

**Zoning Board of Adjustment
Monday, April 6, 2020, 6:30 p.m.
City Hall Council Chambers
3 Washington Street, 2nd Floor**

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – February 3, 2020
- III. Unfinished Business
- IV. Hearings:

ZBA 20-06:/ Petitioner, Leah LaRock of 1041 Route 63, Spofford, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Variance for property located at 0 Daniels Hill Rd., Tax Map #238-003-000; that is in the Rural District. The Petitioner requests a Variance to permit a single family home to be built on a 1.8 acre lot where a 5 acre lot is required per Section 102-791 of the Zoning Ordinance.

ZBA 20-07:/ Petitioner, 143 Main St., LLC of West Swanzey, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Change of Non-Conforming Use for property located at 143 Main St., Tax Map #584-061-000; that is in the Central Business Limited District. The Petitioner requests a Change of Non-Conforming Use to permit a multi-family dwelling with office use from a single-family dwelling.

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

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1 City of Keene
2 New Hampshire

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5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Monday, February 3, 2020**

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Joshua Greenwald
Arthur Gaudio, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Mari Brunner, Planner

Members Not Present:

Michael Welsh
Louise Zerba, Alternate

George S. Hansel, Mayor

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12 **I. Introduction of Board Members**

13
14 Chair Gorman called the meeting to order at 6:30 PM, explained the rules of procedure, and
15 introduced the Board members. Mr. Gaudio acted as a voting member.

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17 **II. Minutes of the Previous Meeting – January 6, 2020**

18
19 Vice Chair Hoppock moved to approve the minutes of January 6, 2020, which Ms. Taylor
20 seconded and the motion carried unanimously.

21
22 **III. Meet the City's New Mayor, George Hansel**

23
24 *[This was originally item V.A. on the agenda and the Chairman heard it out of order.]*
25

26 The Chairman welcomed Keene's new Mayor, George Hansel, and congratulated him on a close
27 race between two respected candidates. Mayor Hansel said he is trying to visit all City
28 Committees early in 2020 to introduce himself. He is responsible for nominating new Committee
29 members for election by City Council. He welcomes suggestions from the Zoning Board for new
30 members. Any current Board members should inform the Mayor if they are interested in serving

31 beyond their current terms, as he supports continuing strong leadership. Mayor Hansel thanked
32 the Board for their volunteerism.

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34 **IV. Unfinished Business**

35 **V. Hearings:**

- 36 **a. ZBA 20-03:/ Petitioner, Brady Sullivan Properties of 670 N. Commercial St.,**
37 **Suite 303, Manchester, NH, requests a Variance for properties located at 222**
38 **West St., Tax Map #583-012-000, #583-014-000 and #583-015-000 that is in**
39 **the Commerce District. The Petitioner requests a Variance side set back on**
40 **side, building set back is supposed to be 20 feet from the property line, in**
41 **actual will only be 4 feet per Section 102-791 of the Zoning Ordinance.**

42
43 Chair Gorman opened the public hearing and welcomed comments from Staff. The Zoning
44 Administrator, John Rogers, used maps to demonstrate the location of the property in question,
45 with respect to Gilbo Avenue, West Street, and Island Street. He also oriented viewers with
46 proposed elevations and site plans for a new mixed retail /office building on the property, which
47 would require a Variance to build within 20 feet of the side setback. If the Variance were
48 granted, several parking lots on the property would be merged as one Tax Map Parcel (TMP).

49
50 Vice Chair Hoppock recalled another application for this property (ZBA 19-07) that he thought
51 was for a parking deck/garage. Mr. Rogers said there was a previous application for a self-
52 storage building, though he left it to the applicant to explain their newly proposed retail/office
53 use. Both retail and office uses are allowed in the Commerce District (CD), but the proposed
54 building would violate side setbacks.

55
56 Ms. Taylor asked Mr. Rogers to demonstrate where the setback issue was on the site plans. Mr.
57 Rogers demonstrated on the site plan where the northeast corner of the proposed structure would
58 violate setbacks. Ms. Taylor asked if this was considered a side setback because it was a part of
59 the larger site plan. Mr. Rogers said it would be a side setback because this unique corner lot has
60 frontage on three roads and per code, the primary frontage is based on narrowest part of lot,
61 which in this case is West Street, making it the front setback. Ms. Taylor asked if this was all
62 considered one parking lot due to common ownership. Mr. Rogers said the City does not yet
63 consider this as a common lot, which is why there are multiple TMPs listed. Ms. Taylor
64 questioned why Island Street was not the front setback in this instance. Mr. Rogers said that to
65 build the proposed structure, the applicant would have to merge these lots into one TMP because
66 a building cannot cross property lines. Ms. Taylor asked if the concept is to merge the three lots
67 underlying the proposed building as opposed to subdividing it off. Mr. Rogers said the applicant
68 would need to speak to those details but his understanding from the application was that the
69 intent is to merge it all into one parking lot serving the Mill Apartments, Keene Casino, NBT
70 Bank, and the new structure.

72 Mr. Gaudio questioned if the three parking lots and the major parcel in question had common
73 ownership. Mr. Rogers said that they are under common ownership at this time and added that
74 both the Building and Zoning Codes would not allow development across property lines.
75

76 Mr. Greenwald asked if the process had already begun to merge the three parking lots and Mr.
77 Rogers left answering to the applicant. The Chairman asked if merging the lots would be a
78 condition of this Board's Variance approval. Mr. Rogers said that the applicant would not be
79 issued a Building Permit to construct on separate lots. Mr. Rogers referred to Ms. Taylor's
80 questions about the setback and he said that as it sits currently, Ms. Taylor is correct that would
81 more likely need a rear setback Variance.
82

83 Ms. Taylor said she realized that the Mill and Casino buildings are preexisting and that the
84 applicant wants to add this third structure. She asked if there is a requirement for one primary
85 structure on a property in the CD. Mr. Rogers referred to the intent of the CD, which allows
86 different uses on the same lot, such as in a shopping plaza.
87

88 The Chairman welcomed the applicant, Ben Kelley of Brady Sullivan Properties of 670 N.
89 Commercial Street, Manchester, and the Property Manager Robert Pearson of Alstead, NH. Mr.
90 Kelley recalled being before this Board in 2019 seeking a Variance for a self-storage facility,
91 which they thought would be a nice amenity for new tenants despite it being a disallowed use in
92 the CD. The developers changed their idea to a retail/office use, which is allowed in the CD.
93 They understand that multiple lots would need to merge for this development to occur and Brady
94 Sullivan wanted to determine if the Board would approve this use before incurring any of those
95 costs. The project is ready to begin quickly if the setback Variance were approved. Mr. Kelley
96 said the parking lot for which they seek a setback Variance is controlled under a historic lease
97 and is currently used daily. He referred to the strip of 15 parking spaces on the southeast corner
98 of the proposed building site. He said it is different from a setback from a neighbor's porch and
99 is more so an organic part of the development through the historic lease. He referred to the
100 proposed building elevations stating the goal to incorporate the development into the Colony
101 Mill so that all buildings on the property face each other in a welcoming way, as opposed to
102 another option for an L-shaped building that was larger but not as continuous with the other
103 buildings.
104

105 Vice Chair Hoppock asked about the lease terms and who owns the lease of the parking spaces in
106 question. Mr. Kelley said there is a long-term recorded lease with developers before his time; he
107 could have his paralegal provide that information to the Board. Mr. Pearson demonstrated the
108 two parcels on the property owned by Eversource and leased to Brady Sullivan. Mr. Gaudio
109 referred to the site plans and asked if the property underlying the setback incursion is owned by
110 an associated entity or leased by one. Mr. Kelley said that the setback relief they seek in this
111 instance is also on Eversource property. He said the eight different tax bills for the property
112 would need to merge under one TMP if this development proceeds.
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114 Mr. Kelley responded to the criteria for granting a Variance.

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

Mr. Kelley said that granting the Variance would not be contrary to the public interest because the setback is based on a tree line that abuts a parking lot area and is a natural organic fit with these lots. In addition, he said the setback would allow the building to be laid out in a more inviting fashion, open to the parking and building areas of 222 West Street and the neighboring retail building across the way on Island Street.

2. *If the Variance were granted, the spirit of the Ordinance would be observed because:*

Mr. Kelley said that granting the Variance is not contrary to the spirit of the Ordinance because of parking lot alignment and the nature of the abutting use would not negatively affect any property abutting the setback. The area would still be used essentially as parking.

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

Mr. Kelley said that granting the Variance would do substantial justice because it would allow the building to be sited in a more meaningful and logical way, without intruding on the abutting property and supporting surrounding uses. The plan would allow traffic flow and visitor access.

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

Mr. Kelley said that introducing a retail building would not diminish surrounding property values and in fact, he said would have the opposite effect. By thoughtfully building a higher-end retail building on the site it should raise neighboring property values, as opposed to a vacant lot.

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:*

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

Mr. Kelley said that the lot setback is needed for additional access behind the building, while abutting a tree line, which then transitions to a parking area. He said the hardship exists in that there are multiple "natural" setbacks already existing on the site and the site's configuration does not allow a meaningful building layout otherwise. Though he noted that the site is incorporated meaningfully now in that it is used daily for parking.

158 Ms. Taylor referred to the proposed building elevations provided by the applicant and asked for
159 more details. Mr. Kelley said that the north elevation presented would be the face of the building.
160 He demonstrated how other designs would have limited the property's flow and appeal. Ms.
161 Taylor said if the elevation referred to the front of the building, she did not understand the point
162 about site access being an issue without the Variance. Mr. Kelley said that he was not referring
163 to building access, but rather that the parking spots in question are used daily already. He pointed
164 out where there would be an access lane around the proposed building to facilitate deliveries, for
165 example.

166

167 Mr. Gaudio questioned the hardship in this instance. The applicant stated that they considered
168 other building shapes and elevations that could fit on the property. Mr. Gaudio said that if the
169 building were aligned differently the setback violation could be avoided. Mr. Kelley said that the
170 difference is that the vast majority of the proposed building would be placed on currently non-
171 impervious greenspace and that moving the building would diminish parking. Mr. Gaudio asked
172 if parking would still comply with Zoning requirements for the property's uses if the parking
173 spaces in question were eliminated. Mr. Kelley was unsure and said the goal is to balance
174 developments on the property and therefore to build on an undeveloped lot versus eliminating
175 current parking; they would already be losing 19 parking spaces. Mr. Rogers added that the
176 applicant's site plan had a note about parking. If the Variance was granted and this development
177 proceeded, the total required parking on the property would be 279 spaces. Today there are 344
178 spaces and therefore there would be adequate parking even with this development.

179

180 The Chairman said that the setback is tight throughout the whole parking area in question and
181 added that moving the building forward would not improve the situation. He said that spinning
182 the proposed building orientation could affect the continuity of the overall lot. Mr. Kelley agreed
183 and said a lot of hardscaping is already required for the other developments on site and it is not
184 as simple as picking the building up and moving it. The Chairman said it was difficult to see
185 hardship but said the leased lots changed it slightly for him.

186

187 Ms. Taylor expressed doubt about unnecessary hardship in this this application because the
188 building could probably be built within setbacks. While designing a building within the setbacks
189 might not be the applicant's preference, Ms. Taylor said that is not part of this Board's
190 consideration. Ms. Taylor continued asking, if the building were constructed on the current
191 greenspace that Mr. Kelley referred to, whether the property would still meet the landscaping
192 percentage required in the CD. Mr. Kelley said they intend to meet those criteria, which would
193 be in question during Planning Board review. Mr. Pearson added that there should be plenty of
194 space to meet landscaping requirements when all six parking lots are combined, in addition to
195 current landscaping around the mill. Mr. Rogers referred to standards in the CD and said that
196 80% of pavement is the maximum allowed, which the applicant would have to meet.

197

198 Mr. Greenwald asked, if the building adhered to setbacks, if the building's entrance would then
199 face Island Street with parking on the side, meaning that patrons would have to walk around the
200 building to access the entrance. Mr. Kelley replied in the affirmative saying that is not an ideal

201 retail layout and would impede existing parking. Mr. Greenwald said it is not ideal for
202 handicapped patrons to have to proceed a long way around the building.

203
204 Ms. Taylor reiterated that it is not this Board’s job to design a building or its access but rather to
205 determine if the plan presented by the applicant creates a hardship, which she struggled to see in
206 this case. Mr. Kelley said he viewed the hardship as trying to construct a successful building
207 within the confines of an odd parking lot layout, while adhering to what is allowed on the current
208 Colony Mill site and working around existing greenspaces and curb cuts. Mr. Kelley said that
209 consulting engineers worked on eight iterations of this building plan and almost all versions had
210 setback issues. He said this plan was not just thrown together.

211
212 Vice Chair Hoppock stated his understanding that there would be a driveway from the westerly
213 side of the building that would loop around the southern side of the building before turning north
214 onto the easterly side of the building. He then asked if parking lots would remain to the right of
215 the area where the setback needs a Variance and Mr. Kelley nodded in the affirmative. Vice
216 Chair Hoppock said that then the parking could be accessed from two directions: 1) the drive
217 around the building and 2) from the general Colony Mill parking lot. As such, Vice Chair
218 Hoppock questioned if the additional proposed uses on the property would alter surrounding
219 traffic patterns and density. Mr. Kelley said that the consulting engineers are working on a traffic
220 study to present to the Planning Board on March 11. Vice Chair Hoppock said that he was unsure
221 whether the applicant identified a special condition of the property itself that justified an
222 unnecessary hardship. He said the applicant identified a special condition of the plan layout but
223 not the property, which he found unsatisfactory. Vice Chair Hoppock was also unsure whether
224 the applicant satisfied the condition about affecting the essential character of the neighborhood,
225 particularly with the amount of traffic and parking. While the parking is used today, he said that
226 there would be more parking demand with a new retail establishment, which he found
227 concerning. Mr. Kelley said there is more than enough parking today and added his opinion that
228 adding amenities and a higher-end retail building would positively enhance the neighborhood.
229 Vice Chair Hoppock asked the definition of a “higher-end retail building,” to which Mr. Kelley
230 replied a modern Class A building with higher-end materials.

231
232 Ms. Taylor asked how many stories tall the proposed building would be and Mr. Kelley said one
233 story. The elevations presented by the applicant appeared as more than one story to Ms. Taylor.
234 Discussion ensued about heights and it was confirmed that the proposed ceiling height was 12
235 feet, the proposed building would be 22 feet at its highest point, and the proposed cupola would
236 extend higher as unusable space for decoration and scale.

237
238 The Chairman welcomed public comments and recognized Anthony Mastronardi of 100 Darling
239 Road, Keene, who owns the abutting property at 70 Island Street. Mr. Mastronardi said there
240 used to be two houses on the greenspace to which Mr. Kelley referred. He recalled opposing the
241 applicant’s request in 2019 to build a self-storage unit because it would have be three stories tall
242 and close to his property line. He said that the Colony Mill has been used more heavily in the
243 past when it was full of retail than it is now. Mr. Mastronardi used maps presented by the

244 applicant to ask questions about the proposed building. When he built his property, the Zoning
245 Board at the time required that he build at the north end of his lot and he was not within the
246 current side setbacks. Therefore, he has little property on the north side and he was concerned
247 when they wanted to build three stories adjacent to the north end of his property. He asked how
248 closed the newly proposed development would be to his property. Mr. Rogers said they would
249 maintain a 20-foot setback for the paving of their travel lane and the building would more likely
250 be 30 feet from Mr. Mastronardi's property line. Mr. Mastronardi expressed support for the
251 Board granting this Variance. He said that the elevation and location, with the building frontage
252 facing north, all looked fine to him.

253

254 Chair Gorman closed the public hearing and the Board discussed whether the application met
255 criteria for granting a Variance.

256

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

258

259 Ms. Taylor did not think a retail building would be contrary to public interest in the CD because
260 it is an allowed use, and so she thought the application met this criteria. Vice Chair Hoppock
261 added that he would be interested to see the results of a traffic study but given Mr. Mastronardi's
262 comments, he did not think that granting this Variance would significantly alter the
263 neighborhood's character. Chair Gorman's said his concern about neighborhood impacts was
264 lessened by knowing the actual proposed building height. Ms. Taylor said her only concern for
265 the neighborhood was traffic and that she had no information about whether curb cuts would
266 change, which she said can already be critical being directly across from the CVS entrance. She
267 said that more retail would bring more traffic and while that is partially a Planning Board matter,
268 she thought this Board should consider it as well when discussing neighborhood character and
269 public safety. Mr. Greenwald agreed that there would be less traffic in the area than when the
270 Mill was full, but he said that in a parking lot with many entrances/exits people might not always
271 follow the path of least resistance that the developer prefers. If the developers reoriented the
272 building, people could possibly then enter directly from Island Street, which he thought was
273 contrary to public interest. While he did not know what the new traffic pattern would be, he
274 imagined it would be less than when Colony Mill was full of retail.

275

276 *2. If the Variance were granted, the spirit of the Ordinance would be observed because:*

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278 Vice Chair Hoppock said that this criteria overlaps with the first and he reiterated his comments
279 that the Board does not have enough information about how traffic patterns would change.

280

281 *3. Granting the Variance would do substantial justice because:*

282

283 Vice Chair Hoppock said that when denying a Variance, the Board must prove that in doing so
284 the public gain would outweigh the individual applicant's loss; not proving that would be an
285 injustice to the applicant. He was unsure in this case because of not knowing traffic patterns and
286 volume expected. He said the applicant sought a 10,000 square foot building, which he did not

287 see as a hardship and he could not speak favorably to substantial justice being done by granting
288 this Variance.

289

290 Ms. Taylor expressed concern that after reviewing the first three criteria, the Board still had
291 many questions affecting their ability to deliberate. She said it is the applicant's burden to prove
292 their case and she was unsure they had carried that burden because of the remaining questions
293 about parking, traffic, and alternate entrances/exits.

294

295 Mr. Greenwald noted that traffic and parking would be nonissues if the building was constructed
296 within setbacks, and while there might still be concerns about the development, those would then
297 not be within the ZBA's purview because no Variance would be needed. The Chairman said the
298 Board might want to consider that the Colony Mill was once a bustling retail center with a
299 consistently full parking lot that many Board members could remember. While there is currently
300 adequate parking, the Chairman was still unsure the application met the first three criteria. Vice
301 Chair Hoppock and Ms. Taylor added that the Board was also missing lease details for the
302 parking spaces on Eversource property, which they said could affect the overall development
303 plan.

304

305 With the Board's support, Chair Gorman reopened the public hearing.

306

307 Mr. Kelley addressed some of the Board's concerns by listing the following information about
308 the proposed development. He said that today the Colony Mill and all of its outbuildings (Keene
309 Casino, NBT Bank, and Elm City Brewery) are approximately 125,000 square feet in total, most
310 of which has been converted to residential apartments. What remains approximately is 5,400
311 square feet for Elm City Brewery, 8,000 square feet for Keene Casino, and 2,500 square feet for
312 NBT Bank, which leaves 89 residential units comprising 109,000 square feet. Mr. Kelley said
313 that the newly proposed building would add 10,000 square feet of retail space, resulting in a total
314 26,000 square feet of retail on the property. He said that when Brady Sullivan owned the Mill at
315 its peak, it was comprised of 65-70% office/retail space, which is more than is currently
316 proposed. Mr. Kelley continued saying that he did not have the Eversource lease end date,
317 though it is publically available through Cheshire County. The lease predated Brady Sullivan's
318 ownership of the Mill. He said it was something to the effect of 99 years or into perpetuity,
319 which was friendly for the developer at the time. If those parking spaces were eliminated the
320 property would still be well within required number of parking spaces, which was part of overall
321 approval for the Mill conversion. The Chairman said that from his point of view, the lease was
322 important and perhaps imperative for this Board to make a fair decision. Mr. Gaudio said a lease
323 would not be in perpetuity. The Chairman said that even if the lease is for 99 years and is
324 renewable, it is still important for the Board to know those lease details, and added that the lease
325 weights on his decision because Brady Sullivan would potentially own the abutting property.

326

327 In anticipation of this Variance request being denied, Mr. Greenwald asked how much square
328 footage the proposed building would lose if built in compliance with the side setbacks. Mr.
329 Pearson reported that the proposed building would be 70 feet wide and 129 feet long, and

330 therefore 1,140 square feet. Mr. Rogers and the Chairman clarified that if the proposed building
331 were built in compliance with setbacks, they would not lose the entire 70 foot width of the
332 building but rather only approximately 35 feet of the building would have to be moved back 16
333 feet to comply with setbacks. The Chairman further clarified that then they would have to move
334 that 35 feet of building width back 16 feet. They would not lose the 16 feet for the whole width
335 and would therefore only lose approximately 600 square feet. The Board referred to site plans,
336 which can be found in the meeting packet, for clarification in this discussion.

337
338 Ms. Taylor reiterated that is it not this Board's job to redesign the proposed development. She
339 imagined the building could be reconfigured to a target square footage and so she did not grasp
340 the hardship in the building design. Mr. Gaudio said that the applicant created a self-imposed
341 hardship by designing the building as such and Vice Chair Hoppock agreed.

342
343 With no further questions for the applicant, Chair Gorman closed the public hearing. The Board
344 agreed there was no need to discuss criteria 1-3 again and they continued with those remaining.

345
346 *4. If the Variance were granted, the values of the surrounding properties would not be*
347 *diminished because:*

348
349 Chair Gorman and Vice Chair Hoppock agreed that they saw no evidence either way and felt it
350 okay to breakeven and grant this criteria.

351
352 *5. Unnecessary Hardship*

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

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

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

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

365
366 Mr. Gaudio reiterated that any hardship in this instance was self-imposed by the applicant's
367 building design. He said the building could be redesigned to fit within the setback dimensions
368 and as such, Mr. Gaudio thought the applicant violated this criteria. Vice Chair Hoppock agreed
369 and added that the applicant did not meet the burden of identifying a special condition of the
370 property that created a hardship, and therefore he did not think the fifth criteria was met. The
371 Chairman agreed that this criteria was not met and while he thought the Eversource lease had
372 potential to create a special condition of the property, the Board did not have that information.

373 Ms. Taylor said that she did not find a hardship but rather that the applicant prefers this particular
374 building design. She did not think anything prevented the applicant from building without
375 violating setbacks. She did not think the applicant met criteria 5.A. or 5.B.

376
377 Ms. Taylor moved to approve ZBA 20-03 for the Petitioner, Brady Sullivan Properties of 670 N.
378 Commercial St., Suite 303, Manchester, NH, to grant a Variance for properties located at 222
379 West St., Tax Map #583-012-000, #583-014-000 and #583-015-000 that are in the Commerce
380 District. The Petitioner requests a Variance for a side setback, where the building set back is
381 supposed to be 20 feet from the property line but would actually only be 4 feet per Section 102-
382 791 of the Zoning Ordinance. Vice Chair Hoppock seconded the motion. The Board voted on the
383 findings of fact.

384
385 *1. Granting the Variance would not be contrary to the public interest because.*

386
387 Passed with a vote of 5-0.

388
389 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

390
391 Denied with a vote of 0-5.

392
393 *3. Granting the Variance would do substantial justice.*

394
395 Denied with a vote of 0-5.

396
397 *4. If the Variance were granted, the values of the surrounding properties would not be*
398 *diminished.*

399
400 Passed with a vote of 5-0.

401
402 *5. Unnecessary Hardship*

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

406
407 The fifth criteria was denied with a vote of 0-5.

408
409 With a vote of 0-5, the motion to approve ZBA 20-03 failed.

410
411 Vice Chair Hoppock moved to deny ZBA 20-03, which Mr. Gaudio seconded and the Zoning
412 Board of Adjustment carried with a unanimous vote of 5-0.

413
414 **VI. New Business**

415

416 *[This discussion ensued out-of-order, after Communications & Miscellaneous below.]*

417
418 Mr. Greenwald informed the Board of an effort to create a state appeal board for any zoning
419 applications denied by local zoning boards, as opposed to going to court. Mr. Rogers said that
420 Staff stays up-to-date with any House and Senate bills. Vice Chair Hoppock did not know the
421 status of the bill at the time of this meeting but added that someone in the NH house must have
422 been displeased when a zoning appeal was denied in court. Mr. Gaudio said that many states
423 have special courts dedicated to zoning matters. Ms. Taylor recalled that last term, a special
424 housing appeal board was defeated by both the House and Senate but was slipped into the budget
425 last minute without funds allocated, and so there is legislation to repeal. She thanked Mr.
426 Greenwald for the information and he said there is a lot of support throughout the state for such a
427 board. Ms. Taylor thought that part of the problem is that applicants can have a long wait time
428 for matters to be heard in the court system and the Board agreed. Mr. Greenwald questioned the
429 effect such a board would have on the ability to undermine the purview of local municipalities.

430

431 **VII. Communications & Miscellaneous**

432

433 Mr. Rogers referenced an email Staff received about the spring Planning and Zoning conference
434 on May 30. If members want to attend, they should contact Staff to register.

435

436 **VIII. Non-Public Session (if required):**

437 **IX. Adjournment**

438

439 There being no further business, Chair Gorman adjourned the meeting at 7:35 PM.

440

441 Respectfully submitted by,
442 Katryna Kibler, Minute Taker
443 February 6, 2020

444

445 Respectfully revised by Katryna Kibler on February 25, 2020

446

447 Reviewed & edited by,
448 Corinne Marcou and Jane Taylor

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0 Daniels Hill Rd. ZBA 20-06



Petitioner requests a Variance to build a single family home on 1.8 acres where 5 acres is required per Section 102-791.



City of Keene
New Hampshire

NOTICE OF HEARING

ZBA 20-06

A meeting of the Zoning Board of Adjustment will be held on Monday, April 6, 2020 at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the petition of Leah LaRock of 1041 Route 63, Spofford, NH; represented by Tim Sampson, of Sampson Architects of 103 Roxbury St. The Petitioner requests a Variance for property located at 0 Daniels Hill Rd., Tax Map #238-003-000, which is in the Rural District. The Petitioner requests a Variance to permit a single family home to be built on a 1.8 acre lot where a 5 acre lot is required per Section 102-791 of the Zoning Ordinance.

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>.

Due to the COVID-19 State of Emergency, the City of Keene Zoning Board of Adjustment will hold its April meeting online. Board members and applicants will participate in this meeting remotely (not at City Hall). Members of the public are encouraged to participate by calling (603) 352-5440 and/or to watch on Cheshire TV, channel 1302. For updates, visit the City website listed above.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date March 27, 2020

APPLICATION FOR APPEAL

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

For Office Use Only:	
Case No.	<u>ZBA 20-010</u>
Date Filed	<u>3/12/2020</u>
Received By	<u>CM</u>
Page	of
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) LEAH LaRock Phone: 603 762 4071
Address 1091 Route 63 Spofford NH 03462
Name(s) of Owner(s) LEAH LaRock
Address 1091 Route 63 Spofford NH 03462
Location of Property 0 Daniels Hill Road

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 238-003-000 Zoning District Rural
Lot Dimensions: Front 212 Rear 295 Side 294 Side 316 | 50
Lot Area: Acres 1.8a Square Feet 78,410 sf
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0 Proposed 2.2% +/-
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 0 Proposed 5.3% +/-
Present Use Vacant Lot
Proposed Use Build Lot - single family

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.

Tim P Samp Date 3/12/20
(Signature of Owner or Authorized Agent)

Please Print Name Timothy Sampson

PROPERTY ADDRESS O Daniels Hill Road

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 102-791 of the Zoning Ordinance to permit:
A single family home to be built on a 1.8 acre lot
where a 5 acre lot is required

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

The proposed use is permitted in the rural zone. Also with the exception of lot size all zoning requirements can be met. The proposed use is also consistent with the neighborhood.

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

The existing lot is small but is in character with the neighborhood. The proposed development will also be consistent with the neighborhood. The spirit of the ordinance is to prevent over-development. A single family residence is in the spirit of the ordinance

3. Granting the variance would do substantial justice because:

The variance would allow the owner to develop the lot in a manner that is consistent with adjacent lots.

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

The proposed use is consistent with adjacent lots. The type, size, and scale are in keeping with the spirit of the ordinance as well as surrounding properties

5. Unnecessary Hardship

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

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

The intent of the ordinance is to prevent over development and maintain consistent scale and character. The only zoning requirement that can't be met is lot size. The property is large enough to maintain the character of the neighborhood

and

ii. The proposed use is a reasonable one because:

the proposed use is permitted in the rural zone. A single family dwelling is consistent and in character with the neighborhood

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.

of the permitted uses in the rural zone only a single family dwelling is consistent with the neighborhood. If a variance is not granted the lot can not be developed in the most reasonable manner, a single family dwelling.



City of Keene

New Hampshire

NOTICE OF DECISION

ZONING BOARD OF ADJUSTMENT

CASE NUMBER: ZBA 14-12
Property Address: 0 Daniels Hill Rd.
Zone: Rural District
Owner: Leah LaRock
Petitioner:
Date of Decision: November 6, 2017

Notification of Decision:

You are hereby notified that the request for an extension to approved Variance dated July 6, 2015 for property located at 0 Daniels Hill Rd., Keene, which is in the Rural District and based upon the record and which is incorporated by reference has been approved 4-1 which will expire in two (2) years on November 7, 2019, This is to permit the construction of a single family dwelling on a lot with 1.76 acres where five acres are required per Section 102-791, Basic Zone Dimensional Requirements of the Zoning Ordinance.

Conditions:

1. Prior to granting of a building permit, the owner will install a 6"-12" berm across the first Woods Road near Daniels Hill Road, and also across the second Woods Road located (easterly) towards Route 9 over the existing open area. In regards to the berm located (easterly) across the second Woods Road, this berm is to extend to the existing berm on the lot.
2. That the owner maintains a vegetated buffer of approximately 20 feet along the road frontage westerly of the driveway. The buffer does not have to be opaque but shall have a density similar to the existing vegetation. This buffer may include new trees or the existing trees.
3. Mr. Robert Hitchcock of SVE Associates will verify that the development of the property does not increase the runoff onto the abutting property to the East.


Corinne Marcou, Clerk

Any person directly affected has a right to appeal this Decision. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The Motion for Rehearing must be filed not later than 30 days after the first date following the referenced Date of Decision. The Motion must fully set forth every ground upon which it is claimed that the decision is unlawful or unreasonable. See New Hampshire RSA Chapter 677, et seq.



Zoning Data:

Parcel ID: 238-003-000-000-000
 Owner: Leah A. LaRock
 Zoning: Rural
 Lot Area: 1.8 Acres / 78,410 +/- sf

	Required	Proposed Structure
Lot Size Minimum:	5 acres	1.8 acres
Minimum Lot Area per Dwelling:	5 acres	1.8 acres
Lot Width Minimum (feet):	200	212
Maximum Height (stories):	2	1 1/2
Maximum Height (feet):	35'	22'
Minimum Yard:	20	20
Front:	50	115'
Side:	50	78'+/- / 82'+/-
Rear:	50	173'+/-
Maximum Percentage of lot covered by structure:	10%	2.3%
Maximum Percentage of lot covered by impermeable surfaces:	20%	5.3%
Required Frontage:	50	212

Project:

Proposed Site
Daniels Hill Road
 16 March 2020

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143 Main St.
ZBA 20-07



Petitioner requests a Change of a Non-Conforming Use to permit a multi-family dwelling with office use from a single-family dwelling.



NOTICE OF HEARING

ZBA 20-07

A meeting of the Zoning Board of Adjustment will be held on Monday, April 6, 2020 at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the petition of 143 Main St., LLC of West Swanzey, NH represented by Tim Sampson, of Sampson Architects of 103 Roxbury St. The Petitioner requests a Change of Non-Conforming Use for property located at 143 Main St., Tax Map #584-061-000, which is in the Central Business Limited District. The Petitioner requests a Change of Non-Conforming Use to permit a multi-family dwelling with office use from a single-family dwelling.

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>.

Due to the COVID-19 State of Emergency, the City of Keene Zoning Board of Adjustment will hold its April meeting online. Board members and applicants will participate in this meeting remotely (not at City Hall). Members of the public are encouraged to participate by calling (603) 352-5440 and/or to watch on Cheshire TV, channel 1302. For updates, visit the City website listed above.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date March 27, 2020

APPLICATION FOR APPEAL

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

For Office Use Only:	
Case No.	<u>ZBA 20-07</u>
Date Filed	<u>3/18/2020</u>
Received By	<u>LL</u>
Page	_____ of _____
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

- 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) Timothy Sampson Phone: 603 769 7736
Address 103 Roxbury St Suite 206 Keene NH 03431
Name(s) of Owner(s) 143 Main LLC
Address PO Box 575 W. Swanzey NH 03469
Location of Property 143 Main St

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 584-061-000 Zoning District Central Bus Limited
Lot Dimensions: Front 50 Rear 50 Side 130 Side 130
Lot Area: Acres .15 acres Square Feet 6500 sf
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 43% Proposed 43%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 60% Proposed 60%
Present Use Single Family Residential
Proposed Use Two Family Residential and office

SECTION III - AFFIDAVIT

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

Tim P Samp Date 3/17/20
(Signature of Owner or Authorized Agent)

Please Print Name Timothy Sampson

PROPERTY ADDRESS – 143 Main Street, Keene, NH

APPLICATION FOR A CHANGE OF A NONCONFORMING USE

The Zoning Board of Adjustment may, in appropriate circumstances and with appropriate safeguards, permit a nonconforming use to be changed to another nonconforming use provided that the following criteria are met:

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

This lot is in the Central Business Limited Zone. The current use of Single Family Residential is not an allowed use in this zone. Uses allowed in this zone include multi-family residential, bed and breakfast, and Boarding houses as well as office. The proposed use is mixed use including two residential units and office. The two residential units are similar to other uses permitted in the zone such as bed and breakfast and multi family. The City of Keene Master Plan “Future Land Use & Policy” chapter shows this property in an area identified as “Downtown neighborhood/Traditional Neighborhoods and Mixed-Use”. This section of the plan encourages these areas to be developed with a residential and mixed use development and “compatibility with historic areas” Allowing the owner use the property for a mix of uses that will include residential and office is more in keeping with the intent of the Ordinance than the current use of Single Family residential.

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

The surrounding area is a mix of uses including residential, professional offices, restaurants and stores. The two residential units and office space will fit well with the existing neighborhood. The property directly to the south of this one contains residential units and several more exist on Davis Street to the west of this property. This is a unique property in the zone due to its age and construction and is ranked as a primary resource in the Historic District Resource Ranking. Allowing the two residential units and office will allow the owner to maintain the historic look of the home. The two residential units and office space will be similar to other uses surrounding this property and will be more in keeping with the mixed uses in the neighborhood than the current use of single family residential and will not be injurious obnoxious or offensive to the neighborhood.



ZBA ABUTTERS LIST

ADDRESS: 143 Main St

Owner Name	TMP NO.	Mailing Address
H3 Main St LLC	584-061-000	PO Box 575 West Swanzey NH 03469
Ellis Robertson Corp	584-001-000	PO Box 188 Chesterfield NH 03443
Cumberland Farms Inc	582-002-000	Westborough MA 165 Flanders Rd 01581-1000
H7 Main St LLC	584-060-000	11 River St Wellesey MA 02481
Roman Catholic Bishop Manchester	584-006-000	153 Ash St Manchester NH 03104
Athens Pizza House Inc	584-062-000	133 Main St Keene NH 03431
37 Davis St LLC	584-056-000	268 Rowland Rd Fairfield CT 06824
Adelphiq Inc	584-063-000	133 Main St Keene NH 03431
Eagle Nest Property Management	584-057-000	10 Gatehouse Rd Suite 125 Amherst MA 01002-2857
Cheshire Housing Opportunity	584-065-000	831 Court St Keene NH 03431
Sanel Realty Company Inc	584-066-000	33 Emerald St Keene NH 03431
21 Davis St LLC	584-058-000	21 Davis St Keene NH 03431
Beauvegard Family Rev Trust	585-003 000	127 Washington St Keene NH 03431

Notarized Statement

I, the undersigned Timothy Sampson, swear that to the best of my knowledge, the above is an accurate and complete abutters list.

Tim P S

Signature

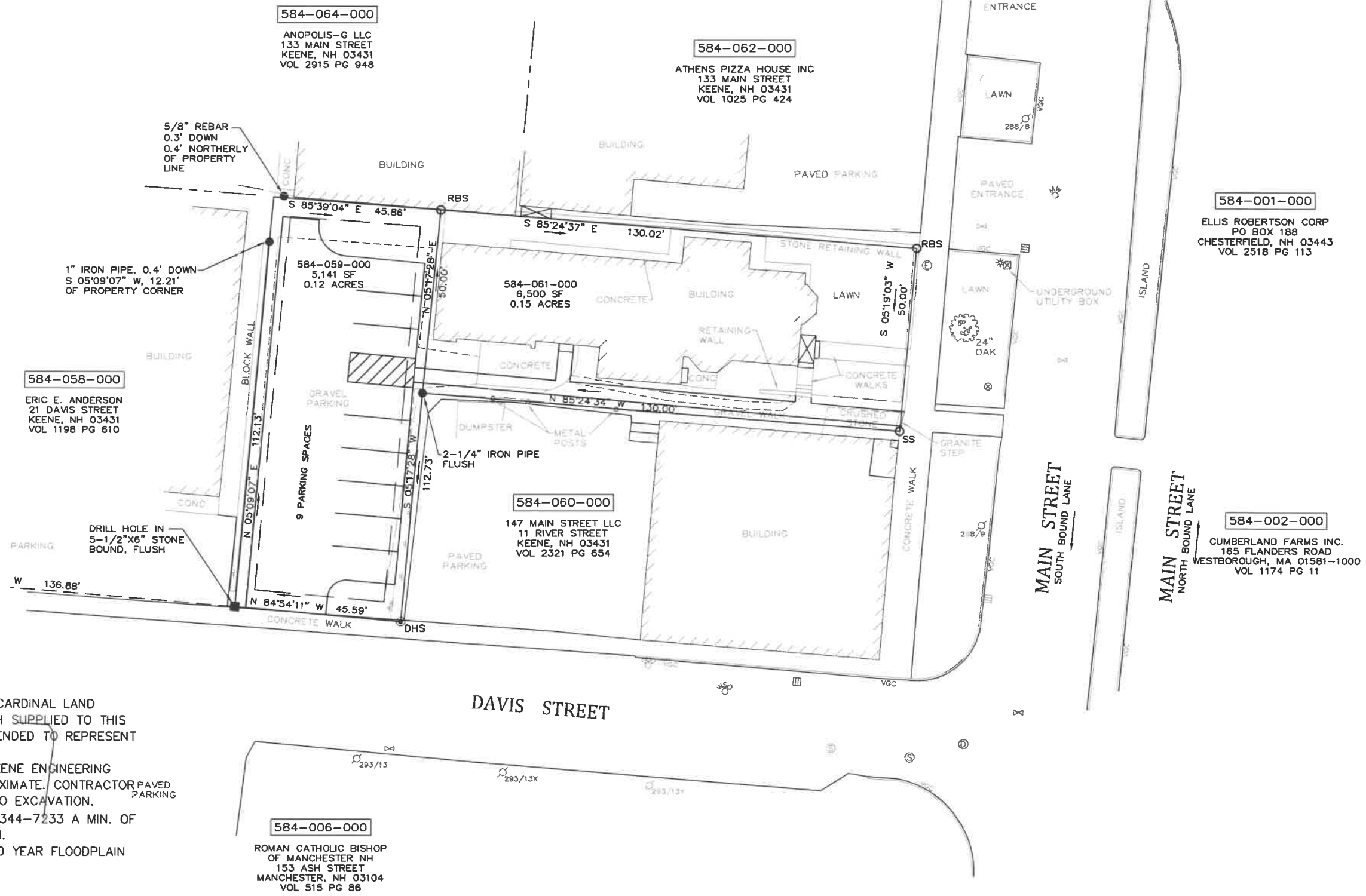
STATE OF NEW HAMPSHIRE
CHESHIRE, SS

Subscribed and sworn before me this 11th day of March, 2020.

Sasha L. Patnode
Notary Public/Justice of the Peace

My Commission Expires _____
SASHA L. PATNODE
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
September 16, 2020

K:\ZBA\Web_Forms\Variance_Application_2010.doc 8/22/2017



LOT DATA

ZONING	CENTRAL BUS. LIMITED
TAX MAP #	584-061-000
LOT SIZE	6,500 SF - 0.15 AC±
LOT COVERAGE	
BUILDING	2,880 SF - 43%
WALKS/PAVING	1,100 SF - 17%
TOTAL	3,900 SF - 60%

PARKING	
RESIDENTIAL - 2/UNIT	= 4 SPACES
OFFICE 400/200	= 2 SPACES
STORAGE 1000/3000	= 1 SPACE
TOTAL REQUIRED	= 7 SPACES
TOTAL PROVIDED	= 9 SPACES

1. THIS PLAN IS BASED ON AS BUILT SURVEY BY CARDINAL LAND SURVEYING, 185 WINCHESTER STREET, KEENE, NH SUPPLIED TO THIS OFFICE IN DIGITAL FORM. THIS PLAN IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY OF THIS PROPERTY.
2. LOCATION OF UTILITIES IS FROM THE CITY OF KEENE ENGINEERING DEPARTMENT RECORDS. LOCATIONS ARE APPROXIMATE. CONTRACTOR TO VERIFY LOCATIONS OF ALL UTILITIES PRIOR TO EXCAVATION.
3. CONTRACTOR TO NOTIFY "DIG SAFE" AT 1-888-344-7233 A MIN. OF 72 HOURS PRIOR TO THE START OF EXCAVATION.
4. THIS PROPERTY IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN FOR THE CITY OF KEENE.

OWNER: 143 MAIN, LLC
 PO BOX 575
 W. SWANZEY, NH 03469

MONADNOCK LAND PLANNING
 139 OLD WALPOLE ROAD
 KEENE, NH 03431
 603.209.3050 - MONADNOCKLP@NE.RR.COM

PROPOSED BUILDING RENOVATION AND IMPROVEMENTS
 143 MAIN STREET
 KEENE, NH

REVISION

ZONING PLAN
 SCALE: 1"=30'
 DATE MARCH 20, 2020

Z-1