

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, March 7, 2016

6:30 PM

City Hall, Second Floor Committee Room

Members Present:

Louise Zerba, Chair
Joseph Hoppock, Co-Chair
David Curran
Josh Gorman, Alternate
Nathaniel Stout

Staff Present:

Gary Schneider, Plans Examiner

Members Absent:

Jeffrey Stevens

Others Present:

I. Introduction of Board Members:

Chair Zerba called the meeting to order at 6:33 PM and introduced the Board Members.

II. Minutes of the Previous Meetings : February 1, 2016

Mr. Hoppock made a motion to accept the minutes of February 1, 2016 with the following corrections. Mr. Curran seconded which carried unanimously.

Mr. Stout noted that on pg. 3 directions in proximity to the building were referenced and should instead read “east” instead of “right” and “north” instead of “rear”. He continued, stating that pg. 10 last paragraph, “conceited” should instead read, “conceded”. Mr. Stout stated that on pg. 10 it states, “Attorney Dowd stated that it was a non-conforming” and noted that the “a” should be deleted.

Chair Zerba stated that on pg. 9 it reads, “He continued, noting that the restaurant should a 932 and not a 931.” This should instead read, “He continued, noting that the restaurant should be a 932 and not a 931 as stated on pg. 2 of the trip generation sheet that was submitted by Attorney Hanna.” Mr. Curran stated that pg. 7 states that the “building is slightly over 6,000” and should instead read, “building is slightly over 6,000 square feet”.

Chair Zerba stated that on pg. 3 it reads “14 Church Street” for Attorney Hanna’s address and should instead read, “41 School Street”. Chair Zerba noted that Attorney Hanna’s name is misspelled in several locations and should read, “Attorney Hanna” not Attorney Hannah”. Chair Zerba stated that on pg. 3 it reads, “Schneir Construction” and should instead read, “Schnyer Construction”. She continued, noting that pg. 8, first paragraph it reads, “Section 1023” in several

locations and should instead read, “102-3”. Chair Zerba stated that on pg. 8 it reads, “Attorney Dowd stated that his memorandum argued that this ordinance presupposed non-conforming uses and structures.” This should instead read, “Attorney Dowd stated that his memorandum argued that this ordinance presupposed non-conforming use and structures.”

Chair Zerba stated that on pg. 14 it reads, “Kennedy Road” and should instead read, “Kennedy Drive”. Chair Zerba noted that individual’s names were misspelled but is unsure how they are spelled. She noted that “Beemus” should instead read “Bemis”. Chair Zerba stated that on pg. 13 it reads, “Mr. Velet stated concern about a variance that detracts from the community and the single family feel.” This should instead read, “Mr. Velet stated concern about a variance that detracts from the community and the single family feel.”

III. Unfinished Business:

None at this time.

IV. Hearings:

Continued from February ZBA 16-04/: Petitioners, the Pub Restaurant and Caterers of 131 Winchester St, Keene; David F. & Marcia A. Parody, owners of Home of New England Fabrics of 51-55 Ralston St, Keene; Chris J. Tasoulas Trust, owners of Chris J. Tasoulas Realty of 103-109 Winchester St., Keene and Northbrook Properties, Inc. of 66 Ralston St., Keene, all represented by Attorney Thomas R. Hanna, 41 School St., Keene, for property located at 141 Winchester St., Keene, which is in the Commerce District. The Petitioners are appealing the Administrative Decision, signed and dated October 22, 2015, released October 26, 2015 by the Zoning Administrator regarding the required number of parking spaces under the Zoning Ordinance.

Attorney Hanna approached the Board. He noted that on February 1, 2016, Attorney Dowd submitted a traffic report from a firm called TEPP and he would like to respond to this report. Attorney Hanna noted that the Board received his report prior to the meeting and handed out the table (pg. 3 of the report) for visual comparison.

Attorney Hanna noted that the applicant of 141 Winchester Street submitted a traffic report to conclude that the property’s change of use will have a benign impact. Attorney Hanna stated that the conclusions of this traffic report are not accurate. He continued, noting that there is a provision in the site plan regulations which states that in the event that the number of vehicle trips exceeds 100 vehicle trips per day or 50 vehicle trips during peak hours then the applicant must conduct a traffic study.

Attorney Hanna stated that the applicant used the trip report to portray the proposed use as less impactful than previous uses. Attorney Hanna noted that this was done by categorizing the hotdog shop as a fast food restaurant which would be comparable to McDonalds without a drive through. Attorney Hanna stated that from this categorization the applicants determined that the hotdog shop had 501 daily traffic trips. He suggested that a specialty retail store would be a more appropriate categorization and would generate about 31 trips daily in comparison to the 501

suggested. With this change the proposed use would increase traffic trips by 332 as opposed to the applicants decrease in traffic counts by 287 with their fast food categorization. Attorney Hanna noted that his report used numbers from the TEPP report and is identified with asterisks. Attorney Hanna stated that the correct categorization of the hotdog stand is for discussion but from past observations of the hotdog stand it is clear that the business did not get a lot of traffic.

Attorney Hanna discussed the applicant's categorization of the proposed use and noted that "quality restaurant" is not fitting and suggested it instead be called a "high turnover restaurant" which was the categorization used in the applicant's report to the Planning Board. He continued, noting that the applicant registered their trade name with the State of New Hampshire and the application stated it would be a lounge providing a pub related menu. Attorney Hanna referred to the weekday chart of his report and noted that a quality restaurant would have a traffic count of 360 and a high turnover restaurant would have a traffic count of 509. Attorney Hanna noted that this traffic increase would have a dramatic change to the neighborhood.

Mr. Gorman noted that the specialty retail store is not an appropriate categorization and suggested that no one would open a hotdog stand if only 30 hotdogs were sold a day. Attorney Hanna stated it is the closest category; the number of 31 hotdogs a day is closer than 501 hotdogs a day.

Mr. Hoppock asked Attorney Hanna to elaborate on why the traffic report is not relevant in this case. Attorney Hanna stated that it was necessary to counter the applicant's conclusions for the record and noted that there are several ordinances stating that if the use is changed the Administrator must look back at the original parking requirements. Attorney Hanna reiterated that the change of use will have an impact and the wrong standard was used to determine parking requirements. He continued, stating that a Variance is necessary to have a new use in this location.

Attorney Kelly Dowd approached the Board and stated that he will be addressing the previous comments from Attorney Hanna. Attorney Dowd stated that a traffic study was conducted by a traffic engineer to determine the trip generation due to the controversy of the proposed restaurant. He continued, noting that Attorney Hanna did not submit a stamped report of the traffic trips as he had done for the TEPP report. He continued, referencing the Institute of Transportation Engineers Common Trip Generation Rates Report and noted that there is a clear distinction between categories for retail and for services. Attorney Dowd stated that a licensed professional would not stamp a report that categorized a food establishment as a retail store. Attorney Dowd stated that these categories are based on average numbers and the success of the business does not determine the category it falls in. He continued, stating that the traffic engineer determined the restaurant categorization of the proposed use. Attorney Dowd referred to the trip generation report and noted that if the proposed use changed the category to a high turnover restaurant, there would still be a negative traffic count from previous uses.

Attorney Dowd noted that Attorney Hanna suggested the applicant apply for Variances and Attorney Dowd noted that this goes against the Constitution and a Variance is only necessary when a hardship is present.

Mr. Hoppock asked why the traffic report is relevant for this case. Attorney Dowd noted that Mr. Schneider used parking regulations to determine the amount of seats allotted for the proposed use as well as the necessary number of parking spots required. He continued, stating that the actual change in traffic count should be considered when discussing the parking of the proposed use. Mr. Stout noted that Attorney Hanna submitted a stamped report in reference to parking. Attorney Dowd agreed but stated that the traffic count report was not stamped.

Gary Schneider approached the Board and handed out several documents. Mr. Schneider stated that an Administrative Decision was based from the Zoning Code only and the use of the proposed property and the parking requirements. Mr. Schneider stated that he did research and worked with the City Clerk's office in reference to Zoning Codes for the Board. He continued, noting that the Assessing Department determined the building was constructed between 1949 and 1950 and in 1957 Smith Auto Sales was occupying the building.

Mr. Schneider referred to the packet handed out and referred to the Zoning Code use specifically #9 which focuses on retail business and consumer services uses. He stated that under this code Smith Auto Sales would have been considered retail sales. Mr. Schneider stated that parking requirements in 1957 were as follows: one parking spot for every 200 feet for retail, one parking spot for every five seats in a restaurant and one parking spot for every 500 square feet for offices. Mr. Schneider noted that in 1970, William Schnyer moved in and shared the building with Strohshine Auto parts and the Zoning and Parking Code remained the same. Mr. Schneider noted that in 1977 only the office requirements changed from one parking spot for every 200 square feet to two parking spots for every 200 square feet.

Mr. Schneider noted that Ken Bland was the Superintendent of Code Enforcement in 1987 and had written a letter stating that as long as there was not an increased demand for parking for the site, parking would be a wash. Mr. Schneider directed the Board to the present Zoning Code document and noted that the parking requirements for restaurants changed from one parking to every five seats to one parking spot for every four seats. Mr. Schneider stated that the site plan from 1987 presented 14 parking spots. He continued, noting that there is no room for additional parking and there has never been sufficient parking since the building was built. Mr. Schneider noted that when Aroma Joes moved in a parking count was made for the building. He continued, stating that the prior uses of the building would have required 32 parking spaces but the site has never had sufficient parking space for the uses. Mr. Schneider stated that if the Board went against the decision of Administration, then 4,200 square feet of the building can only be used for storage and warehouse.

Mr. Hoppock noted that past uses of the building were primarily retail and asked Mr. Schneider how the proposed restaurant use is not a change in use. Mr. Schneider agreed that it is a change of use but he looked at the square footage from the two retail stores and the seating in the restaurant and applied the parking requirements.

Chair Zerba asked why all of the parking spots for the building were not discussed when the decision was made about Aroma Joes. Mr. Schneider stated that the Bridal Shop that was in the space was viewed with the ten parking spaces and determined that Aroma Joes was allotted 40 seats. He continued, stating that the parking demand did not increase per the Zoning Code. Mr.

Schneider stated that generation numbers were not taken into account because that is a Planning Board discussion.

Mr. Gorman noted that Attorney Hanna suggested that the building was conforming in 1970 and wondered how many parking spaces would be required during that time. Mr. Schneider stated that he did not know the square footage for the uses at that time. Mr. Schneider noted that the only way for the building to be conforming in 1970 is with storage space occupying part of the building. Mr. Schneider noted that Aroma Joes came to the Board because they were eliminating physical parking spaces so the parking space number was maintained.

Chair Zerba opened the public hearing.

Darrel Masterson of 44 Willow Street, Keene, approached the Board. Mr. Masterson noted that surrounding businesses would be affected by this proposed use and there are no additional spaces available.

Peter Bradshaw of Greenbrier Road approached the Board and stated that a Variance is necessary so the parking condition in the area does not worsen. He noted that all of the businesses need parking and there is not enough to go around.

Attorney Hanna noted that there can be other uses for the building besides storage. He continued, stating that Variances are an option and criteria for the Variance include safety and the public interest. Attorney Hanna noted that there are over twenty uses permitted in the Commerce Zone and there are some which are not appropriate for the location. He noted that for this reason the Zoning Ordinance states that a change in use, if non-conforming, requires compliance with parking or the applicant must apply for a Variance. Attorney Hanna stated that the Board must uphold the appeal which does not foreclose the applicant from a remedy.

Attorney Hanna noted that Mr. Schneider did not evaluate the facts when the parking ordinance was adopted in the 1970's. Attorney Hanna noted that he was given seven documents tonight and suggested postponing the decision if these documents influenced the Board. He continued questioning the existence of a hobby shop in the 1970's as well. Attorney Hanna referred to the City's tax card for evidence of prior occupancy which stated that about 3,000 square feet was warehouse and 2,713 square feet was retail. He continued stating that only when there was a change made was a change referenced in the tax cards. Attorney Hanna noted that 400 square feet of office space was added in the 1970's. He continued, stating that the total square footage would have allotted 16 spaces (14 for retail and 2 for warehouse) required for the 1970's uses and there were 18 spaces available.

Attorney Hanna noted that the burden of proof from a grandfathered right is on the applicant and noted that no one has done a thorough analysis relating to the facts when the Parking Ordinance was adopted.

Mr. Gorman noted that three parking spots on Ralston Street are now part of the City right of way and asked how this could have occurred. Attorney Hanna stated that the spaces were on site but the building was widened. He noted that the site plan indicated 18 spaces on site. Attorney

Hanna noted that in order to determine the number of grandfathered parking spaces, the Administrator had to look at parking at time of the Parking Ordinance. He continued, stating that the proposed use is a change of use and requirements must adhere to the current year.

Mr. Stout stated that the Zoning Code changed when office space went from 500 to 200 square feet during the 1980's and asked if this would mark the date of the Ordinance as opposed to the 1970's. Attorney Hanna agreed and noted that he did not have sufficient time to review the documents providing this information tonight. Mr. Stout stated that more information is needed to determine what happened to the Zoning Code and what the parking requirements were in 1987. He continued, asking Attorney Hanna if the parking was conforming in 1987. Attorney Hanna did not have the information but stated that he did not believe the site was in compliance in 1987. Mr. Stout noted that office spaces are a possibility in the space as well.

Mr. Hoppock stated that the year of the Ordinance is irrelevant and the important point is that the property was not reviewed appropriately and questioned the burden of proof in this case in reference to parking. He continued, stating that he questions the availability of parking and believes that adequate parking was more probable than not. Attorney Hanna objected to the new information submitted by Mr. Schneider during the meeting and stated that it is unfair for the Board to make a decision based on this new information.

Attorney Dowd noted that there is a difference between a non-conforming use and a non-conforming structure. He continued, stating that a non-conforming use can be in place forever provided it does not expand substantially and a non-conforming structure has grandfathered rights as long as the use is permitted. Attorney Dowd noted that not allowing a permitted use in a building is considered taken by the City. He continued, noting that the Administrator did not need to look at past Ordinances because parking is being reviewed, not the uses of the building. Attorney Dowd noted that if Keene does not allow the grandfathered rights then constitutional rights would be in question as well as the power of the Zoning Board. Attorney Dowd stated that Section 102-3 of the Zoning Ordinance does not apply in this case because there is not a change in structure. He continued, stating that suggesting four Variances to the applicant is unfair and would be considered confiscation of the property. Attorney Dowd stated that accepting Attorney Hanna's interpretation of the Ordinance would then go against the Constitution. He continued, stating that appealing the Administrator's decision would be destructive to the community, violates constitutional rights and is contrary to what the City of Keene has done in the past. Attorney Dowd noted that this precedence would then create problems for property owners in the future as well.

Mr. Hoppock stated the discussion of constitutional rights is premature in this case and Variances must be denied first. Attorney Dowd stated that the Board must look at constitutional rights and interpret Ordinances consistently with the State of New Hampshire and the Constitution. He continued, stating that the only way to read this Ordinance is through the grandfathering clause. Attorney Dowd stated that the Board should think about what is best for Keene and what the State law says.

Chair Zerba closed the public hearing.

Chair Zerba asked the Board Members if the material provided by Mr. Schneider is substantial to the case and if a continuance should occur. The Board Members agreed that a decision can be made and a continuance was not necessary.

A motion was made by Mr. Hoppock to approve ZBA 16-04 to grant the Appeal and overturn the Administrative Decision because the property under consideration is a non-conforming use at present mainly it's dimension, lot size, and setbacks are non-conforming, then it is more probable than not it was non-conforming in 1970, the year the Zoning Ordinance was adopted for wholesale/retail use with 17 spaces available and 16 spaces required as such the Zoning Administrator's decision is legally in error with Section 102-3 (a) in support. Mr. Stout seconded the motion.

Mr. Stout stated that there is no question in change in use for the proposed use. He continued, stating that the requirements of the new use are very different and there are pressing concerns including parking and traffic. Mr. Hoppock stated that once there is a change of use Section 102-3A of the Zoning Ordinance must be reviewed and under this section parking must also be reviewed. Mr. Hoppock noted that a Variance must be applied and there has been no taking and so constitutional rights do not apply.

Mr. Curran stated that there was a change of use and the parking was not non-conforming. Mr. Gorman agreed and stated that the evidence is not compelling enough to prove that there was not a non-conforming status in 1970. Chair Zerba agreed that the proposed use is very different and parking requirements must be met.

By unanimous vote the Zoning Board of Adjustment approved ZBA 16-04.

Continued from February ZBA 16-05/: Petitioner, Attorney Kelly E. Dowd, PLLC of 29 Center St., Keene, representing 141 Winchester St., LLC, for property located at 141 Winchester St., Keene which is located in the Commerce District. The Petitioner is appealing the Planning Board's determination to not proceed on a proposed site plan for 141 Winchester Street. The Planning Board stayed the application on a determination by the Planning Board that a decision is required by the Zoning Board of Adjustment on the number of parking spaces required by the Zoning Ordinance for the premises prior to continuing with site plan review per Section 102-978.

Attorney Dowd stated that the Planning Board determined ZBA 16-05 mute.

A motion was made by Mr. Hoppock to withdraw ZBA 16-05 as mute. Mr. Gorman seconded which carried unanimously.

Continued from February ZBA 16-06/: Petitioner, Talons, owned by 141 Winchester St., LLC, Keene represented by Kelly E. Dowd, PLLC of 29 Center St., Keene, for property located at 141 Winchester St., Keene, which is located in the Commerce District. The Petitioner is requesting a Variance to be permitted 20 off-site parking spaces located more than 300' from the structure to meet additional off-site parking requirements.

Attorney Dowd stated that due to the decision of ZBA 16-04 additional Variances must be applied and revisit the Zoning Board.

A motion was made by Mr. Hoppock to withdraw ZBA 16-06 without prejudice. Mr. Curran seconded the motion which carried unanimously.

WITHDRAWN ZBA 15-27/: Petitioner, Dorene K. Adams of 277 Old Walpole Rd., Keene, requests a Variance for property located at 277 Old Walpole Rd., Keene, which is located in the Rural District. The Petitioner requests a Variance to allow two lot subdivision of a lot in the Rural Zone. One lot will have 51 feet of frontage where 50 feet is required and one lot will have 28 feet of frontage where 50 feet is required per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

A motion was made by Mr. Curran to accept the withdrawal of ZBA 15-27 without prejudice. Mr. Hoppock seconded the motion which carried unanimously.

WITHDRAWN ZBA 15-28/: Petitioner, Dorene K. Adams of 277 Old Walpole Rd., Keene, requests a Variance for property located at 277 Old Walpole Rd., Keene, which is located in the Rural District. The Petitioner requests a Variance to allow the removal of vegetation and grading of slopes within prohibitive slope areas totaling 7,700 square feet where removal of vegetation and grading is prohibited per Section 102-1404 of the Zoning Code.

A motion was made by Mr. Gorman to accept the withdrawal of ZBA 15-28 without prejudice. Mr. Curran seconded the motion which carried unanimously.

ZBA 16-10/: Petitioner, Toadstool Bookstore, 12 Depot St., Peterborough, NH, owners Anopolis-G, LLC of 133 Main St., Keene, for property located at 12 Emerald St., Keene, which is in the Central Business Limited District. The Petitioner is requesting a Variance to permit retail sales of 8,000 square feet and a small café with 24 seats on a lot with 31 parking spaces where 46 parking spaces are required per Section 102-793 of the Zoning Code.

Mr. Schneider presented a map of the area in discussion.

Dave Bergeron of Brickstone Land Use Consultants, LLC approached the Board and presented a detailed map of the area in discussion. He stated that Toadstool Bookstore would like to move into the facility that was once McCue's Billiards and Sports Lounge. Mr. Bergeron stated that the same parking lot and building entrance would be used. He continued, stating that the use of the building would be a bookstore and a small café. Mr. Bergeron stated that parking requires 46 spaces and there are 31 available onsite but there is sufficient parking on Main Street and Commercial Street. He continued, stating that during busy hours, employees will park in the ten hour meter spots so customers can use the parking lot. Chair Zerba asked about a 300 foot buffer around the area. Mr. Bergeron scaled out the 300 buffer on the map for the Board.

Mr. Bergeron noted that there will only be interior changes to the structure. Mr. Hoppock asked if the café was eliminated would the parking requirements be met. Mr. Bergeron replied, no and stated that the café is about 1,000 square feet with 24 seats. He continued, stating that parking requirements come from the bookstore which requires 40 and the café which requires six. Mr. Gorman asked if there would be an increase in parking spots if the café is eliminated.

Mr. Stout inquired about setbacks. Mr. Bergeron stated that it is already a non-conforming lot and the grandfather clause applies.

Mr. Willard Williamson, owner of Toadstool Bookstore approached the Board. He stated that he and his co-owner are excited about the move and noted that the space would be used efficiently. Mr. Williamson noted that a letter was received from Ted's Shoe and Sport across the street in approval of Toadstool Bookstore moving to the building. He noted that there is no café service lined up yet.

Mr. Bergeron went over the criteria.

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

Mr. Bergeron stated that the building is currently vacant and this would be an improvement to the property and the City. He continued, stating that the hours of use are compatible with the other businesses in the area.

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

Mr. Bergeron noted that there is adequate off-street parking available and noted that there is a difference in retail uses and different requirements for these uses.

Granting the Variance would do substantial justice:

Mr. Bergeron stated that this is an opportunity for the business to thrive and grow and the addition of Toadstool Bookstore is consistent with the goals of downtown and the Keene Master Plan.

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

Mr. Bergeron stated that the use would be similar to other businesses in the area. He continued, stating that this would be an opportunity for people to shop at night and add variety to the downtown area.

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*

Mr. Bergeron stated that the existing lot is very small with a large building and there is no room to expand the parking. He noted that the number of parking spots in the area will be sufficient.

- 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. Bergeron stated that Toadstool Bookstore will compliment other businesses and operate in similarly to businesses in the area. He noted that Ted's Shoe and Sport provided a letter of approval.

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

Mr. Bergeron noted that the small lot has been in existence since about 1950 and noted that there is additional parking available within walking distance.

Mr. Curran was strongly in favor of a bookstore downtown. Darrell Masterson of 44 Willow Street, Keene approached the Board and stated that a bookstore downtown would be a great fit.

Mr. Stout asked about the lot to the east and the status of toxic waste. Mr. Bergeron stated that there was a leak at the location but a recovery system was in place over the years and has been completed. He continued, noting that additional monitoring occurs.

A motion was made by Mr. Hoppock to approve ZBA 16-10. Mr. Gorman seconded the motion.

Mr. Hoppock stated that Toadstool Bookstore would be an improvement to the area and the gain to the public would be substantial. Mr. Hoppock stated that there is a hardship if the variance is not allowed. Chair Zerba stated that there is sufficient parking in the surrounding area.

Chair Zerba went over 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

- 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 purpose of the ordinance provision and the specific application of that provision to the property:* Granted 5-0
 - ii. *The proposed use is a reasonable one:* Granted 5-0

ZBA 16-11/: Petitioner, Ashuelot River Realty, Inc. of 86 North Shore Rd., Spofford, NH, for property located at 809 Court St., Keene, which is in the Commerce District. The Petitioner is requesting a 12 foot Variance to permit a proposed lot line adjustment with an eight foot setback where a 20 foot setback is required per Table 102-791, Basic Zone Dimensional Requirements.

Mr. Schneider stated that the City notice indicated the setbacks being approximately 8 feet from the property line. He continued, stating that there are three sections of the building with different distances from the property line including a section which is 7.3 feet from the property line a section that is 7.9 feet from the property line and a section that is 5.8 feet from the property line. Mr. Schneider asked the Board if this is a significant error and if the Variance needed to be postponed and re-noticed.

The Board agreed to hear the Variance and a re-notice was not necessary.

Mr. Dave Bergeron of Brickstone Land Use Consultants, LLC approached the Board. Mr. Bergeron presented a plan from the original site plan developed in 1986 to the Board and noted that it is similar to the structure today. He noted that there was a construction error and the building goes over the property line by about a 1 ½ feet. Mr. Bergeron stated that the abutting landowner agreed to give the applicant a strip of land due to this error. He noted that configuration was done to make the lot in discussion as conforming as possible without creating non-conformity of the other lot.

Mr. Hoppock asked if the bump-out which goes over the property line will be removed. Mr. Bergeron replied, yes. Mr. Bergeron noted the orange strip on the presented map will allow the building to be on the property but it will not meet the 20 foot setback requirements. Mr. Schneider noted that the applicant will still need to get approval from the Planning Board. Mr. Bergeron showcased the map that will be presented to the Planning Board.

Mr. Hoppock asked about when the adjustment will occur. Mr. Bergeron stated that an application can be sent to the Planning Board for the April meeting and the deed submittal can occur in May. Mr. Hoppock asked if 90 days would be appropriate. Mr. Bergeron replied, yes.

Mr. Hoppock noted that a construction mistake created a unique feature of the parcel and noted that there is an agreement with the neighbor.

A motion was made by Mr. Hoppock to approve ZBA 16-11 with the condition to remove the bump-out and the boundary line be recorded within 90 days of approval. Mr. Stout seconded the motion.

Chair Zerba went over 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

B. 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:

iii. 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

iv. The proposed use is a reasonable one: Granted 5-0

By a unanimous vote the Zoning Board of Adjustment approve ZBA 16-11.

V. New Business:

VI. Communications and Miscellaneous:

VII. Non Public Session: (if required)

VIII. Adjournment:

Chair Zerba adjourned the meeting at 9:30 PM.

Respectfully submitted by:

Lana Bluege, Minute-Taker

March 7, 2016