City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT MEETING MINUTES

Monday, June 3, 2024 **6:30 PM** **Council Chamber, City Hall**

Members Present:
Joseph Hoppock, Chair
Jane Taylor, Vice Chair
Richard Clough
Edward Guyot

Staff Present:
Corinne Marcou, Zoning Clerk
Michael Hagan, Plans Examiner

Members Not Present:
David Weigle, Alternate

I) Introduction of Board Members

Chair Hoppock called the meeting to order at 6:30 PM and explained the procedures of the meeting then roll call was conducted. Chair Hoppock noted that they are one member short, because a Board member had to resign for personal reasons. With applicants having the right to a five-member Board, any applicant who does not want to go forward with a four-member Board should let the Board know before they start getting into the details of their case.

II) Minutes of the Previous Meeting – May 6, 2024

Ms. Taylor stated that she has the following edits to the May minutes:

Line 61 – the word "is" should be deleted. *("…Increasing impervious surface and is does not know")*
Lines 1424 and 1428 – the text *"Met with a vote of 3-0. Ms. Taylor was opposed"* should be changed to *"Met with a vote of 3-1. Ms. Taylor was opposed."*

Chair Hoppock agreed and asked if anyone else had changes, hearing none, he asked for a motion.

Mr. Guyot made a motion to approve the meeting minutes of May 6, 2024, as amended. Ms. Taylor seconded the motion, which passed by unanimous vote.

III) Unfinished Business

IV) Hearings

A) ZBA-2024-12: Petitioner, Thomas Burton requests a variance for property located at 45 Dover St., Tax Map #569-082-000 and is in the Medium Density

District. The Petitioner requests a variance to replace the required 10 ft. side setback with a 3 ft. side setback per Article 3.5.2 of the Zoning Regulations.

Mr. Hagan stated that 45 Dover St. is in the Medium Density District. He continued that the lot has .21 acres, about 8,712 square feet, is currently a non-conforming two-family home with a total square footage of 5,938 square feet and living space of 3,416 square feet. This application is for a variance for the setback of a proposed building and potentially a dwelling unit above that proposed building using the newly adopted Cottage Court ordinance. There were no ZBA decisions on file.

Ms. Taylor asked what specifically is non-conforming, asking if it was the lot size, the building, or both. Mr. Hagan replied that a two-family dwelling in the Medium Density Zone requires 8,000 square feet for the first unit and 5,000 for every additional unit. He continued that the lot size is 8,712 square feet, so it is short of the requirement for the second unit.

Ms. Taylor stated that Mr. Hagan said it was under the new Cottage Court ordinance, but the application says it is an application for an ADU, so she is confused. Mr. Hagan replied that he was going to let the applicant explain his intent. He continued that staff had conversations with the applicant about the wording used in the application.

Chair Hoppock asked to hear from the applicant.

Tom Burton of 45 Dover St. stated that this is his first time coming before the ZBA. He continued that he prefers to not read his extensive application in its entirety but will if needed. In summary, looking at (the) public interest (criterion), granting this Variance would enhance the local housing supply, addressing the community housing shortage without requiring new infrastructure. The project is designed to match the neighborhood's architectural style, ensuring it complements the area's aesthetics and maintains visual harmony. Additionally, it makes efficient use of the property without significant encroachment, ensuring no adverse effects to light, air, or privacy for neighboring properties. The project is expected to increase property values in the neighborhood, contributing to economic vitality.

Mr. Burton continued that he submitted a letter of support from his neighbor who would be encroached the most by this side variance.

He continued that regarding the spirit of the ordinance, the proposed development aligns with the goals of the Zoning Ordinance by promoting orderly, beneficial development while preserving the character of the neighborhood. The construction of the garage with an apartment supports local residential growth objectives and demonstrates a commitment to sustainable land use. Reducing the side setback to three feet from the roof overhang (means) the building itself would be five feet away from the property line. The three feet represents the minimum modification needed to achieve the desired development.

Mr. Burton continued that regarding the impact on the surrounding property values, the new structure is designed to complement the neighborhood style using high quality materials and design standards, ensuring it is an asset to the area. The addition increases the property's

functionality, making it more attractive to potential buyers and contributing to the balanced local housing market. The project includes measures to prevent adverse effects on neighboring properties and will likely lead to high property tax contributions, benefiting local services and infrastructure.

Mr. Burton continued that he is working specifically with the neighbor he would be closest to and have the most effect on. For instance, she has already given her opinion on the color of the house as she wants it a lighter color to ensure that light does enter her windows; he has agreed to this. To be clear, the encroachment on her property would be the northern side of her house. Direct sunlight does not go through there anyway.

Mr. Burton continued that regarding unnecessary hardship, strict application of the 10-foot side setback significantly limits the potential to address the urgent community need for additional housing. The property's unique location and configuration make it especially suitable for this type of development. Reducing the setback to three feet is essential for the reasonable use of the property, allowing the construction of the planned garage and apartment, which aligns with community goals and zoning objectives.

He continued that regarding the substantial justice criterion, approving this variance will result in substantial justice by allowing him to make necessary improvements to his property without causing harm to the public or his neighbors. It recognizes the unique circumstances of his lot and provides a fair solution that balances his needs with community standards.

Chair Hoppock asked Mr. Burton to elaborate on the unique circumstances of his lot.

Mr. Burton replied that he looked at the property map from the top, and it is not unique in that sense. He continued that it is unique in the sense that it has a situation where the building that is already there was built in 1870 and it is not allowing him to help himself and the community. It is not able to work within the current Zoning regulations to try to address those two situations.

Ms. Taylor stated that in looking at the property and what Mr. Burton has submitted, with that overhang being three feet from the property line, her question is what will happen when the snow slides off the roof. She asked if the snow will be dumped on the abutting property.

Mr. Burton replied that that is a good question. He continued that he has addressed the water (issue) and plans to put gutters up. Sarah, the owner of the abutting property, has real water problems. His property is at a higher elevation than hers with the properties behind and north of his are higher than his, so his property receives all the water from those properties and Sarah's property receives the water from his, in her basement. Thus, he will put gutters on his building, which will be a net benefit for her. The hope is that her basement will not flood as much or at all. That is a good question about the snow, and he is not sure how to answer that as he had not not given that a thought. If the snow were to fall on Sarah's property, it would be in the yard, not on a building. It is on the northern side, where there is no walkway and generally no people. He is not sure if there is some kind of technology, he can install on the roof to help break up the snow when it falls. He would want to do that as he does not want to cause any harm or problems.

Chair Hoppock stated that Mr. Burton's neighbor's property is very close to the same boundary line that Mr. Burton is seeking the setback from. He continued that he was looking at Mr. Burton's diagram and asked how far the closest point on Sarah's home is to her setback. Mr. Burton replied that the portion of her property that sticks out as closest to the property line on the northern part is probably about a foot to the setback line. Chair Hoppock replied that that would put it about 14 feet from Mr. Burton's overhang, asking if that is correct. Mr. Burton replied to no. He continued that if he is allowed the three feet, that would put it four feet from the setback. Chair Hoppock replied that Sarah's setback is ten, though. Mr. Burton replied no, Sarah's setback is about a foot off her property line.

Ms. Taylor asked Mr. Burton to explain more about how the situation is unique. She continued that she wrote down (that Mr. Burton said) *"not allowing to help myself to work within the current zoning regulations."* The Medium Density District is *"intended to provide for medium intensity and associated uses,"* which does not tell them much, except that a two-family dwelling on this already-substandard lot seems to her to be at least medium density. She does not understand what Mr. Burton was saying about the uniqueness.

Mr. Burton replied that first, (his property) is at the end of the Medium Density District. He continued that one street over is High Density and he is very close to downtown. This might be a stretch, but the uniqueness he sees is that if his structure had been built closer to his other property line like his neighbor's, he would probably have the space to build this without a Variance. However, his structure is offset, more centered on the property. Sarah probably has the space to build on her southern side, because her building is closer to her property line on the northern side, without setbacks.

Chair Hoppock asked if it is correct that Mr. Burton's argument is that the placement of his structure on his lot makes the property unique. Mr. Burton replied that is correct. Chair Hoppock stated that that can be compared to the property on Mr. Burton's north side and the property on his south side. Mr. Burton replied that is correct.

Chair Hoppock asked Mr. Burton to say more about the existing residents in the 1,920 square foot structure, asking how many people can live in that home. Mr. Burton replied that it is two units with he and his son living in the bottom unit and they have tenants in the upstairs unit. There are four bedrooms upstairs and four bedrooms downstairs with four people could live in each. He assumes Chair Hoppock is getting to the issue of parking as well, because there are parking regulations.

Chair Hoppock replied yes, but he is not there yet. He continued that he is just trying to understand the density of the lot. Mr. Burton replied that there is a total of eight bedrooms in two units. Chair Hoppock asked how many people he proposes will live in the ADU. Mr. Burton replied that he intends to create a small two-bedroom unit of maybe 900 square feet for two people, with two bedrooms.

Chair Hoppock asked where all the cars will go, if there are 10 people there. Mr. Burton replied that if this building goes up, it will encroach a bit into the driveway. He continued that there would still be room for four vehicles there, and a fifth vehicle in the garage. Chair Hoppock

asked if that is the garage underneath the unit on the second floor. Mr. Burton replied yes. Chair Hoppock stated that he could be short five parking spaces. He asked if Mr. Burton knew what kind of parking is available on the street. Mr. Burton asked what the ordinance is for this as he thinks he would be within the ordinance.

Mr. Hagan replied that currently, the ordinance requires two parking spaces per dwelling unit. He continued that there are some exceptions, if a CUP is sought for the Cottage Court, of one per unit.

Ms. Taylor stated that that brings up the question she had for Mr. Hagan earlier where the application says ADU, but she understands that Mr. Burton is coming in under the new Cottage Court Ordinance; she asked for clarification. Mr. Burton replied that he has been working with the Community Development Department, and staff helped him with the process. They showed him the ordinances, what he was in compliance with and what he was not, and ultimately, he decided it would be better for him to work under the Cottage Court Ordinance. That is why he waited to come forward, to make sure that the (Cottage Court Ordinance) went through on (May) 16, which it did.

Ms. Taylor asked how that impacts his proposal. Mr. Burton replied that if the Cottage Court Ordinance did not pass (in the City Council), he would not have come forward, because he would have had to ask for multiple variances, versus just one. Spending the money and time to try to do that would have been too risky.

Ms. Taylor asked Mr. Hagan to clarify how a Cottage Court differs. She continued that this (Ordinance) is brand new, and she read it once but has not absorbed it all yet. Mr. Hagan replied that it is a lengthy chapter, but he can give them an overview. In this case, Mr. Burton is asking for a Variance for the building setback. He would have to go in front of the Planning Board for a Conditional Use Permit (CUP) to move forward, meeting those regulations. If a Variance were issued, the ZBA could condition it upon getting a CUP. Alternatively, if Mr. Burton were to seek a CUP prior to getting a Variance, the Planning Board could condition it upon it not being valid unless he got the Variance. It is kind of an either/or scenario, and (staff) thought this was a cleaner path.

Chair Hoppock asked if the Board had further questions. Ms. Taylor asked staff whether the Board could see the plans on the screens. Mr. Hagan replied that they are having technical difficulties with the screens. He offered to show the Board the aerial plans on his laptop.

Chair Hoppock asked if Mr. Burton had anything else to add. Mr. Burton replied to no. Chair Hoppock asked for comments from the public in support of the application.

Ryan Clancy of 51 Dover St. stated that he is in favor of this application. He continued that he is Mr. Burton's neighbor to the north. All the properties on Dover St. are within the 10-foot setback and the property to the south of Mr. Burton is not the only one that is a foot away from the property line; almost every house on the street falls is. As Mr. Burton said, they are one street away from High Density, and along with that, two properties across from Mr. Burton's are considered two-unit properties but are rented by the room. The two units have 10-12 bedrooms.

Across from his property are two Keene Housing properties that are on the property line or a foot away from it. Those have more than two units as well; thus, (Mr. Burton's) would conform to the neighborhood. As a Planning Board member, he is excited about this possible Cottage Court being the first one to come to the Planning Board. He hopes that when the ZBA is looking at whether to grant this Variance, they are looking at the three-foot setback and not at things that the Planning Board would look at, such as parking and the residential use above the building Mr. Burton plans to build.

Chair Hoppock asked how long Mr. Clancy has been in the neighborhood. Mr. Clancy replied 3.5 years. Chair Hoppock asked if Mr. Clancy would be able to say, regarding the other properties in the immediate area he mentioned, if the location of the primary residence on the property is the reason for the closest of the property lines. In other words, whether they are so close because of their placement, or some other reason. Mr. Clancy replied that he assumes it is just how the lots were broken up. He continued that they are all just under a quarter of an acre. He thinks the majority of the properties are .18 or .19 acres each. All the houses are very similar, with that bump out they were looking at. Chair Hoppock asked if the majority of the houses have been there more than 50 years. Mr. Clancy replied yes.

Ms. Taylor asked if Mr. Clancy, as a Planning Board member, believes it creates a conflict for him to testify in favor of something that will come before the Planning Board. Mr. Clancy replied that at the Planning Board, he will be stepping down for this application. He continued that as a neighbor and an abutter to this property, he has the right to speak to the ZBA about it. Ms. Taylor replied absolutely. She continued that she was just curious, because she did not realize he would be stepping down for this (at the Planning Board).

Chair Hoppock asked if anyone else wished to speak in favor of the application. Hearing none, he asked if anyone from the public wished to comment in opposition. Hearing none, he continued that he would note for the record that the applicant mentioned a letter of support from Sarah Dudzinski, the immediate southerly abutter. He will not read it aloud, unless somebody disagrees, because the letter is on file in the record. Hearing no further public comments, Chair Hoppock closed the public hearing and asked the Board to deliberate.

Ms. Taylor stated that she has a quandary regarding the first criterion, because it appears there was some kind of conflict between the Medium Density District and the Cottage Court Ordinance, and she is not sure which the ZBA should be following. She continued that she has some concerns that if they are following the Medium Density District, it might be contrary to the public interest, if only because there would be about four feet between structures if this were built. She can see it being a hazard, be it fire or some other catastrophic event as well as having concern about snow sliding off the roof. She is not very familiar with the Cottage Court Ordinance, but it appears that that might encourage houses to be four feet from one another. She tends to come down on the side of it being contrary to the public interest because it would create something that is "cheek to jowls" of the abutting house, even if the abutter is in favor.

Chair Hoppock stated that he shares the concern about the tightness. He continued that in looking at the plan, he believed there was more room than that. Thus, it gives him a degree of concern as well. On the other hand, the Applicant is correct that he is addressing the city's housing issue, to

a degree. Mr. Burton's lot is only so big, but he is adding living space and increasing the tax base, two factors that strike in favor of the public interest. The neighbor's comment indicates to him that there will not be any serious alteration to the character of the neighborhood. Aside from the closeness of the two structures, he does not see any danger to public health, safety, or welfare.

Chair Hoppock continued that the other piece that bothers him somewhat is the density. With eight people in the main structure and two more people in the ADU, there could be up to ten people on a relatively small lot. He is not sure if it would be a gain to the public to prevent that, regarding the third criterion. He has not resolved that yet. Overall, he would say that this meets the public interest test. He is not sure if it meets the other (criteria), though.

Chair Hoppock continued that regarding the spirit of the Ordinance, given the testimony from the neighbor, it seems that this request is consistent with the character of the neighborhood and will not alter it in any fashion. He is not sure if the gain to the public would be that significant if this were denied. The gain to the public would be less density. The loss to the individual would be significant; he would not be able to develop his property as he wishes. To him, that is a close call. He does not see any evidence that approving this Variance would diminish property values, because as has already been indicated, it would not alter the essential character of the neighborhood.

Ms. Taylor stated that the Board has not heard any testimony on the value (criterion). She continued that she thinks it is probably a wash, because, again, of the increased density. You might have to pay more taxes, but she is not sure it would have a favorable impact on resale value if she knew she was four feet away from her neighbor's wall. Chair Hoppock replied that someone would certainly be able to see that upon driving in the driveway. Ms. Taylor replied yes, that is why she sees it as a wash.

Chair Hoppock stated that the question is whether it negatively impacts the surrounding properties, and he does not see any information about that. He continued that two neighbors support this, and the Board has not heard from anyone opposing it, in writing or verbally. That allows him to draw an inference that no one in the neighborhood thinks their property values will be affected by this. Thus, he leans on the side of this not being detrimental to property values.

Chair Hoppock stated that regarding the fifth criterion, he agrees with the applicant that the placement of the structure, given the configuration of the lot, can be a special condition of the property, (as well as) the placement in relation to the placement of other houses in the immediate area, mainly the neighbors to the north and south. In the plan given to the Board, the neighbor to the north has a home pushed further up against the northern boundary of his lot. The southerly neighbor who wrote a letter in favor also has a house pressed up against the line. The Board does not have any information about where these boundary lines were 55 or 60 years ago when there was no Zoning. These lots were created before the regulations and now they are non-conforming lots.

Ms. Taylor stated that she has some concerns with that position, and she respectfully disagrees. She continued that there is good case law that it is not a hardship by itself if the Zoning

restrictions may interfere with the proposed use of the property. "Reasonable use" is not just any use. It might be reasonable if it were not for the fact that if you drive down Dover St. you will see the houses are mostly the same age, with a few additions here and there, on the same sized lots. Starting with a case titled *Crossley (v. Town of Pelham),* written by Justice Souter, and then followed up by the *Harrington (v. Town of Warner)* case, (case law says) that if all the lots are similar, it does not create a unique setting for the property. If you do not think the dimensional requirements are correct, the solution is to change the Zoning requirements. That has been done in part with the Cottage Court Ordinance, except it did not do away with dimensional requirements. She does not think the size of the lot constitutes a hardship, because all the other lots are similar. The Board only has a picture of three of the lots, and they do not have a drawing with the lot lines, but just looking at it, she sees that most of the properties on that street are in a similar configuration. They are old houses on small lots, close to lot lines on one side or the other. She does not see the hardship.

Chair Hoppock stated that he would like to have more information, because he believes that the structure's placement in relation to the lot line locations and size of the lot do matter. He continued that if pressed, he would say that at best, the evidence is insufficient on hardship in this case. He is not sure he would say there is no hardship, but if the information is insufficient and the applicant has not met his burden, that is the same as saying there is no hardship.

Mr. Guyot stated that he can add that something that might support the uniqueness of the property, in his mind, is the fact that the southerly neighbor's home is very close to the lot line. It appears to be about a foot. He continued that in a sense, that puts a burden on the applicant's lot, as far as changing the setback and making it even tighter. The applicant cannot control that. The home has been there, just like all the others. It puts a unique burden on his property, as opposed to on the northerly lot, where the house seems to be more central on the lot.

Ms. Taylor replied that she does not think that creates a unique condition of the subject property. She continued that it might be a unique condition if the *neighbor* wanted to do something, being only a foot from the lot line, but in her view, it does not create a unique situation for this particular property.

Chair Hoppock asked if anyone had further comments about any of the criteria. Mr. Hagan asked the Board to discuss the third criterion for the record.

Chair Hoppock stated that regarding the substantial justice criterion, the Supreme Court has often said that the only guiding rule in this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. He continued that as he said before, he thinks that regarding the issue of the density of this property, maybe avoiding that is a gain to the public. The question is whether the loss to the individual is outweighed by preventing such density. He was not sure he had an answer, and he still is not sure. It is a close call.

He continued that he thinks the public interest criterion is satisfied because of the housing issue and the property tax base benefit. He thinks it is not contrary to the public interest or to the Ordinance because it will not alter the essential character of the neighborhood. There might be a safety issue due to the closeness of the property in question and the one to the south of it, which

is a question on the second criterion. For the third criterion, he would give the applicant the benefit of the doubt and say that the gain to the public is not sufficient to outweigh his loss, so he would meet that standard. He thinks Mr. Burton meets the fourth criterion, which is that if the Variance were granted the values of the surrounding properties would not be diminished. He would be in favor of finding the property unique, for reasons previously explained. He is hung up on the safety piece of this.

Ms. Taylor stated that she agrees with the safety concerns, and that is probably a two-pronged factor. She continued that one is the closeness of the property and the second is the increased density. It is nice to have areas used for new residential property, but there are limits. Regarding the hardship criterion, the Harrington case says, *"The applicant must show the hardship is a result of a specific condition of the property and not the area in general. The property must be burdened by zoning restriction in a manner that is distinct from other similarly situated property. The burden cannot arise as a result of the Zoning Ordinance's equal burden on all property in the district. The burden must arise from the property and not from the individual plight of the landowner."* That applies well in this situation because of the similarity of the lots, the age of the structures, and the nearness of this lot and other lots to the setbacks, especially on the side.

Chair Hoppock asked if the Board had further comments. Hearing none, he asked for a motion.

Ms. Taylor made a motion to approve ZBA-2024-12, seeking a variance for property located at 45 Dover St., Tax Map #569-082-000 in the Medium Density District to replace the required 10 ft. side setback with a 3 ft. side setback per Article 3.5.2 of the Zoning Regulations, with the following conditions:

1) Conditioned on approval and meeting all requirements of a Conditional Use Permit by the Planning Board.
2) If all the requirements are met, it will be designed so that the snow load is not deposited on the abutting property.

Chair Hoppock asked, for clarity, if Ms. Taylor means she does not want the snow flying off onto Sarah's lawn or property. Ms. Taylor replied that the Board has (issued this condition) with other properties. She continued that she would like to see the snow that slides off Mr. Burton's roof not only not go on Sarah's property, but also not smack into her house, because it is only a foot from the lot line.

Mr. Clough seconded the motion.

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

Met with a vote of 4-0.

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

The vote was 2-2. Chair Hoppock and Ms. Taylor were opposed.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-0.

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

Met with a vote of 3-1. Ms. Taylor was opposed.

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.

Not met with a vote of 1-3. Mr. Clough, Ms. Taylor, and Mr. Guyot were opposed.

The motion failed with a vote of 0-4.

Ms. Taylor made a motion to deny ZBA-2024-12, a request for a Variance for property at 45 Dover St., Tax Map #569-082-000, to allow construction with a 3 ft. side setback instead of the 10 ft. required setback. Mr. Clough seconded the motion, which passed by unanimous vote.

B) <u>ZBA-2024-13:</u> Petitioner, Jim Phippard of Brickstone Land Use Consultants, LLC of 185 Winchester St., requests a variance for property located at 0 Wetmore St., Tax Map #116-032-001, is in the High Density District and is owned by the Bergeron Family Revocable Trust of 2021. The Petitioner requests a variance to permit a building lot containing 5,544 sq. ft. where 6,000 sq. ft. are required per Article 3.6.2 Minimum Lot Area of the Zoning Regulations.

Chair Hoppock introduced ZBA-2024-13 and asked to hear from staff.

Mr. Hagan stated that 0 Wetmore St. is zoned High Density, and the lot size is .13 acres, with 5,544 square feet. He continued that there are currently no buildings on the lot and no ZBA decisions in the file. This lot has existed since the inception of the development there. Chair Hoppock asked if it is correct that that was in 1926. Mr. Hagan replied that he is not certain.

Jim Phippard of Brickstone Lane Use Consultants, LLC, stated that he did this application three years ago. He continued that the (owner) went to apply for a building permit and did not realize that his Variance had expired, hence Mr. Phippard was asked for assistance again. Thus, tonight he is here on behalf of Bergeron Family Revocable Trust of 2021, the trust that owns the property at 0 Wetmore St. He showed its location in the graphic and continued that it is an

existing, vacant lot that is non-conforming due to the lot size. When he applied for the original Variance in 2021 and gave the background at that time, (this) whole area of Wetmore St. and Fairbank St. was part of a 172-house lot subdivision created by Albert Lacroix in 1926. In 1926, no Zoning restricted lot sizes, so several lots in this area are of substandard size based on today's regulations. This lot was conforming when created and became non-conforming as the zoning laws changed over time. The most recent one that required 6,000 square feet occurred in 1970. That is when this lot became non-conforming, as it is only 5,544 square feet. Thus, it is 456 feet short of being a legal lot size.

Mr. Phippard continued that at one time, the Assessing Office combined this lot with the lot to the north of it, which had the same owner at that time. That was back when this was being done without landowners' permission necessarily. When the landowner realized that his lot was merged without his permission, he filed a request with Assessing to separate it again, which they did. Thus, each of the lots are existing, non-conforming lots. The lot to the north has an existing house. The lots shaded in yellow on the plan are also non-conforming lots that were originally created in 1926.

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

Mr. Phippard stated that he believes granting the Variance is not contrary to the public interest. On the plan, he showed the vacant lot under discussion, and continued that it is large enough to allow construction of a single-family home that meets all the other dimensional requirements of the High Density District. They calculated lot coverage to show that it does not exceed lot coverage. It conforms in all respects other than the size of the lot. Thus, he thinks it is in the public interest to allow this lot to be developed for a single-family home. That is what the applicant is requesting, similar to what has been done on other non-conforming lots. Six non-conforming lots in the immediate neighborhood near this property have houses on them. The applicant will not build a large home. At the time, he was looking at a footprint of 22' x 18'. Since then, he (has decided that he) might add a single-car garage, which there is room for on the easterly side. He still would comply with the lot coverage requirement and setbacks.

Mr. Phippard stated that it is in the public interest to allow this lot to be cleaned up and improved. It will add to the tax base and provide a home, which he believes will be an affordable home. There are many reasons to allow this.

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

Mr. Phippard stated that the spirit of the Ordinance would be observed because this neighborhood has many small lots. He continued that he pointed out six that are already built on, that are similar to or identical in size to the subject lot. It is only fair to allow this lot to be developed in a similar manner. Today the lot is being used for storage of snowmobiles, equipment, and a vehicle. If that continues and the lot cannot be built on, it will probably become unsightly and be a detriment to the neighborhood. Cleaning up the lot and developing it as a single-family home will be a big improvement. It will help the neighborhood and help protect property values.

3. Granting the Variance would do substantial justice.

Mr. Phippard stated that this lot is only 456 feet short of the required 6,000 square feet. He continued that it became non-conforming due to changes in the zoning regulations, not due to anything the landowner did. This was essentially done *to* the landowner. He thinks it thus meets the criteria for substantial justice.

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

Mr. Phippard stated that cleaning up this lot and using it as a single-family home similar to the other lots in the neighborhood will help enhance the value of surrounding properties, as opposed to remaining as a vacant lot that could become detrimental.

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 thinks the special conditions of this property come from the original subdivision of 1926 where the property was legally conforming when it was created. Over the years, City Council changes resulted in the lot becoming non-conforming. The lot meets all the current dimensional requirements, and even with a single-family home, it can meet the lot coverage requirements and all the building setback requirements. He believes the unique feature of changes in zoning are what caused this.

and

ii. The proposed use is a reasonable one because:

Mr. Phippard stated that the proposed use is reasonable because it is identical to the other uses surrounding it in the neighborhood as they are all single-family homes. It is on City water and sewer that exists at the property. It can meet all the other dimensional requirements.

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 this is not separate from the other properties in the area. He continued that it is similar to the other lots, but the other lots that have a similar non-conformity were all developed, which was done in a good manner. Property values there have been increasing over

the past couple of years. He thinks this is another positive step that will help that trend continue. This Variance was approved in 2021 and he hopes the ZBA will approve it again.

Chair Hoppock asked if the Board, when granting this Variance in 2021, relied on paragraph B. in the unnecessary hardship criterion. Mr. Phippard replied that he is not sure, that he does not remember all the details.

Chair Hoppock asked if Mr. Phippard said that the proposed single-family home on this lot would meet all the dimensional requirements and setbacks. Mr. Phippard replied yes. Chair Hoppock asked what the square footage would be. Mr. Phippard replied that at that time (in 2021) the footprint was 22' x 18', and it would probably be two stories. He continued that it would have at least two bedrooms. (The owner) mentioned to him that he is looking at adding a single-car garage. There is room for that on that side of the lot. Chair Hoppock asked if there is room for that without needing any more variances. Mr. Phippard replied that is correct.

Chair Hoppock asked if there were more questions from the Board. Hearing none, he asked if members of the public wanted to speak in favor or in opposition of the application. Hearing none, he closed the public hearing and asked the Board to deliberate.

Chair Hoppock stated that he thinks this should be somewhat straight forward, since this case was before the Board a few years ago.

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

Chair Hoppock stated that he does not see anything contrary to the public interest in regard to this application, because it is asking for a Variance to build a single-family home, which is not contrary to the public interest. He continued that the Board heard that it will be a home within all the requirements of the lot size. He does not see any issue in that regard.

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

Chair Hoppock stated that this criterion looks at alteration of the essential character of the neighborhood and whether the Variance, if granted, would pose a danger to public health, safety, or welfare. He continued that he does not see this altering the essential character of the neighborhood. It is a neighborhood full of similarly sized lots with similar dwellings constructed on them. The neighborhood would not be altered in any way that would be discernable. Similarly, he does not see any issue with respect to public health, safety, or welfare.

3. Granting the Variance would do substantial justice.

Chair Hoppock stated that granting the Variance will allow construction of an affordable housing unit for the owner, and will do substantial justice for that owner, without any harm to the public that he can see. He continued that the balancing test favors granting this application.

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

Ms. Taylor stated that she thinks they would be hard pressed to argue that a new house on that lot probably would increase not just the value of that property, but also the value of the neighborhood, as opposed to it having been a storage lot for odds and ends. Chair Hoppock replied yes, that (storage lot for odds and ends) would serve to diminish the values of the surrounding properties. He continued that he agrees and sees other ZBA members nodding.

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 Hoppock stated that he thinks the lot size is a unique feature of the property in relation to what is sought, a single-family home. He finds that a special condition of the property that makes the application of the lot size ordinance unfair or unduly burdensome to the owner.

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

Ms. Taylor stated that she thinks this (paragraph B) is appropriate, and she remembers when this case came before the ZBA (in 2021). She continued that her concerns again were similar to what were raised in the previous application. However, in this application, she thinks it probably falls under what she calls the "if all else fails" criteria. In other words, if this is not granted, the question is whether there is another reasonable use that this property can be put to, other than merging with the abutting property, which does not seem to be on the table. Thus, she would put forward that there does not seem to be any other reasonable use, so when the Board gets to voting, they should look to paragraph B. of the unnecessary hardship test.

Mr. Guyot made a motion to approve ZBA-2024-13, submitted by Jim Phippard of Brickstone Land Use Consultants, to request a variance for property located at 0 Wetmore St., Tax Map #116-032-001, in the High Density District and owned by the Bergeron Family Revocable Trust of 2021, to permit a building lot containing 5,544 sq. ft. where 6,000 sq. ft. are required per Article 3.6.2 Minimum Lot Area of the Zoning Regulations. Mr. Clough seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. Unnecessary Hardship

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.

Met with a vote of 4-0.

The motion to approve ZBA-2024-13 passed with a vote of 4-0.

C) <u>ZBA-2024-14:</u> Petitioner, Martine Fiske requests a variance for property located at 10 Adams Ct., Tax Map #590-006-000 and is in the Low Density District. The Petitioner requests a variance to permit a 16 ft x 19 ft deck on a lot that is nonconforming at 7, 620 sq. ft. where 10, 000 sq. ft. is required, making it unable to conform with the impervious coverage per Article 3.3.3 of the Zoning Regulations.

Chair Hoppock introduced ZBA-2024-14 and asked to hear from staff.
Mr. Hagan stated that 10 Adams Ct. is located in the Low Density District, it is 7,620 square feet where 10,000 square feet are required. It is a single-family home with 14,101 square feet of living space. This property has two variances and one decision by the Board. ZBA-89-14 was denied on March 6, 1989, a Variance for lot coverage and setbacks. On August 6, 1996, due to a change in the Zoning Ordinance that relaxed the coverage requirements, they were allowed to move forward with a Variance application on September 4, 1996. At that time, ZBA-96-23, Variance for a one-foot setback for a garage, was granted. The current proposal is for expansion of a deck area, which he will let the applicant speak to.

Ms. Taylor stated that Mr. Hagan said there were two Variances and one decision. She asked if the decision was part of the Variance. Mr. Hagan replied that the March 6, 1989, variance was denied. He continued that the August 6, 1996, decision, which has no case number, was that there was enough to be heard again due to the change in the ordinance that allowed increased density, percentagewise.

Ms. Taylor asked if this proposal meets all the setback requirements. Mr. Hagan replied yes, other than the lot coverage.

Martine Fiske of 10 Adams Ct. stated that this was her first time before the ZBA. She continued that 10 Adams Ct. is in a mixed neighborhood of single-family homes and multi-family conversions, on the edge of an area with many multi-family homes. Approximately half of her neighbors are multi-family, and the other half are single-family. (This is) Ward 1, Low Density, one block off Main St. on a dead-end street that terminates in the parking lot behind the nursing facility across from Keene State Collage. As Mr. Hagan said, it is 7,620 square feet with the house built in 1938 and is her primary and only residence. Currently there is a 22.5' by 8' stone patio in the rear yard that is crumbling due to masonry failure and has become a hazard with pieces of it might collapse. Only 2/3 of the space can be used because there are two steps down into the yard and one step up into the house. This narrow space is about the width of a standard porch. She can just barely fit two Adirondack-style chairs in the center of the space, with a rain barrel at the end. It does not allow for any outdoor dining.

Ms. Fiske continued that if granted, a 16' by 19' deck would be built over the existing stone patio. She has been told it would be exceedingly expensive and difficult to remove this stone patio in the rear yard, so she is looking to build over it. The new deck would double the depth, so that it is 16 feet instead of 8 feet, and it would reduce the width to 19 feet, so it aligns with the side of the house where the existing stone patio goes beyond the edge of the house. The proposal would meet all the setback requirements with the side property so that it is approximately 11 feet from the property line and 37 feet from the back property line with garden space and lawn in between. It would allow for outdoor living space and entertainment space. The two houses nearest to the property have the depths of their own backyards. This is her rear yard, surrounded by shrubs and fencing, not visible from the street.

Ms. Fiske continued that she requests a Variance on Section 3.3.3, because it is already a non-conforming lot, under 10,000 square feet. As currently set up, it is at 46% impervious. She is asking for an extra 152 square feet.

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

Ms. Fiske stated that the proposal is not contrary to the public interest because it does not infringe on the setbacks to the neighboring properties. Her application includes letters of support from the nearest neighbors to the proposed deck, Nancy and Paul Vincent, and Allison and Joe Lucas, both single-family homes. The increase in impervious surface would be negligible at 2%, which sounds like a lot, but at 152 feet, it is not.

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

Ms. Fiske stated that the spirit of the Ordinance would be observed because it meets all the setback requirements, and it is a very minimal increase in impervious surfaces.

3. Granting the Variance would do substantial justice.

Ms. Fiske stated that substantial justice would be met because it keeps within the spirit of the Code, given that the lot is 2,380 square feet below the minimum standard, and she is only asking for 152 extra square feet for impervious surfaces. This lot is a two-bedroom home that could comfortably accommodate four people, but the patio space does not allow for more than two people on it currently. Certainly, there is no space for any visiting people, so a family and visitors could not be on the patio all at the same time. She is asking for reasonable enjoyment of property without intrusion into the neighbors' space.

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

Ms. Fiske stated that surrounding property values would not be diminished because she would not be encroaching on any of the required setbacks, so it would not affect the neighbors' use and enjoyment of their properties in any way. The new deck would be further away from the side property, which is a benefit as well. The impervious surface amount is a negligible amount to the community, but of great value to her as the homeowner.

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:

Ms. Fiske stated that the lot already does not meet the Zoning requirements for Section 3.3.2 – Dimensions and Sitings, being 2,380 square feet short of the Code's requirement of 10,000. The non-conforming size already is 1% over on the impervious surfaces. As seen on the site map, the garage is pushed quite far back to the rear of the property, which extends the length of the driveway. That is quite an addition to the impervious surface, and she cannot do much about that, which was done by a previous homeowner.
Ms. Fiske stated that she believes the purpose of protecting the neighboring properties from encroachment will be met, and it would meet all the setbacks and minimal impervious surface increase.

and

ii. The proposed use is a reasonable one because:

Ms. Fiske stated that the use is reasonable for a two-bedroom home that could have four people in it. The existing space does not meet a reasonable use (for four people). It would in no way affect the livability for any of the neighbors.

She continued that she does not want to be repetitive, but in summary, the property is a small lot with a long driveway. She is asking for only 152 square feet.

Ms. Taylor stated that she knows Ms. Fiske mentioned the expense of removing the stone, which she understands. She continued that she is looking at the photo Ms. Fiske included, and wonders what will happen to the couple of feet of the stone patio that extends beyond where Ms. Fiske wants to build the deck.

Ms. Fiske replied that the plan is to remove all the pieces that are not stable. She continued that the photo in the middle, with the planter, shows a corner that is about to collapse. That whole piece would be removed. Ideally, if she can get the builder to do it, she would like to remove the portion of the stone patio that would be exposed, which is 3.5' by 8', and then put in a small brick pad where there is an existing sidewalk of brick. She would like a step-down onto brick. She would thus be hopefully removing about half of the stone patio that would be exposed under the deck and replacing half of it with brick.

Chair Hoppock asked if that would improve her impervious coverage percentages. Ms. Fiske replied that she thinks so, but she did not include that because she is not sure the builder can do it. She continued that the stone blocks are irregularly sized, with some quite large. Chair Hoppock replied that you cannot tell from the photo how deep the blocks go down. Ms. Fiske replied that is correct, and she does not know, either, which is why she did not include the removal of those stones. She is not sure if it can be reasonably done.

Chair Hoppock asked if it is correct that Ms. Fiske is measuring the 152 square foot increase from what is there now. Ms. Fiske replied yes. Chair Hoppock asked about one of the photos, which shows the (proposed deck) extending further than the stone block. Ms. Fiske asked if he meant the stone block with the rain barrel on it. Chair Hoppock replied that in the photo with the two Adirondack chairs, the yellow line (representing the proposed deck) extends onto the grass, and he asked if that would be covered up. Ms. Fiske replied yes and directed his attention to the bottom photograph. She continued that there would be an additional eight feet that would cover over an old garden, and then it would be an additional 8' by 19'. Again, she hopes to remove the stone on the side, but cannot make any promises. Chair Hoppock asked if it is correct, then, that the problem with the impervious coverage comes in when she is covering up that old garden, and that does not include removing the other piece they just talked about. Ms. Fiske replied that is correct.
Mr. Hagan stated that if it is helpful, page 93 of the agenda packet has a plot plan that shows the jet out and extension.

Chair Hoppock asked if the Lucas's and the Vincents are Ms. Fiske's immediate abutters. Ms. Fiske replied yes. She continued that if you are looking at 10 Adams Ct. from the front, the Lucas's are the rear neighbors on her left/east side with their property line about seven or eight feet behind her existing patio, to the side. The Vincents' property is behind the garage. The space directly behind her patio is a rental unit, with occupancy by students changing on a regular basis. She does not think there has been the same person in that house for more than a season.

Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked if members of the public wanted to comment in opposition or in support. Hearing none, he asked if the applicant had anything further to add. 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.

Ms. Taylor stated that she thinks the Variance is not contrary to the public interest because it certainly does not conflict with the purpose of the Ordinance, does not alter the essential character of the neighborhood, and does not threaten public health, safety, or welfare. It does not interfere with anyone else's rights, because it is solely behind the house on this property and quite a distance from any abutting structures or residents or anything else. Chair Hoppock agreed.

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

Ms. Taylor stated that for reasons stated in the first criterion, she thinks this observes the spirit of the Ordinance. Chair Hoppock agreed. He continued that given the minimal increase of 152 square feet, that may change, depending on how lucky the applicant is with (finding someone to remove) that piece (of stone) that sticks out. The Board can assume that will move, so for purposes of the application, there is no threat to public health, safety, or welfare and this will not alter the essential character of the neighborhood. He thinks the second criterion is met.

3. Granting the Variance would do substantial justice.

Chair Hoppock stated that he thinks the applicant herself states nicely in her application, that the increase in impervious surfaces would be a negligible amount to the community but of great value to the homeowner. He continued that he thinks she means that if this were denied, the harm to her would be significant, with no appreciable gain to the public. That is how he sees it, and he thinks this criterion is met.

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

Chair Hoppock stated that he does not see how this would have any impact on property values, other than improving the applicant's own property, and if her property value is improved, she will naturally carry others in the area with it.

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.

Ms. Taylor stated that there is not much of an opportunity, where this property is located, of changing its size to have a different proportion of impervious surface. She continued that she

would say that even if you moved the proposed deck one way or another, it still would not change the calculation. Thus, this is a situation where the property itself creates hardship. With this extra 152 square feet, changing the impervious surface does not have any relationship to the limitation in the Ordinance on this property. Chair Hoppock agreed.

Chair Hoppock asked for further comment. Hearing none, he asked for a motion.

Mr. Clough made a motion to approve ZBA-2024-14, petitioner Martine Fiske, requesting a Variance for property located at 10 Adams Ct., Tax Map #590-006-000, in the Low Density District, to permit a 16 ft x 19 ft deck on a lot that is nonconforming at 7,620 sq. ft. where 10,000 sq. ft. is required, making it unable to conform with the impervious coverage per Article 3.3.3 of the Zoning Regulations. Mr. Guyot seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. Unnecessary Hardship

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.

Met with a vote of 4-0.

The motion to approve ZBA-2024-14 passed with a vote of 4-0.

The Chair called for a short break at 8:05 PM with the meeting resuming at 8:15 PM.

D) <u>ZBA-2024-15:</u> Petitioner, Jason Reimers of BCM Environmental and Land Law, PLLC, of 41 School St., representing Ryan Gagne of Live Free Recovery Services, LLC, 9 Dutton Circle, Mt. Vernon, NH, requests a variance for property

located at 973 Marlboro Rd., Tax Map #294-004-000, is in the Rural District and is owned by BTD Properties, LLC of 1 Main St., Marlborough, NH. The Petitioner requests a variance to permit a non-medical Residential Drug/Alcohol Treatment Facility where such use is not permitted per Article 3.1.5 of the Zoning Regulations.

Chair Hoppock introduced ZBA-2024-15 and asked to hear from staff.

Mr. Hagan stated that 973 Marlboro Rd. is in the Rural Zone on 1.1 acres with about 47,916 square feet. He continued that the last permitted uses were a school and a single-family home with 2,686 square feet of living space and the total building size is 4,462 square feet. This property has had several variances. It is important to know that the property straddles two municipalities, the City of Keene and the Town of Marlborough with the boundary line situated about down the middle. Mr. Hagan continued that some of the previous variances came from the fact this property was developed on that boundary line though there was one variance submitted in the 1990's for retail sales in the Rural Zone that was withdrawn. On February 3, 2003, there were two variances, voted on separately but sharing one ZBA number, ZBA-03-04. These were for log home sales and a model log home; both were approved. On November 3, 2003, ZBA-03-17 was granted for a sign variance for a change of location and increased size. On April 4, 2005, ZBA-05-14 was granted, an additional sign variance for additional square footage.

Mr. Hagan stated that it is important to note that the question might come up, being on two different properties of how this is discussed. RSA 674:53 addresses how municipalities deal with properties that straddle two municipalities. Chair Hoppock asked for more information about that. Mr. Hagan replied that it is lengthy, and he will not go through the whole thing, but essentially, it is a letter of agreement between the two municipalities on how to deal with, for example, building permits, who inspects what, and zoning issues. Currently, the Community Development Department is working on a letter to the Town of Marlborough with a Conditional Use application that has been submitted. They are working on that in the background while this variance is going on.

Chair Hoppock stated that perhaps the applicant will explain during the presentation, but he read in the materials that the Town of Marlborough will subject this to a special exception requirement. Mr. Hagan replied that is correct.

Jason Reimers from BCM Environment and Land Law stated that he represents the applicant, Live Free Recovery Services. He continued that with him are Ryan Gagne (of Live Free) and Tara Kessler (of BCM Environment and Land Law). They are seeking a variance from Section 3.1.5, which is the list of permitted uses in the Rural District. The list does not include residential drug and alcohol facility.

Mr. Reimers continued that regarding how this is playing out in both municipalities, they are asking for a variance. They also need a Congregate Living and Social Service Conditional Use Permit from Keene, and a Congregate Living and Social Service Operating License that is renewed annually with the City of Keene. From Marlborough, they need a Special Exception from the ZBA, and site plan approval from the Planning Board where they have a joint hearing scheduled in about two weeks. In addition, the facility is licensed by the NH Department of

Health and Human Services (NHDHHS). Mr. Hagan also alluded to, (when he spoke about) RSA 674:53, that there is a provision, and he (Mr. Hagan) alluded to a prior letter when it was the log home business where the Marlborough Select Board ceded their permitting authority to the City of Keene so there was not duplicate building permit requirements, duplicate inspections, and things of that nature.

Chair Hoppock asked if it is correct that that is not true today. Mr. Reimers replied that he does not believe it to be, because he believes that letter was specific to that particular project. He thinks Mr. Hagan was alluding to the fact that if the applicant is able to get the approvals, a similar or the same process might play out here.

Mr. Reimers continued that before he addresses the variance criteria, he would like Mr. Gagne to tell the Board about Live Free Recovery Services and the specific use they are proposing.

Ryan Gagne stated that he is the owner and operator of Live Free Recovery Services, which has been in operation in various forms since 2015. He continued that in late 2018, they talked with Southwest Community Services (SCS) about SCS's vacant building on 881 Marlboro Rd. on the correctional facility property. SCS was having trouble with a program they had started without knowing the amount of substance use of people who were coming out of incarceration facilities. When they (SCS) started the operation with fantastic intentions and staff, it became clear to them that this was a little bit outside of SCS's scope. They shut the program down and the building was vacant. Live Free had an opportunity to meet with SCS at the end of 2018/beginning of 2019 and out of all the applicants, SCS chose Live Free to operate there.

Mr. Gagne continued that since then, Live Free has developed a full continuum of care of substance use treatment in Keene, with several other locations. A sober living property changed ownership, and the person that had started the program no longer wanted to run it. It was a vital service for people finding recovery housing, especially given the housing crisis that now exists. There was little to no affordable housing for people who were just getting on their feet, until that property was established. Instead of letting that sober living property close, Live Free took over the operation of that as well.

He continued that since then, Live Free has operated at 361 Court St., which is also in a residential neighborhood, and at 106 Roxbury St., which Live Free Recovery obtained an approval from the ZBA several months ago. They are very familiar with the Congregate Living License process where they have just obtained two of their renewals. Live Free operates an outpatient facility at 17 Kit St. and employs a variety of clinicians, psychiatric APRNs who are qualified and competent when it comes to substance abuse treatment. It is important to note that Live Free does not have issues within the neighborhoods in which they operate. They do not receive complaints from neighbors who are less than 100 feet away from Live Free's driveways. Live Free works with their neighbors, not against them and they are not there to cause problems; they are there to add a service to the location that they provide in, and they take it very seriously.

Mr. Gagne stated that the 881 Marlboro Rd. location has a full medical detox program. He continued that people are there to medically stabilize themselves from either drugs or alcohol. After stepping out of that program, a person has to be medically cleared by the psychiatric nurse

practitioner or medical director that they are appropriate to step down to what is called the next level of care. That next level of care is that the person is not only medically stable, but also stable enough to engage in treatment at the next juncture. Stepping from the detox program directly into the outpatient program can sometimes have challenges internally for the individuals. This location [that they are seeking a Variance for] would be a high intensity residential program. Residents are supervised 24 hours a day, with about 16 hours per day of clinical programming. A Good Neighbor Policy was just handed out [to the ZBA] with some of that would not apply to this location, because residents would not be moving to and from anywhere. They would be within the facility until they were ready to step down to another program. This would be a higher level of care, clinically, and more supportive for those individuals. After meeting with City staff several weeks ago, they came to the (decision) that this variance would be the best path moving forward for the use of the property.

Chair Hoppock stated that Mr. Gagne says the Good Neighbor Policy was just handed out. He continued that under the ZBA's Rules of Procedure, anything given to the Board within 10 days of a public hearing is subject to acceptance by a majority vote of the Board. Mr. Gagne can speak to the Good Neighbor Policy as much as he wants, but for the Board to look at it and take it into the record, they would need to vote on it first. Mr. Gagne replied that he apologizes for not submitting it with the application. He continued that he did not realize it was a written policy. Chair Hoppock replied that Mr. Gagne can speak about what he handed out and speak about anything else he wants; his intention was not to cut him short. Mr. Gagne replied that he just wanted to give a full circle summary of how Live Free Recovery Services has several locations and this is not a new concept for them.

Chair Hoppock asked if it is correct that the high intensity programming of 16 hours per day would be, on average, for four to six weeks per person, in house. Mr. Gagne replied that was correct. He continued that after that, individuals would step into the lower levels. Part of entering the program would be an individual's willingness to engage in long-term treatment, which provides a better outcome for the individual.

Chair Hoppock asked if the individuals decide when they are ready to step down by working with their clinicians. Mr. Gagne replied that the professionals would help them with that. Chair Hoppock asked if it would be a collaborative (decision). Mr. Gagne replied yes.

Ms. Taylor stated that she does not know whether Mr. Reimers or Mr. Gagne would be the ones to answer, but she hopes that at some point one of them will go through the planned, internal uses for the two buildings.

Mr. Gagne stated that he had been driving by this property for about three years and always wondered what was going on inside. He continued that it is a unique location, aesthetically. It is an attractive building, and he can attest to the building's interior matching its exterior. The single story ground level is partitioned with a hallway that has offices all the way down, approximately nine of them. Then, the residential building itself. Some of the offices would be turned into bedrooms, and others would be turned into either group rooms or individual clinicians' offices. This program's "caseloads," as they are often referred to, would be very low. The client to clinician ratio (would be low). The clinical offices would be among some of the residential

dwellings as well. The main building would have some of the community activities and groups. A two-story housing portion is the residential building itself, and there is plenty of common space in there as well.

Ms. Taylor asked how many residential clients/patients they would have at any one time. Mr. Gagne replied that they are here asking for about 20, but he has a feeling it will be less than that, after they develop the space. The maximum would be 20, and the lower side would be anywhere down to 16. Until they get into architectural engineer expenses, he cannot give a definite answer. Ms. Taylor replied that she was curious, because there seem to be five or six offices on this plan, and they only see the first level of the residential structure, which shows one bedroom. She is trying to figure out how they fit 20. Mr. Gagne replied that there are two more upstairs. He continued that there are two large rooms that could, ideally, have a partition going through to create space if need be. Without even doing that, it would have the ability for the offices needed as well as the residential component.

Ms. Taylor asked if there would be 24-hour staff. Mr. Gagne replied yes.

Chair Hoppock asked if it matters which side the boundary line is on, in terms of the uses Live Free will put to it. He continued that in other words, it seems like about three quarters of the long building with the offices is on the Marlborough side. He asked if that matters, in terms of the uses. Mr. Reimers replied that they do not think it matters. Chair Hoppock replied that he agrees. Mr. Reimers replied that they have not seen anything in any of the ordinances that have suggested that. They did think about whether, for example, they would need to put all the residents in one (municipality), but they have not seen anything guiding that. Chair Hoppock replied that he thinks that makes sense.

Chair Hoppock asked if there were any more questions from the Board at this point. Hearing none, he asked the applicant to continue.

1. *Granting the Variance would not be contrary to the public interest.*
2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

Mr. Reimers stated that the first two criteria are related and considered together. He continued that the two ways that the NH Supreme Court looks at these are whether granting the variance would alter the essential character of the neighborhood or whether it would threaten public health, safety or welfare. This variance will do neither. Starting with the character of the neighborhood, this is a unique building and property that is partly in Keene and partly in Marlborough. The property has had varied uses over the past few decades and is currently vacant. Live Free's proposed uses are of similar intensity as previous commercial uses on the property. The property has been used for commercial purposes since the 1970s. It was Bud & Dolly's restaurant, and then that building was torn down in the 1980's. In the late 1980's and early 1990's, Planning and Zoning approvals were obtained for commercial uses of the site, such as a restaurant, convenience store, and a greenhouse retail space. However, those plans never materialized. In 2003, Monadnock Log Homes received approval to construct the existing building, which was used for several years as a model log home showroom and log home sales offices. The most recent use has been for a therapy clinic and outpatient therapy clinic for youth

diagnosed with autism and other developmental disabilities. The sign still advertises it as "Patterns Behavioral Services."

Mr. Reimers continued that the proposed use will generate minimal traffic. Residents are not permitted to have vehicles or leave the facility on their own. Most daily trips will be by the staff who will be present 24 hours a day. The staff will work in three shifts with five to seven staff present during the first shift and no more than five staff present during the second and third shifts. They estimate an average of 30 vehicle trips to and from the site daily, with "one trip" defined as a car leaving the site, counting it as another trip when the car comes back. An estimate of 30 vehicle trips per day is consistent with a residential neighborhood. Given that this is located on Rt. 101, this traffic will not even be noticed. The property has two driveways forming a horseshoe shape.

Mr. Reimers continued that residents of the facility will be supervised 24 hours a day and will have scheduled times for outdoor breaks in an existing, fully enclosed outdoor area. There are two outdoor areas, one enclosed outdoor area on the Marlborough side, and a large outdoor deck on the Keene side. Those spaces will not be, for example, smoking lounges in which residents could come and go as they pleased. Due to the high level of supervision and limited outside activities, the proposed use will not generate significant levels of noise or disturbance to surrounding properties. The people staying at the facility will be there voluntarily. They will have already gone through a detox program at another site. Many residents will be there because they are covered by health insurance.

Mr. Reimers continued that Live Free has a well thought out Good Neighbor Policy that its residents are expected to abide by. He invites the Board to read it, but he will highlight a few sections that stood out to him. One is, *"We can show our neighbors that we are assets to the community. We are not drug houses or trap houses, but rather look at us as good neighbors and contributing members to society."* Another quote that caught his attention was, *"You represent the Live Free family. Even though you will successfully transition on, we plan to be here to continue our mission for generations. Think and act beyond yourself."* The third was, *"Keep your voices lowered and be aware of subject matter. This is just as important on the deck and smoking area."* He thinks those are examples of a thoughtful good neighbor policy that has been revised over the years. Adding to this is the fact that the property and building are already well screened from neighboring properties. It is screened from the abutting property to the east by a solid wooden fence along the property line. The properties to the south and west are undeveloped, densely forested and vegetated. In the front, abutting Rt. 101, are existing mature evergreen shrubs and trees between the roadway and the front of the site, partially screening the existing parking area and building from the roadway and abutters to the north.

Mr. Reimers stated that in all, the proposed use will not alter the essential character of the neighborhood. He continued that as to whether it would threaten public health, safety, or welfare, the amount of traffic will be low, as the residents will not have vehicles. All the residents are sober and are always supervised. The applicant is installing sprinklers and will not strain emergency services. The number of Police, Fire, and EMS calls combined, from all Live Free's four facilities in Keene combined, are about six to eight per year.

Chair Hoppock asked how many people were involved. Mr. Gagne replied that he wants to clarify that that does not include 881 (Marlboro Rd.) being a medical facility, because that is a little different when it comes to the medical calls they get. Sometimes people are in medical crisis before they even come to Live Free, thinking it is a good idea to drive themselves to Live Free, and Live Free then needs to have something like hospital intervention. However, this location, he is talking about the facilities that operate with 361 Court St., (106) Roxbury St., 17 Kit St., and 26 Water St.

Chair Hoppock asked what the total population is of those four locations. Mr. Gagne replied roughly 64 individuals every 30 days. Chair Hoppock asked if it is correct that it is about 6 to 8 calls per year for about 64 individuals. Mr. Gagne replied that it is about .5 per month.

Mr. Reimers stated that the fact that Live Free's detox facility is about 1,000 feet away allows Live Free to better stabilize someone in need. In addition, since all these individuals have already gone through that detox program, any symptoms experienced by a resident will likely be less severe, because they are at a further stage in their sobriety. They are not as acute.

Ms. Taylor asked if her understanding is correct that this facility is proposed to be "intermediate" between the one that is on the grounds of the county jail and the four others in Keene. Mr. Gagne replied that 881 Marlboro Rd. is their 3.7 (level) medical detox facility. He continued that from there, they have two step down locations, which would be a step after this particular proposed use. The idea behind that is to better support individuals who maybe could use the additional support, and to lengthen someone's treatment episode, which also greatly improves their outcomes. The step down to just sober living is 26 Water St. That is when individuals are fully employed, attending recovery meetings and engaging with the community themselves, looking to further their employment and gain residency within Keene. Many graduates from that program go on to become part of Live Free's alumni program and rent apartments locally.

Mr. Reimers stated that he has some clarifying questions for Mr. Gagne, if that is okay with the Board. He questioned whether Live Free Recovery Services currently has the category of use they are proposing (tonight). Mr. Gagne replied no, this proposed use would be something in between the detox program and what currently exists at two of the locations. Mr. Reimers asked if it would be fair to say that 881 Marlboro Rd. is for those most in need (of the highest level of care). Mr. Gagne replied yes. Mr. Reimers replied that then Live Free has other locations for (people needing) the lowest (amount of care), and this (proposed one) is going to be the intermediate (treatment level) Live Free does not currently have. Mr. Gagne replied that was correct.

Ms. Taylor asked which are the two facilities Mr. Gagne was referring to, the intermediate steps before individuals get to the sober living step. Mr. Gagne replied 361 Court St. and (106) Roxbury St.

Tara Kessler stated that she will add that what differentiates this proposed facility from a group home where people are coming and going to work every day is that in this facility the residents will not be leaving. She continued that they will be there 24 hours a day, on site, with clinicians providing clinical support for 16 hours a day and then supervision when people are sleeping or

need breaks. There will not be people coming and going from the site, as there would be ones with a more traditional group home. This will be a place where residents live in the building and are able to go outside for breaks during scheduled times, with supervision at any time of day.

Mr. Reimers stated that for all the reasons they have given, this will not threaten public health, safety, or welfare. Overall, helping individuals transition to sober living is a major benefit to public health, safety, and welfare. As the Variance will not change the character of the neighborhood or threaten public health and safety, granting this Variance will be in the spirit of the Ordinance and will not be contrary to the public interest.

3. Granting the Variance would do substantial justice.

Mr. Reimers stated that as Chair Hoppock stated earlier, any loss to the individual that is not outweighed by a gain to the general public is an injustice. He continued that here, denial of the variance would cause a loss to the applicant, the landowner, and the general public, with no corresponding gain to the general public. The loss to the applicant would be the loss of an opportunity to use this property for its important mission. Existing buildings suitable for this specialized use are not easy to find. The building, property, and location are all unique. Located 1,000 feet from the applicant's detox facility, it is perfectly located to suit the applicant's needs. The loss to the landowner would be that the sale of the property would fall through, and this unique property is not well suited for most uses permitted in the Rural District. It is not an easy property to sell. These losses would not be outweighed by any gain to the public if the variance were denied. The public needs and wants these services. Live Free's mission of assisting individuals to live sober lives is a benefit to the public and in furtherance of public health, safety, and welfare.

Mr. Reimers continued that if the variance is denied, the delivery of these services will be delayed while the applicant tries to find another suitable property. This would be a disservice to the public. This property has long been used for commercial and therapy purposes and it is currently vacant. Granting the variance will allow the applicant to use this existing building and property in a manner that is consistent with the long history of commercial uses of the parcel and in a way that will not adversely impact surrounding land uses. Therefore, this variance will do substantial justice, as there will be a loss to the applicant, the landowner, and the public if the variance is denied, with no counterbalancing gain to the public.

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

Mr. Reimers stated that the applicant sees no reason for surrounding property values to be diminished. He continued that the building is currently vacant, and it is a challenging building to use. A vacant building is detrimental to a neighborhood. The proposed use will be of similar intensity to previous commercial uses of the parcel and other nearby commercial uses, and it might be of a lesser intensity regarding parking and traffic. The most recent use was for outpatient therapy services, which was an intensive use, in terms of traffic. Many uses for this building require a variance. This proposed use is less intense than some of the permitted uses, such as a kennel or greenhouse/nursery. The property is well kept despite being vacant, because

it has not been vacant for very long, and the building is in good shape. Live Free will maintain this appearance. They expect to put about $150,000 into improving the building, and they will allocate about $20,000 a year for maintenance.

Mr. Reimers continued that the residents will be there voluntarily and will have already been through detox. They will be supervised 24 hours a day and only be permitted outside of the building during scheduled times. The overall use of the property will not impact the neighbors, especially to the extent that property values would be diminished. Property values are not easily diminished.

Mr. Reimers continued that Live Free has a great track record in Keene and Manchester, and there is nothing to suggest that it has diminished property values surrounding its existing properties. For all these reasons, as well as the fact that the property is on a busy corridor near downtown Marlborough, the proposed use will not diminish property values.

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. Reimers stated that this has three components. He continued that first is whether the property has special conditions that distinguish it from other properties in the area. Second is whether those special conditions make it such that there is no fair and substantial reason to apply the prohibition of residential drug and alcohol facilities in the Rural District to this particular property. Third is that the use must be reasonable.

He continued that starting with special conditions, this is a textbook example of a property that is unique. He usually tries to avoid saying things like that, but in this case, it is truly unique. Both the property and the building are split by the town line. It is a residential building, but large enough to accommodate 20 beds and office space. It is in the Rural District, yet it is on a busy highway. It is 1,000 feet from the applicant's detox facility. It has existing parking, and more parking than is necessary. It has an existing, fully enclosed outdoor area. It has existing screening. It has long been used as a commercial property, and similarly to the proposed use, it has been used for therapy in the past. All of these are special conditions that set this property apart from any other property in the area.

Mr. Reimers continued that the second part of the unnecessary hardship test is whether there is a fair and substantial reason to apply the prohibition of residential drug and alcohol facilities to this particular property. Denying the Variance will not further the purposes of the rural district. Therefore, there is no fair and substantial relationship. As stated in Section 3.1.1., *"The Rural District is intended to provide for areas of low density development, predominantly of a residential or agricultural nature. These areas are generally outside of the valley floor, beyond where city water, sewer and other services can be readily supplied."* He continued that denying

this variance will not further these purposes. Denying the variance would not provide for an area of low-density development. This building already exists, and it has long been used for restaurant, commercial, and therapy uses. Section 3.1.1. also says that the Rural District is intended to be *"predominantly of a residential or agricultural nature,"* and the proposed use will not change that. The word "predominantly" means that the residential and agricultural uses should be predominant, but that does not mean they must be exclusive. This proposed use is residential in nature.

He continued that regarding the District being *"…generally outside of the valley floor, beyond where city water, sewer, and other city services can be readily supplied,"* that states a concern for extending city utilities into rural areas, but here the applicant does not need Keene's water or sewer. The property is connected to Marlborough's sewer system, and it has a well for water. Thus, granting this variance will not compromise the purpose of the Rural District of not requiring the expansion of city services.

Mr. Reimers continued that in all, granting this variance will not undermine the purposes of the Rural District or the purposes behind not including residential drug alcohol treatments in the list of permitted uses. This is a unique situation. This property is not representative of the Rural District or its predominant aims.

and

ii. The proposed use is a reasonable one because:

Mr. Reimers stated that providing an opportunity for people who have voluntarily gone through a detox program to spend four to six weeks living in a safe environment under 24-hour supervision while getting therapy is a reasonable use. He continued that Live Free has been successfully providing these services in Keene for years. Their use is proven reasonable, and their track record is terrific. The applicant will suffer an unnecessary hardship if the Board denies the variance.

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. Reimers stated that a variance is necessary to enable a reasonable use of the property. He continued that as he has said, this property is unique in many ways and perfectly suited for this use. That the property needed past Zoning relief exemplifies the unique nature of the property, and the fact that the property has even received Zoning approvals for uses that never came to fruition, which he thinks further shows that many or all of the permitted uses are just not viable for this property. For that reason, he believes the applicant satisfies the alternative unnecessary hardship test in addition to the primary one.

Ms. Taylor asked Mr. Reimers to refresh her memory about the statement he made in the beginning about what Marlborough needs to do and when they are planning to review it. Mr.

Reimers replied that the RSA Mr. Hagan referenced provides for a joint hearing with the Marlborough Planning Board and Zoning Board. He continued that they need site plan approval and a special exception for a group home in the district in Marlborough. They submitted the applications, and the joint hearing is scheduled for June 19. They also submitted applications to the Keene Planning Board for the Conditional Use Permit for congregate living.

Ms. Taylor asked what would happen if, assuming this were all approved, someone in the residential setting did not abide by the rules. She asked if the individual would return to the detox program, if it were a substance issue. Mr. Gagne replied that Live Free would do what they would do at any level of care. He continued that if an individual cannot abide by the rules set forth for them after a corrective conversation and an attempt with corrective action plans, or is unwilling to do so, then Live Free will typically work with other crisis intervention spots so that person is not just put out on the street. He continued that sometimes when something happens within the facility after hours, the individual rests for the evening and the issue is sorted out in the morning when services are open and available. Live Free tries to go above and beyond to never just leave a person on the sidewalk with their belongings. That is not successful for the individual, for Live Free, or for the immediate town. Thus, they work hard to mitigate those issues. In addition, it is a professional standard for Live Free, with actions Live Free has to take internally to make sure that they can intervene well in those crises and intervention moments.

Ms. Taylor asked where someone goes if Live Free determines the interventions have not worked and the person has to leave. Mr. Gagne replied that if an individual was at the discharge point, Live Free would work with one of the crisis intervention spots, look into maybe changing an address so the person has an opportunity to start anew in a different program, and look for what opportunities or services that person has available to them in that moment. There is not one clear-cut answer. If this occurred in the detox program, that would be different. If this occurred in this (proposed) program, Live Free would look for crisis intervention spots such as The Doorway, which would be able to work with the individual and get them to the services that the individual is willing to participate in.

Mr. Reimers asked if Mr. Gagne, when he says, "crisis intervention spots," means working with another agency. Mr. Reimers replied yes, other agencies that are more suited for those types of phone calls, something that needs to be immediate, and is willing to work with somebody. The individual maybe does not meet Live Free's criteria or is not willing to abide by Live Free's rules, but maybe (another agency) has a lesser standard. Or maybe the individual, because of that intervention, is willing to do something in a different program.

Chair Hoppock asked if any of Live Free's residents (at the proposed location) would be subject to court orders or are there as a condition of release. Mr. Gagne replied not for a condition of release. He continued that sometimes someone might have a legal precedent that they would have to mandate, but the person still would have to choose to be there and choose to participate. He continued that Live Free has an extensive screening policy, and certain criteria would remove someone from being able to come into the program. Chair Hoppock asked for examples. Mr. Gagne replied that sex offenses or any type of violence would exclude someone from being able to participate in those locations. He continued that one of Live Free's facilities is directly across from a charter school. They have never had any incidents. Students are outside playing ball all

day, and when a ball comes over the fence, someone brings it back to the students. (Live Free) does not have issues with their neighbors.

Chair Hoppock stated that he assumes it goes without saying that Live Free does not allow weapons of any kind. Mr. Gagne replied definitely not. He continued that residents are not allowed to have cell phones, or anything that could possibly allow for participation in further drug use; Live Free mitigates all circumstances. Visitors are rarely allowed, only people who are engaging in family treatment, and those visitors are screened through the individual's clinician, and are not allowed until a little further into the treatment process, if they are even approved; they have to be a healthy support.

Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked if anyone from the public wanted to speak in opposition to this application.

Bruce Robbins of 5 Main St., Marlborough stated that he is the abutting neighbor to this property, and he has heard a lot of talk about it and about what has been there in the past. He has lived in Marlborough since 1993. There have only been a couple of businesses at the (subject property). A couple of the uses that [people here] said were approved were denied. The people who owned Athens Pizza tried to open a store and pizza place in this location and were denied by the City of Keene. When the person built the building that now exists, the City of Keene and the Town of Marlborough approved certain plans. The person changed those plans and added another sunroom in the back of the building, which is not in compliance with the wetlands. The foundation for the back of that building is almost in the brook. When it rains heavily, the brook tries to go up where it normally used to go, where they filled it in and put the foundation. Now the water, when high, beats against the side of that building and floods his side yard.

Mr. Robbins continued that he does not think this is a good location for rehab. He was sent a registered letter (by the applicant), which said this was a non-medical place. Tonight, they said it was a medical facility and he disagrees with it. He owns the property on all three sides of the (subject) property and feels this will lessen the value of his home and his property. He is retired and trying to live on his property. He questions who will want to buy his four-bedroom home and be next door to a detox facility. He does not think anyone would want that. He questions who will buy his other land and build a house, with a detox facility in the neighborhood. He did not buy in a residential neighborhood to live next to a detox building.
Mr. Robbins continued that the "closed-in smoking area" the applicant spoke about is no more than 10 feet from his property line on the side of his house where he spends a lot of time outdoors. He is a non-smoker and the wind blows from the north side that will blow all of the cigarette smoke into his yard. The building did not exist when he moved here in 1993 and he disagrees with it. He asked if there will be any security at the building. The applicant said there will be (staff) there, but he questions what will happen if someone who is trying to get off drugs or alcohol "goes berserk" and hurts someone in the neighborhood. He asks the ZBA to vote against this application. Main St. Marlborough does not need this.

Ryan Benn of 976 Marlboro Rd., Keene, stated that the applicant says this will not harm property values, but he does not see how it could not. He continued that he has only lived there for about 4.5 years, and if someone told him that this would be moving in next door 4.5 years later, he

either would not have bought (his property), or he would have asked for a reduced price. He is on call, away for 30 hours at a time, and does not know if he is comfortable with his wife being alone for 30-hour stretches.

Chair Hoppock asked if anyone else wanted to speak in opposition. Hearing none, he asked if the applicant wanted to respond.

Mr. Reimers stated that this is not a detox facility or a medical facility. He continued that is a non-medical, non-detox place for people who have already gone through a detox program and have been medically cleared by professionals. People who enter this facility do so voluntarily. The neighborhood would not be getting a "detox place." Regarding the smoking area Mr. Robbins referred to, Mr. Gagne is willing to work with any neighbors to make this work. The smoking area does not need to be in that location; it could be somewhere else. Residents are supervised 24 hours a day. This is not a place where, for example, 20 people are just hanging out living together for four to six weeks and spending all their time smoking on the deck. People will be in intensive group sessions 16 hours a day. They are supervised during their breaks.

Mr. Gagne stated that part of becoming a part of any community is working with neighbors. He continued that Live Free has a history of working with neighbors to move property lines, (for example), because there were trees impacting neighbors' houses in Keene and in Manchester. If there is water damage being created by the property he owns, he is obligated to at least look at ways to help with mitigating that if possible. He does not know the history of what previous owners did that met or did not meet Code, but that is not an impact he wants to have on any community. It is not an impact he *has* had on any community.

Mr. Gagne continued that regarding Mr. Robbins' comments about the need for security, Live Free does not have security; they have on-site staff who are trained and able to handle these kinds of situations. If that were to be a prevalent problem, a board member would probably bring up an incident that had taken place that was reportable. He would be hard pressed to find (that), because they do not exist.

Mr. Gagne continued that he understands the viewpoint about property values, but regarding the property values of Live Free's locations, they have added to the property values of their neighbors. He mentioned (the) Court St. (property) was falling apart and that Live Free had a clear, step-by-step plan to reestablish that property. A roof just went on over the summer, and a complete landscape plan has been done, which is common for Live Free. He looks at these properties to be ones that support their clients in a manner that is with integrity, which requires funding to the property itself. That is a benefit to Live Free's neighbors, not a hindrance. You cannot find a property that is next to any of Live Free's properties, including in Manchester, which has not increased in value.

Mr. Reimers stated that as Mr. Gagne said, you would be hard pressed to find an example of someone "going berserk." He continued that this is a home staffed by professionals who are trained to deal with situations if they arise. He understands people having concerns about something new like this in the neighborhood, but nothing factual supports those concerns coming to fruition. He did not include this in the application, but Ms. Kessler found a 2019 study by the

National Bureau of Economic Research in Cambridge, which looked into substance use disorder treatment centers and their relation to property values. The abstract says, *"We find no evidence that substance use disorder treatment centers affect property values."* Thus, having concerns anecdotally is not the same as property values actually being diminished. He remembers a case he had with (the ZBA) years ago, and he recalls the ZBA members who were there, regarding a homeless shelter. The ZBA was careful not to base their decision on the inferred character of the people who might be there. People with substance use disorders are a protected class under the Fair Housing Act. There is nothing to support the fear that someone will "go berserk" in the neighborhood, because Live Free's track record is there.

Mr. Gagne stated that it is important to note that Live Free has had completely open lines of communication with their neighbors. He continued that neighbors could call his cell phone or email him as he provides his contact information. Neighbors have phone numbers for on-site staff as well. These are valid concerns, and if he did not know what he knows, he would probably have those concerns, too. However, concerns are not always based in fact. What he found in working with neighbors of the Court St. facility is that it is a very densely populated neighborhood, and neighbors are not afraid to express their opinions and feelings about situations. Live Free does not have incidents at Court St., and those neighbors are incredibly close to Live Free's property line. If the inferred damage were going to take place, it would have already happened. The (Court St. facility) is a lesser (level of) care. Residents have more freedom to go out. If they were to go out and do the things (Mr. Robbins' spoke of), those problems would already exist, because the Court St. residents have more opportunity to do that. Less opportunity would imply that there is less chance that would take place. The spirit of this would be to have an open line of communication to work through anything that ever comes up or is of concern, whether real or not. Often, Live Free gets phone calls with complaints about parties going on. The caller assumes the partying is at the Live Free facility, but the reality is that it is the rooming house across the street, not Live Free's clients. That same willingness to have an open line of communication would exist for these (Marlboro Rd.) neighbors as well.
Chair Hoppock asked if it is fair to say that this location would never have fewer than five staff members present. Mr. Gagne replied that was correct.

Ms. Kessler stated that she will add that the City of Keene has an annual review process through its operating license that will hold this type of facility accountable. She continued that Live Free has been held accountable for the past year that this license process has taken effect. Mr. Gagne replied that even more, this is a facility that will be licensed by the NH DHHS, which is the highest licensure there is. Thus, Live Free's clinicians, medical staff, or anyone else within Live Free's facilities, will have their license under scrutiny by the NH DHHS for this facility. Anything they do will have to abide by that licensure, and he knows that if Live Free is not adhering to that, the NH DHHS will close their doors immediately.

Mr. Reimers asked Mr. Gagne to explain how this will not be a medical facility. Mr. Gagne replied that the portion of this that often gets confused is that when someone is referred for medical stabilization, before they come to Live Free, they have to be a "non-institutional referral," meaning they do not require a hospital level of care. He continued that if they require a hospital level of care Live Free cannot admit them, (not even to) Live Free's medical facility. At that point, the person is typically removed or separated from certain drugs using some types of

prescription drugs. There is a taper that they are cleared for at some point in time. Then, a person would step into this facility, where they would engage in clinical treatment. Live Free's idea for this (proposed facility) is to have a smaller, more specialized program for these individuals to engage in specialized treatment, such as talk therapy, group therapy, and very honed life skills. These individuals typically do not have the life skills that others have, and this is an opportunity to focus on what life skills they need as individuals and be able to provide that for them. That is the level of care, it is not medical. Residents might be on medications, because if someone has, for example, diabetes, generalized anxiety disorder, or depression, they are prescribed medications. Live Free helps residents with what they need. Maybe they have not been on medications, and someone can evaluate them and recommend they see a prescriber. The idea is for people to be able to get a foothold and to have a lot of supervision and a lot of care, on a more individualized basis, from people with smaller caseloads.

Mr. Gagne continued that he views this (proposed program) as similar to programs Live Free has done. They go above and beyond, and take the work very seriously, for this exact reason. He would want someone to do that for his own loved one who needed help. If he were in a neighborhood where this was taking place, he would hope that the facility was really taking the thought and consideration that Live Free does.

Mr. Reimers stated that unlike a detox facility, this is non-medical in the sense that medicine is not being used to help get residents to stop using drugs or alcohol. He asked if that is correct. Mr. Gagne replied yes, the individuals have already made it through that process.

Chair Hoppock asked if it is correct that someone who is there, who has been through detox, requires medical treatment for something else – such as anxiety, depression, or whatever it is – would get that treatment from an outside person such as their own PCP. Mr. Gagne replied no, Live Free would have an internal prescriber that people could see. He continued that Live Free's detox facility is 1,000 feet up the road. If a resident has any issue, it is about a 45-second car ride to go sit down with a registered nurse or APRN, who is licensed by the NH Board of Medicine, to have those kinds of conversations. That is an added benefit, as many residential facilities he is proposing do not have that as an opportunity. Those medical staff (at the detox facility) are there 24/7. A registered nurse, sometimes two, is on staff 24/7, with the psychiatric APRN.

Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked if the applicant had anything further to add. Hearing none, he closed the public hearing and asked the Board to deliberate.

Chair Hoppock stated that before they start the deliberations, they should discuss the one-page handout they received (from the applicant). He continued that under the ZBA's policy, they are supposed to get materials 10 days prior to a hearing. *"If an applicant or an applicant's agent submits supplemental information pertaining to an application within 10 days prior to the public hearing at which the application is to be heard, the Board shall consider during the meeting and decide by majority vote whether to accept the supplemental information for consideration at the meeting or to continue to application to the next scheduled meeting to allow adequate time to review the supplemental information."* His opinion is that they do not need to continue this

hearing. He asked if they should vote to accept this piece of paper and consider it tonight, or not accept it.

Ms. Taylor made a motion for the ZBA to accept this "addressing neighborhood concerns policy" from Live Free Sober Living into the record. Mr. Guyot seconded the motion, which passed by unanimous vote.

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

Chair Hoppock stated that he does not see how granting this Variance would be contrary to the public interest, in terms of violating basic Zoning objectives. He continued that the property is currently vacant and has a history of commercial use. He does not know what happened to the log home business, but he remembers driving by it many times. The ZBA's concern is whether this proposed use, which is not permitted in this zone, violates basic zoning objectives. A kennel or other uses that were mentioned would be busier/have more of an impact on the area than this one would. He is impressed that there is likely a very low traffic impact here, and the proposed use would impact less than a restaurant, kennel, or a variety of other uses that are permitted. He does not think it would be contrary to the public interest.

Mr. Hagan stated that a letter from an abutting neighbor was submitted on Friday, May 31, and thus did not make it into the agenda packet. He continued that he has a copy, but not enough copies for everyone. Chair Hoppock replied that he can pass it around and let the Board read it.

Chair Hoppock stated that for the record, it is a memorandum dated June 3, 2024. It is from Bonnie Delano and Brenda Sherwin, daughters POA [Power of Attorney] for Dorothy Wilcox of 974 Marlboro Rd., Keene. Then there is a carbon copy of an email address. The subject concerns ZBA-2024-15, Variance to permit a non-medical residential drug/alcohol treatment facility at 973 Marlboro Rd,. Tax Map #294-004-000. He continued that the memo reads as follows: *"On behalf of our 102-year-old mother, Dorothy Wilcox, whose property abuts this proposed facility, we ask the following concerns be addressed and considered regarding the above Variance request. Dorothy has lived at 974 Marlboro Rd. for over 70 years and has raised five children in her home. For a large portion of that time, 973 Marlboro Rd. was a vacant lot. She has always earmarked the future sale of her home to be what she will use to live on once she is no longer able to live by herself. By allowing a drug/alcohol treatment facility beside her, it will most definitely impact the value and the profits once the house is sold. How will she be compensated for this revenue loss?*

As the value of the home at 974 Marlboro Rd. will be negatively impacted, a reevaluation for tax assessment needs to and should be made. Although we appreciate the facility will be staffed 24/7 and all efforts will be made to ensure the safety of the facility, residents, and the neighboring property owners, nothing is foolproof. If a resident of said facility causes damage to Dorothy's home, or is injured or worse on her property, who is legally and financially responsible?"

Chair Hoppock reopened the public hearing and asked if the applicant wanted to address the letter.

Mr. Reimers stated that he understands the neighbors seeing this as a concern, but again, there is nothing to support the assertion that this will impact Ms. Wilcox's property value. He continued that as far as who is legally responsible for, say, a (Live Free) resident leaving the house and getting hurt on Ms. Wilcox's property, he does not think that is part of a variance. The most difficult questions for a lawyer to answer are the ones when people throw out, *"Well, what about liability?"* Ms. Wilcox certainly would not be liable for someone else hurting themselves, unless she had some kind of obvious danger on her property, which he does not think is the case. It is true that nothing in life is foolproof. However, there is no track record here of sober people just wandering away and getting hurt or causing damage to properties neighboring Live Free. He does not think the concerns in the letter, while valid, change the variance calculus at all.

Chair Hoppock asked if there were any other questions or comments as a result of the letter. Hearing none, he closed the public hearing to resume deliberations.

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

Chair Hoppock stated that this criterion goes to the two factors that seem to be implicated most here, which are whether it will alter the essential character of the neighborhood, or whether it will jeopardize public health, safety, or welfare. He likes to see concrete evidence backing a position, and lacking such evidence, he likes to see more than speculation. To a degree, the Board members bring their personal experiences to this Board, which they are allowed to do. He has had a number of cases in his professional life as a lawyer dealing with these kinds of facilities, advocating for them and fighting against them. He has seen both sides of the equation. He always sees people speculating about what he calls the "parade of horribles." There is an assumption that people in recovery are potentially dangerous, he has not seen that to be true. There is no evidence in this case where that could even remotely be taken as a serious fact. People in recovery are there because they want to be, and they have already taken a couple of steps to get where they are going to be at the intermediate level of this facility. That shows that they have made progress to a degree and are continuing to do so. If the program is as effective as the Board has heard, people will continue to make progress and step down as they go. He does not buy the argument that granting this variance would create a public health or safety risk in any neighborhood. The corollary to that is that there is no danger to the public welfare or safety, in his opinion.

Chair Hoppock stated that regarding the essential character of the neighborhood, the Board is not seeing any evidence that the physical structure of the place will change. He continued that the only thing that might need to be addressed is the location of the outside smoking area. He heard the applicant say that Live Free can work with that, and that the property is large enough to do so. He personally is not a fan of smoking and would ban it altogether if it were his property, but that is not his call. He heard the applicant say he will work with the neighbors on this, and he believes him. Aside from that one minor issue, he would be prepared to say that granting this variance would not violate the spirit of the Ordinance. It would be observed.

3. Granting the Variance would do substantial justice.

Chair Hoppock asked, what harm to the public if this were granted. He continued that everything he just said about public safety and welfare is applicable here. He does not see any evidence that there will be this great harm befalling the neighborhood, the city, or anywhere else. He sees a loss to a couple individuals here – the owner, the applicant, and the general public. These facilities are needed in today's society. He would support the finding that this criterion has been met.

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

Chair Hoppock stated that the Board has heard a couple of comments about property values. He continued that in his experience doing this kind of work, he has seen people come in with letters from realtors, letters from real estate appraisers, stating their gut opinions. Tonight, the Board heard opinions from several people who wrote and spoke. He does not doubt the sincerity of their beliefs, but he questions the basis for them. He does not think he is putting too much weight on what the applicant says, because he (the applicant) has the track record. He himself is aware of the track record, because he has been involved with some of those cases, collaterally or not. He does not see the negative impact, especially with the one on Court St., not too far from the hospital. Before Live Free took over that property, another outfit went in, and the neighbors "went nuts." The ZBA shut it down and did not grant the variance for that. They (granted the variance) for (Live Free), and he thinks he knows why. He was not on the Board then, however, the track record that this applicant has demonstrated leaves him to believe that Live Free does know what they are doing, that they will operate in a manner that will not allow property values to diminish, and that they will listen to their neighbors. They handed out a policy about their relationship with their neighbors, which he thinks is thorough and sincere. He would use that as evidence to support his conviction that granting this variance would not diminish 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:

and

ii. The proposed use is a reasonable one.

Chair Hoppock stated that he thinks Mr. Reimers nailed the three-part test. He continued that there are special conditions to this property, some he himself has never seen before, such as a town line running right through the middle of the building, with 1.1 acres on one side and almost an acre on the other. There are competing regulatory requirements from two municipalities. The size of one building, with so many offices that can be easily converted into residential units, with sufficient bathrooms; and the fact that it is on a main thoroughfare, Rt. 101, are other special conditions. Those special conditions make the application of a prohibition of this type of use somewhat nonsensical, or at least unreasonable. He thinks the use they propose is reasonable in

this location. The fact that it is located so close to another facility owned by the same applicant is just a coincidence and a plus for Live Free, not a special condition, but he heard what Mr. Gagne said about the availability of medical treatment so close to the place. He would be in support of this application, and in support of granting the variance, for all those reasons.

Mr. Guyot stated that he agrees with Chair Hoppock's assessment, which was well said. He continued that he would also add that residents are controlled primarily inside the facility. There is an outside smoking area, but residents will not be wandering about the property, is what he heard from the applicant.

Ms. Taylor stated that she thinks the proposed use as part of the unnecessary hardship test is reasonable. She continued that her understanding is that except for a brief period, this property has never been used for the purposes that are defined, on the Keene side of the building, at least. She cannot speak to what the Marlborough side of the zoning might be. She thinks the use is reasonable, or at least as reasonable as any of the prior uses have been. Chair Hoppock replied that it is at least as reasonable as and less impactful than many of the permitted uses.

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

Ms. Taylor made a motion to approve the variance for Live Free Recovery Services, LLC, for property located at 973 Marlboro Rd., Tax Map #294-004-000, in the Rural District, to permit a non-medical Residential Drug/Alcohol Treatment Facility where such use is not permitted per Article 3.1.5 of the Zoning Regulations, with the condition that the ZBA's approval is contingent upon the applicant receiving all approvals required by the Town of Marlborough, the City of Keene, and the State of New Hampshire. Mr. Clough seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Met with a vote of 4-0.

The motion to approve ZBA-2024-15 passed with a vote of 4-0.

E) <u>ZBA-2024-16:</u> Petitioner, Heather Francisco requests a variance for property located at 271 Elm St., Tax Map #536-086-000 and is in the Medium Density District. The Petitioner requests a variance to turn a single family home with an Accessory Dwelling Unit into a two family on a lot with 11,325.6 sq. ft. where 13,400 sq. ft. is required per Article 3.5.2 of the Zoning Regulations.

Chair Hoppock introduced ZBA-2024-16 and asked to hear from staff.

Mr. Hagan stated that 271 Elm St. is zoned Medium Density, has .26 acres, is a single-family home with an Accessory Dwelling Unit (ADU) and currently conforms with all requirements. It has been a single-family home since 1979. In 2017, the owner obtained a permit to have the ADU. He could not find any ZBA cases in the file. In Section 8.4.2 – Specific Use Standards, An Accessory Dwelling Unit, 1. Defined says, *"An independent living unit ancillary to a single-family dwelling unit and under the same ownership as the principal dwelling unit. The unit may be an attached Accessory Dwelling Unit (ADU), located within or attached to the principal dwelling unit, or a detached ADU, located in an attached accessory building on the property."*

Chair Hoppock asked if it is correct that the lot is 11,325.6 square feet and the applicant needs 13,400 square feet to do what she wants to do. Mr. Hagan replied yes, to make it a two-family home instead of an ADU. Chair Hoppock asked if it is correct that there is a shortage of 2,074.4 square feet. Mr. Hagan replied yes.

Chair Hoppock asked to hear from the applicant.

Heather Francisco of 271 Elm St. stated that she wants to begin by thanking the (staff members) who helped her with this process and answered so many of her questions. She continued that she is petitioning for this variance as a way to address Keene's housing crisis in general. She owns 271 Elm St., currently designated as a single-family home with an ADU. At the end of this month, she will be moving out of the home, to Gilsum, NH. Two families with school-age children currently reside in the building. One family shares a unit with her, and the other resides in the apartment on the first floor. Those families will have to vacate when she moves out, because with the ADU, she has to reside in one of the units in order to rent the house out. Those families will not be permitted to stay when she moves out and will be considered homeless. They

are both working class families. Everyone she had rented to have been nurses or other professionals. The neighborhood is mainly lower-middle class or working-class people who get their bills paid on time but do not have the luxury of being able to secure a new home for their families with 30 days' notice. Keene does not have many two-bedroom rentals available. These two families work (in Keene) and their children attend the school closest to 271 Elm St.

Ms. Francisco continued that 271 Elm St. was built in 1920 as a two-family home. She bought it in 2020 during the COVID-19 pandemic when it was in very poor shape and had been vacant for years. She believed it was a two-family home. She did not know until recently that it was designated as a one-family with an ADU. If she had known that she would not have put families in danger of losing their housing if she moved out.

Ms. Francisco continued that the property is located in a Medium Density neighborhood with single-family, multi-family, commercial, and government housing. The purpose and effect of the proposed variance is to change the property's designation from a single-family with an ADU to a two-family property. Justification for the proposed variance is that 271 Elm St. was originally built to be a two-family home and has been used to house two separate households since she purchased it. It has square footage for four parking spaces, currently all in use. It has two addresses on some paperwork, as 271 Elm St. and 273 Elm St. as it has two separate apartments. One is 807 square feet and includes two bedrooms, separate dining and living room, kitchen, bath, and laundry room. The other apartment is 598.26 square feet and includes the same, but with a larger bath and laundry room. Both apartments have covered porches, storage areas in the basement, and minimums of two parking spaces. Each apartment has a separate heating system and utilities. The lot size is 11,325.6 square feet and includes a 15' by 80' driveway area. The square footage falls short of the required 13,400 square feet. However, there is room for plenty of parking and a ramp for the first floor apartment if needed.

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

Ms. Francisco stated that since 2020, she has received a great deal of positive reinforcement from the neighborhood and community members. Multiple community members have shared that 271 Elm St. was formerly referred to in a negative light and in ill repair. Quickly after she rehabilitated the property, the home directly across the street was completely gutted and remodeled. Next, the other property directly across the street had an exterior remodel. Lastly, the two abutting vacant lots that had been used as a dumping ground for construction waste were purchased, and a large, beautiful home was built. Another abutting property had an exterior remodel just before the newest house was built. All this development happened in the three years following the exterior rehab after her purchase of 271 Elm St. During all these years, 271 Elm St. housed two separate families, which has done nothing to harm the neighborhood. It has helped with the improvement and upkeep of the property.

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

Ms. Francisco stated that 271 Elm St. is now an attractive, modern, two-family home that houses two young families with children. She continued that if the variance were granted, the spirit of the Ordinance would be observed, because two middle-class families who care for their property

would remain living at 271 Elm St. The yard is sizable and there is room for its covered porches, gardens, parking, and safe play away from the street.

3. Granting the Variance would do substantial justice.

Ms. Francisco stated that when she advertised the first floor unit, she received well over 100 inquiries. Most inquiries arrived with lengthy explanations of circumstances of the hardship of finding housing and heat, especially two-bedroom housing in close proximity to the hospital and schools. She knows firsthand how difficult it is for Keene residents to find housing.

Several abutting properties are distinguished as multi-family homes. One has a lot significantly smaller than 271 Elm St. Another is deemed not large enough for a two-family; however, actually has a three-family home on it. She has marked a map listing all the abutting multi-family homes and commercial properties just a bit further than 200 feet.

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

Ms. Francisco stated that following her purchase and use of 271 Elm St. as a two-family, four directly abutting properties invested a great deal of money in their properties. The other three invested in landscaping and painting their homes. It is not technically legal in the City of Keene, but she sees 271 Elm St. already used as a two-family home like it was originally built.

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:

Ms. Francisco stated that denial of the Ordinance would immediately make two families homeless with 30 days' notice. It would cause the property to sit vacant for the entirety of her owning it because she will be moving out at the end of this of June. Since it is now designated as a single-family home with an ADU, if she does not live in one unit, no one can live in the other. She is able to let 271 Elm St. sit vacant, but it would be immediately recognizable to Keene residents.

and

ii. The proposed use is a reasonable one.

Ms. Francisco stated that the proposed use is reasonable because 271 Elm St. has already been used as a two-family since she purchased it in 2020.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the

property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Ms. Francisco stated that another unnecessary hardship would be to residents of Keene. Denial of the variance would immediately prevent Keene residents' access to affordable multi-bedroom housing located near good schools with ample yard space for their children. This would be seen as nothing but unnecessary hardship during Keene's housing crisis.

Ms. Francisco stated that regarding the square footage of the yard, she had done the math wrong and wrote 768 square feet. She continued that it is over 2,000 square feet. It is 2,000 square feet less than currently required for a two-family without a variance. Both apartments provide ample space for two families. The lot provides ample space for parking.

Ms. Francisco continued that (the application) includes the abutters list and a map of the property that shows where the driveway is. She believes the driveway is 83 feet long and it can easily fit four cars. Four cars or trucks easily fit in a box configuration and are able to come and go as they please. An aerial map is numbered to show other properties that have less square footage than hers and are multi-family homes with two and three bedrooms. Some have very similar square footage to that of 271 Elm St.

Ms. Francisco stated that in conclusion, she is asking for the ADU to be changed into a two-family home. Chair Hoppock asked if it is correct that Ms. Francisco is not proposing any new construction, and just wants the ADU to be reclassified as the second dwelling unit of a two-family dwelling unit. Ms. Francisco replied that is correct, the only change would be the paperwork.

Chair Hoppock asked if it is correct that the driveway is 83 feet long. Ms. Francisco replied yes. She continued that the property is 86 feet on that side, but coming in three feet from City property, it would bring it to 83 feet.

Ms. Taylor asked Mr. Hagan if there was any information on the permit from when this became an ADU. She continued that she is trying to figure out, if it was originally a two-family home, whether it reverted to a one-family and then someone wanted an ADU, or if it went right from a two-family to a one-family with an ADU. Mr. Hagan replied that the City's records show that it has been used as a single-family home since 1979, until there was construction work without a permit. In [2017], a stop work order was given to the property because they (the owner) were looking to convert it to a two-family and the City records indicated that it was only a single-family. He continued that the only route the (owner) could take, without seeking a variance, was the ADU. They chose to not go for a variance because an ADU was permitted by right under the Ordinance. At the time, there were many more limitations to ADU's, such as an ADU could be no more than 30% or 600 square feet in size, and it had to be owner-occupied. It used to require two parking spaces for an ADU as well as for the single family. The Ordinance changed and now it allows an ADU up to 1,000 square feet, attached or detached, with one parking space. If identified as (an ADU), it has those additional allowances. If this converts to a two-family, nothing will change as far as building permits go. The only difference would be that it could be

rented out and would not have to be owner-occupied. Ms. Francisco would have to add one more parking space. She provided a parking plan showing where the property can fit four vehicles and meet the parking requirements.

Ms. Taylor stated that when she looked up the photos of the property on Google, she noticed two distinct entrances on the front of the house. She asked Ms. Francisco if those were there when she purchased it. Ms. Francisco replied yes, and in addition, there is another distinct entrance with a porch on the side where the driveways are. She continued that each unit has its own front door and back door.

Ms. Taylor asked if one of the units has a stairway to go upstairs. Ms. Francisco replied that there are three entrances and exits. She continued that if you pull in the driveway, there is a door that opens into a hallway from which you can go up the stairs to the top floor apartment or take a left to the bottom floor apartment. You can also access either of the apartments via the left-hand doorway. The door on the front, on the right, is just for the first-floor unit.

Mr. Hagan stated that a few minutes ago, he incorrectly stated that the permit for the ADU was given in 2010. He continued that to correct the record, it was actually 2017.

Ms. Francisco stated that when she purchased it, it was advertised online and through her realtor as a two-family home and she thought that it was. She was a first-time buyer, did it completely on her own and has learned a lot since then. The main issue now is that she has a responsibility to these two families she rented to, not knowing that their housing would be in danger when she herself moved out, as she knew she eventually would do. She does not have the financial means to help rehouse them.

Ms. Taylor asked Mr. Hagan about the lot's square footage. She asked if there is a difference between the ADU requirement under the current Zoning and a two-family home. Mr. Hagan replied there is no zone dimensional requirement for an ADU. It is by right, for any single-family home in the state of NH, with additional conditions set forth by the municipality. If Zoning allows for a single-family home on that lot, an ADU is allowed. Ms. Taylor asked if the Keene Zoning Ordinance requires square footage of the lot. Mr. Hagan replied no, not for an ADU. He continued that as long as there is a single-family home on the lot, you are allowed to have an ADU, with no additional lot size requirements.

Ms. Taylor asked if what they have here is an issue of semantics. Mr. Hagan replied that it is allowed by right and meets all the current Zoning requirements. He continued that Ms. Francisco is asking for it to be a two-family home. If it were a two-family, it would be required to have 13,400 square feet. Thus, they are talking about 2,000 square feet if it were to be a two-family home.

Chair Hoppock asked if the ZBA can approve this with the condition that no further increases in the square footage of either building occur. He continued that in other words, the (owner) could not put an addition on anything. Mr. Hagan replied that the ZBA can put a condition on anything. He continued that his suggestion is that even if this were to be a two-family home, the Ordinance

is intended to be able to expand out to the minimum dimensional requirements. This is a small house compared to the lot size with the square footage of the whole house at almost 1,400.

Chair Hoppock asked what he means about the "whole house" and the ADU. Mr. Hagan replied that the primary dwelling unit is 807 square feet, and the ADU is 598 square feet. Those are rather small units, in comparison, currently an ADU is allowed to be up to 1,000 square feet.

Chair Hoppock asked Ms. Francisco who James Devincentis and Tiea Zehnbauer are, and whether those are neighbors. He continued that they are the owners of 187 Elm St. Ms. Francisco replied that they might be the couple who just bought the double lot and put the house up.

Chair Hoppock stated that as he understands it, Ms. Francisco currently has the main house and an ADU, and just wants to allow the main house and the ADU to be single-family residences on the same lot. Ms. Francisco replied yes, because they are identical except for the stairway, which is what takes away the square footage on the first floor unit. She continued that they have separate heating and utilities.

Chair Hoppock stated that the agenda packet has a street map of the area, but you cannot make out anything on it; it is just a bad copy, and he is not sure what happened. He continued that it would be helpful to see the lots as some have numbers on it. Ms. Francisco replied that numbers one through six are the abutting properties that have multi-family homes and have square footage that is similar to or less than that of 271 Elm St. She continued that some are two-family, and some are three-family. What she does not have here (in the agenda packet) is that kitty-corner to her property are two commercial properties with six and eight units in them. They are (slightly beyond) the 200 feet abutters line.

Chair Hoppock asked Ms. Francisco what special condition of her land would make the application of the 13,400 square foot requirement burdensome to her. He continued that in other words, she has two relatively small structures on the lot, but they are close to or similar to six other properties in the immediate neighborhood. He is trying to identify something about this property that makes the application of the Zoning restriction unfair.

Ms. Francisco replied that where the house sits on the property gives ample room on all sides of it to the neighbors. The property kind of horseshoes around it. There is space for more than four cars to park in, but she knows that is the minimum she has. Regarding the layout of the house, it has more generous features as a two-family than many of the homes designated as two-family. The abutting property next door is a three-family home with square footage that is not enough for a two-family. The abutter in the rear is a two-family home that has just a driveway. It does not look to her like it (her property) is not a two-family home. It looks and feels like it has a spacious yard, and the top and bottom units match. It just does not appear to be anything other than a two-family home. The square footage of the top apartment is a little bit bigger than it should have been at the time it was distinguished as an ADU. At that time, there was a cap on how big the ADU could be. At the time, it should not have qualified as an ADU, but it does now.

Ms. Taylor asked Mr. Hagan what happens if (staff) finds that an ADU no longer meets the requirements, such as saying it has to be owner-occupied. She asked what staff do, and whether

they would say that the permit is no longer valid. Mr. Hagan replied that, as in this situation, staff would work with the applicant to go through all the avenues the Ordinance allows for. He continued that in Ms. Francisco's situation, it looked like a Variance application (would be best), knowing that for starters, the Medium Density zone already allows for up to three-family, based on lot size. In this case, it does not meet the lot size, but it would allow for it. When you try to legislate locally, it is hard, enforcement is not easy. Staff would look at each situation individually, though in this case, it is an educational process. If this were in the Low Density District, they would be having a different conversation, because two-family homes are not allowed there, so it is not just the dimensional requirements, it is the use. Again, it is case by case. An ADU is allowed anywhere a single-family home is allowed, by right. Thus, if you had this in West Keene on West St., next to the country club, you could have a single-family home with an ADU. It would look like a two-family, it would be designed and meet the Building Code requirements as a two-family, but if the owner no longer occupies that location, you can no longer use that ADU. You can still rent out the main unit, but the ADU use has to cease. You could rent out either of the units, but you could not have a two-family. You could have a single-family with an ADU, owner-occupied.

Ms. Taylor asked if Ms. Francisco is trying to tell the Board that she feels the special condition of the property is the fact that it is an ADU that maybe should not be an ADU. Ms. Francisco replied yes, it should be a two-family as it was originally built. She continued that it is 104 years old, and it (the house) was a two-family until the 1970s. Everything about it is separated, such as the heating, hot water tanks, electricity, entrances, exits, and parking spaces. There is separate, covered porches for each unit and separate garden spaces.

Chair Hoppock asked, regarding the photo of the front of the house, if the second porch is on the back. Ms. Francisco replied that it is on the right side.

Chair Hoppock asked if the applicant had anything further to say, before he opened it to public comment. Ms. Francisco replied that she is excited about what Keene is doing with the Cottage Court project and she thinks it would be a disservice to Keene to not have two two-bedroom apartments available. She continued that they are completely new, from 2017 to 2020. It was completely gutted and remodeled and in a nice neighborhood. Just in the last three to four years, everything has been remodeled around this property with people who care about their homes. The tenants care about their homes. She will only be (living) 11 minutes away, and to take two separate units off the market, or even one unit off the market, which is next to a school, in a good area, with a good yard for children to play in, is not good at all.
Chair Hoppock asked for public comments.

Gary Boutell of 280 Elm St. stated that he would approve of this being officially made a two-family, especially if there is no proposal for additional curb cuts. He continued that he assumed this was a two-family home anyway. He does not know of any other two-family homes in that area of Elm St., but around the corner on Spruce St. and behind Ms. Francisco's property on Carroll St. there are a couple of duplexes. The one on Spruce St. looks like a barn with about four apartments in it. There are mostly single-family homes in the neighborhood. He has met one of the tenants (of 271 Elm St) and they are nice people. He has no problems with any of the immediate neighbors.

Zack LeRoy of 30 Hanover St. stated that he is here as a concerned citizen and that he supports this. He is a real estate professional in the area and is very concerned that if they start treating ADUs like that, Ms. Francisco could be harmed, that would inhibit others from buying it. Not many people would want to buy a two-family home without the intention of it being a two-family home. It is different than the example (Mr. Hagan) used about West St. where you might have a nice home with an in-law apartment. He is a big advocate for ADUs, and that was a perfect example and use of it. However, in this particular circumstance, it needs to be a two-family home and looked at that way, not just for the current owner, but the following owners.

Chair Hoppock asked if the Board had questions. Hearing none, he asked if the applicant wanted to respond to the comments.

Ms. Francisco stated that she is very appreciative and continued that she did not know people were going to come to speak about 271 Elm St. She appreciates people being involved in the community.

Chair Hoppock stated that he wants to put into the record that the Board has a document from abutters James Devincentis and Tiea Zehnbauer, owners of 187 Elm St., stating that they have no concern with the proposed Variance. Mr. Devincentis and Ms. Zehnbauer signed it and attached a copy of the ZBA notice. Hearing no further comments from the public, Chair Hoppock closed the public hearing and asked the Board to deliberate.

Chair Hoppock stated that he is struggling to find special conditions (regarding the unnecessary hardship criterion). Ms. Taylor replied that after listening to everything and the explanations of "ADU" and "two-family," she thinks the special condition of this property is the building itself, and that what is requested and what has happened really does not bear any relationship to the purpose of the Zoning Ordinance in this instance. She continued that usually they are talking about the lot size being huge amongst small lots, or the other way around. However, if you look to the *Farrar v. City of Keene* case, that was a huge house. That was the issue with that, and that (large house size) formed the special condition. She thinks what they have here is a structure that in and of itself is a special condition and an unusual condition. It (271 Elm St.) certainly fits in the neighborhood, and it does not create any health or safety issues, nor does it impact the values of surrounding properties. To her way of thinking, the benefit to the applicant certainly outweighs any harm to the general public.

Chair Hoppock stated that he agrees with Ms. Taylor's position and would add that there would be no gain to the general public if this were denied. He continued that the harm to the applicant would be significant, especially when you consider the impact of her moving to Gilsum and what would happen to the (tenants) there (at 271 Elm St.) by virtue of the regulations. That is a bad outcome. There is certainly no violation of the basic zoning objectives here. Even the neighbors are saying, *"I thought it was a two-family all along,"* and that makes perfect sense. It looks like a two-family and ought to be, going back to the semantic problem. It is an unusual special condition, but he can accept it, and thinks it is appropriately defined.

Ms. Taylor stated that she looks to the verbiage for unnecessary hardship, *"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 no fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property."* She thinks that is about as clear as they are going to make it. Chair Hoppock replied that is well stated.

Chair Hoppock asked for a motion. Mr. Hagan asked the Board to first say more about criteria 1, 2, and 4.

Chair Hoppock stated that nothing about this application would alter the essential character of the neighborhood. He continued that they heard plenty of testimony that indicates that when you are walking or driving by the property, it looks like a two-family lot. There is nothing about the property, the structures, or the granting of the Variance that would create a threat to public health, safety, or welfare. He does not think there is any violation of the basic zoning objectives here, for the reasons Ms. Taylor mentioned, and by virtue of the fact that there is no harm to the neighborhood. Especially in light of what the applicant said about the beautification happening in the area and the increase in property values, he cannot imagine there could be any decrease in property values by virtue of this Variance.

Mr. Clough made a motion to approve ZBA-2024-16, applicant Heather Francisco's request for a variance for property located at 271 Elm St., Tax Map #536-086-000, in the Medium Density District, to turn a single family home with an Accessory Dwelling Unit into a two family home on a lot with 11,325.6 sq. ft. where 13,400 sq. ft. is required per Article 3.5.2 of the Zoning Regulations. Mr. Guyot seconded the motion.

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

Met with a vote of 4-0.

2. If the Variance were granted, the spirit of the Ordinance would be observed.
Met with a vote of 4-0.

3. Granting the Variance would do substantial justice.

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Met with a vote of 4-0.

The motion to approve ZBA-2024-16 passed with a vote of 4-0.

V) New Business
VI) Communications and Miscellaneous
VII) Non-public Session (if required)
VIII) Adjournment

There being no further business, Chair Hoppock adjourned the meeting at 10:25 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk