

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 6, 2023

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Joseph Hoppock, Chair
Jane Taylor, Vice Chair
Michael Welsh
Richard Clough

Staff Present:

Michael Hagan, Plans Examiner
Corinne Marcou, Zoning Clerk

Members Not Present:

Joshua Gorman

I) Introduction of Board Members

Chair Hoppock called the meeting to order at 6:30 PM. Roll call was conducted. Chair Hoppock noted that there will be a four member Board, with three of the petitions on the agenda moving forward and one wishing to continue to next month's meeting with a five member Board.

II) Minutes of the Previous Meeting – September 5, 2023

Ms. Taylor made a motion to approve the meeting minutes of September 5, 2023. Mr. Welsh seconded the motion, which passed by unanimous vote.

III) Unfinished Business

None.

IV) Hearings

- A) **ZBA 23-24: Petitioner, Grady Budd and Lauren Lavoie, represented by A. Eli Leino of Bernstein Shur, of Manchester NH, requests a Variance for property located at 143 Jordan Rd., Tax Map #232-008-000 and is in the Rural District. The Petitioner requests to permit the construction of an energy vestibule entrance 41' 5" into the front setback where 50' is required per Article 3.1.2 of the Zoning Regulations.**

Chair Hoppock asked to hear from staff. Plans Examiner Michael Hagan stated that 143 Jordan Rd. is located in the Rural District and was built in 1976. He continued that it is on 1.5 acres and is a single-family home with no previous variances or ZBA applications on record.

Chair Hoppock asked to hear from the applicant.

Eli Leino of Bernstein Shur in Manchester introduced himself and stated that with him are the property owners, Grady Budd and Lauren Lavoie, and Katie Sutherland, Project Architect. He continued that there are no existing variances on this property. It was built before the Zoning changed to the 50-foot setback in the larger lots and is a preexisting condition as such. He asked the architect what the style of the house was, because it is listed in the Assessor's sheets as "colonial," which he did not think was right. The architect's response was that it was a garrison, sort of, but "really a hodge-podge."

Mr. Leino continued that they are before the ZBA tonight because this is preexisting in the 50-foot setback and they are trying to rebuild the front façade of this house, along with an air lock or energy vestibule. Having a double door air lock would be a way to not let all the hot air out in the winter, or the cool air out in the summer. It is a logical build, and as the Board can see from the submitted elevations plan, it will be a nicer look and be in keeping with what Jordan Rd. is starting to become. There has been a lot of redevelopments there, with some big houses, some beautiful houses trying to take advantage of the view. It is in the Rural District, is defined in the ordinance "*outside of the valley floor*," which this certainly is. As such, the lot slopes very sharply from Jordan Rd. down into Keene. Thus, there is not much room to move back without undertaking many cuts and fills to try to do it in a way that complies with the setback ordinance, making it very challenging.

Mr. Leino continued that he will go through the Variance criteria.

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

Mr. Leino stated that to be contrary to the public interest it needs to conflict with the essential character of the neighborhood or threaten the public health, safety, or welfare. He continued that as noted, there is not necessarily one overwhelming visual character to this neighborhood, other than it is residential, in a low density zone. They are maintaining exactly the same single-family home and there is no contradiction with the essential character by doing that, nor a threat to the public health, safety, or welfare. They are not changing anything about the way this is used from the 1976 original build, it will just be a better-looking version, not hurting sight lines or diminish emergency response time or anything like that.

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

Mr. Leino stated that this is related to the first criterion. He continued that this meets the spirit of the Ordinance, where this zone is proposed for very low density development of residential

character. [It is a] single-family house, mildly encroaching slightly more into the setback, which it already encroaches in, but nothing that violates the spirit of the Ordinance.

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

Mr. Leino stated that substantial justice has been held by the Supreme Court to be a balancing test between the rights of the applicant and the rights of the public, so any harm to the public cannot be outweighed by the benefit to the applicant. He continued that this is an opportunity for these homeowners to really make this their home, as opposed to a slightly dated, slightly tired, 1976 façade on a home that works well. Moving right now is difficult, rates being what they are, the housing stock being what it is. This is an opportunity to spruce up this house with a beautiful new façade and the energy vestibule entrance. That is a big benefit to his clients, and on the other side, their neighbors to the left and right and across the street will also get to look at a better-looking façade rather than this hodge-podge that exists. He does not see a detriment to the public, so the balancing test tips on the side of the applicant.

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

Mr. Leino stated that the value of surrounding properties will not be diminished by this. He continued that this is an investment by the homeowners, taking something that is a little tired and architecturally not what they are hoping for, and taking the opportunity to invest in this piece of the neighborhood, which has happened up and down Jordan Rd. It will be positive for the neighborhood. It shows that if people take the investment on any of these other houses, it is in keeping with the neighborhood; this is what people are doing. They are working hard to be proud of the houses on Jordan Rd.

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. Leino stated that this is a preexisting condition, which the Board can look at as a unique characteristic. He continued that in addition, it slopes sharply from Jordan Rd. into the valley, so building further back, in a way that is compliant (with the Land Development Code) would mean demolishing the house to move it back. That is an excessive expectation and would create a hardship, both financial and (otherwise) and is unnecessary. Whereas allowing this (proposal), where they already have a flatter area on the front, and they already know the driveway works, is a logical way to improve this house and make it more suitable for the homeowners' use, based on the conditions of the property.

and

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

Mr. Leino stated that the proposed use is reasonable. He continued that this is a zone predominantly for single-family homes as well as some agricultural uses. This is a single-family residential proposal, which is what is there currently, so it is a reasonable use.

Mr. Leino stated that there is a letter signed by the neighbors of the different houses, which he can read or give to staff. Chair Hoppock replied that he does not think the ZBA members have copies of those. Mr. Leino replied that he had just received the letters from his clients tonight; they were delivered today. Chair Hoppock asked him to read them, so that they are in the record.

Mr. Leino stated that the letters are from Carol Arsenault at 142 Jordan Rd., Clark and Joanne Dexter at 137 Jordan Rd., and Christopher and Meghan Dubriske at 153 Jordan Rd. He continued that it is the same letter from each of these abutters, left, right, and across the street:

“Dear Keene Zoning Board,

It is our understanding that Lauren Lavoie and Grady Budd, who reside at 143 Jordan Rd., have applied to the Keene Zoning Board for a property Variance so that an addition to the front of their home can encroach on a 50-foot setback. As their immediate neighbors, we fully support their request and are not opposed to this encroachment.”

Chair Hoppock asked if Mr. Leino had anything further to add. Mr. Leino replied that he would answer any questions.

Ms. Taylor stated that she is trying to understand the drawings that were submitted with the application. She asked if the existing house is within the 50-foot setback. Mr. Leino replied no, the existing corner of the garage is already in the setback. Ms. Taylor asked if the main house itself is currently within the 50-foot setback. Mr. Leino replied that the zone line cuts a piece of the garage basically right to the front door, so there are encroaching pieces of the house. The building is currently non-conforming.

Chair Hoppock stated that the plan he is looking at, page 33 of 88 in the agenda packet, shows the setback line bisecting the corner of the house and it looks like it goes through a shaded area, which would be the new vestibule. He asked if that is correct. Katie Sutherland, Architect, replied that the hatched areas represent the proposed addition. She indicated where the setback line is and noted that some of the existing building is within the setback line.

Chair Hoppock asked if that is what makes it non-conforming. Mr. Leino replied that is correct. He continued that it was designed, obviously, to a different setback standard when it was built.

Chair Hoppock stated that regarding the fifth criterion, on that same map, if you are looking at the front of the house, the slopes look like they slope front to back on the left side. Ms. Sutherland referred to the contour lines and replied that the hill drops off rather steeply at the back of the house. All along that side of Jordan Rd., actually. She continued that because of the topography on that side of Jordan Rd., many of these other houses are also within the 50-foot setback. There is definitely precedent on that side of the road.

Chair Hoppock asked if those other houses were preexisting and if they were zoned out of that setback after the fact. Mr. Leino replied that he has driven it a few times, and he does not think any of these houses look brand new or like they were built in the last 10 or 15 years.

Chair Hoppock asked if the 50-foot setback was put in during the last round of Code modifications. Mr. Hagan replied that the 50-foot setback in the Rural District has been in place for at least the past 23 years he has been here. He continued that what changed in the Rural District during this last round of changes is that it went from five acres to two acres.

Chair Hoppock asked if it is correct that this is 1.5 acres. Mr. Leino replied yes, a legally non-conforming lot, similar to the ones surrounding it.

Ms. Taylor stated that she assumes this new vestibule will have some form of roof overhang. She asked whether that is factored into the calculation that was in the application. Mr. Leino replied yes, it was. He continued that they measured from the farthest overhang.

Chair Hoppock asked if there were any further questions from the ZBA. Hearing none, he asked for public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

Mr. Welsh stated that to him, this is one of those situations where the applicant, through the narrative of the form they filled out, has done a very good job covering the bases. He continued that regarding the first criterion, he thinks the citation of case law is interesting and compelling. Chair Hoppock replied that he agrees.

Chair Hoppock stated that he does not see any issue with this application. He continued that it will not alter the essential character of the neighborhood or create any public safety issue, but it will look nice, and will fit in the neighborhood. He agrees with the remarks before that an energy vestibule in a low-density area, in a single-family home in the Rural District, is within the spirit of the Ordinance. Regarding the third criterion, he sees no harm to the public, if anything, there is a public benefit, in terms of energy savings and appreciates the gain to the property owner. He does not see any way that this could diminish property values anywhere. Regarding the fifth criterion, the topography is a factor. The fact that it is a preexisting condition in terms of the footprint of the house gives it a problem as well, making it harder to comply with the setbacks. He thinks the fifth criterion is met as well and will vote to approve this.

Ms. Taylor stated that she echoes Chair Hoppock's comments, and she thinks something they need to consider is whether it will change the density, since that is the whole purpose behind the Low Density District, and it clearly will not impact that. She continued that the topography is, to her, the primary factor of the hardship, as long as the calculations are correct. In addition, regarding the fifth criteria, she would add that it is a quite reasonable request.

Mr. Welsh made a motion to approve ZBA 23-24 for 143 Jordan Rd. Mr. Clough seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

Met with a vote of 4-0.

and

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

Met with a vote of 4-0.

The motion to approve ZBA 23-24 passed with a vote of 4-0.

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

Chair Hoppock stated that Petitioner Jeffrey Christensen emailed Corinne Marcou, Zoning Clerk, on Tuesday, October 31, asking that this matter be continued until the December meeting. He asked for a motion.

Mr. Clough made a motion to continue ZBA 23-25 to the next meeting, December 4, 2023, at the request of the applicant. Mr. Welsh seconded the motion, which passed with a vote of 4-0.

- C) ZBA 23-26: Petitioner, Tasoulas Realty, dba MGJ Realty of Keene, requests a Variance for property located at [36] Carpenter St., Tax Map #573-067-000 and is in the Medium Density District. The Petitioner requests a change of use from warehouse to a health center/gym where a gym is not a permitted use per Article 3.5.5 of the Zoning Regulations.**

Chair Hoppock introduced ZBA 23-26, noting that the address is incorrect on the agenda and the correct address is 36 Carpenter St. He asked to hear from staff.

Mr. Hagan stated that 36 Carpenter St. is zoned Medium Density and was built in 1930. He continued that it is 23,247 square feet. Current and past uses are/were a school, manufacturing, office, factories, storage, retail, and wholesale. In 1987, there was a two-part ZBA application, an appealed administrative decision as well as an enlargement of a non-conforming use. The first was denied; the ZBA agreed with the Zoning Administrator's decision for the use. The ZBA approved the enlargement of the non-conforming use to expand retail service use of the printing for an occupancy of 2,200 to 6,900 square feet.

Ms. Taylor asked Mr. Hagan to confirm the zoning. Mr. Hagan replied Medium Density, the intent of which is as follows: *"To provide medium-intensity residential development and associated uses. All uses in this district shall have City water and sewer services."*

Ms. Taylor stated that her question concerns all the uses in the building. She asked if it is correct to assume that the zoning has changed over time. Mr. Hagan replied that he cannot confirm that. He continued that during the time he has been here, it has always been zoned Medium Density. There have been multiple uses in the building over the years with many of them having changed from one owner to another for the same type of business. Ms. Taylor replied that maybe the applicant can clarify that for them.

Chair Hoppock asked if there were any further questions for staff. Hearing none, he asked to hear from the applicant.

John Tasoulas of 36 So. Lincoln St. stated that this is a commercial building in the Medium Density District. He continued that to the south is the industrial, historical center of Keene, the railroad area with many commercial buildings in that area. At the corner of Water St. and Carpenter St. is where the old Findings building was. Across the street to the west is a park, which is also zoned Medium Density. This is really on the fringe of the Medium Density District. It is more industrial to the south, and to the west is commercial and industrial. The building was built in the 1930's and has been added on to over the years. At one point, Medium Density was applied to it. He does not know when, but he assumes in the 1970s. The Medium Density District allows for no commercial uses except for a telecommunications tower and maybe a home for people who were abused.

Mr. Hagan replied that allowed uses are congregate living and social services with a CUP, such as a domestic violence shelter or small group home; community garden; and conservation area.

Mr. Tasoulas stated that all the uses currently in the building are not permitted under Medium Density. He continued that it is interesting that Medium Density was imposed on this building to begin with, considering its history and uses, but that is where they are today. They want to change some of the uses from a warehouse to a gym/recreational use. The only uses in the building are residential, is what the zoning is asking for.

Chair Hoppock asked what uses are happening in the building now. Mr. Tasoulas replied warehousing, office space, a printing business, a carpet care business, and a dog-washing business. He continued that with the permitted uses, the most you could do there would be a three-unit building. If he were to tear it down, he could have a three-unit building on a 1.2-acre lot, to be in compliance with zoning.

Mr. Tasoulas stated that he will go through the criteria.

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

Mr. Tasoulas stated that the public interest would be served, because he has an industrial building in the Medium Density District that does not have any permitted uses under the current zoning. It would allow him as the building owner to increase the number of uses in the property and make it more viable as a rental, which is better for Keene. He continued that having recreational uses is good for the Medium Density District. It allows people to get together and work out, congregate, and have a community of like-minded, health conscious people. The City-owned park across the street is in the Medium Density zone and not permitted, but he does not think the City would put a use on that property that was contrary to the zone. If the City thinks it would be good to have a park and recreational use across the street, he thinks it would be good to have it at 36 Carpenter St. It would fit into the neighborhood and would not be contrary to the public interest.

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

Mr. Tasoulas stated that his response is the same (as for the first criterion). He continued that people getting together for health purposes is good for the Medium Density Zone. It gets people

together in that area to work out, congregate, and improve their lives. The Ordinance would want recreational uses. This is a closed recreational use, membership-only, not open to the public. It would thus be small amounts of people getting together at this location to improve their health, and he thinks it would be in the spirit of the Ordinance.

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

Mr. Tasoulas stated that he thinks it would do justice. He continued that he has a building where every use in it is legally non-conforming. The zoning imposed on this building is very restrictive. This would create justice in that he would be able to use this property with a reasonable use and it would not be injurious to the neighborhood in the Medium Density zone.

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

Mr. Tasoulas stated that Paul Rodenhauser, a realtor at Masiello, wrote a letter giving his opinion about the property values in the neighborhood. He continued that Mr. Rodenhauser says that in his professional opinion, the use of recreational gym/healthcare will not decrease or diminish property values whatsoever in that area.

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.*

Mr. Tasoulas stated that this commercial building was built in the 1930's and added onto over the years, and a very restrictive zoning district was applied to it in that none of the uses that were in the building over the years are permitted anymore. They are all legally non-conforming. He continued that the hardship is that he needs to have a use for this property. Factories and industrial uses/spaces in Keene are diminishing. Other uses that are beneficial to the District need to be permitted in these buildings. A building on Victoria St., very close to his, used to be a warehouse building and it is now a gym. The (former) Findings building, almost adjacent to his building, is being turned into a skate park. There are commercial and industrial buildings in the area changing into recreational uses. Having a building that has no legal uses under the current Ordinance is unfair. It would be fair if this Board were to allow a reasonable use like a gym in the building.

Ms. Taylor asked how many members Mr. Tasoulas has for the "members only" gym. Mr. Tasoulas replied about 15 to 20, is what CrossFit gym owner Michelle (Gaffney) says.

Ms. Taylor stated that she was wondering about parking. She continued that if there are several uses there from the other businesses, she does not know how the parking is calculated. Mr. Tasoulas replied that he provided that documentation to City staff prior to this meeting. He continued that he measured the usable space in the building and came up with a parking plan. He asked if the Board has that.

Chair Hoppock asked if it is the email from October 20, which says 16 parking spaces for office, 2.5 parking spaces for warehouse, and 24 parking spaces for gym. He asked if that sounds right. Mr. Tasoulas replied yes, and he submitted a plan with that email.

Ms. Taylor asked if she is correct in understanding that this gym is currently operating. Mr. Tasoulas replied yes, it is already operating in a section of the building, and they would also like to open a climbing gym in another section of the building. Ms. Taylor asked if that would change the parking requirements. Mr. Tasoulas replied no, he included that as part of the application. Ms. Taylor asked when the gym started operating. Mr. Tasoulas replied about three years ago.

Ms. Taylor asked if Mr. Tasoulas was aware of the zoning issues when he leased the space to the gym. Mr. Tasoulas replied that when he bought the property there was a school in the building and he thought that perhaps (the gym) would be a use that was consistent with a school. Ms. Taylor asked if it is correct that he did not make an inquiry. Mr. Tasoulas replied that was correct.

Mr. Welsh asked for more clarity on that last issue. He asked if it is correct that the prior use of this particular part of the building that they are talking about here, even though the gym has been there for a bit, was not a warehouse, but school. Mr. Tasoulas replied that the part of the building where the gym currently is used to be part warehouse and then part school. He continued that (the gym) occupies space that was part of the school and then there was a part that was just a warehouse. (The gym operator) took both spaces. He made a bad assumption, and that is why they are here tonight, to try to rectify that and to be in compliance with the zoning laws.

Chair Hoppock stated that the application's narrative about the fifth criterion talks about unnecessary hardship of the property being in a flood zone. He asked if that really has anything to do with the use Mr. Tasoulas is proposing. Mr. Tasoulas replied that mostly it talks about the building having this zoning applied to it, the Medium Density Zone, the commercial building, and also being in the flood plain. It describes its uniqueness in that it is hard to rent because of those two items. The flood plain would have nothing to do with the gym's operation.

Chair Hoppock replied that that is what he was getting at. He continued that to satisfy the unnecessary hardship criterion you have to show that the zoning provision in play – which is prohibition of a gym – creates an unnecessary hardship when you look at a feature of the property. Mr. Tasoulas replied that it is the prohibition of *any* of the uses that are in the building. That is the hardship. He continued that none of the uses described in the zoning table are ones that he could have in this building. He thinks that having a gym is a reasonable use. Without

having reasonable uses, he would say that they could consider it a “taking.” He would not have any viable way to make income, to make the building economically viable.

Chair Hoppock replied that there are permitted uses in the Medium Density Zone. Mr. Tasoulas replied that he went through them and one of them was a three-unit building. That would require him to tear (the building) down and put up a three-unit building; that is all that is permitted in the Medium Density Zone on a lot, for residential. He supposes he (would be permitted to) put in a telecommunications tower or domestic violence shelter.

Chair Hoppock asked what the size of the lot is. Mr. Tasoulas replied 1.2 acres.

Chair Hoppock asked if it is correct that aside from the gym, Mr. Tasoulas has five other uses occurring in the building – warehousing, offices, printing, a carpet store, and a dog-washing business. Mr. Tasoulas replied yes.

Chair Hoppock asked if Mr. Tasoulas had anything further to add. Mr. Tasoulas replied no. Chair Hoppock asked to hear from the public.

Theodore Chabott of 245 Church St. stated that he owns a garage at 17 Kirk Court, about 60 feet from the property in question. He continued that he has lived in the area all his life, and the building they are discussing has always been a commercial building. It was started by MPB, and then over the years was Morgan Linen, J.A. Jubb Insulating, and St. Martin cabinetry. It has always been a commercial building, so he does not understand why Mr. Tasoulas cannot keep it as such and rent it as such. He knows the City has changed it to Medium Density, but he feels that Mr. Tasoulas should have a Variance, since it has always been a commercial building and he (Mr. Chabott) does not think it could be used for anything else.

Chair Hoppock asked if Mr. Chabott agrees that the use as a gym would be more commercial than anything else. Mr. Chabott replied that it is a business and he thinks it would be good for the neighborhood, and Mr. Tasoulas does have ample parking there.

Michael Conway of Railroad St. stated that he is here in support. He continued that there are current businesses there, and if the Variance is not granted, it puts those businesses potentially in jeopardy. They might have to relocate or go out of business. In this current climate, that is the last thing they want to happen. He thinks that should be part of the Board’s considerations, along with everything else they are tasked with considering. They should (think of) the number of ongoing, viable, successful businesses that are operating there, that are working and generating income for people and paying taxes, because they do not want that to be jeopardized.

Aja Davis stated that she and her wife, Molly (Pinney), live on Kingsbury St., right around the corner from the gym. She continued that they are in support of this Variance. (The gym) is a great addition to the neighborhood. She and her wife know the gym’s owner and know this will be viable for the neighborhood. She and Ms. Pinney are part of the neighborhood committee to revitalize east Keene, and with the ongoing issues that east Keene is facing with crime, homelessness, and drugs, they are passionate about making sure there are *good* influences in the neighborhood and things that they want to cultivate and encourage. She has spoken with many

neighbors who also support this (gym) and who think that it would be a great addition to the neighborhood and bring some vitality back to the area.

Molly Pinney stated that she lives at Kingsbury St. with Aja Davis. She continued that she is in support of this, as someone who grew up in this area and drove hours to find rock climbing. It is exciting to have it here in Keene. As Ms. Davis said, with all they are addressing in the neighborhood right now, to be able to bring this type of business and more good things to the area would be great.

Michelle Gaffney stated that she is the owner of CrossFit Monadnock, and is hoping to be the owner of Climb Monadnock gym. She continued that she is obviously in support of this and feels that it is a good contribution to the community and the neighborhood.

Ryan McGuire stated that he is the co-owner of Monadnock climbing gym. He continued that he is obviously in support of this and thinks it will be a welcome addition to the community. Currently, (Keene) residents have to drive over an hour away to get to the closest climbing gym. In addition to being able to provide some jobs for members of the community in the future, and bringing a healthy resource to the local community, the east Keene area has its issues. As a community, they can bring a lot of good and awareness to try to keep that area clean and he fully supports this.

Chair Hoppock asked if the applicant wanted to say anything else. He continued that he has the right to respond to the public input.

Mr. Tasoulas replied that he would reiterate what everyone else has said, that this is a benefit to the neighborhood. He continued that it is a very reasonable use for this property, given that industrial uses are shrinking in the area, and again, the fact that he has no other legal uses he can have at this property. Everything there is legally non-conforming. To have a use like this would bring the community together and that is in the public interest and provides justice to him and the community. He thinks it will be great for Keene.

Chair Hoppock stated that hearing no further comments, he will close the public hearing. He asked the Board to deliberate.

Ms. Taylor stated that regarding the first criterion of this not being contrary to the public interest, she thinks the Board has heard that there is support for this type of facility. She continued that they certainly had not heard any evidence that it would be against the public interest. To that end, skipping to the fifth criterion regarding unnecessary hardship, she suggests the Board consider this under 5.B. She thinks there has been a showing that there is no other reasonable type of use for an industrial building that is right in the middle of a Medium Density neighborhood. In the past, when she had to deal with revising other zoning boards outside of Keene, she always used the example of how if you have a new use, you are not going to put an industrial building in the middle of a residential neighborhood. Here, they have the opposite situation, with an industrial style building that has had a residential neighborhood develop around it.

Chair Hoppock replied that that is right.

Mr. Welsh stated that he completely agrees with Ms. Taylor's thinking. He continued that regarding the second criterion, he thinks that being a residential zone, the prior use being at least partly warehouse was far outside the spirit of the Ordinance. The new use they are considering is one that is still technically outside of the Ordinance but is on the trajectory toward more proximity and conformity with the Ordinance. Gyms are often a feature of an apartment building or hotel or something like that and are things that people like to have near where they live. He thinks the second criterion is also satisfied.

Ms. Taylor replied that that is the reason she suggests they consider it under 5.B., because then the spirit of the Ordinance is not much of a factor.

Chair Hoppock stated that what he has heard, from the public comment especially, is that granting this Variance would not alter the essential character of the neighborhood. He continued that in addition, if the people who live there and their observations are correct, which he does not doubt, (this proposal) would also seem to enhance public safety, or at least give public safety a better chance. The use itself certainly would not threaten public health, safety, or welfare, which is the bottom line. The potential for it to improve it is a plus. He agrees with Ms. Taylor that they should proceed with the second part of the fifth criterion in this case, for the reasons she stated. He does not see any diminution in property values, either. There is a gain to the public and a gain to the landowner, which is a nice mixture, regarding the substantial justice criterion. They heard from the neighbors about the positive impact this use will have and has had, so he thinks that criterion is satisfied as well.

Mr. Clough stated that he lives on Valley St. and is just outside of the abutters' list. He continued that he has been there for 23 years. When (this property) was J.A. Jubb, it looked very out of place, seeing people going back and forth with insulation trucks. It is a problematic building, when you have a big warehouse area like that and not much else you can do and everything else is chopped up. During the three years that CrossFit has been there, he has seen people running back and forth on the sidewalk, doing some sort of timed exercise as part of their workout. There does not seem to be any impact with traffic. Certainly, people are doing positive things in relationship to it. Given his observations of it, he does not see how granting this Variance would have a negative impact on any of these criteria.

Chair Hoppock stated that as they discussed before, there is certainly enough parking. He asked if the Board had further comments or if someone was ready to make a motion.

Mr. Clough made a motion to approve ZBA 23-26, 36 Carpenter St. Mr. Welsh seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

and

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

Chair Hoppock stated that the Board seems to agree that the criteria in subparagraph A. would not be established.

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

Met with a vote of 4-0.

The motion to approve ZBA 23-26 passed by unanimous vote.

D) ZBA 23-27: Petitioner, Kathryn Willbarger of Cheshire Medical Center, represented by Michael Vickers of Design Communications, Avon, MA, requests a Variance for property located at 62 Maple Ave., Tax Map #227.006-000 and is in the Industrial Park District. The Petitioner requests a directional sign exceeding the allowable size of 4 square feet per Article 10.2 of the Zoning Regulations.

Chair Hoppock introduced ZBA 23-27 and asked to hear from staff.

Mr. Hagan stated that 62 Maple Ave., zoned Industrial Park, was built in 1957. He continued that it is 142,790 square feet according to the records. It received a Special Exception in April

2021 for institutional use, which was approved 5-0. It has had a long history of being an office use, with a couple different insurance companies, and was recently changed to hospital use. Chair Hoppock asked if the Board had any questions for Mr. Hagan. Hearing none, he asked to hear from the applicant.

Jason Bridges from Design Communications stated that Mr. Vickers is out of town, and he is here on behalf of Cheshire Medical Center. This request is to allow two directional signs that are larger than what the Code allows. The maximum allowed is four square feet and they are requesting a Variance to allow two signs that are 17 square feet each. The signs are directional, and not for commercial advertising purposes.

Mr. Bridges continued that Cheshire Medical Center acquired this property recently and, in the future, will occupy the entire building with the renovation being done in phases. The first phase renovates approximately 10% of the building, at the very back of the building, not visible by the street, facing the northwest façade. The new entrance is invisible from the street and from the vehicular entrance point on Maple Ave. Since it is a healthcare facility, patients are often arriving at the location under duress. Many are elderly and some are vision-compromised. Efficiently directing people to the back of the building is critical for a medical facility. The proposed signs feature directional messages 4.375" letter height. According to universal design guidelines, the maximum legibility of the size of a letter is from 145 feet. It is critical that this first sign is legible as soon as you enter the main entrance at the southeast façade adjacent to the entry point. There are many parking spaces all over the immediate entrance of the facility, and if you mistakenly turn left and park there, (you will find that) those doors are locked, and it can be confusing. Again, the only entrance is at the far back of the building.

Mr. Bridges continued that the first directional is located about 140 feet from the Maple Ave. entrance. The second directional, to then take people left around to the back of the building, is about 200 feet past the first one. At that point, the entrance is still not visible, and does not become visible until you actually make that left turn to the back façade. The maximum size letter available on a four square foot sign is approximately 1 inch, which is only readable from about 30 feet back. This does not work for the purpose of wayfinding or directional.

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

Mr. Bridges stated that granting his Variance is in the best interest of the public, for reasons expressed in section 3. He continued that additionally, the directionals are not visible from the public right-of-way or the street. The traveling public is not affected, as there are no visible sightlines that will be affected. These signs are not illuminated, and they are not commercial advertising. They are simply critical, functional, and directional use.

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

Mr. Bridges stated that these signs are enlarged only as much as to properly function from the distance that they would be read from. He continued that again, they are not visible from the street. A healthcare facility is not a competitive, commercial business entity; it is a public service entity. They do not feel that standard business advertising rules would apply to this wayfinding.

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

Mr. Bridges continued that as stated in section 3, so that patients can easily find their way to the main point of entry, under what could be stressful situations.

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

Mr. Bridges stated that the signs, although larger than the Code allows, are not overbearing, in comparison to the size of the facility and the lot. He continued that there is a substantial buffer zone between the signs and the nearest residential neighborhoods. You would not be able to see these signs from the abutting properties.

5. *Unnecessary Hardship*

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

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

and

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

Mr. Bridges stated that the entrance is now at the far back of the building, and these signs are critical tools to direct traffic to that entrance. He continued that the public purpose of the Ordinance would not be affected.

Ms. Taylor stated that regarding the picture of “directional 1,” she is quite familiar with the property and thinks that is visible from the street. Mr. Bridges replied that it is visible but not obstructing wayfinding or of vehicular travel. Ms. Taylor replied that Mr. Bridges had said it would not be visible from the street. Mr. Bridges replied that he apologizes; it would be visible, it is 140 feet set back, but it is not obstructing vehicular travel on Maple Ave.

Chair Hoppock asked if there is a reason the design was created with the entrance in the back. He asked if something about the building requires them to put the entrance there. Mr. Bridges replied that the building is being renovated in phases, and this is the first phase. He continued that there are still two units under construction, which will be completed later. Currently, the

only operating unit would be in the very back, which is invisible from the entrance point. There are multiple entranceways in which to go as you pull into the property, leading to confusion.

Chair Hoppock asked if the two signs will direct people to the place they need to park, to get into the (correct) door. Mr. Bridges replied yes, there is a straight arrow directing you to the back. He continued that again, given that there are multiple parking areas that could confuse people, it would be easy for someone to just go into an open parking spot. The second (directional sign) would take you left, around to the back of the building where the main entrance is.

Chair Hoppock asked if the entire building will be renovated and used by the clinic. Mr. Bridges replied yes. Chair Hoppock asked what the timeframe for that is.

Kevin Forrest, Vice President of Facilities and Support Services at Cheshire Medical Center, stated that Cheshire Medical Center will own and occupy all the building. He continued that right now they are looking at phases. They just opened the Family Residency and Community Care Center on October 9. There is no other construction currently going on in the building, but over the next several years, they intend to occupy the rest of the building.

Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked for public comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

Chair Hoppock stated that the public interest here, as Mr. Bridges mentioned, is significant. He continued that when you are going to the hospital or the doctor's office, you may not be in the best state of mind, and you want to be told where to go quickly and efficiently. He thinks the idea is in the public interest and (that criterion) is satisfied. He also thinks nothing in this application would alter the essential character of the neighborhood or create a public health or safety issue; in fact, it would do the opposite. Regarding the substantial justice criterion, there is no harm to the public; there is a gain to the public by being properly directed on a very large property. The building is almost 143,000 square feet, and he does not remember the acreage, but it is a huge parking lot, so being told which direction to go in to park your car is a big help.

Chair Hoppock stated that what he is not clear on is what special conditions exist on the property that distinguish it from others in the area. He continued that size is certainly one factor, and that creates the need for directionals. He would say that is a special condition.

Mr. Welsh stated that the size of the pavement is "really extraordinary," and in fact, it is where he taught his children to drive. He continued that it is a big, paved lot, and it is hard to get direction from just the massive pavement. Signage is necessary in this instance and that might be a special condition.

Ms. Taylor stated that she taught her children how to drive there, too. She continued that she thinks it is not just the size of the parking lot, but as Chair Hoppock said, the size of the building

itself. It is very hard, if you do not know where you are going, to know where you are going. Especially if the entrance, at least for the moment, is at the rear of the building. You could easily go around in circles, and patients do not always have a lot of time to find their way.

Chair Hoppock replied that he agrees.

Mr. Clough stated that because of the size of the lot, you need signs to be big. He continued that otherwise, you would need to put up 15 signs saying, "Keep going," "Keep going," "Not there yet," "Now bear left." He suspects it is also a minimum number of signs to get the information across.

Chair Hoppock replied that that is a good observation. He asked if anyone had further comments.

Mr. Hagan asked for the Board's comments about the spirit of the Ordinance or the values of surrounding properties. Chair Hoppock stated that he does not see anything about this application that would have any impact on or alter the immediate neighborhood, and he does not see anything that would impact or adversely affect public health, safety, or welfare. In fact, he thinks it would have the opposite effect; it would enhance it, by directing people who need medical attention to the right place. He continued that as described, these are not commercial signs, will not be lit up at night, and will not be seen from the road in a way that would impede traffic or distract people. With all those factors put together, this does not affect safety, and this would not diminish property values.

Ms. Taylor stated that regarding the impact on the neighborhood, there are residential houses across the street and one residential house right next door. She continued that however, there is a significant hedge that would block (views). No lighted signs will be added. Thus, she thinks (surrounding properties) are well insulated from the impact of these signs.

Mr. Welsh made a motion to approve ZBA 23-27, 62 Maple Ave. Mr. Clough seconded the motion.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

Met with a vote of 4-0.

and

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

Met with a vote of 4-0.

The motion to approve ZBA 23-27 passed with a vote of 4-0.

V) New Business

None.

VI) Communications and Miscellaneous

None.

VII) Non-public Session (if required)

None.

VIII) Adjournment

There being no further business, Chair Hoppock adjourned the meeting at 7:52 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk