

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

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

**Monday, December 4, 2023**

**6:30 PM**

**Council Chambers,  
City Hall**

**Members Present:**

Joseph Hoppock, Chair  
Jane Taylor, Vice Chair  
Joshua Gorman  
Michael Welsh  
Richard Clough  
David Weigle, Alternate

**Staff Present:**

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

**Members Not Present:**

*All Present*

**I) Introduction of Board Members**

Chair Hoppock called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted. Chair Hoppock stated that Mr. Weigle is not a voting member tonight.

**II) Minutes of the Previous Meeting – November 6, 2023**

Ms. Taylor gave the following edits for the meeting minutes:

- Line 549, “He continued that has been there...” should be “He continued that he has been there....”
- Line 663, “Mr. Bridges continued that as stated in section 3, patients can easily find their way to the main point of entry,” should be either “patients need to easily find their way” or “so that patients can easily find their way,” otherwise it does not make sense, given the context of the conversation.

Chair Hoppock stated that he agrees with adding the words “so that” to the sentence on line 663.

Mr. Welsh made a motion to approve the meeting minutes of November 6, 2023, as amended. Mr. Clough seconded the motion, which passed by a vote of 4-0. Mr. Gorman abstained due to having been absent from the November 6 meeting.

### **III) Unfinished Business**

None.

### **IV) Hearings**

- A) Continued ZBA 23-25: Petitioner, 706 Main St. Owner LP, of Newark, DE, represented by Jeffrey Christensen, Esq. of Cleveland, Waters and Bass of Concord, NH, requests an Enlargement or Expansion of a Nonconforming Use for property located at 706 Main St., Tax Map #120-019-000 and is in the Low Density District. The Petitioner requests to expand or enlarge the pre-existing, nonconforming three-unit multifamily use to add two additional dwelling units, per Articles 18.2 and 25.7 of the Zoning Regulations.**

Mike Hagan, Plans Examiner, stated that 706 Main St. is in the Low Density District, and the lot size is .63 acres. He continued that it is about 27,402 square feet, is a non-conforming, three-unit residential building with the living space the City has on record is 2,148 square feet. There are no ZBA decisions found on record.

Ms. Taylor asked Mr. Hagan to clarify the pre-existing non-conforming use. She continued that her understanding is that in the Low Density District, a three-family, multi-unit is permitted. Mr. Hagan replied that is not correct. He continued that single-family homes are the only residential units permitted in the Low Density District, as well as ADUs. A (multi-family unit) is allowed in the Low Density District with a Conservation Residential Development (CRD). Those are big lots of land that are allowed to be divided into a CRD. Ms. Taylor asked if this is non-conforming because it existed prior to putting the CRD requirement there. Mr. Hagan replied no, certain lot sizes are necessary to qualify for a CRD. He continued that off the top of his head, he thinks the minimum lot size is one or two acres in the Low Density District to qualify for a CRD.

John Rogers, Zoning Administrator stated that Table 3.3.5 shows the permitted uses in the Low Density District. He continued that at the top of "Residential" it says "Dwelling, single-family," which is the only residential use allowed in this district. The CRD is a separate overlay district. This (property in question) is not a CRD in any way. It was a pre-existing use that happened before the zoning changes.

Ms. Taylor asked if it was pre-existing before the CRD requirement went into effect. Mr. Rogers replied that the CRD is something completely different. They are looking at this just as a Low Density District property as this would not qualify for a CRD. Ms. Taylor asked if that is because of its lot size. Mr. Rogers replied that this pre-dates the CRD; it was a three-family lot before a CRD was ever developed. Ms. Taylor replied that that answers her question; the CRD came after this property existed. Mr. Rogers replied that is correct.

Chair Hoppock asked to hear from the Petitioner.

Jeffrey Christensen, Esq., stated that he is representing the owner, 706 Main St. Owner LP. He continued that with him are Manny and Leslie Pellegrino, the principals, who can answer questions about the specifics of the property. As mentioned, this is a pre-existing non-conforming lot that predates not only the CRD but also the Zoning Ordinance as a whole. It is a three-unit, multi-family in the primary building shown on the screen. It is an oddly shaped lot. The building has an attached garage, on the right side of the building, depending on how you are looking at it, near the “edge of the hockey stick (shape).”

Mr. Christensen continued that the proposal is to put two additional dwelling units in that attached barn, which is not currently being used. There is enough parking area because of the large lot size with room for ten parking spaces, which would be two parking spaces per unit. The submitted application includes a parking plan that shows where those are. Because this is a pre-existing non-conforming lot, in order to expand the number of dwelling units, they need approval, pursuant to Section 18.2 and 25.7, which are interrelated.

Mr. Christensen continued that broadly speaking, this is a net benefit without any burden to the area. There are no changes to the footprint of the building or the exterior, other than some cosmetic changes as they redo that attached barn. From the perspective of something like overcrowding, there will not be any impact. This uses existing buildings to add to the housing supply without adding any new structures, no additional encroachment in the setbacks, and no overcrowding of the land. The changes to the property will primarily be to the interior, which will not affect anyone other than the residents. The parking is on a gravel driveway, so the expanded parking will not add any problems for water runoff or drainage. It is a pervious surface.

Mr. Christensen continued that regarding the criteria of approval, the first is whether this will reduce the value of surrounding properties, or add some obnoxious, injurious, or offensive use. It will not, because the use is already there, it is already a multi-family building, and there have not been any issues with it being a multi-family. There is no reason that adding two additional units to the otherwise unused space would suddenly create some new harm to the area that did not exist before. It is in an area, downtown Main St., which can support this. It means adding housing units to an area that can support and accommodate that, taking the burden off the more rural parts of the city. There is no reason that this would reduce property values. A nearby condominium association is much larger than this. It will not alter the essential character of the neighborhood at all.

Mr. Christenson continued that likewise, there would be no nuisance to vehicles or pedestrians with plenty of space for parking, and there could be even more. This will have to go through site plan approval by the Planning Board to hammer out some of those details. There will not need to be any burden on anything off the property – no street parking, no parking off the property; there is plenty of space exactly where it is. Given that it is already being used as a multi-family without any hazards to pedestrians or traffic, again, there is no reason that this would create some

new hazard. It would be putting traffic in an area that can accommodate traffic, and keeping the increased traffic out of rural neighborhoods where such use might not be as suitable.

Mr. Christensen continued that regarding adequate facilities, this property is already on municipal utilities, water and sewer. The expanded dwellings will also be on municipal utilities so there will not be any change there. All this will do is add to the tax base without adding to the physical burden on the land or the City. Given the location, there will not be any undue burden on other municipal services like emergency response as it is right downtown.

Ms. Taylor stated that she noticed in the application that the (impervious) coverage area is blank. She asked what the coverage is. She continued that she knows the building is not changing, but there will be additional parking area. She thought gravel was impervious, not pervious. Mr. Hagan replied that part of that review would be done by the Planning Board, which under their review, all those numbers will be provided. The minimum requirements for setbacks, parking coverage, they may have to adjust to accommodate for that.

Mr. Rogers stated that gravel would be an impervious surface when put down correctly for use as travel lanes and parking spaces. He continued that as Mr. Hagan said, it would be reviewed by the Planning Board, if needed, or else by the Minor Project Review Committee. Either way, it would be reviewed for the lot coverage. The Low Density District has an impervious coverage of 45%. If there is 45% in that lot it would be covered, between the building and the impervious surfaces.

Ms. Taylor asked about the fact that there is additional parking surface there. Mr. Rogers replied that it is proposed parking, so with this change of additional units, Planning approval would have to occur, and the applicant would have to provide those percentage numbers for review at that time. He continued that, if need be, it would be back before this Board for lot coverage, if they came to find out they could not provide the ten parking spaces and/or could not meet the impervious coverage. Mr. Hagan stated that there are options for pervious paving that could also satisfy that, if it becomes an issue, but if you look at the property, (you will see) there is plenty of space. Ms. Taylor replied that it would have been helpful to have that in the application.

Mr. Weigle stated that there is a requirement for it to have the appropriate facilities as well, such as the sewer/water hookup, as this is moving from a three-unit to a five-unit. He asked if that is covered here with the ZBA or if that would also be going to the Planning review. Mr. Hagan replied that it would be reviewed in the Planning process.

Chair Hoppock asked Mr. Christensen to talk about the two new units. He asked how many rooms there will be and how many people will live in them. Mr. Christensen deferred to Manny Pellegrino.

Mr. Pellegrino stated that the plan is for two-bedroom units, somewhere around 700 to 850 square feet. Chair Hoppock asked if that is consistent with the three existing units. Mr.

Pellegrino replied that he thinks the larger unit downstairs is about 1,100 square feet. He continued that the other ones are closer to the range of 700 to 800 square feet.

Chair Hoppock asked if there were any further questions for the applicant. Hearing none, he asked for public input. Hearing none, he closed the public hearing and asked the Board to deliberate on the criteria.

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

Ms. Taylor stated that she has driven past this many times and that it is fairly secluded; it is not something “in your face” as you drive by it. She suggests that probably nothing would be injurious, obnoxious, or offensive to the neighborhood. It is set back from the road, it is set back from the surrounding development, and if anything, it will increase the value, just by the way Keene’s tax structure works.

Chair Hoppock stated that he agrees. He continued that certainly, it is secluded, and certainly, it is a large enough lot to accommodate two extra units of the modest size described. He agrees that the first criterion is met.

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

Chair Hoppock stated that he does not find any basis for finding a nuisance or serious hazard to vehicles or pedestrians. He continued that according to the plan, it is easy in, easy out from the parking area to the south Main St. access road. He does not see a particular issue with getting onto that road, although sometimes it is crowded with traffic, but that would be true of every lot along that street. He does not find that the second criterion is a problem.

Mr. Gorman stated that he agrees with Ms. Taylor’s comments and Chair Hoppock’s comments, about the first two criteria.

*3. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.*

Mr. Gorman stated that this is on a busy, well-traveled road, so he thinks the facilities are fine. He continued that the water/sewer utilities clearly would be adequate, given that they are municipal. He thinks this is a perfect location for an expansion of this type of use, especially since the structure already exists. As the applicant stated, there is a void for housing that they need to try to fill, and they need to try to do it wisely, which he thinks this is a perfect opportunity for.

Chair Hoppock stated that also, Attorney Christensen spoke of how these two units take the pressure off more rural areas, which is a point well taken.

Ms. Taylor stated that regarding safety and facilities, going from three units to five probably puts it in a different (category) regarding the Building Code, but that is something that will be reviewed. She continued that if the building suddenly needs to have sprinklers installed, for example, that is beyond the ZBA's purview.

Mr. Gorman made a motion to approve ZBA 23-25. Mr. Clough seconded the motion.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

*3. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.*

Met with a vote of 5-0.

The motion to approve ZBA 23-25 passed with a vote of 5-0.

**B) ZBA 23-28: Petitioner, Charles and April Weed requests a Variance for property located at 28 Damon Ct., Tax Map #553-039-000 and is in the High Density District. The Petitioner requests the construction of an attached carport, 12' x 24', that will extend approximately one foot from the property line where [10]' is required per Article 3.6.2 of the Zoning Regulations.**

Chair Hoppock introduced ZBA 23-28 and asked to hear from staff.

Mr. Hagan stated that 28 Damon Ct. is in the High Density District, with a lot size of .38 acres, is approximately 16,552 square feet, and is a single-family home with approximately 1,607 square feet of living space. There are no ZBA decisions found on record. One thing to note for the record is that the advertisement said a 15-foot side setback, but it is actually a 10-foot side setback required for this zone.

Chair Hoppock asked to hear from the Petitioner.

Charles Weed stated that their (his and his wife, April Weed's) hope is to provide some safety and shelter for vehicles on their driveway, which they have used for 30 years. He continued that their new roof and flashing was done professionally, and they also insulated their attic, but it will still have icefalls. On February 25, 2023, two cars were damaged at the same time by icefalls.

They want to continue to use the driveway and don't want to put additional impermeable surfaces, or additional structures, on the property. They think the optimal way of doing it is with a carport. They have gone out for plans with both a steel building and with Williams Construction Company. They have not received an estimate back but he thinks they will see them soon. They did not want to do anything before they had approval.

Mr. Weed continued that they will not change the footprint of the property at all. He continued that he wishes it were more than a foot from the edge of the driveway, but that is how it fits. Their neighbor seems to be delighted with the idea. He (the Weeds' neighbor) has a large side yard, which he assumes will absorb ice and snow, because it always has. There would be no change or effect to the neighbors' property that he can visualize. This (carport) would probably improve the value of their (the Weeds') house a bit, certainly (by improving) the health and safety of the existing occupants. He assumes that in general, it will improve the nature of the neighborhood.

April Weed stated that if she were a (ZBA member), a question that would come to her mind would be, "Why now?" She continued that it all boils down to the new roof they had installed, she believes, because they had never had problems with this driveway before, with snow coming down on cars. As a consequence of the new roof, they had metal flashing put across the bottom, and they did not see the (problem of the falling snow) coming. It took out two cars belonging to family members. She and Mr. Weed are the proud winners of the NH Public Radio car raffle, and they have a brand new car that they really want to keep safe. Not to mention, they (are concerned with the safety of) the people walking down the driveway.

Chair Hoppock stated that page 51 of 58 (of the ZBA's agenda packet) shows a photo of the Weeds' proposed carport roof. He asked if that will be a solid roof or if it would allow things to fall through it, which he assumes it would not.

Mr. Weed replied that it will be solid. He continued that he has spoken with the metal fabrication people and they said, "It sounds to me like you need to have the highest standard possible for such a building. It will increase your cost a little bit," but, they understand that ice and snow has some weight.

Chair Hoppock asked if the right side will be open. Mr. Weed replied yes, both the leaving side and entering side will be open. Chair Hoppock asked if that means three sides will be open. Mrs. Weed replied yes.

Chair Hoppock asked if the carport's base will be a slab, gravel, or some other surface. Mr. Weed replied that his wife put in eight tons of hardpack this summer. He continued that they have never had anything other than hardpack on it before, so they just put it on there.

Chair Hoppock asked, regarding the setback limitation, if it is the roofline that brings them to the one-foot part, or if it is something else, such as the posts. Mr. Weed replied that he thinks the footings and the exterior posts would be within one foot.

Mr. Gorman asked where the overhang would extend to. He continued that technically, that is what they should be applying for a setback for – the furthestmost point of the structure. Meaning, the roof overhangs *over* the posts. He asked if they know what the overhang is. Mr. Weed replied no. He continued that he thinks it has to do with the contractors' plans.

Mr. Gorman replied that he thinks that technically, the ZBA would need to hear what it is going to be. Chair Hoppock replied that to avoid any problems in the future, they should be as close as possible. Mr. Hagan replied that it would be up to the Board to give a number, so that when staff issues a building permit, they can base it off that.

Mr. Gorman stated that he has a question for the applicant, then. He continued that he assumes they want some sort of overhang, but they probably do not want to shrink this down to any smaller than it already is. He asks what they would anticipate accomplishing their needs for two vehicles with an overhang. He asked if they would be able to come within the one foot, or if they would be asking for more. Mrs. Weed replied that their cars would not be side by side; they would be parked one behind the other. That would leave plenty of room for that.

Mr. Gorman replied that if they had to, they could put the posts, say, 18 inches from the line with a six-inch overhang. He asked if that is correct. Mr. Weed replied that he believes so. Mr. Gorman asked if that means Mr. and Mrs. Weed would be comfortable moving forward with a foot as the setback from the furthestmost point of the structure. Mr. Weed replied that he thinks so.

Mr. Rogers stated that just to be clear, when staff does the setbacks, they measure to the furthest point of the structure, as the Board is correctly interpreting. He continued that if one foot is what were to be granted tonight, Mr. Hagan would be looking to see that that overhang is at one foot or more from the setback. It is very important to make sure that it is clear that that is where the measurement would be taken from: the furthest point of the structure. In this case, on the diagram in front of the Board, it would be the drip edge.

Chair Hoppock stated that if he is hearing the applicants correctly, they could live with the one foot.

Mr. Weigle asked if the Weeds or the contractor is planning to put anything at the bottom, such as spikes, to help break up the ice that falls. Mr. Weed asked if he means on the flashing. Mr. Weigle replied that he means onto the carport. He continued that he heard them say their neighbor is fine with it, but there might still be sheets of ice coming off. Mr. Weed replied that if the building permit makes that suggestion, he thinks it would be perfectly appropriate.



Mr. Hagan stated that the Building Code does not require that. He continued that it would be left up to the Board to decide if they feel that is needed. The Board could make that a stipulation and staff could add it to the building permit. The Ordinance requires the applicant to make sure water and snow does not go onto other properties. This is a solution the Board or applicant could put forth.

Mr. Weed stated that he thinks the carport roof would have about a 12 10 pitch to the roof. Thus, there would be a two-foot drop between the house and the outer edge. It is not as steep as the roof above it, which has the icefalls.

Mr. Welsh stated that regarding the provided diagram, the shallower slope does not seem to lend itself to the same kind of catastrophic ice pouring off. He continued that he thinks much of the ice and snow that falls on this roof will stay on the roof until it melts, and then run off as water. That would mean the drip line would be where water comes off, as opposed to lots of snow tumbling further than the roofline.

Mrs. Weed stated that because it would be a lower down/shorter roof, snow would not have as far to go. She continued that it would not be as catastrophic as Mr. Welsh said, when it lands.

Mr. Gorman stated that he thinks that what the Weeds are experiencing is, they had the snow belt put on, the aluminum at the base of the roof. He continued that the ice and snow actually accelerate off that, by design, so they do not get ice dams. The snow will then land on the shed roof, which will be the style of the carport's roof, and will likely stay there, unless they were to put a metal roof on that shed roof. Then it would avalanche into the neighbors' property. He thinks that as long as it is an asphalt-style roof, it will just retain most of that snow, as Mr. Welsh said, and just have a melt off until spring. His only concern is the potential discharge of snow into the neighbors' property in the event of a metal roof. He would probably be opposed to a metal roof on that structure, for the sake of keeping the snow on the Weeds' property.

Mr. Rogers stated that for clarity, depending on how the Board were to approve this tonight, they could consider some conditions. He continued that he heard them ask about whether this is open-sided, so (a condition could be) that it has to stay open-sided. He would also point out that this is an unheated space. Thus, snow will not shed off like it does off the house, which is heated. Regardless of how well insulated a building is, heat loss happens, and snow slides. It is not as likely to happen from (the carport) in this situation. The Board could consider that as well as what Mr. Gorman spoke to, regarding how if this were a metal roof, maybe some of the guards that Mr. Weigle mentioned could be required to be installed to hold the snow on that and keep it off the neighbors' property. If the Board is inclined to approve this, they can do so and address some of these concerns with some possible conditions.

Chair Hoppock stated that he is trying to envision what a condition would be. He asked if an asphalt roof could be a condition. Mr. Gorman replied yes or a metal with a snow guard.

Chair Hoppock asked if this goes to site plan review. He continued that he does not think so.

Ms. Taylor stated that she is hesitant to tell an applicant how to build something. She continued that on the other hand, she thinks the Board could have a more general condition that it be constructed in such a fashion that the snow would not discharge onto the abutters' property.

Chair Hoppock asked if that would be okay for enforcement purposes, from the administration's perspective. Mr. Rogers replied yes, he thinks the department could work with that as the building permit is issued. He continued that they will certainly be looking at this Variance, since they normally would not allow this building permit, but if this Variance were granted, they would certainly take that into consideration during the approval process.

Chair Hoppock asked if the applicants had anything else to add. Mr. Weed replied no. Chair Hoppock asked for public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Mr. Welsh stated that he cannot see how this proposal is contrary to the public interest, provided concerns about snow melt going into the neighbors' property are addressed. He continued that it does not detract from property values. It provides no nuisance to the neighbors, and given the talk about car damage, it strikes him that this is also a safety issue. It would be bad to be a person walking underneath that (roof) when the snow fell. He thinks it is consistent with the first criterion.

Mr. Gorman stated that he thinks it being open-sided on all sides helps with the public interest, too. He continued that it is not as if they are putting a completely enclosed structure right on their property line. They are simply trying to put cover over the roof of their cars. Thus, it is a little different than, say, an addition.

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

Chair Hoppock stated that in a residential zone, albeit High Density, it is something that you would normally see in the neighborhood. He continued that thus, it is consistent with the Ordinance, in terms of a garage or other place for a car.

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

Chair Hoppock stated that to further Mr. Welsh's comment, in terms of doing substantial justice, the harm to this applicant if it were to be denied would be significant and not outweighed by any gain to the public, for the reasons the Weeds explained - the safety to their property and safety to others who are in the area, and the minimal impact it would have on the neighbor, given the configuration of the carport and the slant of the roof. He thinks the third criterion is satisfied.

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

Chair Hoppock stated that he cannot even imagine a diminution of property values based on this.

5. *Unnecessary Hardship*

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

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

*and*

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

Chair Hoppock stated that he would say a special condition of the lot is the space between the home and the property line; it is tight. The driveway looks like it has been there for quite some time. He continued that he read in the application that these folks have lived there for over 30 years, and have always used this as a parking area. He thinks the special condition of the lot meets the unnecessary hardship criterion.

Mr. Gorman stated that he agrees and adds that it would be an undue burden on the property owner (if this were not approved). Their only other solution would be to create a new driveway or park their cars somewhere else. He continued that as Chair Hoppock said, this is the way the driveway is set up and it has worked for them for over 30 years. This is rather where the carport needs to go, based on the configuration of the property.

Chair Hoppock stated that in looking at the pictures, he cannot imagine where else a carport could go.

Mr. Gorman made a motion to approve ZBA 23-28, for a Variance to construct a carport, with a one-foot side setback, with the following conditions:

- The carport will remain open on three sides.
- Petitioners make their best effort to maintain the snowfall on their own property.

Ms. Taylor seconded the motion.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

5. *Unnecessary Hardship*

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

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

Met with a vote of 5-0.

*and*

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

Met with a vote of 5-0.

The motion to approve ZBA 23-28 passed with a vote of 5-0.

#### **V) New Business**

Chair Hoppock stated that he extends a heartfelt thank you to Mr. Gorman for serving on the Board for so long. He continued that the Board would miss him. Mr. Gorman replied that it has been his pleasure and he will miss them as well.

#### **VI) Communications and Miscellaneous**

None.

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

None.

**VIII) Adjournment**

There being no further business, Chair Hoppock adjourned the meeting at 7:21 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker

Reviewed and edited by,  
Corinne Marcou, Board Clerk