

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING MINUTES

Monday, June 20, 2016 6:30 PM City Hall, Second Floor Committee Room

Members Present:

Louise Zerba, Chair
Joseph Hoppock, Vice Chair
Jeffrey Stevens
Nathaniel Stout
Joshua Gorman

Staff Present:

Gary Schneider, Plans Examiner

Members Absent:

David Curran

Others Present:

I. **Introduction of Board Members**

Chair Zerba opened the meeting at 6:36 p.m. and introduced Board members Jeffrey Stevens, Joseph Hoppock, Nathaniel Stout, and Joshua Gorman. She stated that there is only 1 agenda item for this evening. Staff liaison Gary Schneider was also present.

II. **Minutes of the Previous Meeting** - none

III. **Unfinished Business** - none

IV. **Hearings:**

Chair Zerba asked if the agenda items could be combined. Mr. Schneider suggested that the property be discussed as a whole, followed by the nuances of the subdivision as listed below in ZBA 16-24 through 16-31. It is one piece of property currently, containing two houses. The proposal is to have a boundary line divide the property so it can be separated into two distinct properties.

ZBA 16-24:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 256 & 260 Beaver Street, Keene, owned by Cheshire Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit a two (2) lot subdivision of a 0.2 acre lot which would result in lot one being 4,303 square feet +/- and lot two being 4,549 square feet +/- where a minimum of 8,000 square feet is required per Section 102-791 of the Zoning Ordinance.

ZBA 16-25:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 256 & 260 Beaver Street, Keene, owned by Cheshire

Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit a side pavement setback of zero (0) feet for a shared driveway where a five (5) foot side pavement setback is required per Section 102-794.a.5 of the Zoning Ordinance.

ZBA 16-26:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 256 Beaver Street, Keene, owned by Cheshire Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit the creation of a single family lot in the Medium Density District with a side setback of seven (7) feet where ten (10) is required per Section 102-791 of the Zoning Ordinance.

ZBA 16-27:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 260 Beaver Street, Keene, owned by Cheshire Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit the creation of a single family lot in the Medium Density District with a side setback of seven (7) feet where ten (10) is required per Section 102-791 of the Zoning Ordinance.

ZBA 16-28:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 256 Beaver Street, Keene, owned by Cheshire Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit the creation of a single family lot in the Medium Density District with 48 feet width at the building line where 50 feet lot width is required per Section 102-791 of the Zoning Ordinance.

ZBA 16-29:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 260 Beaver Street, Keene, owned by Cheshire Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit the creation of a single family lot in the Medium Density District with 37 foot width at the building line where 50 foot lot width is required per Section 102-791 of the Zoning Ordinance.

ZBA 16-30:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 256 Beaver Street, Keene, owned by Cheshire Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit the creation of a single family lot in the Medium Density District with 48 feet frontage where 50 feet is required per Section 102-791 of the Zoning Ordinance.

ZBA 16-31:/ Petitioner, Cheshire Housing Trust of 168 Castle Street, Keene, requests a Variance for properties located at 260 Beaver Street, Keene, owned by Cheshire Housing Trust, 168 Castle Street, Keene, which is in the Medium Density District. The Petitioner requests a Variance to permit the creation of a single family lot in the Medium Density District with 15 feet frontage where 50 feet is required per Section 102-791 of the Zoning Ordinance.

Chair Zerba stated that she would like to hear some history of this property.

Mr. Schneider introduced the particulars of the parcel. He demonstrated via a large map that it is situated on Beaver Street, near North Lincoln Street, Oak Street, and the Woodlawn cemetery. The property is the third up Beaver Street, and is in the Medium Density District. Dave Bergeron of Brookstone Land Use Consultants, LLC was present to represent the three owners of the property; Cheshire Housing Trust who owns the land, and the two owners of the two houses. He showed an existing condition plan of the property. The house located on the front of the property is 256 Beaver St. and the house on the rear of the property is 260 Beaver St. Both houses on the lot pre-date Keene zoning law, which came into existence in the 1940's. He pointed out the existing driveway and walkway on the plan; also a shed located on the rear of the property. Mr. Bergeron stated that the front house was constructed around 1870, and the second house was built around 1920.

The property was purchased in the late 1980's by Cheshire Housing Trust. They purchased the property, and held the land. The houses were sold to owners at a greatly reduced rate, which offered affordable housing. The increase of the value was regulated by the program, and sales had to be conducted within the affordable housing program. Both houses have been sold several times over the course of years within these guidelines. The program has dissipated over the years, and this particular property is the last of its type in the program.

The lot is outside of the bounds of the Ordinance. The properties share a driveway. Cheshire Housing Trust would like to sell the land to the owners for one dollar (\$1.00), so the owners will own both the houses and the land. Mr. Bergeron demonstrated a proposed line of division for the two properties. The properties amicably share the driveway, and the proposal is to allow this use to continue. Both properties use the shed. There will be a separate easement agreement for the shed, and the yards. A number of easements are already in place.

As driveways need to be three feet from the property line, a Variance is needed to split the driveway; however, there is not enough space for the split into six feet per property. Mr. Hoppock asked if the driveway and shed easements will become part of the deeds, to which Mr. Bergeron replied in the affirmative. The driveway is approximately seven feet from each home. The site of the driveway has been in existence for many years, and the current owners have learned to live with its position on the property.

Another Variance is for the frontage because of the way the houses sit on the lot. The Variance would even out the distribution of frontage.

The building line of both homes is in question. Both are too close to the building line. Additionally, the lot size is non-conforming in a Medium Density District by having two units on it.

The fourth Variance is on the property boundaries, as the boundaries are non-conforming.

Chair Zerba asked if the garage is solely on 260 Beaver Street. Mr. Bergeron answered that it is. There had been discussion about splitting the property through the garage, but there would have

been more easement issues, as well as building code. Chair Zerba asked how this would be reflected on the deed. If this plan goes before the Planning Board for a subdivision, the subdivision will be recorded in the Registry of Deeds, and the easement will be included in the description of the lot.

Mr. Stout asked for a description of the curb cut. Mr. Bergeron stated that cut is about 20 feet. Mr. Stout also asked the square footage of occupied space of each property. Mr. Bergeron did not have measurements, but stated that the house on the rear of the property is the smaller of the two at approximately 800 square feet. He believes the front house to be 1200 to 1400 square feet.

Linda Mangones, Executive Director of Cheshire Housing Trust, spoke to the formation of Cheshire Housing Trust in 1987. Peter Ryner, who was then a City Planner, initiated a group that sought to use public subsidies in a way that made housing affordable to the average citizen of Keene. Ms. Mangones said that she has been pleased that this land use system has been in place as a number of people had been assisted through the program. The administration of this use of land is extraordinarily complex. Additionally, housing costs are no longer escalating, eliminating the need for an agency owning the land. Chair Zerba asked if this property was purchased with the understanding that the owners would own the houses, and Cheshire Housing Trust would own the land. Ms. Mangones replied yes; that Cheshire Housing Trust offered a lease for 99 years. The current model in this community no longer fits the needs of the agency, and Cheshire Housing Trust wishes to sell the property to the current owners. While the lots will be small, the initial cost was quite low. Originally, these houses were not in good shape. Community Development funds were used to upgrades both homes some years ago. Additionally, the owners have maintained and upgraded the houses over the years, thereby adding value to the neighborhood. Ms. Mangones stated that Cheshire Housing Trust is looking for a graceful way to exit the land trust business, and to assist the current homeowners in purchasing the land.

Mr. Stout asked how many properties were involved in the program. Ms. Mangones stated this is the only property of this type, but there were other properties with a limited equity formula; one near the Keene Day Care, and the other at Farmstead Commons; condos that were owned with a somewhat simpler mortgage arrangement.

Mr. Bergeron displayed the deed for one of the properties, which contained approximately 50 pages. Chair Zerba asked what would happen if one of these two properties would be sold. Ms. Mangones stated that Cheshire Housing Trust simply wants to sell the land to the owners, who can then retain or sell the properties as they choose. Mr. Bergeron stated that the property would be the same as any other in the City, with the exceptions, as noted by Chair Zerba, of the shared garage and shared driveway.

Mr. Hoppock asked if the gain restrictions apply upon sale of the property. Ms. Mangones said that the value might be limited because of the small size of the lot.

Pam Russell Slack, 260 Beaver Street spoke to the positive nature of this property. She was enthusiastic about the program, which she entered as a single parent with three children. She raised her children there, and is still in the house. She clarified that the building on the property is a shed, not a garage. Cheshire Housing Trust removed a portion of the building five or six years ago, as it was deteriorating. She further stated that refinancing her house now is quite

difficult, due to the lack of land that is attached to the houses. Ms. Slack has lived in the house for 22 years. When the land lease was signed, the owners paid the property taxes, even though they did not own the land. They will certainly continue to do so when the easements are in place.

Kurt Steelman of 256 Beaver Street spoke to the excellent nature of the program. He and his wife have raised their two children in the home. He stated that both households have made significant improvements to the property. He added that there might be some small gain if the property is sold, but this would balance the money his family has invested in the property.

Mr. Bergeron reviewed the criteria for granting a Variance.

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

No, as these houses have existed on the lot since 1870 and 1920. Granting the Variance will have no effect on abutting properties; there will be no change in configuration of the neighborhood.

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

The spirit of the ordinance is to protect and preserve the public health, safety and welfare. There will be essentially no physical changes, and the change will enhance the neighborhood.

Granting the Variance will do substantial justice:

Granting the Variance will do substantial justice as nothing on the ground itself will change. The public will be served, as the configuration of the existing lot doesn't allow changes in any other manner.

If the variance is granted, the values of surrounding properties would not be diminished:

There is no actual change to the property itself.

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

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:

ii. The proposed use is a reasonable one:

Mr. Bergeron stated there would be no hardship in that these houses have existed on the properties since the 1920's and earlier. There will be no physical changes to the property, and the character of the neighborhood will not be changed.

The proposed use is a reasonable one, as the two houses already exist. Granting the Variance will have no effect on the neighborhood, and will enhance the value of the property.

As for the special conditions that distinguish it from other properties, this property shows that it cannot be used in any other fashion due to the nature of the lot. The lot speaks for itself. There is no other way to create this change other than to apply for the Variance.

Chair Zerba asked if there were further questions. Mr. Hoppock asked if there are concerns about over-crowding. Mr. Bergeron answered that the housing code limits the number of occupants to four unrelated individual in a house. The housing code also states that parking must be sufficient for its use. This property will allow parking for its intended use.

Mr. Gorman asked if this would not restrict a large family from renting or purchasing the house. He also asked the square footage of the shed. Mr. Bergeron said the shed is about 220 square feet; ten by twenty feet, with a wall in the middle to separate the two units. Mr. Gorman further asked if there was a reason to just attach it to one property. Mr. Bergeron stated that his company feels that the use of the second storage space by the second family is most equitable. Mr. Gorman was looking to the future in that different groups of occupants might live in these houses. Mr. Bergeron stated that in town properties do tend to have some more unusual configurations, and that neighbors learn to get along together. With the easements in place, there will be legal documents enforcing the use of shared property i.e.: the driveway and shed.

Mr. Schneider asked if the easements could be changed in the future. Yes, replied Mr. Bergeron. If the owners agreed that changes needed to be made; for example, if the shed deteriorates and needs to be removed, the easement could then be extinguished.

Mr. Hoppock asked about the code for number of cars in the driveway. Mr. Bergeron replied that current code allows two cars to be stacked in a driveway at a residence. Mr. Hoppock questioned if there was a fire in the rear house. Mr. Bergeron stated that the distance from the street to the house is not great, and that emergency vehicles would have access to the rear house. Mr. Hoppock asked if there is anything to the right of the small house. Mr. Bergeron replied in the negative and stated the existing rear house exists as non-conforming.

Mr. Schneider stated that the fire department will have a chance to review this subdivision process before the Variance is granted.

Chair Zerba asked if there were further comments before the public hearing was closed. Mr. Bergeron stated that they hope these Variances are granted to clarify ownership of both properties.

Chair Zerba closed the public hearing at 7:10 p.m.

Mr. Stevens stated that he is in favor of granting these Variances. He said that these Variances will stay within the spirit of the ordinance. He applied the reasonableness test, and statomg this process falls within the guidelines.

Mr. Gorman said there is very little reason not to grant this.

Mr. Hoppock stated that there would be far greater harm to the owners by not granting the Variance, meeting the substantial justice test, as well. The lot is unique as it has been in the current configuration since 1920 and nothing the Board will decide can change this. Granting the Variances is in favor of the owners. The Committee should codify what is real, and approve what is already in existence.

Mr. Stout said that Brookstone Land Use Consultants did a good job in determining how to divide the properties, and he is in support of granting the Variances.

Chair Zerba offered her support of granting the ordinances, as well.

Mr. Hoppock asked if there is a mechanism to vote on all the variances. Mr. Schneider said it might be possible to vote on each individually. Chair Zerba asked if the details could be encapsulated. Mr. Hoppock made a motion to approve ZBA applications 16-24 through 16-31, inclusive, to permit a subdivision on a two-lot subdivision on a 2/10 acre lot, which would allow one lot to be 4,303 square feet; the other 4,549 where 8,000 square feet is required. Also, to permit a shared driveway with a zero foot setback where a five foot side set-back is required; similarly, a side setback of seven feet would exist where a ten foot setback would be required. Also included would be a building line of 48 feet where a 50 foot building line is required (for 256 Beaver Street), and a 37 foot lot line where a 50 foot lot line is required for 260 Beaver Street. A frontage line Variance for 256 Beaver 48 feet where 50 feet is required; and for 260 Beaver, a 15 frontage line Variance where 50 feet is required. Mr. Stevens seconded the motion. Chair Zerba asked if there are any further questions. Mr. Hoppock asked Mr. Schneider if there are any conditions on this vote. Mr. Schneider said that what stands before the Board tonight will go to the Planning Board.

Chair Zerba then presented the Variances for Board vote:

Granting the variance will not be contrary to the public interest Granted 5 - 0

The variance is consistent with the spirit and intent of the ordinance Granted 5 - 0

Granting the variance will do substantial justice Granted 5 - 0

Granting the variance will not diminish value of surrounding properties Granted 5 - 0

Unnecessary Hardship:

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

Granted 5 - 0

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

The motion was made and seconded to approve ZBA16-24 through 16-31. The motion passed unanimously.

Chair Zerba and others Board members wished the homeowners well.

V. **New Business:**

VI. **Communications and Miscellaneous:**

VII. **Non Public Session: (if required)**

VIII. **Adjournment:**

Chair Zerba adjourned the meeting at 7:18 p.m.

Respectfully Submitted
Sue Walthour, Minute Taker