



Zoning Board of Adjustment - Monday, June 7, 2021, 6:30 p.m.

- This meeting will be conducted using the online meeting platform, Zoom. The public may join the meeting online or in City Hall in the Council Chambers on the 2nd floor. The public may also join the meeting online by visiting www.zoom.us/join and enter the Meeting ID: 839 9261 2795.*
- If you are unable to attend the meeting online, you may call the toll-free # (888) 475-4499 and enter Meeting ID: 839 9261 2795 to listen to the meeting.*
- More info on how to access this meeting is available on the Zoning Board of Adjustment webpage at ci.keene.nh.us/zoning-board-adjustment.
- If you encounter any issues accessing this meeting, please call 603-209-4697.

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – April 5, 2021 & May 3, 2021
- III. Unfinished Business
Revisions to Zoning Board of Adjustment Regulations, Section II, I-Supplemental Information
- IV. Hearings:
- V. New Business:
- VI. Communications and Miscellaneous:
- VII. Non Public Session: (if required)
- VIII. Adjournment:

**In Emergency Order #12, issued by the Governor pursuant to Executive Order #2020-04, which declared a COVID-19 State of Emergency, the requirement that a quorum of a public body be physically present at the meeting location under RSA 91-A:2, III(b), and the requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the meeting location under RSA 91-A:2, III(c), have been waived. Public participation may be provided through telephonic and other electronic means.*

The Board chair will provide instructions during the meeting for how the public can provide comment.

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Suggested Revision to ZBA Regulations, Section II, I – Supplemental Information

Submission of supplemental information.

- a. An applicant or applicant's agent may submit additional information pertaining to an application either submitted by the filing deadline or already on the agenda for a scheduled public hearing no less than ten (10) days prior to that hearing. Failure to do so may result in the additional information not being considered at the public hearing.
- b. During the meeting when the subject application is being heard the board shall consider and decide by majority vote whether to accept the supplemental information for consideration or grant a continuance to the next scheduled board meeting to permit the city staff, board, abutters, and other parties time to review the new information.
- c. No such submission limitations shall be imposed upon an abutter or other party wishing to submit comments or information about the subject application at the public hearing.

1 City of Keene
2 New Hampshire

3
4
5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Tuesday, April 20, 2021**

6:30 PM

Council Chambers

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

9
10 Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to
11 Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions
12 of RSA 91-A (which regulates the operation of public body meetings) during the declared
13 COVID-19 State of Emergency. He called the meeting to order at 6:33 PM.
14

15 **I. Introduction of Board Members**

16
17 Roll call was conducted.
18

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

20
21 Ms. Taylor made a motion to adopt the March 1, 2021 meeting minutes as presented. Mr.
22 Hoppock seconded the motion, which passed by unanimous vote.
23

24 **III. Unfinished Business**

25
26 Chair Gorman asked staff if there is any unfinished business. John Rogers, Zoning
27 Administrator, replied in the negative.
28

29 **IV. Hearings**

30
31 **a. ZBA 21-10: Petitioner, Monadnock Peer Support Agency of Keene,**
32 **represented by Carol Slocum of The Masiello Group, requests a Variance for**
33 **property located at 64 Beaver St., Tax Map # 553-035-000; that is in the Medium**
34 **Density District. The Petitioner requests a Variance to permit a two dwelling**

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

37
38 Chair Gorman asked to hear from staff. Mr. Rogers noted for the public, the shift of the order of
39 agenda items. He continued that there was a request from an applicant's representative who had
40 a prior meeting to attend to and asked for an adjustment in the order of the hearings; that is why
41 ZBA 21-10 is first.

42
43 Mr. Rogers stated that 64 Beaver St. is off of Washington St. and this property is located in the
44 Medium Density Zone. He continued that the High Density District is across the street, which
45 has different lot size requirements. This property is before the Board because they have
46 approximately 12,200 square feet and what they are requesting would require 13,400 square feet.
47 They are short on the square footage requirements for two dwelling units. This property
48 received, a Variance in 1987 for a two-family home without the required lot size, converting the
49 property that August. In 1999, the Granite State Monarchs, an agency contracted with the State
50 of New Hampshire to provide mental health services, took over the building. The Zoning
51 Administrator at the time determined that the Monarchs were exempt from the City's Zoning
52 Code from the State RSA 674:54 exemption category as they provided a governmental service.
53 In 2000, the Monarchs received a building permit to change the use from a two-family to a
54 business use under the Building Code. The applicant is currently before the Board requesting to
55 have a two-family home back on this property, but again they are lacking the required lot square
56 footage.

57
58 Chair Gorman asked for questions for Mr. Rogers.

59
60 Ms. Taylor stated that it is her opinion that if the property received a Variance for a two-family
61 home in 1987, and Variances run with the land, even though in 2000 a portion of the house was
62 converted to a business use, it did not need Zoning Board approval. If that is correct, she asked
63 the reason why a second Variance was applied for as the property already has a Variance for a
64 two-family home.

65
66 Mr. Rogers replied that since it had changed to another use, that Non-Conforming Use as a two-
67 family home was eliminated. Ms. Taylor replied that Variances run with the land and are not
68 eliminated. She continued that her question stands that if there is already a Variance for a two-
69 family home, that underlying Variance, as far as she understands, continues and perhaps the
70 Board does not need to hear this Variance request.

71
72 Chair Gorman asked Ms. Taylor what her thoughts are on Discontinuation of Use and if that
73 should be a consideration. Ms. Taylor replied that her understanding is that it does not. She
74 continued that of course, the law has been changed since then that a granted Variance has only so
75 much time to act upon the approval. She continued that it is her understanding that would not
76 affect a Variance that had already been granted.

78 Mr. Rogers stated that he would point to the Abandonment Section of the Zoning Code, Section
79 102-202. He continued that it could be considered abandoned, especially when the property
80 owners changed the use of the building from what was permitted, with a Variance, to be a two-
81 family to then obtain a permit to change the two-family to a business use. Mr. Rogers read
82 Section 102-202;4, “*A non-conforming use has been changed to another use under proper*
83 *permit from the Zoning Board of Adjustment.*” He continued stating that he would leave the
84 decision to the Board that if a Variance is necessary or not, but as the Zoning Administrator, he
85 stated that since the use was changed in 2000 with a change of use building permit, then the 1987
86 Variance would be eliminated under the Abandonment Clause.

87
88 Chair Gorman asked if it is correct that the clause states if the property is abandoned for one
89 year, the non-conforming use goes away. Mr. Rogers replied that is correct. He continued
90 reading the full Section 102-202, “*A non-conforming use shall be deemed abandoned if the use*
91 *is discontinued for a period of one year. The building, structure, or property in which such use*
92 *existed thereafter shall be used only in conformity to and with this chapter. A non-conforming*
93 *use shall be considered abandoned when:*

- 94
95 (1) *The intent of the owner to discontinue the use is apparent;*
96 (2) *The characteristic equipment and furnishings of the non-conforming use have been*
97 *removed;*
98 (3) *A non-conforming use is replaced by a conforming use; or*
99 (4) *A non-conforming use has been changed to another use under proper permit from the*
100 *zoning board of adjustment.”*

101
102 Mr. Rogers stated that (1) to be the case as the property owners obtained a permit to change the
103 use from a two-family, but he does not know if (2) has necessarily happened. He continued that
104 regarding (3) and (4), the use was changed to another non-conforming use. Mr. Rogers further
105 stated that based on the Zoning Administrator’s determination at the time; it was determined to
106 be exempt from needing Board approval.

107
108 Ms. Taylor stated that her position would be that when a Variance is granted, you have a use
109 under a Variance, which technically is not the same legally as a non-conforming use. She
110 continued that she leaves that to others to comment.

111
112 Ms. Taylor stated that when she did a site visit to this property, she noticed two separate
113 mailboxes. She asked if a portion of this structure is currently being used as a residence, or if
114 any of it is currently being used for residential purposes. Mr. Rogers stated that the applicant
115 would be able to answer that. He continued that his understanding is yes, there is still one rental
116 apartment type of setting in the building, but again he would defer to the applicant.

117
118 Mr. Hoppock stated that he agrees with Ms. Taylor. He continued that there is a Variance that
119 does run with the land, which was put into use in a timely fashion in 1987. He continued that
120 Section 102-202 refers to a non-conforming use, which, by definition, is a use that is non-

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

124
125 Mr. Gaudio asked if it is known what the Zoning Ordinance requirement was in 1987 and
126 questioned what the square footage amount that was exceeded is the same. Mr. Rogers replied
127 that it would appear that the square footage they were seeking relief from is the same now as it
128 was in 1987. Mr. Gaudio replied that he then agrees with his prior two colleagues.

129
130 Mr. Hoppock made the following motion, which was seconded by Ms. Taylor.

131
132 On a vote of 5-0, the Zoning Board of Adjustment found that based on the Boards discussion, in
133 terms of the history explained and the prior Variance from 1987, the property at 64 Beaver St.
134 does not require an additional Variance to be a two-family home.

135
136 **b. ZBA 21-09: Petitioner, Cheshire Medical Center of 550 Court St., Keene,**
137 **represented by Tom Hanna, Esq. of BCM Environmental & Land Law, Keene,**
138 **requests a Special Exception for property located at 62 Maple Ave., owned by 62**
139 **Maple Ave. Keene, LLC, Tax Map # 227-006-000; that is in the Industrial Park**
140 **District. The Petitioner requests a Special Exception from Sections 102-661 and**
141 **102-662 for the Industrial Park District and Section 102-1111, Permitted**
142 **Locations for Institutional Use of the Zoning Ordinance.**

143
144 Chair Gorman asked to hear from City staff.

145
146 Mr. Rogers stated that this property is off Maple Ave., is a large building that has been a variety
147 of insurance companies over the years, but it has been vacant as of late. It is in the Industrial
148 Park District, which does not specifically list “clinic” as a permitted use, but does allow
149 “institutional uses” in Section 102-1111-Permitted Uses for Institutional Uses. Maple Ave. is
150 among the streets listed in this section of the Zoning Code. The applicant is before the Board
151 today to request a Special Exception as required under the Zoning Code for this institutional use
152 on Maple Ave.

153
154 Chair Gorman asked if anyone had questions for Mr. Rogers. Hearing none, he thanked Mr.
155 Rogers for the information.

156
157 Ms. Taylor stated that she has a question for Chair Gorman. The Board members just received,
158 late that afternoon, a complete or partial traffic study; she is not sure which, because she has not
159 had a chance to look at it. She continued that she is concerned that since traffic is one of the
160 considerations for a Special Exception, that without having the opportunity to review that traffic
161 study or summary they just received, she is not sure she can judge appropriately on this
162 application. She does not know if anyone else has that concern.

163

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

166
167 Mr. Rogers stated that he would like to point out one thing that is a little unique for the Industrial
168 Park District; there is criteria that requires any change of use to automatically present before the
169 Planning Board for site plan review. Again, as Ms. Taylor stated, some of the criteria under the
170 Special Exception definitely deals with traffic, so it would be the Board's prerogative to
171 determine if they want to continue this application to another date so they have adequate time to
172 review the information.

173
174 Jason Reimers, Tom Hanna's partner, stated that first, he apologizes for having this memo late.
175 He continued that he sent it to the City just as soon as he and Mr. Hanna received it. However,
176 in the slides that will be reviewed, they had already submitted the traffic tables with the traffic
177 counts. He thinks this report is more just supplemental to those slides. Steve Pernaw prepared
178 the report and is here tonight to speak and answer questions. He hopes that will be sufficient, but
179 if the Board cannot make a decision tonight, they would ask to withdraw this report and rely on
180 what they had already submitted and ask for a decision tonight.

181
182 Chair Gorman stated that he is comfortable moving forward either way. He asked to hear Ms.
183 Taylor's thoughts. Ms. Taylor replied that she appreciates Mr. Reimer's offer that he will be
184 presenting some of the same information, but it does kind of nag at the back of her brain that
185 there is this document that she assumes was to be part of the record for tonight and she has not
186 had a chance to look at it. Chair Gorman replied that if that is truly a sticking point for her and
187 other Board members, he is happy to withdraw that document from the record and allow Mr.
188 Reimers to proceed, as he has requested.

189
190 Mr. Hoppock stated that he would leave it up to the applicant's representative to decide how he
191 wants to present this case. He continued that Mr. Reimers mentioned a reference to rounding out
192 a traffic something in the materials the Board has, and he does not see that in the materials. He
193 shares, to a degree, Ms. Taylor's concerns. He has not had time to read the document either.
194 Chair Gorman replied the same. Mr. Hoppock stated that he is perfectly willing to let Mr.
195 Reimers present the case as he sees fit, and that is the applicant's right.

196
197 Mr. Welsh stated that he has had 15-20 minutes to look over the document and he is comfortable
198 with keeping it on the record, but he is also comfortable with taking it off the record, especially if
199 that adds to the ability of his fellow Board members to deliberate and come to a decision.

200
201 Mr. Gaudio stated that he agrees with Mr. Welsh and has looked at the document. He continued
202 that either way is okay with him.

203
204 Ms. Taylor stated that she has a general comment, not necessarily specific to this application. It
205 would be helpful and more efficient if staff could request that applicants get the Board
206 information that is going to be in their presentations in advance so the Board can make a

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

209
210 Mr. Rogers stated that as soon as staff receives any information from an applicant, it is sent to
211 the Board. He continued that he couldn't control when an applicant submits information and he
212 does not feel comfortable telling an applicant they cannot submit documentation for the Board to
213 look at. It is the Board's decision, as they are doing tonight, trying to decide if they have had
214 enough time to look at something.

215
216 Chair Gorman thanked Mr. Rogers. He continued that he knows there are instances when
217 information is received last minute by the applicants. Mr. Rogers stated that again, this applicant
218 will need to go to the Planning Board, so he is not sure if this traffic study was being developed
219 more for the Planning Board and the applicant felt it might be additional information that the
220 Zoning Board would like to see. That would be for the applicant to address.

221
222 Chair Gorman stated that he thinks the applicant was pretty clear that he wants to move forward.
223 Ms. Taylor stated that she has a suggestion. If it is not in the Board's rules that there is a
224 deadline for submitting information to be considered at a public hearing, perhaps the Board as a
225 whole should consider whether it wants to add such a rule. Many municipalities do have that
226 kind of rule included in their Zoning Board rules. It might be helpful, because that puts the
227 applicants on notice and it gets the Board the information. Chair Gorman replied that
228 historically, they have left it up to the Board's discretion.

229
230 Mr. Rogers stated that he quickly reviewed the Rules of Procedure, and he thinks Chair Gorman
231 brought up a good point that if there is a rule it is still up to the Board's discretion as to continue
232 the petition to allow the Board adequate time to review the new information. As the Board
233 knows, sometimes one sheet of paper can have a lot of information on it that will take longer
234 than 15 minutes to digest. This is certainly something they can discuss. Chair Gorman replied
235 that perhaps they should take this up after they are done with the hearings. He continued that he
236 is comfortable with the discretionary measures they have been using but if the Board feels
237 differently he is happy to discuss it.

238
239 Chair Gorman stated that for the sake of this hearing, he wants to point out that the applicant was
240 here in the beginning of the month and due to Internet connection failure, their hearing had been
241 rescheduled late in the month and they have also stated that the Board can take the information
242 or not. At this point, the only decision he needs from the Board is whether they are taking the
243 information. He asked for a vote. Ms. Taylor stated that since three of them have not had an
244 opportunity to look at the information and they are not able to take a 15 to 20 minute break now
245 to read it, she thinks they should not consider the information. Chair Gorman replied that he is
246 inclined to agree. He asked Mr. Reimers if he and his clients are okay with that. Mr. Reimers
247 replied in the affirmative.

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

251

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

255

256 Mr. Reimers stated that he and Tom Hanna represent Cheshire Medical Center and they are here
257 tonight for an application for a Special Exception. As Mr. Rogers said, it was the former
258 Peerless Insurance headquarters and then Liberty Insurance. He continued that it is a 50-acre
259 site. The building is 147,000 square feet and Cheshire Medical Center has entered into a
260 purchase and sale agreement that is contingent on Zoning approval. Cheshire Medical Center
261 proposes institutional uses that are permitted by Special Exception under Article 4, Division 17,
262 Section 102-662, which lists permitted uses in the Industrial Park District and under Section 102-
263 11111, permitting institutional use all along Maple Ave. The proposed project includes moving
264 some accessory support services and corporate offices, which are allowed by Special Exception
265 under Section 102-662 as well.

266

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

282

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

288

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

292
293 Dr. Caruso stated that he is a family physician and has been the CEO at Cheshire Medical Center
294 for five years. He continued that regarding why they are purchasing this building and why they
295 need this building, it is important to understand that Cheshire Medical Center is an anchor
296 institution in this community. There are over 1,300 employees throughout the COVID-19 crisis,
297 besides doing what they do and taking care of people with healthcare problems and also
298 providing things that they do not do, which is public health; they did all of those things. The one
299 key thing that most people do not know about Cheshire Medical Center is that they continue to
300 economically bring care and services and dollars to this community by remaining open. That is
301 unique in NH. Many hospitals cut back services significantly and laid staff off, and Cheshire
302 Medical Center did not, which is economically important to this area. Cheshire Medical Center
303 understands its responsibility to this community.

304
305 Dr. Caruso continued that it is important to know that in 1973 Cheshire Medical Center moved
306 from lower Main St. to its current site on Court St. It is incredibly space constrained. They have
307 gotten very capable at manipulating the space within the building but if you have ever tried to
308 park there or get into the building at times when there is a lot of volume, you know it is quite
309 difficult to get to where you need to go. When he came here in 1993, there were 30 physicians
310 on staff. Now there over 150 physicians and over 50 associate providers. All of that is in the
311 same physical footprint that has existed since 1973. Thus, when the former Peerless building
312 became available they actively pursued it, in particular, because they know they need to be able
313 to provide continued primary care in this community. To provide primary care, you need family
314 physicians. Unfortunately, the number of family physicians are drying up. The cost and demand
315 is increasing, so the ability to take care of rural towns is difficult.

316
317 Dr. Caruso explained why a Family Medicine Residency program is important, as it is where
318 physicians who have completed their medical school training, but are not yet ready to practice
319 medicine on their own. These physicians go through a program to understand how to take care of
320 a specific specialty that they are then able to pursue as a physician practicing. The community
321 needs a mechanism to bring family medicine physicians here. One method is a Family Medicine
322 Residency program. Cheshire Medical Center knows that currently there is a huge demand in the
323 population and the country. They are not able to meet the needs, and by 2035, Family Medicine
324 Residency programs need to increase by about 21%. Having a Family Medicine Residency
325 program will meet the needs for Keene and the region. By 2030, NH needs 333 new primary
326 care physicians. There are currently only two Family Medicine Residency programs in the state,
327 in Concord and Exeter. It is important for this portion of the state, because somewhere around
328 56% of trainees who come out of residency programs in family medicine stay within 100 miles.
329 From Cheshire Medical Center's perspective, this is one way they can make sure that they
330 continue to take care of the community long-term with primary care. The Dartmouth system is

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

333
334 Dr. Caruso continued that the interesting piece is that they really only need 25,000 square feet
335 but the reality is they need more space beyond just a Family Medicine Residency program. The
336 Family Medicine Residency program is the driver for them to make a decision on moving
337 forward on a space like this one. He asked Ms. Willbarger to explain what else they are thinking
338 about for that building.

339
340 Ms. Willbarger stated that they see this as a transformational opportunity for Cheshire Medical
341 Center and the community. She continued that in addition to the Family Medicine Residency
342 program they plan to use 62 Maple Ave. for both clinical and support services. At their main
343 campus at 580 Court St., they currently are very challenged with space. As they have, new
344 providers coming on board they struggle to find space for them. As they look to expand
345 services, they are limited due to the lack of space. The bottom line is the immediate and longer-
346 term growth strategy to serve our aging community that requires more space. Cheshire Medical
347 Center's ability to build on their current campus is very limited and expensive. 62 Maple Ave.
348 will allow them to move some clinical and support services off campus to Maple Ave., which
349 will allow them to expand and add new services to their main campus. Possible services they
350 can move to Maple Ave. are pediatrics, physical and occupational therapy, which are services
351 there is a great demand for, and they are currently not able to meet with the space that they have,
352 administration, human resources, education, finance, and potentially, the daycare for employees.
353 In addition to moving some services to 62 Maple Ave., that frees up some space on the main
354 campus to expand the clinical services. Some of those potential opportunities are expanding
355 surgery, which could include an outpatient surgery center, orthopedics, cardiology, urology, and
356 also, looking at inpatient expansion and potentially single rooms and shared programs with
357 Dartmouth, such as a spine pain center or vein and vascular center.

358
359 Ms. Willbarger continued that as part of Cheshire Medical Center's Master Strategic Plan to
360 serve the community over time, 62 Maple Ave. would provide the additional space needed.
361 Without that additional space, Cheshire Medical Center would be challenged to meet the needs
362 of the aging community.

363
364 Ms. Taylor stated that it does not seem like that long ago that the childcare center on Court St.
365 was rebuilt and expanded. She asked if that would close down or if they would have childcare at
366 both locations. Ms. Willbarger replied that that space was built about 20 years ago. If they
367 move the daycare to 62 Maple Ave., the plan would be to use that space on campus for a
368 potential outpatient or ambulatory surgery center. They would not have two daycares.

369
370 Chair Gorman asked if there were any other questions. Hearing none, he asked Mr. Reimers to
371 continue.

372
373 Mr. Reimers went through the Special Exception criteria.

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

376
377 Mr. Reimers stated that the neighborhood already has numerous institutional uses, and the
378 building was formerly corporate offices. He continued that there are three churches in the
379 neighborhood, a private school, Keene Middle School, and a funeral home. There are
380 commercial uses to the south. The pediatric facility Cedarcrest is across the street, which the
381 Board should have received a letter from in support of granting a Special Exception for Cheshire
382 Medical Center. The uses proposed for the new Cheshire Medical Center are similar to these
383 existing uses and the corporate office portion of the project will be no different from what
384 existed until the insurance company left. 62 Maple Ave. is an ideal location for this use. It will
385 occupy an existing vacant building. Parking already exists. It is one tenth of a mile from Rt. 12
386 and less than two miles from Cheshire Medical Center's main campus. The location is
387 appropriate from a regional perspective, with Cheshire Medical Center firmly planted in Keene,
388 opening a regionally important Family Medicine Residency program in an existing vacant
389 building two miles from the main campus is ideal and this is a unique opportunity both for
390 Cheshire Medical Center and for Keene.

391
392 2. *Such approval would not reduce the value of any property within the district, nor*
393 *otherwise be injurious, obnoxious, or offensive to the neighborhood.*

394
395 Mr. Reimers stated that there would be a similar impact as the prior insurance company use. He
396 continued that like the insurance company use, all uses will take place inside, other than outside
397 eating and things like that. The building is set back from the road and other properties, and there
398 are vegetative buffers on at least two sides. Where there is not a vegetative buffer, there is a
399 huge expanse of grass, in the front, and going over to the apartment buildings going toward the
400 YMCA. The building already exists, is buffered from its neighbors, and the continued upkeep of
401 the buildings and grounds will ensure that the surrounding properties will not be reduced in
402 value.

403
404 3. *There will no nuisance or serious hazard to vehicles or pedestrians.*

405
406 Mr. Reimers stated that they expect that the impact on vehicles and pedestrians will be similar to
407 the prior insurance company use. There is a sidewalk on the opposite side of Maple Ave. There
408 will be no nuisance or hazard to vehicles or pedestrians. Mr. Pernaw will speak to the traffic as
409 he has looked at the traffic related to the medical offices component in two different ways. He
410 has looked at it from a square footage perspective as well as from the estimated number of
411 employee's perspective, and his conclusion is that the PM peak traffic change from the prior
412 insurance building use will range from 18 fewer cars from the prior use to 74 additional cars.
413 The range that Mr. Pernaw estimates means there will be 18 less either PM peak trips per day or
414 74 more at the most. He continued that even the high end of this range would not create a
415 nuisance or a hazard. Mr. Reimers state that as Mr. Rogers said, this will need to go before the
416 Planning Board for approval as well.

417 4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be*
418 *provided for the proper operation of the proposed use.*
419

420 Mr. Reimers stated that this building is connected to City water and sewer. He continued that
421 there is a substantial amount of parking. He continued, stating that there needs to be a correction
422 with the parking calculations. The application stated there were 553 parking spaces but they
423 conducted a hand count and there are actually 581, an increase of another 28 parking spaces.
424 There are no infrastructure limitations in the way of Cheshire Medical Center using this building.
425 It is an ideal location with a large enough building that is nicely sited on the property.
426

427 Ms. Taylor asked what would be the hours of operation, stating the former Peerless Insurance
428 Company used to be 8:00 AM to 4:15 PM. She further asked if this would be a 24-hour
429 operation. Dr. Caruso replied that it is not a 24-hour service; this is ambulatory practice only.
430 He sees it running from about 7:30, 8:00 AM to 5:00, or 6:00 PM, which are the normal
431 operating hours for their outpatient clinic buildings.
432

433 Stephen Pernaw of Stephen G. Pernaw & Company, Concord, NH stated he has been doing
434 traffic studies in NH for over 30 years. He continued that he is a licensed, professional engineer
435 and received national certification as a professional traffic operations engineer. When traffic
436 studies conducted for the NH Department of Transportation (NHDOT), they require the use of
437 the Institute of Transportation Engineers (ITE) Trip Generation Manual. That is the industry's
438 "Bible." When contacted by Cheshire Medical Center, they was given the size of the building
439 and the breakout in terms of how many square feet were going to be allocated to what type of
440 use.
441

442 Mr. Pernaw explained that for the insurance category, the closest ITE Land Use category is
443 "single tenant office building." He explained the estimates in the table, with the peak hours of
444 about 7:00 to 8:00 or 8:00 to 9:00 AM and 4:00 to 5:00 or 5:00 to 6:00 PM. Each day could be a
445 little different but that is standard. Using this Land Use Code and the gross floor area of the
446 building, he was able to come up with some reasonable estimates on what that former insurance
447 company generated. Next, he explained the breakout he received by Cheshire Medical Center –
448 clinical office, administration offices, and the childcare facility. Based on the slides shown, he
449 explained that the highlighted boxed-in area is kind of a "worst case situation." Under this
450 scenario, they expect that the proposed use would generate 74 additional vehicle trips over that
451 one-hour period than the former insurance company. That does not mean that the peak hour
452 volume on Maple Ave. is going to increase by 74. Certainly, most will travel toward Rt. 12 and
453 people will head in the other direction toward downtown. That 74 will end up split at some
454 point.
455

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

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

469
470 Mr. Pernaw continued that when he was told of the 81 employees, he went back to ITE and
471 calculated the national average of how many employees per thousand square feet, as a
472 reasonableness check. He further explained that this proposed location will have a lot fewer
473 employees per thousand square feet than the national average, hence the trip reduction on Table
474 2. If asked as an independent Traffic Consultant which table he leans toward, he thinks Table 2
475 is much more representative of what is really going to happen, because it is based on site-
476 specific, Keene information, whereas the Table 1 estimates are simply based on the area of the
477 building.

478
479 Ms. Taylor asked if the information on the two tables presented is one table is about square
480 footage and the other is about employees. She further questioned if Table 2 uses the employees
481 for the medical office building, does that take into account patients. Mr. Pernaw replied in the
482 affirmative. He continued that the independent variable covers all trips. ITE provides engineers
483 these two different methods and they say "use your best engineering judgment; there is no right
484 or wrong." The estimate of 80 trips at peak hours covers everyone – patients, employees, and
485 service vehicles. These trip rates come from counts at actual medical office building sites.

486
487 Ms. Taylor further questioned the table for the former insurance company who had varied
488 numbers of employees, with at one point between 500 and 600 employees on site. Mr. Pernaw
489 replied that he was unaware of that information. Ms. Taylor replied that at the end of the day, it
490 probably does not make much difference for this, but she just wanted it mentioned.

491
492 Mr. Welsh stated that one other factor in the trips is that there are two driveways separated by
493 couple hundred. He continued, stating that takes some of the pressure away from what would
494 otherwise be a one-driveway situation and seems to make the numbers even more sustainable.
495 He asked if that impression is correct.

496
497 Mr. Pernaw replied yes, he believes so. He continued that most people coming in from Rt. 12
498 will take that first driveway and head to the parking lot on the north side of the building, and he
499 expects most employees, coming from the other direction, would come in the south driveway.
500 Thus, Mr. Welsh is right, as this is two different sites since there are two different driveways.
501 That +74 or -18 is going to be distributed between those two driveways. That, again, vehicles

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

504

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

507

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

511

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

513

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

518

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

521

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

525

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

528

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

531

532 *Met with a vote of 5-0.*

533

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

536

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

540

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

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

546
547 Ms. Taylor stated that in addition, as they have discussed in the past, especially since they have
548 already found that this is a consistent use in the neighborhood, an occupied building contributes
549 much more to the value of an area than an empty building. In addition, this is a very large empty
550 building.

551
552 *Met with a vote of 5-0.*

553
554 *3. There will no nuisance or serious hazard to vehicles or pedestrians.*

555
556 Mr. Gaudio stated that there is no particular evidence of a nuisance or serious hazard to vehicles
557 of pedestrians. He continued that the traffic information provided helps to reach that conclusion
558 and considering there was a larger number of people employed before in this building, and could
559 employ a large number of people in the future. Thus, he thinks this is a very reasonable usage of
560 the property and maintenance of the traffic patterns.

561
562 Mr. Hoppock stated that he agrees with Mr. Gaudio. He continued that the biggest issue when he
563 first read this application was traffic. After listening to Mr. Pernaw, he thinks it is a non-issue.
564 He accepts Mr. Pernaw's numbers, calculations and analysis and does not think there would be
565 any significant traffic impact with respect to the proposed use. He supports the fact that there is
566 no nuisance or serious hazard to vehicles or pedestrians created by this proposed use.

567
568 Ms. Taylor stated that she agrees that she does not think traffic will be much of an issue. She
569 continued that this is probably more of a Planning Board issue, but her only comment is that
570 from her experience there were the occasional traffic accidents as people tried to exit that facility
571 when it had a large number of employees. She hopes that the Planning Board would look at the
572 lighting at the entrances and exits so that vehicles entering and exiting are well lit.

573
574 *Met with a vote of 5-0.*

575
576 *4. Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be*
577 *provided for the proper operation of the proposed use.*

578
579 Mr. Hoppock stated that there is no issue with respect to water or sewer. He continued that by
580 virtue of the picture they saw, there is an enormous amount of parking, over 500 spaces. He
581 thinks all of those appropriate facilities are sufficient for the proposed use and he approves that
582 the application meets this criterion.

583
584 Chair Gorman stated that he agrees.

585

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

588
589 *Met with a vote of 5-0.*

590
591 The motion to approve ZBA 21-09 passed with a vote of 5-0.

592
593 **c. ZBA 21-08: Petitioner, Mint Car Wash of 435 Winchester St., Keene,**
594 **represented by Jim Phippard of Brickstone Land Use Consultants, Keene,**
595 **requests a Variance for properties located at 435 Winchester St., 433 Winchester**
596 **St., and 0 Wetmore St., owned by MOC76 Realty Co, LLC, Tax Map #'s 115-**
597 **029-000, 115-031-000, 115-030-000; that is in the Industrial, Commerce and High**
598 **Density Districts. The Petitioner requests a Variance to permit a drive-thru**
599 **carwash partially located within the High Density District where a drive in**
600 **business is not a permitted use per Section 102-422 of the Zoning Ordinance.**

601
602 Chair Gorman asked to hear from staff. Mr. Rogers stated that this location is on lower
603 Winchester St. with the side street just to the north of the property is Wetmore St. While the
604 Variance is for the property that is in the High Density Zone, this overall project will encompass
605 the three lots listed on the application. The one corner lot on Wetmore St. is the Ocean Harvest
606 building and directly behind that on a separate lot is the parking lot for the restaurant, and just
607 south of Ocean Harvest is where the Mint Car Wash is located. Mint Car Wash is looking to
608 demolish the current empty Ocean Harvest building, and build a new, very similar drive-through
609 type car wash to what is existing on the lot to the south.

610
611 Mr. Rogers continued that it is unique in the fact that this project will encompass three different
612 Zoning districts. The current car wash is actually in the Industrial Zone, and that project
613 received a Variance from the Board in 2014 to allow that drive-through car wash to occur.
614 Where the empty restaurant is, is in the Commerce District, and the parking lot is in the High
615 Density District. He will let the applicant speak to the proposed site plan and how the building
616 itself will actually cross over into the lot in High Density. His understanding from the applicant
617 is at least the two lots would be merged to allow the building to cross property lines. His
618 understanding is that they were going to merge all three lots into one.

619
620 Mr. Hoppock asked if the Wetmore St. area is Residential or Low Density. Mr. Rogers replied
621 that the street is High Density.

622
623 Mr. Gaudio asked Mr. Rogers if he has any information on the history of the property in terms of
624 the restaurant operating on two separate zoning lots. Mr. Rogers replied that is difficult to
625 answer, as the building plans do not speak to the parking lot. He further stated that there are files
626 from 1926 when Wetmore St. and Fairbanks St. were initially designed and those lots were all
627 subdivided. The proposal was for that to go much further to the west than those roads currently

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

630
631 Mr. Gaudio asked if it is correct that the Ocean Harvest parking lot in the High Density District
632 is not a permitted parking lot in that zone, even attached to a restaurant in the neighboring lot.
633 Mr. Rogers replied he is correct, that would not be a permitted use. He continued that it certainly
634 is pre-dating anything in the files, so it would be a non-conforming use for that lot.

635
636 Ms. Taylor stated that she is confused on the zoning and asked for clarification on the zoning
637 district for Wetmore St. Mr. Rogers replied that this is the High Density District. Ms. Taylor
638 questioned the application under the “lot characteristics” it has listed all three parcels. She
639 wonders whether the dimensions listed are for all three parcels. She further questioned the “lot
640 coverage by structures” and the figures change, but it does not look like that percentage would
641 really apply to all three parcels.

642
643 Mr. Rogers replied that he would direct the question to the applicant’s representative, Mr.
644 Phippard. Ms. Taylor asked if she is correct in her understanding, the application is for lots 30
645 and 31. Mr. Rogers replied yes, that is correct. He continued that the Variance is for the parcel
646 labeled lot 31, which is in the High Density District and lot 30 is in the Commerce District. The
647 carwash would be an allowed use in the Commerce District, so the main portion of this request
648 for the Variance is to lot 31. He thinks probably the applicant has included all the other
649 information on the application because the intent is to merge all into one lot. It is confusing, as
650 there will be three different Zoning districts on one lot.

651
652 Ms. Taylor stated that her other question, which might be for Mr. Phippard, is it looks like there
653 is a parking lot behind the old Ocean Harvest and then there is a separate parking lot, are these
654 both owned by the restaurant. Mr. Rogers replied that there is the one parking lot right behind
655 the Ocean Harvest, and he assumes what Ms. Taylor is referring to is actually the secondary
656 driveway into the current Mint Car Wash. That is on the lot the current car wash is on. Ms.
657 Taylor replied no, she is looking at something else. There is probably parking then right behind
658 the Ocean Harvest building as well as parking that is on this additional lot. Mr. Rogers replied
659 that it is one complete parking lot, even though it is on two lots. It looks like one parking lot
660 with two curb cuts.

661
662 Mr. Welsh asked Mr. Rogers if he has any idea about the traffic patterns into the current Mint
663 Car Wash. He asked if people access by the driveway or if they typically access the car wash off
664 Winchester St. Mr. Rogers replied that with the way the site is laid out it would appear that the
665 majority of traffic enters from Winchester St. Some of the traffic exits probably from this
666 facility onto Wetmore St., but again, he would let Mr. Phippard speak more in depth to that.

667
668 Chair Gorman asked if there were any further questions. Hearing none, he opened the public
669 hearing and explained the procedures for participation.

670

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

672

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

674

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

688

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

699

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

704

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

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

715
716 He continued that they are proposing to utilize the curb cut, however, on Wetmore St. That
717 existing curb cut's use is limited with a few cars that came in via Wetmore St. to approach the
718 car wash because there was a line of cars backing up toward Winchester St. Depending on the
719 time of day, people have learned of the Wetmore St. entrance to gain easy access to the kiosk
720 area and the car wash. The new car wash, however, will rely on the Wetmore St. curb cut as its
721 primary access and egress. There are two existing driveways that lead from Wetmore St. into the
722 Ocean Harvest property today, one, which is closer to the restaurant building and the other in the
723 existing parking lot building in the High Density District land. They are proposing to close both
724 of those curb cuts utilizing only the Wetmore St. curb cut. A car entering the site to go to this
725 new car wash will enter via Wetmore St., turn left into the site, turn left into the queuing lanes,
726 and there are two lanes approaching the car wash entry that merge into one lane. The intent for
727 this new building will be a single tunnel with customers entering the car wash from Wetmore St.
728 then exiting the building turning right back to Wetmore St. and back to Winchester St. The
729 existing car wash will continue to use primarily the Winchester St. curb cut. They have been in
730 existence for a little over five years, so that is the pattern that has developed and that everyone
731 knows and relies on.

732
733 Mr. Phippard stated that he will go through the individual criteria, but asked the Board if there
734 were any questions.

735
736 Mr. Gaudio asked if it is correct that traffic for the new wash will come in from Wetmore St.,
737 curb around, and go back out Wetmore St. Mr. Phippard replied in the affirmative. Mr. Gaudio
738 stated that that is a very short piece of land for a queue for the wash, just the width of the lot.
739 Mr. Phippard replied that it is a tight lot. He continued that because they allow two lanes for
740 queuing, approaching the kiosk, and then they merge into a single lane to enter the tunnel, the
741 total queuing distance is over 300 feet. They can queue a maximum of 13 cars without blocking
742 the driveway leading out to Wetmore St. That is with no cars queuing into the public right-of-
743 way.

744
745 Mr. Gaudio asked if it is correct that they are going to keep the entrance and exit on Winchester
746 St. Mr. Phippard replied that is correct that the Winchester St. curb cut will remain.

747
748 Mr. Gaudio asked if there is anything to prevent people from queuing up out on Wetmore St.
749 Mr. Phippard replied that they provide adequate stacking with 13 cars in the queue. Based on the
750 timing of the car wash, the 13th car in the queue takes 40 minutes from that position to get
751 through the car wash tunnel. Their experience at the site has been that customer's will not wait
752 that long, seeing the line, they decide to come back another time. Even though there are two
753 tunnels, there is a maximum queuing of 13 cars as well, which keeps the cars on the lot. They do
754 not back up into Winchester St. and cars that are approaching the car wash seeing the line have
755 room to turn around by the vacuums and go back out on Winchester St. to leave the site.

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

767

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

776

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

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

805
806 Mr. Phippard continued that Mint Car Wash is hoping to have a maximum of 100 washes per day
807 in the new car wash, which would add 200 vehicle trips on their busiest day. That adds up to
808 about 26 vehicle trips during the peak hour in the afternoon, and knowing people will experience
809 long delays attempting to turn left. They are very aware of the situation and have the same
810 concern. He continued stating they know the Planning Board will have the same concern, as will
811 the State.

812
813 Ms. Taylor her concerns are in regards to internal movements and the safety involved, and
814 attached to that are the size of vehicles that can safely navigate the property. She would hate to
815 see someone try to enter from Winchester St., do a quick, sharp turn to get to the proposed car
816 wash then create a backup for everyone. Mr. Phippard replied in agreement and had a similar
817 concern when reviewing this layout. He continued that the position of the proposed building was
818 situated in different positions in order to accommodate that particular turning movement. They
819 think that people who enter the property from Winchester St. will stay in those lines and go
820 straight ahead, but if they do not, and they turn to the right, a passenger car can make that turn
821 and enter the entering lane closest to Wetmore St. They have done a turn analysis using Auto
822 Turn software to show that that could be safely accommodated. He agrees with this issue, and
823 the Planning Board will review this as well. Mr. Phippard stated that he does not have access to
824 that Auto Turn software plan, but did recognize Ms. Taylor’s concern. He thinks that turning
825 movement is unlikely to happen, since once a car gets to that distance in the queue, there is only
826 four cars ahead of them to get into the tunnel, so he thinks they are going to wait and complete
827 that movement, unless there are no cars waiting to go into the newly-constructed tunnel wash.

828
829 Ms. Taylor asked what size vehicle the proposed new car wash would be intended. Mr. Phippard
830 replied cars and pick-up trucks.

831
832 Mr. Hoppock asked for clarification from Mr. Phippard about a curb cut being closed. Mr.
833 Phippard stated that there are two existing curb cuts from Wetmore St. into the Ocean Harvest
834 property. He continued that both of those curb cuts will be closed and they will be using only the
835 existing curb cut shown above that, leading to the left from Wetmore St. into the site. Mr.
836 Hoppock asked, just to be clear, if it is the one, above that where the High Density District is
837 labeled on the driveway. Mr. Phippard replied in the affirmative. Mr. Hoppock asked if it is
838 correct if that is the one driveway to remain open. Mr. Phippard yes, that will remain open; it
839 was constructed in 1963 with the original Benny’s Auto Body that used to occupy the Industrial
840 lot where the existing Mint Car Wash is located.

841

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

847
848 Mr. Phippard replied yes, the traffic patterns were reviewed. He continued that it was a seafood
849 restaurant with 50 seats, open for lunch and dinner seven days a week with take-out. Using the
850 ITE Trip Generation Manual and talking with Mr. Pernaw, the projected traffic for the restaurant
851 use was reviewed. Actual trip counts could not be done as the restaurant closed in 2019 but
852 based on the size of the restaurant and the number of seats, they estimated approximately 200
853 vehicle trips per day. Mr. Phippard did state that the old Ocean Harvest was open only for lunch
854 and dinner, generally 11:00 AM to 9:00 PM. The proposed car wash would be open from 7:00
855 AM to 6:00 PM. Those hours are slightly different from the restaurant, opening earlier in the
856 morning and closing earlier in the evening. The 200 vehicle trips for the car wash would be
857 spread over a different time of day. That works to the car wash's advantage in the morning, but
858 not in the evening, just because of the existing conditions on lower Winchester St.

859
860 Chair Gorman asked for clarification on the estimate of 100 car washes per day, asking if it is
861 based on the productivity of the existing one. Mr. Phippard replied that it is based on the
862 productivity of the existing Mint Car Wash and the design of the car wash facility. Car washes
863 are designed to offer different types of cleaning cycles, but they also can design the timing of a
864 wash cycle. In this area, it has worked well for the existing Mint Car Wash to design most of
865 their cycles to be 1.5-2 minutes in duration with the maximum time of 3 minutes, depending on
866 the number of features asked for in the wash, waxing and finishing. The number of car wash
867 cycles that can be accommodated between the hours of 7:00 AM and 6:00 PM was reviewed as
868 well as customer comments, with the current proposed design they estimated 100 car washes a
869 day.

870
871 Ms. Taylor asked if that is 100 car washes per day for the new facility or 100 car washes per day
872 combined. Mr. Phippard replied for the new facility. Ms. Taylor asked what the number is for
873 the existing building. Mr. Phippard replied that the existing facility has two tunnels, which can
874 handle 200-300 washes on their busiest days though there is no peak day or time; it is weather-
875 dependent. In the winter, they are very busy on sunny, dry days. Based on the five years'
876 history of the current car wash, the maximum number of cars that were able to wash in one day
877 was a little less than 300 cars.

878
879 Ms. Taylor asked that on a beautiful, sunny day, is it safe to say that with the new facility, the
880 property could see a potential 400 cars per day. Mr. Phippard replied that yes, potentially. He
881 continued that realistically it would be 300 to 350 on a day as Ms. Taylor described.

882
883 Ms. Taylor asked how many employees are there now and how many are anticipated. Mr.
884 Phippard replied that employees work two shifts between 7:00 AM and 6:00 PM. He continued

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

893
894 Ms. Taylor stated that she was a little confused by the application's several mentions of a fence
895 between this facility and the residential properties. She was confused whether the plan was just
896 to maintain the existing fence or whether there is a plan to add additional fence or buffering. Mr.
897 Phippard replied that the current plan is to maintain the existing fence. He indicated the fence on
898 the site plan, explaining how it continues parallel to the existing driveway in the High Density
899 District all the way to Wetmore St., then turns and runs parallel to Wetmore St. again. From that
900 point, an existing five-foot high concrete wall provides an entry feature into the driveway. There
901 is a post with a pedestal with a light on it. Then on the other side of the driveway that continues
902 as it turns a corner to the left and because they do not own the Ocean Harvest property, that wall
903 continues to the left all the way across the green area back to an existing wall around the yellow
904 area going back toward Winchester St. That wall ends about halfway through the Commerce
905 District area and then turns to vinyl fencing. The walls all remain except for the wall within the
906 green area. The fencing on top of the green area remains in place. That is six-foot, solid
907 fencing, which is part of the screening for the traffic and noise that comes from this type of
908 facility.

909
910 Ms. Taylor stated that she just had not been able to tell whether the plan was to add fencing or
911 leave the current fencing in place. Mr. Phippard stated that the Planning Board might require the
912 addition of more fencing and screening along Wetmore St.

913
914 Chair Gorman asked if there were any further questions. Hearing none, he thanked Mr. Phippard
915 and stated that Mr. Phippard can move on to the criteria.

916
917 *1. Granting the Variance would not be contrary to the public interest.*

918
919 Mr. Phippard stated that he believes this to be true. He continued that the existing Ocean
920 Harvest property has been vacant for almost two years with the building is beginning to
921 deteriorate. It is in everyone's best interest to allow a vacant, commercial property redeveloped
922 and be a productive property, paying taxes in the City of Keene. It is in the public's interest to
923 allow the car wash to redevelop this property to provide for the public need expressed to the car
924 wash owners, to shorten the wait period, to shorten the queuing for the existing customer base
925 and to continue to develop the customer base in this portion of the city. They think redeveloping
926 this property is an important aspect to preserving the property values in the area.

927

928 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
929

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

939
940 He continued acknowledging that they will need to seek Planning Board approval and the
941 additional screening or fencing may be a condition of their approval unless the Zoning Board
942 feels the need to address it at this time. He and his client think that by maintaining the screening
943 that is in place, the additional traffic experienced on that commercial driveway leading from
944 Wetmore St. into the site is adequately screened from the residential neighborhood to the west.
945 He is aware that the Board received a letter from a neighbor on Wetmore St.

946
947 Mr. Phippard showed a slide of the plan of the original properties. He continued that the area in
948 purple is the former Ocean Harvest and Wetmore St. is the street above it, and Winchester St. is
949 the street on the right. The lot numbered 435 is the old Benny's Auto Body building; that is not
950 the car wash building that is there today. That is just an old representation on it now. The Board
951 is familiar with where the driveway comes back out to Wetmore St. There is a residential home,
952 #9 on this plan. The person there wrote a letter to the Board expressing concerns about the
953 impact to their property if this is allowed to be redeveloped as proposed. He spent some time
954 looking at that. He tried to hire a professional appraiser but given the real estate market these
955 days, there are no professional appraisers available for months. In the letter, the resident
956 expressed a concern that today their children can play in the street with light traffic on a quiet
957 street. Mr. Phippard state that comment struck a note with him. He continued that he grew up in
958 Keene 65 years ago on Pearl St. He and his brothers could play in the street, and they could play
959 a whole football game before a car could come along, which is hard to imagine today. He is
960 happy for the resident that it is that quiet on his street. He wants to point out that what Mint Car
961 Wash is proposing would add some more vehicle trips on Wetmore St., but they would be
962 turning left before getting to this resident's house. It would be across from the eastern portion of
963 his property. However, this commercial driveway exists today, and has been there since 1963. It
964 provided access to Benny's Auto Body and was regularly used. Benny's Auto Body was a client
965 of his and he did two site plans for them, so he is very familiar with how Benny's Auto Body
966 utilized the property. Since this has been an active commercial driveway since the 1960s, he
967 feels that what Mint Car Wash is proposing is not inappropriate, given that the commercial use
968 exists between that driveway and Winchester St.

969

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

989
990 Mr. Phippard continued that he went to the front of the property near Winchester St. Again, the
991 Winchester St. traffic was generating levels between 80 and 100 decibels, constantly. If a
992 tractor-trailer went by it was higher than 100 decibels. That high level of noise adjacent to
993 Winchester St. is not going to change, with or without the new car wash. He contacted the
994 company that manufactures the car wash facilities and asked for data on what sound levels to
995 expect. The house at 9 Wetmore St. is about 135 feet away from the closest door for the car
996 exiting the proposed new car wash. At that distance, the company predicted a sound level of 61
997 decibels, which is below the current levels and based on the background noise from the
998 Winchester St. traffic. Thus, he does not feel that the new car wash will cause excessive noise.

999
1000 Mr. Phippard stated that as for the spirit of the Ordinance, he thinks they are not introducing a
1001 use that is going to hurt the property values in the area. He thinks they are going to help preserve
1002 the property values in the area by maintaining the screening that is in place. He does not think it
1003 is necessary for any additional fencing, based on the evidence that he found at the site. Mr.
1004 Phippard states that he goes to the sites himself to collect the data and gain the evidence
1005 firsthand, so he is very comfortable representing to the Board that this will not increase the noise
1006 levels and by maintaining the screening that is existing, they will continue to meet the spirit of
1007 the Ordinance.

1008
1009 *3. Granting the Variance would do substantial justice.*

1010 Mr. Phippard stated that he thinks that substantial justice will be done to allow the
1011 redevelopment of the property. This area of lower Winchester St. is not the high-end Commerce
1012 District of the city, but they do not want vacant buildings allowed to remain in place for a long

1013 time. The restaurant directly across Wetmore St. from Ocean Harvest, Jim Eddie's, is also
1014 closed as it recently relocated, leaving a vacant building. Faced with another vacant building, it
1015 does do substantial justice to allow this property to redevelop, to maintain the property value for
1016 this property, and to benefit the car wash property by allowing them to expand their use, address
1017 the queueing issues that are affecting their customer base today. He hopes that the Board can
1018 make that finding for this criterion.

1019
1020 4. *If the Variance were granted, the values of the surrounding properties would not*
1021 *be diminished.*

1022
1023 Mr. Phippard stated that he thinks he covered this pretty well – property values would not be
1024 diminished, because the noise levels are not increasing above the levels that exist there today.
1025 He continued that he thinks that is the primary concern.

1026
1027 Mr. Phippard indicated the proposed front elevation would face Winchester St. He continued
1028 that cars drive around the building on the left-hand side then turn to approach the tunnel wash.
1029 He indicated the view of the tunnel where it exits, to the driveway that leads to Wetmore St., is
1030 consistent with the other views and is a typical car wash building. Mr. Phippard stated these are
1031 unique structures, built entirely from recycled plastic, with a waterproof construction throughout,
1032 which will not rust or mold. He indicated the proposed side view of the building that will face
1033 the existing Mint Car Wash, will contain the mechanical equipment and the office area. He
1034 continued stating that the side of the building will have windows, allowing for the inside view of
1035 the carwash. The existing Mint Car Wash has been there over five years and looks like the day
1036 they opened. He concluded that the new construction on the building helps to enhance the value
1037 of this property and helps to enhance or support the values of surrounding properties.

1038
1039 5. *Unnecessary Hardship*
1040 A. *Owing to special conditions of the property that distinguish it from other*
1041 *properties in the area, denial of the variance would result in unnecessary*
1042 *hardship because:*
1043 i. *No fair and substantial relationship exists between the general*
1044 *public purposes of the ordinance provision and the specific*
1045 *application of that provision to the property because:*

1046
1047 Mr. Phippard stated that he has been doing this for 44 years, and this is the first property he has
1048 worked on where one property lies in three different zones. He continued that they had to look at
1049 all of the zone dimensional requirements, and show Mr. Rogers that they could comply with the
1050 lot coverage for the setback requirements for each of those zones. That is what this plan is. This
1051 plan is something different for him, and a challenge, after such a long time being in business. He
1052 thinks those three zoning districts create a unique situation that does not exist anywhere else that
1053 he knows of in the City of Keene on one property. He knows they are creating that situation by
1054 merging the lots, but for the landowner, that is the best way for him to utilize this land. That is
1055 the easiest way for him to redevelop this property, make it productive, and maximize the value of

1056 this property, not only for his purposes but for taxing purposes on the property as well. He
1057 thinks this unique situation justifies the Variance they are requesting to allow redevelop the
1058 property to another commercial use.

1059

1060 *and*

1061 *ii. The proposed use is a reasonable one because:*

1062

1063 Mr. Phippard stated that he thinks it is a reasonable use because the car wash use already exists
1064 at the property adjacent to this. He continued that it has not caused a problem and has not been a
1065 nuisance and Mint Car Wash has allowed adequate queueing of cars, which seems to be the
1066 biggest type of issue that comes from these types of drive-through uses. It has operated very
1067 successfully there. This will allow the owner to improve the business, reduce the queueing, and
1068 improve the likelihood of long-term success for this property.

1069

1070 *B. Explain how, if the criteria in subparagraph (A) are not established, an*
1071 *unnecessary hardship will be deemed to exist if, and only if, owing to*
1072 *special conditions of the property that distinguish it from other properties*
1073 *in the area, the property cannot be reasonably used in strict conformance*
1074 *with the ordinance, and a variance is therefore necessary to enable a*
1075 *reasonable use of it.*

1076

1077 Mr. Phippard stated that if the criteria in subparagraph (A) were not met, he would be shocked,
1078 but if that is the case, the explanation of how subparagraph (B) applies is the same reasoning and
1079 he does not want to repeat himself. He thinks the Board sees and understands it. He thinks this
1080 will be a benefit to the City of Keene and this is a good use for the property.

1081

1082 Chair Gorman asked if anyone had more questions for Mr. Phippard. Hearing none, he thanked
1083 Mr. Phippard and welcomed public comment, explaining the procedures for participation and
1084 called upon the first attendee.

1085

1086 Chris Drakiotes of 8 Wetmore St. stated that he has been at that property for over 30 years and
1087 the property used to be his grandparents' and he has been familiar with it since the early 1960s.
1088 To give a little history on the Ocean Harvest, that was originally a house that he played in as a
1089 child. Eventually the property sold to become the Ocean Harvest Restaurant. At some point
1090 those owners approached Benny Kramer in addressing the expansion of their parking lot, who
1091 had no objections and the lot was paved. The access road off what used to be Benny's Auto and
1092 is now Mint Car Wash is correct though what was not mentioned was that this was a gated and
1093 locked access. This is where Benny's parked their tow truck and other vehicles with the main
1094 ingress and exit off Winchester St. Mr. Drakiotes continued noting that the number of cars
1095 utilizing the carwash over the weekend mentioned by the Petitioner seem a bit low. He stated
1096 that he can look out his back door on any weekend and the carwash is full and busy where the
1097 cars do not stop until at least 5:30 PM. He continued that on other note is the fence, which is
1098 nice, white and plastic that was installed when he and his neighbor were asked by the carwash to

1099 remove some trees along the property line. He stated that he and his neighbors explained they
1100 would lose their sound deadening and would like to have something to replace the trees. The
1101 owners of the carwash offered to install the fence, that he reiterated was nice, but is hollow,
1102 plastic and echoes at times.
1103

1104 Mr. Drakiotes continued that his main concern is that he has gone through two floods on this
1105 property since he has been here. He questioned if the drainage has been addressed, as there are
1106 only a couple small drains in the area. He also knows that turning out onto Winchester St. is a
1107 problem. He has heard plans for it for years and as they said, he does turn right, then turns
1108 around at Fairfields, and comes back (in the other direction). He does not see that this is going to
1109 get any better. Hopefully, it will not get any worse. However, he has also found, realistically,
1110 that if there is a side street people can park on to get into the (car wash) they will park there and
1111 wait to get in. On Saturday and Sunday in good weather the car wash never stops. That might
1112 need to be addressed further with another look. Overall, he is not against the proposal, but he
1113 thinks there needs to be additional things that are studied, looked at, and addressed.
1114

1115 Chair Gorman asked if Board members had any questions for Mr. Drakiotes. Hearing none, he
1116 thanked Mr. Drakiotes for his comments.
1117

1118 Anthony Casey of 9 Wetmore St. stated that he wrote a letter to the Board and he hopes everyone
1119 had an opportunity to read it. Reviewing items on his letter, he addressed his main concerns with
1120 the proposal. He continued that he knows the Petitioner spent a lot of time reviewing the issues
1121 of sound, but the proposed car wash is significantly closer to his house than the current car wash.
1122 He knows the Petitioner said it was not any closer to any existing residential housing. Like the
1123 Petitioner said, he has several small children who can currently play in the street in front of their
1124 house, which is very nice, and adding a large, commercial exit, which, as his neighbor just said,
1125 never really was and is not even now a large exit, ingress, or egress, seems very dangerous. That
1126 is high volume traffic to be going in and out on a very small street, which, as has been stated ad
1127 nauseam, is very hard to get out of during peak hours.
1128

1129 Mr. Casey continued that he is not as against the proposal as his letter stated, he simply wanted
1130 certain issues to be addressed, specifically property values as there are a lot of them. Granting a
1131 Variance to a property that is right across the street from him and turning it from High Density to
1132 Industrial will affect his property values. He continued stating that he briefly spoke to an
1133 appraiser at the City, and he got the impression from them that essentially, granting the Variance
1134 will have an effect on neighboring property values as well as the long lines of cars. The
1135 Petitioner said 13 cars maximum would be queued at one time, but this is mentioning at one
1136 time, not all day. He continued that the carwash is truly right across the street from his home and
1137 stated he was looking at it as he was speaking. Mr. Casey stated that this proposal would have a
1138 damaging effect on his property value. He concluded stating that these are his main concerns,
1139 adding a large, and high-volume exit right across from his driveway, which he is not being
1140 hyperbolic about; it really is right across from his driveway. He is very against that.
1141

1142 Chair Gorman asked if the Board had any questions for Mr. Casey. Hearing none, he thanked
1143 Mr. Casey for his comments. He called on Mr. Phippard for any rebuttal.

1144
1145 Mr. Phippard stated that he would address the flooding question. He explained that the proposed
1146 plan for the new car wash building would be on the right of the existing carwash that is on the left.
1147 He continued that all of this property, all three lots, are entirely within the hundred-year
1148 floodplain. Flooding is a legitimate issue, and the City does require a permit for Mint Car Wash
1149 to alter any development on this property. The Flood Ordinance requires that they construct a
1150 new car wash building at least one foot higher than the hundred-year flood elevation. That
1151 means bringing fill into the property to raise the pad site under the new car wash building to the
1152 required elevation. To get permission to do that, they have to offset that fill by removing
1153 material from the property to balance the cut and fill. As long as they can balance the cut and
1154 fill, or provide more cut than they are filling, then they are not eliminating flood storage. They
1155 are not exacerbating the flood elevation. Mr. Phippard explained that to accomplish this, first,
1156 the green space to the right of the proposed car wash building, in between that building and
1157 Wetmore St., will be an excavated then created stone-lined swale, which will provide part of the
1158 flood storage required to offset the fill need on site. To the left of the existing Mint Car Wash is
1159 a large green area, which will be lowered a foot to provide the balance of the storage that needed
1160 to offset the fill needed to build. The City does require a flood permit, which will require
1161 certification by a licensed land surveyor and a professional engineer. Mr. Phippard continued
1162 that the drainage on the property was reviewed extensively. The current drainage exits the
1163 existing driveway from Wetmore St. through the culvert into a catch basin in Wetmore St. at the
1164 northeast corner of the driveway where it meets Wetmore St. That drainage pattern will
1165 continue. On the main site itself, an infiltration area to the east side of the new building, between
1166 the building and Winchester St. will be added. He continued that onsite testing occurred and it
1167 has been determined the seasonal high water table as well as determined the ability of the soil to
1168 infiltrate storm water runoff and did the same system on the existing car wash site. It works very
1169 well and has for the last five years. He stated that a similar system would be provided on the
1170 new site, which will reduce runoff from the property over what exists at the site today that will
1171 improve drainage overall in the neighborhood.

1172
1173 Mr. Phippard stated that he is disappointed that the vinyl fence is questionable for adequacy by
1174 Mr. Drakiotes but he is happy to talk with him about it, if they can do something to improve it.
1175 They are certainly willing to consider that. He continued that he disagrees with Mr. Casey's
1176 comments that the carwash is not directly opposite his driveway, which is a bit further in on
1177 Wetmore St. to the right. The driveway for Mint Car Wash is a bit to the east, closer to
1178 Winchester St. Thus, he is challenging Mr. Casey's statement. He agrees that this will make a
1179 change in the neighborhood and he does not recommend that children be allowed to continue
1180 playing in the street. Traffic for the car wash should not be driving by Mr. Casey's house; cars
1181 should be turning before they get to his house, and when they exit they turn right to go to
1182 Winchester St., but still he recommends Mr. Casey no longer allow the children to play in the
1183 street. He himself did it when he was a kid, as did many others 60 years ago, but life has
1184 changed. He does not think the rest of the neighborhood will be affected by traffic. People have

1185 no reason to continue down Wetmore St. or to use Fairbanks St. to get to the car wash. Mint Car
1186 Wash is providing adequate stacking on both sites, so cars should not be backing up into the
1187 street or clogging the driveways. Mr. Phippard stated that he is glad to hear Mr. Casey is not
1188 bothered by the current sounds that exist at the property. He thinks when you live in an area like
1189 this, and he himself used to live in an area on Winchester St. where his office is today, the noise
1190 becomes part of the background.

1191
1192 Mr. Phippard continued that he hopes he addressed most of Mr. Drakiotes' and Mr. Casey's
1193 concerns and stated he is happy to talk with both of them. If the Board grants this Variance, the
1194 project will proceed to the Planning Board, which these discussions will continue. He hopes the
1195 Board can approve this Variance request.

1196
1197 Chair Gorman asked if anyone had further questions for Mr. Phippard. Hearing none, he thanked
1198 Mr. Phippard. He asked for Mr. Casey's letter read into the record. Mr. Rogers replied yes, and
1199 read the letter as follows:

1200 *"March 30, 2021*

1201 *To Whom it may concern:*

1202 *As an abutter to the proposed zoning variance at 433 Winchester street (ZBA 21-08), I*
1203 *would really appreciate if my concerns could be heard by the board. As a recent homeowner this*
1204 *is all quite new to me and so I do beg your pardon for any slip-ups in etiquette.*

1205 *As a father of 3 young children all aged under 5, I often play with them in the street in*
1206 *front of our house for a few hours a day through all 4 seasons and the idea of an increase in*
1207 *traffic through our small neighborhood is worrying. Already, we have had a few near misses*
1208 *with cars zipping out of the Mint Carwash driveway without looking and I am very worried*
1209 *about an increase in traffic, amongst other things.*

1210 *In the pages below, I have copied and pasted the application from Mint Carwash for the*
1211 *variance, which I obtained from the City of Keene website. Any variation in the text from the*
1212 *original is a result of me correcting formatting errors from my sloppy paste job and not an*
1213 *attempt to change the meaning. I have highlighted the sections of the application that I have*
1214 *taken issue with and replied to them in **bold text** below each paragraph, for the convenience of*
1215 *the reader. I realize that such a format can be seen as un-professional and possibly sarcastic, but*
1216 *I could not think of a better or clearer way to make my concerns known.*

1217 *I realize that I live on a residential lot on the edge of the commercial zone but I would*
1218 *like to avoid any further encroachment of the busy commerce district onto the small residential*
1219 *street where my children play.*

1220 *I would really appreciate your kind consideration of my worries.*

1221 *Sincerely,*

1222 *- Anthony Casey”*

1223 Mr. Rogers stated that regarding Mr. Phippard’s response to the first criterion, Mr. Casey
1224 highlighted the text “It will improve public safety at the site” and added the following:

1225 *“My issue with this is that the plans show that the driveway, exiting onto an area of Wetmore*
1226 *Street where my three small children play. Currently, this driveway is not a major ingress or*
1227 *egress point for the carwash but the plans show that it will be one of 2 main entrances. Traffic*
1228 *will increase substantially on a small residential street, which is already and increasingly*
1229 *difficult to exit during peak traffic hours, not improving public safety but diminishing it.”*

1230 Mr. Rogers continued that for the second criterion, Mr. Casey highlighted Mr. Phippard’s
1231 statement *“The spirit of the ordinance in this case is to protect the public health, safety and*
1232 *welfare,”* And *“This existing driveway is also on High Density zoned land. Continuing west on*
1233 *Wetmore Street are residential homes. To protect the homes from noise and to provide screening,*
1234 *a six foot high solid fence was constructed along the west side of the driveway and along the rear*
1235 *property lines of the Mint Carwash site,”* and *“It will also maintain the screen fencing which*
1236 *will help to protect property values in the neighborhood.”*

1237 Mr. Casey’s words in response were:

1238 *“If this is the spirit of the ordinance, I would ask that the variance not be granted, per my*
1239 *previous comments. I would also like to point out for the future that the applicant states that*
1240 *neighboring property values could decrease, due to an unscreened high-volume carwash*
1241 *abutting.”*

1242 Mr. Rogers continued that for the third criterion, Mr. Casey highlighted the following from Mr.
1243 Phippard:

1244 *“...will improve traffic safety leading into the site. The new carwash will not be closer to the*
1245 *existing residential homes to the west of the site than the existing carwash, and it will be*
1246 *screened with the six foot solid fencing along the west side of the site. As such, it will not reduce*
1247 *property values.”*

1248 Mr. Casey’s response is:

1249 *“I disagree that adding a major commercial exit to a residential street, where small children*
1250 *play is an improvement to public safety. As for the statement that the proposed new carwash will*
1251 *not be closer to any existing residential homes; it is simply false. I will assume that this was an*
1252 *oversite but since my house is almost twice as close to the proposed site of the new tunnel as to*
1253 *the existing ones, I find this assumption hard to maintain. A comparison of a map with the*
1254 *proposed plan will show this to be true, as will the picture included on page #38 of the meeting*
1255 *agenda, which was taken directly in line with my driveway. To the point about property values*
1256 *not being reduced due to the existing screening, I would say that there was no mention in the*

1257 *proposal for the screening of my own property, which is directly across the street. I would argue*
1258 *that granting the variance would not do substantial justice, but rather injustice.”*

1259 Mr. Rogers stated that for the fourth criterion, Mr. Casey highlighted the following that Mr.
1260 Phippard wrote:

1261 *“This will improve traffic safety at the site.” and “The new carwash tunnel is no closer to the*
1262 *residential properties than the existing carwash. This proposal will enhance the appearance of*
1263 *the property and help to maintain property values in this area. Approving the variance will not*
1264 *result in a threat to public safety or be a nuisance to vehicles and pedestrians. It will allow a*
1265 *project which will enhance the value of [...] the neighborhood.”*

1266 Mr. Casey’s response is:

1267 *“As I stated above, the new carwash tunnel is substantially closer to my house and property than*
1268 *the existing one. Already from the existing carwash, there is a strong smell of soap on my*
1269 *property; an effect which would only be increased dramatically with an additional carwash*
1270 *tunnel in such close proximity to my property. The noise increase from a busy carwash versus a*
1271 *restaurant parking lot would be substantial also. Further, the removal of the current restaurant*
1272 *building and the removal of several tall pine trees on the commercial lot will deprive my*
1273 *property of the current screening it enjoys from the car dealerships and the busy traffic of*
1274 *Winchester Street. I would also add that there is no mention in the proposal of any new*
1275 *screening from the carwash itself for my property, which is directly across the street, and as the*
1276 *applicant has stated could negatively impact my property value. Finally, queuing lines of cars,*
1277 *directly across the street and a high volume traffic entrance and exit 20 feet from my property*
1278 *can only negatively impact its value in addition to the other concerns I have raised. The granting*
1279 *of the variance itself would also negatively impact my property value as it will effectively push*
1280 *the commerce district still further up residential Wetmore Street.”*

1281 Mr. Rogers continued that regarding what Mr. Phippard wrote about the fifth criterion,
1282 subparagraph (A)(i), Mr. Casey highlighted:

1283 *“...parking lot lies within the High Density district. The zoning at this location has never been*
1284 *altered to reflect this historic commercial use. A variance is necessary to allow the continued use*
1285 *of the site for a commercial use. It would be unfair and unreasonable to deny the variance for*
1286 *this proposal when a commercial use has existed at this site for over 60 years.”*

1287 Mr. Casey’s response was:

1288 *“Historic commercial use or not, if the spirit of the ordinance is to protect public safety, this*
1289 *could be best done by not granting the variance. Historically, the restaurant parking lot never*
1290 *supported a high volume of all-day drive-through traffic. I do not feel that it is unfair and*
1291 *unreasonable to advocate for the safety of my children, the maintaining of my property value and*
1292 *the safety of my neighborhood as a whole.”*

1293 Regarding subparagraph (A)(ii), Mr. Casey highlighted:

1294 *“It will improve traffic safety at the site, and it will not diminish surrounding property values.”*

1295 Mr. Casey’s response was:

1296 *“As I have stated, I believe it demonstrably true that both traffic safety and property values will*
1297 *be negatively impacted if the variance is granted.”*

1298 Mr. Rogers continued that regarding subparagraph (B), Mr. Casey highlighted:

1299 *“The existence of three zoning districts on such a small land area creates a special condition*
1300 *which makes it nearly impossible to bring into compliance.”*

1301 Mr. Casey’s response was:

1302 *“Taken in isolation, this makes sense but not when weighed against the needs of the people*
1303 *living directly across the street. If the part of Wetmore Street was zoned High Density to protect*
1304 *public safety, it should remain so.”*

1305 With Mr. Rogers having finished reading the letter, Chair Gorman asked Mr. Phippard for final
1306 input to give in regards to that letter.

1307

1308 Mr. Phippard stated that Mr. Casey’s letter stated that he (Mr. Phippard) was in error stating that
1309 the new car wash would not be closer to his home, and Mr. Casey was correct about that. He
1310 continued that he (Mr. Phippard) focused on 8 Wetmore St., which the car wash will not be any
1311 closer to, but yes, the proposed new car wash will be closer to 9 Wetmore St. It will be 135 feet
1312 away from Mr. Casey’s home and approximately 70 feet closer than the existing car wash
1313 building will be. He wants this corrected for the record: the abutter was correct and he himself
1314 was in error when he made that statement.

1315

1316 Chair Gorman asked if there were any further questions from the Board. Hearing none, he
1317 thanked Phippard. He asked if there was any further public comment. Seeing none, closed the
1318 public hearing

1319 *1. Granting the Variance would not be contrary to the public interest.*

1320

1321 Ms. Taylor stated that she has real, serious concerns about traffic in this area, Wetmore St. and
1322 Winchester St. especially with the new proposed use at the volume indicated, she stated she has a
1323 hard time seeing how this would be in the public interest.

1324

1325 Mr. Hoppock stated that he agrees with Ms. Taylor. He continued that he thinks this does alter
1326 the essential character of the neighborhood and does threaten the public health, safety, and
1327 welfare of the people in the neighborhood. He has a hard time seeing it otherwise, given the
1328 traffic volume expected.

1329

1330 Chair Gorman stated that he is inclined to agree. He continued that as much as he understands
1331 the complications of that commercial property that was Ocean Harvest and the need to find a
1332 viable use. He continued that at 2.5 minutes per car wash, it could be incessant and over
1333 burdensome.

1334
1335 Mr. Gaudio stated that he has a similar concern and is concerned about the traffic that might start
1336 piling up on Wetmore St. one way or another.

1337
1338 Mr. Welsh stated that he agrees with the concern about the backed up traffic on Wetmore St. He
1339 continued that he does find, that some of the argument about drivers seeing that there is such a
1340 long wait, likely 40 minutes for a 10-minute car wash, there is something compelling there. He
1341 is thinking about the alternative, which is a currently permitted restaurant or facility of that sort,
1342 which is likely to generate a good amount of traffic also. Frankly, he is torn on this one and sees
1343 both sides.

1344
1345 Chair Gorman thanked Mr. Welsh for those good points.

1346
1347 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1348
1349 Ms. Taylor stated that her concerns are very similar to her concerns regarding the public interest.
1350 She continued that it is not just traffic, but also an overburden for this piece of property, even if it
1351 is to be merged to the existing carwash lot. She concluded that it is too much for the property as
1352 it is proposed.

1353
1354 3. *Granting the Variance would do substantial justice.*

1355
1356 Mr. Hoppock stated that the gain to the public for denying this Variance is significant in terms of
1357 safety and density management, as Ms. Taylor said, and the potential for overflow onto Wetmore
1358 St. and Winchester St. He continued that he thinks the gain to the public is greater than the loss
1359 to the individual, if any. He does not believe this factor is satisfied either.

1360
1361 Ms. Taylor stated that she agrees with Mr. Hoppock, but would almost say it in the reverse: she
1362 thinks the loss to the public of the traffic issues and overburdening this property significantly
1363 outweigh the cost to the property owner.

1364
1365 4. *If the Variance were granted, the values of the surrounding properties would not be*
1366 *diminished.*

1367
1368 Chair Gorman stated that the empty Ocean Harvest property, or any empty commercial property
1369 can in fact weigh on surrounding property values, and the wish is to keep the commercial
1370 properties full for a healthy, prosperous community. However, uses a comparison model of a
1371 house next to a restaurant with a parking lot, compared to picturing a house next to a car wash
1372 with two lanes that could potentially flow out into the street and tax the roadways, there is valid

1373 argument for that diminution the property values, compared to a restaurant-type use. Thus, he
1374 thinks that the values of the direct abutters could in fact be diminutive by this.

1375
1376 Mr. Hoppock replied that he agrees. He continued that he sees Mr. Casey's perspective on this
1377 and appreciates his remarks in that regard. He does not disagree with Mr. Casey's remarks about
1378 the possible diminution of his property value.

1379
1380 5. *Unnecessary Hardship*
1381 A. *Owing to special conditions of the property that distinguish it from other*
1382 *properties in the area, denial of the variance would result in unnecessary*
1383 *hardship because:*

1384 i. *No fair and substantial relationship exists between the general public*
1385 *purposes of the ordinance provision and the specific application of that*
1386 *provision to the property because:*

1387
1388 Mr. Gaudio stated that he thinks in this case, there is a fair and substantial relationship between
1389 the general public purposes of the Ordinance, which is to protect those who live nearby from the
1390 traffic and density issues, and the specific application to this property does not relieve that. He
1391 does not think it qualifies under 5(A).

1392
1393 Mr. Hoppock agreed and added another point that he agreed with Mr. Phippard that the three-
1394 zone configuration of these lots do suggest a unique condition, but that unique condition does not
1395 establish that there is no fair and substantial relationship existing between the overall public
1396 purpose of the provision and its application to the property. In fact, as Mr. Gaudio suggested,
1397 there is a direct connection in the relationship. He does not think the hardship criterion is
1398 satisfied.

1399
1400 *and*
1401 *The proposed use is a reasonable one because:*

1402
1403 Ms. Taylor agreed with Mr. Hoppock and Mr. Gaudio and added that she does not find that this
1404 proposed use is reasonable, necessarily, given the location and the other issues that they have
1405 described regarding density, traffic, etc.

1406
1407 B. *Explain how, if the criteria in subparagraph (A) are not established, an*
1408 *unnecessary hardship will be deemed to exist if, and only if, owing to special*
1409 *conditions of the property that distinguish it from other properties in the area, the*
1410 *property cannot be reasonably used in strict conformance with the ordinance, and*
1411 *a variance is therefore necessary to enable a reasonable use of it.*

1412
1413 Mr. Gaudio stated that this is actually in the nature of a self-inflicted hardship. He continued that
1414 the property owner purchased the property knowing of the situation.

1415

1416 Ms. Taylor stated that her understanding of 5(B) is that essentially this would apply if there was
1417 no way to use the property in conformance with the Ordinance, and even though she agrees that
1418 there are two parcels at issue, she suspects that there could be a use for the former Ocean Harvest
1419 property that would be in conformity with the Ordinance. And again, as Mr. Gaudio said, there
1420 is something of a self-inflicted hardship here by purchasing the property before trying to get the
1421 approvals.

1422
1423 Mr. Welsh stated that he will register his unease here. He continued that he does think they are
1424 dealing with a very particularly conditioned piece of land and that if they did break it up into
1425 three properties, two of them would be non-conforming and he is not sure how they would
1426 construct conforming uses on that patchwork. But again, he is conflicted more than he is
1427 compelled about the hardship.

1428
1429 Ms. Taylor made a motion for the Zoning Board of Adjustment to approve ZBA 21-08, property
1430 at 435 Winchester St., 433 Winchester St., and 0 Wetmore St., owned by MOC76 Realty
1431 Company LLC, Tax Map #'s 115-029-000, 115-031-000, 115-030-000; that is in the Industrial,
1432 Commerce and High Density Districts, for a Variance to permit a drive-thru carwash partially
1433 located within the High Density District where a drive in business is not a permitted use per
1434 Section 102-422 of the Zoning Ordinance. Mr. Hoppock seconded the motion.

1435
1436 1. *Granting the Variance would not be contrary to the public interest.*
1437
1438 Not met with a vote of 1-4. Mr. Welsh was in favor.

1439
1440 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
1441
1442 Not met with a vote of 1-4. Mr. Welsh was in favor.

1443
1444 3. *Granting the Variance would do substantial justice.*
1445
1446 Not met with a vote of 1-4. Mr. Welsh was in favor.

1447
1448 4. *If the Variance were granted, the values of the surrounding properties would not be*
1449 *diminished.*
1450

1451 Not met with a vote of 0-5.

1452
1453 5. *Unnecessary Hardship*
1454 A. *Owing to special conditions of the property that distinguish it from other*
1455 *properties in the area, denial of the variance would result in unnecessary*
1456 *hardship because*

1457 i. *No fair and substantial relationship exists between the general public*
1458 *purposes of the ordinance provision and the specific application of that*
1459 *provision to the property because:*

1460 *and*

1461 ii. *The proposed use is a reasonable one because:*

1462

1463 Not met with a vote of 1-4. Mr. Welsh was in favor.

1464

1465 B. *Explain how, if the criteria in subparagraph (A) are not established, an*
1466 *unnecessary hardship will be deemed to exist if, and only if, owing to special*
1467 *conditions of the property that distinguish it from other properties in the area, the*
1468 *property cannot be reasonably used in strict conformance with the ordinance, and*
1469 *a variance is therefore necessary to enable a reasonable use of it.*

1470

1471 Not met with a vote of 1-4. Mr. Welsh was in favor.

1472

1473 The motion to approve ZBA 21-08 failed with a vote of 0-5.

1474

1475 Mr. Hoppock made the following motion to deny ZBA 21-08, seconded by Ms. Taylor.

1476

1477 On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 21-08.

1478

1479

1480 **V. New Business**

1481

1482 **a. Department Review of Board and Commission Legal Ad Fees**

1483

1484 Mr. Rogers stated that at the last meeting staff talked with the Board about reviewing the legal ad
1485 fees. He continued that Zoning Clerk, Corinne Marcou, has conducted the research and has
1486 information to review with the Board. Staff are recommending that the Board review these
1487 increases to cover additional costs both to the advertising in the Keene Sentinel as well as the
1488 costs for the additional number of ad lines due to the pandemic. He continued stating that the
1489 meetings moving forward might involve offering a Zoom option for member of the Board and
1490 the public even when the meetings return to in-person. Mr. Rogers concluded that currently this
1491 topic is on a City Council committee agenda on more time.

1492

1493 Ms. Marcou stated that during the budget process earlier this year, it was discovered that the
1494 legal ad costs were exceeding what had been projected for the year. She continued that it was
1495 discovered that for the public notice in the newspaper, the first paragraph has added quite a few
1496 lines that are required per the COVID-19 State of Emergency, as does the last paragraph, which
1497 has increased the ad costs. She continued that what was also realized was the increased cost of
1498 these lines set by the Sentinel. The set dollar amount that is currently collected for the public
1499 notice is \$25, which was set in 2017 when the Sentinel was charging \$1.35 per line. She stated

1500 that she recently spoke with the Sentinel who will be raising their ad costs to \$1.60 beginning
1501 May 1st. Staff has done the analysis of the regulatory boards, which are the Zoning Board of
1502 Adjustment, Planning Board, and the Historic District Commission. These boards require the
1503 legal notice posted in the newspaper. The analysis provided an average of two applications per
1504 legal notice. Each application roughly takes 77 lines, multiplied by \$1.60, divided by the two
1505 public hearings, which is the \$62 cost they are proposing and asking the Board to approve. As
1506 Mr. Rogers stated, they are moving forward with hybrid meetings, continuing with the Zoom
1507 platform, which will minimize some of the language that is required for the public notice. In
1508 addition, as a department, the language that is used in the public notice has been minimized it as
1509 much as possible, while still staying within the legal requirements.

1510
1511 Mr. Gaudio asked if it is correct to assume that the \$62 just meets those costs. Ms. Marcou
1512 replied that is correct. Mr. Gaudio replied that \$62 seems to be an odd number for a fee. He
1513 suggested \$65, to give a little bit of a cushion so they do not need to raise it again in two months.
1514 He asked if they can do that, or if there is any restraint.

1515
1516 Ms. Marcou replied that she believes they were sticking with the \$62, since it is realistic, and
1517 actual, 77 lines multiplied by \$1.60 divided by the two public hearings comes out to \$61.60.
1518 They were trying to keep it as realistic as possible with the analysis done. Mr. Gaudio replied
1519 that he understands, but he thinks it is cutting it close and they should make it three dollars more,
1520 but he is fine with \$62, too.

1521
1522 Mr. Hoppock stated that he recalls from a prior discussion that this Board has the authority to set
1523 the fee it charges, by its discretion. He asked if that is correct. Mr. Rogers replied in the
1524 affirmative. He continued that just so the Board is aware, as part of the Land Use Code update
1525 that the City is doing, currently there is only one fee that is in the City Code under Appendix B
1526 for the Zoning, and that is to deal with Zoning text changes or Zoning map changes. Under the
1527 new Land Use Code update, it is proposed to pull other fees into Appendix B as well. The Board
1528 absolutely still would have the authority to change their fees; this would add one more step. Mr.
1529 Rogers concluded that the \$62 fee increase is included in the draft changes to Appendix B.

1530
1531 Mr. Hoppock stated that he understands the reasoning and the rationale behind that, but Mr.
1532 Gaudio makes a good point about having a little bit of a cushion. He asked if \$65 per application
1533 turns out to be excessive, and they end up building a reserve, what happens with that unspent
1534 money. Mr. Rogers replied that it would be taken in to the cost center in their budget for these
1535 types of costs. He continued that he does not think they would ever have much of a surplus. As
1536 an example, they currently only have one application for a Special Exception for next month's
1537 meeting. Thus, they will be taking a hit on the overall costs, because this is a cost contributed to
1538 the language for the COVID-19 State of Emergency; they are still going to have to pay that full
1539 cost. Next month they will take a hit, but this month they would have been ahead a little bit
1540 because there were three applicants. The \$62 is an average calculated by Ms. Marcou.

1541

1542 Mr. Hoppock replied that given the increased cost because of the extra COVID-19 lines, are they
1543 running a deficit on this line item for this year. Mr. Rogers replied absolutely, that the deficit is
1544 what drew attention to review this and bring these changes forward, both for the ZBA and the
1545 other regulatory boards who are dealing with the same thing. Mr. Hoppock replied that a \$65 fee
1546 per application could help address the deficit and leave a cushion, maybe. Mr. Rogers replied
1547 maybe is correct.

1548
1549 Ms. Taylor stated that she thinks Ms. Marcou meant to say that the increase from the newspaper
1550 is going to be ten cents per line. She thinks she said that it would increase by \$1.60 per line, so it
1551 actually a ten cent increase. She asked if that is correct. Ms. Marcou replied that the current
1552 charge from the Sentinel is \$1.50 per line, and yes, it would be an increase to \$1.60, a ten-cent
1553 increase. However, regarding the current fee that they collect, the \$25 was based off the 2017
1554 charge from the Sentinel of \$1.35.

1555
1556 Ms. Taylor stated that she would be very concerned about trying to build a cushion, because
1557 unfortunately, she has been involved in this kind of litigation. The State law outlines that a
1558 municipality cannot use fees as a profit center to offset other costs. Fees are to be related to the
1559 actual cost. She is really impressed with the amount of research that has gone into having this
1560 proposed fee of \$62, and as Mr. Rogers said, sometimes you will be ahead and sometimes you
1561 will be behind, and hopefully it all average out so the cost to the customer/public is close to what
1562 the actual cost is.

1563
1564 Chair Gorman stated that he thinks they can all agree that \$25 is too low. He continued that the
1565 \$62 versus \$65 conversation is interesting to him. He recalled the discussion in 2017 with the
1566 legal ad fee increase to the current \$25. Knowing the cost of inflation, he is hesitant to say that
1567 \$62 is a good, fair, reasonable price. He asked if it could be assumed that there is going to be
1568 some general increase. There is a ten-cent increase coming on May 1, but that is also following
1569 up an increase from \$1.35 to \$1.50 since they last looked at this in 2017, and he does not think
1570 they need to be looking at this all the time to raise it a dollar or two. There may be some merit to
1571 just setting it at \$65 and letting it come out in the wash. Maybe they will be hearing whether
1572 they should lower it, if there is a surplus.

1573
1574 Mr. Rogers replied that they would anticipate the overall cost going down a little bit, because as
1575 Ms. Marcou stated, she has already gone through and trimmed some of the excessive lines that
1576 were in the ads, to get the public notice as short as possible. He continued that he anticipates that
1577 the actual costs could go down a bit from the \$62 once the pandemic Emergency Orders are
1578 removed. In addition, just so the Board is aware, these numbers are already in a draft form of an
1579 Ordinance change for Appendix B, so he recommends they move forward with the \$62 figure
1580 and then they can evaluate it once the Emergency Order goes away.

1581
1582 Ms. Taylor stated that she is surprised that it has been almost four years since the fees were
1583 reviewed because many municipalities that she deals with, not necessarily Keene, review their

1584 fees for all their boards on an annual basis. If the Board has to look at this again because
1585 expenses have adjusted, then they look at it again.

1586
1587 Mr. Hoppock made the following motion, seconded by Mr. Gaudio.

1588
1589 On a vote of 5-0, the Zoning Board of Adjustment adopted a fee of \$62 per application effective
1590 May 1, 2021.

1591
1592 **b. Land Use Code Update**

1593
1594 Mr. Rogers stated that Tara Kessler, Senior Planner, has put together a summary of the Land Use
1595 Code updates, but since it is past 10:00 PM, he recommends that they move this discussion to the
1596 May meeting. He continued that the public hearing for the Land Use Code update was held last
1597 week at City Council where four members of the public spoke with three had some critique of
1598 the update but were supportive of it and had some positive feedback for staff. Ms. Kessler has
1599 been the main force behind this, so he gives her the recognition.

1600
1601 Chair Gorman stated that moving this forward to the May agenda sounds like a good idea. He
1602 continued that he knows Ms. Kessler has put a lot of work into this. He asked the Board's
1603 approval. Board members replied in the affirmative.

1604
1605 **VI. Communications and Miscellaneous**

1606
1607 Mr. Hoppock stated that going back to the Board's conversation at the beginning of this meeting,
1608 he proposes a discussion of a rule that says if anyone wants to submit anything into the record,
1609 and they get it to the Board five days before the meeting starts. Ms. Taylor replied that since she
1610 is the one who brought it up, she has some language in mind and she can forward that to Mr.
1611 Rogers and he can circulate to everyone to review.

1612
1613 Mr. Rogers suggested that Board members look at the Rules of Procedure, page 7, I.
1614 Supplemental Information, which states the policy that have been following and followed for this
1615 meeting. *"Any information and/or evidence that is provided after the submittal deadline which*
1616 *the Board determines to be material and necessary may result in a continuation of the public*
1617 *hearing in order to allow the Board an opportunity to review the information and/or evidence*
1618 *and/or to have the City staff, legal counsel, abutters, or other interested persons review and*
1619 *provide input or advice to the Board in regards to such information or evidence."* He continued
1620 that that is the section the Board can make modifications to, if they want. Ms. Taylor replied that
1621 she will send something to Mr. Rogers to circulate to the others.

1622
1623 Mr. Rogers stated that he would not present for the May meeting. Rhett Lamb, Community
1624 Development Director will be in his place.

1625
1626 **VII. Non-public Session (if required)**

1627 **VIII. Adjournment**

1628

1629 There being no further business, Chair Gorman adjourned the meeting at 10:07 PM.

1630

1631 Respectfully submitted by,

1632 Britta Reida, Minute Taker

1633 Edits submitted by,

1634 Corinne Marcou, Clerk

1635 Edits submitted by,

1636 Jane Taylor, Board Member

1 City of Keene
2 New Hampshire

3
4
5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Monday, May 3, 2021**

6:30 PM

Council Chambers

Members Present:

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

Staff Present:

Rhett Lamb, Community Development
Director/Assistant City Manager
Corinne Marcou, Zoning Clerk

9
10
11 Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to
12 Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions
13 of RSA 91-A (which regulates the operation of public body meetings) during the declared
14 COVID-19 State of Emergency. He called the meeting to order at 6:34 PM.
15

16 **I. Introduction of Board Members**

17
18 Roll call was conducted.
19

20 **II. Minutes of the Previous Meeting – None**

21
22 Zoning Clerk Corinne Marcou stated that due to the April meeting being so late in the month, the
23 Minute-Taker was still working on the draft minutes from that meeting when the May agenda
24 packet was sent to the Board; there are no minutes to approve this month.
25

26 **III. Unfinished Business**
27 **Revisions to Zoning Board of Adjustment Regulations, Section II, I-**
28 **Supplemental Information**
29

30 Chair Gorman asked if Staff has anything to address. Rhett Lamb, Community Development
31 Director, noted the agenda item regarding amendments to the Board's Rules of Procedure for the
32 Board's consideration. The existing Rules of Procedure require the Board to have some
33 discussion at a prior meeting, so this is the notice that the regulations are up for discussion
34 though there is not meant to vote to adopt these changes at this meeting.
35

36 Ms. Taylor stated that what was included in the agenda packet is her suggestion based on the

37 discussion at the April meeting. She continued that the Board has been frustrated on more than
38 one occasion regarding being presented with information at the public hearing that they have not
39 seen before. It is unfair to both the Board and the applicants to have the Board look at
40 information cold in the middle of a public hearing. They also had discussed briefly that the
41 portion of the rules is a little vague about how this should be handled. Thus, the submitted
42 proposal and is open to any suggested changes.

43
44 Chair Gorman stated that he proposes that since Zoning Administrator John Rogers is not present
45 at this meeting, it might be better to discuss this next month when he is back, since ultimately it
46 will affect him potentially more so than the Board. He continued that he welcomes any
47 commentary from Mr. Lamb as well. He asked if anyone agrees or disagrees.

48
49 Mr. Hoppock stated that he agrees with tabling this until the next meeting. Mr. Welsh stated that
50 he agrees also. Ms. Taylor stated that she is fine with that; it is a good idea to wait until Mr.
51 Rogers has had a chance to add his comments to the discussion. Mr. Hoppock stated that he
52 agrees. Chair Gorman has tabled this until next month, under “Unfinished Business.”

53

54 **IV. Hearings:**

55

56 **ZBA 21-11: Petitioner, Jaime Dyer of 44 Pierce Lane, Westmoreland,**
57 **requests a Special Exception for property located at 110-120 Main St.,**
58 **owned by R & M Weinreich, LLC of Keene; Tax Map #575-062-000**
59 **that is in the Central Business District. The Petitioner requests a**
60 **Special Exception from Section 102-482, Permitted Uses in the Central**
61 **Business District for a Recreational Activity as a Business.**

62

63 Chair Gorman asked to hear from staff.

64

65 Mr. Lamb stated that this parcel is at the corner of Eagle Ct. and Main St., and is a well-known,
66 important building downtown housing multiple businesses that is in the Central Business
67 District. This application addresses the one site listed on the public hearing notice, 116 Main St.
68 However, there are other businesses located in this building and on this lot. It is important to
69 know that *“The intent of the Central Business District is to be the center or hub of the*
70 *community. The Zone provides commercial, financial, retail, government, and multi-family uses*
71 *oriented primarily towards pedestrian access. A mixture of uses side-by-side and in the same*
72 *structure is to be encouraged.”* He continued that the use requested through the Special
73 Exception process is a recreational activity as a business. The history of the property, which is
74 most likely well known, is that it has been either retail or retail service-type use. The last
75 occupant of this storefront was 365 Cycles, before that, it was a tanning business.

76

77 Ms. Taylor asked Mr. Lamb to explain the parking requirements for the applicant. Mr. Lamb
78 replied that the wonderful simplicity of the Central Business District is that there are no on-site

79 parking requirements.

80

81 Mr. Gaudio asked Mr. Lamb to provide them with information about what kind of a recreational
82 activity the applicant will provide, continuing that the application does not state, though he has
83 heard hearsay from the Keene Sentinel newspaper.

84

85 Mr. Lamb replied that he has not personally been connected to the conversations about the
86 application, but the Sentinel article did represent what is being proposed: a recreational activity
87 as an indoor business with respect to a sporting activity called axe throwing about which the
88 applicant can provide more information. This sport/activity is coming first to Keene through this
89 public hearing process, but it is a popular sporting activity common in other places.

90

91 Chair Gorman asked if there were any further questions for Mr. Lamb. Hearing none, he
92 thanked Mr. Lamb and opened the public hearing. He explained the procedures for participation.
93 He asked to hear from the property owner, Roger Weinreich.

94

95 Roger Weinreich stated that he is before the Board on behalf of Jaime Dyer, the applicant, who
96 was unable to be present due to his working. He continued that he can answer questions about
97 the venue, but will start with a brief history. When 365 Cycles left, he and his wife went looking
98 for a suitable tenant. When they have had vacancies before, they usually received applicants
99 from financial or service businesses. Although those are great tenants, he and his wife look for
100 someone who will draw traffic downtown to help the existing tenants and the whole community
101 be more vibrant. They researched what would be good, and axe-throwing venues came up high
102 on the list before they even met Mr. Dyer. He and his wife visited one such venue in Rhode
103 Island, and became curious about what the demographic is like, wondering if it would just be
104 men. They found that people of all ages go.

105

106 Mr. Weinreich continued that one of the great things about Mr. Dyer's proposal is that he will
107 not have alcohol in the mix, so he will be able to have 6- to 10-year-old children there with their
108 parents. It will be a great family-type activity. He and his wife also wanted to explore the issue
109 of safety. In the venues they visited and every other venue, each axe-throwing lane is designed
110 with an enclosure or cage around it so the axe cannot bounce anywhere or hit anyone. It is not
111 just about axe throwing, it is about teaching how to hit the target with the axe. It is a hands-on
112 activity and people usually stay for about an hour, having to register ahead of time. These places
113 get very busy. He and his wife thought this would be good for the existing tenants, and other
114 surrounding businesses downtown who need more flow of traffic for their dinner and food
115 services.

116

117 Mr. Weinreich continued that he and his wife found that there are four franchises around the

118 country. They spoke with a couple and considered becoming a franchisee as they discovered that
119 there is an international league of tournaments becoming more prevalent. They were on the cusp
120 of opening this business themselves when Jaime Dyer reached out inquiring about the vacant
121 space. It was a fascinating experience, having done the prep work on a prospective tenant, not
122 knowing the intent, which put them as property owners, in a good position to understand the
123 business model.

124
125 Chair Gorman asked if anyone had questions about the venue itself before Mr. Weinreich
126 proceeds with the specifics of the criteria.

127
128 Ms. Taylor asked Mr. Weinreich to orient them to the submitted site plan as to Main St. Mr.
129 Weinreich replied that Mr. Dyer did the sketch, and explained that where it states “main
130 entrance” is Main St. He continued that before the previous tenant of 365 Cycles, the tenant was
131 Beeze Tees. Mr. Dyer plans to remove all of the interior partitions, as it is a long building,
132 approximately 100 feet deep. There will be eight lanes, created in a way that ensures there will
133 not be the sound of axes hitting things against the sidewalls for other tenants. They will build a
134 soundproof wall alongside the Thai Garden side, which is a concrete block wall, to mitigate any
135 sound, but they know there is really no transmission. Part of the idea was to give walk space on
136 each side of the lanes. Mr. Dyer could fit in more lanes, but this is a friendly set up for it.

137
138 Ms. Taylor asked how many people there would be per lane. Mr. Weinreich replied one person
139 per lane throwing at a time, with eight people throwing at once. There could be other people
140 sitting around or standing behind or next to the people throwing with only one person in a lane at
141 a time. Ms. Taylor asked where other friends and family members would be while the person
142 throwing. Mr. Weinreich replied that typically, most designs have a sofa-height table at the
143 back of the lane that two or three people could stand right behind to watch the activity. In
144 visiting some facilities, he saw that people come in small groups and tend to congregate right at
145 the lane, watching from the back. With Mr. Dyer’s plan, people could also watch from the side
146 of the cage, which is different from how it is in other venues. Most venues have the lanes set up
147 almost like a bowling alley. In this case, Mr. Dyer will be giving more space around each lane,
148 not just for egress and passage, although that is one of the ideas, but also for people to view from
149 the side of the lane.

150
151 Ms. Taylor asked if there would be any kind of retail, such as snacks or merchandise. Mr.
152 Weinreich replied in the affirmative that in the front area there will be a receiving booth with a
153 table/counter with an employee greeting and signing in customers. He continued that Mr. Dyer
154 would limit the sales to water and maybe not snacks. Part of the idea is to engage people in the
155 process, knowing that customers can visit other downtown restaurants for food. His merchandise
156 for sale, for the most part, will be T-shirts.

157 Ms. Taylor asked for clarification from the newspaper article stating Mr. Dyer intended to serve
158 alcohol in the future, which is contradictory to what Mr. Weinreich stated. Mr. Weinreich
159 replied that if he said that in the article, his intention is to do that in the future if possible, but if
160 he does not have alcohol, he could run the business just fine. He continued that to begin with,
161 Mr. Dyer would not serve alcohol, per their lease agreement, though that could be revisited in the
162 future.

163
164 Ms. Taylor further asked for clarification on the hours of operation as the news article stated that
165 it would be open couple of days a week. Mr. Weinreich replied that Mr. Dyer will be the
166 business owner and they will have to work this out, but from what he has seen from axe venues
167 around the country, the busiest times are Friday night, Saturday day and night, and Sunday
168 afternoon. Many run until midnight or 1:00 AM. Usually they start in the afternoon. Most rent
169 out the space on weeknights; they often have a non-profit component where they let someone use
170 the space Monday, Tuesday, and Wednesday evening for fundraisers. That is going to be one of
171 the models Mr. Dyer puts into play, but initially, he will start running this Friday, Saturday, and
172 Sundays.

173
174 Mr. Gaudio stated that this is a new sport/experience. He asked if there is any kind of regulatory
175 body or process that would regulate, supervise, and oversee that the lanes are constructed
176 properly and safely, that the operating procedures are safe and people cannot throw axes the
177 wrong way or take axes out the back door. Mr. Weinreich replied that there is not anything like
178 that set up that he is aware of, no national oversight, but there is an international league, which
179 specifies the size lanes for tournaments. In terms of safety, all of the venues they visited adopt
180 the same criteria: they fully encage the lane with walls, ceiling, and wire. They are all
181 substantial, as they do not want anything to penetrate the area. In addition, the person throwing
182 the axe receives one axe at a time. Most venues function with one axe per lane, which means the
183 person throws it then walks down the lane to get it. The axes do not tend to bounce far when
184 they do not hit the target; they fall a foot or two off from the target with each lane typically about
185 12 feet long. He continued that of the venues he has visited, he has not seen any issues. All of
186 the operators they have seen adopt the same criteria, leaning toward the same dimensions as they
187 all want to be chosen as a facility for international tournaments. He and his wife would love Mr.
188 Dyer to do the same and have the possibility of Keene hosting tournaments in the future.
189 Nevertheless, currently, there is no established criteria for oversight of this type of venue. In
190 some instances, people are allowed to bring their own axes, but others prohibit the practice. Mr.
191 Dyer's business would most likely have its own axes to start, but there is merit to people
192 bringing their own, too. Surprisingly, it is a very easy, smooth activity. When he and his wife
193 visited axe venues, they saw a broad demographic, which surprised them, both men and women.

194
195 Mr. Gaudio asked how many supervisors would be on the premises. Mr. Weinreich replied that

196 he does not know what Mr. Dyer has planned, but the venues he and his wife visited had two
197 employees, minimally. He continued that number may be surprising, but the employees train
198 everyone one-to-one before customers can participate alone, with the parameters are so tight that
199 there is not much that can happen. Another part of the model that Mr. Dyer will do is require
200 participants to make reservations, online with a credit card, because the activity is so popular.
201 That means there will not be a line of people waiting to get in the door. The capacity is therefore
202 very controllable.

203

204 Chair Gorman asked if there were any further questions before Mr. Weinreich proceeded with
205 the criteria. Hearing none, he asked Mr. Weinreich to proceed.

206

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

209

210 Mr. Weinreich stated that this is an allowed use in the Central Business District and requires a
211 Special Exception. He continued that other, similar uses have included McCue's Billiards, The
212 Moving Company, and so on and so forth.

213

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

216

217 Mr. Weinreich stated that he and his wife have spoken with many of their business neighbors and
218 fellow property owners, and they understand that the proposed use will be an asset to the
219 downtown community.

220

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

222

223 Mr. Weinreich stated that all activities would be contained within the building in a safe
224 environment.

225

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

228

229 Mr. Weinreich stated that the facilities are all up to date and the condition of the building is
230 excellent.

231

232 Chair Gorman asked if there were any further questions. Hearing none, he thanked Mr.
233 Weinreich and asked if he had anything to add. Mr. Weinreich stated he always invites
234 prospective tenants to vet him as a landlord before they move in or consider a lease, and

235 they also go to the existing tenants in the building and across the street. He continued that
236 he has let nearby business owners know what is happening and the response they have
237 received for the project has been really great.

238
239 Chair Gorman asked if there was any public comment, and explained the procedures for
240 participation. Seeing none, the Chair closed the public hearing and stated that the Board
241 will deliberate.

242
243 1. *The proposed use is similar to one or more of the uses already authorized in that district*
244 *and is in an appropriate location for such use.*

245
246 Mr. Hoppock stated that regarding the examples given in the application, McCue's Billiards has
247 been out of business for about five years, and The Moving Company is more of a school than a
248 recreational activity, similar to the YMCA. He is not sure he can identify any recreational use
249 that has been authorized in this district, from his recollection, and he has been here over 30 years.
250 He continued that his second comment is that it is a deal-breaker for him if alcohol is to be
251 served.

252
253 Chair Gorman asked Mr. Hoppock what his thoughts are on an approval with a condition of no
254 alcohol served, and if this condition would be possible. Mr. Hoppock replied that he is not sure
255 that is in the Board's jurisdiction. There is a State agency devoted to that, and they presumably
256 do effective enforcement. He thinks the mixture of axes and alcohol is potentially deadly.

257
258 Mr. Welsh stated that first, he shares Mr. Hoppock's concern about the alcohol; it does seem like
259 a problematic combination. He continued that with the absence of alcohol, he could see the
260 adventure aspect of this. Regarding other recreational activities, such as karate studios and the
261 YMCA, he sees this business as a recreational activity and there not being many examples, but
262 the alcohol is a source of concern for him.

263
264 Ms. Taylor stated that she raised the question about alcohol due to concerns but is not sure
265 whether it is in the Board's jurisdiction. She agrees that axes and alcohol do not mix well, no
266 matter how much the area is enclosed. She continued that she had similar concerns about similar
267 uses authorized in the district. She does not consider it necessarily a deal-breaker because it is
268 certainly not that far away from the skate park, for example, or the basketball courts further
269 down the Rail Trail. She cannot think of any appropriately similar approved uses, but at the
270 same time, it might be an appropriate location.

271
272 Mr. Gaudio stated that he thinks the alcohol issue is more related to the third criterion and
273 possibly the second criterion than to the first, but he agrees with alcohol being an issue. He

274 continued that the sale of alcohol is not the concern, but the possibility that individuals could
275 bring in alcohol.

276
277 Mr. Hoppock stated that he suggests that the Board make a decision based upon no sale or use of
278 alcohol on the premises. He continued that his reasoning is as follows: the Board is to determine
279 if this application deserves approval in a certain zone that allows for this use with a Special
280 Exception, which is a question of the use. If the use of the property would be towards alcohol
281 consumption and axe throwing, he thinks that is within the Board's purview. The alcohol-
282 licensing group may take a different view and want to grant a license. Granting a license is
283 definitely not this Board's purview though in terms of regulating the use, he believes it is.
284 Whether it falls under the first or third criterion does not concern him too much. He agrees with
285 Mr. Welsh and Ms. Taylor about the uses like karate and the YMCA and is consistent with
286 similar uses, one or more of which have been in that district in the past, or are now. Thus, he
287 does not have any problem with the use, though he does as a safety issue.

288
289 Chair Gorman stated that he does not have a problem with the use in terms of being a
290 recreational activity as activities such as this brings people downtown to participate in which
291 brings vibrancy to other businesses and the whole community. Thus, from that sense he does not
292 take any exception to the axe throwing. He continued that his concern is with the activity mixed
293 with alcohol, but he stated his uncertainty of the Board's purview. His opinion is that if the State
294 is willing to say it is safe, then he is not fit to decide against that. In addition, serving alcohol is
295 an allowed use in that district. He relies on the parties that are responsible for alcohol service to
296 ensure that our community is safe, and from a Zoning perspective, this meets the first criterion in
297 his opinion.

298
299 *2. Such approval would not reduce the value of any property within the district, nor*
300 *otherwise be injurious, obnoxious, or offensive to the neighborhood.*

301
302 Ms. Taylor stated that she does not think there is a property value issue, even though they have
303 not really heard anything about that. She continued that it is a business district and this another
304 type of business. The only way it might be injurious, obnoxious, or offensive may be the alcohol
305 issue. As long as it is completely contained within the building, she does not have a particular
306 issue.

307
308 Mr. Hoppock stated that he wants to state for the record that he thinks the Board can regulate the
309 use of alcohol there if it is going to involve a potentially hazardous activity such as axe throwing.
310 He suggests that the Liquor Commission and State agencies will not concern themselves with
311 what other activities are going on there; they are going to concern themselves with licensing
312 requirements, and the activity there will not fall under that umbrella. Thus, it behooves the

313 Board to pay attention to that. He would not trust agents of the State to try to protect this
314 community's safety and welfare. That is this Board's responsibility.

315

316 Chair Gorman replied in agreement with Mr. Hoppock that the governing body over alcohol
317 probably is not going to look at the underbelly of the use.

318

319 Mr. Gaudio stated that he agrees with Mr. Hoppock. He continued that the Board does have the
320 authority to say this recreational activity is a permitted use as long as no alcohol is served. If the
321 proposition came forward with, as was already said, axe throwing and alcohol, the Board could
322 say deny the request. If it is axe throwing without alcohol, they could say approve the request.
323 He thinks the Board can put the condition on it as a pre-condition of the granting of the Special
324 Exception.

325

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

327

328 Mr. Gaudio stated that this is where the alcohol issue comes in, and this is where there could be
329 additional nuisance or serious hazard, concerning the serving of alcohol. He thinks everything
330 they said before is applicable here.

331

332 Chair Gorman stated that he agrees that this is the criteria where the alcohol drinking and axe
333 throwing could cause some trouble for the application.

334

335 Ms. Taylor stated that she views the third criterion as applying to external to the building. If, as
336 has been represented to the Board, this will be 100% contained within the building, she does not
337 see it creating a nuisance or hazard to vehicles or pedestrians.

338

339 Mr. Hoppock stated that he agrees with Ms. Taylor's interpretation. He continued that he thinks
340 the third criterion is external, and the alcohol problem certainly can fall within the second
341 criterion in the "injurious, obnoxious, or offensive to the neighborhood" clause, and more
342 indirectly within the first criterion. He is more comfortable with that problem under the second
343 criterion than the third. He agrees that the activity itself would be contained in the building and
344 would not present an issue as a nuisance or serious hazard to vehicles or pedestrians on the
345 sidewalk or walking past the business. He does not have an issue with that.

346

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

349

350 Chair Gorman stated that since this is a commercial operation currently, he assumes it already
351 has adequate facilities. He continued that Mr. Lamb pointed out that there are not any

352 requirements for parking.

353

354 Chair Gorman asked if anyone had further comments. Hearing none, he asked for a motion.

355

356 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-11 on the
357 condition that no alcohol be served or brought into the premises, while the recreational activity in
358 question is ongoing. Mr. Gaudio seconded the motion.

359

360 Ms. Taylor stated that Mr. Hoppock added, “as long as the axe-throwing is going on in the
361 building,” and that is hard to distinguish. She continued that she would prefer it just being
362 limited to not used, sold, or brought in without including that limitation.

363

364 Mr. Hoppock replied that he is happy to amend the motion to state; “as long as there is a Special
365 Exception governing the use of this particular recreational activity, no alcohol will be served or
366 brought in.” He asked for conformation. Ms. Taylor replied in the affirmative. Mr. Gaudio
367 seconded the amendment.

368

369 Chair Gorman clarified that the motion is now “to approve ZBA 21-11 on the condition that as
370 long as the Special Exception for axe-throwing is permitted, there will not be alcohol served or
371 brought in.” He asked for a vote.

372

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

375

376 Met with a vote of 5-0.

377

378 2. *Such approval would not reduce the value of any property in the district or be otherwise*
379 *injurious, obnoxious, or offensive to the neighborhood.*

380

381 Met with a vote of 5-0.

382

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

384

385 Met with a vote of 5-0.

386

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

389

390 Met with a vote of 5-0.

391 The motion to approve ZBA 21-11 with the condition passed with a vote of 5-0.

392

393 Mr. Weinreich asked Chair Gorman if he could speak. After conferring with the Board, Chair
394 Gorman approved.

395

396 Mr. Weinreich stated that as of yet, no one knows if alcohol is a problem. He continued that
397 when he did his diligence on this business model, he discovered that on average people would
398 consume one to two beers in their hour of play and then be out of the building. That is not a case
399 for the pros or cons of it, but he just wanted to say that. He is a retired firefighter and does not
400 drink alcohol, so he is happy to not have alcohol at the venue for the moment, but he also knows
401 that dart throwing in bars has not been super hazardous. He does not really know if this is an
402 issue or not, but the Board has addressed it in the proper way, so he appreciates that.

403

404 Mr. Hoppock stated that he appreciates Mr. Weinreich's thoughts. He continued that he knows
405 people do get hurt with darts but that is not what they are talking about right now.

406 **V. New Business:**
407 **Land Use Code Update**

408

409 Chair Gorman asked Mr. Lamb for comments. Mr. Lamb replied that he has a quick update for
410 the Board on the Land Development Code. He continued that this has been a large-scale, multi-
411 year project, to simplify, make more efficient, and include some thoughtful changes into the
412 Zoning and Development standards. The idea came out of the 2010 Comprehensive Master Plan,
413 and throughout the year's staff have been working towards the completion of this Land
414 Development Code. He thinks the Board will find that once they experience this Code the
415 simplicity and the organization and the graphic nature of it will greatly enhance everyone's
416 operation, whether you are building something, seeking a permit for a swimming pool, or
417 seeking a Variance, and whether you are a developer, or staff, or a Board member. They hope to
418 see substantial changes as a result of this reorganized Code and are at the end of the review
419 process. The City Council held a public hearing at the end of April, who referred the updates to
420 the Planning, Licenses, and Development (PLD) Committee, which meets May 12. The PLD
421 Committee's recommendation will then go back to the City Council.

422

423 Mr. Lamb continued that staff would also look at changes to Chapter 46, dealing with congregate
424 care and social service uses, which have been established in this new Code with a licensing
425 process being created through City Council. They are hoping that as they work their way
426 through the end of this process people will be aware of it. Staff wanted to make sure the Zoning
427 Board knew where they are at in the process. If all goes well they will have a PLD Committee
428 recommended approval on May 12 and it will be back in front of the City Council for final
429 adoption on May 20.

430

431 Mr. Lamb continued that staff has established a transition period of several months, when the
432 existing Zoning Code, Planning Board regulations, and other development standards will still be
433 in effect, because the Code, if it is adopted by City Council, will come with an effective date of

434 September 1. That allows a number of things to happen in this large transition, including helping
435 the public understand the new Code and helping staff get up to speed with its new operation. In
436 addition, it gives time to establish the new procedural aspects and put in place with a couple
437 changes to boards and commissions, including the creation of a Site Plan Development
438 Committee, which would oversee smaller developments before or instead of going to the
439 Planning Board. Thus, there is still a lot of work to do, even after the adoption process ends in
440 the month of May.

441

442 Chair Gorman stated that they appreciate the update and stated they know staff have been
443 working hard on this, and they are all looking forward to it. He asked if the Board had any
444 questions.

445

446 Ms. Taylor stated that this takes a tremendous amount of work and she really appreciates all the
447 time that has been put into it. She knows that various licensing and social service aspects have
448 been removed. She tried to read through it and found the permitting section to be extremely
449 complicated. While it is a much-needed area to be addressed, it just seems like it is really
450 complicated.

451

452 Mr. Lamb replied that to some degree this is a compromise in the community. He continued that
453 there is obviously a need for congregate living and social service types of activities in the
454 community, and the advocates have been active participants in creating this opportunity in the
455 City's Code. Staff feels like they are trying to respond to these advocates in a reasonable way.
456 Obviously, they are also sensitive to these uses being included in places where people desire a
457 high quality of life in their neighborhoods. They have been trying to find that balance point
458 between creating opportunity and room within the Code and within Zoning, while also
459 preserving the ongoing oversight by the license process by the Conditional Use process. They do
460 recognize the concern Ms. Taylor raised. There is opportunity in Chapter 46 to make changes in
461 the future if they have overbalanced it in one direction or another.

462

463 Ms. Taylor thanked Mr. Lamb and asked if staff will be providing training for the Board. Mr.
464 Lamb replied in the affirmative that training would be provided during the transition period. He
465 continued that staff would be reaching out to the Board to help them understand the major
466 changes, as the vast majority of the Zoning Ordinance has been re-organized. Most people's
467 experiences through the permitting and Zoning process will not change at all. But there are some
468 pretty substantial changes, especially around Downtown, where there will be six new Zoning
469 districts taking the place of Central Business District and Central Business Limited and the
470 surrounding area. Staff would be happy to get the Board familiar with those changes, and
471 everything else in the Code.

472

473 Chair Gorman asked if there were any further questions or comments. Hearing none, he thanked
474 Mr. Lamb.

475

476 **VI. Communications and Miscellaneous:**

477

478 **VII. Non Public Session: (if required)**

479

480 **VIII. Adjournment:**

481

482 There being no further business, Chair Gorman adjourned the meeting at 7:30 PM.

483

484 Respectfully submitted by,

485 Britta Reida, Minute Taker

486 Edits submitted by,

487 Corinne Marcou, Zoning Clerk