the public notice. In addition, as a department, the language that is used in the public notice has been minimized it as much as possible, while still staying within the legal requirements.

Mr. Gaudio asked if it is correct to assume that the \$62 just meets those costs. Ms. Marcou replied that is correct. Mr. Gaudio replied that \$62 seems to be an odd number for a fee. He suggested \$65, to give a little bit of a cushion so they do not need to raise it again in two months. He asked if they can do that, or if there is any restraint.

Ms. Marcou replied that she believes they were sticking with the \$62, since it is realistic, and actual, 77 lines multiplied by \$1.60 divided by the two public hearings comes out to \$61.60. They were trying to keep it as realistic as possible with the analysis done. Mr. Gaudio replied that he understands, but he thinks it is cutting it close and they should make it three dollars more, but he is fine with \$62, too.

Mr. Hoppock stated that he recalls from a prior discussion that this Board has the authority to set the fee it charges, by its discretion. He asked if that is correct. Mr. Rogers replied in the affirmative. He continued that just so the Board is aware, as part of the Land Use Code update that the City is doing, currently there is only one fee that is in the City Code under Appendix B for the Zoning, and that is to deal with Zoning text changes or Zoning map changes. Under the new Land Use Code update, it is proposed to pull other fees into Appendix B as well. The Board absolutely still would have the authority to change their fees; this would add one more step. Mr. Rogers concluded that the \$62 fee increase is included in the draft changes to Appendix B.

Mr. Hoppock stated that he understands the reasoning and the rationale behind that, but Mr. Gaudio makes a good point about having a little bit of a cushion. He asked if \$65 per application turns out to be excessive, and they end up building a reserve, what happens with that unspent money. Mr. Rogers replied that it would be taken in to the cost center in their budget for these types of costs. He continued that he does not think they would ever have much of a surplus. As an example, they currently only have one application for a Special Exception for next month's meeting. Thus, they will be taking a hit on the overall costs, because this is a cost contributed to the language for the COVID-19 State of Emergency; they are still going to have to pay that full cost. Next month they will take a hit, but this month they would have been ahead a little bit because there were three applicants. The \$62 is an average calculated by Ms. Marcou.

Mr. Hoppock replied that given the increased cost because of the extra COVID-19 lines, are they running a deficit on this line item for this year. Mr. Rogers replied absolutely, that the deficit is what drew attention to review this and bring these changes forward, both for the ZBA and the

other regulatory boards who are dealing with the same thing. Mr. Hoppock replied that a \$65 fee per application could help address the deficit and leave a cushion, maybe. Mr. Rogers replied maybe is correct.

Ms. Taylor stated that she thinks Ms. Marcou meant to say that the increase from the newspaper is going to be ten cents per line. She thinks she said that it would increase by \$1.60 per line, so it actually a ten cent increase. She asked if that is correct. Ms. Marcou replied that the current charge from the Sentinel is \$1.50 per line, and yes, it would be an increase to \$1.60, a ten-cent increase. However, regarding the current fee that they collect, the \$25 was based off the 2017 charge from the Sentinel of \$1.35.

Ms. Taylor stated that she would be very concerned about trying to build a cushion, because unfortunately, she has been involved in this kind of litigation. The State law outlines that a municipality cannot use fees as a profit center to offset other costs. Fees are to be related to the actual cost. She is really impressed with the amount of research that has gone into having this proposed fee of \$62, and as Mr. Rogers said, sometimes you will be ahead and sometimes you will be behind, and hopefully it all average out so the cost to the customer/public is close to what the actual cost is.

Chair Gorman stated that he thinks they can all agree that \$25 is too low. He continued that the \$62 versus \$65 conversation is interesting to him. He recalled the discussion in 2017 with the legal ad fee increase to the current \$25. Knowing the cost of inflation, he is hesitant to say that \$62 is a good, fair, reasonable price. He asked if it could be assumed that there is going to be some general increase. There is a ten-cent increase coming on May 1, but that is also following up an increase from \$1.35 to \$1.50 since they last looked at this in 2017, and he does not think they need to be looking at this all the time to raise it a dollar or two. There may be some merit to just setting it at \$65 and letting it come out in the wash. Maybe they will be hearing whether they should lower it, if there is a surplus.

Mr. Rogers replied that they would anticipate the overall cost going down a little bit, because as Ms. Marcou stated, she has already gone through and trimmed some of the excessive lines that were in the ads, to get the public notice as short as possible. He continued that he anticipates that the actual costs could go down a bit from the \$62 once the pandemic Emergency Orders are removed. In addition, just so the Board is aware, these numbers are already in a draft form of an Ordinance change for Appendix B, so he recommends they move forward with the \$62 figure and then they can evaluate it once the Emergency Order goes away.

Ms. Taylor stated that she is surprised that it has been almost four years since the fees were reviewed because many municipalities that she deals with, not necessarily Keene, review their fees for all their boards on an annual basis. If the Board has to look at this again because expenses have adjusted, then they look at it again.

Mr. Hoppock made the following motion, seconded by Mr. Gaudio.

On a vote of 5-0, the Zoning Board of Adjustment adopted a fee of \$62 per application effective May 1, 2021.

b. Land Use Code Update

Mr. Rogers stated that Tara Kessler, Senior Planner, has put together a summary of the Land Use Code updates, but since it is past 10:00 PM, he recommends that they move this discussion to the May meeting. He continued that the public hearing for the Land Use Code update was held last week at City Council where four members of the public spoke with three had some critique of the update but were supportive of it and had some positive feedback for staff. Ms. Kessler has been the main force behind this, so he gives her the recognition.

Chair Gorman stated that moving this forward to the May agenda sounds like a good idea. He continued that he knows Ms. Kessler has put a lot of work into this. He asked the Board's approval. Board members replied in the affirmative.

VI. Communications and Miscellaneous

Mr. Hoppock stated that going back to the Board's conversation at the beginning of this meeting, he proposes a discussion of a rule that says if anyone wants to submit anything into the record, and they get it to the Board five days before the meeting starts. Ms. Taylor replied that since she is the one who brought it up, she has some language in mind and she can forward that to Mr. Rogers and he can circulate to everyone to review.

Mr. Rogers suggested that Board members look at the Rules of Procedure, page 7, I. Supplemental Information, which states the policy that have been following and followed for this meeting. *"Any information and/or evidence that is provided after the submittal deadline which the Board determines to be material and necessary may result in a continuation of the public hearing in order to allow the Board an opportunity to review the information and/or evidence and/or to have the City staff, legal counsel, abutters, or other interested persons review and provide input or advice to the Board in regards to such information or evidence."* He continued that that is the section the Board can make modifications to, if they want. Ms. Taylor replied that she will send something to Mr. Rogers to circulate to the others.

Mr. Rogers stated that he would not present for the May meeting. Rhett Lamb, Community Development Director will be in his place.

VII. Non-public Session (if required)

VIII. Adjournment

There being no further business, Chair Gorman adjourned the meeting at 10:07 PM.

ZBA Meeting Minutes
April 20, 2021

ADOPTED

Respectfully submitted by,
Britta Reida, Minute Taker

Edits submitted by,
Corinne Marcou, Clerk

Edits submitted by,
Jane Taylor, Board Member