



Zoning Board of Adjustment - Monday, June 1, 2020, 6:30 p.m.

- This meeting will be conducted using the online meeting platform, Zoom. The public may view the meeting online by visiting www.zoom.us/join and enter the Meeting ID: 825 5948 6250.*
- If you are unable to attend the meeting online, you may call the toll-free # (888) 475-4499 and enter Meeting ID: 825 5948 6250 to listen to the meeting.*
- More info on how to access this meeting is available on the Zoning Board of Adjustment webpage at ci.keene.nh.us/zoning-board-adjustment.
- If you encounter any issues accessing this meeting, please call 603-757-0622.

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – May 4, 2020
- III. Unfinished Business
- IV. Hearings:

ZBA 20-04: Petitioner, Oink Enterprise, LLC of 615 Rhododendron Rd., Fitzwilliam, NH, represented by David Bergeron, of Monadnock Land Planning, 139 Old Walpole Rd., Keene, requests a Variance for property located at 79 North St., Tax Map #530-033-000; that is in the Medium Density District. The Petitioner requests a Variance to permit an expansion of a structure in the side setback in the medium density residential zone to permit a setback of 2.5 feet where 20 feet is required per Section 102-791 of the Zoning Ordinance.

ZBA 20-05: Petitioner, Oink Enterprise, LLC of 615 Rhododendron Rd., Fitzwilliam, NH, represented by David Bergeron, of Monadnock Land Planning, 139 Old Walpole Rd., Keene, requests a Variance for property located at 79 North St., Tax Map #530-033-000; that is in the Medium Density District. The Petitioner requests a Variance to permit an enlargement of a nonconforming use in the medium density residential district per Section 102-392 of the Zoning Ordinance.

ZBA 20-10: Petitioner, 522 Main Street Keene, LLC of 24 Harriman Drive, Auburn, ME, represented by Michael Petrovick of Michael Petrovick Architects, 51 Railroad St., Suite 140, Keene, requests a Variance for property located at 526 Main Street, Tax Map #112-008-000; that is in the Commercial District. The Petitioner requests a Variance to permit parking in the front setback per Section 102-749 of the Zoning Ordinance.

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

**In Emergency Order #12, issued by the Governor pursuant to Executive Order #2020-04, which declared a COVID-19 State of Emergency, the requirement that a quorum of a public body be physically present at the meeting location under RSA 91-A:2, III(b), and the requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the meeting location under RSA 91-A:2, III(c), have been waived. Public participation may be provided through telephonic and other electronic means.*

The Board chair will provide instructions during the meeting for how the public can provide comment.

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1 **City of Keene**
2 **New Hampshire**

3
4
5 **ZONING BOARD OF ADJUSTMENT**
6 **MEETING MINUTES**
7

8 **Monday, May 4, 2020**

6:30 PM

Remote meeting via Zoom

Members Present:

Joshua Gorman, Chair
Jane Taylor
Arthur Gaudio, Alternate
Louise Zerba, Alternate
Joshua Greenwald
Michael Welsh
Joseph Hoppock, Vice Chair

Staff Present:

Corinne Marcou, Zoning Clerk
John Rogers, Zoning Administrator

9
10 Chair Gorman called the meeting to order at 6:30 PM. He read a prepared statement explaining
11 how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of
12 New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public
13 body meetings) during the declared COVID-19 State of Emergency. He explained the
14 procedures of the meeting and how the public can participate.
15

16 **1) Introduction of Board Members**
17

18 Roll call was conducted, with each Board member and staff member stating their name, location,
19 and who was in the room with them (if applicable). Mr. Rogers noted that the two alternate
20 members, Louise Zerba and Art Gaudio, will be participating in discussions but will not be
21 voting on motions.
22

23 **2) Minutes of Previous Meeting – April 6, 2020**
24

25 Mr. Welsh made a motion to approve the meeting minutes of April 6, 2020. Mr. Hoppock
26 seconded the motion, which passed by a unanimous, roll call vote.
27

28 **3) Unfinished Business**
29

30 Zoning Administrator John Rogers stated that there is no unfinished business.
31

32 **4) Hearings**

- 33 a) **ZBA 20-08:/ Petitioner, Frederick A. Farrar, Inc., represented by Kendall W.
34 Lane, Esq., Keene, requests a Variance for property located at 15 Avon St., Tax
35 Map #578-003-000; that is in the Commerce District. The Petitioner requests a**

36 **Variance to permit the installation of a transformer and dumpster within a**
37 **fenced enclosure as an accessory use in the front setback in front of the building**
38 **at 15 Avon Street per Section 102-887 of the Zoning Ordinance.**
39

- 40 b) **ZBA 20-09:/ Petitioner, Frederick A. Farrar, Inc., represented by Kendall W.**
41 **Lane, Esq., Keene, requests a Variance for property located at 15 Avon St., Tax**
42 **Map #578-003-000; that is in the Commerce District. The Petitioner requests a**
43 **Variance to permit the installation of a transformer pad 6'8' x 7'8" located five**
44 **feet from Avon Street surrounded by a security fence, which will be one foot**
45 **from the Avon Street right of way when a setback of 20 feet is required per**
46 **Section 102-791 of the Zoning Ordinance.**
47

48 Chair Gorman stated that ZBA 20-08 and ZBA 20-09 will be presented together but voted on
49 separately. He read ZBA 20-08 and ZBA 20-09 and asked Mr. Rogers to speak.
50

51 Mr. Rogers stated that both applications are dealing with the same issue. He continued that in
52 two sections, the Zoning Code speaks to the front setback, whether it be an accessory use or
53 structure. This explains the two applications, even though the applications are for the same
54 transformer proposed.
55

56 Mr. Rogers continued that the property is located at 15 Avon Street which is in the Commerce
57 District. He showed the location on a map, explaining that it is right behind Valvoline Instant
58 Oil Change on West Street. The applicant proposes that the transformer, which is currently on a
59 pole across the street, be upgraded to larger one, which would be required to be on the ground
60 within the front setback.
61

62 Mr. Welsh asked what the two properties to the south are, on Avon Street on the same side of the
63 road. Mr. Rogers replied that Kiser Orthotic and Prosthetic Services directly abuts with a vacant
64 office building as the other.
65

66 Ms. Taylor stated that she read both applications and is confused, trying to distinguish between
67 the two. Ms. Taylor questioned which application would be the accessory use? She thought the
68 pad was just a foundation that was part of it. Mr. Rogers replied that she is correct; there will be
69 a cement pad that the transformer will be placed on. He continued that in the past they have
70 treated these as an accessory-type structure, like a shed or something similar. They do not see
71 these often. Many times these transformers are in the right-of-way and part of Eversource
72 service lines. This one will be on private property and privately-owned.
73

74 Ms. Taylor stated that she still does not understand why the pad and transformer are considered
75 separate structures. She also asked where the dumpster is currently located. Mr. Rogers replied
76 that that they are not separating them out; they would consider the pad and transformer as one
77 item. He continued that the dumpster currently sits to the southeast side of the building where
78 there is paving and added the applicant could speak to it better.

79 Ms. Taylor stated that if the transformer and pad are basically one, she does not understand why
80 they need two separate Variances. Mr. Rogers replied that the first Variance speaks of Section
81 102-791 – Basic Zone Dimensional Requirements, the chart that outlines the setbacks, then the
82 definitions section that speaks to what setbacks are would prohibit any sort of building or
83 structure to be in the front setback. He continued that the second Variance they are asking for
84 relates to Section 102-887 – Front setback, which says “No accessory building or use may
85 occupy any part of a front setback.” There are two sections of the Code that speak to the same
86 thing, so it was the recommendation to the applicant to apply to the two Variances, even though it
87 is the same structure and the same setback.

88
89 Mr. Hoppock asked about the picnic table in the photo of the front of 15 Avon Street. Mr.
90 Rogers replied that is the proposed location for the transformer. Mr. Hoppock asked what the
91 impact would be on the sidewalk, and what the impact would be with snow removal in the area.
92 Mr. Rogers replied that the sidewalk will not be affected. He continued that he does not know
93 how close they would be coming to the sidewalk, but the applicant does want to put a fence to
94 screen the transformer and the dumpster. Mr. Hoppock replied that maybe Mr. Lane can address
95 that during his remarks.

96
97 Ms. Zerba asked what the frontage is from the building to the edge of the sidewalk, and what it is
98 on the north. Mr. Rogers replied that this might be a question better asked of the applicant. Ms.
99 Zerba replied that when Mr. Lane speaks she would like to know the distance from the building
100 to the edge of the property on all four sides.

101
102 Mr. Gaudio asked if safety is the purpose of the fence. He continued that the transformer across
103 the street does not have a fence. Mr. Rogers replied yes, it is partially about safety, and the
104 purpose of the fence is to screen it off. He continued that the applicant would have to adhere to
105 the Electrical Code, ensuring that the fence is not too close to the transformer, as there needs to
106 be an allowed distance for maintenance. The intent is also to screen the dumpster and the
107 transformer they are proposing. He continued that he just found some of the information Ms.
108 Zerba was looking for - the fence is proposed to be one foot from the edge of the sidewalk.

109
110 Chair Gorman thanked Mr. Rogers. He opened the public hearing, and again gave the phone
111 number for members of the public to use if they wish to participate. He asked Kendall Lane to
112 speak.

113
114 Kendall Lane, speaking via phone from 47 Mechanic Street, Suite 1, stated that he is
115 representing Frederick A. Farrar, Inc. He continued that to start with some background on the
116 applicant. Originally established in the mid-1930s on St. James Street in an area that is now a
117 parking lot, Frederick A. Farrar, Inc. moved to their current location on Avon Street. The
118 building was built in 1947 to house the business. The company builds and repairs engines, from
119 fairly small ones to fairly large ones. Slide Exhibit B shows an engine they are currently
120 working on. It was transported to Keene from a Naval Air Station on Cape Cod and is in a
121 number of pieces in the shop at 15 Avon Street. The problem the company runs into is the

122 current transformer is about 25 years old and is relatively small. To work on an engine of the size
123 shown requires more power than the current transformer is able to provide. As an example, if his
124 clients would tested the engine, it would blow the power for the whole side of West Street. The
125 Farrar's have been working with Eversource for about 2.5 years for the installation of a new
126 transformer. They have come to an agreement for the Farrar's to purchase and install a new
127 transformer.

128
129 Mr. Lane continued that the company began looking for where the new transformer could be
130 located. First, they looked at the roof, which would be ideal but unfortunately, when the building
131 was constructed in 1947, it was not designed to with stand the weight of the proposed
132 transformer. Currently, when there is a heavy snowfall the company has to shovel off the roof, as
133 the building cannot support the weight. They then looked at the parking area, shown in Exhibit
134 C. The parking area is utilized exclusively for four company vehicles with the two heaviest not
135 shown in the photo. As there is not a lot of space on the property, if they put the transformer in
136 this area there would not be enough room for their vehicles and they would be looking for a
137 solution to those parking problems.

138
139 Mr. Lane continued that the photo also shows the location of the dumpster in front of the
140 building. The dumpster is right on the edge of the paved section. Exhibit D shows the grass area,
141 which is the proposed the new location for the transformer. Regarding Ms. Zerba's question
142 about the depth, the transformer pad would be located five feet from the sidewalk with the pad
143 six feet, eight inches in depth. Therefore, if it is five feet plus six feet, eight inches and located
144 15 inches from the building, that calculation is about 13 feet from the sidewalk to the building.

145
146 Mr. Lane continued that the photo of the front of the building shows a parking area, which is
147 owned by Valvoline. Between the building and the property line there is about eight feet of
148 space and from then on is a parking area, owned by Valvoline. On the rear is the Walgreens
149 drive-in and there is an area along the back about four feet in depth owned by Farrar's, and then
150 abuts the drive-in for Walgreens. Farrar's looked at all the possible alternatives where the
151 transformer could be located. The front is the only place that exists on site that the transformer
152 could be placed. The final slide, Exhibit E, shows the transformer in front of Antioch University
153 of New England (AUNE), which is directly across from Farrar's. That transformer was installed
154 by Eversource, within the edge of the public right-of-way. The requirement for the installation
155 of transformers is that they either must be protected by bollards (the one at AUNE has two) or be
156 fenced in. Because Farrar's transformer would be so close to the sidewalk, they are proposing
157 that it be fenced in for the safety of anyone using the sidewalk.

158
159 Mr. Lane continued that the way the sidewalk is plowed, the snow removal is just beyond the
160 location of where the transformer is proposed to be placed, so it would not interfere with snow
161 removal in front of Farrar's.

162
163 Mr. Lane continued that he would go through the five criteria:
164

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

166

167 Mr. Lane stated that granting the Variance would not be contrary to the public interest because it
168 is in the public interest to keep Farrar's in business. As it has grown, their ability to continue to
169 function and operate successfully is dependent on having a larger transformer installed that
170 would allow them to continue in operation. The industry has evolved. There are fewer and fewer
171 electrical contracting companies like Farrar's in the northeast. Those that have remained have
172 been picking up more and more types of business. Farrar's used to primarily deal with motors
173 for ski lifts for ski areas throughout the northeast. It has evolved and now much of the work
174 relates to the military and Navy with requirements for larger motors than what Farrar's used to
175 do in the past.

176

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

178

179 Mr. Lane stated that if the Variance were granted, the spirit of the Ordinance would be observed
180 because it would enhance the safety of the property. The transformer would be enclosed in a
181 fence and the dumpster would be moved into the enclosure. Under the Planning Board
182 standards, dumpsters are supposed to be enclosed. This dumpster predates the standards and has
183 been there for many years, not been enclosed. By creating the fenced-in area, they would
184 enhance the appearance and bring the dumpster into compliance with the Planning Board
185 standards.

186

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

188

189 Mr. Lane stated that granting the Variance would do substantial justice because there is no other
190 location on the site. They explored every possible alternative. The roof will not support the
191 weight. If the parking lot area were used for the transformer it would create additional problems
192 with the loss of parking spaces. The proposed location has been reviewed and approved by
193 Eversource. All of the electrical lines for the transformer would be underground.

194

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

197

198 Mr. Lane stated that if the Variance were granted, the values of the surrounding properties would
199 not be diminished because this is not a residential area. It is in an area with businesses plus
200 AUNE. Farrar's is abutted by an automobile service station and kitty-corner to a gas station.
201 The value of the surrounding properties would not be at all affected. There is already a
202 transformer out there for AUNE.

203

204 5) *Unnecessary Hardship*

205

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

208 i. *No fair and substantial relationship exists between the general public purposes of*
209 *the Ordinance provision and the specific application of that provision to the*
210 *property because:*

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

212

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

218

219 Mr. Lane stated that there is a relationship between the hardship and the size of the property. The
220 building has been there since 1947. The property will not get any bigger. They tried to negotiate
221 with surrounding properties and there is no possibility of enlarging the property. It is in the
222 public interest to use the property in a safe manner to protect the public from any contact with
223 the transformer and be able to continue operation. The transformer is necessary, with no other
224 location available. The special condition that relates to this property is its limited size. When
225 Farrar's relocated to this location, the only other building that existed there was the furniture
226 company, which is now AUNE. With the property size, Farrar's options are limited.

227

228 Chair Gorman thanked Mr. Lane and opened it up to questions.

229

230 Mr. Hoppock asked what the dimensions of the new transformer are versus the old one across the
231 street. Mr. Lane replied that that the current one across the street is about two feet by three feet.
232 The dimensions of the new one are 7'8" by 6'8". That is more than double the size of the
233 existing one.

234

235 Ms. Zerba asked if the pad would be the same size as the transformer. Mr. Lane replied yes.
236 Ms. Zerba asked if they considered placing the pad and fence closer to where the dumpster
237 currently is located, which would allow them to keep the green space where the picnic table is
238 now. Mr. Lane replied that they considered moving it further down Avon Street at that section
239 of the building. He continued that the problem is they have to be able to get access into that area
240 of the building. As shown in Exhibit D, there is a large bay door, and right next to that, the entry
241 door to the shop. There is not space to move it down that far. Ms. Zerba asked if it could be
242 close to the pavement farther down. Mr. Lane replied that if they did that there would be no
243 place for the dumpster. In order to have access to the dumpster they have to have the dumpster
244 next to the driveway.

245

246 Mr. Welsh stated that Exhibit D shows the location of the pad and transformer and the fenced-in
247 area, with the trees behind it. He continued that it looks like the trees would be preserved. Mr.
248 Lane replied that that is correct; the trees would not be impacted.

249

250 Ms. Taylor asked what the dimension is of the grassed-in area. Mr. Lane replied that it is about
251 30 feet long. Ms. Taylor inquired about the dotted line in one of the drawings. Mr. Lane replied
252 that the dotted line is the proposed fenced-in area. Ms. Taylor asked if the small, solid line
253 within the dotted lines is the transformer, given they also want to put the dumpster in, why do
254 they need all of that area fenced in? Why obliterate all that green space for something that is six
255 by eight feet? Mr. Lane replied that the green space would mostly remain. He continued that all
256 that is being eliminated is the part where the dumpster and pad will be located. The green space
257 will be behind the fence. They extended the fenced area so they could get the dumpster in and it
258 could be emptied. Ms. Taylor replied that it seems like that is a whole lot of difference between
259 the transformer and what they are proposing to do with the fenced-in area.

260
261 Ms. Taylor stated that Mr. Lane said there is no residential in this area, and maybe he was not
262 aware that a few months back the ZBA approved a Variance so that an old house two parcels
263 down could resume residential use. Mr. Lane replied that they spoke with that owner within the
264 last couple of weeks and that person does not think she will go forward with a residential use.
265 She wants to sell the property to Farrar's and Farrar's is not sure what they would do with it.
266 Ms. Taylor replied that they could put the transformer there. Mr. Lane replied that it is an
267 expensive piece of property for a transformer. He continued that they considered taking the
268 house down and putting a parking lot there. Farrar's employees have been parking at nearby
269 businesses because Farrar's does not have onsite parking. The property owner may change her
270 mind again and decide to make it into a residential property but as of a couple weeks ago, that
271 was not her intent..

272
273 Ms. Zerba asked if Farrar's intends blockade-type fencing. Mr. Lane replied that that is
274 something the Planning Board will be reviewing. He continued that it is a solid white fence, five
275 feet high. Ms. Zerba asked how much green space would remain. Mr. Lane replied that behind
276 the fence all of the green space would remain, except where the pad is. Ms. Zerba asked if
277 people walking on the sidewalk would see any green. Mr. Lane replied that yes, between the
278 fence and the paved area will be about seven feet to the south. To the north, the fence will go up
279 to the sidewalk.

280
281 Chair Gorman asked if it is fair to say that the drawing with the dotted line is not to scale. Mr.
282 Lane replied yes, he drew it and can guarantee that it is not to scale. It looks like it goes down
283 further than it actually does.

284
285 Mr. Gaudio stated that Mr. Lane said there is no room for the transformer on the north side of the
286 building that abuts Valvoline. He continued that there is a compressor there for an air
287 conditioning unit. He asked if there really is no space to put a transformer next to it. Mr. Lane
288 replied that they would have to begin by cutting down all the trees, and they would rather not do
289 that.

290

291 Chair Gorman asked if anyone else had questions. Hearing none, he asked if anyone from the
292 public wanted to speak in favor or against stating the phone number again. Ms. Marcou stated
293 that she and Mr. Rogers do not have any phone calls from members of the public.
294

295 Chair Gorman closed the public hearing and stated that the board will now discuss the petitions.
296 He read ZBA 20-08 and read Zoning Ordinance Chapter 102, Article V – Supplementary
297 Regulations, Division 4 – Accessory Uses, Sec. 102-887 – Front Setback; “No accessory
298 building or use may occupy any part of a front setback unless the front setback extends beyond
299 the front of the building; in such case the portion beyond the front of the building may be used.”
300 He read ZBA 20-09, and read Zoning Ordinance Chapter 102, Article V – Supplementary
301 Regulations, Division 1 – Generally, Section 102-791 – Basic Zone Dimensional Requirements;
302 “Minimum front setback for the Commerce District is 20 feet.”
303

304 Chair Gorman stated that if needed, he would reopen the public hearing to ask any technical or
305 procedural questions of Staff, the Petitioner, or the public.
306

307 The Board reviewed the criteria for ZBA 20-08:

308
309 1. *Granting the Variance would not be contrary to the public interest.*
310

311 Mr. Hoppock stated that the part he is having a problem with is that they have not received a
312 satisfactory explanation for why the new, larger transformer cannot be placed where the old one
313 was. He continued that speaking to the criteria generally, he does not think it presents an issue
314 with respect to altering the essential character of the neighborhood, and notwithstanding the tight
315 configuration, and he does not see that it threatens public health, safety, or welfare. He
316 appreciates that they have looked at other options to rule them out but he does not think they
317 have ruled out the across the street option.
318

319 Chair Gorman re-opened the public hearing and asked for input from Mr. Lane about why the
320 new transformer cannot be placed where the old one is. Mr. Lane replied that the current one is
321 on the utility pole across the street. He continued that the new transformer is more than twice the
322 size and would not be supported on the pole. There is no physical way to put it on the pole and
323 know that it would be supported and safe. The nature and size of it requires it to be on the
324 ground.
325

326 Mr. Hoppock stated that Mr. Lane showed the picture of the transformer on a pad across the
327 street, not on a pole. Mr. Lane replied that was a photo of AUNE’s transformer. Farrar’s will be
328 slightly larger than that one.
329

330 Mr. Welsh stated that he had three issues to affirm to his satisfaction, and Mr. Hoppock covered
331 two. He continued that the third is public safety. He is not usually a fan of fences but in this
332 instance with a large transformer, he thinks the fence adds to the public interest and safety.
333

334 Chair Gorman stated that first he needs to close the public hearing again before they continue
335 deliberations. He continued, thanking Mr. Lane for answering the question about the old
336 transformer, and then closed public hearing.

337
338 Ms. Taylor stated that she is torn. She continued that as she stated in her earlier questioning, the
339 dumpster as currently located is grandfathered from the current Zoning and Planning Board
340 regulations. It seems to her that there is little relief, visually, and for the employees' picnic table.
341 She is not sure this large fenced-in area does add to public safety, where perhaps a smaller fence
342 surrounding the transformer would do. She is of two minds with this particular issue.

343
344 Mr. Greenwald stated that he agrees with Mr. Hoppock that it does not interfere with public
345 health, safety, or welfare. He continued that it is in the public interest. The fence would protect
346 the transformer and dumpster from passersby and provide a better visual appearance.

347
348 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

349
350 Mr. Hoppock asked if they are only discussing ZBA 20-09 right now. Ms. Marcou explained
351 that there is a mistake in the PowerPoint, which says "ZBA 20-09" but ZBA 20-08 should come
352 first. Chair Gorman stated that he is open to discussion on this, but he thinks there might be
353 merit to having general dialogue about both at once and then making separate motions. He asked
354 the Board members for their input and continued that if they have no comments he would assume
355 it is okay to move forward.

356
357 Ms. Taylor stated that the explanations are virtually identical so she does not have a problem
358 discussing them together. She asked, regarding the voting process that if one of the members has
359 a particular concern with one of the criteria for that particular application, can they still make
360 that comment. Chair Gorman replied yes, that is reasonable. He continued that they will speak
361 broadly to both applications and then at voting time, specific comments can be made.

362
363 Chair Gorman asked if there are more comments.

364
365 Mr. Hoppock stated that the "unnecessary hardship" analysis is identical on both and is as Mr.
366 Lane says, tied to the size of the lot. He continued that he is satisfied that that is met. Chair
367 Gorman asked if anyone else has hardship comments. Hearing none, he moved on.

368
369 3. *Granting the Variance would do substantial justice.*

370
371 Ms. Taylor stated that she again goes back to the aesthetics and balancing whether the interest of
372 the public is truly outweighed. She continued that it is the same issue she has with not being
373 contrary to the public interest whether or not what is being proposed - not the transformer itself
374 but everything around it - may be a bit of overkill.

375

376 Chair Gorman asked if they have thoughts on what role the Planning Department could play in
377 this, regarding the aesthetics.

378
379 Mr. Welsh stated that he used to be on the Planning Board and stated that Board will oversee the
380 construction of the fence, the materials, the appearance, and maybe the dimensions. He
381 continued that this Board is approving the use of a fence and a footprint with the Planning Board
382 to give specifics.

383
384 Ms. Taylor stated that her concern is not the footprint of the transformer; it is the footprint of the
385 overall development in the context of where it is located. She continued that she is not sure if
386 this is required to go to the Planning Board.

387
388 Chair Gorman replied that he does not know, he would reopen the public hearing to hear from
389 Mr. Rogers.

390
391 Mr. Rogers stated that the size of the project might not require it to go to the Planning Board. He
392 continued that there are certain size restrictions that allow an application to be handled
393 administratively by the Community Development Director and this might fall into that.

394
395 Chair Gorman asked Mr. Rogers that given the size and nature of the transformer and potential
396 need for repairs and service, as well as the dumpster needing to be screened (required by
397 Zoning), is it possible that the size of that fence or the size of the area being confined is required.
398 He knows it is not allowable to have obstructions around electrical equipment. Mr. Rogers
399 replied that yes, certain clearances need to be maintained. He continued stating the example that
400 particularly in the front, there needs to be enough clearance so someone can safely open the
401 panels and work in a space that is not too confined. Those required clearances might at least be
402 dictating the proposed depth of this area, although probably not the length.

403
404 Chair thanked Mr. Rogers and closed the public hearing again.

405
406 4. *If the Variance were granted, the values of the surrounding properties would not be*
407 *diminished.*

408
409 Mr. Welsh stated that this is consistent with the uses in the surrounding area and it would not
410 negatively affect the property values. In fact, it would keep this business thriving, which
411 relatively improves property values in the area.

412 Chair Gorman asked if anyone else had more to say about the criteria. Hearing no comments, he
413 requested a motion.

414
415 Mr. Hoppock made the motion to approve ZBA 20-08, which Mr. Welsh seconded.

416
417 The Board voted on the findings of fact, via a roll call vote.

418

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

420

421 Passed with a vote of 5-0.

422

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

424

425 Passed with a vote of 5-0.

426

427 3. *Granting the Variance would do substantial justice.*

428

429 Passed with a vote of 4-1. Ms. Taylor was opposed.

430

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

433

434 Passed with a vote of 5-0.

435

436 5. *Unnecessary Hardship*

437

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

440

441 iii. *No fair and substantial relationship exists between the general public purposes of*
442 *the Ordinance provision and the specific application of that provision to the*
443 *property.*

444 iv. *The proposed use is a reasonable one.*

445

446 5. A) Passed with a vote of 5-0.

447

448 The motion to approve ZBA 20-08 passed with a vote of 4-1, with Ms. Taylor opposed.

449

450 Mr. Hoppock made a motion to approve ZBA 20-09. Mr. Welsh seconded the motion.

451

452 The Board voted on the findings of fact, via roll call vote.

453

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

455

456 Passed with a vote of 5-0.

457

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

459

460 Passed with a vote of 5-0.

461

462 3. *Granting the Variance would do substantial justice.*

463

464 Passed with a vote of 5-0.

465

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

468

469 Passed with a vote of 5-0.

470

471 5. *Unnecessary Hardship*

472

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

475

476 v. *No fair and substantial relationship exists between the general public purposes of*
477 *the Ordinance provision and the specific application of that provision to the*
478 *property.*

479 vi. *The proposed use is a reasonable one.*

480

481 5. A) passed with a vote of 5-0.

482

483 The motion to approve ZBA 20-09 passed with a vote of 5-0.

484

485 **5) New Business**

486

487 Mr. Rogers reported that there is no new business. Mr. Welsh thanked staff and Chair Gorman
488 for all of their hard work. Mr. Hoppock stated that he agrees and is very impressed. Mr.
489 Greenwald agreed and praised Chair Gorman and staff. Chair Gorman thanked everyone as well.

490

491 **6) Communications and Miscellaneous**

492

493 None.

494

495 **7) Non-Public Session (if required)**

496

497 None.

498

499 **8) Adjournment**

500

501 There being no further business, Chair Gorman adjourned the meeting at 7:52 PM.

502

503 Respectfully submitted by,
504 Britta Reida, Minute Taker

505 May 9, 2020
506
507 Edits submitted by
508 Corinne Marcou, Zoning Clerk
509 May 19, 2020

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79 NORTH ST. ZBA 20-04



Petitioner requests a Variance for an expansion of a structure in the side setback to permit a 2.5 ft. setback where 20 ft. is required per Section 102-791.



NOTICE OF HEARING

ZBA 20-04

A meeting of the Zoning Board of Adjustment will be held on Monday, June 1, 2020 at 6:30 PM to consider the petition of Oink Enterprise, LLC of 615 Rhododendron Rd., Fitzwilliam, NH; represented by David Bergeron, Monadnock Land Planning, 139 Old Walpole Rd., Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888)475-4499. The Meeting ID is 825 5948 6250. To notify the public body of any access issues, call (603) 757-0622. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-04: The Petitioner requests a Variance for property located at 79 North St., Tax Map #530-033-000, which is in the Medium Density District. The Petitioner requests a Variance to permit an expansion of a structure in the side setback in the medium density residential zone to permit a setback of 2.5 feet where 20 feet 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 by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date May 21, 2020



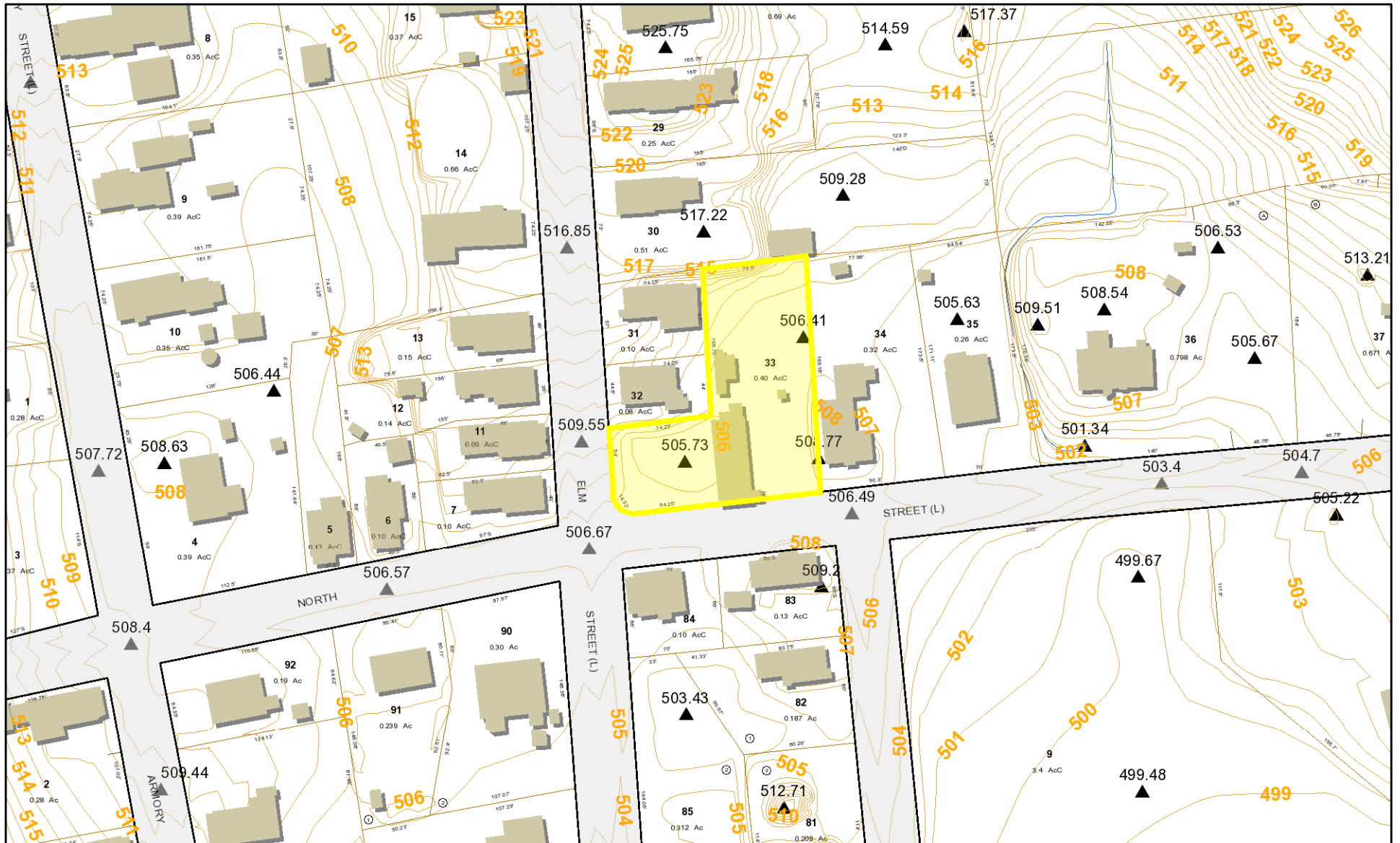
Keene, NH



1 inch = 100 Feet



May 20, 2020



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

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>2BA 20-04</u>
Date Filed	<u>3/17/2020</u>
Received By	<u>GM</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) DAVID BERGERON Phone: 209 3050
Address MONADNOCK LAND PLANNING, 139 OLD WALPOLE RD, KEENE
Name(s) of Owner(s) ONIK ENTERPRISE, LLC
Address 615 RHODODENDRON RD FITZWILLIAM, NH 03447
Location of Property 79 NORTH ST

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 230-033-000 Zoning District MEDIUM DENSITY
Lot Dimensions: Front 55 Rear 170 Side 144 Side 152
Lot Area: Acres 0.41 Square Feet 17,793
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 8 Proposed 11
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 16 Proposed 21
Present Use RETAIL MARKET
Proposed Use RETAIL MARKET

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.

David Bergeron Date 3/17/20
(Signature of Owner or Authorized Agent)

Please Print Name DAVID BERGERON

APPLICATION FOR A VARIANCE

A Variance is requested from Section 102-791, Table 1 – Basic Zone Dimensional Requirements of the Zoning Ordinance to permit: **Expansion of a structure in the side setback in the medium density residential zone to permit a setback of 2.5 feet where 20 feet is required.**

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

The property has been a neighborhood market and deli for approximately 80 years. The building was constructed prior to the current Keene Zoning standards and does not meet the current required setback from the street. The rear of the building contains a commercial Kitchen for the employees to make goods for sale in the market. The owner of the market would like to install new walk in coolers for direct customer use in the front of the store and new walk in cooler for use by the deli in the rear of the market. Expansion must be in the front of the store within the front setback to allow customers access to the products in the coolers. It is in the public interest to allow a business to improve his ability to serve his customers and it is in the public interest to allow a neighborhood market to be able to improve and offer better service to the residents of the area.

2. The use is not contrary to the spirit of the ordinance because:

The setbacks on a lot are to provide visibility for vehicles and pedestrians on the street. The existing building has been in this location for over 80 years and was constructed prior the current zoning setback requirements and is built up to the property line along North Street. The proposed addition to the existing building will be built 4 feet back from the front line of the existing building so that it will not further reduce visibility for vehicles and pedestrians. Because of the location of the existing building, the proposed addition will meet the spirit of the ordinance because it will be further back than the existing building and will not further limit visibility for vehicles and pedestrians.

3. Granting the variance would do substantial justice because:

It would allow the owner to improve his business and to provide additional services to their customers. The owner wishes to install coolers to provide food and cold drinks service for walk in customers. The coolers need to be located in the front of the store which is the customer area. The location of the addition for the coolers will be further from the property line than the existing building and will not interfere with sight distance along North Street or Elm Street. It will do substantial justice for the owner to allow them to add on to their building and improve service to their customers.

4. The proposed use would not diminish surrounding property values because:

The market has existed in this area for many years and is a part of the neighborhood. The proposed expansion would improve the overall appearance of the existing building and improve the look of the property. Improving the appearance of the

existing building and property will improve the value of this property and will help to improve the value of 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 provisions and the specific application of that provision to the property because:

The special conditions of this property are the location of the existing building on the lot. The building was constructed over the property line along North Street when it was built many years ago. The proposed addition to the building will be constructed further back from North Street than the existing building and will be more conforming to zoning than the existing building. Because the addition will be built further back from the street than the existing building, it will not interfere with sight distance for vehicles or pedestrians. Therefore, denial of the variance will not advance the purposes of the ordinance in any fair or substantial way.

ii. The proposed use is a reasonable one because:

Because of the location of the existing building within the side setback for the property, and the configuration of the building the variance is necessary to allow the owner to continue to operate and grow his business. The building was constructed over the setback line in many years ago and is used as a neighborhood market. The front portion of the building is the customer space and the rear is employee work space for preparing food for sale. The owner needs to add refrigerated space in the customer portion of the market to store and display food for sale to customers. The proposed addition will be set back further from the property line than the existing building so it will be more conforming than the existing building. It is reasonable to allow the owner of a building to construct an addition to his building that will be more conforming than the existing building and will allow the business to continue to do well and provide the goods and services that the customers want.

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

The special conditions of this property are the location of the building with the front within the side setback and the use of the building which is a market. Because of the location of the building and the use as a market the variance is necessary to provide necessary services to customers. The front portion of the building is the customer area and the rear is employee work space for preparing food for sale. The owner needs to add refrigerated display space in the customer portion of the market to

store and display food for sale to customers. The proposed addition will be set back further from the property line than the existing building so it will be more conforming than the existing building. Without the variance the owner would not be able to provide services their customers want. All markets have refrigerated space for display of products for sale and the addition would allow the addition of that display space.

530-036-000-000-000
AUGER MARK A.
55 NORTH ST.
KEENE, NH 03431-2620

530-042-000-000-000
CARROLL ROY P.
154 GILSUM ST.
KEENE, NH 03431

530-034-000-000-000
CARTIER DAVID P.
28 COUNTRY MEADOW DR.
RINDGE, NH 03461

536-009-000-000-000
CITY OF KEENE
3 WASHINGTON ST.
KEENE, NH 03431

530-014-000-000-000
DEVINE WILLIAM P.
PO BOX 52
TROY, NH 03465

530-035-000-000-000
DUNHAM MELISSA YOLANDA
73 NORTH ST.
KEENE, NH 03431

530-030-000-000-000
FLANDERS KIM Y.
333 ELM ST.
KEENE, NH 03431

536-085-000-000-000
FONTAINE, MARK P.
9 COTTAGE ST.
KEENE, NH 03431

536-005-000-000-000
GIVEN, MARY
115 NORTH ST.
KEENE, NH 03431

530-031-000-000-000
JACKSON, KIEFFER
325 ELM ST.
KEENE, NH 03431

Sworn and subscribed to me
by David Bergeron this
_____ day of March 2020

David J. Bergeron

530-045-000-000-000
JACOBS, BENJAMIN H.
176 GILSUM ST.
KEENE, NH 03431-2743

536-083-000-000-000
KING RICHARD K.
204 CARROLL ST.
KEENE, NH 03431

536-089-000-000-000
MACHADO GAIL
290 ELM ST.
KEENE, NH 03431

536-006-000-000-000
PAQUIN, CYNTHIA DALE
111 NORTH ST.
KEENE, NH 03431

530-029-000-000-000
PELCZARSKI, KATIE LYNN
343 ELM ST.
KEENE, NH 03431

530-013-000-000-000
PERKINS STEVEN W.
72 CARPENTER ST.
KEENE, NH 03431

536-091-000-000-000
ROGERS BRUCE A.
112 NORTH ST.
KEENE, NH 03431

530-015-000-000-000
ROPIECKI REV. TRUST
80 SANDY BEACH RD.
MUNSONVILLE, NH 03457

530-028-000-000-000
SCHWINDT, KAREN
347 ELM ST.
KEENE, NH 03431

536-090-000-000-000
SOKOL HENRY MARTIN
107 OLD KEENE RD.
TROY, NH 03465

530-012-000-000-000
SPRAGUE MICHAEL A. SR.
667 HURRICANE RD.
KEENE, NH 03431-2176

536-081-000-000-000
SULLIVAN, CHRISTOPHER M.
198 CARROLL ST.
KEENE, NH 03431

536-082-000-000-000
SULLIVAN, CHRISTOPHER M.
198 CARROLL ST.
KEENE, NH 03431

536-007-000-000-000
SYMONDS MARK T.
167 DEPOT RD.
WESTMORELAND, NH 03467

536-084-000-000-000
TAN, DORIS
2772 EAST BRANDON LN.
FRESNO, CA 93720

530-032-000-000-000
TREMBLAY, LOUIS F.
321 ELM ST.
KEENE, NH 03431

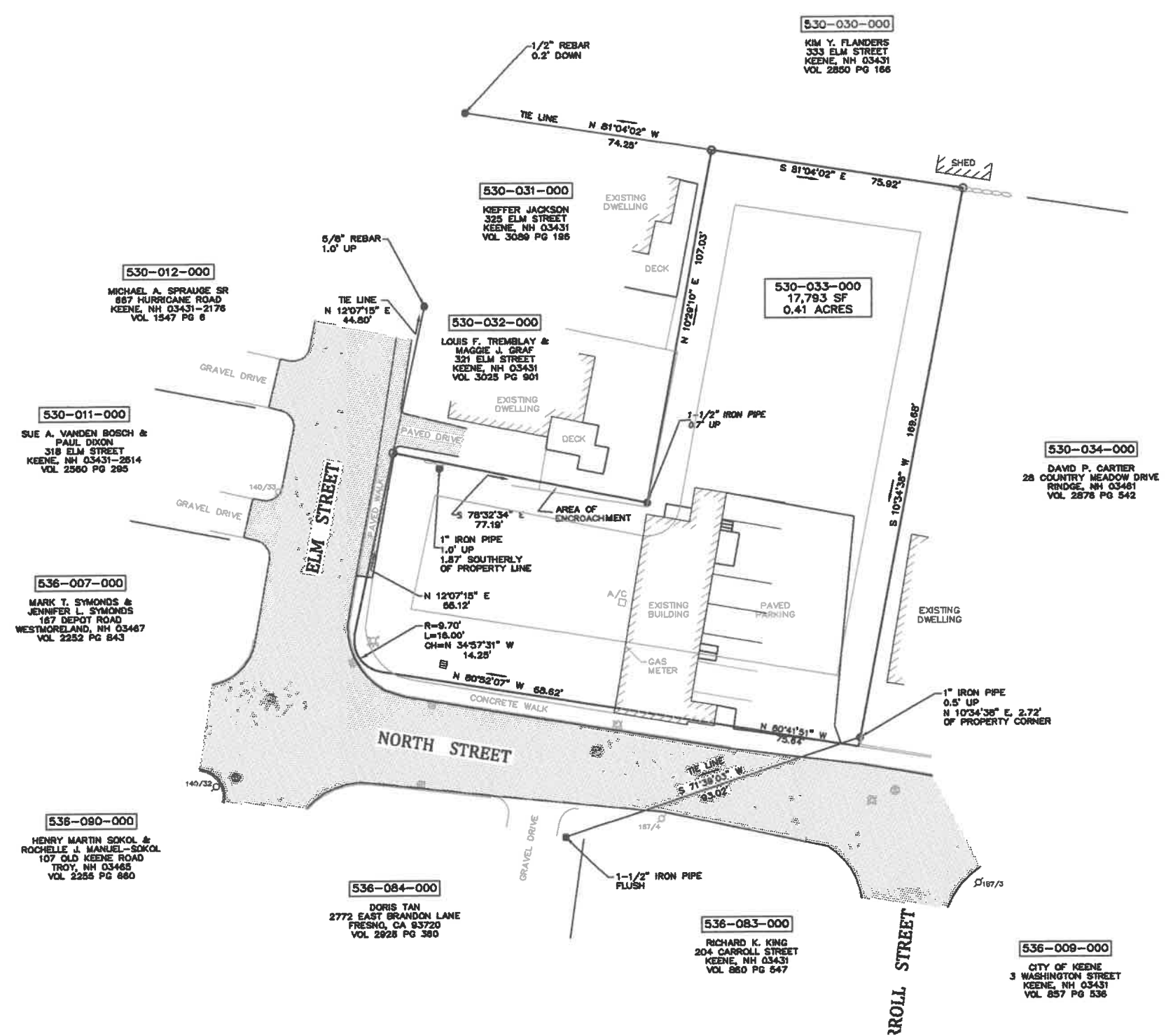
530-011-000-000-000
VANDEN BOSCH SUE A.
318 ELM ST.
KEENE, NH 03431-2614

Monadnock Land Planning
139 Old Walpole Road
Keene, NH 03431

Cardinal Land Surveying
185 Winchester Street
Keene, NH 03431

Oink Enterprise, LLC
615 Rhododendron Rd
Fitzwilliam, NH 02447

Notary Public
My commission expires



OINK ENTERPRISES, LLC
 79 NORTH STREET
 KEENE, NH 03431

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

CC&D'S KITCHEN
 79 NORTH STREET
 KEENE, NH 03431

REVISION

EXISTING PLAN

SCALE: 1"=40'
 DATE: MARCH 20, 2020

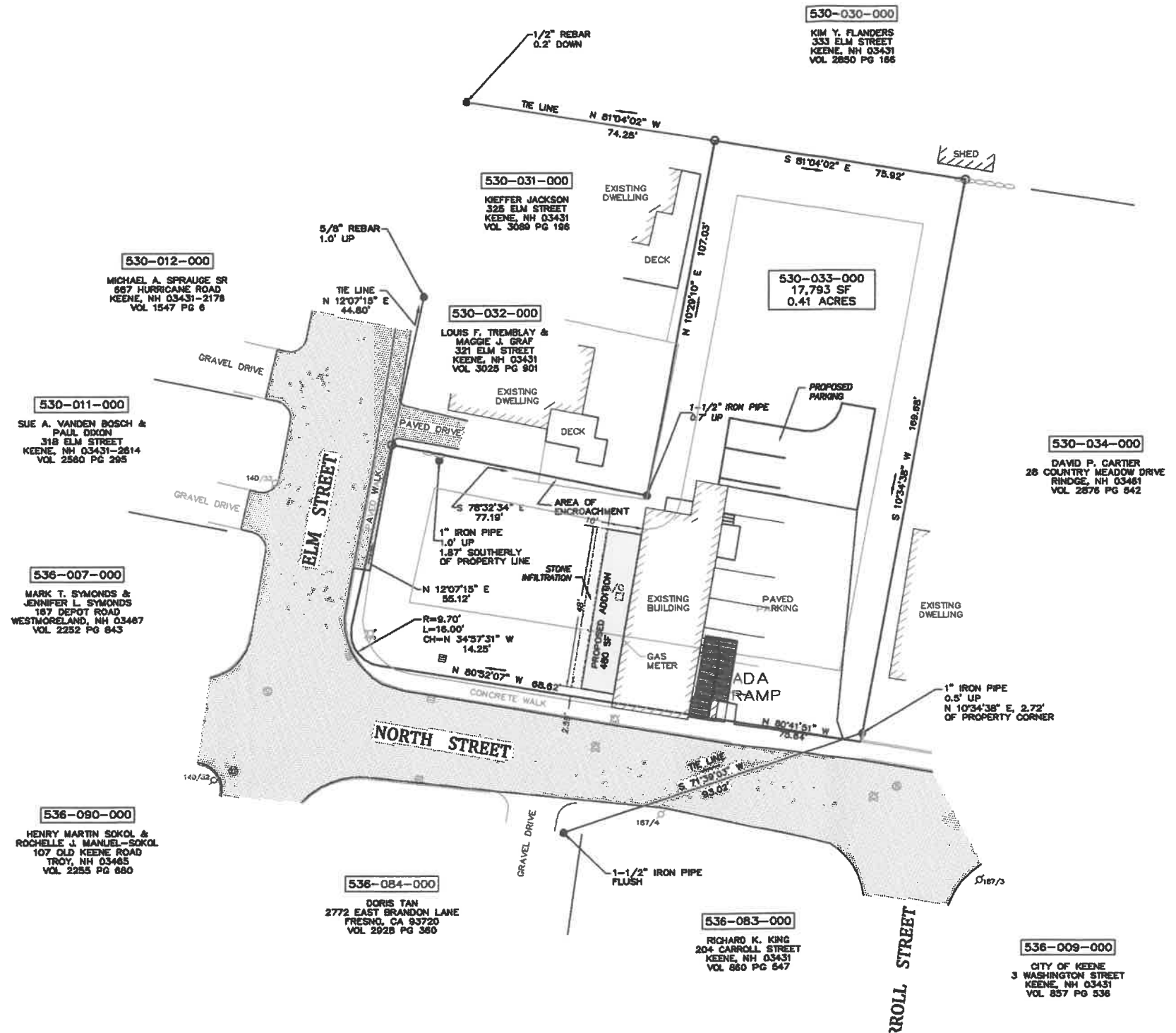
Z1

LOT DATA

ZONING	MEDIUM DENSITY
TAX MAP #	530-033-000
LOT SIZE	17,793 SF - 0.41 A
LOT COVERAGE -EXIST	
BUILDING	1,500 SF - 8%
PAVING	2,775 SF - 16%
TOTAL	4,275 SF - 24%
LOT COVERAGE - PROP.	
BUILDING	1,980 SF - 11%
PAVING	3,775 SF - 21%
TOTAL	5,755 SF - 32%

GENERAL NOTES

THIS PLAN IS BASED ON SURVEY BY CARDINAL LAND SURVEYING SUPPLIED TO THIS OFFICE IN DIGITAL FORM. THIS PLAN IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY OF THIS PROPERTY. 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. CONTRACTOR TO NOTIFY "DIG SAFE" AT 1-888-344-7233 A MIN. OF 72 HOURS PRIOR TO THE START OF EXCAVATION. THIS PROPERTY IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN FOR THE CITY OF KEENE.



OINK ENTERPRISES, LLC
79 NORTH STREET
KEENE, NH 03431

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

CC&D'S KITCHEN
79 NORTH STREET
KEENE, NH 03431

REVISION

PROPOSED PLAN

SCALE: 1"=40'

DATE: MARCH 20, 2020

Z2

79 NORTH ST.
ZBA 20-05



Petitioner requests a Variance for an
Enlargement of a Non-Conforming Use in
the Medium Density District per Section
102-392.



NOTICE OF HEARING

ZBA 20-05

A meeting of the Zoning Board of Adjustment will be held on Monday, June 1, 2020 at 6:30 PM to consider the petition of Oink Enterprise, LLC of 615 Rhododendron Rd., Fitzwilliam, NH; represented by David Bergeron, Monadnock Land Planning, 139 Old Walpole Rd., Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888)475-4499. The Meeting ID is 825 5948 6250. To notify the public body of any access issues, call (603) 757-0622. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-05: The Petitioner requests a Variance for property located at 79 North St., Tax Map #530-033-000, which is in the Medium Density District. The Petitioner requests a Variance to permit an enlargement of nonconforming use in the medium density district residential zone per Section 102-392 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 by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date May 22, 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 20-05</u>
Date Filed	<u>3/17/20</u>
Received By	<u>CAM</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) DAVID BERGERON Phone: 209 3050
Address MONA WOCK LAND PLANNING, 139 OLD WALPOLE RD, KEENE
Name(s) of Owner(s) ONIK ENTERPRISE, LLC
Address 615 RHODOCENDRON RD. FITZWILLIAM, NH 03447
Location of Property 79 NORTH ST

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 530-033-000 Zoning District MEDIUM DENSITY
Lot Dimensions: Front 55' Rear 170 Side 144 Side 152
Lot Area: Acres 0.41 AC Square Feet 17,793
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 8% Proposed 11%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 16% Proposed 21%
Present Use RETAIL MARKET
Proposed Use RETAIL MARKET

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.

David Bergeron Date 3/17/20
(Signature of Owner or Authorized Agent)

Please Print Name DAVID BERGERON

APPLICATION FOR A VARIANCE

A Variance is requested from Section 102-392 – Permitted Uses, Medium Density Zone of the Zoning Ordinance to permit: **An enlargement of nonconforming use in the medium density residential zone.**

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

The property has been a neighborhood market and deli for approximately 80 years. The property is in the Medium Density Residential Zone and the building was constructed prior to the current Keene Zoning standards. Although many neighborhood markets exist in residential areas of the city, they are not a permitted use in the Medium Density Residential Zone. These markets provide a valuable service to residence by providing goods and services near where they live. The market is in need of repair and the existing walk in coolers must be replaced. The owner of the market would like to install new walk in coolers and position one for direct customer access as well as for employee use. The owner would also like to expand the space to allow more room for display of items for sale. They would also like to place one cooler in the front of the market to allow customers access to the products in the cooler. It is in the public interest to allow a business to improve his ability to serve his customers and it is in the public interest to allow a neighborhood market to be able to improve and offer better service to the residents of the area.

2. The use is not contrary to the spirit of the ordinance because:

The existing building has been in this location as a neighborhood market for over 80 years and was constructed prior the current zoning requirements. The City of Keene Master Plan section on “Neighborhoods” focuses on what makes for a successful and vibrant neighborhood. The plan stresses a mix of uses in neighborhoods and specifically states that each neighborhood should have “...activity centers in each neighborhood; ranging in scale from a stand-alone market or deli, professional offices, laundromats, etc. Where possible, these activity areas should be strengthened through redevelopment to provide more neighborhood amenities...” The proposed expansion will meet the spirit of the ordinance by allowing the owner of the market to provide better service and more products to their customers and the local residents as envisioned by the Keene Master Plan.

3. Granting the variance would do substantial justice because:

All markets have refrigerated space that customers access for products for sale. The expansion would allow the owner to improve his business and to provide food and cold drinks service for walk in customers. The coolers need to be located in the front of the store for customer access to products for sale. It will allow the owners to improve their business. It will do substantial justice for the owner to allow them to add on to their product line and improve service to their customers.

4. The proposed use would not diminish surrounding property values because:

The market has existed in this area for many years and is a part of the neighborhood. The proposed expansion would improve the overall appearance of the existing building and improve the look of the property. It will allow the owners to provide more goods and services that their customers want. Improving the appearance of the existing building and property will improve the value of this property and will help to improve the value of 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 provisions and the specific application of that provision to the property because:

The special conditions of this property are the location of the existing building on the lot and the use of the building as a market. The building as a market many years ago. Over the years, goods and services customers require from a market have increased requiring more space in the market to display those goods including refrigerated space. The proposed addition to the building will allow the owner to provide goods and services customers have come to expect from a market. The City of Keene Master Plan also recognizes the importance of allowing local markets to expand and grow to provide local goods and services to customers. Therefore, denial of the variance will not advance the purposes of the ordinance in any fair or substantial way.

ii. The proposed use is a reasonable one because:

The variance is necessary to allow the owner to continue to operate and grow his business. The building was constructed many years ago as a local market providing goods and services to the local neighborhood and the city in general. The building is not large enough to provide a full range of services to customers like a variety of cold drinks and specialty food products. The owner needs to add refrigerated space in the customer portion of the market to store and display food for sale to customers and the expansion is necessary to provide the space for the refrigerated cases. It is reasonable to allow the owner of a building to expand the use in a way that will allow the business to continue to do well and provide the goods and services that the customers want.

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

The special conditions of this property is the use of the building as a local market. The building was constructed many years ago as a local market and is small by today's standards. Customers expect more from a local market than in the past and the number of products and services necessary for a market to carry is much more than it used to be. The variance is necessary to expand the use and provide the space to carry the goods and services that customers have come to expect. The owner needs to add refrigerated display space in the front customer portion of the market to store and display drinks and food for sale to customers. Without the variance the owner would not be able to provide services their customers want. All markets have refrigerated space for display of products for sale and the addition would allow the addition of that display space.

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 building is pre-existing in its current location with limited space between the building and the setback. By not placing parking in the setback, most of the parking is located away from the customer entrance.**

and

**ii. The proposed use is a reasonable one because:
The proposed use is the same use as the prior business occupying the site which had parking located in the front setback. The configuration of the site is existing. Providing parking adjacent to the entrance of this type of facility is a customer convenience.**

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.

Unnessessary hardship exists because the property previously operated with parking located in the setback. Adjacent businesses and properties have parking located in the setback.