

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, August 3, 2026

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Richard Clough, Chair
Edward Guyot, Vice Chair
Zach LeRoy
Tad Schrantz
Adam Burke
Stephen Buckley, Alternate

Staff Present:

Evan Clements, Planner / Zoning Administrator

Members Not Present:

Michael Zoll, Alternate

1. Roll Call

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

Evan Clements, Planner/Zoning Administrator, stated that since Mr. Buckley was designated as a voting member for ZBA-26-5, he will continue as such tonight, as is the Board's practice. During the hearing for ZBA-26-5, Mr. Burke will step off into the audience and return for the next hearing.

2. Minutes of the Previous Meeting: July 6, 2026

Mr. Buckley gave a correction to line 143: "*Mr. Buckley replied this is correct*" should be "*Mr. Reddick replied this is correct.*"

Mr. Buckley made a motion to approve the meeting minutes of July 6, 2026, as amended. Vice Chair Guyot seconded the motion, which passed by unanimous vote.

3. Hearings:

- A) **Continued ZBA-26-5: Petitioner, JP Irving, LLC, of Concord, NH., requests a Variance, for property located at 59 Optical Ave., Tax Map # 241-006-000-000 and is in the Industrial Park District. The Petitioner is requesting a Variance to permit space for dispatch, office, bus storage and routine maintenance where this use is not permitted, per Article 6.3.5 of the Zoning Regulations.**

Mr. Clements stated that the hearing was originally opened on June 1, 2026. He continued that after receiving testimony during that hearing, the Board voted to continue the application to July 6, 2026. At that time, the Applicant made revisions to the proposed location of the outdoor parking storage area for the buses. The Board allowed the public to speak again at the July 6 meeting. The Applicant then requested a continuance to the August meeting, since July 6 only had three Board members present. Today, a site visit at the property at 59 Optical Ave. included nine members of the public, two City Councilors, the Applicants, and six Board members. They discussed the changes to the location and how the site would operate with the buses, and various questions related to the application were asked by the Board and answered by the Applicant.

Chair Clough stated that regarding procedure, they do not need a complete read through of the Variance, but the Applicant can speak to anything pertinent that is new to the Board and give a brief recap, because more members of the public are present today.

George Hansel from HG Johnson Real Estate stated that he represents the property owner, JP Irving, LLC. He introduced Steve Rennick, representing Student Transportation of America (STA), the proposed tenant. They are seeking this Variance to allow for a use that the Land Development Code (LDC) does not contemplate, which means they have no choice but to come before the Board and argue this point. He continued that he wants to briefly review the criteria, but regarding new information, he wants to continue to be respectful in responding to feedback from subsequent meetings. Mr. Rennick prepared quite a bit of information related to the buses' idling. Emissions standards are very high for this type of bus and have evolved over time. Mr. Rennick will speak to this, and he has written copies for the Board members, City staff, and anyone who wants it.

Steve Rennick of STA stated that at previous meetings, people brought up idling of buses on the property. He continued that New Hampshire law limits idling to five minutes within a 60-minute period, which means the buses cannot idle more than five minutes. The only exception would be in winter temperatures. Buses can idle 10 minutes if the temperature is from negative 10 to 32 degrees. Buses can only idle a total maximum of three minutes on normal weather days. STA's Anti-Idling Policy, signed by every driver, outlines all of this. Drivers are held to this policy. Bus idling is also tracked by the Zonar system, so if a bus is idling, it can be corrected immediately. It is on his computer, and he regulates it every morning. The dispatcher, too, would be able to access Zonar and see who was idling and where.

Mr. Rennick continued that regarding emissions, he made copies of STA's engine types and the regulations for those, and information about the modern diesel school bus emissions. They go from 1983 to current. Standards have increased and emissions have decreased every year. A school bus currently is one of the cleanest diesel-burning engines. That, combined with the Anti-Idling Policy, shows that STA is not emitting nearly as much pollution as people think. He thinks the problem with idling that members of the public brought up is because they can smell the asphalt factory across the street. That is not the case with diesel engines on school buses. Every STA school bus is a certified Clean Engine Bus. He has extra copies of this information if members of the public want to read it. He thinks that moving the location of the buses from the back of the property to the front would cut down on any noise or pollution back by the tree line. It would be out front instead, facing Rt. 101.

Chair Clough asked if the Board had questions. Hearing none, he agreed to Mr. Hansel's request to address the criteria.

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

Mr. Hansel stated that it is important for the Board to realize that the Applicant is coming before the Board for a couple of concrete reasons. One, this use is not contemplated in the LDC, so they have no choice but to come before the ZBA. Two, the reason this use fits so perfectly in the site is because it has what this use needs without any modifications. They do not have any site plan modifications planned for this. Everything has been sitting vacant. This is a nice drop-in use that would allow this building to continue to operate and be economically viable without having major impact on the community.

Mr. Hansel continued that he knows this process has taken three meetings, which is regrettable, but he thinks it was a valuable exercise. It allowed the Applicant to make some very reasonable accommodations. Their first attempt had the buses much closer to the residential area. They have moved the buses as far away as they can, which was not easy. It was not something that came to them when they were devising this project, because it is not very practical, operationally, on the site. It was not practical for what they wanted to accomplish, which is to divide the building for multiple users. However, they made this substantial accommodation. They have been responding as they go. They modified the bus routes to make sure that every bus coming in and out of the site would be to the west, making sure to provide as much of a buffer from the residential area as possible.

Mr. Hansel continued that he wants the Board to think about the historic use of this property and the surrounding properties. There was a UPS facility across the street. They could put a manufacturing use there that would have deliveries many times a day, backing trucks up to that loading dock, without any approval needed. That was contemplated when this Zone was devised. They are not doing that. He thinks the STA use would be much less intense than some of the uses that could go there by right. The Board cannot hold this particular use to a much higher standard than the uses that are allowed by right. He understands that having more activity on the site could cause some things that would happen there, but the question for the Board is whether this proposed activity would be substantially worse than something that was contemplated and allowed by right. They are not trying to force a use in here that should go somewhere else. The Zoning Code did not consider this use, so there is no other place. For any place in the City, the Applicant would have to request a Variance. The Board should keep that in mind as they deliberate.

Mr. Hansel continued that finally, he wants to say that they appreciate the public input. He speaks on behalf of the owner and works on behalf of the owner. No matter what happens tonight, they are working to fill that building with multiple tenants. He thinks that will be very successful. They want to be good neighbors and keep the dialogue going. If people have concerns, questions, and suggestions for what the Applicant can do better, he knows the owner is committed to that.

Mr. Buckley asked for clarification of the bus route and departure plan. He continued that on the site visit, he thinks Mr. Hansel said all buses would depart and always turn left on Optical Ave. and would either head to the other section of Optical Ave. and go another direction into the City, or head down to Rt. 101. He thinks he said no buses would come up onto the hill that goes directly to the area of apparently greater concern amongst the residents on Marlboro St.

Mr. Rennick replied that is correct. He continued that coming out of the parking lot, drivers would only be allowed to turn left. He changed the bus routes so there would be no bus traffic going down beyond the second driveway, unless a bus was going to the back to be repaired by the maintenance doors. No buses would go up the hill at any time of day or night. He eliminated all bus traffic on the Marlboro St. extension, to make it better for all the neighbors.

Mr. Buckley stated that to clarify, the other entrance to Optical Ave. is further up toward the City and there is a little island in the middle of Optical Ave. when you turn left and right. They are talking about from that point down, there will be no bus traffic on Marlboro St. He asked if that is correct. Mr. Rennick asked if he means from PC Connections from where you take the left to go onto Eastern Ave. Mr. Buckley replied that he is not so familiar with the names. Mr. Rennick replied that coming out of the Optical Ave. property, turning left brings you to Rt. 101. Turning right brings you to Marlboro St. The bus stops have been moved to the end of the Marlboro St. extension and Eastern Ave. No traffic would be coming down or going up the Marlboro St. extension at all, going forward.

Mr. Buckley stated that if the Board attached a condition to potential approval of this Variance, they would need to carefully compose the condition to be as accurate as possible. Mr. Clements replied that if the Board chooses to approve this, he recommends the condition that no bus traffic either leaving from or heading to the site utilize the Marlboro St. extension. He continued that any potential future user of the property would also be subject to that same agreement. Mr. Rennick added that that would also hold true with STA's staff, except for staff members who live on the Marlboro St. extension. Currently, that is two staff members.

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

Mr. Hansel stated that the Ordinance does not contemplate this proposed use, but the proposed use is consistent with other uses in the district.

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

Mr. Hansel stated that granting the Variance would allow this use that is not contemplated to find a location that seems consistent with its intensity. Granting the Variance would do substantial justice because it would not hold this use in particular to a higher standard than the uses that are contemplated in this Zoning district.

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

Mr. Hansel stated that he does not think this use would have much of an impact on the surrounding properties. He continued that he thinks the accommodation the Applicant made has even further separated that possibility. At the first meeting, there was some confusion about the trips per day versus trips per hour. To clarify, he had misspoken when he referenced 100 trips per day as the threshold that traffic engineers hold for a substantial impact on a surrounding intersection. The threshold is 100 trips per hour. The proposed activities would not come anywhere near that threshold.

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*

Mr. Hansel stated that this site is uniquely suited for this type of use. He continued that it was built as a high bay garage with a high garage door, which exists right now so it could be used for this. It has unused space, already paved, for the necessary storage requirement. No exterior modifications would be needed for the site to accommodate this use. The site is uniquely suited to this purpose. He believes that the fact that they do not need to modify the exterior will preserve the neighborhood character and the other hardship criteria.

and

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

Mr. Hansel stated that this use is consistent with other uses that are allowed here, such as manufacturing, research and development. The building was purpose built for a manufacturer that had heavy equipment.

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

Mr. Hansel stated that he was the one responsible for breaking up this building and trying to figure out how to get it occupied again and working again. He continued that it is very difficult. There are fewer big firms and big manufacturing companies than there were in the past. Those types of occupants that need all this space, and this kind of space, are few and far between. When this Zoning district was contemplated, there were more firms that were single occupancy for a building. Currently, there is more necessity for multi-tenant buildings with multiple types of uses in them. This would allow the property owner to modernize the way the building is used, in a fair and just way.

Chair Clough asked what the timeframe would be for starting the buses in the morning. Mr. Rennick replied that currently, the Harrisville bus is the first to roll out. It starts around 6:30 AM. All the buses start rolling back into the lot between approximately 6:30 AM and 8:45 AM. They go back out around 2:00 PM and are done between about 4:00 and 5:15 PM. He continued that the exception is night sports. Currently, where they are located at the Jonathan Daniels School on Maple Ave., if a bus comes in at night, it just pulls in and shuts down, and it does not back in. Buses do not back in after 9:00 PM.

Chair Clough asked how many buses would be starting their engines at 6:30 AM. Mr. Rennick replied two. He continued that STA services mostly the Keene area, so most of the other buses start around 7:00 AM.

Chair Clough asked for public comment, beginning with people in opposition. He added that whatever comments people made before are part of the public record, so no one needs to restate anything.

Ken Laine of 551 Marlboro St. stated that another concern he did not mention before is senior citizen age. He continued that he and some other residents are elderly and have some serious health issues. Their compromised immune systems would be especially harmed by noise and air pollution. Regarding the garage area where STA would service the buses, the buses would back up towards his house, which is just a few feet away. The alarms would be on. Buses accelerating would leave exhaust fumes. He assumes traffic would go in and out of the garage area every day. Those are his concerns. He hopes his and his neighbors' quality of life will not be taken away.

Penny Bell of 511 Marlboro St. stated that much of her family lives at 505, 508, 511, and 550 Marlboro St. She continued that she has no problem with bus companies. She sees this bus company every day because she drives to Jonathan Daniels School. She would like to know whether this repair facility would be only for the buses that park at the Optical Ave. site, because she believes STA also has 80 buses in Jaffrey. Another question she has is whether the elementary school students who live past 550 Marlboro St., which is the end of the street, would be required to walk to Eastern Ave. and whether that is safe. She does not think the neighborhood asked for that, and she hopes it is not a punishment. She also wants to know whether the Board approving this Variance request would open the door for her to have a repair facility on Rt. 101 or the dead-end part of Marlboro St. She has enough acreage for that. She does not think that is the kind of door the Board wants to open. She also wants to know if there is enough parking at the Optical Ave. site. She sees the STA buses at Jonathan Daniels, and it seems like they are taking up a lot more space there than the space they say they would allow for buses. She questions who would monitor STA's use of the Optical Ave. space, and whether STA could, for example, double in size and bring all their buses from Jaffrey to the Keene site. She questions what kind of impact that would have.

Ms. Bell continued that she does not live directly behind this site but knows people who do. Her neighbors would be affected. They walk their dogs there, and their children play along the street there. She has tenants who work for STA and some of them are family, so she has nothing against STA. However, Mr. Hansel said the Applicant is asking the Board for approval to be here

because they have to be here. She questions whether they truly have to be, and whether it is in everyone's best interest.

Nora Travis of 528 Marlboro St. stated that she spoke last time about the significant negative health effects of diesel exhaust, mentioning that she is a scientist who studies this. She has done a lot of work looking at biodiesel as an alternative fuel, which is less toxic than diesel. Her question is whether the Applicant would be using biodiesel. She would like to know more specifics about these "*clean diesel engines*," because that can mean anything. She would like to know if the engines are post-2017 model, which are the cleanest on the market, and whether the buses have a selective catalytic reduction or diesel particulate filters, which is the best emissions reduction technology. She would like evidence to support Mr. Rennick's claim that these are the cleanest diesel buses that could be available. It is a reasonable question, given the concerns everyone has raised. There is a big difference between 1998 engines and post-2017 engines.

Ms. Travis continued that she appreciates the clarification on idling and the commitment to having onboard computer regulation of it. She understands why the public was concerned. Laws prohibit idling, but it is essentially up to the fleet managers. The New Hampshire Department of Environmental Services (NHDES) sends a recommendation to fleet managers to remind them not to idle. It does not look like there is a robust enforcement response. If the City decides to change the zone, she questions where the complaints would go to, such as the NHDES or the City. It would be a city decision to change the zone and impact on the air quality. The startup of the buses would be worse than the idling. They would be cold in the mornings, so every day, it would be a dirty startup. That would be when most of the emissions would occur. There would be a sequence of all these different timings, depending on what schools the fleet goes out to. Based on that timing, they would have a cold engine start with those puffs, which would float, and people would have to breathe that in. That is more of a health concern than the idling. Every day, this startup period of an hour or so would generate an excess of emissions.

Ms. Travis continued that what she did not mention during her last testimony was that diesel exhaust is classified as carcinogenic to humans. It causes lung cancer in humans, and strong evidence suggests it causes bladder cancer in humans. The designation of carcinogen was made in 2012 by the International Agency for Research on Cancer. California also asserts that it is a carcinogen. She knows the question in response will be, "*Our kids ride on the buses, so how bad could it be?*" It is a carcinogen. If this were in the workplace, it would be heavily regulated. It is not in the workplace, and therefore, because it is a transportation loophole, this is how it happens to happen. The Environmental Protection Agency (EPA) does not regulate the exposure of or the air inside the bus. The Occupational Safety and Health Administration (OSHA) only regulates the chemicals that someone could be exposed to in the workplace. Keene cannot figure all that out. Her point is just that 38 buses would generate a lot of diesel particulate matter and it is something that cannot be undone. The quality of life cannot be returned once this decision is made. The businesses already there have done a lot of tree clearing, as is their right on their property. They have cleared a lot of trees and vegetation that might have acted as a green barrier to some of the migration of air pollution. She would strongly ask the Board to vote against the Variance. This is an economically disadvantaged Census tract in Keene. It would negatively impact this neighborhood, regarding air quality, noise, and quality of life.

Randy Filiault of Ashuelot St. stated that he has been a City Councilor for 27 years and is a lifetime Keene resident. He continued that tonight he is representing his constituents from the Marlboro St. neighborhood abutting this proposed project. As Chair of the Planning, Licenses, and Development Committee, he wholeheartedly supports economic development in Keene. He agrees that STA needs an appropriate site. However, this is not it, for the many reasons the Board has heard tonight and at previous meetings. Article 6.3.5 of the Zoning Regulations does not permit this type of use on this property, and for good reasons. Keene's Comprehensive Master Plan (CMP) strongly emphasizes the importance of safe, quiet, vibrant, walkable neighborhoods. This proposal would detract from that, going against the CMP. It is disappointing that the neighbors must speak out in defense of their neighborhood by simply asking that the Zoning laws be upheld. It is an unfair burden on the neighbors. Keene government created Zoning for a reason, and it should never be taken lightly. In his opinion, a Variance should only be granted for dire situations or emergencies. This proposal is neither. It is simply convenient for the Applicant. There is no hardship.

Councilor Filiault continued that deterioration of Keene's neighborhoods is rapidly becoming a serious problem. As a Councilor, he frequently meets with neighborhood groups struggling with multiple issues affecting their neighborhoods and their quality of life. He appreciates the time and effort the Board has put into this issue. He realizes these decisions are difficult, and he knows the pressure they face. But they must do the right thing for the neighborhoods, which is the most important part of the CMP. He urges the Board to vote "no."

Shane Maxfield of 534 Marlboro St. stated that he and others attended the site visit had a chance to walk around the parking lot. He continued that each bus is about 39 to 40 feet long, which is just shy of half the width of the parking lot. If 30 or 40 buses were jammed into the parking lot, even at the end where the Applicant proposed moving them, that would be very tight. He could imagine the potential "three-ring circus" it would be every morning and afternoon when those 30 or 40 buses maneuvered in and out. He questions whether a waiver of this ordinance would necessitate an attempt at a later point to pave over a lot of that green space to make it less tight. There would be a lot of backing up. Every bus going to the maintenance bay would have to back up to get in or out, as there is no pass through. The buses' back-up alarms are designed to be shrill and attention-getting, about 90 to 110 decibels, which Google says is equivalent to a rock concert. That would happen every time a bus went into the maintenance bay, and frequently in the parking lot as they tried to fit 30 or 40 buses there.

Mark Boden of 547 Marlboro St. stated that he is an abutter. He continued that he does not think he is talking as a NIMBY, but as someone who both personally and professionally has invested a lot in Keene. When he first heard of this proposal, his initial reaction was to think that Keene must be able to do better than putting a bus depot in a residential neighborhood where it would contribute undeniably, even with a responsible operator, to air and noise pollution. That would impact the community without a doubt. Currently, the State does nothing to protect the air. Keene must do that for Keene. Regarding the idling, "five minutes maximum" is for one bus. There would be 30 buses idling. He encourages the Board to consider the neighborhood residents and what they go through, plus the air quality. His concern is that the Board allowing this Variance could lead to the approval of another bus depot Variance in someone else's backyard. Keene has to be better than that.

Dustin Clark of 543 Marlboro St. stated that he understands that the Applicant has revised the proposal for the bus parking area and that they would limit the repairs in the building to one bus at a time. He understands that repairs would generally occur during business hours with occasional Saturday work. He appreciates that the intent of those changes would be to reduce impacts. Even so, he remains concerned that the Applicant has not met the legal standards required for a Variance. A use Variance is an extraordinary remedy. It is not enough to show that this property is a convenient location for this business or that impacts might be manageable. The Applicant must demonstrate that all legal criteria have been satisfied. His primary concern is the unnecessary hardship criterion. He has not seen evidence that this property could not reasonably be used for one of the uses already permitted in the Industrial Park District. The Applicant explained why this business would like to operate here, but he has not seen evidence that the Zoning Ordinance prevents any reasonable use of the property.

Mr. Clark continued that he is also concerned about the precedent that approval of this could set. The LDC does not currently list transportation operation center as a permitted use in this district. If the City believes transportation depots should be allowed in the Industrial Park District, the question should be considered through a public amendment to the Zoning Ordinance where the community and the Planning Board could evaluate whether the use is appropriate through the district. A Variance should not be a substitute for that legislative process. He asks the Board to consider whether the record contains sufficient evidence regarding the operational impacts of this use. Although fueling is not proposed and repairs would occur indoors, this would still be a transportation depot with bus storage, dispatch operations, and regular bus movements. He has not seen detailed analysis of traffic patterns, early morning departures, noise associated with fleet operations, or the cumulative effect of adding this to existing industrial activity in the area. He asks the Board to apply the statutory standards carefully and require the Applicant to meet its burden with evidence. If those standards have not fully been met, the Variance should be denied.

Mr. Clark added that he wants to know whether the Applicant's commitment to one bus at a time, no refueling, and repairs only during business hours would become binding conditions of approval. Otherwise, a future owner or operator might argue that they are not enforceable.

Ken Bergeron of 558 Marlboro St. stated that he has lived there for 56 years. He continued that over the years; all he has seen is conditions degrading. His children used to play in the field and fish in the pond. Some children still do. Seeing multiple buses there would be a further detriment to the neighborhood. He has never heard the Applicant volunteer to bring 12 or 15 buses to the location and start them up in the presence of the ZBA to prove that they are not noisy. The Applicant said he thinks the situation would be better if they moved the buses to the west of the original location. He wishes ZBA members could go listen to what the buses would sound like there.

Chair Clough asked for public comments in support of the application.

Laura Grubel of 23 Sparrow St. stated that she is a bus driver. She continued that she was not forced to be here tonight; she was willing to come. She lives in Tanglewood Park, which is right

behind where the buses are currently parked. She has several signatures from other homeowners in Tanglewood Park. They do not hear or smell the buses at all from where they are parked.

Ms. Grubel read aloud the words she wrote:

“The Tanglewood Mobile Home Park located behind the Jonathan Daniels [School]. I am submitting this statement to confirm that the school buses parked near our community have not created any disturbance. Residents have not experienced fumes, noises, or any concerns related to the buses. Several additional buses approved to remain within the park have not generated any complaints. I will collect signatures from neighbors who wish to affirm these observations. Please feel free to contact me with any questions.”

Ms. Grubel added that she got the signatures. She will give the paper to City staff to enter into the record.

Chair Clough asked if anyone else wanted to speak in favor. Hearing none, he invited the Applicant to respond to the public comment.

Mr. Hansel stated that regarding the health issues and air pollution, the Applicant supplied quite a bit of information related to that. He continued that something for people to consider is that the buses are being held to a higher standard, regarding pollution, compared to regular 18-wheel trucks that come in from all over the country to deliver goods to this site. It might make people feel better about the situation if they think of how these are New Hampshire buses, with a local company where those standards can be upheld. That is also true for the alarms backing out of the garage. At the site visit, they saw that the proposed garage door is right next to the loading dock. Any delivery that would come to the building would involve a truck backing up there. That would not be dissimilar to a bus going in and out of the garage. The sound from the bus would probably be less than the sound from an industrial user in this space.

Mr. Rennick stated that regarding the route modification for the Marlboro St. extension, he brought it back to what it was a couple of years ago when the bus routes were driven by First Student. He did this because people at the first couple of meetings expressed concern about the bus traffic going up and down the Marlboro St. extension. He is trying to work with everyone. Last year when STA took over the bus service from First Student, they kept all the routes the same, thinking everything was okay. Then they learned of people’s concern about the bus traffic up and down the Marlboro St. extension. He is trying to eliminate that. He knows it is a kid-friendly street. Putting the routes back the way they originally were, which is the end of the street down by Eastern Ave., is not to punish the residents in that area. As he said, a couple of STA employees live there, too. The only reason STA made this modification is because they want to eliminate as much traffic as possible between the buses and the employees traveling on that road.

Mr. Rennick stated that for nine days straight, he brought two buses to the Optical Ave. property at different times of day. He ran the buses, put the backup beepers on, and did everything with the buses that they would normally do. He understands that two buses are very different than 20 buses. But he did it just to see what the noise would be. He was on the top of the hill. Between the traffic on Rt. 101 and the backup beepers, at the top of the hill, you could barely hear the

backup alarms. State law requires them to be a minimum of 90 decibels. STA cannot do anything about that. They cannot disconnect them. They had the same concern when they went to the Jonathan Daniels property. They talked with the Jonathan Daniels neighbors. The buses have been there for a year, and they have not had any problems.

Mr. Hansel stated that regarding Ms. Bell's question about whether this use will grow, they are not proposing any site changes. He continued that he submitted a very detailed application, more so than a lot of applications. Sometimes an Applicant can play a little game and not put specific numbers in, but they are not playing that game. They are laying all their cards on the table because they recognize that is important. If approved, they would be held to the application, as well as any conditions the Board puts on it. Regarding Ms. Bell's question about who would enforce it, it is a complaint-driven system. If someone complained to the City about something going on that was not allowed, the City would investigate that and compare it to the documentation of what was approved, and then an enforcement action could take place.

Mr. Rennick stated that regarding the question about biodiesel, STA currently does not fuel on property. All the buses have gas cards, and they go to all the gas stations around town. They use biodiesel if a gas station has it, but he is not aware of any biodiesel stations. Per the Keene contract, STA cannot have any buses older than seven years. All their current buses are 2020 models and newer. That is also true of the special needs' vans. All the large buses are 2021 models and newer. The oldest in the fleet is a van they borrowed, which is at its seven-year mark, that left last week.

Mr. Hansel stated that he has another comment related to what Ms. Travis said about potentially reducing emissions. When Mr. Rennick and his company were looking at potential locations for the buses, they were trying to get it close to the cluster of the population where their routes are so that they can limit the amount of non-productive back and forth driving that would be required.

Mr. Rennick stated that currently, the buses are parked at the Jonathan Daniels Preschool on Maple Ave., and the repair facility is in Westmoreland. He continued that they are trying to get it all centralized. Currently, STA services all of Keene, Marlborough, Harrisville, Sullivan, Nelson, and Marlow. By being in Keene, they could just spread out by going down Rt. 101 and get to the main highways. They would not be traveling as much through the city streets of Keene.

Mr. Hansel asked Mr. Rennick if it is fair to say that with this move to a more populated city, centralizing that location, STA would reduce the number of miles that these diesel buses would be traveling in the whole community. Mr. Rennick replied that is correct.

Mr. Hansel stated that regarding the tree clearing on the site, he is not familiar with that and is not sure what Ms. Travis was referring to. He continued that the only thing he can think of is that he is doing fit-up for another tenant and they might have taken down some trees at the back of the building to put equipment on. That would be his best guess. He has not seen or heard of any tree clearing going on there. There definitely was not any tree clearing between the building and the residences or anything that he is aware of. Mr. Hansel stated that someone had a question or comment about the bus sizes. STA's buses are of various sizes. They are not all 40 feet long. Regarding the tight parking on site, they are not proposing any site modifications. They did the

analysis and determined that with the number of buses that would be operating there, they could move around utilizing the existing pavement.

Mr. Rennick stated that regarding the Jaffrey bus terminal Ms. Bell brought up, Jaffrey has its own terminal with 45 buses, which are maintained in Jaffrey. Jaffrey buses would not be on Optical Ave. at all. No fueling or bus washing would be done on Optical Ave. Peterborough's 48 buses are maintained in Peterborough. None of those buses will be brought to Keene for service.

Mr. Hansel stated that regarding hardship, this is a unique property. He continued that the building was purpose built for a company and its needs at the time. He knows the inside of the building is not the Board's purview, but it is divided up between high bay garage space, which is what they are talking about here, with low-ceiling manufacturing space and other difficultly accessible space in the back. The way the site has been used in the past would be less likely to occur in Keene now. He sees a hardship in using it with the strict Zoning use regulations that exist today.

Mr. LeRoy asked where First Student operates or operated out of. Mr. Rennick replied Whittemore Farm Rd. in Swanzey. Mr. LeRoy asked if it is correct that STA took the Keene contract that First Student used to have. Mr. Rennick replied that STA took the Keene contract and First Student has the Monadnock contract. Mr. LeRoy replied that he was curious whether First Student had vacated a space in Keene due to STA acquiring the Keene contract. Mr. Rennick replied no. He continued that STA's Keene contract is for three years, as is First Student's Monadnock one.

Mr. Buckley asked if Mr. Rennick or Mr. Hansel had more information about the UPS activity, such as which building UPS was in, and when that activity was ongoing. Mr. Hansel replied that it was across the road. He continued that if you are looking out the garage door he and Mr. Rennick are talking about, the UPS facility was straight across the road there. Regarding the level of activity, he only remembers it anecdotally. He does not have any information on that.

Chair Clough stated that he had a roommate who worked at UPS. He continued that before they built the Krif Rd. facility, it was the distribution center for this area. It was used for truck parking and parcel sorting. Mr. Hansel replied that it is not as big of a building as their current facility, but he thinks it operated in a similar way.

Mr. Buckley stated that he has been wrestling with trying to understand this Light Industrial District and what appears to be many activities that are not completely consistent with the definition of "Light Industrial." The Zoning Ordinance says that "Light Industrial" is for "*the manufacture, fabrication, processing, reduction, and/or destruction of any article, substance, or commodity, or any other treatment thereof, in such a manner as to change the form, character, and/or appearance, where such activities are conducted wholly within the enclosed building.*" Mr. Clements made clear in his original presentation in June that a transportation center is not a permitted use anywhere in Keene, but that there are several places in Keene where automobile dealerships have, in effect, transportation centers and maintenance operations. Mr. Clements described that as being an "accessory use" in some instances. He is trying to understand the parameters that are in the Zoning Ordinance, and the fact that C&S has not insignificant

warehouse in this area, and apparently UPS operated a significant transportation center of some sort, and how those activities came into existence and either preceded this apparent limited nature of the Zoning Ordinance. This was a common thing that towns and cities wanted to do; they wanted to have light industrial research centers, for example. Maybe these changes came about, but there were other, pre-existing activities which seem inconsistent with it. He is trying to understand those dynamics and how this creates a situation the Board now has to address with this particular application and the fact that there is no transportation center use in Keene.

Mr. Clements replied that he does not have dates for when things changed. He continued that it is obvious to him, when you look in the permitted uses in the Industrial Park District, that as this district stands today, the intent was, like Mr. Buckley said, for research and development, office, daycare, data center, and light industrial uses. The defining characteristic of “Light Industrial” is that all activities shall take place inside. All the other permitted uses in this district effectively have the same characteristic that the principal function takes place inside of a building. Part of the reason why he determined that this specific use in this location needed a Variance was because fundamentally, the activity for this use would take place outside, not inside. That is why they are all here this evening.

Mr. Clements continued that contrasting that to the Industrial District, a significant number of uses are allowed there for outdoor activity, such as warehouse and distribution, outdoor storage yard, and things like that. If this was zoned Industrial, he can only speculate, but he might have been able to come up with a way to say that while this would be a mix of use and it would be outdoors, the Industrial Zone allows for heavy industry, which is for outdoor, industrial activity. A bus depot would probably better fit there, in between office, outdoor storage, heavy equipment storage, and uses like that. That is not the case in Industrial Park. All the uses are designed to be inside some structure. He does not know when this part of the community was probably zoned Industrial and then was rezoned to Industrial Park. He found site plans for the UPS warehouse and distribution facility from the 1970s and 1980s. When it was permitted, the Zoning Ordinance was very different back then. The LDC was adopted in 2021, with a significant amount of consolidation and changes. His understanding is that the Zoning map as they know it today has not been fundamentally updated since the 1970s.

Mr. Buckley stated that the C&S Warehouse is also in the Light Industrial District. He asked if it is correct that that is a recent origin, or if he misunderstands C&S’s current warehouse. Chair Clough replied that it is C&S’s sales and office space, not their warehouse.

Mr. Clements asked if he answered Mr. Buckley’s question. Mr. Buckley replied that he did the best of his ability. He continued that it just leads to the Board’s difficult task of saying, yes, they have a much more refined or stringent list of permitted uses in the Light Industrial District, which was a change brought about by the LDC amendments in 2021. Mr. Clements replied that he does not think Industrial Park District was created with the LDC. It was earlier. He continued that as he said before, this was a very narrowly targeted area for very specific type of economic activity. In his mind, it was a way to draw in corporate headquarters, with large office buildings pushed back significantly from Optical Ave. The Industrial Park District has large green space requirements, which is the antithesis of the regular Industrial District, which allows for 80% or greater lot coverage. Industrial Park District allows a total of 70% impervious coverage, but only

25% max building, whereas the Industrial District is 80% and 80%. You only need to leave 20% as green space and you can basically pave the rest. The Industrial Park District was designed for a car-centric corporate headquarter office type of use.

Mr. Buckley stated that the linchpin of Mr. Clements's judgment in the Zoning assessment that led to the Variance application process they are in was that the activity was not confined to the inside of the building. It had a significant level of outdoor activity. Mr. Clements replied that that is correct. He continued that he would argue that the maintenance and office would be accessory uses to the principal exterior storage, transportation, depot component of the operation.

Mr. Buckley stated that he has a hypothetical question. He asked, if they built a facility that would house all the buses in a building, whether that would qualify as an "indoor activity" or still be a problematic transportation center that had too much exterior activity and impact on the neighborhood. Mr. Clements replied that that is a hard question to answer. He continued that the City's Public Works facility stores nearly all its equipment inside, down the street from this. It would certainly reduce impacts. He speculates that pollution could be controlled better and noise would be somewhat mitigated. Data centers are loud, and that is a permitted use in this district. He does not have a clear answer to Mr. Buckley's question. Mr. Buckley replied that he will withdraw the question.

Mr. Buckley stated that the buses are currently parked on Maple Ave., next to a mobile home park. He continued that he does not know why that did not require some sort of permission and whether that was a permitted use. He would speculate that because it was considered a school use, somehow it was exempt under governmental uses. That use is right next to a residential area and probably has much more impact because the buses are on the same level and neighbors can see the buses. That does not answer the question the Board is faced with, but it is a fair comment.

Mr. Clements replied that considering the contract with SAU 29, which is a governmental entity, and the use is taking place on school property, that is probably the decision that was made with that. He continued that that might have been before he was Zoning Administrator, so he does not know how that shook out.

Chair Clough closed the public hearing and asked the Board to deliberate on the criteria. Mr. Buckley asked if they should first take a straw poll, regarding whether the Board members present are likely to approve or deny the application. Vice Chair Guyot replied that he would like to go through each criterion; it helps the thought process.

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

Mr. Buckley stated that the *sine qua non* of this whole thing is that it is an outdoor activity, which is inconsistent with Light Industrial, meaning it is inconsistent with the public interest. It is contrary to the general public interest of the district, even though underlying activities that have been going on for many years are consistent with the proposal. The Zoning changed. Part of the Board's obligation is to uphold that Zoning. It seems that the outdoor storage is the real issue. Vice Chair Guyot replied that he agrees with Mr. Buckley there. He continued that however; the Zoning regulations had not contemplated this use. It could be this type of use, or it could be a

different type of use in the future. The Board is in a unique situation where they have to consider this new proposed use and how it fits into the existing regulations that were created with a thought process that did not consider this type of use. He asked if that is a fair assessment of where they are. Chair Clough replied yes. It is very uncharted. He continued that he is not sure anyone has ever come before the Board with a transportation use like this.

Mr. Schrantz replied that he thinks he concurs with Mr. Buckley's assessment. He continued that it seems, based on the information provided and even the most recent conversations and input, that the Industrial District is more applicable to this type of use versus the Industrial Park District. He thinks he concurs that for that reason, it is not in the public interest.

Mr. LeRoy replied that the problem is that they would still have to go through some type of Variance, regardless of where they are. He continued that they would be put in a position of not being able to find an alternative location. He feels for the neighbors. To him, that is the crux of this. When the Board had this discussion about the casino, for example, there was no better place for it. There was not a good place for it in anyone's mind, but the question was where else to put it. It was necessary. No one thought about it long term in the zoning or planning process, which meant it came to the Board to figure out a solution.

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

Chair Clough stated that his feeling is that the Ordinance does not even mention anything of this nature. It is like presenting something in Latin and expecting someone who speaks Greek to understand it.

Mr. Buckley stated that the problem the Board faces is that the "Light Industrial" definition says everything is supposed to be conducted wholly within an enclosed building, so this is not within the spirit of that language. He continued that he drove around the area and saw the Timken building, Samson Worldwide, an image manufacturing company, and several other activities, all of which are indoors. They have some externalities, but everything seemed to be taken inside. UPS might have been different, but it does not appear to be that that was the idea. He would be hard pressed to say that having an external transportation site would be within the spirit of the Light Industrial use as defined in the Ordinance.

Mr. LeRoy asked why Mr. Buckley was restricting his analysis to Light Industrial. Mr. Buckley replied because that is the ordinance they are dealing with. Mr. LeRoy replied that they are looking at Industrial Park zoning. He asked if they are just going to restrict it solely to the Light Industrial aspect and not any of the rest. Mr. Buckley asked for clarification from Mr. Clements.

Mr. Clements replied that Light Industrial is a permitted use in the Zoning Ordinance, and Industrial Park is the district the property is located in. He read the purpose statement for the Industrial Park District, which is also in the Staff Report:

"The Industrial Park District is intended to provide for relatively low intensity manufacturing and research and development firms that are employee intensive, clean in nature, and promote an attractive industrial park environment. Service operations and sales activities are excluded

from this district, except for minor sales that may be accessory to the primary use. All uses in this district shall utilize city water and sewer.”

Mr. Buckley stated that the permitted uses are office; research and development; daycare center; data center; industrial, light; and infrastructure uses. He continued to answer Mr. LeRoy’s question; he feels that the Board is constrained by these permitted areas of activity within the Industrial Park District. The use has to be one of the listed ones, in the categories of commercial, industrial, institutional, or infrastructure. Theoretically, a data center could be a much more intense activity, but that would have a different impact, on water and power, as opposed to the impacts of outdoor storage. It is difficult to say that the spirit of the Ordinance would be observed. He does not think it would be observed in this context.

Mr. LeRoy replied that his point is that there is nothing to compare it to. He continued that there would be no way to go to Industrial, either. If this were Industrial, they still would have to go through the same process. Mr. Buckley replied that he thinks that goes to the Unnecessary Hardship requirement. No Zoning Ordinance can adequately address all potential uses of land. Towns and cities could certainly exclude nuclear power plants. But there will always be these questions of whether particular uses are allowed and how to define the allowed uses. Keene’s Zoning Ordinance is one in which if a use is not listed as a permitted use, the use is excluded. That is how the Zoning Ordinance is interpreted. If it does not say, “transportation center,” it is not an allowed use; someone would have to get a use Variance. They are stuck with the fact that since it is not listed, it is prohibited.

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

Mr. Buckley stated that they are balancing the burden on the Applicant versus the burden imposed on the public at large for protecting the Zoning regulations. He continued that he thinks this weighs in the Applicant’s favor. They are on the horns of a dilemma. They do not have any reasonable place to put this activity, so you could argue that substantial justice would be done to this particular applicant, given the lack of this as a permitted use. If you had to sit down and rewrite the Zoning Ordinance or the CMP, you might consider adding transportation centers. Maybe it is an omission that should be addressed. He thinks the burden is more on the Applicant here and therefore, substantial justice would be done by granting the Variance.

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

Chair Clough stated that someone looking to buy a house might not be thrilled to hear a bunch of buses rumbling at 6:45 AM, but he does not know how it would be the rest of the time. Mr. LeRoy replied that people are eager to buy houses on Arch St., even though you cannot get through there for an hour in the middle of the afternoon on a school day. He continued that it is in the eye of the beholder.

Mr. Schrantz stated that he wants to recognize that the Applicant has tried to make many accommodations based on stated impacts from the abutters, regarding relocating the buses and not having any bus traffic on the Marlboro St. extension. He continued that he thinks that lies in

their favor, listening to the concerns and trying to address them. Something will go in this building. There will be truck traffic and noise created by those uses. He struggles with this question. It is a matter of degree, in his opinion. Certainly, there will be an impact, but there will be an impact no matter what use goes in there. His opinion is that it will not be negatively impactful more than any other use that goes in there.

Chair Clough stated that he was trying to imagine owning a house in this area. He continued that if he does not sleep well, he is a grumpy person. The buses would be starting earlier than his alarm goes off. There would be the anxiety of knowing that something like that could affect him, at least on some days, maybe when it was hot and he had to sleep with the windows open. Maybe the rumbling and other sounds would mean he would not get quite the sleep he expected. Rightfully so, STA cannot change their hours of operation, but their hours of operation are not typical, having buses going out at 6:30, 6:45, or 7:00 AM. Most other uses for that location would typically start at 8:00 AM at the earliest. The bus routes' times are necessary, though.

Mr. LeRoy replied that similarly, what he struggles with is the fact that these bus routes are happening and will be happening one way or the other. He continued that the buses need to bring children to school. The Board can sit here and debate the environmental impact and everything else, but the buses will be operating and driving children to school until there is an alternative way of doing it, whenever that happens. Where the bus operations are centralized is the question. He does not know whether there is another location for that. He does not know whether that is the Board's position. At this point, the Optical Ave. location is the only option on the table.

Mr. Buckley stated that regarding diminution to surrounding properties, he would add two things. First, the abutters presented a great deal of evidence about the asphalt plant. They cannot put the asphalt plant around the Applicant's neck and say it is the Applicant's problem. That is not reasonable. Second, the potential harm from diesel exhaust fumes would be significantly diminished by the fact that these are all clean diesel buses, certified as such. He does not believe the values of surrounding properties would be diminished, because of those two factors.

Mr. LeRoy stated that currently, data centers are a hot-button item nationwide. If a data center wanted to go in this location they could, without any pushbacks. The noise and pollution that comes from them would be much worse than these school buses being there. There are only 182 days of the school year. Something like an Amazon fulfillment center would run seven days a week, with about a thousand trucks going in and out.

Mr. Buckley replied that those are fair comments. He continued that the problem is the Board does not write the laws; they need to implement the laws as written. If it were a data center, it would not come to the Board.

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*

Chair Clough stated that it is awkward, because it has special conditions in terms of where it is in terms of how it has been zoned, which limits its uses to things that are not necessarily as pertinent today as they were in the 1970s and 1980s. On the flip side, it is a flat property, with the hill to the east, and the prevailing climate and winds drive anything that is happening from the west into those houses. Thus, the topography works both for and against it. Putting all the fumes, noise, and other impacts against the people who are living there is negative. But the fact that property just as itself is in a no-man's-land, and yes, they should fix the zoning for this, because it is so limiting. He sees both sides of this.

Mr. Buckley stated that looking at the language, you have to make the following findings for hardship: there is no fair and substantial relationship that exists between the general public purposes of the ordinance and the specific application of that provision to the property. If the Board determines that Mr. Clements is right, which he thinks is a reasonable conclusion, that outdoor activities of this nature are inconsistent with Industrial Park, then the proposed use is inconsistent with these general public purposes as applied to this property. If they make that finding, there is no hardship. It might cry out that they need to allow this use someplace, but maybe it would not be in this zone. Maybe a transportation center would be in an Industrial Zone. This is where he is hung up. He does not think they can get to the hardship without violating this concept that the general public purpose is to confine the activities of a research or light industrial nature to inside the building. Parking buses outside goes against that.

and

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

Vice Chair Guyot stated that he does not think the use is unreasonable for where it is. However, what Mr. Buckley has astutely pointed out is that it is not consistent with the regulations as written today. It is a built-in conflict for the Board.

Chair Clough asked if anyone had anything else to say about the Board's deliberations on the criteria. Mr. LeRoy stated that in June when they first had the hearing, the Applicant said there was no other place to do this. He continued that he thought to himself, there is a ton of commercial real estate. He did a lot of research after that meeting, and the Applicant is right. There is no place that would accommodate this directly. There are plenty of spaces that could be used if the Applicant wanted to invest half a million or a million dollars to reconfigure a building. He does not know if that falls under the definition of "hardship." Like he said, the buses need to be located somewhere. School starts in about three weeks. After the June meeting, he was fully prepared to tell the Applicant to find another location for the buses. But after doing the research, he agrees that there is no other place for it.

Mr. Buckley replied that he would point out that the Applicant said they are functioning currently on Maple Ave. He continued that STA wants to have their maintenance operation, which is currently in [Westmoreland], come down to the same area, because that would be more

efficient and would allow them to provide better service to the School District and Keene residents. The Board needs to consider that. The Applicant is not saying they cannot do what they need to do; they just would like to do it more efficiently. There would be a better service to the SAU and to the Keene students. The question is whether that is enough to say this creates a sufficient hardship to allow because of the lack of other places to go. They are functioning, but not as efficiently as they would like to.

Mr. LeRoy replied that it might not be just what they would “like.” He continued that it might not be sustainable enough to make it a viable business. It would therefore cost the whole community more money. Mr. Buckley replied that the worst-case scenario would be they could not afford the contract they have with the SAU, and they would have to ask for more money, because it would cost more to run the bus operation for the SAU. That would affect all the taxpayers. Certainly, that would be a potential outcome of denying the Variance request in this particular setting.

Chair Clough asked someone to make a motion and asked for assistance with the wording of the proposed conditions. Mr. Clements replied that regarding not utilizing the Marlboro St. extension, he suggests, “*bus traffic leaving from and returning to 59 Optical Ave. shall not utilize the Marlboro St. extension.*” He continued that the proposed navigation of buses leaving the site is for them to always turn left to go down Optical Ave. and then either take the right turn Marlboro St. or the left to Rt. 101. Buses returning to the property would utilize either Optical Ave. or Rt. 101 and not come down the Marlboro St. extension. He would not want to put the Applicant in a situation in the future that would constrain their ability to appropriately serve students with mobility challenges. For example, if STA needed to take a specially equipped bus to a student who lives on the Marlboro St. extension, they should be able to do that without having to repeatedly call the City for permission. They would want all the residents to understand that such a bus would be going on the Marlboro St. extension not for driver convenience as a cut-through, but for a specific reason to serve a student. That is why he would not want a blanket prohibition on Marlboro St. The *intention* of the navigation is important.

Mr. Clements continued that another condition could be, “*All vehicle maintenance shall be conducted indoors.*” They also have a spill prevention and mitigation plan, which seemed straightforward for the Applicant. Community Development staff want a copy of that on file with this use. During the site visit, they discussed screening. The Applicant is hesitant to be subject to everything in Section 9.4 of the LDC, which is designed for new parking lots or doubling the size of parking lots. The regulation says, “*The expansion of a parking lot is subject to these regulations if the expansion results in an increase of the number of parking spaces by 100%. The entire parking lot needs to be brought into compliance with the current regulations.*” Requiring Section 9.4 for an existing parking lot would be a unique decision, targeted to this specific use. There might be a middle ground. Evergreens might provide adequate screening from Optical Ave. of the bus parking area, while giving the Applicant some flexibility. That would be the Board’s decision.

Another condition, Mr. Clements continued, could be, “*No more than 10 vehicles shall idle at a time.*” The Applicant explained that their normal operation is much fewer than that. The Board might want to pick a number or omit that condition. He recommends keeping, “*Prior to*

occupancy, the tenant/owner shall meet with Public Works and the Industrial Pre-Treatment Coordinator to identify any required upgrades for wastewater handling necessitated by the use.” That is targeted to the inside maintenance, such as oil changes or spillage. If a grease trap or some kind of separator were required, it should be installed prior to operation. *“All required building and fire operational permits shall be obtained”* is redundant as a condition because they would be required regardless. Also put in here was, *“Vehicle idling shall not be permitted before 7:00 AM.”* That is the time when the noise ordinance ends for the evening. That would impact the Applicant, as they have since learned, so the Board might want to say, *“No idling prior to 6:30 AM.”* Another condition about *“any additional noise and vibration mitigation”* was kind of a catch-all.

Chair Clough asked if the Board had comments on the proposed conditions or suggestions for which to edit or omit. Mr. Buckley asked if they should make a motion to approve with conditions, say no, then make another motion to say why they are saying no. Chair Clough replied that he is not sure what the procedure or order would be. Mr. Buckley replied that from the discussion the Board just had on the criteria, it does not appear that three or more Board members would say the application meets the criteria. He continued that he thinks they could thus vote on the criteria and then have a motion to deny the application, if that is where they end up, followed by the reasons for saying no. Chair Clough agreed.

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

Not met with a vote of 0 to 5.

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

Not met with a vote of 0 to 5.

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

Met with a vote of 5 to 0.

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

Met with a vote of 4 to 1. Chair Clough voted in opposition.

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*

Not met with a vote of 2 to 3. Mr. LeRoy and Mr. Schrantz voted in favor.

and

ii. The proposed use is a reasonable one.

Met with a vote of 5 to 0.

Mr. Buckley made the following motion.

On a vote of 5 to 0, the Zoning Board of Adjustment found that ZBA-26-5, the proposed student transportation center at 59 Optical Avenue, did not satisfy the criteria necessary to grant a Variance, and therefore the request for the use Variance is denied with regards to Section 6.3.5 of the City of Keene's Zoning Ordinance.

Mr. Buckley made the following motion, which was seconded by Vice Chair Guyot.

On a vote of 5 to 0, the Zoning Board of Adjustment states the following as Findings of Fact: As described in the Zoning Ordinance, in the Industrial Park Zone, a proposed Light Industrial use shall have its activities housed entirely within buildings on the property. This proposed bus transportation center would have a significant outdoor activity impact inconsistent with the requirements of the Zoning Ordinance. That was evident from testimony by the Applicant and as described in the Staff Report.

Chair Clough called for a five-minute recess at 8:30 PM.

B) ZBA-26-8: Petitioner, Hilary Harris, on behalf of the owners, Patrick and Brittany Allen, requests a Variance, for property located at 31 Mill Rd., Tax Map # 239-031-000-000 and is in the Rural District. The Petitioner is proposing to replace the existing entryway and shed with a connector to a new garage with an accessory dwelling unit in the front setback, per Article 3.1.2 of the Zoning Regulations.

Mr. Clements stated that the subject property is an existing 1.5-acre parcel located on the western side of the very end of Mill Rd. He continued that the property contains an existing approximately 1,300 square foot single-family home built in 1941, the driveway, and associated site improvements for a single-family home. The residence is located almost entirely within the 50-foot front yard setback. The property is characterized by an area of steep slopes to the rear of the residence, as well as wetlands and surface water protection buffer areas. Approximately two thirds of the parcel is subject to a National Grid utility easement.

Mr. Clements continued that the purpose of this application is to seek a Variance to permit an attached garage addition to be located 34 feet from the front property line where 50 feet are normally required. The proposed garage addition would be approximately 800 square feet in size and would be attached to the western façade of the existing residence. The proposed garage is intended for storage on the first floor and a future accessory dwelling unit (ADU) on the second floor. The ADU would be permitted by right, would not require any special approval from the ZBA, and is not subject to this application. The property is surrounded by the Rural Residential District, with single-family residential located to the north, east, and west, with undeveloped land

to the south. The Staff Report includes the dimensions and siting requirements for the Rural District, as well as the purpose statement.

Mr. Clements continued that the Surface Water Protection Overlay District Ordinance applies notably to this application. This ordinance is commonly referred to as a “wetland buffer” or “wetland protection ordinance.” In the Rural Residential District, this ordinance requires, at face value, 75 feet of separation from the edge of a delineated wetland to just about any common development. A couple of permitted uses are allowed within this buffer zone. Garages with ADUs are not one of them. However, the Surface Water Protection Overlay District Ordinance was adopted in 2013 with some exceptions carved out for properties that existed prior to the Ordinance’s adoption. This parcel was in existence prior to the Ordinance, and therefore, some allowances apply. Allowances are made if the following are met:

1. It is not feasible to place the structure on a portion of the lot located outside the wetland buffer.
2. The structure is set back as far as reasonably possible from the edge of the wetland.
3. During construction, the appropriate erosion control measures are installed.
4. Any disturbance to the surrounding buffer is repaired upon completion of construction.
5. A minimum 30-foot buffer is maintained, as much as practically possible.
6. Any alteration to a surface water is made in accordance with all applicable state and federal laws, administrative rules, and regulations.

Mr. Clements stated that regarding 4., the Applicant’s site plan shows the proposed garage would be 29 feet and 11 inches from the edge of wetland. The Ordinance gives the Zoning Administrator the authority to make a reasonable determination on that. Thus, he has decided, and he hopes the Board agrees, that the single inch is *de minimis*. As far as he is aware, 6. is not applicable to this application. They would stay 30 feet away from the edge of delineated wetland.

Mr. Clements stated that Mr. Buckley raised a question about the road classification of Mill Rd. He continued that he did some preliminary research, and as far as he can tell, the portion of Mill Rd. that provides frontage and access to this parcel is still Class 5. There might be a portion that extends beyond the driveway of the property that might have since been converted to Class 6, but he does not have that definitive answer right now. A process for getting a building permit on a Class 6 road is articulated in statute independent of the Zoning Board application tonight. If that were for some reason determined to be necessary, it could be addressed at a later date without intervention from the Board. That said, he is confident that is not necessary in this case.

Mr. Schrantz stated that he has a question about the site plan. He continued that it might just be the way that it is depicted, but it looks like the house, and everything is within the wetlands buffer area, in the highlighted red section. Mr. Clements replied that is correct. Mr. Schrantz asked how, then, they are 29 feet and 11 inches outside of that. Mr. Clements replied that the buffer is the 75-foot wetland buffer that would be applied if this were a newly created lot and there would be new construction. He continued that realistically speaking, the Planning Board probably would not approve a subdivision with this parcel because the entire buildable area of it is within that 75-foot wetland buffer. But this lot predates the adoption of the wetland ordinance, so that is where the exceptions are allowed. It says you can build within the buffer, provided you

do these six things. One of the things the ordinance wants is to try to still maintain 30 feet from the edge of the wetland, and that is where the Applicant comes in at 29 feet and 11 inches.

Hearing no further questions for staff, Chair Clough asked to hear from the Applicant.

Brittany Allen stated that she and her husband own 31 Mill Rd. in the Rural District. She continued that tonight they are asking for a Variance to build an addition to their home, of a new garage with an ADU above it for her parents, connected to the house by a new mudroom. The project would include removing the porch, mudroom entry, and a few sheds. The addition would sit within the 50-foot setback required in the Rural District. The reason is the lot itself, as Mr. Clements described. Most of this triangular, 1.5-acre parcel is not buildable. A wetland and its 75-foot buffer bisect the property. A 250-foot National Grid easement cuts through the rest, and a septic and leach tank further constrain the options. Once the required setbacks are applied on top of these constraints, no area on the property, including along the road, is buildable without a Variance.

Ms. Allen continued that the proposed location would follow the layout of the existing house. It connects at one existing door that enters the home and would serve as the new link to the new garage. The proposed location of the garage is similar to the setback of the house, while maintaining an approximately 30-foot buffer from the wetlands. The architect, Hillary Harris, was unable to attend tonight. She prepared a full, written application addressing each of the Variance criteria. City staff have reviewed the project.

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

Ms. Allen stated that this addition would be residential, just like the home it would be attached to, and just like the rest of the homes on the road. The setback at issue was imposed after the principal structure was constructed. The addition would encroach less within the road setback than the existing building. It would not add traffic, block light or air to anyone nearby, and would not change how the neighborhood looks or functions. It would simply be more living space on a property that is already residential. As shown on the proposed site plan, the addition would sit relative to the road and neighboring lots.

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

Ms. Allen stated that the 50-foot setback exists to keep density low, protect traffic safety, and preserve the street's open, rural look. It is a dead-end street with very little traffic. The addition would sit back farther than their existing home, as shown on the site plan. They would not add any new use of city water or sewer. The purpose behind the setback would still be met, even if the exact number was not.

3. Granting the Variance would do substantial justice.

Ms. Allen stated that this criterion is about weighing the harm to the Applicant against the benefit to the public. She continued that as the survey plan and GIS parcel map show, once there is an account for the wetland buffer and the National Grid easement, no buildable area is left on

the lot, not even along the road. Denying the Variance would not protect any public interest, it would just prevent her family from making reasonable improvements to their home. The proposed site plan shows the wetland buffer and easement and how little of the lot is left over.

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

Ms. Allen stated that garages and ADUs like this are common in the Rural District and allowed by the Ordinance. A well-built, well-designed addition like this would be more likely to support property values nearby than to hurt them. The 3D rendering in the agenda packet shows the design would match the style and quality of the existing home.

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*

Ms. Allen stated that this criterion comes down to two things, the shape and constraints of the lot, and the fixed layout of the existing home. First, the lot is an irregular, triangular parcel with the wetland buffer and easement, meaning there is no buildable area anywhere on it once you apply the standard setbacks. That is not true of most lots in the Rural District. The proposed site plan shows the core visual for the hardship argument. Second, the house limits where the addition could connect. The home's exterior exists, and the photo shows what would be removed to make way for a connector. An interior photo of the kitchen door shows that the placement of this door and the windows alongside the house would rule out any other connection point without a much larger renovation. The proposed location is not preference; it is the only place on the lot it could go.

and

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

Ms. Allen stated that for all the reasons given, they believe the addition is a reasonable use of the property, consistent with what the Rural District already allows, and the only way to make use of this lot, given its constraints. They believe the addition would fit the character of the neighborhood and would not create any new burden on the road or neighbors.

Mr. Clements stated that he wants to clarify the road classification question. He apologizes for not noticing before that this property is served by city water, which means the City is definitely maintaining those water lines underneath the road. That means it is not Class 6. Ms. Allen replied that a fire hydrant is directly across the street from their house. Mr. Clements added that he has seen the water lines right there on the City's GIS and the survey.

Chair Clough asked for public comment either in opposition or in support of the application. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Chair Clough stated that it does not sound like this would be contrary to the public interest. He continued that trying to do everything possible to increase housing, and with so many constraints on the oddly shaped property, there would be nothing impacting public interest.

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

Chair Clough stated that he agrees with this one, too.

Mr. Schrantz stated that the only challenge is that it would be inside the setback, but the house already is inside the setback. The addition would not be impacting the setback any further, so he thinks the proposed solution would respect the spirit of the Ordinance.

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

Chair Clough stated that he thinks this criterion makes sense. He continued that if the Board denied the Variance, he does not think anyone would benefit in any way. He thinks granting the Variance would do justice.

Vice Chair Guyot stated that he thinks denying the Variance would be detrimental to the homeowners.

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

Chair Clough stated that he thinks this would be a true statement.

Mr. Schrantz stated that he thinks surrounding property values would probably be enhanced by the Allens adding the garage and improving the property.

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*

Chair Clough stated that the property has an irregular shape and various setback issues, regarding wetlands and the road.

Vice Chair Guyot stated that this criterion is usually challenging for the Board, but this particular situation has so many dynamics associated with the lot's shape, the utility company easement, and the wetland preservation areas. This criterion is clearly met. Chair Clough replied that he agrees this is a clear hardship.

and

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

Chair Clough stated that adding housing and adding storage would be reasonable.

Mr. Burke made a motion to approve ZBA-26-8 to permit an attached garage addition to be located 34 feet from the front property line where 50 feet is normally required per Section 3.1.2 of the Zoning Regulations, as shown in the application and supporting materials received on July 9, 2026, with no conditions. Mr. LeRoy seconded the motion.

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

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

- 5. Unnecessary Hardship*

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

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

Met with a vote of 5 to 0.

and

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

Met with a vote of 5 to 0.

The motion to approve ZBA-26-8 passed on a vote of 5 to 0.

Mr. Schrantz made the following motion, which was seconded by Vice Chair Guyot.

On a vote of 5 to 0, the Zoning Board of Adjustment states the following as Findings of Fact: They decided to approve the application based on the challenges of the site itself, including the wetlands and the easement, as well as the existing condition of the home being within the front setback.

4. **Staff Updates**
5. **New Business**
6. **Adjournment**

There being no further business, Chair Clough adjourned the meeting at 9:00 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Chaisson, Board Clerk