

**Zoning Board of Adjustment  
Monday, January 7, 2019, 6:30 p.m.  
City Hall Council Chambers  
3 Washington Street, 2<sup>nd</sup> Floor**

**AGENDA**

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – October 1, 2018 & November 5, 2018  
Vote for new Chair/Vice-Chair

III. Unfinished Business

IV. Hearings:

**ZBA 19-01:/** Petitioner, Bruce R. and Kimberly A. Pilvelait Revocable Trust, represented by Thomas R. Hanna of 41 School St., Keene requests a Variance for property located at 0 Hurricane Rd., Keene, Tax Map Parcel #106-008-000, which is in the Rural District. The Petitioner requests a Variance for the construction of a single family home on a lot in the Rural District containing 3.7 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present per Section 102-791, Table of Basic Zone Dimensional Requirements of the Zoning Code.

**ZBA 19-01:/** Petitioner, Bruce R. and Kimberly A. Pilvelait Revocable Trust, represented by Thomas R. Hanna of 41 School St., Keene requests a Variance for property located at 0 Hurricane Rd., Keene, Tax Map Parcel #106-009-000, which is in the Rural District. The Petitioner requests a Variance for the construction of a single family home on a lot in the Rural District containing 2.97 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present per Section 102-791, Table of Basic Zone Dimensional Requirements of the Zoning Code.

V. New Business:

2019 Calendar

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, October 1, 2018

6:30 PM

Council Chambers

**Members Present:**

Nathaniel Stout, Chair  
Joshua Gorman, Vice Chair  
Michael Welsh  
Joshua Greenwald  
Jane Taylor

**Staff Present:**

Thomas Mullins, City Attorney  
Gary Schneider, Plans Examiner  
John Rogers, Zoning Administrator

**Members Not Present:**

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. Chair Stout also welcomed and introduced new member Joshua Greenwald to the Board.

**II. Minutes of the Previous Meeting-September 4, 2018**

The Board moved to defer approval of the September 4, 2018 minutes until the next meeting that will be held on November 5, 2018. The motion passed unanimously.

The ZBA agreed to change the order of hearings as follows: ZBA 18-14, ZBA 18-18 and ZBA 18-12, ZBA 18-17 and ZBA 18-19.

**IV. Hearings**

**Continued ZBA 18-14:/ Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene requests a Variance for property located at 76 Railroad St., Keene, Tax Map # 574-010-000, owned by The Moving Company Dance Center, 76 Railroad St., Keene and is in the Central Business District. The Petitioner requests a Variance to permit a lodging house in the Central Business District where a lodging house is not a permitted use per Section 102-482 of the Zoning Ordinance.**

Mr. Greenwald announced he needed to recuse himself due to a conflict of interest. With no objection, the Board continued with hearing ZBA 18-14.

Chair Stout read an email into record that was sent to the Board by Mindy Cambiar. The email notified the Board that The Moving Company Dance Center (MOCO) signed a purchase and sales agreement with another purchaser at 76 Railroad Street. In addition, Ms. Cambiar stated in the email this made her very sad and explained the need to withdraw their application for a Variance at that location. However, Ms. Cambiar stated in the email that Hundred Nights will be requesting an Appeal of Administrative Decision for ZBA 18-18.

Ms. Taylor made a motion to accept withdrawal for continued application ZBA 18-14. The motion was seconded by Vice Chair Gorman, which carried unanimously.

**ZBA 18-18:/ Petitioner, Hundred Nights, Inc., of 17 Lamson St., Keene requests an Appeal of an Administrative Decision based on the definition of a hotel versus a lodging house and the Administrative Decision by the Zoning Administrator that Hundred Nights, Inc. “is considered to be a lodging house under the City’s Zoning Ordinance, and not a Hotel.**

After reading the request, Chair Stout announced the Board has been advised it would not be appropriate for the Board to offer an opinion on this, given there is not an application to which this matter applies.

Chair Stout asked the Board if there was a motion.

Mr. Welsh made a motion to deny application ZBA 18-18 for an Appeal of an Administrative Decision. The motion was seconded by Vice Chair Gorman.

As the Board moved to deny the request, Attorney John Rab, 234 Court Street, Keene came forward to request to address the Board. The City Attorney stated it would appropriate to allow Attorney Rab to speak prior to voting on the motion. Chair Stout welcomed comment.

Attorney Rab stated he was representing Hundred Nights and they object to the Board’s denial of this outright on the basis of a lack of standing. He asked if the Board does deny the application, the Board state the reasons for denial. Attorney Rab stated it was their firm belief they have the powers under RSA 674:33A that the Board hear the appeal. He explained they are appealing a determination of a zoning official with respect to the Zoning Ordinance. He noted they have a clear standing to do such.

Chair Stout asked the Board if there were any questions. With no comment, the hearing continued.

Attorney Rab reiterated that if the Board does deny the application, the Board state reasons clearly for the record in order to provide them a record for appeal. Chair Stout stated that Attorney Rab’s reference to RSA 674:33A does not refer to whether or not there is an active case, to which this advice is relevant. Attorney Rab stated this is a separate accepted application and they are appealing a specific decision. He noted the application was duly docketed and is not related to the application that was withdrawn. In addition, he stated this is not related to a specific property and is related to a specific decision made by a Zoning Officer. Chair Stout asked if there is an application before the Board at the present time. Attorney Rab replied in the

affirmative and that it was an Appeal of an Administrative Decision. Chair Stout stated that he would disagree that an Appeal of an Administrative Decision is an application for a Variance. Attorney Rab stated this application was a separate matter before the Board. Chair Stout stated that it may be a separate matter but the matter should refer to an active case. He noted this was based on the advice given to the Board. Attorney Rab stated if that is the case the reasons for denial should be made clear. Chair Stout stated that he believed he had just done so.

Attorney Rab then asked if the Board was denying the application because they have withdrawn their application for a Variance for the MOCO building. Chair Stout replied that was incorrect and is because the Board does not have an application before the Board. Ms. Taylor added the Board's role is not to issue any advisory opinion. She stated the request to the Administrative Official related specially to a certain property that is the subject of the Variance that is now withdrawn. Based on this information, Ms. Taylor stated the result in any decision other than a denial would result in an advisory decision, which the Board is not empowered to give. Attorney Rab stated Hundred Nights requested the City define the use of Hundred Night's homeless shelter as a hotel rather than a lodging house for purposes of the Zoning Ordinance. He reiterated this is a separate matter and is not related to the application for the MOCO building.

Chair Stout asked for comment from the City Attorney.

Mr. Welsh asked for clarity on the assertion being made by Hundred Nights that there is no specific linkage of their question about definition to a specific property. The City Attorney stated that he would defer back to the N.H. Supreme Court's decision on *Perron v. Concord*. He explained that once the application was withdrawn there is no live application before the Board to consider the Administrative Decision against. The City Attorney continued to explain that there is no case or controversy and the same standard applies over in the Superior Court. He stated if there is no case or controversy before the Board, the Board is prohibited from issuing an advisory opinion.

The City Attorney stated the Supreme Court case stands exactly for that proposition. He stated once the *Perron v. Concord* matter was resolved by the Board in Concord and concluded, the applicant requested an opinion from the Board as to what they could or could not do. The Supreme Court properly confirmed that the Board does not have the authority to issue an advisory opinion. The City Attorney said Hundred Nights may disagree with that opinion, which he understands. Therefore, he stated there is a process which would need to go to the Superior Court for a decision.

The City Attorney stated that his advice is that it would be an issuance of an advisory opinion and is not prohibited under law. He noted this decision was up to the Board.

Mr. Welsh asked the City Attorney to clarify if withdrawal of the application places the question in the status of not something that has a case or controversy attached to it. The City Attorney replied that was correct. Mr. Welch then asked if that status means that anything the Board would be giving is an advisory opinion, which is something that case law has shown is not appropriate. The City Attorney stated that is a correct restatement of what he stated to the extent that they may have another property that would qualify for status or meet the definition. He stated that it would then be proper for the Board to consider the issue.

With no further comment, Chair Stout thanked the City Attorney.

Chair Stout welcomed public comment.

The City Attorney stated this was not a public hearing on this question and is very much like a motion for reconsideration. He explained the motion for reconsideration is filed with the body, the body makes a decision based on the documents filed and this was filed. The City Attorney stated Hundred Nights had the opportunity to state their position at this point and his suggestion is that the hearing forecloses at this point.

Chair Stout retracted welcoming comment from the public. The Board moved to vote.

On a vote of 4-0, the Zoning Board of Adjustment denied ZBA 18-18.

Mr. Greenwald joined the rest of the Board for the remainder of the petitions.

**Continued ZBA 18-12:/ Petitioner, Kay M. Alderman of 350 Hurricane Rd, requests a Variance for property located at 350 Hurricane Rd., Tax Map # 234-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit the extension of a garage to within 11 feet of side boundary line and to within approximately 45+/- feet of Hurricane Rd. where 50 feet is the setback requirement for both side and front side yards per Section 102-791, Basic Zone Dimensional Requirements.**

Chair Stout asked for the City staff report.

Mr. Schneider displayed a map stating the location of the property highlighted in yellow. He noted Hurricane Road is just above the property and to the south is Aldridge Road and Dickinson Road. He noted all of these properties are in the area of the Rural Zone.

Chair Stout asked for the overall acreage. Mr. Schneider replied 3.9 acres.

Chair Stout welcomed James Mountford, 350 Hurricane Road, Keene. Mr. Mountford stated that he was the husband of the applicant Kay Alderman. He noted the reason for the Variance is because they want to put an addition on their garage. Mr. Mountford stated his wife has been faced with medical issues and she wants to move the washer and dryer from the basement up to the next level. He stated they are putting in a mudroom and that takes up half of the two car garage. In order to keep the two car garage they will need to add another bay. He noted his neighbor's property line comes within 11 feet of their property line. Mr. Mountford stated the abutting neighbors have provided a letter in support of the application.

Ms. Taylor stated the map provided in the packet did not indicate the terrain in that area. Mr. Mountford replied the edge by the garage is built up and there is a lawn that drops off to the level of the walkout cellar. Ms. Taylor asked City staff in reference to the 11 feet to the property line if there are some provisions with fire code. Mr. Rogers replied that it would not refer to a single family home, especially with a single story home.

Chair Stout explained to Mr. Mountford that the applicant has the option to read through their application. He asked Mr. Mountford if he wished to address the criteria in his application. Vice Chair Gorman stated that it was not necessary and that Mr. Mountford had stated his case.

Mr. Mounford stated that Attorney Tom Hanna prepared their application. He declined to read through the criteria.

Ms. Taylor referred to the letter Mr. Mountford stated he had from his neighbor that spoke in support of the application. Mr. Schneider provided a copy of the letter to Board. Chair Stout read the letter to the Board.

The letter was sent from Mark and Sharon Rhoades 354 Hurricane Road, Keene and stated they had no objection to the applicant's building an addition to their garage on their property. In addition, the Rhoades stated there is no need to add shrubbery or landscaping between their properties.

Vice Chair Gorman asked if a vegetative buffer currently exists. Mr. Mountford replied in the affirmative.

Ms. Taylor asked how far the neighbor's house is on other side of the vegetative buffer. Mr. Mountford replied approximately 75 feet.

Chair Stout welcomed public comment.

With no comment, Chair Stout closed the public hearing and asked if there was a motion.

Vice Chair Gorman made a motion to approve ZBA 18-12. The motion was seconded by Mr. Welch.

Chair Stout stated that he drives past this property frequently and noted the buffer is more than adequate. He added that he sees no problem with plans to proceed. In addition, he stated there is a hardship here and is in favor.

Ms. Taylor stated that she wanted to clarify that it appears the hardship is related to land and due to the terrain. She stated when she drove by the property it is clear the terrain drops off and is not sure there would be any opportunity to build in back of house and be within the setbacks.

The Board reviewed the criteria.

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

Ms. Taylor stated this is an area of single family residences and the addition is not going to be any closer to the street. She stated there no interference and is in keeping with the neighborhood. She added that granting the Variance does meet that criteria.

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

Chair Stout stated there was no major change in anything the ordinance stipulates for this zone. In particular, he stated that it is not out of keeping with other properties in the area.

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

Chair Stout stated the Board has already heard of the need.

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

Vice Chair Gorman stated this is not a substantial change to the property. He noted this is a rural house in the Rural District. In addition, Vice Chair Gorman commented there will be no impact to buffers or the surrounding property values.

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.*

Ms. Taylor reiterated the nature of the terrain. In addition, she stated that is the only place to do this without building a two story foundation underneath a garage expansion.

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

All members of the Board agreed the use is reasonable based on previous statements.

The Board reviewed the Findings of Fact.

1. *Granting the variance would not be contrary to the public interest. Granted 5-0*
2. *If the variance were granted, the spirit of the ordinance would be observed. Granted 5-0*
3. *Granting the variance would do substantial justice. Granted 5-0*
4. *If the variance were granted, the values of the surrounding properties would not be diminished. Granted 5-0*
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:*



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

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

With a vote of 5-0, the Zoning Board of Adjustment approved ZBA 18-12.

The Board took a brief recess at 6:58 PM. The meeting was called back to order at 7:05 PM.

**ZBA 18-17:/ Petitioner, The Prospect Woodward Home of 194-202 Court St., request a Variance for property located at 95 Wyman Rd., Tax Map #221-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit a free standing sign 29.32 square feet in an area where 20.00 square feet is the maximum area allowed per Section 102-1310.2B.**

Chair Stout asked for City staff report.

Mr. Schneider displayed a map stating the property highlighted in green. He indicated the location of the property is on Wyman Road. The top of the page on the map is Wyman Road heading toward Old Walpole Road and the bottom of page is heading back towards Route 12. He noted the property is on both sides of Wyman Road. The property is in the Rural Zone and in this zone a 20 square foot free standing sign is permitted. Mr. Schneider stated this is a legal commercial piece of property. He explained the Sign Code was recently amended to allow signage in legally nonconforming commercial properties.

Mr. Welch asked if this is a legal nonconforming rural district property. Mr. Schneider responded that prior to the revisions to the Sign Code, signage was not allowed on any residential piece of property. He stated it was recently amended to allow signage as long as the applicant conforms to the signage requirements in the Office Zone. Mr. Rogers added this part of the changes to the Sign Code was to try to allow for situations where in the Rural Zone there are a lot of commercial type activities.

Ms. Taylor asked City staff to clarify that this development is there because of prior Variances and is not a nonconforming use. Mr. Rogers stated the use that is currently there itself is an allowed use on this road. Ms. Taylor asked if this was an application for one sign or more signs. Mr. Rogers stated that based on his understanding the request was for one sign.

Vice Chair Gorman asked if there are setback requirements for the sign. Mr. Rogers replied the applicant would meet the 50 foot setback in the Rural Zone.

Jim Phippard, Brickstone Land Use Consultants, LLC spoke on behalf of The Prospect Woodward Home. He stated the application is for a Variance for a larger than normally permitted sign in this location. He stated the Board has already heard from staff up until this year that signs were not permitted in the Rural Zone. He noted they have been working on this project for several years and in the meantime the Sign Code was amended and a provision was added to allow for legal commercial uses in Residential Zones to have signage. Mr. Phippard stated in the

Office Zone a free standing sign up to 20 square feet is permitted. He said originally two signs were requested but at the last minute they changed the health center sign back to 20 square feet.

Mr. Phippard then displayed a picture of the sign they are proposing for the community center, which he noted is the largest building at Hillside Village. Mr. Phippard stated this is a five story building on Wyman Road that appears as two stories because it is cut into the slope. The back side of the building that is not visible from Wyman Road is a five story building. He indicated the location of Wyman Road and the community center building. The community center is 588 feet long and two stories high. Across the street is the health center building that is a four story building. Mr. Phippard stated they are proposing to place a sign for the community center or the main sign at Hillside Village adjacent to Wyman Road. He also stated that in the Office District, the sign setback is five feet from the right of way. Mr. Rogers noted that it would be his interpretation that it is the zone the applicant is asking for signage to be in, which is in the Rural Zone and not the Office Zone. Therefore, the applicant would have to meet the 50 feet setback. Mr. Phippard stated that it is apparent that he will be coming back to the Board for additional Variances for sign locations.

Mr. Phippard stated that the important thing to understand is they are proposing to place a sign in view of Wyman Road as people approach the property. Mr. Phippard stated the sign will be a two faced sign, six feet high and close to the ground. He said the sign panel itself is 4 X 7 feet 4 inches, which is the sign between the posts. The posts are stone covered to match the facade on the building to help blend in with the background.

Vice Chair Gorman stated that he was concerned the Board is looking at a Variance for a sign and noted that the location of the sign is unknown. He added the location will play a factor and that he would have a difficult time voting on this time without knowing where the sign will be placed. He suggested presenting everything at once. Mr. Phippard stated that he was caught off guard by this decision. Vice Chair Gorman stated he could not vote on the size of the sign unless he knew where it would be located.

Mr. Phippard stated that he understands and requested to table the hearing until the next hearing. He stated that he will file an additional application for a Variance and will review the application with Mr. Rogers. Mr. Rogers stated that he would appreciate the opportunity to meet with Mr. Phippard to have this clarified in order to have an appropriate application for the Board.

Vice Chair Gorman asked if continuing the application will impede in the progress of the project. Mr. Phippard replied continuance would delay the manufacturing of the signs.

Ms. Taylor stated she does not know if the other signs are all within the appropriate size limitations. She then suggested if there is a possibility for any of those signs to be a different size to try to handle all of this in one application. Mr. Phippard stated that all of the other signs comply with size at this time but may not comply with setbacks.

Vice Chair Gorman made a motion to continue ZBA 18-17 until the next Board meeting on November 5, 2018. Ms. Taylor seconded the motion, which carried unanimously.

**ZBA 18-19:/ Petitioner, Hope Chapel of 667 Main St., represented by Chad Branon of Fieldstone Land Consultants, PLLC of 206 Elm St., Milford, NH, requests an Enlargement of a Non-Conforming Use for property located at 667 Main St., Tax Map #120-055-000, owned by Keene Four Square Church, 667 Main St., Keene. The Petitioner requests an Enlargement of a Non-Conforming Use to expand the existing church with a building addition and associated site improvements.**

Chair Stout asked for the City staff report.

Mr. Schneider stated the location of the property is at 667 Main Street. He referred to a map indicating the top of page is heading back into town and the bottom of page heading into Swanzey. He stated Hope Chapel used to be the Hungry Lion and has been a place of worship for a number of years. He stated residential properties are located in the back of the property as well as all around the neighborhood. The property is located in the Low Density Zone and is a legal nonconforming use. Mr. Rogers stated the history of the property is that it has been multiple restaurants over the years. He stated back in 1998 they received a change of non-conforming use under ZBA 98-16, to convert from a restaurant to the institutional use as church under Harvest Christian Fellowship.

Chad Branon of Fieldstone Land Consultants, PLLC of 206 Emerald Street, Milford stated that he represents the landowner and applicant. He stated the property is situated at 667 Main Street and is currently occupied by Hope Chapel. They are proposing to construct a 7,045 square foot addition off the rear of the building.

Mr. Branon stated the site as it exists today is essentially developed. He explained there is an existing church parking lot along the entire front of the property and two curb cuts onto Main Street. The property is paved right up to an abutting house and the back parking lot is paved up to the proposed building site. He stated that parts of the project will make the site more conforming. It was noted the site does not meet the greenspace requirements. Mr. Branon reported they will be eliminating one curb cut along Main Street, address drainage improvements and incorporating some low impact drainage solutions. Mr. Branon stated they will be constructing some rain gardens along the front and removing pavement against the existing building areas. In addition, they will be removing pavement along the proposed building, the southern boundary of the existing parking and pavement along the northwest boundary. He noted there will be a lot of relative features that will bring the property into compliance under the current development standards.

Mr. Branon referred to the 1998 ZBA decision and noted that they must maintain the existing grass buffer at the rear of the property "as is". He noted they are not proposing to expand the improvements in that direction and are trying to consolidate the improvements to the existing impacted area. Mr. Branon state they are going to be required to do some tree clearing along the back edge of the parking lot to address drainage improvement. They are proposing to construct a storm water management area that will capture essentially all of the runoff from the existing parking lot. In addition, they are proposing a drainage swale that parallels the southern boundary of the parking area to captures all runoff and routing it into the basin.

Mr. Branon asked the Board if they had any questions based on the plan.

Mr. Greenwald asked what the use is of the proposed structure. Mr. Branon replied they would be relocating the existing sanctuary to this new building. In addition, there will be a multipurpose room for weddings or youth group functions. Mr. Branon noted that all functions will be associated with church functions. Mr. Greenwald asked if there was a potential for a school. Mr. Branon replied he was unaware of any plans for a school.

Vice Chair Gorman asked if the proposed space will be leased out for functions. Mr. Branon replied that he is not aware this is a use the applicants are seeking. He noted the primary use will be for a sanctuary. Mr. Branon explained the room they currently hold their services in is small and the seating is tight. The proposed addition will provide a much better seating plan along with an elevated platform for services and speakers. Vice Chair Gorman asked how the existing sanctuary will be used. Mr. Branon replied the applicants have discussed using this as a children's sanctuary. Vice Chair Gorman asked what the building will be constructed of primarily. Mr. Branon replied they are proposing a metal building.

Ms. Taylor asked if the surrounding properties are mostly single family residential properties. Mr. Branon replied the majority of the properties southwest and north is single family residential homes. He noted there are one or two commercial businesses on the other side of Main Street. Ms. Taylor asked Mr. Branon to identify the residential streets on the map. Mr. Branon identified Leawood Avenue, Linwood Avenue and Edgewood Avenue. Ms. Taylor asked if there is adequate parking for the proposed expansion. Mr. Branon replied because of the previous uses on the property there was an expansive parking lot along the back and to the north of the site. He said the site does meet all parking requirements and they have addressed the parking components. Mr. Branon noted they are also removing parking in areas that exist within 15 feet of property lines.

Ms. Taylor referred to the apartment building to the north of the property and asked if there only access was through the Church's property. Mr. Brannon replied this is not their only access.

Ms. Taylor then referred to a photograph in packet of a storage trailer and dumpster. She asked Mr. Branon to indicate the location of these on the map. Mr. Branon explained this picture was taken in the southerly direction along the back corner of the building. He stated this whole area is where the addition would be constructed. He said in bringing the project into conformance, the dumpster location they are proposing is on the southern boundary and would be a fully enclosed dumpster.

Mr. Greenwald stated the reason why he asked if the use would be a school is that this facility normally just operates on Sunday's. Mr. Branon replied that most often churches offer services a couple times a week. Mr. Greenwald asked if this is what this church offers. Mr. Branon replied that he was unable to answer because he would not want to restrict this from being an option. Mr. Greenwald stated the reason he was asking if it was a school because there are buses, drop offs and other things of this nature. Mr. Branon noted that nothing of this nature has been presented to him.

Vice Chair Gorman asked City staff in the event they did want to use this addition for purpose of a school what zoning limitation would be in effect. Mr. Rogers replied the school would fall as an instructional use. However, he stated that it could also fall under a change of a non-conforming use even though it is in the same category going from a church to a school. In addition, he stated that it might be considered a change a nonconforming of use and be required to revisit Board at that time.

Mr. Welsh asked looking at Criteria #3 there is a mention of some assurance the enlargement and/or expansion does not violate any of the basic zone dimensional requirements set forth in the Zoning Ordinance. He stated that he presumes this is in regards to setbacks and building dimensions. He asked Mr. Branon to talk about dimensional required setbacks and how they may be impacted, if at all by the proposal. Mr. Branon replied the best way to address this is to explain what has brought before them here today. He stated they took part in a review meeting with City staff, went through the proposal and then submitted a formal site plan submission to the Community Development Office. City staff then reviewed the application in its entirety and they felt the only item they would need relief from is the expansion of a nonconforming use. He stated he believes they meet all of the dimensional criteria and the other 19 development standards that are reviewed. In addition, he stated the proposed addition does meet all setback requirements. As a part of the design process they have redesigned the site to address pedestrian traffic and vehicular circulation. Based on this design they believe they can improve vehicular and pedestrian traffic along Main Street as well as inside the site. Mr. Branon explained the improvements will be made by defining travel paths more clearly, providing landscaped areas in appropriate locations, adding walkways and adding handicap access in appropriate locations.

Mr. Brannon reviewed the criteria.

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

Mr. Branon stated approval of the proposed expansion of the existing church would have no negative impacts on the value of any property within the district nor would it be injurious, obnoxious or offensive to the neighborhood. This proposal would result in no changes to the neighborhood as the use already exists on-site. He stated they would be maintaining the vegetative buffer to the abutting property owners but do have to accommodate some storm water. He explained this was the reason for the tree cutting in that one area. Mr. Branon stated they believe they have put a design together that balances the criteria and is sensitive to neighboring properties.

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

Mr. Branon stated this proposal would not cause any nuisance or serious hazard to vehicles or pedestrians. The site improvements proposed will reduce the amount of existing impervious cover on-site therefore reducing the number of parking spaces and potential traffic over what presently exists. He stated the project also proposes to reduce the width of the existing curb cut to allow for better traffic flow and safety entering and exiting the site. The project also incorporates on-site pedestrian and vehicular traffic circulation improvements. Based on this

evaluation this project should have no adverse impacts on the traffic characteristics of the surrounding roadway network.

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

Mr. Branon stated the appropriate facilities for this project will be provided for the proper operation of the proposed use. The site is serviced by municipal sewer and water, propane gas and overhead utilities. He stated this project will require Planning Board review and approval and all necessary improvements to the property will be incorporated into the final design plans.

The site will maintain all existing utility connections.

With no further comment from Mr. Branon, Chair Stout welcomed public comment. He asked for those in favor of the application to come forward.

Dawn Yocum 108 Greenwood Avenue, Keene stated that her property abuts Hope Chapel. She stated that she is not sure where the petitioner is seeking to build an addition. She asked Mr. Branon to indicate on his map the grassy area that touches her property. She asked if these are trees they are considering cutting. Mr. Brannon indicated the existing tree line that surrounds the grassy area and explained the improvements are east of that area. He said they are imposing some tree cutting on the western edge primarily for storm water. Ms. Yocum asked where her house is in reference to this proposal. She reiterated that she does not understand the location of the addition and that she has vested interest. She stated that she is not against the application but wanted to be informed. Chair Stout explained the Board cannot conduct a meeting with personal interchanges of this nature and apologized. He asked if there was anything the Board could help answer. She replied that her question would refer to Criteria #1.

Mr. Branon noted that he would be happy to measure out the distance out to property after the hearing.

John Dunnell 30 and 34 Lynwood Avenue, Keene commented on the fact that there does not appear to be any representation of the proposed building. He noted it is important as far as any impact to neighbors from this proposal. Chair Stout explained to Mr. Branon that this application will also go before the Planning Board and the Planning Board will likely be the better venue for that specific question. Mr. Dunnell stated the size and scope of the project would have impact on the neighbors. Ms. Taylor added the size of the building directly bears on what is appropriate of a nonconforming use. Vice Chair Gorman stated in summary the Board will address impact in regards to size but will not address aesthetic impact. He noted that is for the Planning Board to consider. Vice Chair Gorman stated the Board will look at impact based on size and scope of project.

Mr. Dunnell asked about the lighting for this project since he is an abutting neighbor. Chair Stout noted that lighting is one of the 19 standards before the Planning Board.

Mr. Dunnell then stated that in reviewing the petitioner's website and earlier discussion at this meeting, Hope Chapel talks about the addition of a gymnasium for the youth group. He stated that in his mind when there is currently no gymnasium it would be considered a change of use for that structure.

Mr. Dunnell noted the nuisances associated with any public construction with a nonconforming use in a Low Density Zone. He said in the Low Density Zone people usually do not have to deal with dumpsters being picked up, car noises and door lock beepers. He noted these are all considered to be nuisance items. In addition, he stated that more and more people assembled in a particular area and children playing in the buffer zone are also nuisance items.

Mr. Dunnell reported that Hope Chapel's website mentioned Christian bands would be coming to the church. He noted this was a noise consideration.

Mr. Dunnell then asked if he could approach the map displayed by Mr. Branon. With no objection, Mr. Dunnell stated the northwest corner of their proposal indicates they would be adding parking spaces highlighted in the gray area. Mr. Dunnell stated in that whole area there is a living hedge that was put in 1971 to protect properties from visual sounds. He noted they are proposing cutting this and this would be cutting existing living hedge. He noted this hedge was attached to their deed and is a document that has some substance.

Mr. Dunnell then proceeded to read Chapter 2 from the Board Handbook and read RSA 674:19 as follows, *"Does the challenged activity have a substantially different impact on the may not render the property proportionally less adequate. Because nonconforming uses violate the spirit of zoning laws, any enlargement or extension must be carefully limited to promote the purpose of reducing them to conformity as quickly as possible"*.

Mr. Dunnell continued quoting a case from NH Supreme Court as follows, *"The ultimate purpose of zoning regulations contemplates that nonconforming uses should be reduced to conformity as completely and rapidly as possible."* New London Land Use Assoc. v. New London Zoning Board.

Mr. Dunnell explained that does not in itself lend to a situation as such where there is a 7,000 square foot existing building, with a proposal to add on a 7,000 square foot building behind it.

Lila Sinclair 24 Lynwood Avenue, Keene stated her property was located next to the Dunnell properties. Speaking to Criteria #1; she was concerned about the uses of the property. She stated that Hope Chapel has frequently used the parking lot to let homeless stay in RV's and trucks with animals and ducks. She noted they use the corner of their property that abuts her property. Chair Stout asked Ms. Sinclair to indicate the location of her property on the map. She approached the map and indicated the location of her property as well as the Dunnell's properties.

She noted the representations on the map are not to scale.

Ms. Sinclair stated in one corner of the property there was a whole summer where a homeless person stayed with his ducks in the church's parking lot. She reported this person was eventually plugging his coffee pot into her home and leaving his coffee pot in her yard. Ms. Sinclair asked what could potentially happen if Hope Chapel is permitted to double in size. She stated losing some of the privacy shield as well as the expansion of their building is a concern. Ms. Sinclair also reported that Hope Chapel let a trucker stay in the parking lot and the noise and lighting of the truck was a nuisance. In addition, she stated the applicant also allowed someone to sell vegetables in the front of building. Ms. Sinclair questions how they are actually going to use this extra space.

Ms. Sinclair stated that Hope Chapel could have been neighborly and sent a packet to the abutting neighbors explaining their intentions. She added that taking out privacy buffers and adding a metal building that is not aesthetically appealing is not neighborly. Another concern Ms. Sinclair emphasized is what will happen to her property value if the application is approved. She noted that Mr. Branon's map is not true to scale because of how tightly all of the homes are located in that neighborhood. She explained that most of the yards in that neighborhood are very small and most people sit in their front yards. Ms. Sinclair also wanted to note to the Board that just this past weekend in the field, there was an RV parked on the property for some sort of revival activity.

Ms. Sinclair concluded that the applicant has not been transparent about their activities as well as their own representation of the property.

James Frederickson, 675 Main Street, Keene stated that his property abuts the petitioner's property on the south side. He asked for the height of the proposed addition. Chair Stout replied that will be discussed.

Jane Frederickson, 675 Main Street, Keene stated that she was not here to necessarily oppose the building plan but was seeking clarity. She said they need to be sure that the buffer of trees and bushes will still be there when the project is done. Ms. Frederickson asked how they would get that reassurance. Chair Stout responded the Board will address this question. In addition, she said it seems to her that building this large structure and doubling the size makes the property more less conforming to the Low Density Zone.

John Dunnell, 30 Lynwood Avenue, Keene stated he is a contractor and that the impact of the project is substantial to the neighbors. He indicated the location of his property on Mr. Branon's map and noted the map is not to scale. Mr. Dunnell stated that the map does not show where the houses are truly located. He noted the three homes that directly abut the property will be demolished with runoff and also be hit with huge snow storage. Mr. Dunnell stated these homes were built before setbacks were put into place and homes are really less than 10 feet from the property line. He said the massive amount of water will change the yards of these homes. Chair Stout stated that if this application gets through, the Planning Board may have one stipulation that there is no extra water allowed. Mr. Dunnell stated the proposal is absurd and is a major concern.



He noted improvements to the parking lot are great. He said if this was a much smaller addition people would agree with the proposal. Mr. Dunnell concluded that he likes building improvements but for a nonconforming use this is a ridiculous structure for a conforming use.

Ron Hitchings 14 Leewood Avenue, Keene stated that he was also an abutting neighbor. He emphasized the massiveness of the water flow that is in his yard. Currently, all the water in the back parking lot comes over the line and across his lawn. Then the water goes back into the culvert on the back part of his land and runs into Ms. Sinclair's back yard as a pond. He reiterated there is a huge runoff concern.

With no further comment, Chair Stout acknowledged Mr. Branon.

Mr. Branon stated the plan he presented is absolutely to scale. He noted the homes in some areas are certainly close in others areas and are not located within the required distance to locate to meet submission requirements. He asked the Board if he could be afforded the time to respond to the abutter concerns. With no objection, Mr. Branon continued.

Mr. Branon stated they are reducing the impervious cover onsite. He explained with no drainage improvements there would be an improvement to storm water runoff. They are reducing the existing coverage on this site. Mr. Branon stated they are proposing infiltration and rain gardens along the front of property. In addition, they are proposing a swale on the southern part of the property. This will capture runoff from the rear pavement runoff and bring it to the storm water management area. Mr. Branon stated the roof runoff from the structure will be routed to the storm water management system. In addition, they are replacing the leaching basins in the parking lot. Mr. Branon stated that not only is there a reduction in impervious cover as well as a reduction in runoff, there will be even more reduction in runoff because they are implementing storm water practices to meet current City standards. He said the issue is that some of these storm water improvements do require cutting some form of the vegetation.

Vice Chair Gorman asked if some of the parking spots could be surrendered in lieu of the buffer being an issue. He stated that it seems they could excavate some of the parking area and hold storm water in that area. Mr. Branon replied they are proposing that in areas. He explained they are meeting the City parking requirements and do not have extra spaces available.

Mr. Branon stated as related to storm water this project will most certainly address those concerns. He noted as it relates to buffering they meet all of the dimensional setback requirements and are increasing the buffering because they are removing pavement that exists on the southern boundary. Chair Stout stated in reference to removing the pavement he asked what will be in place. Mr. Branon replied loam and seed at this time.

Mr. Branon said they are not proposing any tree cutting to the closest neighbors. He indicated that the first property on the corner is 140 feet from back from the edge of parking lot. Mr. Branon said size of the building proposed is a function of a growing church. He referred to the concern raised about a gymnasium and the proposed basketball hoop. Mr. Branon

emphasized this concept is not uncommon for these type of facilities. He stated the idea is to keep the children active and bring them into the church.

Mr. Branon said the lighting plan would be submitted to the Planning Board and that there would be no light pollution.

Mr. Branon stated this was an existing parking lot and that they are working within the existing footprint of the parking lot. He referred to the map and noted the hatched area on the map is proposed pavement. Mr. Branon explained the reason for the pavement is to make this area function in order to maintain the parking. Chair Stout asked if the hedge would need to be removed. Mr. Branon replied there is a partial hedge they are proposing to remove. He stated the Church could work on placing some form of hedge on the back side of the parking spaces.

Mr. Branon said he does not want to lose sight they are proposing to repurpose and construct a building inside an existing parking area. He noted this addition is standard size for a sanctuary hall because the idea is to fan the seats around the stage. He noted the idea is to increase the numbers in the church.

Chair Stout asked for the height of the proposed addition. Mr. Branon replied 33 feet to the peak and that it is a single story building.

Vice Chair Gorman asked if this is an allowable height in that zone. Mr. Branon replied in the affirmative.

Ms. Taylor asked what the height is of the existing building. Mr. Branon responded 20 feet approximately.

Chair Stout welcomed new questions or comments from the public.

John Dunnell, 30 Lynwood Avenue, Keene stated the buffer zone sounds immature and was put in 1971. He said this was a 20 foot tall tree structure and is the length of the parking lot. Mr. Dunnell stated that he wanted it to be known this buffer would be gone and was something that could not be put back. Mr. Dunnell noted that the buffer consisted of honey suckle bushes.

John Holbrook, 11 Leawood, Keene stated that he lives directly behind the proposed building. Mr. Holbrook stated that Mr. Branon keeps referring to the tree line. Mr. Holbrook stated that this tree line is sort of a joke because they are sumac trees. He noted that all these trees do is intertwine and kill everything and he needed to take these trees out. Currently, Mr. Holbrook has a great big hole in that area of his property. Mr. Holbrook stated now there is a proposal to put up a 33 foot structure that will be in his line of sight. He stated he would appreciate putting trees in this area as a buffer.

Gerri Frederickson 675 Main Street, Keene stated they are only people that have a tree line and their tree line goes across the existing building. She said that Mr. Branon says they do not plan cutting down trees but she understand there are trees in this area on her property. Ms. Frederick

stated that she would like to know if Hope Chapel thinks they own that buffer. Vice Chair Gorman added that Mr. Branon stated there would be no tree cutting on her side of the property.

Chair Stout invited Mr. Branon back to address Ms. Frederickson's question.

Mr. Branon reiterated they are not proposing cutting trees any trees in the location of Ms. Frederickson's property. He stated he implied they are removing pavement behind the building and reestablishing vegetation. He said there will be no trees clearing in the southern edge and are working with impacted area.

Vice Chair Gorman asked if it was accurate the rear tree buffer that would be removed, distance being 100 feet, is a wide open field. Mr. Brannon replied in the affirmative. He added they will work with the closest abutter if there was some hedging they felt would be a good fit.

With no further comment, Chair Stout closed the public hearing. The Board began deliberations.

Ms. Taylor stated she has some concern because the three criteria do not reflect the required criteria, which is more established by case law verses statutes. She referenced *New London Land Use Assn. v. New London ZBA, 130 N.H. 510 (1988)* it was the challenge activity has a substantially different impact on the neighborhood. She stated what concerns her are the criteria of whether it is an enlargement or expansion of a nonconforming use. Ms. Taylor read as follows, "*However, enlargement or expansion may not be substantial and may not render premises or property proportionally less adequate the case law may not be substantial less adequate*".

Chair Stout stated the Board was looking at endearment of nonconforming uses as listed in Section 102-210 of the Zoning Code. Chair Stout read as follows "A *nonconforming use may be expanded and enlarged, provided such enlargement and expansion does not violate any of the basic zone dimensional requirements set forth in this chapter. Such expansion must receive permission from the zoning board of adjustment, which must find that the expansion will meet the following conditions:*

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

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

*(3) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.*

Chair Stout stated those are the criteria stated. Ms. Taylor stated that was correct but City Code is still subservient to state statutes in case law. She stated her point is to consider the standard the state has set and is something to keep in the back of the Board's mind. Chair Stout asked if Ms. Taylor if she would care to rephrase the criteria in terms of criteria the Board could take. Vice Chair Gorman stated the word "substantial" is relative and does not know if there is a finite

definition that could incorporate this to the discussion. Vice Chair Gorman suggested the Board go through criteria and see where that leads. The Board agreed.

The Board reviewed the criteria.

1. *Such approval would not reduce the value of any property within the district not otherwise be injurious, obnoxious or offensive to the neighborhood.*

Mr. Greenwald stated as a real estate agent, the things that he saw during the presentation are not selling features. He noted the sketch of the proposed building. Mr. Greenwald stated it will devalue the abutting properties. In addition, he stated that he would not go as far to say that it is obnoxious but that it was certainly breathtaking to see the magnitude of the substantial increase in size. He stated that it will have a negative effect to surrounding properties.

Vice Chair Gorman stated that it is important the Board does not lose sight with some of things the Board is charged with addressing. He stated some of things are not in the purview of the Board such as runoff, aesthetic and building height. Vice Chair Gorman noted these are to be addressed by the Planning Board or City Code. Though he did stated there are concerns on the removing of buffers, doubling of size on the proposed nonconforming use, and the question of what the use will be and the distribution to the neighbors would almost definitely weigh on the property values.

Mr. Welsh stated the idea that it would have no impact on the property value to the district is hard to imagine. He stated “substantial” being a case law citation term does occur in the doubling of size the elevations. Mr. Welsh stated this is a tough case to make that the expansion will satisfy these criteria. He stated that he is not sure that case has been made.

Ms. Taylor stated that she largely in agreement of what has been said. She stated that from what she has seen during this presentation is the virtual doubling of the size and the ability to use this non-conforming use does qualify as substantial. She said the types of activities are not necessarily bad activities but they will result in a much enlarged and expanded use. Ms. Taylor stated that she thinks this will have a negative impact on the neighborhood. She noted not just value but also levels of nuisance and enjoyment of properties. Ms. Taylor stated that she find this as very problematic.

Chair Stout stated the Board has heard a lot of comments on both sides and that the Board has tried hard to afford everyone the time to express their opinion. He stated he hopes that is how everyone feels.

Mr. Greenwald referred to Mr. Dunnell’s comments about expanding a nonconforming use and what should happen is to move toward conforming as rapidly as possible, if possible. Mr. Greenwald noted this proposal is the complete opposite.

Chair Stout stated there are aspects that are more conforming aesthetically. He stated there is a major improvement to the aesthetics as to what exists today. He noted not so much that it would overrule the negative connotations.

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

Vice Chair Gorman stated that does not believe this will be impacted to any degree. He said they are creating a better curb set situation. He noted Route 12 is a heavily traveled street and does not think in this particular question there is impact in terms of causing hazard.

Ms. Taylor stated there was no information presented in that point is what happens to improvement to city sidewalks that exists along Route 12. She stated that she would agree this does not factor in overall.

Mr. Welsh stated that he sees a bit of improvement and a more logical way of parking. He stated the flow will be improved with more logical parking spaces.

Mr. Greenwald does not know what will be done with the multipurpose building. He stated when he asked earlier if this could be a school, he noted that schools have commutes. Mr. Greenwald explained that having a school would add more vehicles which in return would mean there would be more vehicles entering and exiting. He stated that by adding a school, wedding receptions or other functions he cannot see this being better and feels this has the potential to be more dangerous.

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

Vice Chair Gorman state this property has City water utility connections that will be mandated by City Code and does not see any issues.

Ms. Taylor stated she is not sure other than basic utilities the Board has adequate information to determine what other services may be required. She noted this is because the Board does not have all of the details of the different uses, especially if they permit campers onsite.

Chair Stout stated what the Board has heard tonight is that the Church allows certain activities that may be all noble and well-conceived but also may affect the neighborhood in adversarial ways. He stated that he does not think the Board should suggest the applicant did not bring adequate information.

Vice Chair Gorman stated that in reference to criteria #3 there are adequate facilities present currently as are the roads but the fact that the church has broken Zoning Code by allowing people to take up camp on their property is not what the Board needs to concentrate on. The property does have adequate facilities.

With no further comment, Chair Stout asked for a motion.

Ms. Taylor made a motion to approve ZBA 18-19 an enlargement of a nonconforming use to include there are maintained vegetative buffers between this property and all surrounding residential properties. Chair Stout seconded the motion.

Ms. Taylor explained the reason she suggested to add vegetate buffers to the motion is that even though there are vegetative buffers that do exist, it sounds some contemplative some may be removed or lessened more appropriate because these are such dissimilar uses if some protection is afforded to the surrounding residential properties.

The Board reviewed the Findings of Fact.

1. *Such approval would not reduce the value of any property within the district, no otherwise be injurious, obnoxious or offensive to the neighborhood.* 5-0
2. *There will be no nuisance or serious hazard to vehicles or pedestrians.* 3-2, Vice Chair Gorman and Mr. Welch voted in the affirmative.
3. *Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.* 4-1 Ms. Taylor voted in opposition

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 18-19.

Vice Chair Gorman made a motion to deny ZBA 18-19. The motion was seconded by Mr. Greenwald.

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 18-19.

## **V. New Business:**

Mr. Rogers stated the Board has expressed an interest in taking a look at what is included in the Board's packets. He thought this would be an opportunity to gather feedback from the Board. Mr. Rogers stated they are taking a look at the GIS mapping services and what layers could be added to help better illustrate the maps.

Chair Stout stated that his understanding is that the type of information brought forward from the City could have implications and demonstrate favoritism. Mr. Rogers stated that he is hesitant for City staff to do a lot of research on certain areas. He stated that he feels the burden falls to applicant. Chair Stout referred to the standard of the Planning Board on to vote whether or not the application is complete. Mr. Rogers stated that he will confirm with City Attorney and report back to the Board.

Chair Stout urged the Board to read through applications right away in case of a conflict of interest. He explained it would help City staff find an alternate in a prompt manner.

Ms. Taylor stated that it would helpful to have prior information about Board activity for a property such as a prior Variance. Mr. Rogers stated that he will confirm with the City Attorney if this is possible and report back to the Board. Ms. Taylor stated that she appreciates having relative correspondence available on an application.

Ms. Taylor stated that she would like to see the abutters list in order to help identify potential conflicts. Mr. Rogers stated abutter lists would now be included in the packet.

Mr. Welch asked if the entire packet is available online for abutters to access. Mr. Rogers's replied the packets are a part of the agenda and available online. Mr. Welch asked if the abutter notice is clear so that if abutters have questions they are able to access the packet online. He suggested language be added to the notices to inform abutters where additional information can be found. Mr. Rogers replied the notice of hearing includes the date and time of the meeting, petition and the Variance that is being requested.

Mr. Rogers stated this suggestion is a great idea and that language will be added to the abutter notices.

Vice Chair Gorman stated that he was happy with packets and commended the work of City staff.

## **VII. Adjournment**

Hearing no further business, Chair Stout adjourned the meeting at 9:17 PM.

Respectfully submitted by,  
Jennifer Clark, Minute Taker

**City of Keene  
New Hampshire**

**ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES**

**Monday, November 5, 2018**

**6:30 PM**

**Council Chambers**

**Members Present:**

Nathaniel Stout, Chair  
Joshua Gorman, Vice Chair  
Michael Welsh  
Jane Taylor  
Joshua Greenwald

**Staff Present:**

Gary Schneider, Plans Examiner  
John Rogers, Zoning Administrator

**Members Not Present:**

Louise Zerba, Alternate

**I. Introduction of Board Members**

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

**II. Minutes of the Previous Meeting-September 4, 2018 & October 1, 2018**

Ms. Taylor noted the following corrections to the minutes of September 4, 2018:

Page 9, third sentence, the word “plan” changed to “plain”.

Page 9, first paragraph, first sentence, the word “if” be changed to “whether”.

Page 11, last paragraph, second line, the word “imply” should be change to “apply”.

Page 12, bottom of page, “copies of the previous minutes” corrected to “copies of the prior applications and approvals”. Chair Stout asked for the recording of the meeting to be reviewed in order to confirm.

Mr. Welsh noted the following corrections:

Page 15, third paragraph, the word “less nonconforming” corrected to “less conforming”. Chair Stout asked for the recording to be reviewed.

Page 18, first paragraph, the words “a front” corrected to “an affront”.



Mr. Welsh made a motion to accept the minutes of September 4, 2018 as amended. The motion was seconded by Vice Chair Gorman, which carried unanimously.

The Board then moved to make a motion for the October 1, 2018 minutes.

Mr. Welsh made a motion to accept the minutes from October 1, 2018. The motion was seconded by Vice Chair Gorman, which carried unanimously.

Ms. Taylor noted the following corrections:

Page 36, the second to last paragraph, the words “on what is appropriate of a nonconforming use” corrected to “on what is appropriate for an expansion of a nonconforming use”.

Page 38, second paragraph, the word “appeasing” should be changed to “appealing”.

Page 39, last line, she stated that she was not sure if she stated basketball hoop or basketball court. She requested the audio be reviewed.

Page 41, fifth paragraph, “However, enlargement or expansion may not be substantial and may not render premises or property proportionally less adequate the case law may not be substantial less adequate”. She requested the audio be reviewed.

Page 41, sixth paragraph, the word “endearment” corrected to “enlargement”.

Page 44, second paragraph, she requested audio be reviewed to correct this paragraph.

Ms. Taylor referred to the Findings of Fact. She requested clarification on the order votes. She stated that historically affirmative votes are first and negative votes second. Chair Stout asked for review of the motion and voting. He noted the motion should read “On a vote of 0-5 the Zoning Board of Adjustment voted against the motion to approve ZBA 18-19.

Mr. Welsh made a motion withdraw his motion to accept the minutes from October 1, 2018. The motion was seconded by Vice Chair Gorman, which carried unanimously.

The amended minutes of October 1, 2018 will be voted on at the next ZBA meeting that will be held on December 3, 2018.

### **III. Hearings**

Chair Stout announced that the two requests for a rehearing will be heard first.

Chair Stout read the action by the Board for the rehearing. *“The Board shall either grant or deny the motion for rehearing or suspend the order or decision complained of pending further consideration within 30 days of the filing of the motion for rehearing. The Board need not state any reasons for its decision and it need not hold a public hearing on the motion for rehearing. The decision of the Board however, must be entered upon the records of the Board and shall be communicated to the person requesting the rehearing as well as the petitioner and applicant. No testimony or additional evidence other than that contained in the motion for rehearing shall be allowed to be introduced for the Board’s consideration.”*

Chair Stout stated the first motion for rehearing is on behalf of Hope Chapel. He stated that Hope Chapel is appealing a decision of a 5-0 vote of the Board to deny a motion of an expansion of a nonconforming use on October 1, 2018.

Chair Stout asked for comment from the Board relative to the rehearing for this matter. Vice Chair Gorman stated that at this point he has a conflict with the legal counsel that is representing Hope Chapel. He stated that he will need to recuse himself from the rehearing.

Ms. Taylor stated that having read the motion to rehear, she did not see anything that was factually brought into question or proposed any new information. She stated that her inclination is to deny the request.

Mr. Welsh stated the motion caused him to re-read the minutes and to then read the items and motion more closely. He noted that some items were more compelling than others but generally speaking he is inclined in a negative direction on the rehearing.

Mr. Greenwald stated that his vote would remain the same. He noted that he re-read the minutes for this hearing and that it made him reconsider certain aspects. However, his main opinion still remains in the negative.

Chair Stout stated that he was also disinclined to change his vote.

With no further comment, Chair Stout asked for a motion.

Mr. Welsh made a motion to approve the motion for rehearing for ZBA 18-19. The motion was seconded by Mr. Greenwald, which carried unanimously.

Mr. Welsh then made a motion to deny the motion for rehearing for ZBA 18-19. The motion was seconded by Mr. Greenwald, which carried unanimously.

Vice Chair Gorman returned to the hearing.

The next motion for a rehearing is on behalf of Hundred Nights. Chair Stout stated that Hundred Nights is appealing the Board's decision to deny application, ZBA18-18, to change the definition of the Variance that was requested. Mr. Rogers explained the motion was an Appeal of an Administrative Decision on the determination that Hundred Nights was a lodging house.

Ms. Taylor stated that she would be inclined not to grant the motion for rehearing on the basis that there were no factual or legal issues or there was new information in the request for a rehearing. Vice Chair Gorman stated this situation of overturning the general opinion of a city official with no enforcement action and no property existing is loaded with ambiguity. He stated that he did not see any cause to approve the request for a rehearing. In addition, he stated that he did not see anything that was written in the request for a rehearing that is compelling.

Mr. Welsh stated that in his thinking this is differentiating between a decision on the merits of the administrative appeal as opposed to a decision on the appropriateness of the request. He stated the argument is that there is not an active case attached to this and therefore it is not something that would be, other than an advisory opinion. Mr. Welsh stated on balance he did not see cause for opening the rehearing.

Mr. Greenwald added that he was not a part of the original decision of the Board due to his recusal. He stated that with there being no property attached, his inclination is that the Board is here to discuss uses of the property. Mr. Greenwald noted that there was no property to discuss therefore; he stated that he will deny the motion for a rehearing. Chair Stout stated that he would concur with the Board.

Vice Chair Gorman made a motion to approve the motion to rehear ZBA 18-18. The motion was seconded by Mr. Greenwald, which carried unanimously.

Vice Chair Gorman made a motion to deny the motion to rehear ZBA 18-18. The motion was seconded by Mr. Greenwald, which carried unanimously.

**Continued ZBA 18-17:/ Petitioner, The Prospect Woodward Home of 194-202 Court St., requests a Variance for property located at 95 Wyman Rd., Tax Map #221-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit a free standing sign 29.32 square feet in an area where 20.00 square feet is the maximum area allowed per Section 102-1310.2B.**

Mr. Rogers explained this application was continued from the last Board meeting in order for staff and the applicant to review the setback issues with the sign. He stated that what the applicant is proposing is for a sign size Variance and not a setback Variance. Mr. Rogers stated the way the applicant proposes this request is appropriate in the Rural District and is part of the new sign code.

Chair Stout recognized Jim Phippard, Brickstone Land Use Consultants, LLC, of 185 Winchester Street, Keene. Mr. Phippard stated that he was representing The Prospect Woodward Home.

Mr. Phippard stated that he and City staff were wrong about the setback. He noted that the setback is 10 feet. He stated that the request before the Board is for a Variance to allow a slightly larger sign than what the current code allows. The Prospect Woodward Home started this project a couple years ago and signs were not permitted in the Rural District. Mr. Phippard noted that the sign code ordinance was recently amended to allow signage on commercial properties in the Residential District. He noted that the sign requirements would have to comply with the sign requirements in the Office District.

Mr. Phippard explained that this is a unique project and that there is nothing like this in the City of Keene. He noted that this is the largest building that exists in the Rural District in the City. Mr. Phippard stated the sign mimics the shape of Mt. Monadnock and the green on the sign reflects the forestry on the site. Mr. Phippard noted that they looked at other signs at comparable

properties. In addition, he noted that the sign design was not proposed lightly and the designers were very serious in their attempts to design the proper sign. The sign proposed is six feet high and the sign panel itself is 4' X 7' 4".

The building that the sign will go in front of is the Community Building. This building is 588 feet long and appears as a two story building with a steep pitched roof when looking at the building from Wyman Road. He then displayed an overall plan of the site. The long building with the wings is the independent living facility and is also the Community Building. He noted this building has all of the activity areas in the center such as an auditorium, a theatre, café, indoor pool, a gymnasium and over 100 residential units.

The vast majority of traffic going to and from the facility would be using the part of Wyman Road that is heading south toward Route 12. He noted that delivery and support services that serve this building are required to travel this leg of Wyman Road. Deliveries and support services are prohibited from entering through Old Walpole Road.

Mr. Phippard noted that signage is very important. For that reason they are proposing several signs for this property. He stated the idea is that as someone approaches the building informational signs are encountered. Mr. Phippard noted that informational signs do not require a permit but are limited in size to no more than four square feet. He stated the informational signs would be 2' X 2'. The sign company they are using calls them wayfinding signs. He explained these signs will help inform delivery people where to go for deliveries.

Mr. Phippard then displayed an image of the proposed sign that is on the application before the Board. He stated that this is the main sign for the main building on the property. Most visitors coming to the property will come looking for this entry. He stated the need for this sign is to clearly identify the property. The functions for signage is not to just state the name of the property but are also used to guide members of the public. Mr. Phippard noted that signs are also needed to provide an important safety service.

Mr. Phippard stated they settled on this sign that is just over 29 square feet. The columns on the sign are steel posts that are coated with a cultured stone to match the appearance on the front of the main building. Mr. Phippard stated that they felt that the size of this sign should be larger than the size of the sign for the Health Center. He noted this would signal to people that this is the main sign and would help guide people to the main location.

Mr. Phippard reviewed the criteria for a Variance.

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

Mr. Phippard stated it is in the public interest to allow clear, well designed signage to identify an institutional use. In addition, he stated the sign will also provide for the best safety situation and clearly lead people to their destination.

Mr. Phippard stated that it is in the public interest to allow a larger sign on a property when there is no threat to public health, safety or welfare. He added that it is not an oversized sign and is

located 10 feet back from the right of way. Mr. Phippard described the sign as aluminum with external lights on both sides.

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

Mr. Phippard stated that the spirit of the ordinance regarding signs is "*the effective use of signage to direct movement, to advertise, and to inform the public while protecting the safety and general welfare of the public, preserving neighborhood character, and minimizing visual clutter.*" He stated in their case they are trying to provide maximized safety by giving the sign clear identification. Mr. Phippard noted the larger sign on the main building does fit with the design of the building.

*Granting the variance would do substantial justice because:*

Mr. Phippard stated that Hillside Village falls under the Institutional Use according to the definition in the Zoning Ordinance. He explained that when the Institutional Use category was created, signs for institutional uses were not addressed. In this case, Hillside Village is considered a legal, nonconforming commercial property and is required to meet the sign dimensional requirements for the Office District. He stated that buildings and lots in the Office District are very small and the sign dimensional restrictions reflect that. On a large 50-acre site with four and five story buildings, a 20 square foot freestanding sign is too small and out of proportion. He stated there would be no benefit to the public to deny the Variance request. In this case, granting the Variance to allow a sign which is sized to be in balance with the site would do substantial justice.

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

Mr. Phippard stated the proposed signs are located at the main entries to the Community Building and the Health Center. They are not visible from any adjacent properties. The proposed signs are attractive and in balance with the existing buildings at the site. He stated that granting the Variance will not diminish the values of surrounding properties.

#### *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 stated that this 50-acre property is unique and contains three large four and five story buildings. He noted that this makes it unique in the Rural District. Mr. Phippard stated that this also creates a special condition for this property and distinguishes it from all other properties in this area.

He stated the Ordinance requires that signs for this use meet the size requirements for signs in the Office District. The existing lots and buildings in the Office District are very small, so it makes sense to require smaller signs which are in scale with the area. He stated that it is not fair or reasonable to limit freestanding signs to no more than 20 square feet when they will be placed in front of such large buildings. He noted the signs will look too small and out of balance. In addition, they will detract from the overall appearance of this area.

Mr. Phippard stated that if the Variance is granted there will be no threat to public health, safety or welfare. Denial of the Variance would not benefit the public and would result in an unnecessary hardship to the landowner.

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

The proposed signage has been designed to complement the building architecture at Hillside Village while clearly identifying the site. It is in balance with the scale of the buildings at this site. The signs will not be visible from the adjacent properties. The proposed use is reasonable as it will not pose a threat to public health, safety or welfare.

Chair Stout welcomed comment from the Board.

Ms. Taylor asked if the Health Center across the street is a part of the overall complex. Mr. Phippard responded in the affirmative. She asked if the Health Center will need its own sign. Mr. Phippard responded again in the affirmative. He then indicated the location of this sign will be directly across from the main sign. In addition, the sign will comply with the setbacks and the size limitation.

Chair Stout asked if the signs as a whole take on a similar appearance. Mr. Phippard replied that all of the signs have similar logos and colors. He noted that the signs will have different messages.

With no further questions, Chair Stout welcomed public comment. 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 because:*

Mr. Welsh stated that he thinks the applicant has made the case well and this would not be contrary to public interest. Chair Stout concurred with Mr. Welsh, stating that the scale of the sign is appropriate given its place in the project.

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

Vice Chair Gorman stated the ordinance is in place to mitigate overly large signs under the needy situation. He stated this is a half a million square foot development that required several

Variances in order to grant construction. Vice Chair Gorman noted that it would be fairly ironic to grant the construction and then to not allow sign. He stated the proposal is within the spirit of the ordinance due to the size and scope of project.

*Granting the variance would do substantial justice because:*

Chair Stout stated that he sees the sign as utilitarian in the sense that it is necessary in the development of the project. He noted that it certainly fits substantial justice. Ms. Taylor stated that as far as substantial justice people need to know where they are going in order to prevent hazardous driving.

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

Vice Chair Gorman stated that he is not sure there are many surrounding properties due to the size of the project.

*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:*

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

Chair Stout stated the Board had already covered the necessity for good signage.

With no further comment, Chair Stout asked for a motion.

Vice Chair Gorman made a motion to approve ZBA 18-17. The motion was seconded by Mr. Welsh and carried unanimously.

The Board reviewed the Findings of Fact.

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

*If the variance were granted, the spirit of the ordinance would be observed. Granted 5-0*

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

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

*Unnecessary Hardship –*

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

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

Granted 5-0

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

With a vote of 5-0, the Zoning Board of Adjustment approved ZBA 18-17.

**ZBA 18-21:/ Petitioner, Naomi McWhirk of 260 Land Road, Richmond, NH, requests a Variance for property located at 28 Park Ave., Tax Map #564-034-000, owned by 28 Park Ave. Plaza, LLC of 28 Park Ave., Suite 103 and is in the High Density District. The Petitioner requests a Variance to permit a hair salon for services and sales in an existing non-conforming mixed use building where mixed uses, services and sales uses are not listed as permitted uses in the district per Section 102-422, Permitted Uses in the High Density of the Zoning Ordinance.**

Mr. Rogers stated the location of the property is on Park Avenue. The property is located behind Park Ave Deli and across the street from Jack's True Value Hardware. He presented a map to the Board and indicated that #28 is a mixed use building with a storage building on the back side of the lot. Mr. Rogers stated that this part of town was originally in the Business Zone. In the early 1970's, the City rezoned this as the High Density District which then made the buildings in this area nonconforming. He noted the uses of these buildings were mostly commercial type uses.

Mr. Rogers stated this property was previously the location for of Wes's Color Center and a bartending school. In 2011, the Board granted a Variance for this building for a commercial bakery, known as The Bread Shed. The Bread Shed has now moved to a location in the Industrial Zone. Mr. Rogers stated that the Variance for The Bread Shed has now been abandoned since 2013. He explained that the applicant is before the Board for a Variance to permit a hair salon retail service.

Chair Stout asked that since the Variance has been abandoned if the Variance is void regardless of what will be decided at the meeting. Mr. Rogers replied that the original Variance for The Bread Shed is null and void. He explained that if a use were to go into this building it would have to be a conforming use unless a Variance is granted. Chair Stout asked if there were any remnant Variances or Board approval's that need to be considered. Mr. Rogers replied in the negative. Ms. Taylor asked if the Variance is abandoned because the use has been discontinued for more than a year. Mr. Rogers replied in the affirmative. Ms. Taylor asked if the proposed use that is before the Board is considered a commercial use. Mr. Rogers replied that this would be a retail service.



Vice Chair Gorman stated that it seems the use in this particular unit in the building is already completely nonconforming. However, he stated that it is legally nonconforming as a mixed use building. He asked if this statement was correct. Mr. Rogers replied in the affirmative. Vice Chair Gorman stated that this specific unit has been legally nonconforming since the 1970's. Mr. Rogers replied an addition was built on this building as an expansion of the color center. Vice Chair Gorman asked if the Board is strictly weighing in on whether or not this particular nonconforming use fits the mold in keeping with already legal nonconforming use. Mr. Rogers stated that he would leave this to the Board to decide. He explained that this is a request for a Variance since the nonconforming use went away when a Variance was granted for this space to be a bakery. Vice Chair Gorman asked if these uses do carry specifically to a unit and not to a property. Mr. Rogers replied that is the reason why the Petitioner is not before the Board looking for a mixed use Variance.

Chair Stout asked what the surrounding zones are in the area. Mr. Rogers replied that most of this area is the High Density Zone all the way to West Street. Chair Stout asked if that surrounding area encompasses a number of different uses. Mr. Rogers replied that he would let the applicant make the argument.

Mr. Greenwald referred to the map and asked if property #38 was Karl Robert's. Mr. Rogers replied that Karl Robert's is #32 and #38 is a multifamily.

Chair Stout then recognized James McWhirk of 260 Lang Road, Richmond.

Mr. McWhirk began by speaking about the property. He stated the property is located behind Park Ave Deli and that it used to be the color center. Mr. McWhirk stated that Wes's Color Center obtained permission from the Board in the 1970's to expand to a nonconforming use. He noted that this property has been nonconforming since that time. Mr. McWhirk stated there are already varying uses on the property ranging from residential, office, warehousing and retail. He stated they are asking to introduce a hair service with a retail use.

Mr. McWhirk stated there are approximately 30 parking spaces and there are cross easements that exist between Karl Roberts and the Park Ave Deli. He noted there is shared parking between three properties in the area that surround the Park Ave Deli. In addition, he noted there are deeded rights between these properties.

Mr. McWhirk stated the site has a clear line of sight in both directions to and from Park Avenue. He stated there is a nonconforming trend in the neighborhood. He continued that Park Ave Deli is not a permitted use in the High Density Zone. However, he stated the apartments above the deli are permitted. Mr. McWhirk noted that Karl Robert's is in a similar situation, where the apartments above the salon are also a permitted use. In addition, he noted that Jack's True Value that is located across the street to the north is also not a permitted use, but the apartments above are permitted.

Mr. McWhirk reviewed the criteria for a Variance.

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

Mr. McWhirk stated the building that exists now is nonconforming with retail, warehouse, office, and residential uses. In this area are other mixed uses and nonconforming buildings such as a convenience store, deli, a salon, and a hardware store, all with apartments above.

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

The spirit of the ordinance would be observed because this use would be compatible with the other uses in the neighborhood. He stated that it also protected the values to the adjacent properties.

*Granting the variance would do substantial justice because:*

Mr. McWhirk stated that this property became nonconforming due to the City wide rezoning in the 1970's. He stated that substantial justice is met by allowing this use which is so well established in the City and consistently down Park Avenue itself.

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

Mr. McWhirk stated that the general appearance of the building would not change. He said the nature of this building is not residential. He stated the proposal will allow a private salon, similar to the mixed use of one of the abutting properties, which will be low intensity without excessive noise or traffic. He noted that this property has been nonconforming with mixed uses for a long time.

*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. McWhirk stated that what exists at this site today does not exemplify the zoning of the area itself. He said it is accommodating to the many nonconforming uses. He stated this property is in an area with both mixed and nonconforming uses.

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

Mr. McWhirk stated that the proposal is for a small business with low intensity use and the site has adequate parking and clear access to Park Avenue. He stated it fits with the character of the neighborhood that is already established.

*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. McWhirk stated that approvals were given by the Board in the past and the plan is parallel to the mixed uses in the area. He stated the Variance is necessary to enable a reasonable use.

Chair Stout asked Mr. McWhirk to speak more about the nature of the salon. Mr. McWhirk replied they hope to have four chairs, with four people servicing hair. He said at any one time those four people can only be servicing one person at a time. Mr. McWhirk noted that there will not be more four clients at one time.

Chair Stout asked if it will be a male, female or walk-in salon. Mr. McWhirk responded that there will be no walk-ins and will be by appointment only. In addition, it will be a male and female clientele.

Vice Chair Gorman asked Mr. McWhirk to speak more to the retail element of the business. He asked if the retail activity will primarily be linked to the clients or more marketed as a retail operation. Mr. McWhirk replied that it would be restricted to clientele.

Ms. Taylor stated that even though the stylists may be self-employed, there maybe four employees with the potential to have four customers at a time. She noted there may be a possibility to have more customers than that at one time and possible to have between 8 and 12 at a time. Mr. McWhirk replied that it is possible. He noted that hairdressers do not always have the same hours and some may be working evenings. However, he did not expect that all employees will be there at the same time. Ms. Taylor asked if it is possible the employees could be there at the same time. Mr. McWhirk replied that it is possible.

Ms. Taylor explained that the reason for her questioning is that she knows this parking lot. She stated that circulation can get problematic at busy times. Ms. Taylor asked if Mr. McWhirk discussed the required number of parking spaces with City staff. Mr. McWhirk replied that he was unaware. He stated that he did not know if Ms. Taylor was aware that there are many more parking spaces that belong to the property. These spaces are located on the backside of the building where the warehouse is located. He noted there are more parking spaces than what meets the eye.

Mr. Rogers added that City staff has not spoken with applicant in regards to parking. He stated that the site does have quite a bit of parking. He noted that if the Variance was granted and the change of use was to occur that review would happen at that point. Chair Stout asked what would happen if City staff found there are an inadequate number of parking spaces. Mr. Rogers replied that if that was determined, the applicant would have to come back before Board.

Ms. Taylor asked, so she is clear, there are parking spaces between the building and the storage building outback. Mr. McWhirk stated there is a warehouse section of the building on the western side of the property. He stated there is a significant section along the pavement part that is all parking spaces. He noted there are more than 10 parking spaces but less than 20 spaces. Ms. Taylor stated that her concern is that parking, being one of the considerations before the Board is to determine this as reasonable.

Vice Chair Gorman reiterated that parking is not before the Board tonight and will be before the Board should this be an issue in the event of granting the Variance. Mr. Rogers added that with retail space it is one space per 100 square feet. Vice Chair Gorman asked Mr. McWhirk what the square footage of the retail space. Mr. McWhirk responded that he was unaware.

Ms. Taylor stated that according to the plan the retail space is 1,448 square feet.

With no further questions from the Board, Chair Stout welcomed public comment.

Jim Phippard, 185 Winchester Street, Keene stated this is a property that he has worked on many times. In 1977, he lived not too far from this property on Arch Street. He stated that this was a property that he would frequent several times and has site plans for this property. Mr. Phippard wished the applicants would have come to him because he would have provided them with these plans. He added that he will give the plans to the applicant so they can be used when they see the Planning Board.

Mr. Phippard stated that he has never experienced parking problems on this property. He noted there is adequate parking on this property and that there are parking spaces behind the building. He referred to previous testimony that there have been many different uses in this building. Mr. Phippard explained that it has always been commercial in nature since the 1970's. He has handled a couple Variances for this property such as The Bread Shed.

Mr. Phippard reported that he belongs to a group of citizens that are participating with City staff in considering changes to the Zoning Ordinance. He stated these neighborhood commercial areas are the type of POD development that is being considered. In addition, these types of neighborhoods want to be encouraged. Mr. Phippard said that it is easy to recognize the limits of the area and what should be permitted for sizes, parking and access. He added that this space is a good example of what has developed on its own and succeeded on its own. Mr. Phippard noted one business in particular is The Bread Shed. He stated that this business started in this location and has moved on to be a bigger business. Mr. Phippard stated this is a good location and that a salon is a good fit.

In conclusion, Mr. Phippard stated that he hopes the Board will approve the request.

With no further comment from those in favor of the application, Chair Stout welcomed those to speak against the application.

Karl Karter, 32 Park Avenue, Keene stated that he is the owner of Karl Robert's. He stated that his biggest concern is the parking issue. Mr. Karter has been in this location for 34 years and parking has always been a bit of a battle with the businesses around the property. He referred to the comments about there being a deeded right of way. The deeded right of way is through the property and the parking spots along his building are not part of the shared property. He noted that the statements about his parking being available for shared parking are incorrect.

Mr. Karter stated that he always tries to be a good neighbor with the deli and patient about people parking in his area. His concern is in regards to his staff and clients and wants to ensure they will be able to park comfortably.

In addition, Mr. Karter stated he is concerned about there being four chairs at the proposed salon. He stated if there are four stylists, there will be four chairs and a customer in each chair. This will be a total 8 cars. He explained that if it is a beauty shop and with chemical services the duration of time clients will increase. Clients will not just be at the salon for 25 or 30 minutes. Mr. Karter also noted that during this time stylists would be bringing in other clients. He stated that there is strong potential of a lot of cars in the shop at one time.

Mr. Karter noted that there would be no guarantee that all stylists will not be there all the time.

In conclusion, Mr. Karter stated that his biggest concern is the parking situation and with a salon of that nature there could run more of a problem with parking.

Chair Stout asked if there was anything that could appease Mr. Karter in the sense of delineating parking spaces. Mr. Karter replied that it would be helpful if the parking spaces could be designated around the building. Chair Stout asked if signage would be sufficient. Mr. Karter replied that signage would be the best option.

With no further comment, Chair Stout asked if the petitioner wished to offer a rebuttal. Mr. McWhirk replied in the negative.

With no further 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 because:*

Chair Stout stated that this could be a situation that could enhance other establishments in this place and work out for everyone.

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

Chair Stout stated that the Board has the option to put conditions on a Variance. He stated that it seems the spirit of the ordinance would be establishing a parking plan that would suit not just the applicant but with those surrounding businesses. He suggested the Board consider this as a

possibility. Vice Chair Gorman stated that he disagrees slightly and feels that it is a separate property owner. He stated that Mr. Karter is completely entitled to delineate his own parking spots with his own signs. He does not see it in the Board's purview to mandate parking on the property in question or to mitigate parking to adhere if it is not on the Variance application. Ms. Taylor stated that she would disagree with Vice Chair Gorman. She stated that one of the concerns is parking. Ms. Taylor added that it is part of the burden of the applicant to prove what they do with the property is reasonable in order to obtain a Variance. She stated that she feels the Board is missing a large piece of information. Ms. Taylor stated if there are potentially four chairs with a minimum of four clients that goes up to eight parking spaces. She sees moving this application along with the condition that there is adequate parking.

Ms. Taylor stated that it is not just adequate parking for this particular space but has to be adequate parking as part of the cumulative parking for the entire building. She stated that the Board has no information and that just by stating there is adequate parking does not meet the burden of proof of the applicant. Chair Stout stated that the Board also has the option to postpone the hearing in order to ask for more information.

Mr. Greenwald stated that there is 1,500 square feet in Unit #101, which requires seven spaces and that is approaching the worst case scenario. He noted this application will come back to the Board if it is found there is inadequate parking for this business. Mr. Greenwald asked City staff to confirm if this was correct. Mr. Rogers replied in the affirmative.

Mr. Greenwald stated that in regards to placing a condition on parking assignments there would have to be assigned parking for the Park Ave Deli. He noted that it seems the parking at Park Ave Deli has been functioning for quite some time. Mr. Greenwald stated that he was not in support of this condition unless it comes back to the Board that there is an issue with parking.

Mr. Welsh asked City staff to describe the means by which a parking assessment would happen. Mr. Rogers replied that in this case it would most likely take the path of a change of use and would have to go to the planning side of the Community Development Department. He said a lot of times with a change of use it would then require a parking calculation for the whole project. He explained this is done at a time when Planners from Community Development are involved with the project. Mr. Rogers stated the applicant can request from zoning the determination on how many spaces would be needed.

Mr. Welsh asked if City staff discovers that the parking is not adequate, would the Petitioner come back before the Board. Mr. Rogers replied they would have to do something with the parking and go before the Planning Board if it had to go to that level.

Ms. Taylor asked if aside from the warehouse, if there are several other commercial spaces available and if they are occupied. Mr. Rogers replied that he is not sure how the whole building is occupied. He stated that Elegant Settings is in that building and would constitute some office space. In addition, they also have warehouse space in that building.

Ms. Taylor stated that she was concerned if this application was a good candidate for a Variance. She stated that she wants to know more about the whole picture. Ms. Taylor added that she hates voting against this without giving the applicant the option to continue the matter, until the next Board meeting. This will give the applicant additional time to provide more information about parking on this site. Chair Stout stated that if this hearing is postponed until December meeting the Board can delay deliberating on the rest of the criteria. Chair Stout stated that he was inclined to want to hear more about a few factors and that a delay of a month would be appropriate. Chair Stout asked the Board for comment.

Ms. Taylor stated that she does not feel she can go through the criteria without the additional information. She stated looking at the map it appears that both the deli and Karl Robert's are on separate parcels. She stated that what she would be interested in knowing the existing uses in the building and the proposed use. Ms. Taylor asked what the parking arrangements are on that property. She stated that in theory, they should all be able to park on the subject property and not on the adjacent property. Chair Stout stated that he would agree with Ms. Taylor. He stated in addition to the parking request, the Board could use more information about the business. He noted that this information is not well documented in the application.

Vice Chair Gorman stated that he does not agree that the Board should continue this application. He stated that the Board has the information needed to determine if this use meets the five criteria for a Variance. He said if the Board is presented with the parking issues later, the Board will have the opportunity to deliberate. However, he stated if it's strictly parking related he thinks plenty of clarity has been granted to the Board through the planning process and the site plan review. In addition, he stated that adequate parking will be determined, accommodated or brought back before the Board. He stated that he thinks this is a City staff issue to deliberate upon and if they cannot come to accommodate a resolution then Board will hear it.

Mr. Greenwald stated that he agrees with Vice Chair Gorman. He added that he feels if there is an issue with parking the Board will be informed. He stated there is enough information to make the determination if this space is going to work in this area. Mr. Greenwald noted that it would be a disservice to hold up the progress on this salon for a month with information that has already been provided to the Board.

Mr. Welsh stated that he would be looking for reasons for continuing beyond the parking issue. In addition, he stated the scale of the parking issue is one that is well manageable within various means such as a sign or agreement for employees to park around back if there is a beginning of a problem with parking. He stated that he is sure the applicant and existing businesses can work out the details to get that done right.

Ms. Taylor stated that she wanted to point out that parking is very much part of the Variance consideration. She stated that the Board needs to look at this on a holistic basis. She stated that she hopes the applicant and staff would have looked into whether or not the application would meet all of the requirements.

Chair Stout stated that he does not recall being told the Board could reconsider a Variance that has already passed on whether or not parking works. He stated that this is not a model he has

seen before. He is uncomfortable not knowing more about the parking and that it is beholden on the Board to know what is happening with parking when voting on a Variance. He stated that once the Variance is granted and it is found that parking is not adequate there would be a problem. Secondly, Chair Stout stated the other option would be to provisionally grant the Variance. He noted that he does not recall ever having done that before. He stated that he is compelled to vote against the application without further information on the parking. Vice Chair Gorman noted that the Board has heard parking Variances in the past.

Ms. Taylor stated she would vote against the Variance based on not having adequate information. She would like to give the applicant the opportunity to provide more information not just on the parking but also the business itself.

Ms. Taylor made a motion to continue the application to next Board meeting on December 3, 2018. The motion was seconded by Chair Stout.

Vice Chair Gorman stated that he considers this as a disservice to the applicant, the Board and the property owner. He stated that he sees no reason to continue something that is not under the purview of the Board at this point. Chair Stout stated that he disagrees whether parking is under the purview of the Board.

Mr. Welsh commented that he is inclined to really like mixed votes and complicated outcomes to the Board's deliberation. He explained this is because it calls attention to the transcript and record and calls attention to what the Board considers to be an issue worthy of discussion. He stated in the aftermath of a mixed vote and its complicated discussion, there will be greater attention paid to the parking issue by staff, the applicant and the surrounding property owners. Mr. Welsh stated that while his vote is not to continue the hearing he values the votes of those who would disagree because it approves the outcome and process.

With the motion in front of the Board and with a vote of 2-3, the motion fails. Vice Chair Gorman, Mr. Greenwald and Mr. Welsh voted in opposition.

The Board reviewed the criteria for a Variance.

*Granting the variance would do substantial justice because:*

Vice Chair Gorman stated the activity in that area of town is very welcoming to the use. He noted that many businesses have succeeded there. Vice Chair Gorman stated the proposal is good for the neighborhood and is in the spirit of the master plan. He stated that it is a great use for a difficult location. Vice Chair Gorman noted that it does not have great street visibility and the property is challenged in that sense. He added that he cannot think of a conforming use that abuts the property. Across the street is an eleven unit apartment building, a hardware store and multifamily buildings adjacent to this property that are nonconforming.

Mr. Greenwald stated that clearly a hair salon works in that area. He noted that it has for a while and that the proposed salon would complement the other salon. Mr. Greenwald stated that it is a



good use but was not a prominent location for all types of business. However, in his opinion this proposed use would work in this location.

Mr. Welsh stated that he looked into the High Density Zone uses and the intent of the High Density Zone. He noted that one of the things he discovered was the intent for residential properties. If there are nonresidential uses in the area that it be directed toward the service of the people who are residents. Mr. Welsh stated this is that kind of business where people who live in that area can use this service.

Ms. Taylor stated that she does not know with any certainty if it will do substantial justice. She stated that she certainly does not have any objections to the nature of the proposed use. Ms. Taylor referred to the sentence, “*The abutting parking lot is capable of accommodating above average traffic with a wide clear line of sight in both directions in accessing Park Avenue*”. She noted that she does not know this to be true and that there has been no evidence to support this. She stated that she is afraid that she cannot favor the criteria.

Chair Stout stated that he does not feel he has an adequate amount of information in order to move forward with a vote. However, he adamantly stresses that he is not stating that he is opposed to the application. He added that whether he is doing a disservice to anyone it is a disservice to him to allow someone to allege so. Chair Stout stated that he suspects that the granting of the Variance would do substantial justice.

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

Vice Chair Gorman stated this space is currently unoccupied and a use that occupies it will generate activity amongst the surrounding business. In addition, this would benefit economic activity and does not see anything but a positive effect to the surrounding property values. Ms. Taylor stated that she would agree.

#### *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:*

Ms. Taylor noted that there seems to be an implication that it is an economic hardship. An economic impact is not necessarily determinative of hardship to the owner.

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

Chair Stout stated it has been established that a business of this type is appropriate for this location. He noted that the master plan does state multiuse in various places within the City.

*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.*

Chair Stout stated that the Board has established the hardship.

With no further comment, Chair Stout asked for a motion.

Mr. Welsh made a motion to approve ZBA 18-21. The motion was seconded by Mr. Greenwald seconded.

The Board reviewed the Findings of Fact.

*Granting the Variance would not be contrary to the public interest because:* Granted 3-2 Chair Stout and Ms. Taylor voted in opposition

*If the variance were granted, the spirit of the ordinance would be observed.* Granted 3-2, Chair Stout and Ms. Taylor voted in opposition

*Granting the Variance would do substantial justice.* Granted 4-1 Ms. Taylor voted in opposition

*If the Variance were granted, the values of the surrounding properties would not be diminished.* Granted 4-1 Chair Stout voted in opposition

*Unnecessary Hardship –*

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

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

Granted 5-0

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

With a vote of 3-2, the Zoning Board of Adjustment approved ZBA 18-21. Chair Stout and Ms. Taylor voted in opposition.

**ZBA 18-22:/ Petitioner, House of Hope of Swanzey, NH, represented by Brickstone Land Use Consultants, LLC of 185 Winchester Street request a Change of a Non-Conforming Use for property located at 31 Wyman Road, Tax Map #221-029-000, owned by Jeanna C. Hamblet Revocable Trust of 31 Wyman Road, and is in the Corporate Park District. The**

**Petitioner requests a Change of a Non-Conforming Use to permit a non-conforming use to be changed to another non-conforming use.**

Mr. Rogers referred to the map indicating the location of the property, noting that this was a sizeable lot. The property is located along Route 12 on Wyman Road. He stated this area was the Rural Zone but was rezoned to Corporate Park in 1991 and was a single family home. He noted this was a nonconforming use in the Corporate Park.

Mr. Rogers stated that the applicant is looking to change this to a group home in the Corporate Park District, which would be a nonconforming use.

Chair Stout recognized Jim Phippard, Brickstone Land Use Consultants, LLC of 185 Winchester Street, Keene.

Mr. Phippard stated that he was present on behalf House of Hope. He began by introducing Brian Stewart, who is on the Board of Directors for the House of Hope. Mr. Phippard stated that Mr. Stewart would begin by giving a background of the House of Hope.

Brian Stewart, 126 Talbot Hill Road, Swanzey stated that he also represented the House of Hope. He explained that House of Hope is a recovery program for woman undergoing addiction recovery. It is based on a program out of Manchester, NH called New Life Home for Women and Children. He noted that New Life Home has a 40 year history and almost a 90% success rate. He stated that he has letters from Mayor Ted Gatsas and other letters in support to present to the Board. Chair Stout explained that the Board has difficulty accepting material on the evening of the meeting. He stated that if Mr. Stewart feels compelled to present the letters to the Board, the Board would need to approve. Mr. Stewart stated that he understood.

Mr. Stewart stated that the House of Hope is unique in that they take single women, women that are pregnant and women in recovery. He noted that they do not charge women anything for their stay. However, the only thing they ask for is a \$500 retainer. The retainer is then held so the resident can purchase a bus ticket if they elect to quite the program. Mr. Stewart stated this becomes an incentive to not cash in the ticket and quit the rigorous program. He stated that it is a longer term program that is 18-24 months long. The longer programs tend to be more successful. Mr. Stewart stated that the average 30, 60 or 90 day program has a less than 20% success rate. He stated that the longer term programs are usually more expensive. He noted House for Hope runs on a shoestring budget with a lot of volunteers. In return, they are able to offer this program to women with low income in order to have access to a high quality program.

Mr. Stewart noted that this would not be a detox home and that woman must be drug free upon entry. In addition, they must produce a letter from a doctor stating they are free of transition drugs and all psychotropic drugs.

Mr. Stewart stated they work with a woman's independence scholarship program and aid women who have been in abusive relationships so they can get a college education. He stated that they

will also partner with other non-profit organizations in the area and work with the drug and family courts.

Mr. Stewart stated their primary mission is taking women into recovery and helping them get back into the workforce free of all dependencies. Mr. Stewart reported they will produce food products such as vegetables to sell at the local farmer's market.

Mr. Greenwald asked what securities will be at the home in terms of protection. He noted that there is a possibility certain issues may occur. Mr. Stewart replied that they are not comfortable with the public having the address of this facility. He noted that there will be no signs and no outward appearance. Mr. Stewart stated there will be security protocols put into place but did not want to get into those at this meeting. He stated that the most important aspect was to offer a safe stable environment.

Mr. Greenwald stated that he understood why Mr. Stewart could not go into details but asked if they were considering personnel for security. Mr. Stewart replied that was a possibility.

Ms. Taylor asked how many residents would there be at full capacity. Mr. Stewart replied that the maximum capacity would be at 12. He continued that the State of New Hampshire regulations state that a group home could be no more than 16. He noted they will work with Code Enforcement (Community Development) and that the number may be slightly smaller. Ms. Taylor asked if that number would include children. Mr. Stewart replied in the affirmative.

Ms. Taylor asked how many employees would be onsite. Mr. Stewart replied two, the executive director and her husband will live at the home. He noted that the women are chaperoned at all times and they do not leave the property without someone being with them. He said that overnight there will be at least one staff member present. Mr. Stewart noted that this number would also depend on how many women will begin the program. He reported they have been advised to start with 4-6 women in order to get the program running and introduce other women as they see fit.

Ms. Taylor noted that the property is isolated and that has pros and cons. She stated that in making an assumption that residents will not have own transportation, she asked how transportation will be provided without taking someone from onsite. Mr. Stewart stated they have a group of volunteers from local church support and other volunteers. He noted that no staff will leave to transport the residents.

Chair Stout asked if they are affiliated with a local church. Mr. Stewart replied that they are affiliated with a number of churches. He noted that a majority of the Board comes from the Christian Life Fellowship in Swanzey, NH. Mr. Stewart noted that women of all faiths come into the program though that it is not a requirement. He added that it is their Christian mission to help women with their recovery.

Chair Stout asked if none of the residents are allowed to have cars on premises. Mr. Stewart replied in the affirmative. Chair Stout asked if Mr. Stewart felt there is adequate parking. Mr. Stewart relied there is parking for at least a dozen cars.

Mr. Phippard stated that this is a well-known iconic property. He provided an aerial Google Earth image of the property that can be seen along Route 12. He described the property as a large house with a red barn. The property is historic and is the 14<sup>th</sup> oldest home in Keene. He noted the property was built in 1777.

The building is currently owned by the Jeanna C. Hamblet Revocable Trust. The property consists of approximately 5.5 acres and is located on Wyman Road. Mr. Phippard stated that all of this land around the field is zoned Corporate Park. He stated that back at that time there was a lot of interest in bringing corporate entities to the City of Keene. The City made a huge investment in this area to encourage industry.

Mr. Phippard stated this property is so visible and so prime that it was of interest to corporate entities. Back in the 1990's they took two separate corporate entities into this house and they looked at the property to see if this could be converted to office space. He stated that no one was interested in seeing this through. He stated that everyone came to the conclusion that tearing the house down was what needed to be done. The building has sat there ever since as a single family home.

Mr. Phippard stated that when the House of Hope first came to him about this property his immediate reaction was that a group home would not happen in the Corporate Park. He encouraged them to look for another site. The group then came back to Mr. Phippard and told him they felt this was the appropriate site for this home. It was then that he started working with Mr. Stewart.

Mr. Phippard stated that he would now agree that this is the best location for this group home. He noted there is a lot of interest now in recovery and group homes. Mr. Phippard referred to other group homes that have been presented to the City of Keene. He stated that people are afraid to have recovery homes in their neighborhood because they do not want people with drugs or addiction in their neighborhood. Mr. Phippard noted that there is one single family home that is beside this property and the owners of the property have submitted letters in support.

He stated that he became more comfortable with the idea of this project because there is not a neighbor next door that has to listen to their kids play or acting out. The activities going on at the property would generally be on the outside of the house.

He displayed a picture of the main house and the big red barn. The area around the house is a wooded area with partially open fields. Mr. Phippard stated the property itself is very accommodating to what the petitioner is trying to do. The house is very large with over 9,000 square feet of floor area. He noted this square footage does include the unfinished basement and attic space. The actual useable space is five bedrooms and four bathrooms which would become

the residential space. He noted that this is all existing space and nothing has to be changed or altered.

The building can be left intact and Mr. Phippard noted that this was important. He stated that is a use that can go into the existing building and can help preserve that existing building. The building will then be preserved as a historic building on a gateway property in the City of Keene.

There will be no sign on the property because they do not want the home to be identified in a known location. The existing driveway has a paved space that can accommodate parking for seven cars. There is additional space along the driveway if they had to accommodate more cars. He noted that he does not believe they will need to accommodate more parking because the residents will not have cars. The founders of the home may have two cars; staff will have two cars and two parking spots for visitors during the day to bring residents to and from appointments. He noted that this adds up to six spaces.

This property is serviced by City sewer and the sewer line comes down as the sewer main passes through the Corporate Park. He stated this was installed for the District and there will be plenty of capacity. The water main passes across the frontage of the property so if a sprinkler system is required for building code requirements that can be accommodated.

He stated that the more he visited the property he became much more comfortable to state that this use is the right fit for this property.

Mr. Phippard reviewed the criteria.

*The changed use will be more in the spirit and intent of the Zoning Ordinance.*

Mr. Phippard stated the change in use to a group home for women and children will be more in the spirit of the Corporate Park Ordinance than the previous use as a single family home. He stated this use is in a corporate park and is more conforming because it has the aspects of the current zone. They are producing a product, raising crops and honey on the property. He stated that all of that is positive and more in keeping with a business type use. He noted that it is more conforming than a single family home. In a general sense, the spirit and intent of zoning is to protect the health, safety and welfare of the public. This is accomplished in two ways with this proposal. First, by helping women overcome addiction to become self-supporting, independent and productive citizens, these women become contributing members of society, better parents, and reliable workers.

Second, he stated that this proposal will save the existing historic house and barns. He noted that this is an iconic site at the northern gateway to the City of Keene. The home has been beautifully restored and provides an important statement as a gateway property. Mr. Phippard stated that the House of Hope will preserve the home and barns as they exist today. They will have no signs, no large parking lot and have no plans to alter the appearance of the house or barns. A traditional Corporate Park use would more than likely lead to the removal of the house and barns to provide

a pad site for a new building. The preservation of a historic building on a gateway property is a benefit to the public.

*The changed use will not be more injurious, obnoxious or offensive to the neighborhood.*

Mr. Phippard stated that because they are not changing anything on the exterior, there is no visible effect to the neighborhood. He added that there will be no effect on surrounding property values.

Mr. Phippard stated that when the people move into the proposed House of Hope home most people will not even know they will be there. All of their programs will take place inside the building and outside activities will consist of gardening and beekeeping.

Mr. Phippard stated that if children are brought to live there they will have to be brought to and from school.

Bill and Phyllis Phelps, the founders of the House of Hope program will live at the facility and will be there 24 hours a day 7 days a week. The only other traffic generated will be from volunteers working with the residents or transporting residents to appointments. Residents are not allowed to have cars. This small amount of traffic will not affect the safety or capacity of Wyman Road. Mr. Phippard reported that a typical single family home generates ten vehicle trips a day. He noted this number was a national number from the Institute of Transportation of Engineers.

There will be no drugs or medications dispensed at this facility. As a residential facility, there will be no programs or activities late at night. The site is served by city sewer and city water and is adequate for the proposed use. The proposed use as a group home for women and children will not be more injurious, obnoxious or offensive to the neighborhood than its current use as a single-family dwelling.

Vice Chair Gorman stated that the program sounds amazing and a lot of the attributes described definitely fits the location. He stated that by allowing a lodging house this would by no means dictate that it would run this way forever and be specific to this group. The use would go with the property. Vice Chair Gorman then stated if someone else took this over and ran this as a lodging house completely different, there could be signs and parking needs that would to be addressed. In addition, there could be other forms of impact related to that use. Mr. Phippard stated that he thought about that as well. He thought about what could happen five years from now if the program fails and they sell property with this Variance in place. Mr. Phippard explained that the use is a nonconforming use and if someone wants to add more bedrooms or facilities they would have to come back before the Board. He noted that this was due to enlarging a nonconforming use. In addition, Mr. Phippard stated that if they are adding parking or changing drainage they would also have to come back before the Board.

Ms. Taylor stated that this is a Change in Non-Conforming Use and not a Variance. She stated that she is a little confused because she thought this came under the classification of group home.

Mr. Phippard replied that he met with Mr. Rogers and discussed the use in detail and it is a group home and not a lodging house.

Ms. Taylor stated there are five bedrooms and the executive director and their spouse will live on site. She asked if they are taking up one of those bedrooms. Mr. Stewart replied there is a separate master bedroom suite that is separate from the four bedrooms. He added that there will be adult bunkbeds in the bedrooms with built in storage.

Mr. Greenwald stated that it was mentioned they would probably start with 4-6 residents but it could go up to 12 or 16. Mr. Stewart stated that he would not expect it go any more than 12 residents. He noted this would be difficult do to the number of bedrooms. Mr. Stewart stated they are not dependent on the volume of women and are more focused on recovery.

With no further questions from the Board, Chair Stout welcomed public comment.

With no comment, Chair Stout closed the public hearing.

The Board reviewed the criteria.

*The changed use will be more in the spirit and intent of the Zoning Ordinance.*

Mr. Welsh stated he has heard Mr. Phippard in his history of presenting to the Planning Board and the Zoning Board as a skillful advocate for hundreds of applicants. He stated that he has never heard Mr. Phippard add passion to a presentation. Mr. Welsh stated that this was a well-argued case. He noted that this was ironic due to the movement toward conformance and to go from a fairly low impact to more of a commercial flow. He stated that this adds to conformance with the zone that the Board is looking at and applies in this case.

Chair Stout stated that he would agree there is an intuitive sense this is going to be more conforming to a single family use. He stated this is an iconic property and with this change in nonconforming use he believes it shows a preservation of a valuable property in what he considers one of the premier jewels in the City.

*The changed use will not be more injurious, obnoxious or offensive to the neighborhood.*

Chair Stout stated that what is described is relative to the comings and goings of the occupants, there is no way anyone can perceive this as offensive.

Ms. Taylor commented that it meets this criteria and only time will tell if other issues may result in providing more of emergency services. She stated given the nature of the neighborhood there is only one abutter, which is apparently in support.

Chair Stout reopened the hearing to have the letters in support from the abutters entered into the record.



The first letter in support was dated October 30, 2018 and was from Jeanna C. Hamblet, 31 Wyman Road, Keene. The second letter in support was dated October 28, 2018 and was from Caitlin Whitehead, 238 Warren Road, Keene.

Vice Chair Gorman made a motion to approve ZBA 18-22 for a nonconforming use of a group home. The motion was seconded by Mr. Welsh.

The Board reviewed the Findings of Fact.

*The changed use will be more in the spirit and intent of the Zoning Ordinance. 5-0*

*The changed use will not be more injurious, obnoxious or offensive to the neighborhood. 5-0*  
On a vote of 5-0, the Zoning Board of Adjustment approved ZBA 18-22 for a nonconforming use of a group home.

#### **IV. New Business**

No new business was presented.

#### **V. Communications:**

Building Better Together update from Tara Kessler, Senior Planner, Community Development Department

Chair Stout introduced Tara Kessler, Senior Planner, Community Development Department.

Ms. Kessler began her presentation by giving an update on the Building Better Together project. She explained that the role of the Board is related to how land use development is in regards to what can and cannot occur in the City. She explained that Building Better Together is an effort to update the City's land use regulations to make them more simple, efficient and thoughtful. The goal is to have these regulations easier to understand for the average person. In addition, for developers this means a more navigable process for redevelopment and new construction. For City staff and elected officials this means a simpler, streamlined system that will make the review and approval process clearer and easier to administer. All of these updates will allow the City to better serve those in the community and allocate time to other important areas of focus.

Ms. Kessler reported that Keene's land use regulations were last updated 50 years ago. She stated that the City is working with a land use planning and design consultant to develop a set of revised land use regulations. The draft of regulations will be available for adoption in the summer of 2019. The City may choose to delay the effective start date of the revised regulations until six months after adoption. This six-month period would provide time for the community to become familiar with and try out the new regulations.

Ms. Kessler reported that the Community Development Department spent most of the summer doing a significant amount of outreach working with developers, various community groups and

business owners. She stated that they spent a lot of time working with the City departments to understand the different sets of regulations that impact different departments. They have been working primarily with another joint committee which is a division of the Planning Board and the Planning, Licenses and Development Committee, to break down the core concepts and issues that have been identified. The issues identified are parking requirements, use tables, category uses that are allowed, landscaping, storm water management and flood plan regulations.

Ms. Kessler reported that meetings, events and presentations are available for people to participate in as well as keep informed of the project's process.

Chair asked the Board for comment or questions.

Ms. Taylor noted that she has noticed the inadequacy of the definitions within in the Zoning Ordinance.

Chair Stout asked how the Board will know when changes occur. Ms. Kessler replied that she has sent out emails, and that community forums have taken place over the course of the summer. In addition, she stated that she will leave the Board with a packet of information. Ms. Kessler stated that she is also happy to come back after the adoption process.

The Board asked what involvement the Board would have with this process. Ms. Kessler replied this would be in the same capacity as any other community member or Board member could participate. This would be through the public hearing process or by attending the joint committee meetings.

Mr. Schneider handed out the updated sign code for the Board members to replace in the Zoning Ordinance handbook.

## **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 9:33 PM.

Respectfully submitted by,  
Jennifer Clark, Minute Taker

# 0 Hurricane Rd. ZBA 19-01



Petitioner requests a Variance to construct a single family home on a lot in the Rural District containing 3.7 acres where 5 acres is the minimum required lot size where city water and city sewer are not present per Section 102-791.



**NOTICE OF HEARING**

**ZBA 19-01**

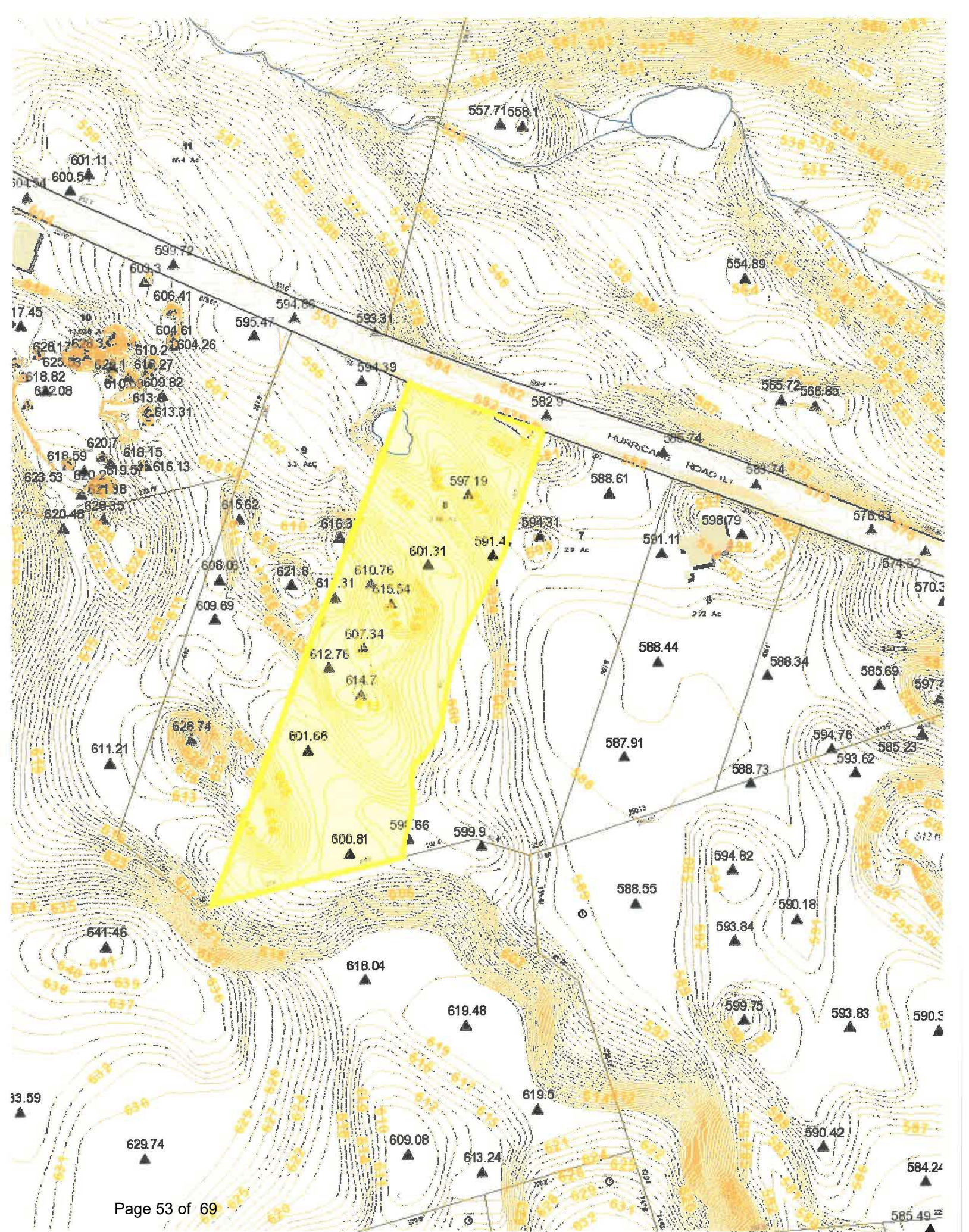
A meeting of the Zoning Board of Adjustment will be held on Monday, January 7, 2019 at 6:30 PM in City Hall Committee Room, 2<sup>nd</sup> floor, 3 Washington St, Keene, New Hampshire to consider the petition of Bruce R. and Kimberly A. Pilvelait Revocable Trust, represented by Thomas R. Hanna, of 41 School St., Keene requests a Variance for property located at 0 Hurricane Rd., Keene, Tax Map Parcel #106-008-000, which is in the Rural District. The Petitioner requests a Variance for the construction of a single family home on a lot in the Rural District containing 3.7 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present per Section 102-791, Table of Basic Zone Dimensional Requirements of the Zoning Code.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm. or online at <https://ci.keene.nh.us/zoning-board-adjustment>

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date: December 24, 2018



# APPLICATION FOR APPEAL

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

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 19-01</u>
Date Filed	<u>12/20/18</u>
Received By	<u>CJM</u>
Page	<u>1</u> of <u>8</u>
Reviewed By	_____

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) Bruce R & Kimberly A Pilvelait Rev Trust Phone: \_\_\_\_\_  
Address 30 Sunnyside Circle Charlestown NH 03603  
Name(s) of Owner(s) Same as above  
Address \_\_\_\_\_  
Location of Property 0 Hurricane Road

### SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 106-008-000 Zoning District Rural  
Lot Dimensions: Front 216 +/- Rear 295 +/- Side 815 +/- Side 653 +/-  
Lot Area: Acres 3.70 +/- Square Feet 161,172 +/- SF  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0 Proposed 0  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 0 Proposed 0  
Present Use Vacant Land  
Proposed Use Single Family Residence on lot

### 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.

Bruce R. Pilvelait Kimberly A. Pilvelait Date December 19, 2018  
(Signature of Owner or Authorized Agent)

Please Print Name Bruce R. Pilvelait Kimberley A. Pilvelait

**APPLICATION FOR A VARIANCE**

- A variance is requested from Section (s) 102-791 Table 1, Basic Zone Dimensional Requirements of the Zoning Ordinance to permit:  
Construction of a single-family home on a lot in the Rural District containing 3.7 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

This is a legally created lot, approved by the Keene Planning Board in 1970, when the Keene Zoning Ordinance allowed lots of less than 5 acres in the Rural District when adequate soil conditions existed on the lot to support a septic system. Test pits and perc tests performed in July 2018 by Northeast Soils and Sitework certify that the soil conditions on site can support a septic system which will meet NHDES requirements. A copy of the letter from Mike Faulkner, licensed designer of subsurface disposal systems (septic systems) and certified septic system evaluator is attached.

At the frontage of this property Hurricane Road is straight. A driveway can be located to provide safe access to the lot with excellent line of sight in both directions. It is obviously not contrary to the public interest to allow a landowner to build on his property when there is no threat to public health, safety or welfare, and where the lot is of a size and character to maintain the rural character of the neighborhood

- 2. If the variance were granted, the spirit of the ordinance would be observed because:** The spirit of the ordinance in the Rural District is to allow for scattered, low density development on sites which will not result in a threat to public health, safety or welfare. The proposed single-family dwelling is a permitted use in the Rural District. The lot can support a septic system for a single-family home and safe driveway access can be provided. Granting the variance will meet the spirit of the ordinance. Moreover, there are several substandard lots in the Rural District along Hurricane Road, and the rural character of the area would be maintained.

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

This lot was approved by the Keene Planning Board in 1970 as a legal, conforming building lot. It became nonconforming in the 1980's when the zoning ordinance was amended to require a 5-acre minimum lot size for lots in the Rural District without city water and city sewer. Soil tests and perc tests have shown that the lot can support a septic system in compliance with NHDES requirements. Safe driveway access can also be provided. There would be no benefit to the public to deny the variance request. In this case, granting the variance would do substantial justice. (See above responses, as well).

4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** A review of the city database shows that there are 18 existing lots nearby in the Rural District, which are smaller than 5 acres, including 4 lots adjacent to this property. Granting the variance will not change the pattern of development which has existed in this location for decades. Construction of a new home on this lot will likely improve the values of surrounding properties. The rural character will remain and construction on this lot will not be inconsistent with the neighborhood.

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:**

This property became nonconforming as a result of changes to the Zoning Ordinance in the 1980's establishing larger lot sizes in the Rural District. This creates a special condition on this lot which restricts the landowner and makes it necessary to obtain a variance to build a single-family home. There is no fair and reasonable relationship between the underlying purposes of the Rural District and the application of the ordinance to this proposal because the lot can support a septic system and a safe driveway location and the rural character of the neighborhood will be maintained. There will be no threat to public health, safety or welfare if the variance is granted. Denial of the variance would not benefit the public and would result in an unnecessary hardship to the landowner. (See also responses to Standards 1 – 4).

**And**

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

The proposed use for a single-family home is a permitted use in the Rural District. The proposed use and the lot size will be consistent with the uses and the pattern of development in the neighborhood. The proposed use is reasonable because, the use will not pose a threat to public health, safety or welfare; it meets the spirit of the ordinance; and it will not result in diminished 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.**

This lot was approved by the Keene Planning Board in 1970 as a legal, conforming building lot. This property became nonconforming as a result of changes to the Zoning Ordinance in the 1980's requiring larger lot sizes in the Rural District. This creates a special condition on this lot which restricts the landowner and makes it necessary to obtain a variance to build a single-family home. It is not fair and reasonable to deny the variance when it has been shown that the lot can support a septic system and has a safe driveway location. There will be no threat to public health, safety or welfare if the variance is granted. Denial of the variance would not benefit the public and would result in an unnecessary hardship to the landowner.

**Northeast Soils and Sitework**

PO Box 66  
West Swanzey, NH 03469

**(603) 352-4640 Fax: (603)239-8039**

**Date: July 16,2018**

Bruce Pilvelait

Property on Hurricane Rd. Keene N.H.

Bruce , after digging test pits on both lots( tax map numbers 106-008-000 and 106-009-000) and reviewing the results, I have determined that a State of N.H. department of environmental services approved Individual sewage disposal system (septic system) can be designed for each individual lot.

Mike Faulkner



Abutters' List  
Bruce R. & Kimberley A. Pilvelait Rev.Trust  
0 Hurricane Road  
Tax Maps 106-008-000 and 106-009-000

106-011-000  
FILTRINE MFG, CO  
15 KIT ST  
KEENE, NH 03431

106-010-000  
CORY W. GRAVES  
284 HURRICANE RD  
KEENE, NH 03431

106-006-000  
EDWARD F. GROSS  
260 HURRICANE RD  
KEENE, NH 03431

234-022-000  
106-007-000  
HANSEL BROTHERS, LLC  
61 BRADFORD RD  
KEENE, NH 03431

106-012-000, 106-004-000  
SARAH H. HANSEL REV. TRUST  
233 HURRICANE RD  
KEENE, NH 03431

BRUCE R. & KIMBERLY A.  
PILVELAIT REV. TRUST  
30 SUNNYSIDE CIR  
CHARLESTOWN, NH 03603

JAMES PHIPPARD  
BRICKSTONE LAND USE  
185 WINCHESTER ST  
KEENE, NH 03431

WENDY PELETIER, LLS  
CARDINAL SURVING  
127 WASHINGTON ST  
KEENE, NH 03431

THOMAS R. HANNA & ASSOC.  
41 SCHOOL STREET  
KEENE, NH 03431

I certify that the above list comprises all abutters within 200 feet of the subject lots as of  
December 18, 2018.



Thomas R. Hanna



Karen M. Hastings, Notary Public

My commission expires: 4/23/2019



106-010-000  
 CORY W. & PAMELA J. GRAVES  
 288 HURRICANE ROAD  
 KEENE, NH 03431-2160  
 VOL 2866 PG 525

106-012-000  
 SARAH H. HANSEL REVOCABLE TRUST  
 233 HURRICANE ROAD  
 KEENE, NH 03431  
 VOL 2804 PG 718

**BOUNDARY LINE ADJUSTMENT NOTES:**

THE BOUNDARY LINE ADJUSTMENT WILL ADD PARCEL B TO TAX MAP 106-008 AND REMOVE PARCEL A FROM TAX MAP 106-008. TAX MAP 106-008 IS 3.70 ACRES PRIOR TO THE BOUNDARY LINE ADJUSTMENT AND SHALL BE 3.70 ACRES AFTER.

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**GENERAL NOTES**

1. THIS PLAN IS BASED ON A BOUNDARY SURVEY BY WENDY PELLETIER, LLS OF CARDINAL SURVEYING AND LAND PLANNING, 127 WASHINGTON STREET, KEENE, NH SUPPLIED TO THIS OFFICE IN DIGITAL FORM.
2. WETLAND DELINEATION BY TOM CARR, CWS OF MERIDIAN LAND SERVICES, INC. PO BOX 118, MILFORD, NH 03055.
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5. THIS PROPERTY IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN FOR THE CITY OF KEENE.

**LEGEND**

- PIN FOUND
- REBAR SET
- UTILITY POLE
- TEST PIT
- STONE WALL
- APPROXIMATE ABUTTER LINE
- EXISTING CONTOUR LINE
- EDGE OF WET AREA
- EDGE OF DELINEATED WETLANDS
- SOILS LINE
- APPROXIMATE ABUTTER LINE
- BUILDING SETBACK LINE

234-022-000  
 HANSEL BROTHERS LLC  
 PETER HANSEL  
 61 BRADFORD ROAD  
 KEENE, NH 03431  
 VOL 2701 PG 548

1-1/4" IRON PIPE  
 1.3' UP  
 PINCH TOP

1-1/4" IRON PIPE  
 1.5' UP

1-1/4" IRON PIPE  
 1.5' UP

1-1/4" IRON PIPE  
 1.3' UP  
 PINCH TOP

1-1/4" IRON PIPE  
 1.4' UP

1-1/4" IRON PIPE  
 1.1' UP  
 PINCH TOP

1-1/4" IRON PIPE  
 1.2' UP

1-1/4" IRON PIPE  
 0.4' DOWN IN  
 STONEWALL

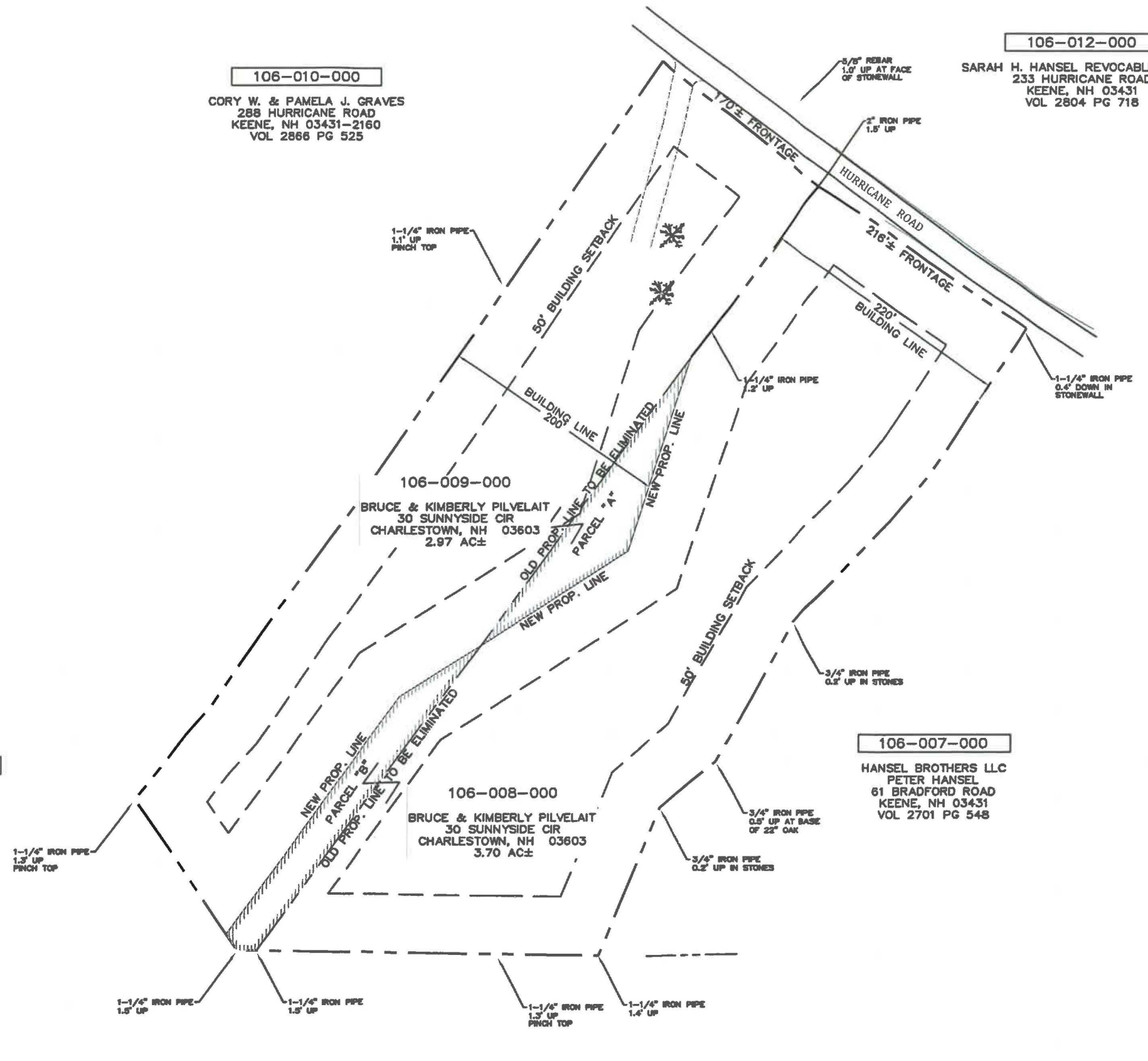
5/8" REBAR  
 1.0' UP AT FACE  
 OF STONEWALL

2" IRON PIPE  
 1.5' UP

3/4" IRON PIPE  
 0.2' UP IN STONES

3/4" IRON PIPE  
 0.5' UP AT BASE  
 OF 22" OAK

3/4" IRON PIPE  
 0.2' UP IN STONES



OWNER:  
 BRUCE & KIMBERLY PILVELAIT  
 30 SUNNYSIDE CIRCLE  
 CHARLESTOWN, NH 03603

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

ZONING BOARD OF ADJUSTMENT  
 LOT SIZE VARIANCE REQUEST

REVISION

PLOT PLAN

SCALE: 1"=100'  
 DATE DEC. 19, 2018

**ZBA 1**

# 0 Hurricane Rd. ZBA 19-02



Petitioner requests a Variance to construct a single family home on a lot in the Rural District containing 2.97 acres where 5 acres is the minimum required lot size where city water and city sewer are not present per Section 102-791.



**NOTICE OF HEARING**

**ZBA 19-02**

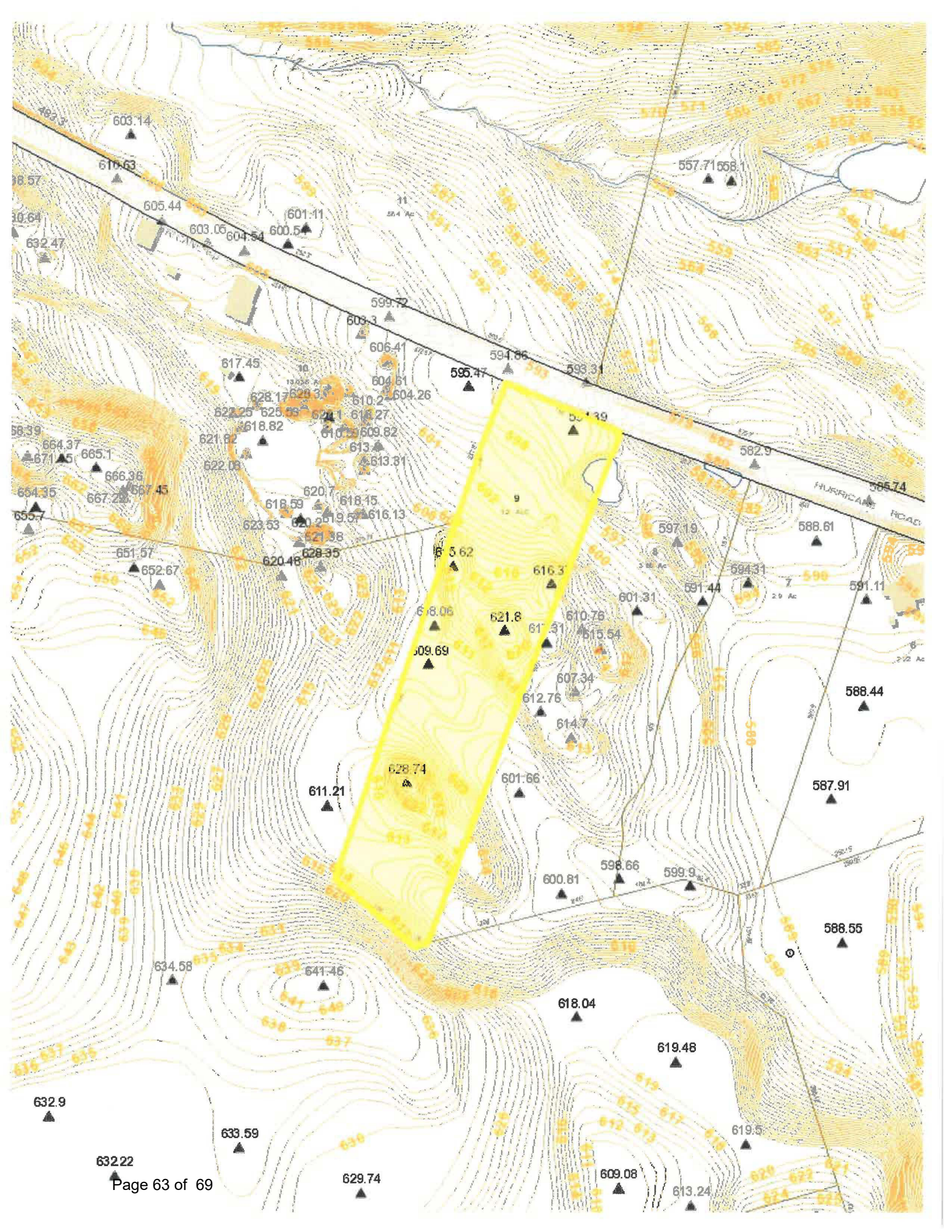
A meeting of the Zoning Board of Adjustment will be held on Monday, January 7, 2019 at 6:30 PM in City Hall Committee Room, 2<sup>nd</sup> floor, 3 Washington St, Keene, New Hampshire to consider the petition of Bruce R. and Kimberly A. Pilvelait Revocable Trust, represented by Thomas R. Hanna, of 41 School St., Keene requests a Variance for property located at 0 Hurricane Rd., Keene, Tax Map Parcel #106-009-000, which is in the Rural District. The Petitioner requests a Variance for the construction of a single family home on a lot in the Rural District containing 2.97 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present per Section 102-791, Table of Basic Zone Dimensional Requirements of the Zoning Code.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm. or online at <https://ci.keene.nh.us/zoning-board-adjustment>

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date: December 24, 2018



# APPLICATION FOR APPEAL

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

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 19-02</u>
Date Filed	<u>12/20/18</u>
Received By	<u>CM</u>
Page	<u>1</u> of <u>7</u>
Reviewed By	

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) Bruce R & Kimberly A Pilvelait Rev Trust Phone: \_\_\_\_\_  
Address 30 Sunnyside Circle Charlestown NH 03603  
Name(s) of Owner(s) Same as above  
Address \_\_\_\_\_  
Location of Property 0 Hurricane Road

## SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 106-009-000 Zoning District Rural  
Lot Dimensions: Front 170 +/- Rear 174 +/- Side 815 +/- Side 778 +/-  
Lot Area: Acres 2.97 +/- Square Feet 129,373 +/- SF  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0 Proposed 0  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 0 Proposed 0  
Present Use Vacant Land  
Proposed Use Single Family Residence on lot

## 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.

Bruce R. Pilvelait Kimberley A. Pilvelait Date December 19, 2018  
(Signature of Owner or Authorized Agent)

Please Print Name Bruce R. Pilvelait Kimberley A. Pilvelait

K:ZBA\Web\_Forms\Variance\_Application\_2010.doc 8/22/2017



**APPLICATION FOR A VARIANCE**

- A variance is requested from Section (s) 102-791 Table 1, Basic Zone Dimensional Requirements of the Zoning Ordinance to permit:  
Construction of a single-family home on a lot in the Rural District containing 2.97 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

- 1. Granting the Variance would not be contrary to the public interest because:**  
This is a legally created lot, approved by the Keene Planning Board in 1956, when the Keene Zoning Ordinance allowed lots of less than 5 acres in the Rural District when adequate soil conditions existed on the lot to support a septic system. Test pits and perc tests performed in July 2018 by Northeast Soils and Sitework certify that the soil conditions on site can support a septic system which will meet NHDES requirements. A copy of the letter from Mike Faulkner, licensed designer of subsurface disposal systems (septic systems) and certified septic system evaluator is attached.  
At the frontage of this property Hurricane Road is straight. A driveway can be located to provide safe access to the lot with excellent line of sight in both directions. It is obviously not contrary to the public interest to allow a landowner to build on his property when there is no threat to public health, safety or welfare, and where the lot is of a size and character to maintain the rural character of the neighborhood.
- 2. If the variance were granted, the spirit of the ordinance would be observed because:** The spirit of the ordinance in the Rural District is to allow for scattered, low density development on sites which will not result in a threat to public health, safety or welfare. The proposed single-family dwelling is a permitted use in the Rural District. The lot can support a septic system for a single-family home and safe driveway access can be provided. Granting the variance will meet the spirit of the ordinance. Moreover, there are several substandard lots in the Rural District along Hurricane Road, and the rural character of the area would be maintained.
- 3. Granting the variance would do substantial justice because:**  
This lot was approved by the Keene Planning Board in 1956 as a legal, conforming building lot. It became nonconforming in the 1980's when the zoning ordinance was amended to require a 5-acre minimum lot size for lots in the Rural District without city water and city sewer. Soil tests and perc tests have shown that the lot can support a septic system in compliance with NHDES requirements. Safe driveway access can also be provided. There would be no benefit to the public to deny the variance request. In this case, granting the variance would do substantial justice. (See above responses, as well).

**4. If the variance were granted, the values of the surrounding properties would not be diminished because:** A review of the city database shows that there are 18 existing lots nearby in the Rural District, which are smaller than 5 acres, including 4 lots adjacent to this property. Granting the variance will not change the pattern of development which has existed in this location for decades. Construction of a new home on this lot will likely improve the values of surrounding properties. The rural character will remain and construction on this lot will not be inconsistent with the neighborhood.

**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:**

This property became nonconforming as a result of changes to the Zoning Ordinance in the 1980's establishing larger lot sizes in the Rural District. This creates a special condition on this lot which restricts the landowner and makes it necessary to obtain a variance to build a single- family home. There is no fair and reasonable relationship between the underlying purpose of the Rural District and the application of the ordinance to this proposal because the lot can support a septic system and a safe driveway location and the rural character of the neighborhood will be maintained. There will be no threat to public health, safety or welfare if the variance is granted. Denial of the variance would not benefit the public and would result in an unnecessary hardship to the landowner. (See also response to Standards 1 – 4).

**And**

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

The proposed use for a single-family home is a permitted use in the Rural District. The proposed use and the lot size will be consistent with the uses and the pattern of development in the neighborhood. The proposed use is reasonable because, the use will not pose a threat to public health, safety or welfare; it meets the spirit of the ordinance; and it will not result in diminished 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.**

This lot was approved by the Keene Planning Board in 1956 as a legal, conforming building lot. This property became nonconforming as a result of changes to the Zoning Ordinance in the 1980's requiring larger lot sizes in the Rural District. This creates a special condition on this lot which restricts the landowner and makes it necessary to obtain a variance to build a single-family home. It is not fair and reasonable to deny the variance when it has been shown that the lot can support a septic system and has a safe driveway location. There will be no threat to public health, safety or welfare if the variance is granted. Denial of the variance would not benefit the public and would result in an unnecessary hardship to the landowner.

**Northeast Soils and Sitework**

PO Box 66  
West Swanzey, NH 03469

**(603) 352-4640 Fax: (603)239-8039**

**Date: July 16,2018**

Bruce Pilvelait

Property on Hurricane Rd. Keene N.H.

Bruce , after digging test pits on both lots( tax map numbers 106-008-000 and 106-009-000) and reviewing the results, I have determined that a State of N.H. department of environmental services approved Individual sewage disposal system (septic system) can be designed for each individual lot.

Mike Faulkner



**Abutters' List**  
**Bruce R. & Kimberley A. Pilvelait Rev.Trust**  
**0 Hurricane Road**  
**Tax Maps 106-008-000 and 106-009-000**

106-011-000  
FILTRINE MFG, CO  
15 KIT ST  
KEENE, NH 03431

106-010-000  
CORY W. GRAVES  
284 HURRICANE RD  
KEENE, NH 03431

106-006-000  
EDWARD F. GROSS  
260 HURRICANE RD  
KEENE, NH 03431

234-022-000  
106-007-000  
HANSEL BROTHERS, LLC  
61 BRADFORD RD  
KEENE, NH 03431

106-012-000, 106-004-000  
SARAH H. HANSEL REV. TRUST  
233 HURRICANE RD  
KEENE, NH 03431

BRUCE R. & KIMBERLY A.  
PILVELAIT REV. TRUST  
30 SUNNYSIDE CIR  
CHARLESTOWN, NH 03603

JAMES PHIPPARD  
BRICKSTONE LAND USE  
185 WINCHESTER ST  
KEENE, NH 03431

WENDY PELETIER, LLS  
CARDINAL SURVING  
127 WASHINGTON ST  
KEENE, NH 03431

THOMAS R. HANNA & ASSOC.  
41 SCHOOL STREET  
KEENE, NH 03431

I certify that the above list comprises all abutters within 200 feet of the subject lots as of December 18, 2018.



Thomas R. Hanna



Karen M. Hastings, Notary Public

My commission expires: 4/23/2019



106-010-000  
 CORY W. & PAMELA J. GRAVES  
 288 HURRICANE ROAD  
 KEENE, NH 03431-2160  
 VOL 2866 PG 525

106-012-000  
 SARAH H. HANSEL REVOCABLE TRUST  
 233 HURRICANE ROAD  
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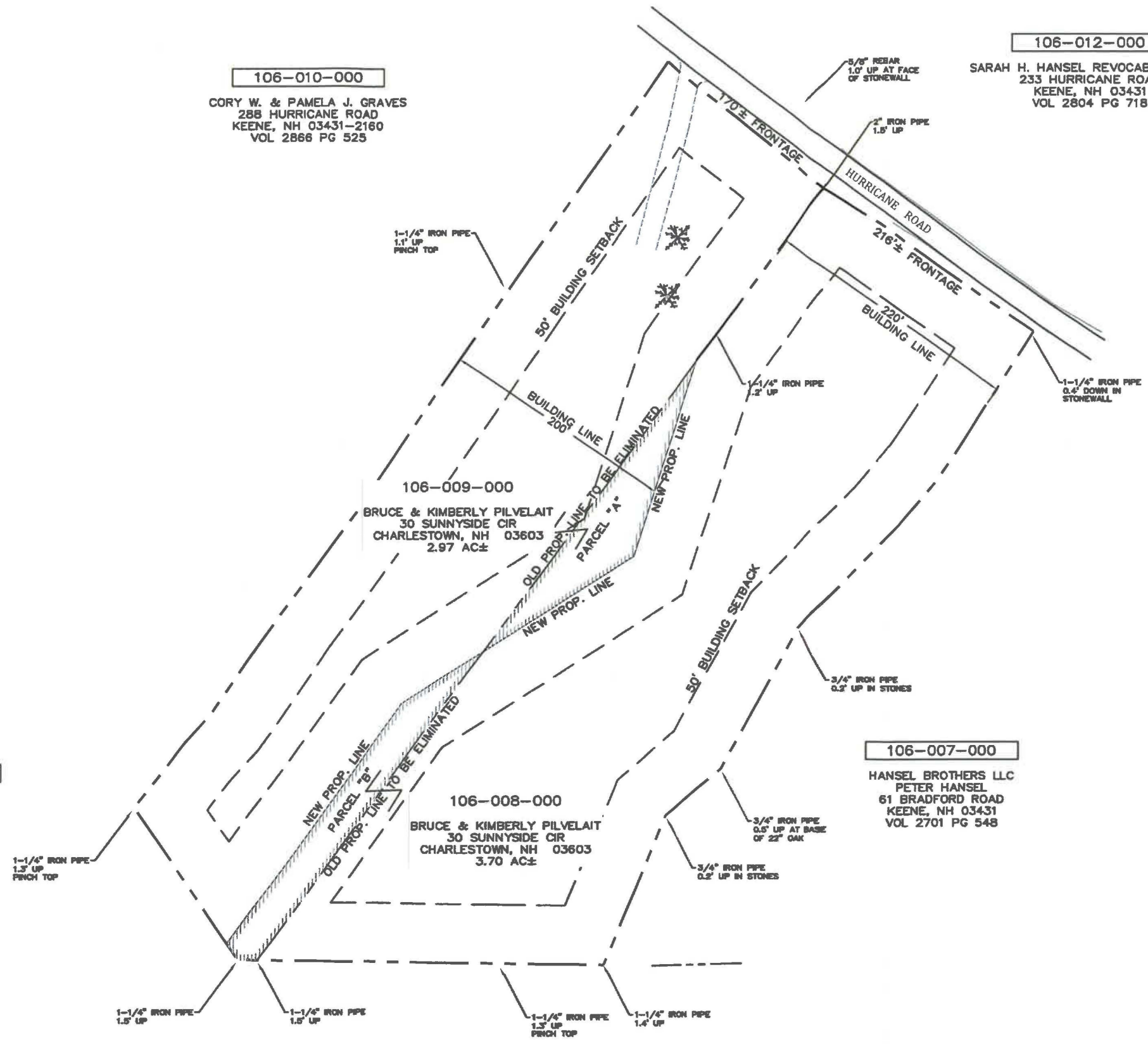
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ZONING BOARD OF ADJUSTMENT  
 LOT SIZE VARIANCE REQUEST

REVISION

PLOT PLAN

SCALE: 1"=100'  
 DATE DEC. 19, 2018

**ZBA 1**



## **ZONING BOARD OF ADJUSTMENT 2019 SCHEDULE**

<b><u>Deadline</u></b>	<b><u>Meeting**</u></b>
December 21, 2018	January 7, 2019*
January 18, 2019	February 4, 2019
February 15, 2019	March 4, 2019
March 15, 2019	April 1, 2019
April 19, 2019	May 6, 2019
May 17, 2019	June 3, 2019
June 14, 2019	July 1, 2019
July 19, 2019	August 5, 2019
August 16, 2019	September 3, 2019*
September 20, 2019	October 7, 2019
October 18, 2019	November 4, 2019
November 15, 2019	December 2, 2019
December 20, 2019	January 6, 2020

\* September meeting is scheduled for Tuesday due to the holiday

\*\*All meetings begin at 6:30 PM and are held on the first Monday of each month in the Council Chambers, 2<sup>nd</sup> fl, City Hall unless stated otherwise