

**Zoning Board of Adjustment  
Monday, August 7, 2017, 6:30 p.m.  
City Hall Committee Room  
3 Washington Street, 2<sup>nd</sup> Floor**

**AGENDA**

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting, June 5, 2017
- III. Unfinished Business

Hearings:

Petitioner, Leah LaRock requests an extension to decision of approval with conditions dated July 6, 2015 for property located at 0 Daniels Hill Rd., which is in the Rural Zone. This approval was to permit the building of a single family dwelling on a lot with 1.76 acres where a five acre minimum lot size is required per Table 102-791, Basic Zone Dimensional Requirements of the Zoning Code.

**ZBA 17-13**/ Petitioners, Robert J. Koning and Catherine R. Owen of 250 Summit Rd., Keene, requests a Variance for property located at 35 Summit Ridge Dr., Keene, Tax Map Parcel #918-10-011.0100, which is in the Rural District and owned by the applicants. Represented by Brickstone Land Use Consultants, LLC of 185 Winchester St., Keene, the Petitioners requests a Variance to permit a home occupation up to 1,200 sq. ft. in an accessory building on a lot in the Rural District where a maximum home occupation size of 300 sq. ft. is permitted per Section 102-921 (a) (5) Home Occupation Criteria of the Zoning Ordinance. The home occupation will be located in an existing barn on a lot to be merged with 250 Summit Rd. The merged properties will be 15.2 acres in size.

- IV. New Business
  - Rules of Procedure
- VI. Communications and Miscellaneous
- VII. Non Public Session: (if required)
- VIII. Adjournment

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City of Keene  
New Hampshire

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

**Monday, June 5, 2017**

**6:30 PM**

**Council Chambers**

**Members Present:**

Nathaniel Stout, Chair  
Jeffrey Stevens, Vice Chair  
Louise Zerba, Alternate  
Joshua Gorman  
Thomas Plenda

**Staff Present:**

Gary Schneider, Plan Examiner  
John Rogers, Acting Health Director

**Members Not Present:**

John Rab, Alternate

**I. Introduction of Board Members**

Chair Stout called the meeting to order at 6:32 PM, introduced members of the Board and welcomed everyone to the meeting.

**II. Minutes of the Previous Meeting**

Vice Chair Stevens made a motion to accept the minutes from May 1, 2017. The motion was seconded by Mr. Gorman, which carried unanimously. Ms. Zerba abstained from voting since she did not attend the meeting.

**IV. Hearings**

**ZBA 17-11/ Petitioner, Albert F. Grauer, Jr., and Lisa S. Grauer of 268 Rowland Rd., Fairfield, CT, requests a Special Exception for property located at 85 Winchester St, Keene, Tax Map Parcel #048-01-001, which is in the High Density District and owned by the applicants. The Petitioner requests a Special Exception from Section 102-422 for use of property as a boardinghouse/lodging house.**

Mr. Schneider indicated that the property was located on the corner of Blake Street along Winchester Street and that the property was located in the High Density Zone. He explained that the property, back in 1993, was a legal fraternity recognized by Keene State College (KSC) and the City of Keene. Mr. Schneider said that according to the definitions in the zoning code a fraternity must be recognized by a college campus. He said that in 2002 KSC no longer recognized the property as a fraternity and was not a

legal permitted use for this property. Mr. Schneider explained that the owners of the property at that time went before the ZBA to apply for a Special Exception to become a lodging house. He noted that the property did not need to be recognized by Keene State College in order to be a lodging house. Mr. Schneider reported that particular application was denied by the ZBA.

Mr. Schneider said that the City followed up with the property and since it was no longer recognized as a fraternity the owners applied for a building permit to convert it back to a single family home. He reported that the property was now recognized as a single family home. Mr. Schneider said that the current property owners were appealing to this Board for a Special Exception.

Co-Chair Stevens asked if there were other lodging houses in the area of the property. Mr. Schneider replied that there is a lodging house located at 57 Winchester Street.

Chair Stout referred to the application on page two, *“New Hampshire law is clear that since a prior Special Exception application for the property was denied in 2004, the ZBA must find a material change of circumstances affecting the merits of this new application in the interest of the doctrine called "administrative finality”*. He said that the Board could take testimony from the applicant’s attorney or the applicant. Chair Stout explained that the public hearing would not be open until the Board decided whether or not the application had demonstrated a substantial change.

Chair Stout recognized Attorney Gary Kinyon, of Bradley & Faulkner PC, at 50 Washington Street, Keene, NH. He stated that he was an attorney representing the Petitioner. He said that the scope of New Hampshire Law on this issue gives the ZBA a great amount of discretion to determine what is a substantial change in circumstances. He said that the petitioner would present evidence to this Board that the circumstances of the prior application that was denied in 2004, have changed substantially relative to the ownership of the property and relative to the composition of the neighborhood.

Attorney Kinyon said that the Special Exception application is the same Special Exception application that was sought and denied in 2004. He noted that nothing has changed in the law relative to the Special Exception compared to the present time.

Attorney Kinyon reported in 1993 that the property was approved for the use the petitioner was seeking at the present time. He said that the key distinction in 1993 was that it was approved as a fraternity house and not as a lodging house. Attorney Kinyon said that by his reading of the Ordinance there is virtually no difference between a lodging house in the City and a fraternity or sorority use. He said that the only difference was the fact that a fraternity or a sorority must be recognized by the college. He said that the ZBA should consider what was approved in 1993 and asked if he could present the Board with a copy of the approved decision. Chair Stout explained to Attorney Kinyon that if a document is submitted on the night of a hearing and the Board does not have the luxury to absorb the content, the Board might not accept the document. Chair Stout asked for the Board’s comments. The Board made the decision to accept the document from Attorney Kinyon.

Attorney Kinyon referred to the application where he mentioned the 1993 approval and thought that the Board might want to see the actual notice of decision that approved the fraternity use. He said that there were two relevant provisions about the need for a sprinkler system on the third floor before the property could be used for up to nine occupants. He noted that the application before the Board at this meeting was for the same number of occupants.

Attorney Kinyon said that the fraternity operated from 1993 and at some point lost its status with the College in 2004. He said that due to the pressures of being compliant with zoning, the owners of the property made an application for a lodging house. He noted that the use of a fraternity or a sorority was the exact same use as a lodging house.

Attorney Kinyon then presented Board with the minutes from the ZBA meeting on January 3, 2005. He said the minutes would give the Board a sense of the issues that were presented to the ZBA that was relative to the neighbors. He said at that time, the fraternity was not being a good citizen of the neighborhood or to the College. Attorney Kinyon noted that there were a lot of complaints about the behavior of the occupants at the fraternity. Attorney Kinyon said at that same meeting the ZBA voted on the same four criteria. He said that the application met three of the four conditions but did not meet the condition that the use would not hurt values of the surrounding properties. He said that was important because the minutes stated that two or three of the abutters who spoke against the application were owners of single family homes who occupied their homes. Attorney Kinyon said that according to the minutes the abutters complained about the behavior of the fraternity members. He said as a result the ZBA denied the Special Exception application. He noted that no appeal was taken in 2005 and the application was filed.

Attorney Kinyon said the owners who bought property from the fraternity owner in 2006, formally transferred the category of the house from a fraternity to a single family home. He explained that was when those owners began renting to college students. He said that the Petitioners purchased the property in 2014 and they did renovations to the property and continued to rent the property as a single family. Attorney Kinyon said that in 1993 through 2004 the owners legally had an occupancy to house nine and utilized the third floor of the property. Attorney Kinyon noted that the third floor was not being used by the Petitioners because it only qualified for occupancy of four as a single family residence.

He said that this was an unusual situation because what was being done in 1993 was legal and then with the loss as a designation as a fraternity it then became illegal. Attorney Kinyon said that the applicants looked at the layout of the property and how the property is currently being operated. He said that they came to the conclusion that there was no reason why this property could not be operated safely as a nine occupant lodging house. He said that the substantial change in circumstances, as stated in the application, is justified because the use of the property is still student housing. He noted that it was a completely different type of student housing now compared to the fraternity use in 2004. Attorney Kinyon explained how the applicants have owned several properties in the area for approximately fourteen years and have run all of these properties professionally. He

said that they maintain the properties impeccably and do not allow the kind of student behavior that occurred in 2004. He noted that there was a lodging house located in the neighborhood at 57 Winchester Street.

Attorney Kinyon used an illustration created made by the Petitioner, Mr. Albert F. Grauer, to illustrate the difference in the makeup of the neighborhood from 2004 to the present day. He indicated that in 2004 most of the neighborhood was owner occupied single family homes. Attorney Kinyon said that with no doubt this would have been a reason why the owner occupied single family neighbors in the 2004 Special Exception application were complaining about the fraternities.

Attorney Kinyon then illustrated the area of the property in 2017 that showed the dominance of student rentals in the neighborhood. He said that there was also more college ownership of the buildings located along Winchester Street. Chair Stout asked how the college housing in the illustration was determined. Attorney Kinyon replied that Mr. Grauer knows most of the properties in the neighborhood and that he did his own investigations to determine if the property was owner-occupied or being rented to college students. Attorney Kinyon explained how the area had also changed due to the construction of Acadia Hall, The Mills and conversion of the former Monadnock Flooring to student housing. He noted that the neighborhood has become predominately student housing and for that reason they believe that there is a substantial change in the circumstances that justifies the application for a lodging house.

Attorney Kinyon said that the only other substantial change was that the property has been improved since the Grauers purchased the property. He said that the property was well maintained and that the Grauers take action to properly supervise all of their properties. He referenced the minutes from 2004 where one of the neighbors said that there were approximately 60 police calls to the property at that time and that it was upsetting to neighbors. Attorney Kinyon said that this would not occur based on the supervision of the Grauers.

Attorney Kinyon asked the Board to find that there is a substantial change and requested to proceed so the Grauers are able to make a request for a Special Exception.

Mr. Gorman said that he was familiar with the Grauers management style and that it is fairly efficient. He asked if the Grauers were to be provided with an approval from this Board, the boardinghouse/lodging house use would carry on with the property regardless of the owner and that Mr. Grauer may benefit from the financial gain and could then easily sell the property. Chair Stout said that was irrelevant to the application for a Special Exception. Mr. Gorman said that it was valid because the whole merit was that the situation has changed because of the new owners. Chair Stout said that he did agree with Mr. Gorman and did see Mr. Gorman's point. Attorney Kinyon said that as a condition of any Special Exception the petitioner would have to get a license from the City Council to operate a lodging house. He explained that one of the conditions of getting that license was an annual inspection and approval by various City departments relative to the maintenance and upkeep of the property. Attorney Kinyon said that if approved, the Special Exception would run with the property and not the applicants. He

said that this was a safeguard that would show that any future owner of the property would have to maintain to a similar level maintenance.

Attorney Kinyon said that relative to the 2004 application the only thing that the ZBA did find was that the proposed use would hurt values of the surrounding properties. He said that, had an appraiser looked at the property, the proposed use and composition of the neighborhood to determine if the proposed lodging house would harm values in the neighborhood. Attorney Kinyon presented a letter from appraiser, Susan Tierney, Powers, Smith & Associate, 67 Winter Street Keene, NH. He said that based on Ms. Tierney's research and her confirmation about the change in the composition of the neighborhood there would not be a reduction in values of the surrounding properties.

Chair Stout explained to the Board that they needed to decide whether or not it has been proven that there has been a substantial change in this property. He noted that the Board had also received two substantial documents from Attorney Kinyon and asked if they would need to continue the hearing in order to absorb the new information. Ms. Zerba said that she thought the circumstances have changed significantly from the previous application and would support the request for a Special Exception. Co-Chair Stevens said that he would agree with Ms. Zerba and that by driving through the neighborhood there was a noticeable change. Mr. Plenda said that he has not seen sufficient evidence that there has been a significant change. Chair Stout said that he also agreed that there has been a substantial change in the property. With a vote of 4-1, the Zoning Board of Adjustments voted in favor to move forward with the request for a Special Exception. Mr. Plenda opposed.

Attorney Kinyon reviewed the criteria.

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

Attorney Kinyon said that a lodging house is allowed by Special Exception in this zone. He said that the proposed use of rental housing for students is the predominate use in the neighborhood. Attorney Kinyon said that property is unique and suited to similar uses in the neighborhood, including the uses of Acadia Hall and conversion of the Monadnock Flooring.

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

Attorney Kinyon said that the predominance of the neighborhood was student housing, and was the application consistent with the idea that this would property would remain student housing with an additional number of occupants. He referenced the letter from appraiser Ms. Tierney that stated, based on her review, the proposed use as a lodging house would not have injurious effect on property values.

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

He said the previous approval for up to nine occupants at the house demonstrates that no nuisance or serious hazard to vehicles, pedestrians, or the occupants would result from the granting of the Special Exception.

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

Attorney Kinyon said that adequate and appropriate facilities already exist for the proper operation of the proposed use, because the house is served by City water and sewer, and a sprinkler system already exists in the house for all proposed living spaces.

Vice Chair Stevens asked what is required for licensing a lodging house. Mr. Schneider replied that through the City Clerk's Office, the applicant would need to fill out an application that would then go before the City Council. He said that inspections of the property were reported to the City Council on conditions of the property. Vice Chair Stevens asked if these were subjective notes on use of the property. Mr. Schneider said that Code Enforcement enforces the building codes; the Fire Department enforces the fire codes and that focus was more on the property than it is with the tenants living at the property. Mr. Gorman said that the scope of enforcement for non-license renewal was weak at best and that property owners were given lengthy amounts of time to correct issues. He asked Mr. Schneider if that was accurate and if he recalls any application that is not renewed. Mr. Schneider replied that he could not recall a specific license that was denied but could recall delays with licensure. Mr. Gorman asked Mr. Schneider if there were any issues with the current property as a code enforcement official. Mr. Gorman said that he has driven by the property and has seen the dumpster torn apart. He noted that he was fairly familiar with off campus living and with nine occupants living in one house, the house would not be what it is now. Mr. Schneider apologized that he did not get out of the office on a daily basis and would not be able to fairly answer that question. Ms. Zerba asked how one and half bathrooms would accommodate nine occupants.

Trevor Grauer, 88 Fox Street, Fairview, CT, said the application was asking for the same number of occupants that was previously granted at the property. He said that the one-and-a-half-baths would still be suitable to serve nine occupants.

Chair Stout asked about parking with nine resident's there and only three parking spaces shown. Rick Grauer, 268 Rowland Road, Fairview, CT, said that he submitted a drawing of the City approved parking spaces that are 9 feet wide and 18 feet long. He referenced the drawing and indicated that the parking spaces at the property were 31 feet and left ample room for someone to park without blocking the sidewalk. Mr. Grauer explained that the south side of the parking area is 36 feet deep allowing two cars in that one area. He said that they also own the abutting property and that there is an additional parking area that is not utilized. He noted that there were another 4 or 5 parking spots at this location that could also be used. Mr. Gorman asked Mr. Grauer if he was familiar with the actual parking requirements that went along with a lodging house. Attorney Kinyon replied that it was one space for every two beds. Mr. Schneider confirmed Attorney Kinyon's statement.



Mr. Schneider referenced the Zoning Code Section 102-1226: Setbacks of paved and unpaved parking and travel surfaces.

He explained that this property would be considered a small lot with a front setback of 5 feet, a side setback of 5 feet and a rear set back of 5 feet.

Chair Stout welcomed public comment.

Attorney Kinyon said that this was an existing property with existing parking and if this was a vacant property the setbacks would be relevant and applicable. He said that the number of proposed parking spaces were adequate for the number of occupants. Chair Stout asked if there were five approved parking spaces for the property. Attorney Kinyon replied in the affirmative.

With no further comment, Chair Stout closed the public hearing.

The Board reviewed the criteria.

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

Ms. Zerba said that the use was similar to what currently exists in the neighborhood and that part of the City's Masterplan was to contain student housing in one area. She said that the evidence has shown that Mr. Grauer runs a tight ship and that she has seen where one of his properties on Winchester Court requires that parents sign a form to ensure appropriate behavior. She noted that the parents were also held responsible for any damage to the property.

Mr. Gorman said that the fixation with property owner should not come into play in a zoning decision. He said that the property could be put on the market at any time and does not see this information as pertinent. Mr. Gorman said that Mr. Grauer is a good landlord but that he could sell the property to a bad landlord and the City could run into the same issues the City was faced with years ago. He said that it was a concern placing so many students into one single family home.

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

Vice Chair Stevens said that clearly the nature of the neighborhood has changed. He said that he did not feel that the property values in the surrounding area would not be changed. He noted that the use was similar to other uses in the area.

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

Vice Chair Stevens said that when more people are added to an area there would be more cars, more visitors and that it definitely created more activity. He said that it was no

different than what was currently in the neighborhood. Vice Chair Stevens said that the application does meet the criteria but that he was hesitantly in favor.

Chair Stout said that it was an interesting case because it was not the City that revoked the fraternity capability and that the lodging house function disappeared with a decision of an external party. He asked what would happen if the Board granted the Special Exception and if KSC allowed fraternities again. Chair Stout advised the Board to think about that possibility. He said he did feel that the character of the neighborhood has changed and given that the Special Exception was denied on that one criterion, he would favor the applicant.

Mr. Gorman asked how the characteristics of the neighborhood have changed so much. He said that he has been resident of this region his whole life and attended KSC and does not think the neighborhood has changed substantially. He said that neighborhood consists of several rented single family homes. Mr. Gorman said that if economics changed these homes could easily turn back into owner occupied homes. He said that he had trouble accepting that the neighborhood has drastically changed. He noted that there was no specific use for college rentals and that it was a decided market. Mr. Gorman advised the Board to think about the ramifications if this Special Exception was approved. Mr. Plenda asked what the choices would be if the Special Exception was not approved and if rezoning would be considered. Chair Stout replied that the rezoning would be considered by the ZBA. Mr. Plenda asked why the use of the zone was considered in a previous application. Mr. Schneider said that changing the zone of a particular piece of property is a City Council function. He said that the property in question was located in the High Density District and that property in the previous application was in the Central Business District.

John Rogers, Acting Health Director/Zoning Administrator, explained that the previous application was for a lodging house in the Central Business District, where a lodging house is not allowed. He said that the application for the property at this hearing was located in the High Density District, which is a permitted use with a Special Exception.

Chair Stout discussed the Findings of Fact:

*The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use. Granted, 5-0*

*Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood. Granted 4-1, Mr. Gorman opposed.*

*There will be no nuisance or serious hazard to vehicles or pedestrians. Granted 4-1, Mr. Plenda opposed.*

*Adequate and appropriate facilities (i.e., sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use. Granted, 4-1, Mr. Plenda opposed.*

Vice Chair Stevens made a motion to approve ZBA 17-11. The motion was seconded by Ms. Zerba, the motion was carried unanimously.

On a vote of 3-2, The Zoning Board of Adjustment approved ZBA 17-11. Mr. Gorman and Mr. Plenda opposed.

**ZBA 17-12/ Petitioner, Peter Throop of 15 Beech St, Keene, NH, requests a Variance for property located at 25 Beech St., Keene, Tax Map Parcel #018-05-015, which is in the Medium Density District and owned by the applicant. The Petitioner requests a Variance to permit the conversion of a single family home to a two family dwelling with a lot size of 9,148 sq. ft. where 13,400 is required per Section 102-791, Basic Zone Dimensional Requirements of the Zoning Ordinance.**

Mr. Schneider indicated that the property was located in between Roxbury Street and Beaver Street and was located in the Medium Density District.

Peter Throop, 15 Beech Street, Keene, NH said that he moved into this house in 1997 and at that time it was a rental house. He said that the house consisted of four bedrooms and two bathrooms and a parking lot suitable for four parking spaces. Mr. Throop said that he bought the property in 2001, continued living there and rented to Antioch students. He said that in 2003 he bought the house located next door at 15 Beech Street. Mr. Throop stated that he currently lives at that property.

Mr. Throop explained that he is currently going through a divorce and that his wife will be converting the property located at 25 Beech Street into a two-family in order to have rental income to help cover expenses. He stated the property would be owner-occupied and that the property would continue to have four bedrooms and two baths.

Mr. Throop reported that the parcel size of the property was 9,148 square feet where 13,400 were required for a two-family dwelling. He referenced the chart that was included with the application and asked the Board to look at the neighborhood that was laid out on the chart. Mr. Throop said that the neighborhood consisted of Dover Street, Beech Street, Grant Street and Douglas Street. There are located in a Median Density District. He explained that in that four block area, there were 62 total residential parcels, 24 are two-family homes and three are multifamily with 3 or more units. He said of those 27 units none of them are compliant with the Zoning Ordinances in terms of lot size. Mr. Throop said of those 27 units there are 16 units that are the same size as his lot or smaller. He said that there is a four-unit building located on Dover Street that is 6,540 square feet and there are three units across the street from his property located on 8,700 square feet. He said that in this part of the Medium Density District there are no other multifamily that are even close to the requirements of the Ordinance. Mr. Throop said that he views this as a hardship and feels that he deserves the same rights as other multifamily owners.

Mr. Throop reviewed the criteria.

- Granting the variance would not be contrary to the public interest because the existing use and the proposed use are both residential uses. He said that 25 Beech Street property is a four-bedroom, two-bath house that is connected to town water

- and sewer. The house is currently rented to undergraduate students and has been rented as such for over 25 years. He said that there is adequate parking for 4 vehicles in the existing parking lot. Mr. Throop said that the proposed condition will include 2 units, one of which will be owner-occupied.
- Mr. Throop said that the Ordinance intends to create a coherent residential neighborhood that includes a two-family and multi-family dwellings on lots smaller than are permitted in the Medium Density District. He said that as long as the proposed Variance creates a condition that is substantially compatible with the neighborhood currently exists one can conclude that the Spirit of the Ordinance would be observed.
  - Mr. Throop said as he indicated that 16 of the 27 properties with 2 or more dwelling units have lot sizes that are the same or smaller than his property. He said the granting of the Variance will not cause an increase in impacts to the neighborhood or general public and the benefit that would be granted to the Petitioner is not greater than that enjoyed by other two-family and multi-family property owners in the neighborhood.
  - He said that 40% of the parcels in the neighborhood are two-family or multi-family parcels with substandard lot sizes, and there is no significant change in the nature or intensity of the existing use compared to the proposed condition. He said that it is highly unlikely that the value in the surrounding properties would be diminished.
  - Mr. Throop said that since the minimum for lot size standard for the district is intended to represent a density required to serve the public interest all 27 two-family and multi-family parcels within the four block neighborhood are below the minimum lot size required for the use in the district. He said that the application of the minimum lot size would constitute an unnecessary hardship.
  - Mr. Throop said that the proposed use is a reasonable one because it is a compatible residential use and density in the neighborhood.

Ms. Zerba asked if there would be any changes to the exterior. Mr. Throop replied that there would not be any changes to the exterior.

Chair Stout welcomed public comment.

Mark Froling, 240 Roxbury Street, Keene, NH said that he came as a character witness. Mr. Froling said that Mr. Throop was a terrific neighbor and that he supported the application.

Hanspeter Weber, 22 Douglas Street, Keene, NH said that he has lived on Douglas Street for thirty-plus years. He said that Mr. Throop is a great neighbor. Mr. Weber said that the house he lived in was a single family home and was then converted to a two-family. He explained that he understood the importance of having that extra income from a two-family and that he would not have been able to live in the home if it was not converted to a two-family. Mr. Weber said that he was in support of granting the Variance.

Chair Stout read a letter from Brian Hansen, 220 Roxbury Street, Keene, NH that was opposed to the application.

Mr. Throop said that he did not have a copy of the letter but that it sounded like a number of the arguments by Mr. Hansen did not make sense. Mr. Gorman asked if 220 Roxbury Street was a single-family or multi-family home. Mr. Throop replied that it was currently a single-family on a double lot. He explained that there has been a long-standing, strained relationship between Mr. Hansen and himself.

Vice Chair Stevens asked if the property located at 23 Beech Street shared a driveway with 25 Beech Street. Mr. Throop replied in the affirmative.

Vice Chair Stevens asked if there was sufficient parking. Mr. Throop replied that the parking lot measures 32' x 24' and was three feet short of the City standard. He added that he would be willing to increase the size by three feet if necessary. Vice Chair Stevens asked what the requirements were for a two family. Mr. Schneider replied that for an apartment it was two parking spaces per dwelling unit.

With no further comment, Chair Stout closed the public hearing.

Chair Stout discussed the criteria.

Ms. Zerba made a motion to approve ZBA 17-12. The motion was seconded by Mr. Gorman, which carried unanimously.

*Granting the Variance would not be contrary to the public interest:*

Ms. Zerba said that she would agree with Mr. Throop's comments and that granting the Variance would not be contrary to the public interest.

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

All members of the Board agreed.

*Granting the Variance would do substantial justice:*

Chair Stout said that he felt the Variance would do substantial justice given the evidence of the surrounding properties.

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

All members of the Board agreed.

*Unnecessary Hardship*

*E. 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:*

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

All members of the Board agreed.

*The proposed use is a reasonable one:*

All members of the Board agreed.

Chair Stout reviewed the Findings of Fact:

*Granting the Variance would not be contrary to the public interest:* Granted, 5-0

*If the Variance were granted, the spirit of the Ordinance would be observed:* Granted, 5-0

*Granting the Variance would do substantial justice:* Granted, 5-0

*If the Variance were granted, the values of the surrounding properties would not be diminished:* Granted, 5-0

*Unnecessary Hardship*

*E. 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:*

*ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:* Granted, 5-0

*x. The proposed use is a reasonable one:* Granted, 5-0

With a vote of 5-0, The Zoning Board of Adjustment approved ZBA 17-12.

**V. New Business:** Rules of Procedure

Mr. Rogers referenced the Rules of Procedure being reviewed by the Board. He said that, based on the comments and suggestions by the Board, the Rules of Procedure were updated. Mr. Rogers said that on page 73, a staff report outlined the breakdown of steps required by Staff to prepare the monthly Board packet necessary to conduct the meeting.

Chair Stout asked if the Board approved the Rules of Procedure would the fees would increase immediately. Mr. Rogers replied in the affirmative. In addition, Mr. Rogers suggested that the staff would bring forth a reasonable timeframe for the Board to have a periodical review.

Chair Stout asked Mr. Rogers to confirm the cost of fees. Mr. Rogers said that the application fee would be increased to \$100, the cost of mailing the abutter notices with the US Postal Service and the \$25 fee for a legal notice. Mr. Rogers said that the total cost would depend on the level of information needed for each application.

Ms. Zerba asked if the fees were less than comparable cities. Mr. Rogers replied that the comparable cities were Bedford, Concord, Nashua, Londonderry and Salem. He noted that the proposed fees were much lower compared to these cities.

Ms. Zerba made a motion to approve the Rules of Procedure as presented with a recommendation of a review every two years. The motion was seconded by Mr. Gorman, and was carried unanimously.

Chair Stout thanked the City staff for their hard work and effort.

**VI. Communications**

Mr. Schneider reported that Elena Brander moved out of the area and had to resign from the Board. He asked that Board consider having the City Clerk put together an appreciation letter to send to Ms. Brander.

Ms. Zerba moved to direct the City Clerk to draft a letter in appreciation of Ms. Brander to be signed by Chair Stout. All members of the Board agreed.

**VII. Adjournment**

Hearing no further business, Chair Stout adjourned the meeting at 8:31PM.

Respectfully submitted by,  
Jennifer Clark, Minute Taker





# City of Keene

New Hampshire

## NOTICE OF DECISION

July 6, 2015

AMENDED

## **ZONING BOARD OF ADJUSTMENT**

**CASE NUMBER:** ZBA 14-12  
**Property Address:** 0 Daniels Hill Rd.  
**Zone:** Rural Zone  
**Owner:** Leah LaRock  
**Petitioner:** Leah LaRock

You are hereby notified that the request for a Variance for property located at 0 Daniels Hill Rd., which is in the Rural Zone and based upon the record and which is incorporated by reference has been approved by a vote of 5-0. This approval is to be permitted to build a single family dwelling on a lot with 1.76 acres where a five (5) acre minimum lot size is required per Table 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

### **Conditions:**

1. Prior to granting of a building permit, the owner will install a 6"-12" berm across the first Woods Road near Daniels Hill Road, and also across the second Woods Road located (easterly) towards Route 9 over the existing open area. In regards to the berm located (easterly) across the second Woods Road, this berm is to extend to the existing berm on the lot.
2. That the owner maintains a vegetated buffer of approximately 20 feet along the road frontage westerly of the driveway. The buffer does not have to be opaque but shall have a density similar to the existing vegetation. This buffer may include new trees or the existing trees.
3. Mr. Robert Hitchcock of SVE Associates will verify that the development of the property does not increase the runoff onto the abutting property to the East.

\_\_\_\_\_  
Corinne Marcou, Clerk

**NOTE:** Any person affected has a right to appeal this Decision. If you wish to appeal, you must act within thirty-(30) days of the date of this notice. The necessary first step, before any appeal may be taken to the Courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will be base your appeal. See New Hampshire Statutes, RSA Chapter 677, for details.



# 35 Summit Rd. ZBA 17-13



Petitioner requests a Variance to permit a home occupation up to 1,200 sq. ft. in an accessory building on a lot in the Rural District where a maximum home occupation size is 300 sq. ft. is permitted per Section 102-921 (a)(5) Home Occupation Criteria of the Zoning Ordinance.



City of Keene  
New Hampshire

**NOTICE OF HEARING**

**ZBA 17-13**

A meeting of the Zoning Board of Adjustment will be held on Monday, August 7, 2017 at 6:30 PM in the City Hall Committee Room, 2<sup>nd</sup> floor, 3 Washington St, Keene, New Hampshire to consider the petition of Robert J. Koning and Catherine R. Owen of 250 Summit Rd, Keene, NH, represented by Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene. The Petitioner requests a Variance for property located at 35 Summit Ridge Dr., Keene, Tax Map Parcel #918-10-011.0100, which is in the Rural District and owned by the applicant. The Petitioner requests a Variance to permit a home occupation up to 1,200 sq. ft. in an accessory building on a lot in the Rural district where a maximum home occupation size of 300 sq. ft. is permitted per Section 102-921 (a) (5) Home Occupation Criteria of the Zoning Ordinance. The home occupation will be located in an existing barn on a lot to be merged with 250 Summit Rd. The merged properties will be 15.2 acres in size.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice Issuance Date: July 24, 2017



**APPLICATION FOR APPEAL**

Zoning Board of Adjustment  
3 Washington Street, Fourth Floor  
Keene, New Hampshire 03431  
Phone: (603) 352-5440

<b>For Office Use Only:</b>	
Case No.	<u>2BA 17-13</u>
Date Filed	<u>7/17/17</u>
Received By	<u>CSM</u>
Page	<u>1</u> of <u>9</u>
Reviewed By	<u>GS</u>

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

**TYPE OF APPEAL - MARK AS MANY AS NECESSARY**

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

**SECTION I - GENERAL INFORMATION**

Name(s) of Applicant(s) Brickstone Land Use Consultants LLC Phone: 603-357-0116  
 Address 185 Winchester Street, Keene NH 03431  
 Name(s) of Owner(s) Robert J Koning \* Catherine R Owen  
 Address 250 Summit Rd, Keene NH 03431  
 Location of Property 35 Summit Ridge Drive

**SECTION II - LOT CHARACTERISTICS**

Tax Map Parcel Number 918/10/011/0100 Zoning District Rural  
 Lot Dimensions: Front 105' +/- Rear 574' +/- Side 740' +/- Side 1,149' +/-  
 Lot Area: Acres 6.4 AC Square Feet 278,784 SF +/-  
 % of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0.9% Proposed 0.9%  
 % of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 2% Proposed 2%  
 Present Use Home Occupation  
 Proposed Use Home Occupation

**SECTION III - AFFIDAVIT**

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Robert J Koning Date 7/14/17  
 (Signature of Owner or Authorized Agent)

Please Print Name \_\_\_\_\_



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:

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.

**PROPERTY ADDRESS: 35 Summit Ridge Drive and 250 Summit Road**

### **APPLICATION FOR A VARIANCE**

- A variance is requested from Section (s) **102-921 (a) (5), Home Occupation, Criteria** of the Keene Zoning Ordinance to permit:

A home occupation up to 1200 sf in size in an accessory building on a lot in the Rural district where a maximum home occupation size of 300 sf is permitted. The home occupation will be located in an existing barn on a lot to be merged with 250 Summit Road. The merged properties will be 15.2 acres in size.

#### **DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:**

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

The Keene Master Plan recommends the creation of live-work properties within the community. Granting the variance will allow this property owner the opportunity to use his existing barn to grow his home occupation on the same property where he lives. Kontech Design is a small design and manufacturing facility using computer aided design and machining skills to create prototypes and specialty products of all types. All activities associated with the home occupation will be conducted inside the building. There will be no more than 1 employee who does not reside on the property. Deliveries are limited with an average of only one truck per week and three UPS/FedEx deliveries. There will be no changes to the exterior appearance of the barn. The home occupation will operate Monday thru Friday from 8 AM to 5 PM and will not operate nights or weekends.

It is in the public interest to allow home occupations which will maintain the character of the residential property, be consistent with the Keene Master Plan, and not be a nuisance or hazard to the neighborhood.

**2. If the variance were granted, the spirit of the ordinance would be observed because:**

The spirit of the ordinance, in this case, is to protect the public health, safety and welfare by restricting home occupations in size to limit the intensity of use. In this case, the home occupation already exists at the property. The owner of the property operates the existing home occupation in an office within their home. Increasing demand has required the use of his home workshop, a 900 sf shed which is also located on the property. The proposal is to move the home occupation into the existing 1200 sf barn located on the same property. The additional space and higher ceiling height in the barn will allow for modern manufacturing equipment to be purchased which is needed for his work.

The existing barn will be re-painted, insulated, new windows will be installed and a new overhead door will be installed. The barn will remain the same size and shape. This will preserve the existing residential character of the property.

The owner is currently the only employee. At some future time, one employee may be added, which is permitted by the ordinance. All truck deliveries are via Summit Road. No increase in truck delivery traffic is expected.

The spirit of the ordinance is observed in part because the home occupation will occupy an existing barn which will be preserved in appearance. All business activities

will be conducted inside the building and there will be no more than one additional employee. Traffic will not significantly increase and there will be no nuisance or hazard to the public.

Public welfare will be enhanced by this project because the existing building will be improved and will result in an increase to the property tax assessment.

The proposed use will not create a threat to public health, public safety or public welfare. This proposal meets the spirit and intent of the ordinance.

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

When merged, the property will be in excess of 15 acres. The existing barn is located over 800 feet from Summit Road, over 400 feet from Summit Ridge Road and over 200 feet from the closest neighbor. By utilizing the existing barn, the character of the neighborhood is respected and existing property values will not be diminished.

City water and city sewer is available to this property if needed, and has adequate capacity for this use. Granting the variance will do substantial justice because it will allow a use which is not contrary to the public interest and observes the spirit and intent of the ordinance.

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

The home occupation already exists at the property. This proposal will move the home occupation to the existing barn and is only visible from one house located more than 200 feet away. The exterior of the barn will be repainted and new windows and an overhead door will be installed. Otherwise the building appearance will remain the same. All business activities will be conducted indoors. The business will operate normal business hours, M-F 8 AM to 5 PM and not on weekends. Deliveries to the property will be via Summit Road and will remain similar to the existing number of deliveries.

The use as proposed will not generate excess noise, will not increase traffic and will not be a threat to public safety or public welfare. Granting this variance will not result in diminished property value for surrounding properties.

**5. Unnecessary Hardship**

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

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

The merged lots will form a property over 15 acres in size with an existing house, two sheds and a 1200 sf barn. The barn is hundreds of feet from the public rights of ways. The existing ordinance limits the size of a home occupation to no more than 300 sf. The purpose of this is to limit the intensity of the use and to preserve the character of residential properties. In this case, this is a large property with an existing barn which is barely visible from the public rights of way. The large machines utilized in manufacturing the prototypes require a higher

ceiling than is currently available. The ceiling height in the barn is 11 feet and adequate for specialized machines. This home occupation already exists on the property and has not created a nuisance or hazard, and has not resulted in a diminution of property values. Denial of the variance would serve no public purpose in this case.

**And**

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

The home occupation already exists on the property. It has never resulted in a nuisance or hazard and has not diminished property values in the neighborhood. The move to the existing 1200 sf barn will not increase traffic or noise. It will not change the residential appearance of the property and will not diminish surrounding property values. It is fair and reasonable to allow this use under these circumstances.

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

The home occupation already exists on the property.

It has never resulted in a nuisance or hazard and has not diminished property values in the neighborhood. The move to the existing 1200 sf barn will not increase traffic or noise. It will not change the residential appearance of the property and will not diminish surrounding property values. It is fair and reasonable to allow this use under these circumstances.

It is unfair and an unnecessary hardship to restrict this property when allowing an existing home occupation to move into an existing larger space with higher ceilings will fulfill the general public purposes of the ordinance by maintaining property values without being a nuisance or hazard to the neighborhood. A variance is necessary to allow the proposed use on this site.



# LOT DATA

ZONING	RURAL
TAX MAP #	918100110000 & 918100110100
LOT SIZE	662,112 SF - 15.2 AC±
LOT COVERAGE	
BUILDING	5,230 SF - 0.8%
PAVING	11,600 SF - 1.7%
TOTAL	16,830 SF - 2.5%

## GENERAL NOTES

THIS IS A COMPOSITE PLAN OF THIS PROPERTY BASED ON AERIAL PHOTOGRAPHY AND GROUND SURVEY. THIS PLAN IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY OF THIS PROPERTY. TOPOGRAPHIC INFORMATION BASED ON AERIAL TOPOGRAPHY. THIS PROPERTY IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN FOR THE CITY OF KEENE.

