

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 7, 2022

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Richard Clough

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Michael Hagan, Plans Examiner

Members Not Present:

Jane Taylor
Michael Welsh

I) Introduction to Board Members

Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the meeting.

II) Minutes of the Previous Meeting: September 19 and October 3, 2022

Mr. Hoppock made a motion to approve the meeting minutes of September 19 and October 3, 2022. Mr. Clough seconded the motion, which passed by unanimous vote.

III) Unfinished Business

IV) Hearings

- A) Continued ZBA 22-13: Petitioners, Brian & Amalia Harmon, requests a Variance for property located at 27-29 Center St., Tax Map #568-016-000-000-000 that is in the Downtown Transition District. The Petitioners requests a Variance to permit a multi-family dwelling with three units on a lot with 3,049 sq. ft. where 18,800 sq. ft. is required, per Chapter 100, Article 4.6.1 of the Zoning Regulations**

Chair Gorman introduced ZBA 22-13 and asked to hear from staff.

John Rogers, Zoning Administrator, read from the meeting minutes of the August 15, 2022 ZBA meeting:

“Mr. Hagan stated that 27-29 Center St. is located in the Downtown Transition District. He continued that it is a brick building, built in 1920. It currently sits on 3,049 square feet where, if this Variance were granted, it would be required 18,800 square feet for a three unit building. This property received a Variance on September 7, 2021 to convert from an office building to a two-unit dwelling. In addition, four parking spaces were required, and a Variance was granted for three.

Mr. Welsh stated that the application before the Board is for the addition of another unit. He continued that they considered parking last time and asked if the Board should consider the addition of parking this time.

Mr. Rogers replied that staff spoke with the Applicant, who will be presenting the Board with a different alternative that is allowed under the Zoning Code. He continued that a section of the Zoning Code speaks to the ability to provide the required off-street parking as ‘remote parking,’ meeting the parking requirements by leasing off-site spaces somewhere within 1000 feet of where the required parking is needed. He will let the Applicant speak to that, but he believes their intent is to seek the additional parking spaces that would be required if this dwelling unit were granted through that ‘remote parking’ section of the Zoning Code.

Chair Gorman asked, for clarity, if it is correct that with the Variance the Board approved, the Applicant had two and a half spaces. Mr. Rogers replied that he believes that what they presented at the previous Variance request was that they had three and something spaces. The Variance that was granted, was for the one parking space that was lacking, because with that granted Variance was for the two dwelling units, which would require four spaces. With this new request, would require two more spaces, and again, they are proposing to provide it through the remote parking section of the Zoning Code. Chair Gorman replied that it would be imperative for the Board to focus on these two, because they have already granted a Variance for the existing fourth one. Mr. Rogers replied that that would be his recommendation. Certainly if this Variance were to be approved, they could condition that approval on the Applicant meeting the parking demand for that third unit.

Chair Gorman asked if there were any more questions for staff. Hearing none, he asked to hear from the Applicant.

Brian Harmon and Amalia Harmon, of 184 Colby Road, Danville, introduced themselves. Mr. Harmon stated that he and Mrs. Harmon do understand, and they have two options for parking, but they do not have leases. He continued that they have not selected either of the two options, because they did not know where this Variance request would take them. Not having any previous knowledge of how best to prepare for the meeting, they did seek two particular areas for potential parking. They do not have those leases in hand. They would like time, if that were what the Board needs, to produce these leases or submit them somehow.

Mr. Rogers stated that just so the Board is aware, there is a whole process laid out in the Zoning Code for this parking lease agreement. He continued that there is an approval process that runs

through the Community Development Department and ultimately is approved by the City Manager, if the Harmons are going to go with the remote parking.

Chair Gorman stated that he would like to ask the Board if they are comfortable moving forward with the application without a lease in hand, but perhaps making that a contingency, should they see fit to approve the application otherwise.

Ms. Taylor stated that if this moves forward, she thinks it would be appropriate to have that as a condition. Chair Gorman agreed. Mr. Hoppock agreed.

Chair Gorman asked the Harmons if they are prepared to continue. He continued that the Board would be happy to continue this application to the next scheduled meeting, if they want to make further preparations. Mr. Harmon replied that he thinks they would like the opportunity to postpone this to the next meeting if possible. Chair Gorman replied that he is comfortable with that but cannot speak for the entire Board. He continued that they would have to make a motion.

Ms. Taylor made a motion to move consideration of ZBA 22-13 to be considered further at the September meeting of the Zoning Board of Adjustment, at the Applicant's request. Mr. Hoppock seconded the motion."

Mr. Rogers stated that at that point, a member of the public spoke, and that person is here tonight to give his thoughts. He continued that moving forward in the meeting minutes, another abutter, who was not able to be here tonight, spoke. He read from the minutes:

"Frank DePippo, of Blue Spruce Ocean Holdings, stated that he owns the property next door at 33 Center St. and has for many years. He continued that never has anyone removed his fence. The Board was given a photograph showing the potential parking, and he is very uncomfortable with it. The photo shows his fence in place. Mr. DePippo continued to share his opinions about the building, the parking, and the application. Chair Gorman stated that he is not comfortable allowing Mr. DePippo to continue in such depth, given that the Board has not yet heard from the Applicant. He continued that if the Board were going to continue this hearing, they would love to hear all of Mr. DePippo's input at the next hearing. He hears that Mr. DePippo is dissatisfied with a decision the Board has already made regarding a previous Variance, but that has been done, and they are moving on to this hearing. If they move this hearing to next month, he urges Mr. DePippo to come to speak, or write a letter to the Board. They did not know the application would be proposed for continuance, but it is an attempt to be fair to everyone, including Mr. DePippo.

Mr. DePippo replied that he at least wants to submit a photograph he brought. Chair Gorman replied that he could submit it to City staff. Mr. DePippo continued to speak about his fence, and Chair Gorman stated that the topic is not the Board's purview and he encourages Mr. DePippo to reach out to the appropriate City staff members instead.

Chair Gorman called for a vote on the motion to continue ZBA 22-13 to the September 6, 2022 meeting. The motion passed unanimously.”

Chair Gorman thanked Mr. Rogers and asked if the Board had any questions.

Mr. Hoppock asked if the Variance is for the square footage, not for the parking. Mr. Rogers replied that is correct; his understanding is that the applicants were going to try to meet the parking requirements in a different way, with remote parking.

Chair Gorman asked if there were more questions. Hearing none, he asked to hear from the applicants.

Brian and Amalia Harmon, of 184 Colby Rd., Danville, NH, introduced themselves. Mr. Harmon stated that they are here regarding 27-29 Center St. He continued that the last time they talked to the Board; they were in transition to get remote parking spaces, to meet the requirements to hopefully get the third unit approved. They did this; two parking spaces are required within 1,000 feet. They are happy to have done it as well, and take the parking burden away from that street.

Chair Gorman asked if it is correct that the remote parking exempts this application from having the (Board) involved with parking, which would be handled by City staff. Mr. Rogers replied yes, the Zoning Code has a process with additional steps for the applicants to go through regarding remote parking, if this Variance were granted by the Board. Chair Gorman replied that the Board would then focus on the five criteria regarding inadequate lot size.

Chair Gorman asked if the applicants wanted to go through the five criteria.

Amalia Harmon stated that they are seeking to add a unit to the 27-29 Center St. property, which she and Mr. Harmon have owned since last March, with construction began in May. There has been an increase in construction materials costs and a decrease in the construction workforce. The property needed more work than she and Mr. Harmon had anticipated. The request is to apply the new grant program that Governor Sununu just launched, Invest NH. The program is specifically for projects with three or more units. There is plenty of room for a third unit. Governor Sununu wants to expand and accelerate housing and construction by incentivizing it with such grants, to alleviate the housing shortage. The program is for three units but she and Mr. Harmon have two, which is why they are asking for the third.

Chair Gorman asked the Harmons to begin with the first criteria and give the Board some background as to why granting the Variance would not be contrary to the public interest. He continued that what Ms. Harmon just went through was the background of their request and why they are applying for the Variance.

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

Mr. Harmon stated that Keene is experiencing a housing shortage/crisis, and granting this Variance would allow three dwelling units to provide much needed affordable housing. He continued that the essential character of the neighborhood would not be altered. There are residential units in the area and a few multi-family units as well.

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

Mr. Harmon stated that the proposed change, the addition of a unit, is necessary to continue the construction on the property. He continued that inflation has impacted his and Ms. Harmon's ability to (continue). It is difficult to keep going because everything is so expensive. He cannot find any qualified construction people to hire. In order to accelerate completion, the grant is needed, and the grant requires three units for application submittal to the Invest NH Housing Fund. This uses federal American Rescue Act dollars for one of the state's most critical needs, more workforce housing to help support businesses in need of more workers. Cheshire Hospital is in need, which is close. The property is close to everything, which is why he and Ms. Harmon love the building and location so much. It has a lot to offer, for many people. The third unit would bring costs down so someone could work and have money to be saved, instead of having it all go to a high mortgage.

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

Mr. Harmon stated that it would supply Keene with three more living units to house much-needed workforce. He continued that Governor Sununu predicts that the money will go a long way to help ease the state's housing crisis.

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

Mr. Harmon stated that the building is beautiful, historic and has so much potential. He continued that the offices were empty; he could not get anyone in there. This can be transformed into something desirable. Cities prosper and succeed by attracting young professionals and workforce. This will increase the value of the surrounding properties and improve the security and longevity of Keene's economy.

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. Harmon stated that the building does not impact the general public.

And

ii. The proposed use is a reasonable one because:

Mr. Harmon stated that the proposed use is reasonable because they can do so much with it, and it will be preserved and used for something instead of staying empty [inaudible]. The NH housing shortage will not be going away soon. He continued that in the local news on June 6, 2021, Casey McDermott of NH Public Radio reported, “*New Hampshire’s housing landscape is pretty brutal.*” A Sentinel Source article from November 7, 2020 said, “*...apartment vacancy rates are low and the pandemic has exacerbated many aspects of the pre-existing housing crisis.*” Time is of the essence to apply for the grant. The grant requires the property to have the additional unit. This third unit is much needed by the community. Commissioner Taylor Caswell said the percent of available two-bedroom rentals in the state is below one percent and considered unhealthy from the business community’s perspective.

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. Harmon stated that if the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist in that the intent of creating/constructing crucially needed housing may not be tangible. He continued that the building will sit empty and they cannot maintain the building without financial hardship as well as a negative impact on the neighborhood. There is definitely room for a third unit in the square footage of the building. The building is large [inaudible] a three-bedroom unit would fit. Their target (renters) are local workforce, like people working at Cheshire Hospital, wait staff, employees from the new M&T bank, paralegals, and so on and so forth.

Chair Gorman asked what the square footage of the building is. Mr. Harmon replied 3,049 square feet. Chair Gorman stated [inaudible] vary in size, in excess of 3,000 square feet [inaudible]. Mr. Harmon replied yes, it is 3,362 square feet.

Chair Gorman stated that he understands that the crux of the Harmons’ application speaks to the housing shortage, which arguably the whole state and country are dealing with. He continued that the housing shortage is indisputable, but the point of the Board, or the purpose in his mind, is to make sure that there is smart housing - that is, not just creating more housing because it is needed, but creating housing that is sustainable for the community and beneficial to the community. Otherwise, in his view, it is not worth having. Creating housing that is not healthy would be just as bad as having a housing shortage. His question is thus whether the Harmons can elaborate a little on the spirit of this particular Zoning Ordinance and why it exists relative to lot size. The concern would be shoehorning too much density into a certain area. He asked what the Harmons could say about the property that might let the Board know why that should be a

concern on this particular parcel of land. He knows the building is already there; that is certainly part of it, and he knows it is on a small, pre-existing lot, which is certainly part of this as well. He asked why the Harmons think this is not going to create a situation that is contrary to the Ordinance, where there is too little space.

Mr. Harmon stated that they have this over the restaurants, The Pour House, and the Roxbury apartments; the common area is a hallway. He continued that the common area here (at 27-29 Center St.) would be the porch and the side entrance. He presented drawings for a two-family. There is a washer/dryer area, too. He is comparing it to the larger places that have studio apartments with people coming and going, and he and Ms. Harmon have no intention to go to that scale at all.

Chair Gorman replied that [inaudible] he thinks Mr. Harmon is comparing 27-29 Center St. to 10-unit buildings that exist in locations where such a thing is allowed. He continued that it would help if Mr. Harmon kept his focus on the zone that his and Ms. Harmon's property is in, and why they think the area would not be adversely impacted.

Ms. Harmon stated that the upstairs was designed to have three bedrooms. She continued that the downstairs was designed to have three bedrooms, but if you break that in half and go from front to back on the right-hand side, you can have enough room for a living room, kitchen, and a bedroom and bathroom. On the other side is the same amount of space, but they will use what would have been a bedroom to be a kitchenette area, so it would not be too cramped. She showed where there would be one bedroom, and where there would be two bedrooms, and showed the unit that would be a one-bedroom.

Chair Gorman stated that basically they are not changing the [inaudible]. He continued that they were originally intent on [inaudible]. With this application, they would have the same six bedrooms. Mr. Harmon replied that is correct. Chair Gorman stated that it would just have an extra kitchen and bathroom and an extra unit. Mr. Harmon replied that is correct. Ms. Harmon stated that [inaudible] and showed the common area, another way out. She continued that this would not change the outline of the outside of the house at all.

Mr. Hoppock asked how many extra people they are anticipating. He continued that he wants to hear about the parking, too, because that is relevant to the second criterion about public health, safety, and welfare. Ms. Harmon replied that on the right-hand side is a one bedroom for one or two people. Mr. Harmon stated [inaudible]. Mr. Hoppock asked if it is correct that right now they have two units. Mr. Harmon replied yes. Mr. Hoppock asked if there would be six tenants the way they are now, and Mr. Harmon replied yes.

Mr. Hoppock asked again about parking. Mr. Harmon stated that remote parking would be at the community lot, on the closest side of the Colonial Theater, near/behind Margarita's Restaurant. There are two spots there. He continued that they wanted it closer but they did not allow trucks, which he can understand. They wanted to make sure they could get a minivan or something substantial.

Mr. Clough asked how far away that is. Mr. Rogers replied that if the Board gives him a few minutes and continues on, he research. He continued that also, just so the Board is aware, the requirements that still need to be followed for remote parking, per the Zoning Code, are: *“Where remote parking spaces are under separate ownership from the principal lot, a written and duly executed parking agreement between the record owners, which guarantees the use and operation of remote parking areas for the life of the principal use, shall be submitted to and approved by the Zoning Administrator and recorded in the County Registry of Deeds. Change of ownership or use of either parcel shall require a renewal of the agreement.”* He continued that staff would have to be provided with something that [inaudible] would not put the Variance in jeopardy.

Chair Gorman asked if it would negate the Variance if the agreement expired, even though this is not a parking Variance. Mr. Rogers replied yes, because [inaudible] the Variance would be conditioned upon [inaudible]. Chair Gorman replied [inaudible].

Mr. Clough stated that to him, a lot of the impetus to add the extra unit, at least in the narrative, is from Invest NH. He asked if the Harmons are aware of its status, and if they applied for it. Ms. Harmon replied that even though she and Mr. Harmon told them there was a Variance in the works, they said, “Just apply; we’ll deal with that later.” She continued that Invest NH also let her and Mr. Harmon know that that is a benefit to the City of Keene as well. For every unit they get \$10,000 that goes to the City to put to whatever they need. It does not need to be earmarked for one particular thing. Parking might be good.

Chair Gorman stated that he is assuming the Harmons are aware of the elevated fire and life safety codes that come into play as a result of adding a third unit. Mr. Harmon replied yes, that is another reason for the hardship potential. That has quadrupled, especially after [the fire at] Cobblestone. His sprinkler contractors here in Keene [inaudible].

Chair Gorman asked if there were more questions from the Board. Hearing none, he stated that he will open it up now to public input, and the Harmons will have the opportunity for rebuttal afterwards.

Chair Gorman read into the record:

*“ABUTTER’S PETITION
TO CITY OF KEENE ZONING BOARD OF ADJUSTMENT*

*RE: the Harmon request for Second Variance on property at 27-29 Center Street
1. The premises is located in the Historic District at 27-29 Center St. and is two stories in height.
It has two entry doors in front, and abuts the public sidewalk, completely.*

2. *It was purchased by the Harmons from Leonide Realty, LLC, March 20, 2021 for \$187,000, and deed is recorded at Vol. 1174 page 943 of the Cheshire Registry. There is no mortgage of record, to petitioner's knowledge.*

3. *The Harmons' application for a variance to convert from an office building to a two-family residence was granted and a building permit was issued September 23, 2021, by the City of Keene.*

The lot is 3048 square feet whereas 13,400 square feet is required by City Ordinance. The building does not meet maximum building coverage requirement of 50% or the minimum green/open space requirement of 30%.

The front setback is 0, and the minimum rear setback is approximately two feet where 15 feet is required.

There is a two-story green wooden porch across the entire rear portion of the building that closely abuts the Espieffs property, and appears to have been unused or maintained for many years. Whether it has historic importance is unclear.

4. *Building renovations by Harmon ceased in May of 2022 because of claims that materials were more expensive, and of workforce problems.*

5. *Coincidentally, however, the State of New Hampshire's "Invest" program, enacted by the legislature in April 2022 to help fund housing, and funding commenced July 11, 2022 for projects with a minimum of three family units.*

6. *The present (second) petition for variance was filed by the Harmons on July 21, 2022 and was promptly noticed for hearing. However, due to an error, the hearing was rescheduled for August 15, 2022.*

7. *At the August 15 hearing, the Harmons were given a continuance to September 6, in order to provide alternative parking information.*

However, no notice of this continuance was issued/mailed to abutters or others entitled to notice. Again, a Continuance was granted to the Harmons to September 26 [sic], without notice to abutters.

8. *On the facts and evidence available, this second variance request should be denied. It asks for a third family to be permitted in the same living area already set aside for a second family unit. It is 'the straw that broke the camel's back.' This entire building is literally 'on the street.' There is no setback for the intense traffic on Center St. (which comprises its 'front yard'). There is no place for children or adults to be safe from the ongoing traffic from the downtown and adjacent Court House area during all the seasons and weather conditions. It is a 'living trap'*

for youngsters coming and going. In short, it is a likely 'center' for emergency and police responses because of its density, configuration, lack of setback, and very dangerous location. Granting the variance would not be in the interest of justice, and would be contrary to the spirit of the ordinance.

9. Finally, and most critically, the Board must deny the variance, and take other action in light of the bad faith and illegal demands of the Harmons, all set forth in Section 2: Property Information; Section 5.B filed with their petition, and in their handwriting – a copy of which is attached hereto for reference, and reads as follows:

'If the criteria in sub par A are not established an unnecessary hardship will be deemed to exist in that the interest of creating, constructing crucially needed housing may not be tangible. The building will sit empty, and we cannot maintain an empty building, without financial hardship as well as a negative impact on the neighborhood.'

The Harmons' threat is clear – give us the second variance or you get nothing but an empty building. They need the third unit to get State funding (which requires three units). They are retroactively willing to throw away their first granted variance from this Board. Their only interest is getting the State funds. This amounts to pure DURESS on this Board. The hearing is simply a formality, and the Board are nothing but Harmon actors, to see that the third unit variance is approved, and Harmon gets qualified for State funding.

This Board's integrity is at stake. Even if you could find for the Harmons, your finding would be clouded by their Duress.

This Board's official standing as a reliable and lawful body is at stake, and it must take action to protect its integrity and lawful responsibility.

It should deny the pending petition for variance, and revoke the initial grant of variance, leaving the Harmons with an office building on Center St. The Board is free to take any other action it deems proper.

Clearly, this matter should be referred to the City Attorney.

I reserve my rights.

*Respectfully submitted,
Peter S. Espieffs, November 7, 2022"*

Mr. Rogers stated that it appears that this parking lot, depending on where in the lot they've rented, might not be within a thousand foot section. He recommended that if this application is to be approved, that there is a condition that the Applicant obtain the recommended parking necessary as outlined in the Land Development Code. He continued that also, just as a note for

the Board, the living space of the building is 2,736 square feet. The total building, because of the unfinished basement and the porches, is a total of 4,676 square feet.

Chair Gorman stated that if this off-site parking does not meet the criteria, his understanding is that any action the Board takes tonight is relative solely to the lot size and if they cannot satisfy off-site parking requirements they would be going back for a parking Variance. He asked if that is correct. Mr. Rogers replied that would be his opinion, certainly if the Board got to the point of making a motion, he would recommend the motion have a condition placed on it to ensure that the parking would be satisfied in some manner, whether through an act of this Board or remote parking.

Chair Gorman asked for public input.

Peter Espiefs stated that he is the one who filed the petition in opposition. He continued that he thinks he has stated everything he can about this case. You cannot ask for a Variance based on finances. That is not one of the criteria for a Variance, but that is what the Harmons are saying. They need this Variance so they can get a third unit and get qualified for the NH state funding. They bought this property for \$187,000 and there is no mortgage. They want to see if they can get some money from the State and get the building to have three apartments. They already have approval for two, and could have done the two, but they are not going to do any now unless they get this Variance, and there is no legal basis for the Variance for the third unit. He thinks the Board can read and understand what the situation is. He does not have anything personal against the Harmons. He tried as best he could to get along with them when they first started, and went along with their two-apartment project. He did not oppose that. However, they are dealing with something else now. The Harmons have changed; they are not who they purport to be. They have been in business for a long time and know “all the tricks and the games.” He will not tolerate this, and will appeal if the Board does not deny the Variance.

Chair Gorman asked if there was any more public comment. Hearing none, he invited the Harmons to give rebuttal.

Mr. Harmon stated that if this was a courtroom, he would ask that (Mr. Espief’s words) to be stricken from the record. He continued that he is appalled at the words of this respected elder, and would argue that Mr. Espiefs does not know him and Ms. Harmon very well and does not know their intentions. His and Ms. Harmon’s intentions are only for the people of this community, and they themselves are a part of the community. They want to help the community. Their son went to Keene State College, and they fell in love with it here (in Keene). He asks that that not be taken away from them. They have only good intentions in their hearts. Mr. Harmon questioned if this Variance would benefit him and Ms. Harmon then replied that of course as they are here to invest in the community and this neighborhood. He likes this neighborhood and he does not understand why Mr. Espiefs is trying to shut them out. There is a place for everyone. He and Ms. Harmon have every good intention.

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

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

Mr. Hoppock stated that the public interest is to regulate the density of land in terms of traffic, population, and overall use at one particular time by people or anything else. He continued that he finds the spirit of the Ordinance is jeopardized by this application. The lot is too small, and as Mr. Espiefs points out, and from what he can tell in the picture, there is really no frontage. He stated that he has been to the property and has seen it; it is a tight fit. He does not think that the 2,736 square feet of living space can comfortably fit three units. He is not comfortable either with [inaudible] in a packed neighborhood. He thinks that does not satisfy the criterion.

Mr. Clough stated that he tends to agree. He continued that it is something he always sees the Board butting up against – many of these densities are based on lot size and building size is quite often skewed when they are closer to downtown. This is a situation where if this was centered on the lot it would not pass any sort of frontages or side setbacks; it is still tight. Then whatever use it has, it is cramped. Thinking of it as a residential unit where people would be there for multiple hours a day and especially overnight, it looks very cramped. He thinks that regarding the first criterion, the public interest, it is so tight to the sidewalk and is definitely questionable.

Mr. Hoppock asked Mr. Rogers for clarification, stating that it just dawned on him that this is a non-conforming building on a non-conforming lot already. Mr. Rogers replied that that is correct, that as it is mentioned this building would not meet the necessary setbacks and many of the Zoning dimensional requirements. Mr. Hoppock replied that those all are requirements that bar against density and overcrowding. Mr. Rogers replied that that is correct.

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

Chair Gorman stated that he thinks this dovetails with the Board's discussion on the first criterion. He continued that the spirit of the Ordinance is exactly as Mr. Hoppock and Mr. Clough discussed, to prevent overcrowding situations that can lead to uncomfortable living situations for not only the tenants at this building but also tenants or residents of surrounding properties. He is not sure that the housing shortage or the availability of government funds would trump the situation. He does not think a third unit would be in the spirit of the Ordinance. The Board has already given a Variance to this building and now they are being asked to make it even more non-conforming. He does not think that is within the spirit or intent of Zoning in general. In summary, in looking at the square footage of this lot, you can see the Harmons are not asking the Board to overlook a couple thousand square feet. It is a considerable amount more – 18,800 square feet is required. They are asking to allow a use that would require, per the Zoning Code, approximately six times more square footage than it has. He has a hard time finding cause to think that this would be in the spirit of the Ordinance.

Mr. Hoppock stated that he thinks granting the Variance would alter the essential character of the neighborhood. He continued that it would decrease public health, safety, or welfare with overcrowding.

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

Mr. Hoppock stated that he thinks the gain to the public in denying this application outweighs any loss to the individual. The gain to the public is the reduction of the likelihood of overcrowding in this already crowded area. It is supposed to be an area that transitions from downtown to residential or [inaudible].

Mr. Clough stated that he agrees.

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

Chair Gorman stated that he does not think the exterior appearance of the building [inaudible]. He continued that he does not think that element of it could detract from value, but he does think the situation of overcrowding can detract from value. This is a tough one and he could go either way on it, but he thinks at the end of the day, two units are healthy for the values and three are not.

Mr. Hoppock stated that he does not disagree and can attest that the overcrowding situation did develop there [inaudible]. He does not think this criterion is satisfied.

Mr. Clough stated that he agrees that having done work on the outside would be great for the neighborhood. He continued that he can imagine it done up and looking beautiful, but again, changing the inside means it becomes a wash.

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:*
 - ii. *The proposed use is a reasonable one because:*

Chair Gorman stated that the applicant did not give input on 5.A(i), but he addressed 5.A(ii).

Mr. Hoppock stated that the applicant did not identify a special condition of the property that distinguishes it from other properties in the area. He continued that the other properties in the area are all large and most are non-conforming. He does not think there is anything special about the Harmons' property. He knows that in other cases the Board has worked hard to help applicants determine what special conditions their properties might have, and in this case he has

tried that and has been thinking about it, but just cannot identify a special condition of the property that distinguishes it from other properties in the area. Secondly, he thinks there is a fair and substantial relationship between the general public purpose of the Ordinance, protecting against density and overcrowding, and the application of that provision to this property. The square footage of a lot is designed to prevent the lot from being overcrowded. He does not think this criterion is met at all.

Mr. Hoppock continued that regarding ii., the proposed use of a three-unit building is [inaudible], and is a reasonable use but not here in this particular location, in his view.

Chair Gorman replied that he is inclined to agree. He continued that it becomes [inaudible] with the third unit. He was comfortable with the second unit when the applicants came in front of the Board because the property already exists and is on a small lot and needs some use, and he thinks it was challenging to find a use for it. He thinks the Harmons have done that and the Board has obliged in granting the first Variance for two units. It is unfortunate that the Harmons find themselves in a financial position where they are not able to continue with the process of building out the two units. However, while financial hardship can be a part of the Board's decision, he is not comfortable making it the whole basis of the decision. He also believes that inflationary pressures exist for everyone. As economics work, with inflation comes much higher rent prices, so he does not see any hardship there. If you put the money into an investment property, you will get the money out. That is just the way it goes – prices go up to build it, prices go up to rent it. In his mind, that is offsetting. That said he does not see that there is a specific hardship to this property, and if in fact there was, the first Variance satisfied that.

Mr. Clough stated that he was not on the Board for the first Variance, but yes, when he looks at the total amount of living space, he sees that those two units are fairly large. He continued that he does not deny that it would be a fairly expensive space for someone to rent, but when you start to split that off and create a third unit (it changes). If they were all equal, then possibly you would have equity, but it will not be able to be split equally. Thus, you would still have an odd scenario, in terms of how many people are actually there. He has lived in rental units in Keene and had plenty of times when he had to hit the wall next to him because the people next door were making too much noise. Then you realize, oh, there are six people in this place and should have only had four. Thus, adding another unit, with the number of bedrooms that were already there, is a hard thing to be able to justify.

Mr. Hoppock stated that he is still stuck on the fact that they have an Ordinance governing lot size, and the purpose is to regulate/bar against overcrowding. Applying the Ordinance to this property, there is a direct relationship between the Ordinance and what it is trying to avoid. He does not see anything about the property itself that is a special condition that would make the application of the Ordinance unfair or inappropriate.

Chair Gorman asked if anyone had anything else to say. Hearing none, he asked for a motion.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 22-13 on the condition of approved appropriate parking. Mr. Clough seconded the motion.

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

Denied with a vote of 0-3.

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

Denied with a vote of 0-3.

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

Denied with a vote of 0-3.

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

Denied with a vote of 0-3.

5. *Unnecessary Hardship*

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

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

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

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

Denied with a vote of 0-3.

The motion to approve ZBA 22-13 with the condition failed with a vote of 0-3.

Chair Gorman made a motion to deny ZBA 22-13. Mr. Clough seconded the motion, which passed by unanimous vote.

B) ZBA 22-18: Petitioner, Keene Mini Storage, of 690 Marlboro Rd., requests a Variance for property located at 678 Marlboro Rd., Tax Map #214-107-000-000-000 that is in the Industrial District. The Petitioner requests a Variance

**to permit an electronically activated changeable copy sign per Chapter 100,
Article 10.3 Prohibited Signs of the Zoning Regulations.**

Chair Gorman introduced ZBA 22-18 and asked to hear from Mr. Rogers.

Mr. Rogers stated that he and his wife are abutters, so he will let Michael Hagan, Plans Examiner speak to this.

Mr. Hagan stated that 678 Marlboro Rd. is located on a 9.5 acre lot and is zoned Industrial. He continued that construction was done in 2019 to permit or convert office space to self-storage, with 11 buildings on site. Currently there are three freestanding signs; one for the Keene Mini Storage located to the east, and a sign to the west that used to be the Cheshire Oil sign, is now a sign for the gas prices. The other is a marquis sign for the Citco signs. Under the current Ordinance those signs would all be non-conforming.

Chair Gorman asked if anyone had questions for Mr. Hagan. Hearing none, he asked to hear from the applicant.

Jay Frazier of 290 Cheshum Rd., Harrisville, introduced Jim Robinson, owner of Keene Mini Storage. Mr. Frazier continued that they are looking to receive Variance to allow them to change their flip signs to digital activated signs. He asked Chair Gorman what the Board wants to know.

Chair Gorman replied that Mr. Frazier is welcome to proceed however he wishes, such as going through the five criteria or giving a brief background as to why Mr. Frazier thinks this should be an acceptable request.

Mr. Frazier stated that the flip signs have to be done by hand, which means going outside in the snow, standing on a milk crate, and flipping the signs down. He continued that with the volatility of fuel prices these days, it could happen two or three times a week. Keene Mini Storage has one fulltime employee, an office manager; that is basically it on the property. Occasionally he himself does maintenance for them or might go out and flip the signs and get them unfrozen from the ice and snow. The LED (signs) are what most other fueling stations have. It would have 10-inch digits and the LED signs are 27"x24", or about 4.5 square feet each. The current metal signs are 36"x32", or 8 square feet, so the LED signs would have a smaller footprint. The sign itself is 40 square feet. He is looking to have signs that can be changed remotely from the office, which is what nearly everyone else in this business does. He went through this process when Cheshire Oil owned all the T-Birds; there was a process for all the different stations in all the different towns, to get permits to change those signs.

Chair Gorman replied yes, the Board has heard a few of these (types of Variance requests) in the past few years, from some of the local gas stations.

Mr. Frazier stated that a lot of it is a safety issue, such as having to put signs up on a pole on a windy day with things flying off.

Mr. Hoppock asked how bright the lights are. He continued that regarding the picture the Board [inaudible]. He asked if there are any neighboring houses that would see this and be impacted by the light. Mr. Frazier replied that the apartment building on the corner of Factory Rd. is the closest residential building.

Mr. Hoppock asked [inaudible]. He asked for Mr. Frazier's best guess. Mr. Frazier replied across the street, on the corner.

Chair Gorman stated that the primary visual for the lighting, if you are an abutter, would be the coffee roaster. He asked if that were correct, that the coffee roaster is the most visible the light would be. The apartment buildings are either across the street or up the street. Mr. Frazier agreed.

Mr. Clough asked if the lights are dimmable, and if Mr. Frazier would be able to program them so that when it is really dark they do not need to be as bright. Mr. Frazier replied no, they have just one setting. He continued that they would fit right into the footprint on that existing sign. It is a good-looking, two-post sign that has been there for years and has good landscaping around it. The whole property is landscaped well.

Chair Gorman asked if Mr. Frazier could read through the five criteria.

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

Mr. Frazier stated that the LED sign is more attractive and easier to read on a busy highway. He continued that he wants to emphasize that it is a busy highway, and people are looking at the price per gallon. Drivers coming from Factory Rd. and from the other direction will take a glance.

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

Mr. Frazier stated that similar signs have been approved at most fueling locations in Keene.

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

Mr. Frazier stated that LED price signs are easier to read after dark than the flip signs, which are not backlit and difficult to see at night.

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

Mr. Frazier stated that the LED signs, like the existing flip signs, would be attached to the main, existing wooden sign with two posts. The sign has been on the property for years and is well-maintained and landscaped around.

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. Frazier stated that the metal flip signs are difficult to change in the winter and accumulate ice and snow between their panels.

and

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

Mr. Frazier stated that (it gives) the ability to change prices from the office, without personnel having to sometimes go through snow banks, brush off the snow, and chip ice to flip the metal numerals.

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. Frazier stated that fueling locations need to have the ability to change prices frequently and safely, due to the volatility of the fuel prices.

Chair Gorman asked if anyone had questions for the applicant.

Mr. Hoppock asked if it is correct that the lot is relatively flat. He continued that in the picture, the topography looks flat, without hills. Mr. Frazier agreed. He continued that there is a hill coming in from Marlborough; when you pass the main brick building, you are going downhill. Mr. Hoppock replied that the land that makes up the lot is flat, though. Mr. Frazier replied that it is two different heights – half of the storage units are on a higher elevation. Mr. Hoppock asked if that affects the ability to see the sign. Mr. Frazier replied no, there is no crest of a hill; there is a good view all the way down through.

Chair Gorman asked if there were more questions. Hearing none, he asked for public comment. John Rogers of 660 Marlboro Rd. stated that he wanted to point out that regarding Mr. Hoppock's question. In regards to the sign, there is no residential use at 660 Marlboro so the sign would not be a deterrent to him. In addition, where the sign is located, directly across the

street is a convenience store and a larger storage building. The residential properties in this area are non-conforming and cross the street in the Commerce District is a single family, a multi-family, but further west along Marlboro Road and not directly across from the sign. There are storage units between the sign and the Prime Roast building.

Mr. Hoppock asked if it is correct that there is nothing beyond that. Mr. Rogers replied that further up, quite a ways up, is a plaza with commercial uses.

Chair Gorman asked if there was any more public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

Mr. Hoppock stated [inaudible], but on the other hand, he can see where [inaudible], so they can try it. He continued that the public interest is safety [inaudible].

Mr. Hoppock made a motion to approve ZBA 22-18. Mr. Clough seconded the motion.

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

Mr. Hoppock stated that it is probably not contrary to the public interest because the public interest [inaudible]. A sign that would not distract a driver [inaudible] a sign that says "\$3.55 per gallon" or "\$5.60 for diesel." If you were looking for gas that is what you would want to see. What might distract the public is something that said, "Regular gas \$7.00 per gallon" or "\$1.50 per gallon," but they are not worried about that. He thinks this meets the first criterion.

Mr. Clough stated that if it were a blinking or flashing sign, that would be a distraction, but a stationary sign with just the numbers is not something he would see as a distraction.

Chair Gorman stated [inaudible].

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

Mr. Hoppock stated that he does not see that the essential character of the neighborhood would be altered, given what is there already. He continued that [inaudible].

Chair Gorman stated that the numbers would be smaller, so that probably helps comply with the Zoning Ordinance.

Mr. Hoppock stated that he does not think the public health, safety, or welfare is at all threatened. Chair Gorman and Mr. Clough agreed.

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

Mr. Hoppock stated that the gain to the public, if the Board denied this, would be nominal. He continued that the loss to the public would be having easily readable signage. It would enhance

the public safety; the gain to approving this would be that motorists could read the signs clearly and safely. The loss to the individual, if this were denied, would be the horrible inconvenience of having to go out in a snowstorm to flip the signs. He does not find this criterion to be a problem.

Chair Gorman stated that he agrees that there is no gain to the public in denying this, and potentially a loss to the public in denying it. The gain to the applicant is obvious and reasonable, the same thing that has been afforded to most every other gas station that has come before the Board and asked for this.

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

Chair Gorman stated [inaudible] the Board heard from an abutter that he did not see any problem with this [inaudible]. The criteria does not say it has to increase the values; it just cannot diminish them, and he does not think it will. Mr. Hoppock agreed.

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:*

Mr. Hoppock stated that he thinks the special condition of the property is the nature of the use on the property presently, [inaudible]. He continued that as the Chair mentioned, they have had many of these cases where this is the standard of the industry, to have changeable signs. He thinks the special condition of the property is the nature of the business operating on it, and the application of the Ordinance to that particularly property, precluding that type of sign, does result in a hardship to the owner and on the property because a reasonable sign cannot be used. A Variance can be approved without jeopardizing health and safety. He finds this criterion to be met.

Chair Gorman stated that he agreed. He continued that [inaudible].

Chair Gorman asked the Board to vote on the criteria.

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

Granted 3-0.

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

Granted 3-0.

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

Granted 3-0.

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

Granted 3-0.

5. *Unnecessary Hardship*

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

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

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

Granted 3-0.

The motion to approve ZBA 22-18 passed 3-0.

V) **Adjournment**

There being no further business, Chair Gorman adjourned the meeting at 8:04 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk
John Rogers, Zoning Administrator
Michael Hagan, Staff Liaison