

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, March 5, 2018

6:30 PM

**2nd Floor Committee Room,
City Hall**

Members Present:

Nathaniel Stout, Chair
Michael Welsh
Sean Wallin
Jeffrey Stevens, Alternate

Staff Present:

Gary Schneider, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

Josh Gorman, Vice Chair
Louise Zerba, Alternate
John Rab, Alternate

I. Introduction of Board Members

Chair Stout called the meeting to order at 6:36 PM and introduced the Board members.

II. Minutes of the Previous Meeting

Chair Stout noted a correction on page 7, third paragraph, “Mr. Welsh said that this projects...” should be changed to “Mr. Welsh said that this project’s....”

Chair Stout noted a correction on page 16, second paragraph, “Chair Stout asked if most of these neighborhood homes....” should be changed to “Chair Stout asked if most of these neighborhoods were built prior to when the setback regulations were enacted”.

Chair Stout noted a correction on page 16, second paragraph, “Chair Stout then stated that is....” should be changed to “Chair Stout then stated that this”.

Chair Stout noted a correction on page 16, second paragraph, “Mr. Rogers for most of the neighborhood....” should be changed to “Mr. Rogers said for most of the neighborhood...”

Mr. Stevens noted a correction on page 11, second paragraph, “Mr. Petrovick said that part of the issue with this property is old Court Street easement....” should be changed to

“Mr. Petrovick said that part of the issue with this property is an old Court Street easement...”

Mr. Welsh made a motion to approve the minutes of February 5, 2018 as amended, which was seconded by Mr. Stevens and carried unanimously.

III. Hearings:

Continued ZBA 18-03:/ Petitioner, Michael Petrovick of Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, requests a Special Exception for property located at 809 Court Street, Keene, Tax Map Parcel # 188-01-001, which is in the Commerce District and owned by Hillsborough Capital, LLC of 63 Emerald Street, Suite 167, Keene. The Petitioner requests a Special Exception per Section 102-856, maximum Building Height from 35 feet to 50 feet.

Chair Stout stated that Mr. Stevens was not present at the last ZBA meeting and asked Mr. Stevens if he had read the minutes and if he was comfortable to vote on the case. Mr. Stevens replied in the affirmative.

Chair Stout apologized to the applicant for having a four member Board. He explained that the City has a policy to try to provide applicants with a five member Board on any occasion they may require their vote. Chair Stout wanted the applicant to be sure of this and was aware that the hearing would only be heard by a four member Board.

Steve Holland, owner of Hillsborough Capital, LLC, of 63 Emerald Street, Keene, stated that he did accept a four member Board.

Chair Stout asked if there was a staff report. Mr. Schneider replied there was no staff report.

Michael Petrovick, of Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, stated that he was representing his client, owner of Hillsborough Capital, LLC. Mr. Petrovick explained that their project was to utilize part of an existing foundation that currently sits on the property that was previously a furniture store and then occupied by state offices. He said that his client is proposing to build a 120' x 240' building using the existing foundation and then expand the building. Mr. Petrovick said they were looking to build a building that was 50 feet in height and the use of the building was for practicing and hitting baseballs. He noted this is the reason for the height inside of the building.

Mr. Petrovick stated their plan was to step back 50 feet and put a sloped roof to minimize visual impact. In addition, he said they added some clear story to the proposed 50 foot section of the building, with glass overhead doors along the south side of the building to minimize visual impact. He noted that this 50 foot building was something that could happen in this part of town with a Special Exception.

Mr. Petrovick addressed Section 102-791 Basic Zone Dimensional Requirements, Special Exception footnote (b):

(b) The maximum building height, in stories, may be increased up to 3½ stories; six stories in the central business zone only, and/or the maximum building height, in feet, may be increased to up to 50 feet; 75 feet in the central business zone only, if a special exception is granted therefor in accordance with section 102-37 pertaining to special exceptions by the zoning board of adjustment, provided that the zoning board of adjustment shall also determine that:

- 1. There is adequate carrying capacity on public roads serving the proposed project site to accommodate traffic associated with and anticipated for the proposed project. It shall be the responsibility of the applicant to demonstrate such capacity, the demonstration or proof of which shall include affirmative letters from the state department of transportation, if state roads are within 1,000 linear feet of the proposed project site, and the city engineer and police chief. Traffic studies may be required by the board in its discretion at the applicant's expense in addition to the foregoing; and*

Mr. Petrovick said their response to this was that the proposed use does not increase traffic on Court Street beyond the existing state office occupancy. He said that they provided a traffic analysis completed by Fieldstone Land Consultants, LLC to support this conclusion.

Mr. Petrovick said the site is located approximately 1,300 feet south on Court Street at the intersection of Court Street and NH Route 12A. He stated the Zoning Exhibit Plan prepared by Fieldstone Land Consultants, PLLC confirms the distance to Route 12A (he noted this exhibit was also submitted to the Board).

- 2. All parking requirements can be satisfied on site. A waiver of on-site parking requirements in accordance with division 7 of article V of this chapter pertaining to off-street parking regulations may not be granted. In the central business zone only, parking capacity requirements may be satisfied on site or off site in accordance with division 7 of article V of this chapter, provided that the applicant demonstrates to the satisfaction of the zoning board of adjustment that there is adequate capacity in the proposed off-site parking location, whether a private or public parking area, for the parking required of the use under this chapter. The mere presence of a nearby public parking lot shall not in and of itself be a sufficient demonstration of adequate parking capacity in the off-site parking location to accommodate the required parking for the use.*

Mr. Petrovick said the project is not requesting a waiver of on-site parking pertaining to off-street parking regulations. He said the parking Variance being requested under a separate application would reduce the parking requirement to 50 spaces.

Mr. Petrovick said it is important to note, the Special Exception height increase does not increase the floor area of the building, but provides the required ceiling interior height clearance for use as an athletic training facility. He also said it was important to note the current site plan prepared by Fieldstone Land Consultants, PLLC and under review by the

City of Keene Planning Board indicates 58 parking spaces and pending final design of the facility and locations of HVAC equipment may require reducing parking. Therefore, Mr. Petrovick said that was the reason for the request for the parking Variance. Mr. Petrovick noted that they were not sure if the A/C unit would be installed on the roof or if it will need to be ground mounted.

3. The design of the proposed building is attractive and compatible with adjacent buildings and those in the vicinity, does not unreasonably obstruct vistas of hills that can be seen from any public ways on the valley floor, or the light and air available to adjacent buildings; and

Mr. Petrovick said the design of the proposed Summit Athletic Center has been conceived as a modern industrial-style building to reflect a progressive, updated style while taking cues from the City's distinctive architectural identity and history. The approximately 28,800 square foot facility fits comfortably in its suburban setting. The building will house a state-of-the-art athletic training facility focusing on improving sports performance.

He explained the exterior materials, textures and colors are designed to minimize the visual impact of the building and to create harmony with the surrounding buildings. The sloped roof facing Court Street is intended to reduce the visual impact of the building's height. Mr. Petrovick said the fenestration patterns and solid/void rhythm is an abstract recollection of an industrial structure which creates a welcoming and easily identified entrance and introduces natural light into the open interior.

Mr. Petrovick continued explaining that the building's shortest facade is oriented parallel to Court Street in order to accommodate the building and off-street parking. The site configuration and building placement minimize the building's aesthetic impact.

Mr. Petrovick said the building's orientation or design does not interfere with the views and vistas of the surrounding mountains.

4. Adequate capacity and availability of emergency services exists; and Response: Per the site plan by Fieldstone Land Consultants, the site provides adequate access for emergency services which also have clear access to the site from downtown Keene via Court Street.

Mr. Petrovick said that per the site plan by Fieldstone Land Consultants, the site provides adequate access for emergency services which also have clear access to the site from downtown Keene via Court Street. He noted that in a meeting with the Planning Board that was attended by the Keene Fire Department and Keene Police Department, they had no issues with the site plan.

5. Adequate existing sewer and water are available to serve the proposed building.

Mr. Petrovick said the existing sewer and water services are on site and are sized appropriately for this project.

Mr. Welsh referred to the traffic study mentioned by Mr. Petrovick and asked if this study was given to City staff because it was not included in the packet. Mr. Petrovick replied the analysis was submitted in the original packet given to City staff. He stated that he had a copy of the analysis and could provide the Board with a copy. Chair Stout stated that the policy for accepting new material the day of the meeting would be at the discretion of the Board. He explained that the Board may need additional time to review this information. Mr. Stevens noted that if this project was to be a major traffic producing endeavor, raising a lot more questions, the Board would want to have more time to process the information. He added that he was comfortable hearing the information read by the applicant.

Chair Stout asked the Board if they would accept the new information from the traffic analysis. The Board agreed and asked Mr. Petrovick to read the letter into the record.

The analysis was prepared by Chad Branon, PE, of Fieldstone Land Consultants, PLLC; 206 Elm Street, Milford, NH. Mr. Branon came forward to explain that an analysis of what the site was conducted prior to the proposal when it was a state office building and then compared it to what they were currently proposing at this site. He read the letter of analysis that was dated February 15, 2018 as follows:

The following is an abbreviated traffic analysis for the proposed redevelopment of 809 Court Street in Keene, New Hampshire. This analysis has been prepared to address the anticipated traffic impacts on the adjacent area resulting from the redevelopment of this property.

809 Court Street was formerly occupied by the New Hampshire Department of Health and Human Services which was a regional office servicing the surrounding communities. This state office occupied the entire existing building which consists of 19,943 square feet. In an effort to determine the traffic generated from this facility we utilized the Institute of Transportation Engineers (ITE) trip generation data 1. Using the ITE trip generation data this office use is best categorized as a Government Office Building. The ITE Manual classifies a Government Office Building as an individual office building containing either the entire function or simply one agency of a city, county, state, federal or other governmental unit. Using the ITE manual this type of facility can be expected to generate an average of 117 vehicle trip ends (VTE) during the AM Peak Hour. Likewise, the facility can be expected to generate 117 VTE during the PM Peak Hour.

Hillsborough Capital, LLC is proposing to redevelop the subject parcel into an Indoor Athletic Facility which will be called The Summit Athletic Center. This development will consist of the construction of a new 28,800 square foot building with associated site improvements. Using the Institute of Transportation Engineers (ITE) trip generation data² this facility could be classified as an Athletic Club, a Health & Fitness Club or a Recreational Community Center. We utilized a Recreational Community Center as the ITE Manual classifies a Recreational Community Center as a stand-alone facility which is open to the public similar to and including YMCA's. These facilities often include classes and clubs for adults and children, meeting rooms, locker rooms, tennis, racquetball, handball, basketball and volleyball courts, athletic fields, exercise classes,

weightlifting and gymnastic equipment. We felt that the uses outlined under this definition best fit the proposed use. Using the ITE trip generation data this project can be expected to generate an average of 78 vehicle trip ends (VTE) during the AM Peak Hour and 69 VTE during the PM Peak Hour.

In summary the redevelopment of this project into an indoor sport complex should yield less traffic than the state offices that previously occupied the subject site. Based on this evaluation this project should have no adverse impacts on the traffic characteristics of the surrounding roadway network.

Chair Stout asked if the analysis was an update from a previous study. Mr. Branon replied that this was an analysis comparing their proposed use to the previous existing use. In addition, he stated that they have not updated any traffic studies. Chair Stout said based on the figures provided it was fair to state that they were not based on data specific to the site. Mr. Branon replied that was correct and stated that even a traffic study would utilize this data in order to predict traffic data. He explained that this project would result in less traffic impacts because the ITE likely accounted for the traffic associated with the office building that previously existed on the site. Mr. Branon said what they were stating, was that their proposal on the site will yield less traffic than what existed prior.

Mr. Petrovick then addressed the four conditions for a Special Exception:

- 1.) *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.*

Mr. Petrovick said that it is a commercial use and is appropriate in keeping with the other businesses in area.

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

Mr. Petrovick said that the proposed building is not much different than what was currently at the site. He noted that he personally felt the proposed building was a better looking building than what was currently at the site. In addition, he added that the use was not something that would be offensive or obnoxious to the neighborhood.

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

Mr. Petrovick stated that nothing that happens at the site with traffic flow or what goes on at the site is a serious hazard to vehicles or pedestrians.

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

Mr. Petrovick said the building and the site will be equipped for proper use of the site.

Chair Stout asked the Board if they were satisfied that the sub criteria have been met with Section 102-791. Mr. Stevens asked City staff to clarify question (2) of footnote (b) and asked if the Board was not allowed to grant parking less than where it is required. Mr.

Rogers replied that this section was referring to the ability for someone to have approval from the Zoning Administrator through the City Manager to provide offsite parking to meet the requirements and that the applicant in this case was not requesting a waiver. Mr. Schneider added that Section 102-978 addressed the waiver for this particular section for a Special Exception.

Mr. Stevens asked the applicant for the hours of operation. Mr. Holland replied that they have an existing facility in Marlborough and are currently opened 10AM-8 or 9PM and would be proposing similar hours. He noted that they have made exceptions to these hours by appointment. Chair Stout noted that the Board does not have the hours as a condition and if the Special Exception passes it does not mean that the applicant would necessarily follow the same hours as the Marlborough facility. He added the Board could impose a condition, if needed.

Mr. Welsh said that he appreciated the measuring of the distance to Route 12A and that it gives the Board confidence they are moving forward appropriately if the application is approved. He then referred to the exhibit plan and asked if the long wall in this view is the shorter looking wall heading back toward the rear of the property. Mr. Petrovick replied in the affirmative and noted that the exhibit plan displayed was the most accurate view of the building.

Chair Stout stated that the Board has enough information to proceed with the Special Exception. He explained to the Board that there were two Variances for this application that are very similar and that one would replace the other. He asked the applicant if they wished to proceed with the application for ZBA 18-07. Mr. Petrovick replied that he would like to proceed with ZBA 18-04. He said they previously had a side yard setback Variance application that was heard at the last ZBA meeting and because there was a misunderstanding about how that measurement is taken, they are under advisement to withdraw that application because it had to do with the way the City measures side yard setbacks. Mr. Petrovick asked for the Board's input on whether or not they would need to withdraw the application. Mr. Schneider suggested that the applicant proceed with ZBA 18-07 first and then if in fact this was denied then the applicant could proceed with ZBA 18-04 which would be a less non-conforming Variance.

The Board approved the applicant's request and decided to proceed with hearing ZBA 18-07 after voting on the Special Exception.

Chair Stout opened the public hearing.

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

The Board reviewed the criteria for a Special Exception:

- 1.) *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.*

All members of the Board agreed. Chair Stout stated that the use is appropriate for that particular location. Mr. Stevens added that the proposal was a perfect location given the location of the baseball field's right behind the building.

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

Chair Stout stated the properties that surround this location are similar in function. He noted the one that is most dissimilar is the American Legion and that it was hard to perceive how the proposal could negatively affect that property. Mr. Stevens stated that having a type of health facility tends to bring values up, assuming that it would not be obnoxious with traffic. He used the example of the Keene YMCA. Mr. Welsh stated that he would concur with the applicant that the new proposed building was an improvement aesthetically.

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

Chair Stout said that the Board heard the traffic study that was read and that this information is credible. Mr. Wallin agreed with Chair Stout.

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

All members of the Board agreed that the size of the facility was adequate and the appropriate facilities would be provided for proper operation.

The Board addressed the Basic Zone Dimensional Requirements, Special Exception footnote (b): The Board agreed the applicant meets the dimensional requirements for a Special Exception.

With a vote of 4-0, the Board approved Section 102-791 Dimensional Requirements, Special Exception footnote (b).

Mr. Stevens made a motion to approve ZBA 18-03 as stated in the application. The motion was seconded by Mr. Wallin.

Chair Stout reviewed the Findings of Fact:

1. *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 4-0
2. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.* Granted 4-0
3. *There will be no nuisance or serious hazard to vehicles or pedestrians.* Granted 4-0
4. *Adequate and appropriate facilities (i.e., sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.* Granted 4-0

With a vote of 4-0, the Zoning Board of Approval approved ZBA 18-03.

ZBA 18-07:/ Petitioner, Michael Petrovick of Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, requests a Variance for property located at 809 Court Street, Keene, Tax Map Parcel # 188-01-001, which is in the Commerce District and owned by Hillsborough Capital, LLC of 63 Emerald Street, Suite 167, Keene. The Petitioner requests a Variance to permit a side yard setback decrease from 20 feet to 4.7 feet per Section 102-791, Basic Zone Dimensional Requirements of the Zoning Ordinance.

Michael Petrovick, Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, explained that he came before the ZBA at the February 2018 meeting requesting for a side yard setback. He noted that nothing has changed except for the definition of the side yard setback and where this is measured from. Mr. Petrovick stated that they would use the existing foundation, which is located 5.5 feet from the property line and the drip line is currently located at 4 feet from the property line. He continued explaining that they are looking to have their new building be 4.7 feet from the property line to the drip edge.

Mr. Petrovick addressed the criteria for a Variance:

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

Mr. Petrovick said as indicated on the submitted Zoning Exhibit Plan dated February 15, 2018 prepared by Fieldstone Engineering, the proposed building improves upon the existing condition where the existing building drip line is 4.0 feet from the property line increasing the distance to 4.7 feet. This is also the closest point of the building to the north property line. The distance is 10.45 feet from the proposed building to the property line at the northwest corner of the building.

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

Mr. Petrovick said the proposed structure improves upon the existing condition and utilizes the existing foundation.

Granting the variance would do substantial justice because:

Mr. Petrovick said the proposed building improves upon the existing condition by increasing the distance from 4.0 feet to 4.7 feet.

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

Mr. Petrovick said the proposed project does not encroach further into or worsen the existing condition.

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:

Mr. Petrovick said the proposed project seeks to improve upon the existing condition.

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

Mr. Petrovick said the proposed building improves upon an existing condition.

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 thereby is necessary to enable a reasonable use of it.

Mr. Petrovick said the property contains a deed restriction which requires that no building shall ever be erected on that portion of the lot southwesterly of the "building setback line" shown on reference plan #2. Chad Branon, PE, of Fieldstone Land Consultants, 206 Elm St. Milford, NH stated that he wanted to touch on a couple of the design constraints for the project because it speaks to the hardship. He said there is an existing building setback in front of the property that prevents them from shifting the building into more of a conforming situation. Mr. Branon noted that they need to provide access around the building and adequate parking for the facility. He noted that they have been working with the Keene Fire Department to ensure there is adequate access. Mr. Branon stated there is a hardship relative to geometry as well as providing emergency access.

Mr. Branon pointed out that this project does not alter the essential character of the neighborhood and there would not be a negative impact to the neighborhood. He said the architectural elements and the aesthetics would be an improvement to the building as well as to the area. Mr. Branon noted that this project would not have any negative impacts to the public's health and safety. In addition, he stated that new construction usually has a positive impact to the surrounding neighborhoods values as long as there are no negative traffic impacts.

Chair Stout asked if the footprint of the proposed building is larger than the previous building. Mr. Petrovick replied that the proposed building is 8,800 square feet larger than the previous building. Mr. Branon noted that it is slighter larger to the back and slightly larger to the front but the majority of the building is enlarging to the south, which is away from the setback to the north. He said that they are maintaining the foundation line along the northern boundary and they were actually improving the existing setback. Mr. Branon explained the existing foundation is 5.5 feet from the property line and taking into account the 20 inch eave, 4 feet is the actual distance from the property line to the existing fascia, and with the new building design it will be 4.7 feet at its closest location.

Chair Stout asked City staff if there was an outstanding Variance on this property. Mr. Rogers replied there was a Variance granted for the brewing company that did not follow up on their Variance. He stated that it was the City staff's opinion that since this building was being torn down that it would be appropriate for the applicant to come before the ZBA to seek a new Variance. Mr. Schneider added that with a brand new building, which is considered brand new because they are voluntarily tearing down the old building, the new building must now be in accordance with the Zoning Code and comply with present

code, which would include the setbacks as required. Chair Stout stated for the record that the Board has accepted that the previous Variances no longer apply to the property. Mr. Wallin asked if the footprint would remain the same. Chair Stout replied that there would be a new footprint.

Mr. Welsh asked if the northern wall foundation will still exist. Mr. Branon replied that was their intent was to try to utilize the existing foundation and with a new steel building there will be columns and they may have to cut away at certain sections of the foundation in order to improve the building. He reiterated they are going to work within the existing foundation and utilize as much as possible. He wanted to point out that his client purchased the property and had thoughts of renovating the existing building but after the evaluation of the limitations of roof height for an athletic training facility it was decided that the renovation would not be effective and as good as service to the community by keeping the old building. Mr. Branon stated that these are the reasons for the new footprint.

Chair Stout opened the public hearing.

With no comment, Chair Stout closed the public hearing.

The Board reviewed the criteria for a Variance:

Granting the Variance would not be contrary to the public interest

Chair Stout stated that it reflects favorably on where the setback was before, having been enlarged slightly. He stated that he could see the necessity of following the guidelines of the original foundation, even though it is considered a new footprint. Mr. Welsh stated that the basis of setbacks whether they are there for aesthetics, lack of crowding on adjacent properties or access does not think any benefits of that sort would be acquired by denial of the Variance in this particular case.

If the variance were granted, the spirit of the ordinance would be observe

All members of the Board agreed that the Spirit of the Ordinance would be observed if the Variance were granted.

Granting the Variance would do substantial justice

Chair Stout stated that there are certain necessities that if the client could not go through those steps they would not be able to build the property as they conceive it. He stated that it was hard to consider other uses of this property within the Commerce District due to the nature and size of the property.

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

Mr. Stevens said he does not feel the proposal would have a negative effect and that it would actually have a positive effect on the surrounding properties. Chair Stout stated that it was nice that the facility is near the baseball fields and not too far from YMCA.

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

Chair Stout reiterated his comments that it was hard to consider other uses of this property within the Commerce District due to the nature and size of the property.

ii. The proposed use is a reasonable one

All members of the Board agreed proposed use is a reasonable one.

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 thereby is necessary to enable a reasonable use of it.

Mr. Welsh stated his appreciation for the additional information brought to this meeting and in particular the site plan that helps visualize the setbacks and also help him visualize a fairly complicated condition that is listed in the criteria of footnote 5 (b).

Mr. Stevens made a motion to approve ZBA 18-07 to allow a setback of 4.7 feet where 20 feet would normally be required. The motion was seconded Mr. Wallin.

The Board reviewed the Findings of Fact:

If the variance were granted, the spirit of the ordinance would be observed. Granted 4-0

Granting the Variance would do substantial justice. Granted 4-0

If the Variance were granted, the values of the surrounding properties would not be diminished. Granted 4-0

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. Granted 4-0

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 4-0

ii. The proposed use is a reasonable one. Granted 4-0

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. Granted 4-0

With a vote of 4-0, The Zoning Board of Approval approved ZBA 18-07.

ZBA 18-04:/ Petitioner, Michael Petrovick of Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, requests a Variance for property located at 809 Court Street, Keene, Tax Map Parcel # 188-01-001, which is in the Commerce District and owned by Hillsborough Capital, LLC of 63 Emerald Street, Suite 167, Keene. The Petitioner requests a Variance to permit a side setback from the required 20 feet to 5.5 feet per Section 102-791, Basic Zone Dimensional Requirements, of the Zoning Ordinance.

Chair Stout asked the applicant if they wished to withdraw their application for ZBA 18-04.

Mr. Petrovick replied that they are requesting to withdraw their application for ZBA 18-04.

Continued ZBA 18-05:/ Petitioner, Michael Petrovick of Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, requests a Variance for property located at 809 Court Street, Keene, Tax Map Parcel # 188-01-001, which is in the Commerce District and owned by Hillsborough Capital, LLC of 63 Emerald Street, Suite 167, Keene. The Petitioner requests a Variance to permit the reduced number of parking spaces from the required 57 spaces to 50 parking spaces per Section 102-793 of the Zoning Ordinance.

Michael Petrovick of Catlin & Petrovick Architects, PC of 51 Railroad Street, Keene, wanted to point out that they are able to meet the parking requirements on site as prescribed by code. He said they are asking for the Variance because they have to provide in the design process, 75 tons of cooling for this space. Mr. Petrovick said they are not sure if it is more economical to put that equipment on the roof or ground mount the air conditioning equipment. He explained that they may need to deal with this by reducing the parking spaces and still need to pursue this Variance.

Mr. Petrovick read through the criteria for a Variance:

Granting the Variance would not be contrary to the public interest – Mr. Petrovick said the proposed project is seeking to reduce the required parking from 57 spaces to 50. The project provides ample parking on-site for the proposed occupancy.

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

Mr. Petrovick said the proposed project is a significant number of parking spaces to ensure adequate parking for customers using the facility.

Granting the variance would do substantial justice because:

Mr. Petrovick said the number of occupants who can use the facility does not exceed the 50 proposed parking spaces.

If the variance were granted, the values of the surrounding properties would not be diminished because: Mr. Petrovick said the reduced number of parking spaces does not

create a deficit of parking creating a nuisance to the neighboring properties or a safety issue for customers using the facility.

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 property includes a right-of-way which was previously Court Street and provides access to the neighboring property which reduces the area available for providing parking on-site.*
- ii. *The proposed use is a reasonable one because: Mr. Petrovick said the 7-space reduction in parking will create a parking problem and not burden the neighboring or present a safety issue for customers using the site.*

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 thereby is necessary to enable a reasonable use of it.

Mr. Petrovick said the property contains an easement which restricts the configuration of site.

Chad Branon, PE, of Fieldstone Land Consultants, PLLC; 206 Elm Street, Milford, NH said that if everything is approved at this meeting they would continue their review with the planning process and there are a number elements they would review before the Planning Board. He said these elements pertain to landscaping, pedestrian access, ample space for utilities and all of those facets could impact a parking space. Mr. Branon said that the City has asked them to include a sidewalk main entrance to the site and are contemplating a cross walk to get to the main entrance for people that would be walking to the site. He stated that improvements of this nature would impact a parking space or two. Mr. Branon said what they were asking for with this Variance was some flexibility. He explained that they know through his client's operation in Marlborough that 50 parking spaces would be more than adequate for the facility. In addition, he said they have received feedback from the Keene Fire Department and Keene Police Department and there no concerns relative to access. He noted that they are confident they would be able to maintain parking in rear. Mr. Branon said there are some restrictions in front of the property that prevent from adding additional parking.

Mr. Branon said the proposal of the parking Variance to go down to 50 spaces would not be detrimental to the character of the neighborhood or threaten health, safety, or general welfare of the public.

He said that in speaking to substantial justice, there is no gain to the public by enforcing the 57 spaces and there is a gain outweighed to his client allowing some flexibility to

work hand and hand as the review process continues. He said what they do not want to have happen is to come back before the Zoning Board due to a deficiency that could be resolved by approval of this Variance and is a proactive approach to the planning process.

Mr. Wallin asked if they could put air conditioning units on the roof. Mr. Branon replied in the affirmative. Chair Stout stated that he does not recall a request for a Variance of this nature and that he was uncomfortable with the idea of granting a Variance on the possibility of doing things. In addition, he said that it argues against the hardship question and not a change of use. He asked how one would argue hardship if it is based on the possibility of something happening.

Mr. Stevens, Mr. Rogers and Mr. Schneider stated that they could not recall a request for a Variance of this nature.

Mr. Branon explained that the difficulty with a project such as the proposed is that zoning is typically handled early in the process and in most communities parking is handled at a Planning level. He noted that a lot of the comments received through a planning review would directly intermingle with parking. He said when they initially submitted for a parking Variance they were not confident they would be able to get this number of parking spaces in the back of the building. Mr. Branon said that since the last Zoning Board meeting, they were able to have a technical review meeting and received some follow-up feedback from departments and are now confident with the exception of the HVAC units, that they will be able to maintain parking in back. He said what they are looking for is relief relative to recent developments such as the addition of the pedestrian access to the building. Mr. Branon said they were willing to modify their request based on what is currently known about the site. Chair Stout said that he does not think that statute allows granting a Variance of this nature because of the various criteria. He explained that there was no specific purpose. Chair Stout stated that he would suggest withdrawing the application.

Mr. Branon asked for a few minutes to consult with his client. The Board approved.

The Board discussed how they viewed the request for this Variance. Mr. Welsh stated that it was not a good precedent to have a request for a Variance where people are covering bases for possibilities. Chair Stout stated that the actual factual need must be stated.

Mr. Petrovick asked if Board could table this application for the next meeting. The Board agreed. Mr. Rogers stated that the application would have to be continued for the next April meeting. Chair Stout stated that the applicant had the prerogative to withdraw the application anytime from now until the next meeting.

Mr. Schneider noted that if the Board tabled the request now, the application would not need to be re-noticed.

Mr. Welch made a motion to continue ZBA 18-07 to the April 2, 2017 meeting at 6:30 PM. The motion was seconded by Mr. Stevens, which carried unanimously.

IV. New Business:

Mr. Rogers distributed the new zoning ordinances book to the Board members. Mr. Rogers informed the Board that the City has applied for a zoning change to the City's current Sign Code to incorporate the new zones and to clean up some language within the code. In addition, he said this amendment to the Sign Code is to become content neutral based on the Supreme Court decision of *Reed v. Town of Gilbert, AZ*.

Mr. Rogers stated the amendment requests will be submitted to the Joint Planning Board/Planning, Licenses and Development Committee for review and consideration and then this Committee would submit a recommendation back to the City Council.

V. **Adjournment**

Mr. Welsh made a motion to adjourn the meeting, which was seconded by Mr. Wallin and carried unanimously. Hearing no further business, Chair Stout adjourned the meeting at 8:22 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker