

**Zoning Board of Adjustment
Monday, June 4, 2018, 6:30 p.m.
City Hall Committee Room
3 Washington Street, 2nd Floor**

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – May 7, 2018
- III. Unfinished Business
- IV. Hearings:

ZBA 18-09:/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests an Appeal of An Administrative Decision for property located at 83 Court St., Keene, and owned by John and Josephine Russell of 893 Old Walpole Rd., Surry, NH. The Zoning Administrator has ruled that a proposed wellness center is defined as a health and fitness center and is not a permitted use in the Office District.

ZBA 18-10:/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests a Variance for property located at 83 Court St., Keene, and owned by John and Josephine Russell of 893 Old Walpole Rd., Surry, NH. The Petitioner requests a Variance to permit a Health and Fitness Center in an existing 3,962 square foot building (formerly the Red Cross) where Health and Fitness Center is not a permitted use in the Office District per Section 102-602, Office District, Permitted Uses.

ZBA 18-11:/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests a Variance for property located at 96 Dunbar St., Keene and owned by Dunbar Opportunity, LLC of 55 Main St., Keene. The Petitioner requests a Variance to permit self-storage units inside an existing warehouse building where a self-storage facility is not a permitted use in the Central Business District per Section 102-482, Central Business District, Permitted Uses.

- V. New Business:
- VI. Communications and Miscellaneous:
- VII. Non Public Session: (if required)
- VIII. Adjournment:

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City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 7, 2017

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Joshua Gorman, Vice Chair
Sean Wallin
Michael Welsh
Jeffrey Stevens, Alternate

Staff Present:

Gary Schneider, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

John Rab, Alternate
Jeffrey Stevens, Alternate
Louise Zerba, Alternate

I. Introduction of Board Members

Chair Stout called the meeting to order at 6:30 PM introduced members of the Board and welcomed everyone to the meeting.

II. Minutes of the Previous Meeting-April 2, 2018

Mr. Welsh made a motion to accept the minutes from April 2, 2018. The motion was seconded by Vice Chair Gorman, which carried unanimously.

IV. Hearings

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.

Chair Stout announced the Board received a letter from Catlin & Petrovick Architects, PC that was dated on April 25, 2018. Vice Chair Gorman read the letter as follows:

Mr. Stout at the March 5, 2018 Zoning Board meeting the above case for Hillsborough Capital, LLC requesting to reduce the number of parking spaces was continued to April 2, 2018, in order for the owner to complete the City of Keene's Planning Board approval process for the project. This request was to provide for the Planning Board process to be completed which will determine the number of available parking spaces available on this site. At the March 26, 2018 Planning Board meeting the case was continued to address several concerns raised by abutters at the meeting.

We are working with the abutters and Planning staff to resolve the issues prior to the April 23, 2018 meeting of the Planning Board.

Our letter of April 2, 2018 requested the pending ZBA case be continued to May 7, 2018 Zoning Board meeting which was granted. At the April 23, 2018 Planning Board meeting the project was approved by the Board. The approved site plan will not require a Variance to reduce the required number of parking spaces. Therefore, we are withdrawing this application incase for consideration. We appreciate the consideration of the Zoning Board's consideration of this project.

Mr. Wallin made a motion to accept the request for withdrawal of ZBA 18-05. The motion was seconded by Mr. Welsh, which carried unanimously.

ZBA 18-08;/ Petitioner, Jim Phippard, of Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests a Variance for property located at 186 North St., Keene, and owned by Timothy and Marybeth M. Sweeney. The Petitioner requests a Variance to construct a 90 sq. ft. two story addition to an existing non-conforming single family dwelling unit in place of an existing 115 sq. ft. attached shed. The existing attached shed is located entirely within the rear setback and is 1 foot from the rear property line where a setback of 10 feet is required. The replacement structure will remain 1 foot from the rear property line but be 4 feet narrower in width. The change in use from an existing shed to an addition to the dwelling unit changes the required rear setback from 10 feet per Section 102-888 to 20 feet per Section 102-791, Basic Zone Dimensional Requirements.

Mr. Schneider indicated the location of the property is in between Armory Street and Court Street. The property is located in the Medium Density District and across the street from the property is the Low Density District.

Chair Stout stated in the interest of full disclosure, he lived in this neighborhood up until a year ago.

Chair Stout recognized Jim Phippard of Brickstone Land Use Consultants, located at 185 Winchester Street. Mr. Phippard stated that he was representing the applicants, who purchased the property and moved into the home a week ago. He noted this was another owner occupied home in the neighborhood. Mr. Phippard stated the property is an existing nonconforming use and is smaller than the 8,000 square foot lot size that is required in the Medium Density District. In addition, it is nonconforming because the house was constructed in 1890 and was built almost entirely within the side and front in rear yard setbacks. Mr. Phippard said in today's zoning the

property is nonconforming due to lot size and of the setback encroachments. He noted this created a unique situation for the property owners.

Mr. Phippard presented the Board with a picture of the house as it exists today. He explained the house was essentially one room wide and there was a need to go through one room to get to the next room. The upstairs where the bedrooms are located have the same situation. Mr. Phippard stated the proposal was to finish an unfinished area in the back end of the house and make into a bedroom. He said in order to correct the situation, the applicants are requesting to remove an existing shed and replace it with a two story addition that is 6 feet wide. Mr. Phippard stated this would allow the applicants to add a stairwell so they are able to have an entry point from the ground floor up the stairs to the bedroom. He noted this would fix the issue of having to go through the other existing bedrooms to get to the other bedroom. Mr. Phippard said based on today's living standards it is unusual not to have a private entrance to a bedroom.

Mr. Phippard reviewed the criteria.

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

Mr. Phippard said because the house is existing nonconforming, constructed in 1890, it creates an unusual situation. The egress from the first floor to the second floor being added will improve life safety conditions by adding the second egress. He said it will improve the value of the home and help to maintain neighborhood property values. Mr. Phippard said it is in the public interest to allow property improvements which enhance property value, improve life safety, and result in a more conforming building footprint. Mr. Phippard stated that he could not stress enough that this is an owner occupied home. He noted the whole end of North Street is owner occupied homes, which he stated is a good thing for a neighborhood.

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

Mr. Phippard said the Spirit of the Ordinance in this case is to provide adequate separation of buildings and structures for fire safety; to avoid overcrowding; and to preserve line of sight for the safety of vehicles and pedestrians. He said granting this Variance will not violate the Spirit of the Ordinance. The proposed addition is at the rear of the existing building and smaller than the footprint of the existing shed. The smaller footprint results in greater separation from a neighboring shed to the west and is no closer to an existing shed to the south. He said the location at the rear of the building does not interfere with the line of sight for vehicles and pedestrians. Mr. Phippard said granting the Variance will allow the property to be used in a manner which will not result in a public hazard or diminish public safety, and therefore, observes the spirit of the ordinance.

Granting the variance would do substantial justice because:

Mr. Phippard said granting the Variance would do substantial justice because it will allow the property owner to upgrade and improve the value and life safety conditions of their residence. It

will not result in a hazard or threat to public safety or diminish surrounding property values. He said approval of the Variance would do substantial justice. Mr. Phippard provided the Board with a picture of the shed as it exists today. He noted the addition would have clapboard siding and will look like part of the original house.

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

Mr. Phippard said this is an 1890's house in a neighborhood that consists primarily of owner-occupied single family homes. The owners intend to maintain the look and architecture of the original building. He said the renovations and small addition will improve the value of the house, which will help to maintain existing property values within the neighborhood. Mr. Phippard said approving the Variance will not result in a threat to public safety or be a nuisance to vehicles and pedestrians. In addition, he said it will enhance the value of this property and provide better life safety conditions for the property.

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. Phippard said the existing house was constructed in 1890, prior to creation of zoning in the City of Keene. The current zoning regulations have made the property nonconforming due to the lot size. The existing house is almost entirely within the front, side and rear setbacks. He said these result in a special condition on this property where it is not possible to add the second egress without a Variance. Mr. Phippard said the proposed encroachment will have no negative impact to public safety or public welfare. It is not fair or reasonable to deny the Variance in this case when there is no public benefit and no threat to public safety or welfare. He said denial of the Variance would result in an unnecessary hardship in this case.

ii. The proposed use is a reasonable one because:

He said the proposed addition is smaller than the existing footprint of the shed. The reduced building size in the setback area will make the building more conforming with the current setback regulations. The proposed addition will not result in a threat to public safety or diminish surrounding property values.

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

Mr. Phippard said the existing house was constructed in 1890, prior to creation of zoning in the City of Keene. Current zoning regulations have made the property nonconforming due to the lot

size: 5,625 square feet where 8,000 square feet is currently required in the Medium Density District. The existing house is almost entirely within the front, side and rear setbacks. This results in a special condition on this property where it is not possible to add the second egress without a variance. The proposed encroachment will have no negative impact to public safety or public welfare. It is not fair or reasonable to deny the variance in this case when there is no public benefit and no threat to public safety or welfare. Mr. Phippard stated denial of the Variance would result in an unnecessary hardship in this case.

Mr. Wallin asked what is keeping the applicants from building on the side where the porch is located. Mr. Phippard replied the existing porch is outside the footprint of the house and would be a much larger project. In addition, the applicants do not want to lose porch.

Vice Chair Gorman asked how an interior stairwell provides a means of egress, noting that a second means of egress should directly go to the outside. Mr. Phippard replied under the code, Vice Chair Gorman was correct. He explained that the addition will improve the egress because there is only one means of egress from the second floor that is all the way to front of the house where stairwell is located. Mr. Phippard noted this was a big improvement over what exists today.

Chair Stout asked if the shed is attached to the house. Mr. Phippard replied in the affirmative. Mr. Stevens asked how the addition will match with the roof line. Mr. Phippard replied the roof will go all the way up to match the gable roof. In addition, Mr. Phippard stated that instead of the roof of the shed draining to the west into neighbor's yard, it will be replaced with a roof that will drain back onto the property.

Vice Chair Gorman referred to Mr. Phippard's comment that granting the Variance would be more conforming with today's criteria. He stated given the increase setback from 10 feet to 20 feet this would mean it would be less conforming. Mr. Phippard replied this is true given the change from the storage area to habitable space. He stated the shed is attached to the structure and will merit a Variance in this case. Mr. Schneider stated they discussed filing an Appeal of an Administrative Decision on this matter and the applicant's decided to go with the Variance. Chair Stout asked if the Board approves the Variance would it remove the need for another Variance on the setback. Mr. Schneider replied in the affirmative.

Vice Chair Gorman asked in lieu of not granting the Variance, could the applicant apply for an Appeal of the Administrative Decision. Mr. Schneider replied this was a good question but could not provide an answer at this time.

Chair Stout opened the public hearing and welcomed public comment.

Chair Stout recognized Marybeth Sweeney of 186 North Street and Tim Sweeney of 186 North Street. Ms. Sweeney stated she appreciates the opportunity to meet with Board in order to request a Variance because she and her family are excited to live this neighborhood. She explained they moved into this home knowing this was a two bedroom home but saw potential space in the back of the house. After a conversation with a friend, that is an architect, they were

told this space could not be considered a bedroom. Ms. Sweeney said they are eager to conform to zoning standards but also want to improve the property so that it feels like it is a good investment to them.

Ms. Sweeney noted she had a letter of an approval from a neighbor. Chair Stout stated this letter would be read into the record after Ms. Sweeney's statements.

Ms. Sweeney informed the Board that their builder is Jason Beam, whom she stated has worked with the City of Keene. Chair Stout thanked the applicant's for taking the right route with the Zoning Board.

Mr. Wallin asked Ms. Sweeney which neighbor provided the letter of approval, in reference to the location of the property. Ms. Sweeney replied that it was the neighbor to the left of the property, located at 46 Prospect Street.

Michelle Greene, 36 Prospect Street, indicated the location her property in reference to the applicant's property and spoke in support of the application. She noted the proposal will eliminate the water dripping onto her shed and property from the applicant's shed. The Board thanked her for her comments.

Mr. Stevens read a letter dated April 28, 2018 from Barbara and James Sovik as follows:

Dear Board Members:

Our property on 46 Prospect Street, Keene, NH continues with frontage on North Street, and we are therefore direct abutters to the referenced property seeking a variance.

We wish the Board to know that we have no objection to the granting of the variance, and recommend that you approve it as it will do no harm, improve the utility of the property, and should not impact the neighborhood in any way. In fact, granting the variance will make the property less non-conforming than it presently is.

We suspect that many properties within the city "core" , of which 186 North Street is an example, predate the zoning ordinances including setbacks, etc., and "as built" situations pretty much need to be accepted and some flexibility given to allow the owners to modify their properties to conform to changing living standards.

We urge you to accept the variance as described. Thank you.

With no comment, Chair Stout closed the public hearing.

The Board reviewed the criteria.

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

Mr. Stevens stated properties of this age run when making any type of modification run into this sort of thing. He said clearly the entire house is almost outside of where it would be able to be built today and he does not see a problem granting the Variance. Chair Stout concurred with Mr. Stevens remarks. He added that the Board has not heard for any neighbors in opposition. Chair Stout stated that there has been reference to a change of use and a change of use is a different consideration than a setback. Mr. Rogers stated it was not a change of use and was more of a change of structure. Chair Stout asked if the use being changed to is a use that is already permitted in the High Density District. Mr. Rogers replied in the affirmative.

Vice Chair Gorman added that encroachment regulations are different for inhabitable space and that the Board was here to determine that 20 feet is a further nonconforming use.

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

Mr. Wallin stated that the Board was giving actual living space by getting rid of a shed to add an addition well within the setback. He noted that he had trouble correlating this with the spirit of the Ordinance. Vice Chair Gorman stated the other issue is going from one story to two stories and that the space is no longer a wood shed and is living space. Chair Stout stated that the Ordinance has stipulations for the High Density District. He noted that the High Density District in most of the City has preexisting conditions. He said most buildings have these situations and does not see that the spirit of the Ordinance is being violated in an expansion of a building that is already in a widely highly developed area. Vice Chair Gorman noted the property in question was located in the Medium Density District.

Vice Chair Gorman stated the silver lining is the fact that the applicant is diminishing the foot print and is increasing the path between an abutter.

Mr. Stevens referred to the intent of the Medium Density District and read Section 102-391 from the Zoning Code as follows, *“The intent of the medium density (MD) district is to provide for a medium density/medium intensity residential area. There is a very limited number of other uses permitted which are associated with a residential setting. Normal commercial/industrial uses are excluded. All uses in this zone are required to have city water and sewer service”*. Mr. Stevens stated this does not change the intent because it is being changed from a two bedroom to three bedrooms and it was hard to argue having a three bedroom home in a Medium Density District. He said as far as the setback, by removing the shed, the house is still 14 feet where it should be and was not changing much of the footprint. Mr. Welsh said in terms of the spirit of the ordinance, the proposed modification does improve the safety of the house and the surrounding homes.

Mr. Wallin said that he is concerned with removing something that is already in a setback and then adding another permanent structure. He noted that there may be other options.

Chair Stout noted that for the arguments he made for the High Density District also apply to the Medium Density District. Chair Stout thanked Vice Chair Gorman for noting the correction.

Granting the Variance would do substantial justice:

Chair Stout said he understands the necessity of tearing down a major feature of the house would be an injustice. Mr. Stevens stated the loss to the home owner would far outweigh gain to the public by not allowing the Variance.

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

All members of the Board agreed that granting the Variance would not diminish the value of surrounding properties.

Unnecessary Hardship

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

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

Mr. Stevens stated this was a unique property and is something that is seen often in older homes.

x. The proposed use is a reasonable one

Mr. Stevens stated this was reasonable proposed use.

Vice Chair Gorman requested to reopen the public hearing. The Board agreed.

Vice Chair Gorman asked how the proposal would impact the abutters, in terms of the increased height to the structure. He stated, in his opinion, the impact could be stronger if there were windows overlooking the abutters. Vice Chair Gorman stated that Mr. Phippard mentioned there are no windows in the addition. Mr. Phippard stated that was correct. Vice Chair Gorman asked how a secondary egress from the sleeping room was permitted without a window. Mr. Phippard replied the applicant would be allowed a window on the side walls but not on the gable end.

Mr. Welsh stated that egress has a technical definition involving sizes of windows that may not apply here and what is before the Board is a defect of egress. He said at the same time it is improvement to the safety of the home and also add fire escape capabilities. Vice Chair Gorman noted that it is under the purview of the Board when making a decision how one property may impact another abutter.

With no further comment, Chair Stout closed public hearing.

Chair Stout reviewed the Findings of Fact:

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

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

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

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

Unnecessary Hardship

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

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

Granted, 5-0

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

Mr. Welch made motion to approve ZBA 18-08 as stated in the application. The motion was seconded by Vice Chair Gorman, which carried unanimously.

With a vote of 5-0, The Zoning Board of Adjustment approved ZBA 18-08.

V. New Business:

Mr. Rogers reported that the Parcel Mapping Project is almost complete and ready to go live. He explained that the objective of the mapping system is to generate current, accurate parcel maps which show the correct size, shape, location, and ownership of every property in the City. In addition, the public will have access to the parcel maps and the system will be able to perform tasks such as creating abutter lists.

VII. Adjournment

Mr. Welsh made a motion to adjourn the meeting, which was seconded by Vice Chair Gorman and carried unanimously. Hearing no further business, Chair Stout adjourned the meeting at 7:29 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker

83 Court St.
ZBA 18-09



Petitioner requests an Appeal of an Administrative Decision which has ruled that a proposed wellness center is defined as a health and fitness center and is not a permitted use in the Office District per Section 102-2, Definitions.



City of Keene

New Hampshire

NOTICE OF HEARING

ZBA 18-09

A meeting of the Zoning Board of Adjustment will be held on Monday, June 4, 2018 at 6:30 PM in City Hall Committee Room, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the petition of, John and Josephine Russell of 893 Old Walpole Road, Surry, NH, represented by Jim Phippard, of Brickstone Land Use Consultants, LLC of 185 Winchester St., Keene who requests an Appeal of an Administrative Decision for property located at 83 Court St., Keene, Tax Map Parcel #003-04-006, which is in the Office District. The Zoning Administrator has ruled that a proposed wellness center is defined as a health and fitness center and is not a permitted use in the Office District per Section 102-2, Definitions.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance: May 24, 2018

APPLICATION FOR APPEAL

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

For Office Use Only:	
Case No.	<u>ZBA 18-09</u>
Date Filed	<u>5/18/18</u>
Received By	<u>CM</u>
Page	<u>1</u> of <u>5</u>
Reviewed By	<u>[Signature]</u>

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

TYPE OF APPEAL

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) John & Josephine Russell Phone: _____
 Address 893 OLD WALPOLE ROAD SUREY NH 03431
 Name(s) of Owner(s) AMERICAN NATIONAL RED CROSS
 Address 2 MAITLAND STREET CONCORD NH 03301-3534
 Location of Property 83 COURT STREET

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 003-04-006-0000 Zoning District OFFICE
 Lot Dimensions: Front 42' Rear 42' Side 195' Side 195'
 Lot Area: Acres .19 Square Feet 8276.00+/-
 % of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 36% Proposed 36%
 % of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 84% Proposed 84%
 Present Use OFFICE
 Proposed Use OFFICE

SECTION III - AFFIDAVIT

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

[Signature] Date 5-18-18
 (Signature of Owner or Authorized Agent)
 Please Print Name JC Russell Josephine Russell

PROPERTY ADDRESS 83 COURT STREET

APPEAL OF AN ADMINISTRATIVE DECISION

Relating to the Interpretation and Enforcement of the Provisions of the Zoning Ordinance

- Section (s) of the Zoning Ordinance in question: SEE ATTACHED
- Decision of the Zoning Administrator to be reviewed:

- Basis for error in the Zoning Administrator's decision:

- Statement from the Zoning Administrator:

PROPERTY ADDRESS: 83 Court Street (Office District)

APPEAL OF AN ADMINISTRATIVE DECISION

Relating to the Interpretation and Enforcement of the Provisions of the Zoning Ordinance

- **Section(s) of the Zoning Ordinance in question:** Section 102-2, Definitions.
- **Decision of the Zoning Administrator to be reviewed:** The Zoning Administrator has ruled that a proposed wellness center is defined as a health and fitness center and is not a permitted use in the Office District. See attached ruling dated May 08, 2018.
- **Basis for error in the Zoning Administrator’s decision:** The Keene Zoning Ordinance does not define a “wellness center”. In the absence of a specific definition, the list of the proposed activities in the wellness center should be reviewed to determine if they are permitted in the Office District. In this case, the proposed activities include:
 - Massage Therapy
 - Reiki Therapy
 - Nutrition Counseling
 - Psychologist/Psychiatrist
 - Life style Coaching
 - Physical Therapy
 - Acupuncture
 - Gem Therapy
 - Aroma Therapy
 - Yoga
 - Fitness Training & Exercise

Each of the above listed activities requires a license or certification in order to offer the service. As such, they are professional services. Nine of the listed activities, if proposed individually, would be permitted outright as professional offices in the Office District. The offering of all these professional services in one location creates the wellness center. While yoga, fitness training and exercise are not listed as permitted uses individually in the Office District, they are accessory activities and provide an important contribution toward overall wellness.

- **Statement from the Zoning Administrator:**

From: John Rogers
Sent: Tuesday, May 8, 2018 11:20 AM
To: Medard Kopczynski; 'JC Russell'
Cc: josephine russell; Rhett Lamb
Subject: RE: 83 court st

Hi Josephine,

83 Court Street is in the City's Office District which is intended to provide a buffer from the more commercial uses allowed in the business districts, such as the Central Business district, and residential districts such as the High and Low districts to which this section of the Office District abuts. This buffer is in part being created by allowing non-commercial offices as stated in the intent statement, which goes on to use professional offices as an example of a low intensity use.

The zoning definition of a health and fitness center has many of the activities listed in your letter of intent and is a use allowed in the commercial and industrial districts but not in the residential districts or the Office district.

After reviewing your letter and the comments in the emails it is my interpretation that the use you have described meets the definition of a health and fitness center which is a use allowed in the Central Business, Central Business Limited, Commerce, Commerce Limited, Neighborhood Business, Business Growth and Reuse, and Industrial districts and not an office use as allowed in the Office district.

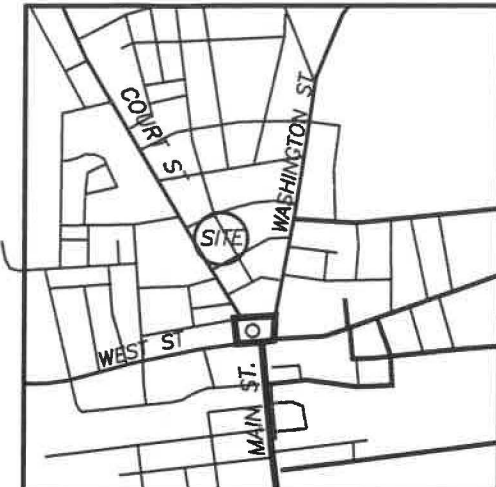
Under Section 102-67 of the City's Zoning Code you do have the ability to appeal this decision to the Zoning Board of Adjustment if filed within 45 days of the decision date of May 8, 2018. The Zoning Code also give you the ability under Section 102-36 to seek a variance from the code if you desire.

If you have any questions about this decision or options available to you please do not hesitate to contact me.

John

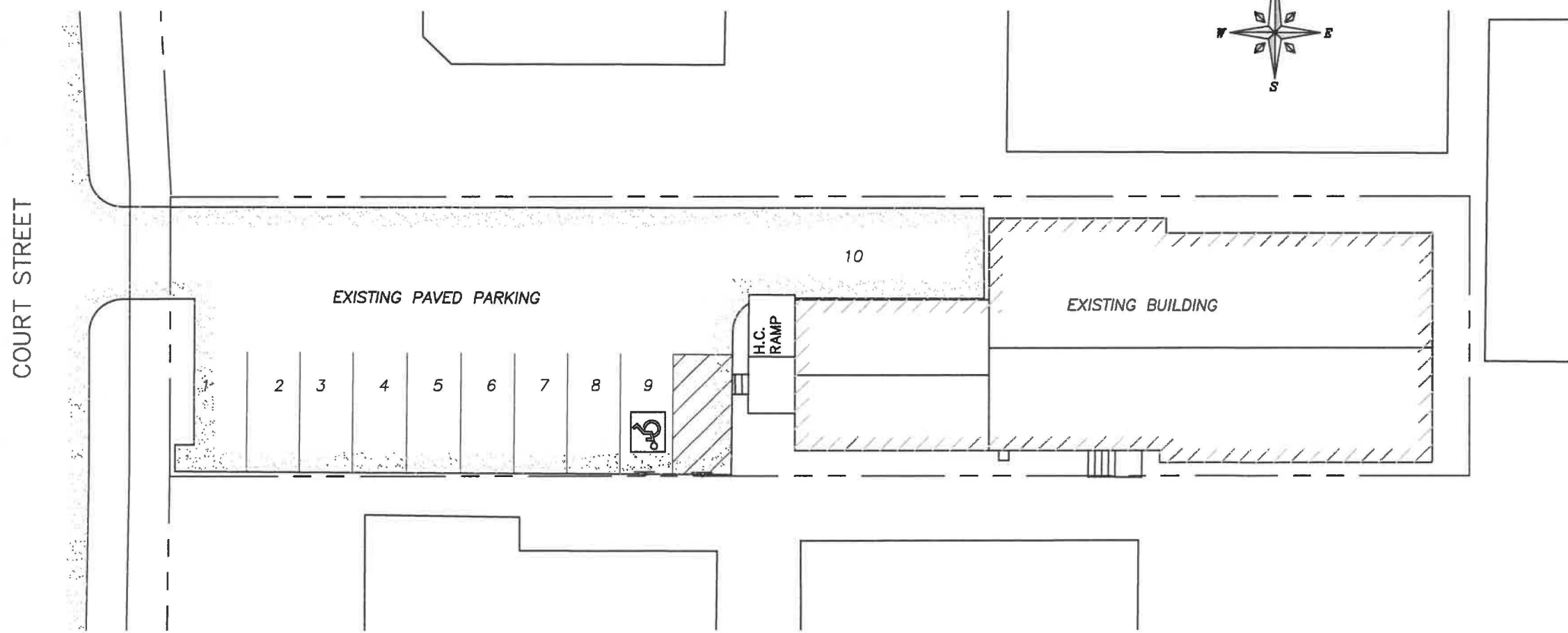
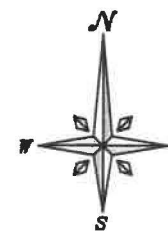
John Rogers, CBO
Acting Health and Code Director
City of Keene
3 Washington Street
Keene N.H. 03431
603-352-5440 x 6040

From: Medard Kopczynski
Sent: Friday, April 27, 2018 9:20 AM
To: 'JC Russell'



LOT DATA

ZONING	OFFICE
TAX MAP #	003040060000
LOT SIZE	8,190 SF - 0.19 AC±
LOT COVERAGE	
BUILDING	2,970 SF - 36%
PAVING	3,960 SF - 48%
TOTAL	6,930 SF - 84%



COURT STREET

AMERICAN NATIONAL RED CROSS 2 MAITLAND STREET, CONCORD, NH 03301	Brickstone Land Use Consultants, LLC 185 Winchester Street, Keene, NH 03431 Phone: (603) 357-0116	PROPOSED WELLNESS CENTER 83 COURT STREET, KEENE, NH	REVISION	ZBA PLAN	SCALE: 1=20' DATE MAY 18, 2018	Z-1
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83 Court St.
ZBA 18-10



Petitioner requests a Variance to permit a Health and Fitness Center in an existing 3,962 sq. ft. building (formerly the Red Cross) where Health and Fitness Center is not a permitted use in the Office District per Section 102-602, Office District, Permitted Uses.



City of Keene

New Hampshire

NOTICE OF HEARING

ZBA 18-10

A meeting of the Zoning Board of Adjustment will be held on Monday, June 4, 2018 at 6:30 PM in City Hall Committee Room, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the petition of, John and Josephine Russell of 893 Old Walpole Road, Surry, NH, represented by Jim Phippard, of Brickstone Land Use Consultants, LLC of 185 Winchester St., Keene who requests a Variance for property located at 83 Court St., Keene, Tax Map Parcel #003-04-006, which is in the Office District. The Petitioner requests a Variance to permit a Health and Fitness Center in an existing 3,962 square foot building (formerly the Red Cross) where a Health and Fitness Center is not a permitted use in the Office District per Section 102-602, Office District, Permitted Uses.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance: May 24, 2018

APPLICATION FOR APPEAL

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

For Office Use Only:	
Case No.	<u>ZBA 18-10</u>
Date Filed	<u>5/18/18</u>
Received By	<u>JM</u>
Page	<u>1</u> of <u>12</u>
Reviewed By	<u>R.S.</u>

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) JOHN & JOSEPHINE RUSSELL Phone: _____
Address 893 OLD WALPOLE ROAD SURRY NH 03431
Name(s) of Owner(s) AMERICAN NATIONAL RED CROSS
Address 2 MAITLAND STREET CONCORD NH 03301-3534
Location of Property 83 COURT STREET

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 003-04-006-0000 Zoning District OFFICE
Lot Dimensions: Front 42' Rear 42' Side 195' Side 195'
Lot Area: Acres .19 +/- Square Feet 8276.00 +/-
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 36% Proposed 36%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 84% Proposed 84%
Present Use OFFICE
Proposed Use WELLNESS CENTER (HEALTH & FITNESS CENTER)

SECTION III - AFFIDAVIT

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

JCRussell Joseph Russel Date 5-18-18
(Signature of Owner or Authorized Agent)

Please Print Name JCRussell Josephine Russell

PROPERTY ADDRESS 83 COURT STREET

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 102-602 of the Zoning Ordinance to permit:
SEE ATTACHED

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

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

3. Granting the variance would do substantial justice because:

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

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one because:

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

APPLICATION FOR A VARIANCE

- A variance is requested from Section (s) **102-602, Office District, Permitted Uses** of the Zoning Ordinance to permit: a Health and Fitness Center in an existing 3962 sf building (formerly the Red Cross) where Health and Fitness Center is not a permitted use in the Office District.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

- 1. Granting the Variance would not be contrary to the public interest because:**
The proposed wellness center (Health & Fitness) would be conducted entirely inside the existing building. The activities in the wellness center would consist of Massage therapy, Reiki therapy, Nutrition counseling, Psychologist/Psychiatrists, Life Style coaches, Physical therapy, Acupuncture, Gem therapy, Aroma therapy, Yoga, Exercise and Fitness classes, and others. All services would be provided by licensed professionals or certified instructors in their activities. It is in the public interest to allow a wellness center for professional services which promote both physical and emotional well-being.
- 2. If the variance were granted, the spirit of the ordinance would be observed because:**
The spirit of the ordinance in this case is to allow noncommercial offices, such as professional offices, within walking distance of downtown. The former Red Cross building is already set up for individual offices and has two large meeting rooms, exactly what the wellness center requires. All of the services to be provided will be by licensed professionals and/or certified instructors. With the exception of Yoga and Fitness classes each of the individual services is permitted outright in the Office District. While at this location, the Red Cross provided training classes for first aid, CPR, and emergency response training. Granting the variance will allow the property to be used in a manner similar to the previous uses on the property. It will not result in a public hazard or diminish public safety, and therefore, observes the spirit of the ordinance.
- 3. Granting the variance would do substantial justice because:**
It will allow the building to be re-purposed for a use which promotes public health and well-being. It will not result in a hazard or threat to public safety. It will not diminish surrounding property values. Approval of the variance would do substantial justice.
- 4. If the variance were granted, the values of the surrounding properties would not be diminished because:**
The only change to the property will be the addition of a handicap parking space within the existing parking lot. No other changes to the exterior of the building are proposed. The proposed activities in the wellness center are similar to the health and fitness activities at the Keene Senior Center, right across the street on Court Street. 10 onsite parking spaces are provided and free public parking is available on both sides of Court Street. Approving the variance will not

result in a threat to public safety or be a nuisance to vehicles and pedestrians. It will re-purpose an empty building and provide a use which promotes the health and well-being of the general public. Granting the variance will not result in diminished values of the surrounding properties.

5. Unnecessary Hardship

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

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: The existing building is 3962 sf of office space on a 0.19 acre lot. There are 10 existing parking spaces on the lot. The property is nonconforming due to lot coverage and due to the number of parking spaces (20 spaces are required at 1/200 sf for office use). This creates a special condition for this property which limits the ability to fully utilize the space for office use. As a wellness center (health and fitness center), however, only 8 parking spaces are required by zoning (1/500 sf of gross floor area). Granting the variance to change the use to a wellness center (health and fitness center) will result in making the property more conforming than it is today. The proposed wellness center will have no negative impact to public safety or public welfare. It is not fair or reasonable to deny the variance in this case when there is no public benefit and no threat to public safety or welfare. Denial of the variance would result in an unnecessary hardship in this case.

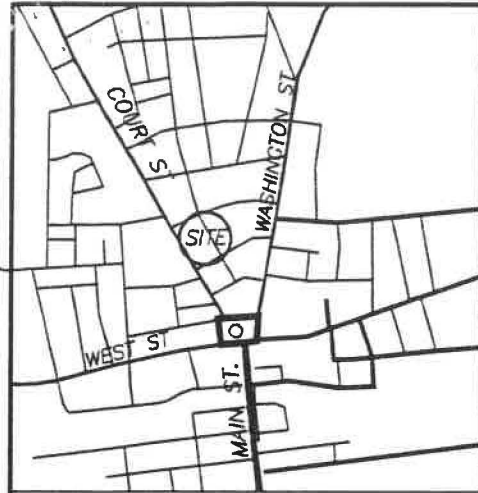
And

ii. The proposed use is a reasonable one because:
The proposed use as a wellness center consists of licensed professionals and certified instructors providing health and wellness services for the general public. All services will be provided indoors in the existing building. Adequate parking exists on the site and in the public parking on Court Street adjacent to the site. The proposed wellness center will not result in a threat to public safety or diminish surrounding property values.

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

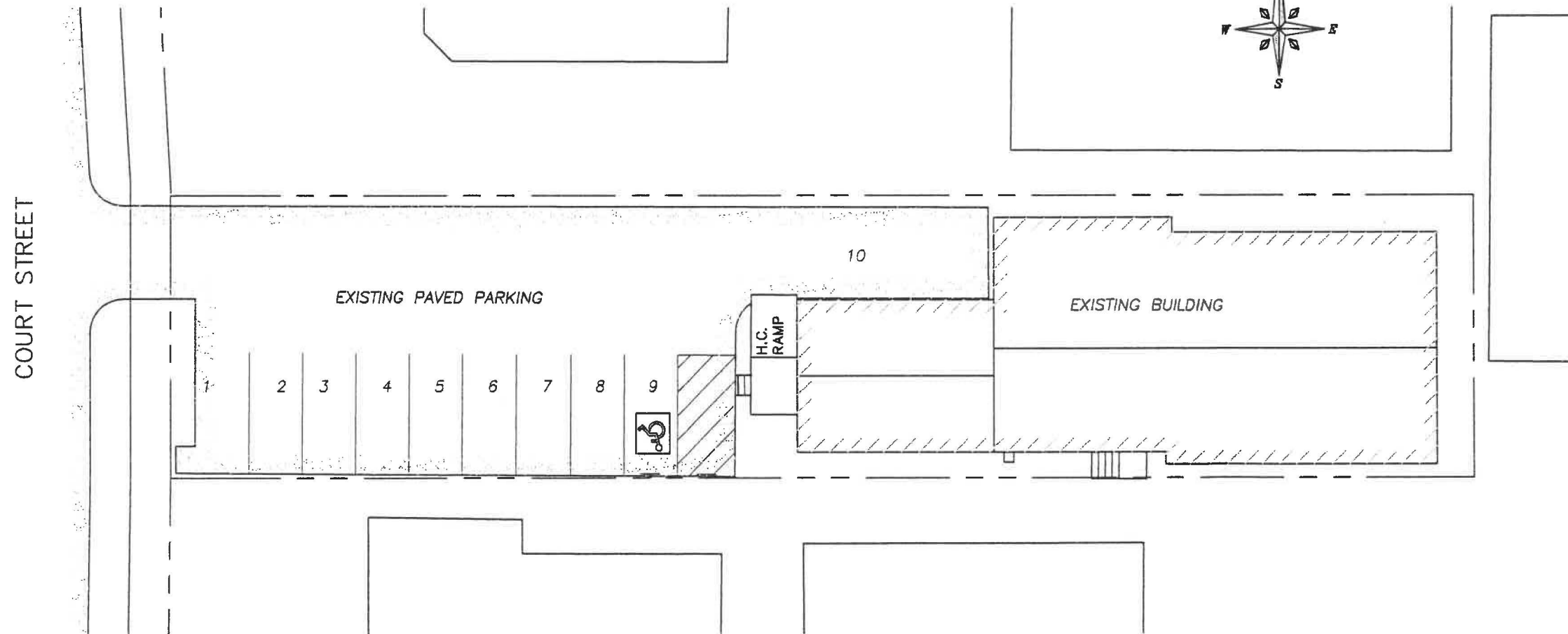
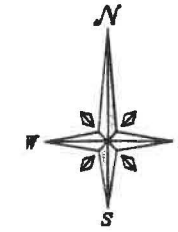
The existing property is nonconforming due to lot coverage and to onsite parking (10 spaces provided where 20 spaces are required). This results in a special condition on this property. Granting the variance will allow a use which will

comply with the parking requirements and make the property more conforming to the zone requirements. It is not fair or reasonable to deny the variance when there is no public benefit and no threat to public safety or welfare. Denial of the variance would result in an unnecessary hardship in this case.



LOT DATA

ZONING	OFFICE
TAX MAP #	003040060000
LOT SIZE	8,190 SF - 0.19 AC±
LOT COVERAGE	
BUILDING	2,970 SF - 36%
PAVING	3,960 SF - 48%
TOTAL	6,930 SF - 84%



AMERICAN NATIONAL RED CROSS
2 MAITLAND STREET, CONCORD, NH 03301

Brickstone
Land Use Consultants, LLC
185 Winchester Street, Keene, NH 03431
Phone: (603) 357-0116

PROPOSED WELLNESS CENTER
83 COURT STREET, KEENE, NH

REVISION

ZBA PLAN

SCALE: 1=20'

DATE MAY 18, 2018

Z-1

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96 Dunbar St.
ZBA 18-11



Petitioner requests a Variance to permit self-storage units inside an existing warehouse building where a self-storage facility is not a permitted use in the Central Business District per Section 102-482, Central Business District, Permitted Uses.



City of Keene

New Hampshire

NOTICE OF HEARING

ZBA 18-11

A meeting of the Zoning Board of Adjustment will be held on Monday, June 4, 2018 at 6:30 PM in City Hall Committee Room, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the petition of, Dunbar Opportunity, LLC of 55 Main Street, Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, LLC of 185 Winchester St., Keene who requests a Variance for property located at 96 Dunbar St., Keene, Tax Map Parcel #023-02-0200, which is in the Central Business District. The Petitioner requests a Variance to permit self-storage units inside an existing warehouse building where a self-storage facility is not a permitted use in the Central Business District per Section 102-482, Central Business District, Permitted Uses.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance: May 24, 2018

APPLICATION FOR APPEAL

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

For Office Use Only:	
Case No.	<u>ZBA 18-11</u>
Date Filed	<u>5/18/18</u>
Received By	<u>GM</u>
Page	<u>1</u> of <u>10</u>
Reviewed By	<u>A.S.</u>

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) _____ Phone: _____
Address _____
Name(s) of Owner(s) DUNBAR OPPORTUNITY LLC
Address 55 MAIN STREET KEENE NH 03431
Location of Property 96 DUNBAR STREET

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 023020200000 Zoning District CENTRAL BUSINESS
Lot Dimensions: Front 119.27 +/- Rear 121 +/- Side 136 +/- Side 144 +/-
Lot Area: Acres 0.38 Square Feet 16553 +/-
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 39 % Proposed 39 %
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 100 % Proposed 100 %
Present Use WAREHOUSE
Proposed Use RETAIL SALES & SELF STORAGE

SECTION III - AFFIDAVIT

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


(Signature of Owner or Authorized Agent) Date 5-17-18

Please Print Name Mitchell Greenwald Owner Dunbar Opportunity LLC

PROPERTY ADDRESS 96 DUNBAR STREET

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 102-482 of the Zoning Ordinance to permit:

PERMITTED USES IN CENTRAL BUSINESS DISTRICT

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

SEE ATTACHED

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

3. Granting the variance would do substantial justice because:

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

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one because:

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

APPLICATION FOR A VARIANCE

- A variance is requested from Section (s) 102-482, **Central Business District, Permitted Uses** of the Zoning Ordinance to permit: self storage units inside an existing warehouse building where self storage facility is not a permitted use in the Central Business District.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

- 1. Granting the Variance would not be contrary to the public interest because:**
The existing building is a former two story warehouse containing 12,655 sf. The building has been vacant for many years. It is located at the end of Dunbar Street. The applicant proposes to use approximately 4900 sf on the ground floor of the building for his auction business (a permitted use); and 1800 sf on the ground floor and the entire second floor (5955 sf) for inside self storage units. No outside storage is proposed. Granting the variance will allow owner to fully utilize the second floor of this large warehouse building with a low intensity use. It is in the public interest to allow vacant buildings to be re-purposed with a low intensity use. The vacant building will be renovated, brought up to current building code standards, and the property value will be improved.
- 2. If the variance were granted, the spirit of the ordinance would be observed because:** The spirit of the ordinance in this case is to allow mixed uses in a manner which does not create a public hazard or threaten public welfare. The re-purposing and renovating of a vacant warehouse building as proposed will improve the appearance of the building and add to the property value. The self storage units will be inside and on the second floor of the building and will not be visible from the outside. This is a low intensity use which will not add significant traffic and will not create noise or obnoxious fumes. Granting the variance will allow the property to be used in a manner similar to the previous uses on the property. It will not result in a public hazard or diminish public safety, and therefore, observes the spirit of the ordinance.
- 3. Granting the variance would do substantial justice because:** It will allow the building to be re-purposed, renovated and brought up to current building code standards. It will improve the building appearance and it will not result in a hazard or threat to public safety. It will not diminish surrounding property values. Approval of the variance would do substantial justice.
- 4. If the variance were granted, the values of the surrounding properties would not be diminished because:** The existing building has been vacant for many years and has become run down. Granting the variance will allow the owner to renovate the building and bring it up to current building codes. The self storage units will be inside the building and not visible from surrounding properties. Approving the

variance will not result in a threat to public safety or be a nuisance to vehicles and pedestrians. It will re-purpose an empty building and greatly improve the property value. Granting the variance will not result in diminished values of the surrounding properties.

5. Unnecessary Hardship

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

i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:** The existing building is a 12,655 sf, two story warehouse which was built in 1875. The building has been vacant for many years and has become run down. It is not insulated and is out of date with the current building codes. This creates a special condition for this property which severely limits the feasibility of renovating and re-purposing the building. Self storage units inside the building allows the owner a use which makes it feasible to save the building and bring it up to the current building code. Granting the variance to allow self storage will result in improving the property with no negative impact to public safety or public welfare. It is not fair or reasonable to deny the variance in this case when there is no public benefit and no threat to public safety or welfare. Denial of the variance would result in an unnecessary hardship in this case.

And

ii. **The proposed use is a reasonable one because:** Self storage is a low intensity use and will not generate significant traffic. It will be located inside the building and will not be visible from surrounding properties. Granting the variance will allow the building to be saved. It will improve the property value and will not result in a threat to public safety or diminish surrounding property values.

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

The existing building is a 12,655 sf, two story warehouse which was built in 1875. The building has been vacant for many years and has become run down. It is not insulated and is out of date with the current building codes. This creates a special condition for this property which severely limits the feasibility of renovating and re-purposing the building. Self storage units inside the building allows the owner a use which makes it feasible to save the building and bring it up to the current building code.

Granting the variance to allow self storage will result in improving the property with no negative impact to public safety or public welfare. It is not fair or reasonable to deny the variance in this case when there is no public benefit and no threat to public safety or welfare. Denial of the variance would result in an unnecessary hardship in this case.

