

**Zoning Board of Adjustment
February 6, 2023 6:30 p.m.
City Hall Council Chambers
3 Washington Street, 2nd Floor**

AGENDA

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: December 5, 2022
- III. Unfinished Business:
 - Election of Chair and Vice-Chair
- IV. Hearings:
 - ZBA 32-01:** Petitioner, Christopher Masiello of Nuevo Transfers, LLC of 1 Bedford Farms, Suite 202, Bedford, NH, and represented by Jim Phippard of Briskstone Land Use Consultants, LLC, requests a Variance for two properties each located at 0 Carroll St. and two other separate properties located at 0 Elm St. and 225 Elm St., Tax Map #'s 536-049-000-000-000, 536-050-000-000-000, 536-055-000-000-000 and 536-056-000-000-000. The Petitioner requests a Variance to permit a building containing five dwelling units on a single lot in the Medium Density District where no more than three dwelling units on a single lot may be permitted per Chapter 100, Article 8.3.1.C.2a of the Zoning Regulations.
- V. New Business:
 - Adoption of the 2023 meeting schedule
- VI. Communications and Miscellaneous:
- VII. Non Public Session: (if required) permeant
- VIII. Adjournment:

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1 **City of Keene**
2 **New Hampshire**

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4
5 **ZONING BOARD OF ADJUSTMENT**
6 **MEETING MINUTES**
7

8 **Monday, December 5, 2022**

6:30 PM

Council Chambers
 City Hall

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Richard Clough

Staff Present:

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

Members Not Present:

Michael Welsh

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10
11 **I) Introduction of Board Members**
12

13 Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the
14 meeting. Roll call was conducted. Chair Gorman stated that Michael Welsh is absent, and it is
15 his understanding that all of the applicants have agreed to proceed with a four-member Board.
16 John Rogers, Zoning Administrator, confirmed that is correct.
17

18 **II) Minutes of the Previous Meeting: November 7, 2022**
19

20 Mr. Hoppock requested tabling the meeting minutes of November 7, 2022 because he has not
21 had a chance to review all of instances where the draft minutes say “[inaudible].” Others agreed.
22

23 **III) Unfinished Business**
24

25 Chair Gorman asked staff is there is unfinished business. Mr. Rogers replied no.
26

27 **IV) Hearings**
28

29 **A) ZBA 22-19: Petitioner, Hans Porschitz, requests a Variance for property**
30 **located at 196 South Lincoln St., Tax Map #587-001-000-000-000 that is in the**
31 **Medium Density District and owned by Jennifer Whitehead. The Petitioner requests**
32 **a Variance to permit a structure outside the building setbacks on the side & rear of**

33 **the property, the side setback from 20' – 0' to 14.2' and the rear setback from 15' to**
34 **12' per Chapter 100, Articles 1.3.3.A.3 and 3.5.2 the Zoning Regulations.**
35

36 Chair Gorman asked to hear from staff. Michael Hagan, Plans Examiner, stated that 196 South
37 Lincoln St. was built in 1925 as a single-family residence. He continued that it is on a .11 acre
38 lot, about 4,791 square feet. It is a corner lot, and non-conforming due to lot size and setbacks.
39 There are no Variances on record.
40

41 Mr. Clough asked what the second non-conforming piece was that Mr. Hagan said. Mr. Hagan
42 replied that the rear garage did not meet setback requirements.
43

44 Chair Gorman asked if there were other questions for staff. Hearing none, he asked to hear from
45 the Petitioner.
46

47 Ms. Taylor stated that she has a question about the process. She continued that she wants it to be
48 clear for the record – are they going by the Ordinance as it appeared before the most recent
49 amendments? Because these applications were filed prior to the amendments. What is on the
50 screen says “November 2022” and that would be the updated version. Mr. Hagan replied that
51 there would be no change, regarding the Variance they are requesting.
52

53 Hans Porschitz and Jennifer Whitehead, both of 196 South Lincoln St., introduced themselves.
54 Mr. Porschitz stated that the packet shared has the overview of their request. He continued that
55 the size of the lot is not conforming to the Medium Density District, and the setbacks of the
56 corner lot requirements makes it even harder for a small lot to have anything added to it. They
57 have made upgrades to the property to include electrical systems and would like to add a solar
58 system to the roof to offset the cost and use of the electrical system. With the panels on the
59 south side of the building, there is a danger of snow sliding off the panels in the winter. It is a
60 danger to the access to the building. The door on the Water St. side is primarily used because it
61 is closest to the driveway and the garage. They want to protect that area. The awning structure
62 that was considered is not feasible structurally for the requirements, and there is a need to expand
63 into a porch structure to support it. Those porch posts and the resurface would encroach into the
64 setback beyond what the current Land Development Code (LDC) allows. Therefore, they
65 request a Variance to place that structure in that area.
66

67 Ms. Taylor asked Mr. Porschitz to clarify what they are asking for, because some references are
68 to a “porch” and other references are to the “supported extension of an awning.” She continued
69 that porches have floors and could potentially be used as living space. She asked if their
70 intention is a porch just for cover prevention of snow slide, or a porch to use as extended living
71 space. Mr. Porschitz replied that they do not intend the porch to be enclosed; it is just a
72 protection for people walking by the building.
73

74 Mr. Rogers stated that on page 5, figure 8 is a rendition of what is being proposed, and that might
75 answer Ms. Taylor's question. Ms. Taylor replied that she was seeking clarity on the proposed
76 use, not the actual structure.

77
78 Mr. Hoppock asked if it is correct that only the roof of the porch/awning will extend into the
79 setback. Mr. Porschitz replied the roof and the posts supporting it. Mr. Hoppock replied that he
80 sees that on page 5.

81
82 Chair Gorman replied that he sees it on page 4 and 5 as well and asked what the size is proposed.
83 Mr. Porschitz replied 7x18 feet overall. Chair Gorman asked what Mr. Porschitz's explanation is
84 for not making it a bit smaller. He asked if they would be able to comply with the setback
85 requirements if it were, say, four feet. Mr. Porschitz replied that it would be more conforming.
86 He continued that the building itself, as shown on the plot plan, is already on that side outside the
87 setback requirements. Chair Gorman replied that he realizes they cannot make it completely
88 conforming, but it would be less non-conforming if it could be smaller. He asked why it needs to be
89 seven feet and whether that is just aesthetics or preference. Mr. Porschitz replied aesthetics.

90
91 Ms. Whitehead stated that it (being seven feet) would also support the additional solar panels.
92 She continued that it would also look more like a porch, which fits with the other homes in the
93 neighborhood. Theirs is the only house that does not have a porch aesthetic, so this would help it
94 conform with the neighborhood.

95
96 Chair Gorman asked if the Board had any more questions. Hearing none, he asked if the
97 Petitioners wanted to go through the five criteria, or if they feel this is a rather straightforward
98 request to build this structure in the setback to accomplish snow movement away from the entry,
99 support some solar panels, and fit in aesthetically. He asked if that is the basis of their request.
100 Mr. Porschitz replied yes.

101
102 Ms. Taylor stated that she tends to get confused about what is the "side" and what is the "rear" of
103 a corner lot. She continued that she thinks of them as having two sides and two rears, as opposed
104 to having a front. Mr. Rogers replied that the Zoning Code looks at the front as being the
105 narrowest portion, which is the South Lincoln St. side on this property. He continued that the
106 side setback in this district is 10 feet, but since this is a corner lot, a section of the Zoning Code
107 requires an additional 10 feet added to whatever the side setback is. One reason for that is
108 visibility. If this were to be an open structure, it would not necessarily create that hazard.

109
110 Ms. Taylor asked if it is correct that the side setback is 74'3". Mr. Rogers replied yes. Ms.
111 Taylor asked if it is correct that the rear setback would be the one that says 65 feet. Mr. Rogers
112 replied yes. Ms. Taylor asked if the corner of the house is within the 15 feet of that. Mr. Rogers
113 replied that he would have to look, but the Applicant provided a plot plan showing the setbacks.
114 The southwest corner of the building might be within that setback. He continued that it looks
115 like the front corner of the building is 14'7". Regarding the rear setback, part of the building is

116 at 10'9". This addition will not go quite as close as that corner of the house; it looks like the
117 Petitioner is asking for 12 feet.

118
119 Chair Gorman asked if there were any more questions from the Board. Hearing none, he asked if
120 the Petitioners had anything else to add. Hearing none, he asked if members of the public
121 wanted to speak in favor of or in opposition to this application. Hearing none, he closed the
122 public hearing and asked for a motion.

123
124 Mr. Hoppock made a motion to approve ZBA 22-19 without condition.

125
126 Chair Gorman asked if the Board wanted to contemplate the condition that the porch structure
127 remain open. Mr. Hoppock replied that the Applicant said it would not be enclosed. Mr. Rogers
128 replied that if the Board's desire is to make sure it remains unenclosed, he recommends that be a
129 condition. He continued that if that condition is not included in the motion, there is nothing to
130 preclude the homeowner from enclosing the space.

131
132 Ms. Taylor stated that she thinks it is a good suggestion for a condition. Mr. Clough stated that it
133 does not appear that the corner affects the sightline very much, because the corner of the actual
134 building juts out so much and the structure will not go down the full length of the building. He
135 continued that probably his biggest issue was the ability to enclose the structure, because that
136 becomes a different type of space, but he does not see it as a sightline issue and does not think
137 that (not enclosing it) needs to be a requirement.

138
139 Ms. Taylor stated that she agrees with Mr. Clough's assessment, and that was the reason for her
140 questions at the beginning about what kind of structure it was, because even if the current owners
141 do not plan to enclose it, subsequent owners could. Subsequent owners could make it a
142 screened-in porch. Thus, she thinks it would be wise for the Board to condition approval upon it
143 not being enclosed.

144
145 Chair Gorman re-opened the public hearing and asked the Applicants if they wish to proceed
146 with this as a stipulation, or if they want to speak more about why they do not think the
147 stipulation should be put into place. Mr. Porschitz replied that the use that they have intended
148 for this structure is an open space. He continued that they have no plans to enclose it but he
149 cannot speak to the intentions of future owners. Chair Gorman asked if he wants to make any
150 statement in support of the ability to close it off. Mr. Porschitz replied that it is fine either way
151 the Board wants to do it. He continued that the corner of the building already has an enclosed
152 porch, so any future owner would probably use that instead of enclosing this (proposed) space.

153
154 Mr. Rogers stated that to Mr. Clough's point, the current front of the house is 14'7" from the
155 property line next to the intersection, and this new addition's front will be 14'2". Thus, this
156 roofline will be five inches closer in the front corner. That very well could give the idea if there
157 was any sort of obstruction created by this, whether enclosed or unenclosed.

Chair Gorman stated that he is fine proceeding without the condition. Ms. Taylor replied that a Variance runs with the land and regardless of the intentions of the current owners, others might think this is a perfect site to have an enclosed area. Chair Gorman asked if she thinks it would impact line of sight. Ms. Taylor replied that she is not concerned about the line of sight, but approving something that is going to be an overhang meant to protect people from falling snow is very different from the future potential for additional living space.

Mr. Hoppock withdrew his motion.

Mr. Hoppock made a motion to approve ZBA 22-19 subject to condition that the porch structure not be enclosed in any fashion. Ms. Taylor seconded the motion.

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

Mr. Clough stated that since the Board is including the condition, the two things they are concerned with - line of sight and whether it would be utilized as another living space - would be addressed. He continued that there would not be an issue with it.

Mr. Hoppock stated that he does not see the proposed use in the application as any way risking an increase of density in the area, and it will not encroach on/block the light or air in the neighborhood. He does not see those two factors being in play. The Applicants' purpose of the structure is a good one, with solar panels. He does not see any Zoning issue with that.

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

Ms. Taylor stated that she thinks it would be observed, continuing that it is not an additional living space, so it does not impact issues that the Board frequently discusses about density. In addition, she thinks there is a safety issue for the homeowners and visitors. Chair Gorman agreed.

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

Chair Gorman stated that the benefit to the property owner clearly outweighs any potential injury to the public. He continued that he does not see any potential injury to the public, but he does see gain for the public through the usage of solar panels, updating and upgrading the building, at a point where we are trying to have more sustainable energy initiatives. He sees benefit to both the public and the Applicant.

Mr. Hoppock stated that the flipside is that the loss to the individual if it were denied would not be significantly outweighed by any public gain. He thinks the third criterion is met.

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

Mr. Hoppock stated that he sees no impact whatsoever on the values of surrounding properties. Chair Gorman agreed. He continued that if anything, this might raise the value of surrounding properties. Mr. Clough agreed.

5. *Unnecessary Hardship*

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

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

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

Mr. Hoppock stated that keeping in mind the lot size and the configuration of the home on it, and the purpose of the setbacks – reduced density, improvement of sightline distances, maintaining light and air – none of those factors apply to or justify the restrictions of the setbacks in this case. Regarding this application, they are not trying to prevent any of those dangers. He continued that by virtue of the configuration of the limited area the Applicants are proposing, he thinks those are special conditions. The Applicant does identify some of those in the application – the location of the driveway, the allowable building area, the fact that it is a corner lot, and the way the home is placed on the lot. He thinks all of those are special conditions, and they make the application of this Ordinance unfair to this lot, under this proposal.

Ms. Taylor stated that she echoes what Mr. Hoppock said. She continued that she drove around this neighborhood and saw some larger lots and some smaller lots, but this particular one is unique in its setting because of the corner lot and the placement of the house. One of the interesting things about this is that on the sideline, the corner of the extended roof is actually going to be less of an encroachment than part of the house. She does not feel that the ability to put solar panels on adds to the hardship. Putting solar panels on may be a great personal preference, but it is a personal preference. Other than that, she does think that the lot creates a hardship and a safety issue.

Chair Gorman stated that he agrees, and would add that the proposed use is reasonable, for many reasons just explained for 5. A) i.

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

Granted with a vote of 4-0.

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

Granted with a vote of 4-0.

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

244 Granted with a vote of 4-0.

245
246 4. *If the Variance were granted, the values of the surrounding properties would not be*
247 *diminished.*

248
249 Granted with a vote of 4-0.

250
251 5. *Unnecessary Hardship*

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

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

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

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

263
264 Granted with a vote of 4-0.

265
266 The motion to approve ZBA 22-19 with the condition passed with a vote of 4-0.

267
268 **B) ZBA 22-20: Petitioner, Hilary Harris, requests a Variance for property**
269 **located at 365 Main St., Tax Map #112-038-000-000-000 that is in the Low Density**
270 **District. The Petitioner requests a Variance to permit a one additional dwelling unit**
271 **in an existing barn totaling three units on the property, per Chapter 100, Article**
272 **3.3.5 of the Zoning Regulations.**

273
274 Chair Gorman asked to hear from staff.

275
276 Mr. Hagan stated that 365 Main St. was built in 1880 and is in the Low Density District. It
277 currently is a two-family house, which is a non-conforming use for the District. The proposed
278 area is 720 square feet. The lot size is approximately one acre, which is approximately 43,560
279 square feet. There are no Variances on record for this property.

280
281 Ms. Taylor asked if it is correct that if it were already a non-conforming use, adding a third
282 dwelling unit would make it more non-conforming. Mr. Hagan replied that is correct.

283
284 Chair Gorman asked to hear from the Petitioner.

Hilary Harris stated that she owns and lives at 365 Main St. She continued that she is a local architect and the Board probably recognizes her from the 310 Marlboro St. project, which is her primary job – she returned to the area to work on that project. When she decided to take on that job, she needed a place to live, and started looking for a property. Being an architect, she was interested in finding a property that was in need of TLC, because she likes projects. She came across 365 Main St., which was a duplex, and had been formerly managed as student housing. There had been eight unrelated female students there for the past few years as it has been student housing for quite some time. There was a lot of deferred maintenance, and squirrels living in the attic. She hit the ground running, got a building permit, and started doing improvements on the property. She was able to rent the upstairs unit relatively quickly, now occupied by Keene’s Postmaster and his family. The lower unit was in need of more work and that is where she resides with three construction workers. The units are identical, but the upper unit was in better shape. They both have four bedrooms and one bathroom with the bath in the lower unit being extremely small. Part of the building permit she got was to add another bathroom toward the back of the building where there is a more private bedroom, which is where she lives. That is not the focus of this Variance request; she just wanted to give a bit of background about the property.

Ms. Harris continued that the focus of this Variance request is the beautiful barn shown in the slides. It has been moved three times since this property was built in 1910. It is an authentic timber frame, which she has a great interest in as she used to work at Benson Woodworking. This is a beautiful building in great condition, and is famous/infamous in the city. A neighbor gave her a “365 the Raging Barn” T-shirt since the property is known as the “raging barn” of Keene State College (KSC). When she bought the property it had a bar in it, and she hears there were many parties there, that was contrary to the public interest with neighbors stating it was disruptive on many occasions. Her intention is for it to not be the party barn anymore and the bar has been ripped out already.

Ms. Harris continued that regarding this building’s future, she does not want it to be “the party barn,” nor does she want it to continue to house squirrels. She continued that it could remain as is, as cold storage since there is not much else to do with this barn. Her proposal is to build an apartment in the barn, which she would live in. She showed a picture of the property as seen from KSC’s campus. She continued that the picture gives a sense of scale of the surrounding area. The large building shown on the left is KSC’s Pondside dorm, which abuts the backside of this property. It is also in the Low Density District and houses 154 students. Her property is dwarfed by this dorm, which is right next door. Other properties nearby include 351 Main St., a sorority house that houses 13 people, and another large dormitory which she believes has 11 different communities within it. A KSC parking lot is also adjacent to the property.

Ms. Harris continued that her property is on Main St., which is a very busy street. The speed limit is 25 mph but not many people drive that (slow). There is on-street parking, so it is a very wide street and is the gateway to Keene. She is sensitive to that, and believes that this property can be upgraded and can give a facelift to the neighborhood as you enter Keene. In another

slide, you can see that many of the abutters of this property are actually KSC. The next slide zooms into that area, and she wants to highlight all the non-conforming properties in this immediate area. One of her points is that while she is in the Low Density District, she is surrounded by high intensity or non-conforming uses. On this part of Main St., her property is a full acre. Only one other property on Main St. is one acre – the one across the street, which is conforming. The rest are significantly smaller.

Ms. Harris showed another image of the property, looking to the south. She continued that the point is to show the expanse of the property and its green space, which she has no intention of building on the green space, focusing only on the barn. There will be a slight increase in impervious area. The proposed barn renderings show a shed roof on the east side with a screen, because currently there is no way to screen the trash on the property and she would like to put a little bit of impervious surface there for the trash and screen it. On the other side is where she would like to put the entrance to the barn. A deck would protect the entrance and there would be impervious surface, like a sidewalk, going to the entrance. However, because the property is so large, the amount of impervious surface that will be added is negligible. The property feels very exposed, and the neighbors to the south do not have any privacy. She would like to put some landscaping in between the properties to respect that privacy and make it a little nicer.

Ms. Harris continued that she believes that if she were granted the Variance to build this apartment, it would foster better stewardship of the property than what has been happening, and it would lend itself far more to having an owner-occupied unit, as opposed to it just being rented to students. Her intention is to make this a high performance, net zero project. That is her line of work and her passion, and she believes we need to be building buildings like this. This existing building is being underutilized, in a walkable community, and it would be a great addition to Keene and is in line with the City's sustainable energy goals.

Mr. Hoppock asked if it is correct that there are two living units in the main house. Ms. Harris replied yes. Mr. Hoppock asked what the square footage is for those. Ms. Harris replied that the total square footage of that living space is 3,396, divided by two. Mr. Hoppock asked if her proposal is to add one unit to the barn. Ms. Harris replied yes.

Mr. Hoppock stated that other than the lot size and the comparison Ms. Harris is making to the neighborhood properties, he is unclear whether there are any other special conditions of Ms. Harris's property that she wanted to point out. Ms. Harris replied that other special conditions are that almost 50% of the property abuts KSC, and 12% is on Main St., which is a very busy street; and it has a barn that, in its present state, is essentially only usable for cold storage. It is essentially an overbuilt garage that cannot be used to its full potential. It is being neglected and it is not in the public interest for it to be in the state that it is in. The hardship is that there is this building that needs something to happen to it, whether it be taken down or turned into a party barn or something else. She thinks the best use of it would be to put an apartment in there. The property is significantly larger than the majority of the properties in the area. It is four times the size of a property she would need for a single-family dwelling. Even if she were to add this

(apartment), she still has excessive amount of property for the amount of dwellings that are proposed.

Mr. Hoppock asked what the parking capacity is. Ms. Harris replied that currently, you can get about eight cars in there, stating that it is on the site plan. You can fit about six cars in front of the barn and two or three cars in the overflow parking area. She has heard that there were 14 cars parked there before, but she is sure that was not legal. She would be happy to delineate the parking more formally, if this Variance were granted, if they wanted her to put stripes there. Chair Gorman replied that he thinks the Code Department would handle that. He continued that she would be required to have at least six parking spaces. He asked Mr. Rogers if that is correct. Mr. Rogers replied yes. He continued that if the barn were to still have a garage, the spaces in the garage would count as well. Ms. Harris replied that there are three spaces in the garage.

Chair Gorman asked staff if the existing use is conforming. Mr. Rogers replied no, it is a legal non-conforming use. He continued that City records indicate it being a two-unit for as far back as their records go. It is a pre-existing non-conforming use.

Chair Gorman asked if there were any further questions from the Board. Hearing none, he asked for public comment.

Andrew Oram of 390 Main St. stated that a generally accepted adage is “actions speak louder than words,” and there are three actions involved with Ms. Harris buying this property that have been significant to him. First, he and his wife have not been woken up by loud parties since Ms. Harris took it over. Second, the fact that she lives there changes the character of the property to conform more to its long-term Low Density definition, because that was a relatively peaceful neighborhood and the house in question had become problematic from time to time due to noise. (Homeowners) are disinclined to live like that. They may rent to people to live like that, but they do not want to live with them, so the fact that the owner is on the property is significant to him and it represents her investment in the neighborhood. Third, he appreciates the degree to which Ms. Harris reached out to him and his wife and the neighborhood. He was given a grand tour of the property and shown the materials. Ms. Harris clearly has the experience and skills to do a good job with the barn. Now, while the barn is not substantially deteriorated, it is certainly showing wear. He can tell from the work Ms. Harris is done that she cares about the work. She is talking about building a space that she would live in, and probably a subsequent owner would as well. He thinks that establishes a better chance of the building being owner-occupied, which means that the tenor of the building will be more in line with how the neighborhood traditionally has been.

Mr. Oram continued that regarding the five criteria in the application, he understands that the Board’s job is not in any way to change Zoning, but he observes, as someone who lives in the middle of this neighborhood, that between Rt. 101 and the Applicant’s house, there are more non-conforming structures than conforming ones. Perhaps the designation for the neighborhood is out of date. That makes it difficult for properties when they change hands. It is difficult to

415 afford a single-family home on Main St. and keep it up; they are all houses that require a lot of
416 maintenance. Stuff gets pushed into a Variance, and if over 50% of that section (of properties)
417 have Variances, to him that calls into question the designation (of Zoning). That is particularly
418 true, as Ms. Harris pointed out, in comparing to what is going on at KSC. He understands that is
419 off the books; however, Ms. Harris's property is 100 yards from a building that has more people
420 in it than live in all of the structures of Ms. Harris's side of the street between there and Rt. 101.
421 Thus, one has to ask – when we look at being fair to someone using a property in that area, how
422 is (her property) non-conforming? (Her property) is actually more conforming than most of the
423 structures around it. Further, the house two below (from Ms. Harris') has almost the same
424 situation, though those (homeowners) do not have multiple living quarters in their house, they do
425 have one in the barn behind, which is essentially what Ms. Harris is asking to do. To him it
426 would feel unfair if she were not able to do that, given such close comparison. For all of those
427 reasons, he support's Ms. Harris's application and hopes the Board gives her the Variance.

428
429 Chair Gorman asked if there was anyone else from the public wishing to speak. Hearing none,
430 he closed the public hearing and asked the Board for a motion.

431
432 Mr. Hoppock made a motion to approve ZBA 22-20. He continued that he cannot think of a
433 condition, but could be persuaded if other Board members had one.

434
435 Chair Gorman replied that what comes to his mind is that the premise of this application was
436 based on the owner element of it, and Mr. Oram's commentary added to that. He continued that
437 of course the concern is that they could end up with 12 bedrooms right next to a college. The
438 Applicant's intent is clearly great, and if the situation stays that way there is no harm there, but if
439 the building turns into a three-unit with college students, there is nothing to prevent that from
440 happening. He does not know if an owner occupant stipulation could or would be entertained.

441
442 Ms. Taylor replied that it would be difficult to support that as a condition. She continued that the
443 Board cannot really say who lives where. They have to address the use of the property, not the
444 people.

445
446 Ms. Harris asked to speak. Chair Gorman opened the public hearing. Ms. Harris stated that she
447 does not think there would be 12 occupants, because the barn will just have a one-bedroom
448 apartment. Chair Gorman replied that he understands that, but it is a unit, and if a (future)
449 property owner were to take it over as a college rental, s/he would not be renting it as a one-
450 bedroom. Ms. Harris replied that the amount of investment she is putting into this would mean
451 such that she hopes that no one who bought this property would turn around and rent it to
452 students, but no one knows what people will do.

453
454 Chair Gorman closed the public hearing.

455
456 Chair Gorman stated that he is inclined to agree with what Ms. Taylor said, but it was just a
457 thought, because that is the one underlying potential issue down the road.

Mr. Rogers stated that if the Board were so inclined, Section 8.4.2 of the Zoning Code, which speaks to Accessory Dwelling Units (ADUs), has some regulation about owner occupancy. There is a whole structure in place as the property needs to be deeded as such. There is a condition that goes somewhat down the path the Board is talking about, if they were so inclined to apply that. He agrees that it could be quite difficult to enforce at times. He just wanted the Board to be aware that the Zoning Code does have some stipulation in a similar setting where owner occupancy is required.

Chair Gorman stated that he realizes it would be difficult in terms of scope of enforcement, and hopefully it would not need to be enforced, but it would at least give City staff the opportunity to have some scope of enforcement. If it became a problem house 20 or 30 years from now, staff would at least have a leg to stand on, whereas currently they would not. Mr. Rogers replied that is correct. Chair Gorman asked if ADU's need to be attached. Mr. Rogers replied that this (structure in question) would not be considered an ADU in any sort of way; he is just putting forth that there is some language that they could incorporate into a condition that this be owner occupied, if the Board desired to do that.

Ms. Taylor stated that to consider this an ADU would be a whole different ballgame, and it is not in the application before the Board. She continued that she does not necessarily think they should include that as a condition. Chair Gorman asked if it is her stance that the Applicant would have to meet the requirements for an ADU and come before the Board under that premise, or the Planning Board. Ms. Taylor replied that she thinks it would be the Planning Board.

Mr. Hagan stated that this property would not be able to have an ADU, because it is already non-conforming. He continued that any single-family home is allowed to have an ADU as long as it meets the criteria in that section. Regarding applying these requirements, he thinks what Mr. Rogers was trying to do was to show the Board that Zoning does regulate owner occupancy in buildings, not in this particular one, but in an ADU use. Thus, if the Board needed language to go along with that, there is already set criteria for owner occupancy.

Ms. Taylor stated that she disagrees with that analysis, because ADU's are a creature of stable that, as opposed to the Board making some sort of condition that it be owner occupied as part of a Variance, which is a whole different ballgame.

Chair Gorman stated that Mr. Hoppock's motion is on the floor. Mr. Clough seconded the motion.

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

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

Mr. Hoppock stated that as he sees this, there are two living units in the main house, with one more being added to the barn; it is a one-acre lot, one of the larger lots in this Low Density

District and therefore in a high intensity use, which is the background. He continued that he does not see this proposed use being contrary to the public interest. The design plans do not factor into his analysis of that.

Mr. Hoppock stated that, in viewing the first two criteria together, he does not see this use as contributing, causing, or in any way impacting the essential character of the neighborhood in terms of public health, safety, or welfare. He thinks that is an important part of the spirit of the Ordinance question, and the Supreme Court says they can look at those together.

Ms. Taylor stated that she thinks it is a close call. She continued that regarding the first criterion, they have been talking for a long time about how it is in the public interest to have more residential units. The second criteria is more difficult, and she does not think this meets the spirit of the Ordinance. The Ordinance is clearly low density, and if the Ordinance needs to be changed, that is beyond the Board's scope. She continued that the property is already non-conforming. If the Board were to look at this solely as an expansion of a non-conforming use, as opposed to a Variance, they would not allow it because it would so change the footprint of the non-conforming use that it would totally be beyond what the scope would be. Thus, while she thinks it may be a close call regarding whether it is in the public interest, she definitely thinks it is not within the spirit of the Ordinance. Maybe the Ordinance needs to be changed.

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

Chair Gorman stated that he thinks there is some injustice to the property owner, without being afforded a reasonable use of the structure. He continued that having a big structure that you effectively cannot use causes the property owner some degree of harm, and he does not think it being developed hurts the public. His only real hang-up on this is the worst case potential. The project is great, probably does substantial justice, and appears to be in the spirit of the Ordinance based on the size of the lot and the intent of preventing overcrowding. It is not contrary to the public interest to have this structure in need of repair get some life put into it and used reasonably. These are all good things. It is just the potential worst-case scenario that he is struggling with.

Mr. Hoppock stated that when he looks at issues of parking and traffic, he does not see the proposed use at all harming the public. He continued that he does not think there will be a density issue, nor an overcrowding issue as there will not be too many cars. What could happen years from now, regarding the noise from the college, he does not know; that piece is open. There are enforcement mechanisms available, and he thinks denying the Variance would create more harm to the property owner than it would result in gain to the public. This is a close call for him, but he leans on the side of the property owner on this criterion.

Chair Gorman stated that his discomforts could be eased significantly if the Board put a bedroom limit on this unit. Ms. Taylor asked how many bedrooms are in the house. Chair Gorman replied eight. Ms. Taylor replied that nine bedrooms is still a lot. Chair Gorman replied yes, but

it is not as many as twelve. He continued that a two-bedroom, well-renovated barn would probably end up, just by virtue of what it is, limiting the likelihood of it becoming a college rental, as the Applicant alluded to. As opposed to (not adding a condition) and having it end up ten years from now being a four-bedroom college barn. Mr. Hoppock replied or having one bedroom with four people in it. Ms. Taylor replied that she does not think it makes a difference. If some future owner wants to make it into college housing, they are going to do it, whether it is a one-bedroom or two-bedroom barn. They will still have eight bedrooms in the house, so they will put sixteen students in the house and four in the barn. Chair Gorman replied that there is a Zoning Ordinance relative to that, which City officials enforce. He continued that if the Board (does not condition this Variance) in the beginning, they cannot ask City staff to (do anything). The Board cannot just say, "We shouldn't do anything because it's not enforceable." The effort can still be there, and the intent. Down the road, it would give staff something to stand on, if they visit the house and see that it is overcrowded or being used as a four-bedroom as opposed to the two that the Variance allowed.

Mr. Hoppock asked if they should ask the homeowner about that. Chair Gorman replied that he will open the public hearing and asked Ms. Harris what her stance would be regarding limiting the number of bedrooms in the barn, as a condition to this Variance. Ms. Harris replied that she would be fine with that. She continued that as she said, her intention is to live in it. She does not have any control over what happens to it if the property were ever sold. Her only assurance is that maybe if she makes it nice enough, maybe it could be faculty housing.

Mr. Clough stated that he agrees that having some sort of teeth in it, even if they are small, is better than none at all. He continued that that is the only thing the Board has that would be available to restrict anything in the future, thus, he agrees with it.

Mr. Hoppock asked if Mr. Clough would agree to withdraw his second on the motion so Mr. Hoppock could withdraw the motion and start anew. Mr. Clough agreed and withdrew his second. Mr. Hoppock withdrew his motion.

Chair Gorman stated that the public hearing is closed.

Mr. Hoppock made a motion to approve ZBA 22-20 on the condition that only one bedroom is permitted in the unit that the applicant proposes to add. Mr. Clough seconded the motion.

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

Chair Gorman stated that he does not think the values of surrounding properties would be diminished in any way. He continued that he thinks this will add to the value of the entire street. It is a great project. He feels bad about his hang-up about the potential ramifications down the road, because he thinks this is a great project for the community, for property values, and so on and so forth.

Ms. Taylor stated that she agrees. She continued that she thinks this will increase the value of the property in question as well as those of surrounding properties.

5. *Unnecessary Hardship*

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

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

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

Ms. Taylor stated that this is difficult for her in answering what is the special condition of the property. Is it the fact that it is an acre, in an area where there are no other 1-acre properties and is that offset by the fact that they are basically being asked to expand a non-conforming use already? She has mixed feelings as she does not think it is an issue, necessarily, from what the Board has heard, the financial plight of the owner. It is not that the property is not going to be used if nothing is done. Whether the barn needs renovating or not, she is not sure that by itself creates the hardship.

Chair Gorman stated that his opinion is that size is a special condition, yes, but that is a much smaller one than the other ones that weigh on him. He continued that the big one is having all the college dormitories behind it. That is different from many other properties. It alters whether or not that is likely to be a single-family home. The college was nowhere near (what it is today) when the home was constructed. Having an old, timber frame barn is nice, but the Applicant does not have horses, she has a car. Just through time, the hardship becomes figuring out what to do with the barn. Finding a good repurpose for it is applicable here. The barn being there is a hardship, and he thinks the house and barn being a victim of change through generations now finds itself needing to be repurposed.

Mr. Hoppock stated that the barn could be considered a special condition of the land. He is not sure any other property has a barn like this on it, so Chair Gorman's great observation helps him, as he was focusing more on the lot size and location.

Mr. Clough stated that the house was built 29 years before KSC was created, before the concept of KSC was even on the horizon. He continued that as has been stated, the area around the property has changed significantly, whereas the property has remained the same. At some point, adaptability has to play a part in this. He sees it in that respect, too – it would be an improvement for this sort of work to be done on the barn.

Mr. Hoppock stated that the only thing he would add is that the general purpose of the Ordinance is to regulate density and to make sure that lots are not overpopulated. In light of location, the structure, the size of the lot, and the limitation on the bedrooms, the risk of overpopulating this lot is minimal. He continued that therefore, he would say that the overall purpose of the

Ordinance does not have a specific application to this property, which creates an unnecessary hardship.

Ms. Taylor stated that her only concern with that line of thought is that because of its size and the amount of frontage, the lot has potential for subdivision. She continued that that is not an issue before the Board. Mr. Rogers replied that he and the Applicant looked at that, and this property would require a Variance to be subdivided. There is not enough frontage to create two lots, and the location of the house on the lot is a little wonky. This would require a Variance to be subdivided. Ms. Taylor replied that she did not know if the back of it was too close to the pond and if it would create a water issue. Mr. Rogers replied no, there is not enough frontage on Main St. to subdivide. He continued that there certainly is enough square footage, but not enough frontage, unless there was a Variance.

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

Granted with a vote of 4-0.

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

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

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

Granted with a vote of 4-0.

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

Granted with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

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

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

The motion to approve ZBA 22-20 with the condition passed with a vote of 3-1. Ms. Taylor was opposed.

673 **C) ZBA 22-21: Petitioner, Timothy St. Pierre of B.U.R. Construction, LLC of**
674 **940 John Stark Hwy, Newport, NH, requests a Variance for property located at 363**
675 **Pearl St., Tax Map #593-004-000-000-000 and owned by Adam Wright. The**
676 **Petitioner requests a Variance to permit the temporary use of a vacant lot for**
677 **staging of an adjacent construction project per Chapter 100, Article 3.3 of the**
678 **Zoning Regulations.**

679
680 Chair Gorman asked to hear from staff.

681
682 Mr. Hagan stated that 363 Pearl St. is currently a vacant lot. He continued that there are many
683 (potential) uses for it but it currently is unused. It is a .6-acre lot, about 26,136 square feet.
684 There are currently no Variances on file.

685
686 Ms. Taylor asked if this has frontage on Winchester St. Mr. Hagan replied no.

687
688 Mr. Hagan stated that one more thing to add is that the proposed use of “outdoor storage yard” is
689 allowed in the Commerce District and the Commerce Limited District.

690
691 Ms. Taylor asked where the Zoning line is that runs along Winchester St. Mr. Hagan replied that
692 the property directly south, in the image, the building to the vacant lot, is located in the
693 Commerce Zone. The rectangular building is another apartment building. There are two
694 apartment buildings to the right, and just below that is the McDonald’s Restaurant. Thus, there
695 is one buffer lot in between the Commerce Zone.

696
697 Chair Gorman asked if there were further questions for staff. Hearing none, he asked to hear
698 from the Applicant.

699
700 Tim St. Pierre, owner of B.U.R. Construction, stated that he is not sure if the Board is familiar
701 with the construction project that B.U.R. Construction is undertaking in town. He continued that
702 they are contracted to build two new roundabouts, one at the Key Rd./Riverside Plaza
703 intersection, and one at the Island St. intersection. They are removing a temporary bridge that
704 has been there for approximately 45 years, and simultaneously upgrading water infrastructure,
705 sewer infrastructure, and significant drainage work. It is a two-year, phased project, and it is an
706 incredibly intensive use that B.U.R. Construction is here to perform.

707
708 Mr. St. Pierre continued that one challenge of construction projects is the staging of construction
709 materials. This is his 30th year owning a construction company, having done work all up and
710 down the I-91 corridor, on both sides of the river, mostly for the NH Department of
711 Transportation (NHDOT) and Vermont Agency of Transportation. They work with
712 municipalities in both states as well, including the City of Keene; having done about \$13 million
713 worth of infrastructure in Keene. Never before has this use been determined to require a
714 Variance. This is something new for B.U.R. Construction, and from his understanding,

715 something new to the City. It is not in the contract, and him saying that does not mean he does
716 not think B.U.R. Construction needs to be before the Board, but this is something new.

717
718 Mr. St. Pierre continued that in order for B.U.R. Construction to be able to do this project, they
719 absolutely need to be able to stage construction materials. When they do that, they look to
720 prevent “construction sprawl.” Just as the City creates districts out of the city so there is not
721 sprawl, his company does the same. They do not want to have construction materials stored
722 across town, so that every day they are running trucks back and forth through town and creating
723 excess traffic, noise, dust, and so on and so forth, to be able to bring the materials they need for
724 that to put into the ground. They always look for areas adjacent to the project, to try to use as
725 staging areas for the materials. They have used the area on Pearl St. as it is a vacant, unimproved
726 lot, which is probably the most important defined factor of the lot. He understands that outside
727 storage is allowed in the Commerce District, but he assures the Board that people who are taking
728 commerce in do not want the distraction and the truck traffic interfering with their commerce.
729 Those options for B.U.R. Construction are not an option, because these establishments will not
730 allow them to stage there. Thus, they have to find adjacent areas, usually unimproved, which are
731 hard to find, or they have to stage in traffic, which would be the alternative here. If they have to
732 relocate and move their construction materials, they have to take a lane of Pearl St. and close it
733 during the day, and take two lanes of Winchester St. and close it during the day. That would
734 create major traffic problems in the city, not to mention the additional truck trips B.U.R.
735 Construction would have to run through town, if they can find a place where they can stage in
736 town at all. That would create problems.

737
738 Mr. St. Pierre continued that he is not sure if the Board is familiar with the details of the project,
739 but the least intrusive part of the project has passed, and the most intrusive and difficult project is
740 coming. They will be closing Island St. for 35 weeks to replace the temporary bridge with poles
741 being relocated. He continued that if they have to take a lane of Pearl St. and two lanes of
742 Winchester St., he is not sure what will become of traffic, but he knows that there are issues with
743 the Rt. 9/12/101 roundabout experiencing gridlock. He stated that the Riverside Plaza is going to
744 be a roundabout in early spring, but then comes the next phase where there will be major
745 gridlock. Inside the contract, the only thing that deals with traffic is that B.U.R. Construction
746 cannot back up into that Rt. 9/12/101 roundabout. When they do, they have to bring in
747 Uniformed Traffic Officers (UTOs) to be able to clear that queue. The only way to clear that
748 queue is to let traffic run up and down Winchester St., and hold everything at Key Rd. at the
749 plaza, and at Pearl St. That is the only way to solve it, so not having the Variance that allows
750 them to stage materials on the property (on Pearl St.) would create tremendous problems with the
751 flow of vehicular traffic as this project continues to go forward.

752
753 Mr. Hoppock stated that that is a good public interest argument so far.

754
755 Ms. Taylor stated that she sees the temporary access on Pearl St. She asked what kind of traffic
756 control Mr. St. Pierre envisions when B.U.R. Construction needs to move equipment and
757 materials out onto Island St. or Winchester St. Mr. St. Pierre replied that right now the job

comes with flaggers, built into the project, and UTOs as needed. Those are line items within the contract. Ms. Taylor asked if it is correct that they have already accounted for that. Mr. St. Pierre replied yes, if there is a need. He continued that generally, coming out of the lot and onto Pearl St., the traffic is not heavy enough to require flagging. The flagging comes when you get down to that tricky 4- or 5-way intersection down below.

Ms. Taylor stated that this area for storage is rather level. She continued that her question for staff is whether anything in the Code addresses outdoor storage runoff, or how close they have to be to the lot line as she is thinking about the abutters. Mr. Rogers replied there certainly would be. He continued that best standard practices would be in play. This use, if the company were to receive a Variance, would also go before the Planning Board to address many of those type of reviews, including reviews by the Public Works Department, making sure proper fences are put up, and so on and so forth.

Mr. St. Pierre stated that this project is governed by a Stormwater Pollution Prevention Plan (SWPPP), and the staging area has to be accounted in that SWPPP. It also deals with the construction general permit, which is required at the federal level. All of those are in place and functioning. The stormwater professionals come out weekly or after each rain event of more than a quarter of an inch, and inspect the entire site and file a report. Those reports are on file with the City; there are about 40 so far.

Mr. Hoppock asked if it is correct that this would be a temporary use and a temporary Variance. Mr. Rogers replied that is the way the Applicant is presenting this. He continued that he spoke with City Attorney Tom Mullins in regards to that, and the City Attorney feels that the Board would be able to condition this with a time limit.

Mr. St. Pierre stated that the application was put in to run concurrent with the timeframe of the project. He continued that it would be completely finished at the end of 2023. As per arrangement with the landowner, it will be returned to the same (condition) as it was prior to the start. That will be hydro seeded in late October. Mr. Hoppock asked if it is correct that that is B.U.R. Construction's arrangement with the owner of the land they are trying to use. Mr. St. Pierre replied that full disclosure; they are already using the land.

Mr. Hoppock asked if the correct date is 12/21/23. Mr. St. Pierre replied that the contract's "drop dead" date is 11/15/23, and that is when everything is done, but that part of the project (with the staging in the Pearl St. lot) will certainly be done by the end of October or early November. Mr. Hoppock asked what date Mr. St. Pierre would prefer to see for the Variance, were the Board to approve it. Mr. St. Pierre replied 11/15/23.

Chair Gorman asked if Mr. St. Pierre would take exception to a stipulation such as screening on the site, to benefit the neighbors. Mr. St. Pierre asked what type of screening. Chair Gorman replied visibility screening, such as hedges or a fence for the temporary use. Mr. St. Pierre replied that he thinks screening would probably be more of a visual detriment. He continued that

he cannot speak for everyone when it comes to that. He does not have the means to commit to that, because he does not own the property. It could not be hedges, which are long-term.

Chair Gorman asked if there were more questions from the Board. Hearing none, he asked if the Applicant had anything further to say. Mr. St. Pierre stated that regarding the diminishing value criterion, the fact that it will be returned at the end of the season services that. There will be no diminishing of property values because it will be returned to the same vacant lot that it was prior to B.U.R. Construction doing the construction work.

Chair Gorman asked if anyone from the public wanted to speak in favor of this Variance. Hearing none, he asked if anyone wanted to speak in opposition.

James W. Wright Jr. of 344 Pearl St. introduced himself and his wife, Patricia A. Wright. Mr. Wright stated that Mr. St. Pierre painted a nice picture, but his question is why he is here for a Variance now, and why there was not a Variance eight months ago when B.U.R. Construction started their work. He continued that this is the Low Density District, and this construction has changed the environment. He and his wife used to have a barrier so they could not see Winchester St., but the construction took the trees out. He was born in Keene, raised in West Swanzey, and has been at 344 Pearl St. for 57 years. He has been through many changes in the city and has never had a problem. He does not have a problem with roads or roundabouts, but he has a problem with this construction company renting a piece of property in the Low Density District without coming (to the Zoning Board) first. They cut 35 to 40 feet of the sidewalk out, so they can drive large trucks in. He has not been able to sleep in the morning as construction sometimes started at 6:00 AM. He asked (the Community Development Department) how the construction company was able to do that. Staff there told him they had no involvement in the project, and referred him to the Public Works Department. He talked with someone there who told him there is nothing the Public Works Department can do about it. He did not know they (his neighbor, Adam Wright, no relation) rented the property to the construction company without the neighbors having any say. His house faces the property. He has not been able to open his windows all summer.

Mr. Wright continued that he is here to complain and he does not want B.U.R. Construction to have a Variance. The construction wrecked what used to be a beautiful park. He knows that will be part of the roundabout, but the company could put the staging materials there. They have not even finished the roundabout on Winchester St. and he was told they would be cleaned out by Thanksgiving, and they were not. It is a mess and it is all he sees out his windows. He thinks it is an injustice that this could be allowed without him and his neighbors being informed earlier. Why did he not get a letter six months ago to come to this Board, but he got one now? He has not had a decent night's sleep in a long time. He lived through the (installation) of the Island St. bridge, and the Winchester St. bridge, and the park there has now been ruined. This is across the street from him. He was interested to hear Ms. Taylor bring up the topic of being able to see out on the street. It is unfortunate that there are only two houses that live across from there; everything else is all rentals. (Homeowners) do not live there; they rent it to the college. The

Wrights across the street have a rental and they run a great ship, but that does not include that. This is the property that he has rented. Hearsay is that when this is all said and done, Adam Wright wants to split this piece of property, for two apartment buildings on Pearl St. The consensus is that B.U.R. Construction, when they leave this property, will have the under footing. They will put a pristine lawn there like it was always there, and the barrier on Winchester St. He could be dead in three years, de does not care what Mr. St. Pierre says. He himself has never seen a construction project end on time. The roundabout is not even done.

Ms. Wright stated that B.U.R. Construction is already behind schedule with the roundabout, so she does not know how they are going to get the roundabout done, and the bridge, by next November.

Mr. Wright stated that there was another couple here tonight (who wanted to speak about this), who live straight across from this, but he assumes they felt the wait was too long and left. He continued that their windows rattle, too, when the trucks go through. Ms. Wright added that their house shakes when B.U.R. Construction drops materials. She continued that it should not be in a Low Density District and it is very upsetting for people who have lived there for 57 years. They planned their retirement here. They do not live high and they wanted and expected it to be a nice, quiet neighborhood. Mr. Wright stated that he does not think anyone on the Board would like to get up in the morning, look across the street, and see (construction like this). He continued that there are 157 spaces available in the KSC parking lot right back at Mrs. Sheehan's house. KSC has that house and can never rip it down because there is a 100-year lease on it. B.U.R. Construction could have put their materials there, or behind Walmart.

Chair Gorman stated that he understands Mr. Wright's sentiment and his level of frustration, but they need to start wrapping this up. He continued that what is happening on other properties is not relevant tonight. The Board is specifically focused on the property in question. If Mr. Wright has specific remarks as to why this application does not meet the criteria for a temporary Variance, he wants to hear those.

Ms. Wright replied that she and her husband have some papers they have put together. She asked if it is okay to pass them out to the Board members. Chair Gorman replied that he will look at it and read it into the meeting minutes. He continued that it appears to be an email from attorney Sam Bradley to Kürt Blomquist, Public Works Director. He read:

"Dear Kurt: my client is James Wright, 344 Pearl St. He is upset that the contractors working on the new roundabout on Winchester St. are using land at 347 Pearl St. belonging to Adam Wright for parking trucks and other construction vehicles and equipment. The resulting noise and dust is a major nuisance to the Pearl St. neighborhood, and a particular annoyance to Mr. James Wright. The trucks and other construction equipment wake him the morning, and the dust prevents him from opening his windows in hot weather. He is concerned that it may continue for two or three years – he believes the same area will be used by the contractors who will be working on the Island St. bridge.

Mr. James [sic] and I believe that this use in this area (low density residential) is a zoning violation, and we wonder why it was not submitted to the ZBA and neighbors notified and given a chance to comment? There should be some reasonable alternative. I hope it will not be necessary to resort to the courts for relief.

Sam Bradley (Homer S. Bradley, Jr.)
Bradley & Falkner, PC
50 Washington St”

Chair Gorman also read into the record:

“A Refutation to ZBA 22-21 Petitioner Timothy St. Pierre B.U.R. Construction, LLC

We ask the board to consider what is presented in the following pages has already occurred as a direct result of this construction staging project breaking ground prior to approval.

A. Granting the Variance would be contrary to the public interest because:

- It has created noise pollution with work beginning before 7:00 AM.
- It has trucks delivering inventory, cutting trees down, preparing the property for construction staging purposes daily.
- It has created large dust clouds daily.
- It has created light pollution nightly.
- It cut the curb to the sidewalk presenting danger to pedestrians.
- The large equipment is causing vibrations to the abutters’ property which will result in damage to the structural integrity of the properties.
- Cosmetic damage is already a concern with the consistent rattling of windows.

B. If the Variance were granted, the spirit of the Ordinance would not be observed because:

- It has completely altered the character of the locality.
- They have already removed trees which expose Winchester St.
- [They have] disturbed the sidewalks.
- [They have] radically altered the landscape.
- Mounds of dirt have been trucked in.
- Large storage containers have been placed for inventory.
- A pod for an office has been placed.

C. It has threatened public health, safety, and welfare in these ways:

- *Abutters are losing sleep.*
- *They are experiencing mental anguish due to the constant noise and light pollution.*

D. Quality of life has been diminished. Abutters are unable to enjoy their “Bundle of Rights” legally given to them as property owners. They are as follows:

- *The right of possession*
- *The right of control*
- *The right of exclusion*
- *The right of enjoyment*
- *The right of disposition*
- *Examples of this would be: they are unable to enjoy their outdoor seating areas such as decks.*
- *They no longer have a view from their east and south sides of their house as it is now obstructed by construction equipment.*
- *They have lost their view from their front porch. Currently they have a view of a burned home, a second damaged home from the fire and now a construction staging area.*

E. Granting the Variance would continue to do substantial injustice because:

- *This is a ‘LOW DENSITY’ zone and the project should not have begun without City approval.*
- *It has been a detriment to the safety, health, and wellness of all its abutters, some of whom have resided in their perspective homes for decades. These are their golden years and the current location for this construction staging project impedes their enjoyment of their property.*

F. If the Variance were granted the values of the surrounding properties would be diminished.

- *The location of this staging project, the noise pollution, the light pollution along with the unsightly view, all negatively and directly impact the market value of all properties within 200 feet of the staging project. This negative impact can create financial hardship for those wanting to sell their properties in this seller’s market.*

G. Unnecessary Hardship

- *There are other properties that could be identified for the purpose of staging without such a severe impact on the abutters.*
- *The Variance does injure the private rights of the identified abutters.*

- *The staging of this project broke ground in early spring of 2022 without approval of the City or notification to abutters.*
- *The proposed use is not a reasonable use of the property, zoned 'Low Density.'*
- *It has long term impacts on this 'low density' neighborhood such as:*
 - *Affecting property owners' 'Bundle of Rights'*
 - *Causing mental anguish*
 - *Destruction of real estate*
 - *Diminishing property values*

In closing, we as the abutters understand the full scope of the construction project and how it relates to the betterment of the City of Keene. Our refutation is with the procedural defect relating to the property chosen for the staging of the project, and the direct negative impact the placement of this project has on our private residences. The City of Keene has grown in the many years we have resided here and we fully understand the scale of these projects to improve its infrastructure. However, to grant this Variance would harm all of us in ways perhaps people did not consider when looking at the master plan. We have worked diligently our entire lives to have a piece of the American Dream and we chose it here on Pearl St. We have contributed to this community on a multitude of levels and have chosen to live out our golden years in our home on Pearl St. We ask for consideration in regards to this Variance, in the hopes that a revised location be considered which would have less impact on the longtime citizens of Keene. Also, [we ask] that we be allowed to live out the remaining years of our lives in 'quiet enjoyment' of our property for which we worked our whole lives to afford.

*Sincerely and warmest regards,
Mr. and Mrs. James W. Wright Jr."*

Chair Gorman thanked the Wrights and asked if they had anything else to add. Mr. Wright replied that he wants to know how they could make a deal without someone knowing. Can you just rent your property in the City of Keene, for that type of activity? They would not be here, if that had not happened. Ms. Wright added that it sounded to them like it was going to be an area where they were going to be having *some* of their vehicles and equipment, not all the large trucks and diggers. She should have taken photos this summer, but kept thinking it would not get any worse, but it did. Mr. Wright stated that the Board needs to understand what he and his wife are going through.

Chair Gorman stated that he understands but asks that the Wrights not present redundant information. He continued that if they have something new to state, the Board is here to listen. They understand the Wrights' frustration and that they do not want the construction project there and that it has affected their quality of life.

Ms. Wright stated that she does not agree with the comments about traffic, because Pearl St. is heavily trafficked. Cars going by, in a 25 or 30 mph zone, actually go 50 mph and that is an issue. Chair Gorman replied that they need to focus on the issue before the Board. Ms. Wright

1013 replied that Mr. St. Pierre said that traffic would not be an issue because they have flaggers.
1014 Chair Gorman replied that he thinks what Mr. St. Pierre was alluding to was the fact that if he
1015 could not store his construction equipment in close proximity to his work site, he would actually
1016 be creating more of a traffic issue, for folks on Pearl St. as well as folks throughout the entire
1017 city.
1018
1019 Ms. Taylor stated that she asked specifically about the traffic and Mr. St. Pierre said there would
1020 be flaggers when necessary to get the trucks in and out of the lot. Chair Gorman added that that
1021 is true regardless (of whether he receives the Variance), because B.U.R. Construction's contract
1022 requires flaggers. Ms. Taylor replied that she thought Chair Gorman just said they would not be.
1023 Chair Gorman replied no, he did not; he thought that Mr. Wright was alluding to what the
1024 Applicant was stating about the traffic not being a problem on Pearl St. currently, but if this site
1025 was not able to be used for storage, it was going to create traffic flow problems. Mr. Wright
1026 replied that he did not go there.
1027
1028 Mr. Hoppock stated that it might be useful to hear what Mr. St. Pierre can tell them, and about
1029 how these problems might be alleviated.
1030
1031 Ms. Wright stated that she also had a question about how the Applicant said that if the (staging
1032 materials) cannot be in the (vacant lot); it will still be on Pearl St. She does not understand what
1033 that means. Chair Gorman replied that Mr. St. Pierre could explain that during his rebuttal. He
1034 asked if the Wrights had any more questions for him.
1035
1036 Mr. Wright stated that he and Ms. Wright are not complaining about the traffic on Pearl St. He
1037 wants them to understand that, but what they are complaining about is the staging area across the
1038 street. Chair Gorman replied that the Board understands that.
1039
1040 Chair Gorman asked if there were any other members of the public wishing to speak. Hearing
1041 none, he gave Mr. St. Pierre the opportunity for rebuttal.
1042
1043 Mr. St. Pierre stated that he is not sure how he painted a "pretty and rosy picture" of anything,
1044 because there is nothing pretty and rosy about this level of construction. He continued that the
1045 task in front of B.U.R. Construction, and the contract they have to do, is very invasive work. He
1046 did not and will not say that it is not. In fact, he wanted to forewarn everyone that the "easy"
1047 part is done, for that particular neighborhood and area. The majority of the work was up on the
1048 main roundabout for this past year. Island St. was going to be closed in January, but that is being
1049 delayed because of this, so it might be a little later. Once Island St. is closed, there is water,
1050 sewer, and drainage work up Pearl St., through the intersection, and beyond. If B.U.R.
1051 Construction has to move the materials that currently exist in that staging area (on Pearl St.), the
1052 materials will go into one of the travel lanes on Pearl St. on a day to day basis and take up two of
1053 the travel lanes on Winchester St., which will shrink back to one-way traffic each way. Pearl St.
1054 would have alternating one-way traffic, with that bridge closed. B.U.R. Construction does not
1055 have any other choice for staging materials that they can put in the ground. They would have to

bring the materials to the project on a daily basis. The impacts there (on Pearl St.) are impacts he will not dispute, and the impacts will remain, whether B.U.R. Construction is on this parcel, or on the main road.

Mr. Hoppock asked if he is saying the impacts he is talking about on Pearl St. and Winchester St. are definite impacts. Mr. St. Pierre replied yes, they need to have pipe, the concrete structures, and other materials available to put in the ground on the day that they are doing the tasks. He continued that that also includes trench boxes, excavators, trucks, rollers, and more. There is a magnitude of stuff and there is no location to place it. The only way is to take one of the sidewalks and three travel lanes. Mr. Hoppock asked if the City has approved the lane on Pearl St. and the two on Winchester St. Mr. St. Pierre replied that those are in the contract limits. The contract gives them permission to do whatever they want, following the limits of the contract. The limits of the contract come up into Pearl St.

Mr. St. Pierre stated that he is not sure what Mr. Wright is referring to when he mentions the "park." He asked if Mr. Wright means the grassy area next to the bridge that lays down over. Ms. Wright replied that they mean the park on Island St. and Pearl St., by the river. Mr. St. Pierre replied that is where the structural steel [unfinished sentence]. He continued that when the bridge comes, that entire area is set aside for the bridge project, because that is going on concurrently. That means enormous structural beams, reinforcing steel, re-bar, cranes, and pile driving, which will mean even more vibration than what the Wrights have experienced so far. They will be driving piles that the bridge will be seated on, and one of the piles will be driven within seven feet of a building on the other side of Island St. B.U.R. Construction does not do the design; they are not designers. They are installers and follow the blueprints. The impacts that are coming will be far worse than the impacts that have been seen.

Chair Gorman stated that it seems to boil down to the fact that "you need to break a few eggs to make an omelet." He asked if there is anything B.U.R. Construction could do to mitigate any of this. He continued that Mr. St. Pierre has a lot of experience, more than anyone else in this room. Is there anything he can think of to mitigate the impacts for these concerned citizens as he understands that this is highly invasive work. Mr. St. Pierre replied that it is hard to try to mitigate problems when he is unaware of the problems. He continued that (the Wrights' complaints) are all news to him; none of these issues has ever been relayed to the B.U.R. Construction office. They have heard nothing about what the Wrights' particular complaints are. They will investigate, try to remedy, try to mitigate everything under the sun that they can, but it is hard to do that when they do not know what the problems are.

Chair Gorman asked if anyone else had questions for the Applicant.

Ms. Wright stated that Mr. St. Pierre said he was unaware of these impacts. She asked who is accountable, from the City, to relay that information (to B.U.R. Construction). She continued that she and her husband have been talking with people in the City. How did the staging area get in place before tonight's meeting, without some kind of a Variance? Nobody ever advised her

and her husband that the staging would go there. They would have been able to give input, and they would have known what was coming. She and her husband had never talked with or heard of Mr. St. Pierre. The person they spoke to on that staging area said that it would be “minimal.” People seem to have different definitions of “minimal.”

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

Mr. Hoppock stated that he has a question for staff. Why is this (Variance request) here? What took so long? Mr. Rogers replied that his office was just made aware of this construction staging area. As soon as they were made aware of it, he sent a letter to B.U.R. Construction and Adam Wright, making them aware of the need, if they wish to proceed with this type of use on this property, to get a Variance from the ZBA. They immediately came in and applied for the Variance.

Mr. Hoppock asked if it is correct that B.U.R. Construction is contracted with the City of Keene. Mr. Rogers replied yes. Mr. Hoppock asked why B.U.R. Construction is even subject to Zoning, in that case. Mr. Rogers replied that under 674.54 there is Governmental Use Exemption, a process laid out that would require the City to take the action so that, in this situation, B.U.R. Construction was an agent of the City. The City has not taken that stance. It is a possibility, yes, but currently it would not apply to this situation. Mr. Hoppock replied that if that process were undertaken, the Wrights would have learned about this when it was still warm out. Mr. Rogers replied that under the Governmental Use Exemption, there is the ability, and the process would require notification to the Planning Board. The Planning Board then has the ability to require a public hearing and any comments that the Planning Board would have would be non-binding in that situation. At this point in time, he feels that if this were to be granted a Variance, it would go to the Planning Board and it would be binding conditions placed on this site, as opposed to if there was a Governmental Use Exemption applying, there would be no binding comments from the Planning Board.

Mr. Hoppock stated that the problem is that this Board is hearing about this for the first time tonight. He continued that it is a huge project, and the Board has no plans in front of them, no details about progress of construction, no schedule, nothing. He is prepared to deny this tonight, not caring what happens. Mr. Rogers replied that that is up to the Board’s discretion. He continued that the Board can also continue this, if they so desire, if they feel they need more information before making a decision.

Chair Gorman stated that he wonders if the Board can look at potential advantages to allowing this, in contrast to potential advantages to disallowing it, especially given that it is already there, and what may come of it if the use is disallowed abruptly.

Ms. Taylor stated that they have an application before them, and their choices are to table it until a time certain for more information, deny it, approve it, or approve it with conditions. She continued that she does not think it is the Board’s job to figure out what will happen if it is

denied or approved with conditions. They need to look at hardship, public interest, and so on and so forth, but the impact of what happens in either direction, they can determine within the constraints of the criteria.

Mr. Hoppock made a motion to approve ZBA 22-21 with the condition that no work begins before 7:00 AM.

Chair Gorman asked if the Board wants to table this. Mr. Hoppock replied that he does not know; he was just putting a motion on the table so they can have a conversation.

Ms. Taylor seconded the motion.

Chair Gorman asked if it is correct that this would go before the Planning Board. Mr. Rogers replied yes.

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

Chair Gorman stated that it could be said that they divide the pros and cons. Ms. Taylor replied that she agrees, and based on the information presented to the Board, there is definitely evidence that it would be in the public interest because it might save the rest of the city from some of the travails of a major construction project. She continued that on the other hand, it looks to be against the public interest when you consider the needs of the residential neighborhood. Those are the pros and cons she sees.

Mr. Rogers stated that the Board might want to include a condition regarding the dates of the Variance. Chair Gorman agreed and asked for a new motion.

Ms. Taylor and Mr. Hoppock withdrew their motion and second.

Mr. Hoppock made a motion to approve ZBA 22-21, with any approval expiring on November 15, 2023, and subject to the further condition that no work begin before 7:00 AM. Ms. Taylor seconded the motion.

Chair Gorman stated that he thinks the public interest certainly is satisfied by the completion of this construction project that is likely less than a third of the way complete. It is replacing the bridge that was temporary many decades ago, which is, as Ms. Taylor said, something that has great benefit to the community and the public as a whole, including people outside of this community who use Keene as the center of activity. Then he looks at the harm to the residents of that street, and while he thinks it is unfortunate that they have been impacted by this – temporarily, he might add – he also sees that it is going to be difficult to alleviate them of any impact. Their whole street will be dug up. There will be pile driving. Realistically and unfortunately, for all the folks living there, this happens whenever there is a construction project, anywhere in the city. It does adversely impact the residents; that is undeniable. However, the

intent is for the greater good – not just the greater good for everyone else, but also the people the project is impacting, because they get a new street and infrastructure updates. It is almost impossible to find a solution that is non-disruptive, unless you just let the infrastructure decay, which is not a solution. That is actually a bigger problem than what they are trying to solve. Thus, he thinks that easily the public interest part of this is satisfied.

Mr. Hoppock stated that he agrees that the public interest is satisfied overall, at the level of 50,000 feet looking down, for the reasons others have stated.

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

Mr. Hoppock stated that this is where he diverges. He continued that whether the (Variance) would alter the essential character of the neighborhood is what the second test looks for, and the answer to that question is yes, it will. It will affect public health, it will affect safety, and it will affect welfare, however temporary it may be. That is evident from both the Applicant and the abutters. He does not see how it would be possible to have a project like this and not have it be that way. Does the fact that it will only be for a year or less ameliorate that? He does not know what legal term that would be; “temporary alteration of the essential character of the neighborhood.” There was the comment that B.U.R. Construction would restore the property to its original condition upon conclusion of the project, but that does not change the fact that for now and for the next year or so, the essential character of the neighborhood is changed.

Chair Gorman stated that he agrees with Mr. Hoppock in that it is undeniable that the character of the neighborhood will be changed. He continued that he also thinks that neighborhood has been dealt a bad hand right now because a house burned down, which he is sure is frustrating to see out the windows of your home. The question he has is whether it is this use (that the Variance is requested for) that is causing these health and life safety issues, or if it is the construction project. If it is the construction project, the Board cannot make decisions about that. If it is the fact that materials are being parked in this empty lot, then the Board can alter that tonight. The Board is not going to alter the negative impact to that neighborhood. The only people who could do that would be the Public Works Department.

Ms. Taylor stated that she is looking at it from the perspective that they propose to limit the Variance to a time period, so she is applying the criteria to that time period. She continued that from her perspective, for the next year or so, the essential character of the neighborhood is going to be altered by this use, and yes, by this construction project, but as Chair Gorman says, that is a different issue. The Board cannot address the construction project as a whole.

Chair Gorman replied no, but the Board could perhaps exacerbate it by disallowing the use. If they disallow the use, would they be negating the impact, or adding to it? They have heard from the Applicant that B.U.R. Construction will have to stage the materials in the street. They have heard from the Applicant that all of the same things will happen, just not neatly placed on a lot. He knows the word “neatly” does not exactly apply, but it will not be any *neater* if there is no

place to put the materials, and it will not be less invasive if the place to put the materials is somewhere far away.

Ms. Taylor replied that she agrees, but the question before the Board is the use of this lot. Chair Gorman replied right, and whether it is in the spirit of the Ordinance. Ms. Taylor stated that she thinks what Chair Gorman is addressing is substantial justice, as opposed to the spirit of the Ordinance in the context of the time limited Variance on a particular piece of property.

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

Mr. Hoppock stated that under this criterion, they are looking at what the gain or loss to the owner is versus the gain or loss to the public. He continued that the abutters do not factor into this criterion, the way he reads it under case law. The gain to the public for this (use of staging of materials) to continue is significant. This is similar to the first criteria, not contrary to the public interest. For the same reason that allowing this use to continue for a year, within the timeframe of the day, 7:00 AM to whenever, protects the public at large but also protects the consequences of it not being permitted there, such as materials being all over the road. He would say that this criterion is satisfied. The Board is not looking at abutters' concerns under this criterion, just the gain or loss to the owner and the gain or loss to the public.

Ms. Taylor stated that she generally agrees, except for the fact that the abutters would be considered part of the public. Chair Gorman replied that he agrees, and a question he needs help answering is whether the Board would be helping the abutters by not allowing this use. If yes, how so? They (the abutters) will have (the impacts of) the same equipment, same noise, same amount of material, same amount of trucks, and same amount of everything, whether it is on that lot or in their street. It is unfortunate, but it is reality. How does the Board disallowing this use make life better for anyone?

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

Mr. Hoppock stated that (the question is) whether they mean the values today or the values a year from now. He continued that to him the answer does not matter, because this project goes forward, and will be completed within a year. Chair Gorman stated that it could be adding to the values. Mr. Hoppock agreed.

Ms. Taylor stated that again, she thinks they have to look at it in the context of it being limited in time and limited to this property. She continued that her question is whether the values would be impacted during the time period that this Variance is in effect, because when the Variance is no longer in effect, the values are not an issue.

Chair Gorman replied that in that case, he does not think it will be impacted, because there will be construction vehicles everywhere, trucks everywhere, dust everywhere, and noise everywhere,

1271 if the (use) is not here. All of those things will be present if the use is here, except the
1272 (materials) will be parked on one lot. If he were trying to sell his house, he would at least like
1273 people to be able to get to his front door without having to navigate around piles of construction
1274 equipment and dirt up and down the street. He thinks that it does not diminish property values.
1275 He is not arguing that it raises them, but it does not have to as that is not the standard. The
1276 standard is that it does not lower them. He thinks that during any construction project an
1277 argument could be made that there is an adverse impact on values, but he does not think it is
1278 because the equipment is being parked on a storage lot, it is because the neighborhood is being
1279 disheveled. That is going to happen regardless (of whether this Variance is granted), which is
1280 actually the premise for most of these criteria, in his opinion. You cannot take the construction
1281 out of the construction. If this Board could, they would, to placate the rights of the folks who
1282 live in the neighborhood, but they would find themselves not able to do construction. He does
1283 not think it is relative to this lot being there, it just relative to the construction project occurring.

1284
1285 Ms. Taylor stated that she is looking at it more narrowly in the context of the property itself. She
1286 continued that in the context of the property itself, use of the property does diminish values. She
1287 is not disagreeing that the construction project as a whole, during the project, has an impact.

1288
1289 5. *Unnecessary Hardship*

1290 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1291 *area, denial of the variance would result in unnecessary hardship because*

1292 i. *No fair and substantial relationship exists between the general public purposes of the*
1293 *ordinance provision and the specific application of that provision to the property because:*
1294 *and*

1295 ii. *The proposed use is a reasonable one.*

1296 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
1297 *hardship will be deemed to exist if, and only if, owing to special conditions of the property that*
1298 *distinguish it from other properties in the area, the property cannot be reasonably used in strict*
1299 *conformance with the ordinance, and a variance is therefore necessary to enable a reasonable*
1300 *use of it.*

1301
1302 Mr. Clough stated that this is a vacant lot. There are not a lot of vacant lots. They heard in the
1303 presentation that other lots that were potentially going to be used are being used for other things.
1304 Thus, the possibilities are limited. There are no other lots available, close by or even half a mile
1305 away. That creates a special circumstance, because this is a vacant lot, and for what this purpose
1306 is, that is what you are looking for.

1307
1308 Chair Gorman stated that looking at the provisions of the Ordinance, he thinks the Ordinance is
1309 in the LDC for the purpose of not having this use exist permanently. He continued that
1310 situationally, this hardship criterion becomes difficult, and when you look at it as a situation, Mr.
1311 Clough's point is valid. There is a vacant lot, and a need for a vacant lot, and you put it to good
1312 use. The impact is undeniable and it is going to be undeniable whether they use the lot or not.
1313 There will be impact in that area for everyone, worse for the people who live there, admittedly.

Taking all of that into context, he does not think that is why the Ordinance was written, to keep construction sites from being well kept and well managed. He also thinks unnecessary hardship would result in not allowing this. B.U.R. Construction would still have to do the work. The work will still take place. It will just make everything more difficult, for the people in the neighborhood as well as for B.U.R. Construction.

Ms. Taylor stated that she does not disagree with a single thing Chair Gorman said, except it has nothing to do with hardship. She continued that there are at least three cases that say special conditions are found in the property itself and not in the individual plight of the Applicant. She thinks they have a classic “plight of the Applicant,” where B.U.R. Construction is looking for a place to store its materials. She does not see any special condition of this property as it is a level lot in a residential neighborhood. The only thing that distinguishes it from other properties around it is that it is vacant, and she does not see that as enough to qualify for a Variance. Certainly, she does not think that the plight of the Applicant or the construction project by itself creates a hardship.

Chair Gorman asked Ms. Taylor if she thinks the proposed use is a reasonable one. Ms. Taylor replied that she is not certain if it is reasonable or not, but she is not sure she gets there, because this is a condition of the Applicant, not a condition of the property.

Chair Gorman asked if Ms. Taylor thinks this type of use is needed in a project of this scale. Ms. Taylor replied that she does not think that has anything to do with the application or the criteria. Chair Gorman replied that he disagrees. He continued that to him, if this is needed for this project [unfinished sentence]. He asked Mr. Rogers how many vacant lots are in the area. Mr. Rogers replied that right in that area there are not any other vacant lots. He continued that within Key Rd. there is a vacant lot, but it is in the floodplain, so this type of activity could be prohibited. He could not find any other vacant lots within a reasonable distance. Chair Gorman replied that to him, that would be what separates this property from other properties: it is the only vacant lot. He continued that if they can agree that a project of this size and scale typically would have a use like this; this property is unique because it is the only one that can accommodate this use. Ms. Taylor replied that she thinks that is a real stretch.

Chair Gorman asked if the Board had anything further to say. Hearing none, he stated that the abutters’ have a hand raised and he could re-open the public hearing. Ms. Taylor she has a problem with re-opening the public hearing once the Board has entered the motion and voting process. Chair Gorman replied that that is a valid point and he is inclined to agree. Mr. Hoppock stated that he agrees that it would not be appropriate.

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

Granted with a vote of 4-0.

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

The vote was 2-2. Mr. Clough and Mr. Hoppock were opposed.

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

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

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

The vote was 2-2. Ms. Taylor and Mr. Clough were opposed.

5. *Unnecessary Hardship*

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

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

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

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

The motion to approve ZBA 22-21 failed with a vote of 1-3. Mr. Hoppock, Mr. Clough, and Ms. Taylor were opposed.

Mr. Hoppock made a motion to oppose ZBA 22-21. Ms. Taylor seconded the motion, which passed with a vote of 3-1. Chair Gorman was opposed.

V) New Business

A) Rules of Procedure Updates

Mr. Rogers stated that the agenda packet contains two pages from the Board's rules of procedure, and proposed changes staff made to them to reflect the changes to the RSA. He continued that the one on page 5 is regarding the change for how soon the public hearing has to be heard (changed from 45 days to 90 days). The second change is a sentence regarding the findings of fact and how those need to be part of the written decisions. Staff asks that these proposed changes be put to a vote for adoption.

Ms. Taylor stated that she thinks the changes make sense and are appropriate.

Ms. Taylor made a motion to adopt the proposed changes to the Rules of Procedure. Mr. Hoppock seconded the motion, which passed by unanimous vote.

1400 Chair Gorman asked if there was any more new business. Mr. Rogers replied no.

1401

1402 **VI) Communications and Miscellaneous**

1403

1404 **VII) Non-public Session (if required)**

1405

1406 **VIII) Adjournment**

1407

1408 There being no further business, Chair Gorman adjourned the meeting at 9:23 PM.

1409

1410 Respectfully submitted by,

1411 Britta Reida, Minute Taker

1412

1413 Reviewed and edited by,

1414 Corinne Marcou, Zoning Clerk

ELM & CARROLL STS. ZBA 23-01



Petitioner requests a building containing 5 dwelling units on a single lot in the Medium Density District where no more than 3 units on a single lot may be permitted per Chapter 100, Article 8.3.1.C.2.a of the Zoning Regulations



City of Keene

New Hampshire

NOTICE OF HEARING

ZBA 23-01

A meeting of the Zoning Board of Adjustment will be held on **Monday, February 6, 2023, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA 32-01: Petitioner, Christopher Masiello of Nuevo Transfers, LLC of 1 Bedford Farms, Suite 202, Bedford, NH, and represented by Jim Phippard of Briskstone Land Use Consultants, LLC, requests a Variance for two properties each located at 0 Carroll St. and two other separate properties located at 0 Elm St. and 225 Elm St., Tax Map #'s 536-049-000-000-000, 536-050-000-000-000, 536-055-000-000-000 and 536-056-000-000-000. The Petitioner requests a Variance to permit a building containing five dwelling units on a single lot in the Medium Density District where no more than three dwelling units on a single lot may be permitted per Chapter 100, Article 8.3.1.C.2a of the Zoning Regulations.

You are receiving notice of this hearing as an abutter to or owner of property within 200-ft of the subject parcel.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

A handwritten signature in blue ink that reads "Corinne Marcou".

Corinne Marcou, Zoning Clerk
Notice issuance date January 27, 2023

City of Keene, NH

Zoning Board of Adjustment Variance Application



For Office Use Only:

Case No. ZBA23-01
Date Filled 11/9/23
Rec'd By CSM
Page 1 of 10
Rev'd by _____

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keenenh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: **NUEVO Transfers LLC**

MAILING ADDRESS: **1 Bedford Farms Suite 202 Bedford NH 03110**

PHONE:

EMAIL:

SIGNATURE: 

PRINTED NAME: **CHRISTOPHER J. MASIEKO**

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: **James Phippard / Brickstone Land Use Consultants LLC**

MAILING ADDRESS: **185 Winchester Street Keene NH 03431**

PHONE: **(603) 357-0116**

EMAIL: **jphippard@ne.rr.com**

SIGNATURE: 

PRINTED NAME: **JAMES P. PHIPPARD**

SECTION 2: PROPERTY INFORMATION

Property Address: 0 Elm St, Carroll St, 225 Elm St

Tax Map Parcel Number: 536-049-000,536-050-000,536-055-000,536-056-000

Zoning District: Medium Density

Lot Dimensions: Front: 186' Rear: 186' Side: 178' Side: 175'

Lot Area: Acres: 0.75 Square Feet: 32,670

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 0 Proposed: 8.8%

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 0 Proposed: 19.6%

Present Use: Vacant Lot

Proposed Use: 5 Unit Residential

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

See Attached

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) of the Zoning Regulations to permit:

See Attached

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

PROPERTY ADDRESS 0 Carroll Street, 0 and 225 Elm Street

APPLICATION FOR A VARIANCE

- A variance is requested from Section (s) 8.3.1. C.2.a of the Land Development Code of the Keene Zoning Ordinance to permit: A building containing five dwelling units on a single lot in the Medium Density district where no more than three dwelling units on a single lot may be permitted.

Background: Nuevo Transfers, LLC is the owner of four contiguous vacant lots, two on Elm Street and two on Carroll Street. The lots are all in the Medium Density district and are summarized as follows:

TMP	ADDRESS	LOT SIZE
536-049-000	0 CARROLL ST	0.19 ACRES
536-050-000	0 CARROLL ST	0.19 ACRES
536-055-000	0 ELM ST	0.18 ACRES
536-056-000	225 ELM ST	0.19 ACRES

The owner wishes to merge the four lots to form a single lot of 0.75 acres (32,670 sf) and then construct a single building containing five dwelling units. While the merged lot meets the square footage requirements for five units (29,600 sf required), a variance is needed to construct more than three dwelling units on a single lot.

This has come about due to the existing soil conditions on the properties. This entire area sits on a large area of peat which requires special foundations to be able to safely support a building. Attached are copies of test boring logs showing peat up to 16 feet deep on the lots. To safely build on the lot area, the geotechnical engineer has recommended helical pile foundations with the piles extending well below the layer of peat and into the more suitable soils deep under the building sites. The costs of the pile foundations are extremely expensive. To reduce the overall unit cost it was determined that combining the units into one building would reduce the foundation costs by approximately \$100,000. The owner is therefore seeking a variance to allow 5 units on one lot in a single building.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

Residential building lots are in short supply in the City of Keene. This site is four contiguous vacant lots in an existing residential neighborhood served by city water and city sewer and existing city sidewalks. The entire neighborhood is in the Medium Density district and contains a mix of single family, 2 family, 3 family and 6 family buildings. It is in the public interest to utilize existing vacant lots where the infrastructure is there to support new housing units. A new residential building will enhance the appearance of this property and enhance the property value, increasing property taxes for this lot.

2. **If the variance were granted, the spirit of the ordinance would be observed because:** The spirit of the ordinance in this case is to allow medium intensity residential development on lots with city water and city sewer. The proposed use for this lot is a small, five unit residential building on city water and city sewer. The proposed new building will meet all building setback requirements and all lot coverage requirements. By combining the units into one building there will be more green space on this lot than many of the existing lots in the neighborhood. This will help to provide badly needed housing in a walkable neighborhood in Keene. This proposal meets the spirit of the ordinance.
3. **Granting the variance would do substantial justice because:** These are the last vacant lots in this residential neighborhood. These lots have remained undeveloped due to the underlying soil conditions which have made it too expensive to build on. By merging the lots and combining the units into one building the owner has found a way to make it feasible to build here. The merged lot will conform to all zone dimensional requirements and as proposed the new building will meet all building setback requirements and lot coverage requirements. The existing neighborhood is a mix of single family and multifamily residential buildings, and this proposal is consistent with many of the other lots in the neighborhood and will maintain the character of the area. There are nine existing multifamily buildings within 250 feet of this property which have from two to six dwelling units. There is no public benefit to denying a variance to allow the last remaining vacant lots to be built on. It will do substantial justice for the property owner.
4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** Construction of a new residential building on these vacant lots will enhance the appearance of the property and improve its property value. Vacant properties can become unkempt and over time will hurt the values of adjacent properties. By constructing a new multifamily building on the lot, the surrounding property values will not be diminished. It will maintain the character of the neighborhood and will provide badly needed housing units.

5. Unnecessary Hardship

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

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

The peat that was discovered underlying these sites creates a special condition of the property which greatly limits how the properties can be used. The only solution to make building on this area feasible is to merge the lots and combine the units into one building.

The ordinance limits the number of units to three on one lot which makes it unfeasible to build here. The ordinance fails to recognize the special conditions here and results in the need for a variance to allow more than three units. The merged lots create a 0.75 acre lot which is large enough to meet the dimensional requirements for five units. It will comply with all building setbacks and lot coverage requirements. It will utilize vacant building lots in an area with city water, city sewer and city sidewalks. Denying the variance provides no benefit to the public and will result in an unnecessary hardship to the owner.

And

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

Multifamily buildings are a permitted use in this neighborhood. There are several existing multifamily buildings in the immediate area including two existing six-unit buildings. A new building served by city water, city sewer and city sidewalks will enhance the appearance and the value of this site. This proposal is consistent with the character of the neighborhood and consistent with the purpose of the ordinance. This is a reasonable use of this property.

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

The peat that was discovered underlying these sites creates a special condition of the property which greatly limits how the properties can be used. The only solution to make building on this area feasible is to merge the lots and combine the units into one building. The ordinance limits the number of units to three on one lot which makes it unfeasible to build here. The ordinance fails to recognize the special conditions here and results in the need for a variance to allow more than three units. The merged lots create a 0.75 acre lot which is large enough to meet the dimensional requirements for five units. It will comply with all building setbacks and lot coverage requirements. It will utilize vacant building lots in an area with city water, city sewer and city sidewalks. Denying the variance provides no benefit to the public and will result in an unnecessary hardship to the owner.

M&W SOILS ENGINEERING, INC
PO Box 1466 ° Charlestown, NH 03603 ° 603-826-5873

TO: Pappas Contracting LLC PO Box 575 W. Swanzey, NH 03469 attn: Mike Pappas	PROJECT NAME: Pappas Elm & Carroll Streets LOCATION: Keene, NH M&W JOB #: 12310-22	SHEET: 1 of 1 DATE: 5-19-2022 HOLE #: B-1
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Ground Water Observations 6' at 0 Immed. hours	Augers-Size I.D. 4.25" Split Spoon 1.5" Hammer Wt. 140# Hammer Fall 30"	Surface Elevation: Date Started: 5-19-2022 Date Completed: 5-19-2022 Boring Contractor: T&K Drilling Soils Engineer/Inspector: Justin Mailloux
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LOCATION OF BORING: South end of Carroll Street side.

Sample Depths From/To (Feet)	Blows per 6" on Sampler	Moisture Density or Consist.	Strata Change Elev.	Soil Identification	Sample		
					No.	Pen. Inches	Rec. Inches
4 – 6	2, 2, 2, 3	Moist		Brown fine to coarse Sand, little Silt, over	1	24	12
			4.5"	Dark brown Peat, trace to little fine Sand/Silt.			
6 – 8	2, 2, 2, 2	Wet		Gray fine to coarse Sand, trace Silt, over	2	24	8
			7'	Dark brown Peat.			
8 – 10	1, 1, 1, 1	Wet		Reddish brown Peat.	3	24	20
10 – 12	1, 1, 1, 1	Wet		Brown Peat.	4	24	12
14 – 16	WOH/24"	Wet		Brown Peat, over	5	24	6
			15.5'	Gray fine to medium Sand, little Silt.			
16 – 18	WOH/24"	Wet		Gray Clay/Silt.	6	24	22
20 – 22	WOH/12", 1, 2	Wet		Gray layered fine Sand/Silt/Clay.	7	24	14
25 – 27	4, 4, 5, 1	Wet		Gray fine to medium Sand, trace Silt.	8	24	19
30 – 32	4, 8, 12, 20	Wet		Gray fine to coarse Sand, trace Silt.	9	24	24
				(Erroneously high blows at 31' due to flowing sand.)			
				(Boring discontinued at 32' due to flowing sand.)			

Ground Surface to: 30' Used: 4.25" Hollow Stem Augers

Earth Boring: 32'
Rock Coring: 0
Samples: 9
HOLE NUMBER: B-1

Proportions Used	Cohesionless Density	Cohesive Consistency
Trace 0 to 10%	0-10 Loose	0-4 Soft
Little 10 to 20%	10-30 Med Dense	4-8 Med Stiff
Some 20 to 35%	30-50 Dense	8-15 Stiff
And 35 to 50%	50+ Very Dense	15-30 V. Stiff

M&W SOILS ENGINEERING, INC
PO Box 1466 ° Charlestown, NH 03603 ° 603-826-5873

TO: Pappas Contracting LLC PO Box 575 W. Swanzey, NH 03469 attn: Mike Pappas	PROJECT NAME: Pappas Elm & Carroll Streets LOCATION: Keene, NH M&W JOB #: 12310-22	SHEET: 1 of 1 DATE: 5-19-2022 HOLE #: B-2
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Ground Water Observations 6' at 0 Immed. hours	Augers-Size I.D. 4.25" Split Spoon 1.5" Hammer Wt. 140# Hammer Fall 30"	Surface Elevation: Date Started: 5-19-2022 Date Completed: 5-19-2022 Boring Contractor: T&K Drilling Soils Engineer/Inspector: Justin Mailloux
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LOCATION OF BORING: North end of Carroll Street side.

Sample Depths From/To (Feet)	Blows per 6" on Sampler	Moisture Density or Consist.	Strata Change Elev.	Soil Identification	Sample		
					No.	Pen. Inches	Rec. Inches
4 – 6	3, 3, 3, 2	V. Moist		Brown Peat.	1	24	8
6 – 8	1, 1/12", 1	Wet		Brown Peat.	2	24	19
8 – 10	WOH/24"	Wet		Brown Peat.	3	24	24
10 – 12	WOH/12", 1, 1	Wet		Brown Peat.	4	24	13
14 – 16	WOH/24"	Wet	13'	Gray Clay/Silt.	5	24	24
16 – 18	WOH/24"	Wet		Gray layered Silt/Clay, with fine Sand.	6	24	24
20 – 22	WOH/6", 1/18"	Wet		Gray layered fine Sand/Silt/Clay.	7	24	24
25 – 27	WOH, 1, 1, 8	Wet		Gray fine to coarse Sand, trace Silt.	8	24	18
30 – 32	4, 7, 20, 35	Wet		Gray fine to coarse Sand, trace Silt.	9	24	24
				(Erroneously high blows at 31' due to flowing sand.)			
				(Boring discontinued at 32' due to flowing sand.)			

Ground Surface to: 30' Used: 4.25" Hollow Stem Augers

Earth Boring: 32'
Rock Coring: 0
Samples: 9
HOLE NUMBER: B-2

Proportions Used Cohesionless Density Cohesive Consistency

Trace	0 to 10%	0-10	Loose	0-4	Soft
Little	10 to 20%	10-30	Med Dense	4-8	Med Stiff
Some	20 to 35%	30-50	Dense	8-15	Stiff
And	35 to 50%	50+	Very Dense	15-30	V. Stiff

NOTICE LIST

This template can be used to record the name, mailing address, street address, and tax map parcel (TMP) # for each party that is required to be noticed as part of an application.

OWNER NAME	MAILING ADDRESS	STREET ADDRESS (If different from mailing address)	TAX MAP PARCEL (TMP) #
NUEVO Transfers LLC	1 Bedford Farms Ste 202 Bedford NH 03110	0 Carroll St, 225 Elm St	536-049,536-050,536-056
NUEVO Transfers LLC	69A Island St St Keene NH 03431	0 Elm St	536-055-000-000-000
Severin Z Keeley	56 Spruce St Keene NH 03431		536-042-000-000
Cleyton Prinser & Brienna Provencher	119 Cheshire Turnpike Langdon NH 03602	147 Carroll St	536-043-000-000-000
Toby D Tousley	PO Box 626 Keene NH 03431-0626	143 Carroll St	536-044-000-000-000
Nina Fish	139 Carroll St Keene NH 03431		536-045-000-000-000
Timothy P Snapp	63 Adams St Apt2 Keene NH 03431	131 Carroll Street	536-046-000-000-000
Page M Niland	125 Carroll St Keene NH 03431-2909		536-047-000-000-000
Brian A Miller	42 Park Ave Keene NH 03431	119 Carroll St	536-048-000-000-000
Ann T Claridge	4 Sylvia Ave Natick MA 01760-4116	140 Carroll St	536-051-000-000-000
Carl N Babbitt	152 Carroll St		536-052-000-000-000
GBH Real Estate Inv LLC	53 County Rd Bedford NH 03110	253 Elm Street	536-053-000-000-000
Anna French Burnham	241 Elm St Keene NH 03431		536-054-000-000-000
Michael & Marcia Murdock Family Rev Trust	54 Centerview Drive Swanzey NH 03446	217 Elm Street	536-057-000-000-000
Beth Ellen Forcier Rev Trust	224 Elm Street Keene NH 03431		536-058-000-000-000
Ronald R & Diane L Dunn	228 Elm Street Keene NH 03431		536-059-000-000-000
Bryan James Ganoe	250 Elm Street Keene NH 03431		536-060-000-000-000
Roner Investment Properties LLC	PO Box 173 Marlborough NH 03455	35-37 Armory St	536-062-000-000-000
Timothy D & Diane L Matson Living Trust	23 Armory Street Keene NH 03431		536-063-000-000-000
Francis J Moriarty Rev Trust	17 Baldwin St Keene NH 03431		536-064-000-000-000
Natalia Gouznova Alexandre Alaferdov	10 Lake St 1E White Plains NY 10603	11 Baldwin St	549-009-000-000-000
Steven Bundrick	211 Elm Street		549-010-000-000-000
110 Spruce Street LLC	518 Old Shaker Rd Loudon NH 03307	110 Spruce St	536-061-000-000-000

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LOT DATA

ZONING	MEDIUM DENSITY DISTRICT
TAX MAP #	536-049-000, 536-050-000 536-055-000, 536-056-000
LOT SIZE	32,670 SF ± - 0.75 AC ±
EXISTING LOT COVERAGE VACANT LAND	
PROPOSED LOT COVERAGE	
BUILDINGS	2,880 SF - 8.8%
PAVEMENT	6,407 SF - 19.5%
TOTAL	9,287 SF - 28.4%

REVISIONS:

OWNER/DEVELOPER:

**NUEVO TRANSFERS
LLC**
1 BEDFORD FARMS
SUITE 202
BEDFORD, NH 03110

PLANNER:

Brickstone
Land Use Consultants, LLC
Site Planning, Permitting and Development Consulting
185 Winchester Street, Keene, NH 03431
Phone: (603) 357-0115

MULTI FAMILY
0 & 225 ELM STREET AND
0 CARROLL STREET

**CONCEPT
PLAN**

SCALE: 1"=40'

DATE: JANUARY 17, 2023

SHEET 1

ZONING BOARD OF ADJUSTMENT 2023 MEETING SCHEDULE

DEADLINE DATE	MEETING DATE*
December 16, 2022	January 3, 2023*
January 20, 2023	February 6, 2023
February 17, 2023	March 6, 2023
March 17, 2023	April 3, 2023
April 14, 2023	May 1, 2023
May 19, 2023	June 5, 2023
June 16, 2023	July 3, 2023
July 21, 2023	August 7, 2023
August 18, 2023	September 5, 2023*
September 15, 2023	October 2, 2023
October 20, 2023	November 6, 2023
November 17, 2023	December 4, 2023
December 15, 2023	January 2, 2024*

All review meetings are at 7:30 AM, in the 2nd Floor Conference Room, unless stated otherwise.

* January & September 2023 meetings and January 2024 meeting are scheduled for Tuesday due to the holiday

**All meetings begin at 6:30 PM and are held on the first Monday of each month in the Council Chambers, 2nd fl City Hall, unless stated otherwise