



## **Zoning Board of Adjustment - Monday, October 5, 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](http://www.zoom.us/join) and enter the Meeting ID: 852 3438 4919.\*
- If you are unable to attend the meeting online, you may call the toll-free # (888) 475-4499 and enter Meeting ID: 852 3438 4919 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](http://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 – September 15, 2020
- III. Unfinished Business
- IV. Hearings:

**ZBA 20-17:**/ Petitioner, Flyboy Realty, LLC of Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, of 185 Winchester St., Keene, requests a Variance for property located at 166 West Street, Tax Map #576-002-000; that is in the Central Business Limited District. The Petitioner requests a Variance for a new building on a lot that abuts Gilbo Avenue with a principal building façade which does not face Gilbo Avenue. Two principal building facades are proposed which will face the public parking areas on the east and north sides of the proposed new building per Section 102-1473.4 of the Zoning Ordinance where the principal building façade orients toward Gilbo Avenue.

**ZBA 20-18:**/ Petitioner, Ryan Gagne of 119 Clear Creek Way, Manchester, NH requests a Special Exception for property located at 15 Kit Street, Tax Map #110-017-000; that is in the Industrial District. The Petitioner requests a Special Exception per Section 102-632 to allow Office for professional purposes.

**ZBA 20-19:**/ Petitioner, Brett Cooke of 40 Brook Street, Keene requests a Variance for property located at 40 Brook Street, Tax Map #553-084-000; that is in the High Density District. The Petitioner requests a Variance for a side setback of five feet on the north side of the property to build a garage with an apartment per Section 102-791 of the Zoning Ordinance where ten feet is required.

**CONTINUED NOVEMBER 2, 2020 ZBA 20-16:**/ Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester St., Keene, requests a Change of a Nonconforming Use for property located at 15 King Ct., Tax Map #122-022-000; that is in the Low Density District. The Petitioner requests a Change of a Nonconforming Use from a now vacant fitness center to a lodging house (homeless shelter).

- V. New Business:  
Board member term expiration dates and term limits
- 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 **Tuesday, September 15, 2020**

**6:30 PM**

**Remotely via Zoom**

**Members Present:**

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

**Staff Present:**

John Rogers, Zoning Administrator  
Corinne Marcou, Zoning Clerk

**Members Not Present:**

Michael Welsh

9  
10 Chair Gorman began by announcing the Board will hear petitions for Belmont Ave., Church St.  
11 and Wyman Rd. He further stated the two petitions for Hundred Nights, Inc. will be heard on  
12 Tuesday, September 22, 2020 at 6:30 PM. Any questions for these petitions can be directed to  
13 the Community Development Department, City Hall.

14  
15 **I. Introduction of Board Members**

16  
17 Roll call was conducted. Chair Gorman stated that alternate member Arthur Gaudio will be a  
18 voting member tonight. He continued that alternate member Louise Zerba will participate in  
19 discussions but abstain her vote.

20  
21 **II. Minutes of the Previous Meeting**

22  
23 Chair Gorman stated that the Board adopted the minutes from June 1, 2020 at their September 8,  
24 2020 meeting.

25  
26 Chair Gorman called the meeting to order at 6:30 PM. He read a prepared statement explaining  
27 how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of  
28 New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public  
29 body meetings) during the declared COVID-19 State of Emergency. He explained the procedures  
30 of the meeting and how the public can participate.  
31

32 **III. Unfinished Business**

33  
34 None

35  
36 **IV. Hearings**

- 37 a) **ZBA 20-12:** Petitioner, Janis Manwaring of 50 Belmont Ave., Keene,  
38 requests a Variance for property located at 50 Belmont Ave., Tax Map  
39 #598-034-000; that is in the Low Density District. The Petitioner  
40 requests a Variance to permit a change to a detached garage into an  
41 Accessory Dwelling Unit (ADU) where a detached ADU is not a  
42 permitted use in the Low Density District per Section 102-896 of the  
43 Zoning Ordinance.

44 Chair Gorman opened ZBA 20-12 and asked Mr. Rogers to present comments. Mr.  
45 Rogers stated this property is in the Low Density District where an attached  
46 Accessory Dwelling Unit (ADU) would be allowed under the current Zoning Code,  
47 but detached ADU's are not allowed. This is an Ordinance change that occurred in  
48 2017 when the State changed its RSAs about ADUs and required municipalities to  
49 allow for ADUs in all districts that allow single-family homes, where previously the  
50 City of Keene only allowed ADU's in the Low Density District. The City of Keene  
51 now allows ADUs in all districts that allow single-family homes, but only attached.  
52 Detached ADUs are allowed only in the Rural District as well as a few other districts.

53 Mr. Greenwald asked what the rationale was for allowing only attached ADUs versus  
54 detached ones. Mr. Rogers replied that the State separated them out into the  
55 categories of attached versus detached, but the City had not. He continued that the  
56 City then changed its Ordinance to align with State requirements. Staff's thoughts  
57 for having attached ADUs was to try and maintain the single-family dwelling look.

58 Ms. Taylor asked Mr. Rogers what the intended square footage is of this proposed  
59 ADU. She continued that the Ordinance states ADU's can be between 400 and 1000  
60 square feet and she was curious where this one fits in. Mr. Rogers replied that 576  
61 square feet is the proposed size for this ADU. He continued that the Ordinance for  
62 the attached ADU is a minimum of 400 square feet and a maximum of 800, so this  
63 petition would fit in that category.

64 Mr. Hoppock asked if there are any parking restrictions. Mr. Rogers replied they do  
65 require two additional spaces.

66 Chair Gorman opened the public hearing and explained how the public can  
67 participate.

68 Chair Gorman recognized Daniel Manwaring, son of Janis Manwaring, co-owner of  
69 50 Belmont Avenue.

70 Mr. Manwaring stated that he, his wife Cindy Qu, and his mother Janis Manwaring  
71 are at 50 Belmont Avenue. He continued that they are asking to be granted a  
72 Variance on a detached ADU because they fit all the other requirements for an ADU  
73 except for the fact that they have a detached garage that was on the property before

74 they acquired the property. Granting the Variance would not require any structural  
75 changes to the property, especially as far as the actual building or parking.  
76 Everything is in place and would fit the requirements and the Ordinance for the  
77 ADU.

78 Chair Gorman asked him to elaborate on the five criteria.

79

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

81 Mr. Manwaring stated that an ADU is permitted in the Low Density District if it is  
82 attached to the residence. He continued that his proposed ADU is in a detached  
83 garage but it is a similar size to the Ordinance's size requirements. He and his wife  
84 will live in the ADU and his mother will remain in the house, meeting the requirement  
85 that the owner live in the primary residence. It is similar in size to what is proposed  
86 by the Ordinance. Finally, it is consistent with the residences and values in the  
87 neighborhood.

88

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

90

91 Mr. Manwaring stated that the Spirit of the Ordinance will be observed because he and his wife  
92 will be living there. He continued that the original concept of the ADU was to offer a senior  
93 family member privacy and independence with close family support and this is the case as his  
94 mother is getting older and he and his wife would like to be there to support her. The garage is  
95 576 square feet and will have one bedroom, one bathroom, a kitchen, and a living area, as  
96 required in the Ordinance.

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

98 Mr. Manwaring stated that no new structure is required to create this ADU. He  
99 continued that the garage has stood on the property for over 25 years and has been  
100 well-maintained and is in good shape. The garage and house together take up a small  
101 fraction of the lot, only 18%. None of the neighbors will be impacted by having this  
102 structure too close to their boundaries, which was an original concern of the  
103 Ordinance.

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

106 Mr. Manwaring stated that if the Variance were granted, the values of the  
107 surrounding properties would not be diminished because the property values would  
108 actually be increased. The current garage is assessed at \$7,200. The ADU with its  
109 living features will mean the taxes will increase for this property despite little exterior  
110 changes to the garage. It is doubtful that the property values in the neighborhood will  
111 be affected. He and his wife will only have one car so traffic will be minimal. It is  
112 most likely that neighbors and visitors will notice little difference in the exterior of  
113 the property, as most single-family homes in this area have two to three cars.

114 *5. Unnecessary Hardship*

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

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

121 Mr. Manwaring stated that there is significant hardship in meeting the requirements  
122 because the house is at a four foot higher value than the door to enter the house,  
123 therefore it is not possible to build a breezeway to attach the garage to the house  
124 which would make it possible to turn the garage into an attached ADU in normal  
125 circumstances. It is probable that the previous owner built the garage separate from  
126 the house.

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

128 Mr. Manwaring stated that ADUs are permitted in the Low Density District  
129 supporting the need for families to have a family member close by. This garage,  
130 though detached, has been present on the property for over 25 years and is now  
131 needed to be converted to an ADU. In the neighborhood there are many detached  
132 garages – for example, on Belmont Avenue, half of the garages are detached, as is  
133 true on Colby Street, and one in three on Brown Street. All the homes have steps to  
134 the homes higher than the garage. Most of the original homes were built for workers  
135 of Kingsbury and other manufacturing companies in the 1930s. It is possible that  
136 garages were built later as cars became part of our way of living. When his mother  
137 bought the home 25 years ago the garage was already detached. It is not possible to  
138 build a breezeway to connect the garage to the house. Because they can meet all other  
139 requirements in the Ordinance, they are asking that the Variance be granted to waive  
140 that the ADU be attached to the house. Again, no building needs to be added to  
141 facilitate this ADU and the percentage of the house and garage size in relation to the  
142 lot will remain small, at 18%.

143 Chair Gorman asked if there were any questions from the Board.

144 Ms. Taylor asked if Mr. Manwaring could clarify that the proposed ADU is the entire  
145 garage. Mr. Manwaring replied that is correct. Ms. Taylor stated that she lives in a  
146 house where the garage is about 5.5 feet lower than her house, so she knows from  
147 personal experience that it is not impossible to connect the two with a breezeway.  
148 She continued that she has concerns about what the Special Conditions of the  
149 property are. She referenced Mr. Rogers who had stated earlier that two parking  
150 spaces were required for the ADU and she believes that there are probably two  
151 required for the primary residence, so she wants to make sure that even if the  
152 applicant only has one car currently, that there are four off-street parking spaces at  
153 this location.

154 Mr. Rogers replied that that is correct; they would have to provide information for  
155 four parking spots during building permit process. Cars parked stacked one behind  
156 the other in the driveway might be a possibility. Previously the garage itself was  
157 providing the two parking spaces for the house. Mr. Greenwald asked if expanding

158 the driveway is a possibility. Mr. Rogers replied that the parking area on the lot is a  
159 possibility as there seems to be space available to add additional parking to the side  
160 of the garage. Mr. Greenwald asked if it would meet appropriate setbacks. Mr.  
161 Rogers replied that this drawing indicates that it would.

162 Chair Gorman asked if Mr. Manwaring wants to add anything relative to Ms.  
163 Taylor's comments relative to the breezeway idea and her struggle to see that there is  
164 a hardship there. Ms. Taylor clarified that she was asking because the Board needs to  
165 find some sort of special condition of the property. She continued that she is  
166 struggling with whether or not the statement in the application that they are unable to  
167 build a breezeway is correct, because her own garage is about 5.5 feet lower than her  
168 house and she was able to build a breezeway between the two. There were a few  
169 steps involved but this house already has steps. She would like clarification because  
170 she does not understand the hardship.

171 Mr. Manwaring stated that he first wanted to answer the parking question; there is  
172 definite room for more than four cars in the driveway. He continued that, when the  
173 house was built, the driveway was paved extra wide, extending a little beyond the  
174 garage and is more than deep enough to permit about three cars. Regardless of how  
175 many cars he and his wife currently have the driveway could support four to six cars.

176 Mrs. Manwaring stated that she and her family explored briefly with a contractor,  
177 should this Variance be granted, the idea of building a breezeway. She continued that  
178 it is not that she does not believe Ms. Taylor but she does not see how they would do  
179 a breezeway. It is a two-story house and a one-story garage and it did not make sense  
180 and seemed very expensive, so they decided to ask for this Variance since the garage  
181 meets all the other criteria for an ADU.

182 Mr. Hoppock asked if it is correct that they will have one bedroom and one bathroom  
183 in the ADU. Mr. Manwaring replied yes. Mr. Hoppock asked if they have plans to  
184 expand the number of bedrooms or bathrooms. Mr. Manwaring replied no, he and  
185 his wife are accustomed to small spaces and know they can work well if designed well.  
186 Mr. Hoppock asked if it would be connected to City water and sewer and if that is  
187 part of the building permit. Mr. Manwaring replied yes.

188 Mr. Gaudio asked how they will heat it. Mr. Manwaring replied that they will adhere  
189 to the Code regarding insulation and spray foam, and cellulose on the ceiling. He  
190 continued that since it is such a small space they plan to do a mini split, which is  
191 energy efficient and more than enough for that small space.

192 Chair Gorman opened the hearing to public comment and explained how members of  
193 the public could ask questions via Zoom or telephone. Chair Gorman asked staff if  
194 there are any members of the public wishing to speak. Ms. Marcou replied no. Chair  
195 Gorman stated that hearing no public input, the public hearing is now closed. He  
196 continued that the Board will now deliberate.

197  
198 *1. Granting the Variance would not be contrary to the public interest because:*

199 Mr. Gaudio stated that he thinks it would not be contrary to the public interest for a

200 few reasons, but mainly because it would not change the size or the nature of the  
201 property and it would still have the same general appearance. That point probably  
202 goes with the second criteria also. There is nothing about the application that would  
203 give evidence that is a threat to public safety, welfare, or health. There is nothing  
204 there to be concerned about. It passes those two.

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

207 Chair Gorman stated that he agrees with Mr. Gaudio's point relative to this. He  
208 asked for other comments.

209 Ms. Taylor stated that she has some concerns about this point. She continued that  
210 after hearing Mr. Rogers' explanation, there was clearly a reason, although she does  
211 not know what it was, when the zoning was changed, that it would be changed  
212 specifically in the Low Density District so she has concerns about that. She is not  
213 sure if her concerns rise to the level of voting against the petition, but she has  
214 concerns, if the Low Density District allowed ADUs previously and that was  
215 narrowed to only attached ADUs.

216 Mr. Greenwald stated that he agrees with Ms. Taylor that it is somewhat of a concern,  
217 but for him it does not rise to the level of voting no. He continued that in this case, in  
218 creating a breezeway, the Ordinance would operate in a vacuum because it is not  
219 realistic to do that, even though it *could* be done; anything can be done with money.  
220 It is his opinion that aesthetically it would destroy the character of the neighborhood  
221 and the house just to satisfy the need for an attached ADU to get approved.

222 Chair Gorman opened the public hearing to ask Mr. Rogers to weigh in on the  
223 reasoning to the Ordinance and give any relevant information. Mr. Rogers stated that  
224 when the State changed the RSA, a lot of other municipalities did not allow ADUs.  
225 The City already did and were thus ahead of the curve. With the changes from the  
226 State, the City staff went through the process to change the Ordinance through City  
227 Council vote. This change was about trying to maintain the single-family home  
228 aesthetics, whether in low, medium, or high density zones. Maintaining the single-  
229 family home aesthetic was the main purpose of the change.

230 Chair Gorman asked if the idea was that the breezeway would make it appear like a  
231 single-family home, because it was all connected. Mr. Rogers replied that it could be  
232 that, and they have to also think about all the different styles of houses in the City.  
233 There are many larger houses, such as the Victorian homes on Court Street and  
234 Washington Street where converting a garage to an ADU may not happen but  
235 creating an ADU within the existing footprint of the house itself could. The general  
236 purpose of the change was to maintain the aesthetic of the single-family lot.

237 Mr. Gaudio stated that it is the same aesthetic difference between an attached garage  
238 and a detached garage. He continued that it could said that attached and detached  
239 dwelling units are the same thing, as far as the aesthetics go. Mr. Rogers replied that  
240 that is a decision for the Board to determine.

241 Chair Gorman thanked Mr. Rogers and closed the public hearing again. He asked for



242 further comment on Criteria #2. Hearing none, he moved on to Criteria #3.

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

244 Mr. Hoppock stated that he does not see a public gain achieved by denying this  
245 request, and weighs that against the loss to the home owner, which would be  
246 significant. He stated granting the Variance would do substantial justice for that  
247 reason. He does not see a gain to the public by denying the petition. It would not  
248 impact density; it would not hurt parking; it would not weigh against the  
249 neighborhood or create a safety issue or block air or light. None of those factors  
250 apply. And the structure will not change size.

251 Chair Gorman stated that he agrees with Mr. Hoppock. He continued that he thinks  
252 the only thing missing, to keep the Applicant from being here, is the breezeway, and  
253 he is not sure that adding one would change things much. It has been fairly well  
254 documented that it will be a family-living situation, which is what ADUs are geared  
255 toward; and that it would have minimal impact on the exterior aesthetics for the  
256 neighborhood appearance.

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

259 Mr. Greenwald stated that is accurate. He continued that he does not think it will  
260 have any sort of impact; it will neither improve nor diminish any of the neighborhood  
261 property values. He further stated the change will improve the property while also  
262 providing some negatives as the property will no longer have a garage. But it will  
263 have an ADU, and from what the applicants are describing, it will be very well  
264 renovated. It is his opinion that granting the Variance would not negatively impact  
265 the neighborhood.

266 5. *Unnecessary Hardship*

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

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

273 *and*

274 ii. *The proposed use is a reasonable one*

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

281 Mr. Hoppock stated that he would rely on subparagraph (B). Chair Gorman stated

282 that he agrees. Mr. Hoppock stated that the Special Conditions are demonstrated by  
283 the size of the property. The size of the garage has not changed. Its footprint has not  
284 changed. The configuration of the topography of the land has not changed. The  
285 difficulty they will have, and what it will do to the character of the neighborhood if  
286 they put a breezeway in as discussed before, is it might not be conforming to the  
287 other houses in the neighborhood. If you recognize the hardship and try to correct the  
288 hardship you will impact the other factors they have been discussing. That is the  
289 point about Special Conditions; it could affect the essential character of the  
290 neighborhood if drastically altered. He thinks that under subparagraph B, there is a  
291 Special Condition of the property that distinguishes it from others in the area and the  
292 property cannot be reasonably used in the fashion they would like. A Variance is  
293 necessary to enable the use they are proposing, and Mr. Hoppock stated he does not  
294 think the Board should deny a reasonable use that is not going to affect the  
295 neighborhood.

296 Ms. Taylor stated that she suspects that if there is unreasonable hardship it should be  
297 determined under subparagraph A, because subparagraph B requires that if you were  
298 to deny the Variance the property could not be used for the purpose for which it is  
299 zoned, and it is clear that this property can be used as a single-family residence. She  
300 does not think it is a matter of the property not being able to be used in strict  
301 conformance with the Ordinance. It is more that if there is a hardship it is due to the  
302 relationship between the garage and the house. Although economics cannot be the  
303 sole factor in determining hardship, it can be a consideration.

304 Mr. Gaudio stated that he thinks it falls under subparagraph A and he proposes a  
305 discussion. He continued that regarding subparagraph Ai, "*No fair and substantial*  
306 *relationship exists between the general public purpose,*" that is having a single-  
307 family house with an ADU and insisting that it be attached versus detached. There is  
308 no fair and substantial relationship between the public purpose of the Ordinance and  
309 the specific application. Regarding subparagraph Aii, the proposed use is a  
310 reasonable one, with a family member to live in the ADU, to give assistance to other  
311 family members.

312 With Chair Gorman asking for a motion to grant a Variance for ZBA 20-12, Mr.  
313 Greenwald made a motion. Mr. Hoppock seconded the motion.

314 The Board reviewed the Findings of Fact.

315

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

317

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

319

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

321

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

323 *Granted 5-0.*

324

325 *Unnecessary Hardship*

326 A. *Owing to special conditions of the property that distinguish it from other properties in the*  
327 *area, denial of the Variance would result in unnecessary hardship. Granted 5-0.*

328 With a vote of 5-0, the Zoning Board of Adjustment approved ZBA 20-12.  
329

330 b) **ZBA 20-13:**/ Petitioner, Theodore Chabott of 245 Church St., Keene,  
331 requests a Variance for property located at 245 Church St., Tax Map  
332 #573-060-000; that is in the Medium Density District. The Petitioner  
333 requests a Variance to permit the construction of a three car garage  
334 within five foot setback where ten feet is required per Section 102-  
335 791 of the Zoning Ordinance.  
336

337 Chair Gorman opened ZBA 20-13 and asked Mr. Rogers to present comments. Mr. Rogers  
338 stated that this property is in the Medium Density District and the Applicant is requesting to  
339 create a three car garage with only a five foot setback, where ten feet is required per the Zoning  
340 Ordinance. He continued that the Applicant will further explain, that the he has purchased the lot  
341 right behind his which is on Kirk Court. The Applicant's intention is to move his existing garage  
342 to the other lot after merging the two lots into one. The map in the Board's packets shows it in  
343 an L shape lot with frontage on Kirk Court, as well. The intent is to move the small one car  
344 garage to the new section and behind the house, build a three-car garage with a setback of five  
345 feet instead of ten.

346 Chair Gorman asked if the Applicant has merged the lots. Mr. Rogers replied yes, he will be  
347 merging the lots. He continued that the garage would not be allowed on the other property  
348 unless the two properties were merged, because a garage is not an allowed primary use on its  
349 own lot. Chair Gorman asked if it was currently a residential, building lot. Mr. Rogers replied  
350 yes. Chair Gorman asked if it is correct that it will not be conforming, if the Applicant chooses  
351 to subdivide the two lots at a later time. Mr. Rogers replied that he assumes the Applicant would  
352 have to re-draw and pull that lot off, with the new garage if the Variance were granted, the side  
353 setback would be conforming but the rear setback would not be, unless he re-drew the property  
354 line to match the setbacks required.

355 Ms. Taylor stated that she sees an outline of the property with the additional lot. She continued  
356 that it looks like the one-car garage is still pictured as being on the original lot and there is a new,  
357 large building behind the residence. She asked for clarification. Mr. Rogers replied that the  
358 small building on the right-hand side is the one-car garage. He continued that the larger structure  
359 behind the house he believes is a swimming pool. He is not sure if it is active. His  
360 understanding is that it would be filled in and removed. Ms. Taylor replied that she is still  
361 confused as to what is where. Mr. Rogers showed the main house, the swimming pool, and the  
362 one-car garage just to the right that would be moved to the south on the new portion of the lots  
363 that would be merged. Where the swimming pool is currently is the location of the proposed  
364 new three car garage. Ms. Taylor asked where the garage is going to be moved to, is that the  
365 side line they have under consideration. Mr. Rogers replied that the existing garage that is being  
366 relocated will meet the side setback. It will be moved a little toward the southwest, and from

367 what is shown on the proposal, it meets all the setbacks. Ms. Taylor stated that she still does not  
368 understand.

369 Mr. Gaudio asked if the new garage will be on the east or west side of that lot. Mr. Rogers  
370 replied that the new garage will go just about where the pool is shown currently, the side setback  
371 on the left-hand side, which is what they are seeking a Variance from.

372 Mr. Greenwald asked if the proposed garage will be accessed from the Church St. side. Mr.  
373 Rogers replied yes, from the existing curb cut on the Church St. side. Mr. Rogers stated that if  
374 the applicant desired a second curb cut there would be an allowance but he would have to go  
375 through the Public Works Department, the City Engineer, and with the process for a single-  
376 family home to have a second curb cut. Chair Gorman stated that he thinks applying for a  
377 second curb cut is a Planning Board issue as well. Mr. Rogers replied that the rules have  
378 changed; curb cuts can now be approved administratively.

379 Chair Gorman opened the public hearing and explained how members of the public can  
380 participate, via Zoom or telephone.

381 Chair Gorman recognized the homeowner, Ted Chabott.

382 Mr. Chabott stated that his proposal is to move the one-car garage onto the back property. He  
383 continued that those two pieces of property have already been merged. He wants to build a  
384 three-car garage basically in the pool area within five feet of the side setback in order to have  
385 ample room to swing into the garage from his property as his property is narrow. Moving the  
386 garage five feet back is what the Variance request is for.

387 Chair Gorman asked him to go through the five criteria and why he believes his property is  
388 suitable to be granted this Variance.

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

390

391 Mr. Chabott stated that the garage would be behind the house, barely visible from the street. He  
392 is requesting the setback so the vehicles would have proper room to swing into the garage.

393

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

395

396 Mr. Chabott stated that the garage would sit five feet from the property line instead of ten feet,  
397 which his neighbor has no objection to.

398

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

400 Mr. Chabott stated that it adds value to the neighborhood.

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

403 Mr. Chabott stated that he is spending several thousand dollars to build this garage so it should  
404 be an asset to the neighborhood.

405 5. *Unnecessary Hardship*

406 A. *Unnecessary Hardship Owing to special conditions of the property that*  
407 *distinguish it from other properties in the area, denial of the Variance would*  
408 *result in unnecessary hardship because:*

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

412 Mr. Chabott stated that the reason for the Variance is that his property is only 57.5 feet wide, and  
413 he wishes to build a garage on the same footprint as the swimming pool except five feet toward  
414 the west so he can have ample room to swing his vehicles into the garage.

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

416 Mr. Chabott stated that he is 77 years old and is finding it more difficult to work on his classic  
417 cars in alternate locations and would like to work on them in his own house in his senior years.

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

423 Chair Gorman asked if Mr. Chabott wants to elaborate on subparagraph B.

424 Mr. Chabott stated that it will be barely visible from the street. He continued that he will vinyl  
425 side the garage to match his house so it will blend right in.

426 Chair Gorman asked if the Board has questions.

427 Mr. Gaudio asked if is there any reason why Mr. Chabott, instead of moving the one-car garage  
428 back to the rear lot, could not build the three-car garage where there is plenty of space. He  
429 continued that he could even use the same driveway and swing around to it, or as mentioned  
430 earlier, get another curb cut to get to it directly from Kirk Court without invoking the need for a  
431 Variance.

432 Mr. Chabott replied that he thought the Board might ask that, and he has multiple reasons. He  
433 continued that firstly, on the Kirk Court lot; he has gardens and blueberry and raspberry bushes.  
434 If he put the garage there he would have to remove those. If he were to build a garage on that  
435 property he would have to set it way back so that if anyone ever wanted to build a house in front  
436 they could. That would need a curb cut and new driveway. But the main reason is the Kirk Court  
437 property is about four feet lower than the main property and is in the flood plain. He would have  
438 to spend a lot of money to do a lot of filling, to be able to put the garage in that location.

439 Mr. Gaudio replied that he would have to do that for the single car garage, too. Mr. Chabott  
440 replied that he is planning on raising it three feet off the ground instead of one foot like it is right  
441 now.

442 Mr. Greenwald stated that he had a question for Staff, asking for clarification on the two lots  
443 having been merged. Mr. Rogers replied that was correct. Mr. Greenwald asked if that it means  
444 the Kirk Court lot is no longer a building lot, nor could it be, being only .2 acres. Mr. Rogers  
445 replied that is correct. Mr. Greenwald stated that he was not sure if the applicant knew that.

446 Mr. Chabott stated that lot was never considered a building lot because of its size. He continued  
447 that about five years ago the City raised his taxes because they came up with new rules saying  
448 that size lot is a viable building lot.

449 Chair Gorman asked Mr. Chabott if it is correct that he has already merged the two lots. Mr.  
450 Chabott replied yes, he did that on the advice of the City because they said he would not be able  
451 to move the one-car garage onto that property without merging the properties first. Chair  
452 Gorman stated that the reason for the merger was because you cannot have a use separate lot that  
453 is just a garage; that is not an allowable use, so by merging the lots Mr. Chabott was able to have  
454 the garage there, so that is accurate, but he thinks now it is no longer a building lot since it has  
455 been merged. Mr. Chabott mentioned the thought of someone putting a single-family home there  
456 down the road, which he thinks is what led Mr. Greenwald to his question. Chair Gorman asked  
457 if Mr. Chabott understands that the Kirk Court lot is no longer an independent, buildable lot. Mr.  
458 Chabott replied no, he did not have that understanding. Chair Gorman asked if that affects or  
459 impacts Mr. Chabott's stance here tonight. Mr. Chabott replied no, he does not think it will. He  
460 continued that he was not ever planning on using it as another building lot.

461 Chair Gorman asked if that would impact Mr. Chabott's stance on Mr. Gaudio's previous  
462 question about building the garage more in a location that is indifferent to these setback  
463 restrictions that actually met the restrictions. Mr. Chabott replied that he does not know how to  
464 answer that, other than to say he would rather have the garage closer to his house than out on that  
465 back lot. Chair Gorman replied that is fair. He stated he wanted to make sure Mr. Chabott  
466 wanted to proceed with this process and that that is his first preference, knowing now what he  
467 knows about the lots being merged. Mr. Chabott replied yes, this is his preference.

468 Ms. Taylor stated that her understanding is that you cannot have an accessory building on a  
469 separate lot and that is why there was advice to merge the two lots. She continued that she thinks  
470 what would have to happen, whether or not there is enough size there to be a buildable lot, is  
471 there would have to be a re-subdivision, which is not the simple on merged lots. Mr. Gaudio had  
472 raised the question she was going to ask, because once the lots are all one after a merger, the  
473 question is whether the three-car garage can be fit somewhere on the lot. She thinks personal  
474 preference is not adequate.

475 Ms. Taylor stated that her remaining question is probably for Mr. Rogers, and maybe it is not a  
476 factor because after merger it is essentially one lot. She questions whether the addition of the  
477 garage and extra pavement cause any permeable surface issues, or are those requirements still  
478 met now that the two lots have been combined? Mr. Rogers replied that when the building

479 permit is applied for the garage, that is for a criteria to be reviewed, to make sure those  
480 requirements are met. He assumes that they would be taking something that might not be  
481 conforming at the moment and making it better by merging these two lots, where you have that  
482 whole second lot that is green space and adding it to a lot that might be non-conforming and not  
483 have enough green space. So Mr. Chabott would possibly be taking a condition and making it  
484 better, because he is also taking an area that was covered by a swimming pool and replacing it  
485 with a garage.

486 Chair Gorman asked Mr. Rogers for clarification about Ms. Taylor's comment that you cannot  
487 have an accessory use on a building lot. Mr. Rogers replied not in this district. He continued  
488 that in certain districts you could have a parking lot or storage, but that is not an allowed primary  
489 use in the Low Density District.

490 Mr. Hoppock stated that he is looking at the picture of 0 Kirk Court. He asked how close the  
491 propose three-car garage is to an abutter. Mr. Rogers replied that the second structure, the  
492 swimming pool, is the ballpark area for where the garage would go, and that is the property line  
493 where Mr. Chabott is looking for the Variance for the five feet to the left. It looks like the house  
494 is close to Church Street, not on Kirk Court. Mr. Hoppock asked Mr. Rogers to show the  
495 location of the driveway on the map. Mr. Rogers showed how the driveway goes right to the  
496 current one-car garage.

497 Mr. Hoppock asked Mr. Chabott why it could not be a two-car garage and serve his needs,  
498 without encroaching on any setbacks. Mr. Chabott replied that he would still want it five feet  
499 from the property line so he would have ample space to swing into it, because his property is  
500 narrow at only 57.5 feet. He continued that he has three classic cars and thus would like a three-  
501 car garage. He is also planning to add a lift in the garage to be able to work on his cars during his  
502 senior years. The Variance would be to set the three-car garage toward the west, toward Main  
503 St., five feet instead of ten feet, so he can have ample room to swing into the garage on his  
504 narrow piece of property.

505 Ms. Taylor stated that she is still troubled by why he cannot put the garage on the back portion of  
506 the merged lot, because it looks like it is 115 feet by 75 feet. Mr. Chabott replied that he could,  
507 but it is lower and he would have to do a lot of filling and do another curb cut, and it would be  
508 further away from his house and he would need to put in a new driveway. He continued that  
509 right now he has a driveway and would just have to add a few feet onto it. He further stated he  
510 would prefer the three car garage behind his house.

511 Chair Gorman asked if there were any more questions from Board members. Hearing none, he  
512 asked if there were questions from members of the public. He called on Patricia Allen.

513 Patricia Allen, of 95 Wyman Rd., asked if there are noise concerns about having work done on  
514 classic cars in a residential neighborhood. Chair Gorman asked if she is asking about zoning  
515 restrictions placed on such activities. Ms. Allen stated that she is new to Keene and not familiar  
516 with the Zoning Code or the City's Ordinances. Chair Gorman stated that Mr. Chabott works on  
517 his own cars in his home, not as a business. Mr. Rogers replied that is correct, Mr. Chabott  
518 would not be allowed to build a garage in this location to run a business working on other

519 people's cars. He continued that the City's noise ordinance would apply if needed, such as if Mr.  
520 Chabott was using loud equipment late at night, or out in the driveway, but he assumes that  
521 would not happen.

522 Andrew Weglinski, of 28 Valley St., stated that Mr. Chabott takes good care of his property.  
523 He continued that he is a good neighborhood and he has seen Mr. Chabott's property, cars, and  
524 blueberry bushes, which Mr. Chabott generously shares with neighbors. He appreciates that  
525 there are no other neighbors that have issues with this proposal, and neither does he, but he  
526 prefers the new garage to be on the Kirk Court. With that being said, he understands Mr.  
527 Chabott's reasoning's for wanting the new garage behind his home. He finished by stating Mr.  
528 Chabott is a great neighbor and he defers to his reasoning about this.

529 Chair Gorman closed the public hearing for the Board to deliberate. He continued that he will  
530 re-open the public hearing if needed to ask questions of staff, the petitioner, or the public.

531 The Board reviewed the Findings of Fact.

532 Mr. Hoppock stated that he is not sure the fifth criterion is met. He continued that they do not  
533 have enough information about the project's potential to alter the essential character of the  
534 neighborhood. He doubts it would threaten health, safety, or welfare. He is not convinced the  
535 fifth criterion is met and is not sure if the Board should spend time on the other criteria if that is  
536 not met, because it is necessary to meet all the criteria.

537 Chair Gorman stated that they will thus start with the fifth criterion and move backwards through  
538 the others.

539 *5 Unnecessary Hardship*

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

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

545 *and*

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

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

552 Mr. Hoppock stated that the only Special Condition he heard was the narrow driveway and that  
553 is obviated by the fact that Kirk Court would be an alternative, so the width of the lot is not  
554 really a Special Condition of the property. Mr. Chabott has other options, so he does not see  
555 how the width or location of the driveway is a Special cCondition that distinguishes it from other



556 properties. The general purpose of the Ordinance is to decrease density and congestion and he  
557 thinks this could impact that. There is a fair and substantial relationship between that general  
558 purpose and the application to this property. It is clear to him that there are other options  
559 available. That is indicative of that fair and substantial relationship exists, as opposed to not  
560 existing. He has a hard time convincing himself that this application meets the fifth criterion.

561 Mr. Greenwald stated that he has a question for Staff, stating that he will assume, that the garage  
562 Mr. Chabott is proposing will have direct entry into the home. Chair Gorman stated that he will  
563 briefly reopen the public hearing and asked Mr. Chabott to respond. Mr. Chabott stated that the  
564 garage will be separate from the house, sitting approximately six to seven feet away from the  
565 back of his house. Mr. Greenwald asked if Mr. Chabott would still have to walk outside of his  
566 house to access the garage. Mr. Chabott replied that is correct. Chair Gorman closed the public  
567 hearing again.

568 Mr. Greenwald stated that the hardship he is focused on is what Mr. Chabott was alluding to, the  
569 fact that he is 77 years old and his “commute” to his garage, where he does the activity that is his  
570 main passion right now. If that commute to his garage was “just” an extra 20 feet, that 20 feet  
571 might be more of a hardship to Mr. Chabott at his age than it would be to someone younger. He  
572 sees a hardship if Mr. Chabott is forced to put the garage further away from his home. His  
573 accessibility to it would be a hardship, even though yes, he could still access it, but not in the  
574 manner he wants or needs.

575 Chair Gorman stated that he sees what Mr. Greenwald is saying, but from his vantage point, the  
576 hardship needs to be a hardship of the property. He continued that as much as he wants Mr.  
577 Chabott to be able to enjoy his later years on his passion, which is very reasonable, the hardship  
578 needs to go with the property. The Board is not considering whether to give Mr. Chabott a  
579 Variance, they are considering whether to give 242 Church Street a Variance. He understands  
580 what Mr. Greenwald is saying and shares some of that same sentiment and would love for Mr.  
581 Chabott to be able to do this project the way he wants to do it, but unfortunately, he does not  
582 think it fits within the parameters of the hardship.

583 Ms. Taylor stated that unfortunately, age is not a Special Condition of the property, although  
584 there are times when she wishes it was. She continued that she is also having concerns, because  
585 the front part of the lot may be narrow but there is still ample space on the property to have a  
586 three-car garage without violating any of the setbacks. Having a garage is reasonable, but having  
587 a three-car garage on the front of this lot may not be reasonable. She thinks the project could be  
588 accomplished within the boundaries of the property without violating setbacks.

589 Mr. Gaudio stated that he agreed. He continued that the issue is with the property, and like Chair  
590 Gorman said, the property is not the hardship. He certainly understands Mr. Chabott’s personal  
591 issue with this.

592 Mr. Greenwald stated that he speculates that had Mr. Chabott known the details about his  
593 allowable use for that property, his whole plan would have been different, even though Mr.  
594 Chabott stated it is not going to affect his decision. He continued that the fact that Mr. Chabott is  
595 moving his one-car garage back onto the merged property because potentially in the future

596 someone might want to build a house there, and now he knows they cannot, Mr. Greenwald  
597 wonders, if the Applicant would have applied for a Variance This bothers him. He is not saying  
598 it amounts to Mr. Chabott's property having a hardship. Mr. Greenwald does not think Mr.  
599 Chabott had an adequate chance to think through other alternatives for his three-car garage  
600 because he thought probably that other portion of the lot was going to be used. He goes back and  
601 forth on whether he thinks there is a hardship, because Mr. Chabott could in fact put the three car  
602 garage on the merged lot.

603 Chair Gorman asked if the Board has suggestions for how they may move forward. He  
604 continued that this does not leave a great feeling with him, either, but he just does not think the  
605 criteria have been met. He asked if, for general discussion purposes, the Board sees any merit to  
606 giving Mr. Chabott a chance to expound on any hardship, though they have given him ample  
607 opportunity to do so. He has essentially admitted that this is more of a want than a need.  
608 According to Chair Gorman, it seems like the Applicant could still accomplish his mission of  
609 having a three-car garage directly where he lives, so that he can still have generally what he  
610 wants, just not exactly or specifically and with maybe a little more cost.

611 Ms. Taylor stated that she has concerns with opening the public hearing once they are in  
612 deliberations, but she sees two options: one, complete creating a record on all criteria and then  
613 vote, or two, Mr. Chabott could potentially, if he chose to, withdraw his application and not have  
614 a negative vote on the application which could, potentially, preclude him from bringing forward  
615 a reconfigured application.

616 Mr. Greenwald stated that for the record, he completely agrees with Ms. Taylor and he thinks  
617 option two would be most advisable because he thinks there is a lot of new information that has  
618 come to the applicant's attention and he might need more time to rethink what he needs to  
619 accomplish.

620 Chair Gorman replied agreement and stated why he specifically asked Mr. Chabott if he wanted  
621 to carry forward with this petition. He continued that he does not agree with Ms. Taylor that he  
622 cannot reopen the hearing, nor was he suggesting that. He was suggesting some sort of  
623 alternative, like she mentioned, a withdrawal of sort from the Applicant if he is interested, so he  
624 could take another reapply with a new application. That could be no Variance application at all,  
625 or Mr. Chabott coming back with a new version of the application.

626 Mr. Greenwald stated that he thinks Mr. Chabott needs to fully understand what his allowable  
627 uses are for the property now that he has merged them and what he can and cannot do. He might  
628 have thought that moving the one-car garage onto the Kirk Court property meant something else.  
629 It sounds like there was some misunderstanding between the Petitioner and the City or whoever  
630 he worked with to merge the properties. He personally would like Chair Gorman to reopen the  
631 public hearing to give Mr. Chabott the opportunity to withdraw his application.

632 Chair Gorman asked if Ms. Taylor agrees that that is a viable option. Ms. Taylor asked if he  
633 means withdrawing. Chair Gorman replied that he means giving the Applicant the opportunity,  
634 should he choose to do so. Ms. Taylor replied yes.

635 Chair Gorman asked if other Board members agree. Mr. Hoppock replied yes, but he shares Ms.  
636 Taylor's concern about reopening the public hearing for further fact-finding after deliberations  
637 commenced. He continued that it is sort of analogous to having the jury deliberate and then  
638 having the trial resume in the middle; it makes him uncomfortable. Chair Gorman reminded the  
639 Board of the language: "*the Board will deliberate and decisions will be conducted in public, and*  
640 *if needed, the Chair will reopen the public hearing to ask any technical or procedural questions*  
641 *of the staff, the petitioner, or the public.*" Mr. Hoppock replied that it is opinion that the Board  
642 can ask technical or procedural questions, but not substantive ones and asking Mr. Chabott if he  
643 would like to continue would be a procedural question.

644 Chair Gorman opened the public hearing to ask Mr. Chabott what his preference would be, to  
645 continue with the current application or to withdraw. Mr. Chabott stated that his preference is  
646 still to put the new garage where the swimming pool is now. He continued that if the Board does  
647 not approve the Variance, he guesses he could put it on the back property but he would rather  
648 not. He is not worried about building a house out there; that does not bother him a bit because he  
649 was not ever planning on selling it as a buildable lot or putting anything else out there.

650 Chair Gorman stated that in its deliberations the Board has come to a certain level of conclusion.  
651 He asked if Mr. Chabott would still like to continue with his current application. Mr. Chabott  
652 replied yes. Chair Gorman closed the public hearing. He asked the Board to continue to  
653 deliberate, moving on to criterion four.

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

656 Mr. Hoppock stated that he does not believe there is any evidence that this would impair  
657 surrounding property values. Chair Gorman stated that he does not think it would diminish  
658 surrounding property values, either. Mr. Greenwald agreed.

659 *Granting the Variance would do substantial justice because:*

660 Mr. Hoppock stated that he is having a hard time with whether the loss of personal preference is  
661 a loss that is outweighed by the gain to the general public. He continued that he is not sure this is  
662 met, either. Ms. Taylor stated that she agrees with Mr. Hoppock.

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

664 Mr. Gaudio stated that he disagrees; he does not think the Spirit of the Ordinance would be  
665 observed, because it could be complied with by using another approach.

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

667  
668 Chair Gorman stated that he thinks Mr. Hoppock already covered this one a little bit, but  
669 generally speaking, this application does not appear to be contrary to the public interest. Mr.  
670 Hoppock stated that he does not think they have enough information about whether it would alter  
671 the character of the neighborhood to any degree and with the option that the garage be  
672 constructed on the Kirk Court lot, it is difficult for him to agree. He is not sure this criterion is

673 met, but erring on the side of caution, he would say that it is, even though there is not enough  
674 information to really say.

675 Chair Gorman asked if there were any other comments from the Board on any of the criteria.  
676 Hearing none, he made a motion for the Zoning Board of Adjustment to approve ZBA 20-13.  
677 Mr. Hoppock seconded the motion.

678  
679 *Granting the Variance would not be contrary to the public interest.* Granted 3-2. Ms. Taylor  
680 and Mr. Hoppock were opposed.

681  
682 *If the Variance were granted, the spirit of the Ordinance would be observed.* Denied 5-0.

683  
684 Granting the Variance would do substantial justice. Denied 5-0.

685  
686 *If the Variance were granted, the values of the surrounding properties would not be diminished.*  
687 Granted 4-1. Ms. Taylor was opposed.

688  
689 5. *Unnecessary Hardship*

690  
691 A. *Owing to special conditions of the property that distinguish it from other properties in the*  
692 *area, denial of the Variance would result in unnecessary hardship.*  
693 Denied 5-0.

694  
695 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*  
696 *hardship will be deemed to exist if, and only if, owing to special conditions of the*  
697 *property that distinguish it from other properties in the area, the property cannot b be*  
698 *reasonably used in strict conformance with the ordinance, and a variance is therefore*  
699 *necessary to enable a reasonable use of it.*  
700 Denied 5-0.

701  
702 Chair Gorman made a motion for the Zoning Board of Adjustment to deny ZBA 20-13. Mr.  
703 Hoppock seconded the motion, which passed by a unanimous vote of 5-0.

704  
705 c) **ZBA 20-14:** Petitioner, David Borden of 55 Langley Rd., Keene,  
706 requests a Variance for property located at 173 Wyman Rd., Keene,  
707 owned by the Bruce L. and Phyllis R. Borden Revocable Trust, of 173  
708 Wyman Rd., Keene, Tax Map #210-048-000 that is in the Rural  
709 District. The Petitioner requests a Variance to permit a three +/- acre  
710 lot with 2.85+/- acres of upland and 0.15+/- acres of delineated  
711 wetlands, where five acres are required per Section 102-791 of the  
712 Zoning Ordinance.

713 Chair Gorman asked Staff to present comments. Mr. Rogers stated that this is a  
714 property located in the Rural District, with frontage on Wyman Rd. and Abbott Rd.  
715 He continued that there is a discrepancy between what the Assessor's database has

716 for this lot's acreage and what the owner's survey shows. The survey is correct. It  
717 is a 26.5-acre lot. The applicant wants to be able to create two lots, with one lot  
718 where the existing house is, on the upper portion of the map, and the other lot would  
719 have five acres of upland. The Applicant had a second Variance application  
720 submitted but has since withdrawn it as their surveyor was able to find enough  
721 upland to create a required acreage lot. The Applicant is asking for a lot to be  
722 created that has three acres where 2.85+/- acres is upland (dry land) and .15+/- acres  
723 is delineated wetlands.

724 Mr. Hoppock asked if it is correct that that is one of the two lots. Mr. Rogers replied  
725 yes, the second lot would be created if the Variance were approved; the Applicant  
726 would have to go through the process with the Planning Board to subdivide the 23.5  
727 acres with approximately six acres of upland scattered throughout.

728 Ms. Taylor asked if additional upland acreage on the remaining portion of the parcel  
729 was found, why some of that acreage could not be added to make five acres,  
730 eliminating this request. She continued that might be a question for the Applicant  
731 and not Mr. Rogers. Chair Gorman replied that Mr. Rogers is nodding his head that  
732 yes, this is a question for the applicant.

733 Ms. Taylor stated that there is such a significant discrepancy between what the  
734 Assessor's database and the survey show, so she hopes the City is following some  
735 procedure to correct that. It looks like, according to the survey, that the abutter to  
736 the southeast gained some property. She does not know what the process is to have  
737 the maps corrected but hopefully the Community Development Department is  
738 talking with the Assessor's Department so this is corrected. Mr. Rogers replied yes,  
739 the Assessing Department will be making corrections though it will not be reflected  
740 until April 1 of next year, however.

741 Chair Gorman asked if there were any more questions for Staff. Hearing none, he  
742 opened the public hearing and shared information about how the public could  
743 participate via phone or the Zoom platform.

744 Chair Gorman asked to hear from David Borden, representing 173 Wyman Rd.

745 Mr. Borden stated that as a family member of the owners, he would review the  
746 criteria and then answer questions.

747  
748 *1. Granting the Variance would not be contrary to the public interest because:*

749 Mr. Borden stated that his request on a smaller than required lot size fits in with the  
750 current neighborhood characteristics. He continued that many lots in the area are  
751 much smaller than this request which he feels is reasonable.

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

754 Mr. Borden stated that the neighborhood would still be very rural in nature. He  
755 continued that wetlands would not be disturbed or built upon. The property will still  
756 have the required Rural District 50-foot setbacks.

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

758 Mr. Borden stated that this Variance would allow an additional building lot that  
759 exceeds the size of many in the neighborhood.

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

762 Mr. Borden stated that the proposed 3-acre lot fits in nicely with the existing  
763 neighbors with no new building proposed. He continued that their survey map  
764 shows the proposed line noting that there is a stone wall that is a natural divider of  
765 that piece of property. His Uncle Bruce Borden maintained the property from the  
766 house down to the stone wall, always maintaining it as a well-kept and well-mowed  
767 property. A proposed buyer would like to farm the land and raise herbs, which is  
768 natural for that location. He further stated that this stone wall was chosen as the  
769 property line as the northern part is the best farmland.

770

771 5. *Unnecessary Hardship*

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

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

778 Mr. Borden stated that due to the fact that there is over 31 acres it does not appear to  
779 be unreasonable to have two building lots. He continued that a 3-acre division with  
780 existing buildings allows an affordable sale to take place and a second lot to be  
781 defined to conform to standards.

782 *and*

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

784

785 Mr. Borden stated that this subdivision fits nicely with the existing character of the  
786 neighborhood. Being finished with his presentation, he asked if anyone had  
787 questions.

788

789 Ms. Taylor asked if the property currently has City water and sewer or if it is well and septic.

790 Mr. Borden replied the property has a well and septic. Ms. Taylor asked if there would be room  
791 on this proposed three acres, considering the wetlands, in the event that the septic failed. Mr.  
792 Borden replied that the septic will be brand new within the month, as a condition of the sale. He  
793 continued that it has a State-approved design and to be installed before the sale of the property.

794

795 Mr. Hoppock stated that on the map, north of Abbott Rd. there is a well site with a question  
796 mark. He asked if that is where the well will be. Mr. Borden replied no, that is an old well that

797 was discontinued years ago. He continued that his Uncle had a new well drilled that is on the  
798 house side of Abbott Road which is marked on the map though the label is small.

799  
800 Mr. Hoppock asked if there is a reason why they cannot move the proposed line south two acres.  
801 Mr. Borden replied that that is where they started in their thinking. He continued that as you can  
802 see from the upland delineation, it would take two acres of “prime upland,” so it was hard to find  
803 enough upland to get five acres for the south, larger lot. Since the family was asking for a  
804 Variance, they thought cutting the lot size down would be a smart move to save the upland for  
805 the calculation of the other lot. His Uncle wanted to build a house there one time so he is  
806 familiar with the area. He continued explaining that if the boundary line were to be moved down  
807 to include the two acres for the northern proposed lot, the southern larger lot would not be as  
808 well configured. Not adding the two acres to the house lot does not affect it at all; it is a still  
809 very nice lot. The division of the stone wall really frames the property well. As the family  
810 discussed the best solutions for a subdivision, they evolved with this application believing it to  
811 be the best of their ideas. It made sense that the house is well suited for that three acre lot while  
812 saving the upland for the southern larger lot, giving that lot plenty of design opportunities for  
813 whoever purchases it.

814  
815 Mr. Gaudio asked if Mr. Borden is saying that if they added the two acres south it would not  
816 leave enough for the other property to be used as a building lot, asking if this was an upland  
817 issue. Mr. Borden replied that the majority of the lot is wetlands. He continued that when they  
818 had it delineated, they found X amount of upland and it did not give a lot to work with on the  
819 second lot and the first lot has an approved septic system that is to be installed, and so by moving  
820 the line north, the two acres, it just made a lot of sense with the upland issue on the other one.

821  
822 Mr. Gaudio asked for further explanation on the map. Mr. Borden replied that between the two  
823 pieces on this proposed line division they end up with six acres of upland. Mr. Gaudio asked if it  
824 is accurate to say that moving the property line two acres south would possibly leave one  
825 acre of upland on the southern larger lot, which does not meet the requirements. Further, Mr.  
826 Gaudio stated that if the boundary line was moved to split the property to make three acre lots  
827 which would make for two nonconforming lots. Mr. Borden replied that it is a little better than  
828 that. You end up with the 3-acre upland lot above with the house, and about six acres of upland  
829 on the second lot. Mr. Borden stated the family did not know there was six acres of upland on  
830 the second lot until the surveyor went back and delineated further upland. He continued stating  
831 there may be more upland on the southern larger lot, down along the border with Hillside Village  
832 but it is expensive to have the delineation done. He was under the impression at first that the  
833 upland had to be contiguous and then learned that it does not, hence the reason for the surveyor  
834 to return. Once there was more upland discovered, the second Variance application was  
835 withdrawn. He did state that there is a lot of wetland that is unbuildable. He is trying to make a  
836 marketable piece that someone could build upon and meet all the regulations. The logical thing  
837 to do to accomplish that was to shrink the house lot.

838

839 Mr. Gaudio asked if his understanding is correct that there is the three acre northern lot and six  
840 or so acres in the south, maybe somewhat non-contiguous, but putting them together makes nine  
841 acres. You cannot make ten acres to split the whole lot into two qualifying lots. Mr. Borden  
842 replied that if they had kept the property line at the five acres they would have kept the second  
843 Variance request in for the lot that did not contain five acres of upland. Once they found that  
844 they had more upland, and that even though it was not contiguous it qualified within the Rural  
845 District requirements, they moved the line to make a smaller lot at the upper end. The house is  
846 quite old, needing a lot of work, and the Applicant stated a lot of concessions on the property had  
847 to be made sell it. The prospective buyers had no problem with the size of the property reducing  
848 gas they saw the prime acreage was north of the stone wall. As what is proposed this evening,  
849 they hope the Board will find their application in favor.

850  
851 Ms. Taylor stated that she is confused now. She continued that she does not know if this is a  
852 question for Mr. Rogers, but asks if the upland has to be contiguous or not to qualify for the five  
853 acres. Mr. Rogers replied that under Section 102-1494 of the Zoning Code, the calculation of  
854 minimum lot size states *“For purpose of calculating the minimum lot size for the subdivision of*  
855 *land, there is a surface water resources defined in this article shall be excluded from the area*  
856 *used to calculate the minimum lot size.”* He continued that it does not speak to anything along  
857 the contiguous portion of this. The Planning Board rules and regulations would address, and he  
858 believes this that is what the Applicant is attempting. For a subdivision to occur, the Applicant  
859 will want to try and create a buildable lot. He thinks that is what the Applicant is doing by  
860 seeking this Variance for the one lot at three acres and leaving possibly four acres of upland that  
861 someone would be able to develop. He thinks that is why they are asking for this one Variance  
862 with this one property and the second lot will have the five acres or maybe six, which although  
863 not contiguous, does meet the Zoning Code.

864  
865 Ms. Taylor stated that it is hard to figure this out when the map the Board has been given does  
866 not show the entirety of the upland versus wetland because it is a prior map and there has been  
867 additional work done. She continued that is a reason she is having a hard time figuring this out.  
868 She asked if it is correct that the southern portion of the lot has about 6 acres of upland. Mr.  
869 Rogers replied in the affirmative that is what the stamped survey plan is showing. Ms. Taylor  
870 asked if he means the one the Board has been given or the subsequent one. Mr. Borden replied  
871 the subsequent one. Mr. Rogers stated that the application states, *“The existing house will have*  
872 *3 acres, of 2.85 +/- acres of upland and 0.15 acres of delineated wetlands. The remainder of the*  
873 *land will have delineated uplands of 6.1 +/- acres and a total of 23.5 acres.”* That is stamped by  
874 a licensed land surveyor and the City received on September 11. Ms. Taylor stated that the  
875 Board does not have that map in front of them. Mr. Rogers replied that it came in after the  
876 agenda packets were sent to the Board.

877  
878 Ms. Taylor asked Mr. Rogers, if the three acre lot is what is requested, is it relevant how much is  
879 upland or wetland. Mr. Rogers replied that the City did ask the Applicant to make sure to  
880 delineate what there was for upland and wetland, but since they are already asking for a Variance  
881 from the five acres required, at that time it would be a decision of the Board, if the Board feels



882 that the 2.85 acres of upland and .15 acres of wetlands is an adequate size for a lot in this district.  
883 Ms. Taylor replied that it sounds like the split of upland versus wetland is not necessarily a  
884 function of the Zoning Ordinance, it is more for the Board's information. Mr. Rogers replied that  
885 is correct. He continued that it is also for the future when the applicant goes to the Planning  
886 Board to request the subdivision. Staff felt it was important for both the Zoning Board of  
887 Adjustment and the Planning Board to have that information.

888  
889 Ms. Zerba stated that she thinks Mr. Borden mentioned that there are adjacent properties of about  
890 three acres or equivalent to what he is proposing, and she would like to hear more about that.  
891 Mr. Borden replied that he did not have that specific information with him though he did discuss  
892 this application with the consultant David Bergeron who is very familiar with the area. He  
893 continued that Mr. Bergeron stated that 90% of existing properties in this area did not meet the  
894 five acre requirement.

895  
896 Chair Gorman asked for public comment. Walter Mess, of 95 Wyman Rd., Apt. 2305, stated that  
897 he lives in Hillside Village, abutting the property. He continued that he speaks only for himself  
898 as a resident, not any of his neighbors or Hillside Village management or ownership. He looks  
899 out onto this property, which abuts the Hillside Village's meadow area. He is confused by a  
900 couple of things, particularly the maps, though some of it has been addressed. The application  
901 states that there are 31 acres. There is the Ash Brook Swamp of 5.2 acres, which really does not  
902 abut the Borden Farm, which he thinks is not part of the discussion. He does question the septic  
903 tank asking if this was for the new proposed lot or the old lot. Another question relates to the  
904 shaded area on the map, stating that it is quite irregular. Is it a correct assumption that the  
905 irregularity is to make up acreage. . He wonders if that is really the intent of the Zoning Board  
906 to look at it that way. He continued that he is not sure what the section of the map that says  
907 "upland not delineated" means. Is that a Zoning category? Or does that mean it is up for sale?  
908 Or to be used for somebody else?

909  
910 Chair Gorman asked Mr. Borden to reply. Mr. Borden stated that the lot is a very irregular lot.  
911 He continued that the surveyor did his best to define a separate, 5.2-acre piece; that is closest to  
912 Hillside Village. The only explanation he has is that section of property was used as a haying  
913 field. Historically, people owned haying fields and would get the permission from the neighbors  
914 to across their land once a year to cut the hay. The haying field portion of the lot, and the rest of  
915 the southern portion of the lot, is all wetlands and it will remain so. He inquired at the  
916 Monadnock Conservancy and this section of the land is a "supported wildlife corridor". The  
917 possibility exists that new owners could possibly build a house then add the remaining wetlands  
918 into conservation or in current use; either way it would stay conservation land. People from  
919 Hillside Village should not see any difference to the property with the subdivision. It will be the  
920 same woods that have always been there. The probable house location would be on the shaded  
921 area, the designated upland area. Regarding the "upland not delineated" note seen on this map,  
922 there has been a map submitted after that the first map, which does have the upland delineated.  
923 This second map does show another location that might contribute to the eventual design of a  
924 house. Upland is the dry land, and the plant symbols designate wetlands. It is a very interesting

925 site, full of possibilities for wildlife and conservation. He continued stating that the northern end  
926 close to the proposed line would there be a building lot available. They have found six acres of  
927 upland, making it a conforming lot within the Rural District. Mr. Borden continued that that the  
928 new septic system is to go with the old house, on the three acre lot. He continued that it is all  
929 approved and will be brand new within the next month.

930  
931 Chair Gorman called on Mr. Mess again. Mr. Mess stated that the only other confusion he had  
932 was the “upland not delineated” section. He state that it may not be relevant to the Zoning  
933 question but asked if this section was considered a building lot, and if the Applicant is thinking  
934 of it in those terms? Where it says “upland not delineated,” that was an earlier drawing. The  
935 final drawing, which the Board does not have in its slide show tonight, will show more cross-  
936 hatching in that area. Theoretically, yes, that area where the note is and the cross-hatched area to  
937 the north of it are building areas. There is a wetland “brook” of sorts going through there, so  
938 whoever builds in that area needs to stay a certain distance away. The subsequent map he  
939 submitted to the City has a 75-foot setback from the wetlands. This provides a future architect  
940 the information needed to site a house foundation, a septic system, driveways, etc. Mr. Borden  
941 did apologize for not having the second map in to Staff in time prior to the packets being sent to  
942 the Board. He further stated that this is a nice area having been raised on the land. He concluded  
943 that this property is pretty remote from Hillside Village and he feels it will not have any negative  
944 impact on their residents.

945  
946 Chair Gorman asked if Mr. Mess’s inquiries are satisfied. Mr. Mess replied that he has further  
947 questions.

948  
949 Mr. Hoppock stated that he heard Mr. Borden say earlier that the thatched area south of the  
950 proposed line is 6.1 acres. He asked if that is correct. Mr. Borden replied that the drawing  
951 submitted to the Board does not show a cross-hatched area of six acres. Mr. Hoppock replied  
952 that he has been taking notes during this meeting, and wrote down earlier that the thatched area  
953 south of the proposed line is 6.1 acres. He continued that however, what Mr. Borden stated  
954 earlier is that the “upland not delineated” area is 5.2 acres and that they are both considered  
955 buildable lots. Mr. Borden replied no, there is only six acres, total south of the proposed  
956 property line. Mr. Hoppock asked how many acres, then, are in the “upland not delineated” area.  
957 Mr. Borden replied that in the drawing submitted to the Board, there are 4.1 acres of upland  
958 shown. That is the delineated, cross-hatched area. He continued that south of the proposed line,  
959 the cross-hatched area down to the curved line where the cross-hatches stop, is 4.1 acres. The  
960 surveyor and wetlands scientist formed a triangular area right around the surveyor’s earlier note  
961 and that added two more acres of upland, and it is shown exactly delineated. Mr. Borden stated  
962 that the reason he had this earlier map is from the surveyors providing only contiguous upland.  
963 He continued, that when he learned that non-contiguous areas could be counted as upland, the  
964 surveyor and the wetland scientist delineated that triangular area of two more acres. So what is  
965 shown on that drawing south of the proposed line is about 4.1 acres, and then there was an  
966 additional two acres found right where that note is. Mr. Hoppock thanked him and said that was  
967 what he was trying to get clarified.

968 Mr. Greenwald stated that the Board and Mr. Borden are here to discuss 173 Wyman Rd. and the  
969 creation of a three acre lot where five acres are necessary, not what is going to happen to the  
970 remaining land. Ms. Taylor replied that may be true, but they still have to look at the entire lot  
971 as it currently exists, before they can make a decision about a portion of it.

972  
973 Ms. Taylor asked if the “additional two acres” Mr. Borden just referenced is in the “upland not  
974 delineated” area, or the area that is near the southern boundary of the entire lot. Mr. Borden  
975 replied that it is where the “upland not delineated” note is. At the time the drawing was done,  
976 the surveyor knew that was upland but it was not delineated until later. The surveyor sketched it  
977 in a subsequent drawing.

978  
979 Ms. Taylor stated that earlier, she thought Mr. Borden said there was additional upland at the  
980 southern end of the lot. Mr. Borden replied that there may be. He continued that he did not hire  
981 the soil scientist for that area. Once the six acres were found, and knowing five acres are  
982 required in the Rural District, they discontinued the survey. He continued stating that most of  
983 that southern area is swampland, which is great for the aquifer and animals and birds but  
984 definitely nothing to build on.

985  
986 Chair Gorman stated that the public hearing is now closed for the Board to deliberate. He  
987 continued that if needed, he will re-open the public hearing to ask technical or procedural  
988 questions of Staff, the petitioner, or the public.

989  
990 The Board went through the Findings of Fact.

991  
992 *1. Granting the Variance would not be contrary to the public interest.*

993  
994 Mr. Gaudio stated that he does not think that this application would be contrary to the public  
995 interest. He continued that he thinks it is in the public interest, because there are other three acre  
996 lots in the area, and because it is prime residential land that will be developed.

997  
998 Mr. Greenwald replied that they are not talking about allowing a three acre lot to be developed  
999 on, they are talking about the creation of a three acre building lot. He asked for clarification on  
1000 the distinction. Mr. Gaudio replied that his first reason is still true. Mr. Greenwald replied that  
1001 his concern is of the confusion with the proposed lot as a building lot not the creation of a  
1002 building lot.

1003  
1004 Mr. Hoppock stated that it is consistent with the rural area where there are many lots that are  
1005 three acres and developed with single-family homes, which is the purpose of this lot in the  
1006 future, which he thinks they should consider as well. He does not think it is contrary to the  
1007 public interest.

1008  
1009 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1010

1011 Ms. Taylor stated that she has some concerns with this criteria because of what Mr. Greenwald  
1012 just referenced, which is that this is a conforming, historic lot, and they want to make it less  
1013 conforming by making it smaller, which is the opposite of the Spirit of the Ordinance. Mr.  
1014 Greenwald stated that he agrees.

1015  
1016 Mr. Gaudio stated that he does not think it would alter the essential character of the  
1017 neighborhood. It is going to be a rural lot in a rural district and nothing he has seen is going to  
1018 change that, and the correlate to that is there is nothing about the application that would threaten  
1019 public health, safety, or welfare. There will not be any congestion issues, the septic is designed  
1020 and approved, there is a well in front of the house, and he believes Mr. Borden testified about an  
1021 approved plan, so he is satisfied that those criteria are met.

1022  
1023 *3. Granting the Variance would do substantial justice.*

1024  
1025 Mr. Gaudio stated that he believes it would do substantial justice because he does not see  
1026 anything that would be an injustice, regarding the Zoning Ordinance. Chair Gorman stated that  
1027 in other words, the fact that it is not creating a substantial injustice makes it justifiable. Mr.  
1028 Hoppock replied that the other way to say that is there is no gain to the public that outweighs the  
1029 loss to the individual.

1030  
1031 Chair Gorman stated that he leans that way on this as well, especially given the size of the  
1032 overall chunk of land, albeit mostly wet. It does not seem like it will have a severe impact on the  
1033 general public.

1034  
1035 *4. If the Variance were granted, the values of the surrounding properties would not be*  
1036 *diminished.*

1037  
1038 Mr. Hoppock stated that there is no indication of any concern there. The values of the  
1039 surrounding properties are not going to be hampered in any way. Chair Gorman stated that he  
1040 does not imagine they would either.

1041  
1042 *5. Unnecessary Hardship*

1043  
1044 *A. Owing to special conditions of the property that distinguish it from other properties in the*  
1045 *area, denial of the Variance would result in unnecessary hardship because:*

1046 *i. No fair and substantial relationship exists between the general public purposes of the*  
1047 *Ordinance provision and the specific application of that provision to the property*  
1048 *because:*

1049 *and*

1050 *ii. The proposed use is a reasonable one.*

1051

1052 Mr. Greenwald stated that he disagrees with this. He continued that there is a house on a lot. It  
1053 is a big lot. It can continue to be as such. The only hardship he hears is that the petitioner does  
1054 not have an extra lot to sell. That is a financial hardship, and that is not a hardship.

1055  
1056 Ms. Taylor stated that she agrees with Mr. Greenwald. She continued that if the Petitioner  
1057 wanted to make this a five acre lot and then he could apply for a Variance for the southern larger  
1058 lot because they did not have a full five acres of dry land. Ms. Taylor continued stating she had  
1059 concerns with the Spirit of the Ordinance question as there is a lot that has plenty of acreage and  
1060 the Petitioner wants to turn it into a substandard lot. She stated she does not see the hardship as  
1061 it pertains to the request that is before the Board.

1062  
1063 Mr. Hoppock stated that he sees it a little differently. He continued that the main purpose of the  
1064 Ordinance is to maintain a rural setting, which means regulating congestion and density. He  
1065 continued that what he sees is a large piece of land that is mostly wetland is proposed to be  
1066 subdivided. He does take into account both parcels. He initially thought the Petitioner could  
1067 move that proposed line two acres south, but he is persuaded that due to the condition of the lot  
1068 and the degree of wetlands, what they are trying to do is get two lots that are similar to most of  
1069 the other lots in the neighborhood. He thinks that because of the land makeup that is a special  
1070 condition of the property and he does not think it changes the rural nature. Therefore, no fair and  
1071 substantial relationship exists between the idea of preventing congestion and density and the  
1072 application of that rule to this property. He thinks the standard is met.

1073  
1074 Mr. Greenwald questioned what happens to this property if the Board insists on five acres. Mr.  
1075 Hoppock stated that the Applicant has nine acres total that are upland, three to the north of the  
1076 line, four to the south, and two in the "upland not delineated" area. Mr. Greenwald stated that  
1077 the result would be that another building lot cannot be created, if the Board insists on five acres.  
1078 Mr. Hoppock stated that the Board should not have to insist on five acres. Mr. Greenwald  
1079 replied that he understands, but is proposing what the result would be if the Board did insist on  
1080 five acres. He continued that it would mean another building lot could not be created, which is a  
1081 financial hardship. Mr. Hoppock replied that he does not see it that way stating it is a land-based  
1082 hardship because on the amount of wetland available in relation to what the Petitioner is trying to  
1083 do with this proposal along with the number of acres of wetland to the south.

1084  
1085 Mr. Greenwald replied that they are talking about 173 Wyman Rd., not the southern larger lot.  
1086 Mr. Hoppock stated that he is talking about and looking at the property as a whole. Mr.  
1087 Greenwald questioned if the application ZBA 20-15 was withdrawn. Mr. Hoppock replied that is  
1088 not the question they are asking. He continued that the question is there a Variance appropriate  
1089 for the three acre piece to the north of the line that is marked "proposed." Mr. Hoppock  
1090 continued that in evaluating the application, the Board should look at the special conditions of  
1091 the land. He further stated that the Petitioner proposes boundary line for the proposed three acre  
1092 lot by evaluating the surrounding properties. In seeing other three acre parcels, and keeping the  
1093 line to the south is consistent with the line to the north because the Petitioner can. He thinks that  
1094 all the Special Conditions are relevant, and that allows for an unnecessary hardship finding

1095 because the density rules are going to be less appropriate. Mr. Hoppock continued that there is  
1096 no fair and substantial relationship where those rules apply to this property because it is not  
1097 going to be densely populated. It is going to be one house on the northern lot, and they will get  
1098 no more than one house on the southern lot. He state that the southern larger lot cannot  
1099 subdivide any further and is satisfied that those objectives are met.

1100  
1101 Mr. Greenwald replied that for the purposes of this discussion, it is irrelevant to the Board what  
1102 else can be created from granting the three acres. Mr. Hoppock replied that he disagreed. Mr.  
1103 Greenwald clarified that it is irrelevant to the Board's decision of whether or not to say five acres  
1104 is needed. He continued that he wants to ask the question of why it needs to be three acres, when  
1105 it could be five. Mr. Hoppock replied that if this petition was five acres, then the other southern  
1106 larger lot would not be five acres. Mr. Greenwald replied that about it is not the Board's concern  
1107 of the other property for this discussion, the Board only cares about 173 Wyman Rd.

1108  
1109 Ms. Taylor stated that she thinks the question before the Board is exactly as Mr. Greenwald  
1110 phrased it; why can't the lot be five acres; what happens with the remainder is not before the  
1111 Board. She continued that as Mr. Rogers said earlier, it is a matter of the size of the lot. Ms.  
1112 Taylor continued that the question of whether it is upland or wetland is basically informational  
1113 purposes. Therefore, if they have 4.1 acres and add two acres back to the north, they still have a  
1114 buildable lot. But as Mr. Greenwald said, that question is not really in front of the Board.

1115  
1116 Mr. Gaudio stated that he understands that the remainder of the whole lot is not before the Board,  
1117 but they have to look at it, to see the whole picture. He continued stating the Board could say  
1118 that the northern lot has to be five acres, which would mean the southern lot would be 4.1 acres.  
1119 It would be two lots. They could grant the Variance for three acres, and the southern lot would  
1120 have six acres, which is now conforming, so it does not have to return to the Board but will still  
1121 have two lots. His opinion on the big picture, which helps him make a decision on the small  
1122 picture here, is he thinks it is a viable answer to say a three acre lot fits, because it is in the same  
1123 density. There is no fair and substantial relationship between the general purpose to keep the  
1124 density for the two lots and the application of this Ordinance. Mr Gaudio believes the Board  
1125 would come to the same conclusion. He would say that there is an unnecessary hardship.

1126  
1127 Chair Gorman stated that for clarity, if the Board were to hear a Variance for two lots, it is  
1128 regardless of what size either lot is in terms of upland.

1129  
1130 Ms. Taylor replied that she does not think that is correct. She continued that what she  
1131 understood from the earlier testimony is that the acreage of the upland was for the Board's  
1132 information. It was not necessarily the required lot size.

1133  
1134 Chair Gorman stated that he needs to interrupt Ms. Taylor to let Mr. Rogers speak to this issue.  
1135 Mr. Rogers stated that for clarity, for the substandard three acre lot, the City asked for the  
1136 delineations of upland and wetland to be given as informational. Overall, though, the amount of  
1137 wetland does have a matter of calculation. Mr. Rogers continued stating that if the Board were to

1138 deny this Variance, the lot that currently has a house on it would actually have to be more than  
1139 five acres since the .15 acres of wetlands would have to be removed to create a five acre lot,  
1140 rendering the wetlands not useable with the calculation. The first lot would have to be 5.15 acres  
1141 to create the one lot as stated, and then the second lot would not have enough upland per the  
1142 Zoning Code which removes the wetlands out of calculation. Mr. Rogers continued that the  
1143 second lot, if it were to be subdivided, would have to return to the Board seeking a Variance for  
1144 this section of the Ordinance since there would have a 20+ acre lot, but as Mr. Hoppock  
1145 mentioned, they would only have a four acre abutment.  
1146 Mr. Greenwald questioned that if the Board did not approve this Variance, if it puts the creation  
1147 of a second lot in jeopardy. Chair Gorman replied absolutely.

1148  
1149 Ms. Taylor asked Mr. Rogers for clarification in saying that in the Rural District, five acres of  
1150 dry/upland are needed for a house lot. Mr. Rogers replied yes. Ms. Taylor replied that her  
1151 understanding was incorrect and she apologizes.

1152  
1153 Chair Gorman stated that the Board would need to hear from the Applicant in either scenario to  
1154 subdivide the property. He continued that what Mr. Borden did, he suspects, seek two Variances  
1155 because he did not have enough upland on either portion, which is what the Board initially was  
1156 presented with. When Mr. Borden found enough upland he eliminated the one Variance request  
1157 because he was able to have enough upland for it to be a conforming lot. Chair Gorman stated  
1158 that now the Applicant is before the Board for one Variance on a property that has pretty vast  
1159 acreage, especially considering its location in Keene, and it is surrounded by properties that are  
1160 primarily dissimilar, in that they are much smaller. He can see a hardship there for this property,  
1161 in that there is a large amount of land that is restrictive in nature and he does not see it as  
1162 adversely impacting the neighborhood in general, because he believes there are plenty of the  
1163 other lots in the vicinity of three acres.

1164  
1165 Ms. Taylor stated that she's struggling with the idea of creating a three acre lot, it not only does  
1166 not have the five acres; it does not have five dry acres either. She asked if the Board considers  
1167 either issues, or just the one that the Applicant requests a three acre lot instead of a five acre lot  
1168 whether it is wet or dry. Chair Gorman replied that the Variance is to create a 3+/- acre lot  
1169 where 2.85 acres is upland and .15 acres is wetland, which can be considered a 2.85-acre lot. He  
1170 continued that .15 is about 6% of the cumulative acreage.

1171  
1172 He asked if Mr. Rogers had any comment on this. Mr. Rogers stated that since the Applicant is  
1173 seeking a Variance for a less than five acre lot to begin with, he does not think the section of the  
1174 Zoning Ordinance that speaks to the wetlands not being allowed to be part of the calculation  
1175 comes into play. Hence the request from Staff for the delineation of upland and wetland as  
1176 informational for the Board. Staff's advice to the Applicant was that since they were seeking a  
1177 Variance for a substandard size lot anyway, that section of the Zoning Ordinance did not apply.  
1178 Chair Gorman clarified that the size of the upland and wetland is in front of the Board as relative  
1179 in terms of being informational of what portion is, in fact, upland. Mr. Rogers replied yes, and to

1180 get the size of the upland and wetland on the record with the Board and with the Planning Board.  
1181 Chair Gorman asked if that satisfies Ms. Taylor’s inquiry. Ms. Taylor replied yes.

1182  
1183 Chair Gorman asked if there is any more deliberation on criterion five or any of the others.  
1184 Hearing none, he asked for a motion.

1185  
1186 Mr. Hoppock made a motion to approve ZBA 20-14. Mr. Gaudio seconded the motion.

1187  
1188 *Granting the Variance would not be contrary to the public interest. Granted 5-0.*

1189  
1190 *If the Variance were granted, the spirit of the Ordinance would be observed. Granted 4-1. Ms.*  
1191 *Taylor was opposed.*

1192  
1193 *Granting the Variance would do substantial justice. Granted 5-0.*

1194  
1195 *If the Variance were granted, the values of the surrounding properties would not be diminished.*  
1196 *Granted 5-0.*

1197  
1198 *Unnecessary Hardship*

1199 *A. Owing to special conditions of the property that distinguish it from other properties in the*  
1200 *area, denial of the Variance would result in unnecessary hardship because:*

1201 *i. No fair and substantial relationship exists between the general public purposes of the*  
1202 *Ordinance provision and the specific application of that provision to the property*  
1203 *because:*

1204 *And*

1205 *ii. The proposed use is a reasonable one.*

1206  
1207 *Granted 3-2. Ms. Taylor and Mr. Greenwald were opposed.*

1208  
1209 *With a vote of 3-2, the Zoning Board of Adjustment approved ZBA 20-14. Ms. Taylor and Mr.*  
1210 *Greenwald were opposed.*

1211  
1212 **V. New Business**

1213  
1214 Mr. Rogers stated that the next meeting is Tuesday, September 22, 2020 at 6:30 PM.

1215  
1216 **VI. Communications and Miscellaneous**

1217  
1218 Ms. Taylor stated that it would be very helpful if staff could get any updated agenda packet  
1219 materials to the Board ahead of the meeting. Brief discussion ensued about the timing and  
1220 logistics.

1221



1222 Ms. Zerba brought up difficulties she had with the hybrid Zoom/in-person meeting format they  
1223 tried tonight. Brief discussion ensued about this and the format of the next meeting.

1224

1225 **VII. Non-public Session (if required)**

1226

1227 **VIII. Adjournment**

1228

1229 There being no further business, Chair Gorman adjourned the meeting at 9:28 PM.

1230

1231 Respectfully submitted by,

1232 Britta Reida, Minute Taker

1233 Edits done by Corinne Marcou, Zoning Clerk

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# 166 WEST ST ZBA 20-17



Petitioner requests a Variance for a new building on a lot that abuts Gilbo Ave. with a principal building façade which does not face Gilbo Ave. per Section 102-1473.4 of the Zoning Ordinance.



**NOTICE OF HEARING**

**ZBA 20-17**

A meeting of the Zoning Board of Adjustment will be held on Monday, October 5, 2020 at 6:30 PM to consider the petition of Flyboy Realty, LLC. of, Keene, NH and represented by Jim Phippard of Brickstone Land Use Consultants, of 185 Winchester St. 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](http://www.zoom.us/join) or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 852 3438 4919. 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](http://www.ci.keene.nh.us/zoning-board-adjustment) and on the enclosed document

**ZBA 20-17:** The Petitioner requests a Variance for property located at 166 West Street, Tax Map #576-002-000; that is in the Central Business Limited District. The Petitioner requests a Variance for a new building on a lot that abuts Gilbo Avenue with a principal building façade which does not face Gilbo Avenue. Two principal building facades are proposed which will face the public parking areas on the east and north sides of the proposed new building per Section 102-1473.4 of the Zoning Ordinance where the principal building façade orients toward Gilbo Avenue.

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 September 25, 2020

# APPLICATION FOR APPEAL

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

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 20-17</u>
Date Filed	<u>9/17/2020</u>
Received By	<u>CM</u>
Page	<u>1</u> of <u>9</u>
Reviewed By	_____

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

## TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

## SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Flyboy Realty LLC Phone: c/o 603-357-0116  
Address PO Box 1060 Keene NH 03431  
Name(s) of Owner(s) Same as above  
Address \_\_\_\_\_  
Location of Property 166 West Street

## SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 576-002-000 Zoning District CBL  
Lot Dimensions: Front 122.3 +/- Rear 128.5 +/- Side 358 +/- Side 355 +/-  
Lot Area: Acres 1.03 Square Feet 45,060 SF  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 22.4% Proposed 23.2%  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 71% Proposed 78.2%  
Present Use Vacant Restaurant  
Proposed Use Mixed Use Office & Multi Family Residential

## SECTION III - AFFIDAVIT

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

[Signature] Date 09/15/2020  
(Signature of Owner or Authorized Agent)

Please Print Name A Ranger Curran



5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one because:

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

PROPERTY ADDRESS 166 West Street

APPLICATION FOR A VARIANCE

- A variance is requested from Section (s) 102-1473.4 **General Regulations in the Gilbo Avenue Design Overlay District** of the Zoning Ordinance to permit: a new building on a lot that abuts Gilbo Avenue with a principal building façade which does not face Gilbo Avenue. Two principal building facades are proposed which will face the public parking areas on the east and north sides of the proposed new building.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

1. **Granting the Variance would not be contrary to the public interest because:**  
It is in the public interest to provide safe access and egress to a building. This portion of Gilbo Avenue has no sidewalks and no public parking along the street. The ordinance requires that a new building be a maximum of 5 feet from the property line at the street with a principal building façade facing Gilbo Avenue. This would result in an unsafe situation where someone exiting the building could walk directly into the street. Since there is no parking on Gilbo Avenue and no city sidewalks on this portion of Gilbo Avenue, it is in the public interest to allow the principal building facades facing away from the street where parking and sidewalks exist and safe access and egress can be provided.
2. **If the variance were granted, the spirit of the ordinance would be observed because:** The Gilbo Avenue Design Overlay District encourages new construction which is compatible with the existing *“downtown architectural, cultural and design characteristics.”* The proposed redevelopment of this property will restore the red brick appearance of the former restaurant. Red brick will also be used on the lower floor of the new building. The mixed use of apartments and office space are similar to the uses in several downtown buildings. Parking is located to the side and rear of the buildings. Pedestrian access is from West Street where the existing sidewalk is connected to the on-site sidewalk providing safe access to both buildings. Lighting on the site will be full cutoff LED fixtures. Landscaping is located adjacent to the streets and the buildings. Granting the variance will allow for safe access and egress to the new building. This meets the spirit of the ordinance in this case.
3. **Granting the variance would do substantial justice because:**  
Granting the variance will allow the owner to fully utilize his property in a manner which is safe for the occupants and for the public. It will improve the property value and enhance the appearance of the property. Denial of the variance will provide no public benefit and would result in a dangerous situation for occupants and visitors to the building. Granting the variance would do substantial justice.
4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** The proposed new building and the restoration of the former restaurant building will enhance the value of the property and help to protect the value of adjacent properties. Vacant buildings in the downtown area can be



detrimental to property values. The redevelopment with mixed uses of offices and apartments is compatible with the downtown area and will help to bring people downtown, which in turn will help to support the downtown economy. Granting the variance will not diminish surrounding property values.

## 5. Unnecessary Hardship

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

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

The ordinance requires a principal façade with a public entry on the Gilbo Avenue frontage. It also requires that a new building be no further than 5 feet from the edge of the right of way. Because there is no public sidewalk on this portion of Gilbo Avenue and no public parking spaces on this portion of the street, this creates a unique condition for this property and a potentially unsafe condition. A variance is needed to allow a principal façade and a safe public entry away from the street.

**And**

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

The proposed uses as office spaces and apartments are permitted uses in this district. There is adequate parking on the site and the site is serviced with city water and city sewer. If the variance is granted, safe access for pedestrians and vehicles can be provided.

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

This portion of Gilbo Avenue has no public sidewalks and no parking spaces in the street. The ordinance requires the new building to be no further than 5 feet from the right of way. If the principal façade with a public entry is only 5 feet from the street it results in a safety hazard for the building occupants, pedestrians, and visitors to the building. A variance is needed to allow the principal façade to be located away from the street where safe access can be provided.

**576-026-000**

**143 WEST STREET LLC  
143 WEST STREET  
KEENE NH 03431**

**576-004-000, 576-005-000**

**BANK OF NEW HAMPSHIRE  
10-380 WELLINGTON ST  
LONDON ONTARIO CANADA N6A 5B5**

**576-019-000**

**TUTHILL PROPERTIES LLC  
2132 ROUTE 9  
STODDARD NH 03464**

**576-007-000**

**149 EMERALD STREET OWNER LLC  
455 TARRYTOWN Rd. SUITE 1526  
WHITE PLAINS, NY 10607**

**576-025-000,576-024-000**

**WEST WILDER LLC  
PO Box 743  
KEENE NH 03431**

**576-003-000**

**172 WEST STREET LLC  
117 WEST STREET  
KEENE NH 03431**

**576-001-000**

**PEOPLE'S UNITED BANK N.A.  
850 MAIN ST  
BRIDGEPORT CT 06604**

**576-018-000**

**S.S. BAKER'S REALTY CO LLC  
428 MAIN STREET  
KEENE NH 03431**

**BRICKSTONE LAND USE  
CONSULTANTS**

**185 WINCHESTER STREET  
KEENE NH 03431**

**576-002-000**

**FLYBOY REALTY LLC  
PO BOX 1060  
KEENE NH 03431**

**576-006-000**

**MOUNTAINSCAPES CAPITAL INV TRUST  
911 EAST COUNTY LINE RD. SUITE 203  
LAKEWOOD NJ 08701**

**576-030-000**

**129 WEST STREET ASSOC  
129 WEST STREET  
KEENE NH 03431**

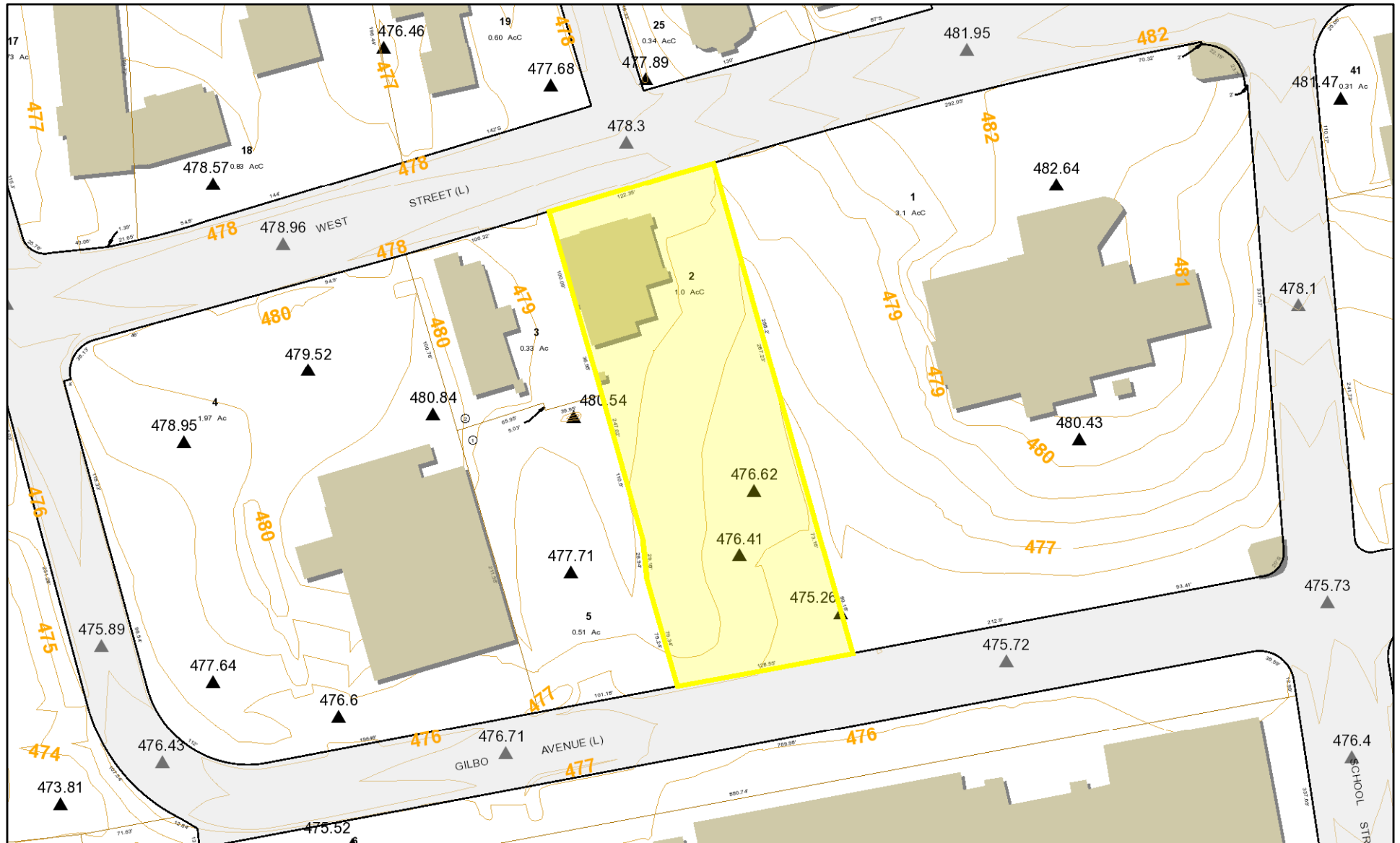


Keene, NH

1 inch = 100 Feet



September 25, 2020

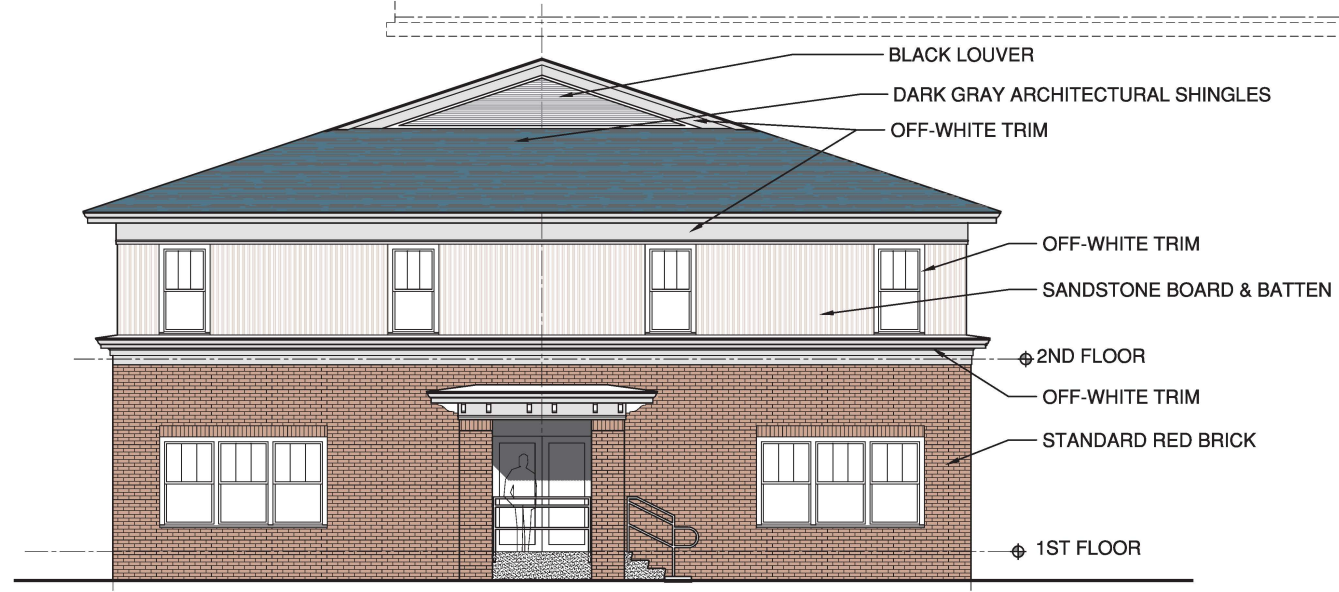


Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

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**1** EAST ELEVATION  
scale: 1/8" = 1'-0"



**3** SOUTH ELEVATION  
scale: 1/8" = 1'-0"



**2** NORTH ELEVATION  
scale: 1/8" = 1'-0"



**4** WEST ELEVATION  
scale: 1/8" = 1'-0"

ISSUE LOG	
DATE:	FOR:

These drawings are LIMITED SCOPE and shall not be used for any other purpose without the overall spatial relationships and materials where indicated. These drawings shall be considered preliminary and are not to be used for construction or budget pricing only, unless expressly released for other purposes as indicated in the Issue Log. The architect assumes responsibility for errors in the information provided, and the client for omissions. Copyright © architects llc

**db architects llc**  
Dan Borletti AIA  
185 Winchester Street  
Keene, NH 03431  
1 603 352 8412  
dan@borletti.com

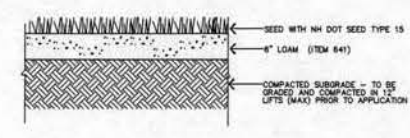


project name: CHANGE OF USE CODE COMPLIANCE DRAWING  
**166 WEST STREET / GILBO AVE BUILDING**  
drawing name:  
**ELEVATIONS**

sheet number  
**A2.1**

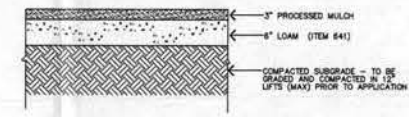
NH DOT SEED TYPE 15

KIND OF SEED	MINIMUM PURITY %	GERMINATION %	LBS/ACRE
CREeping RED FESCUE	96	85	40
PERENNIAL RYEGRASS	98	90	80
KENTUCKY BLUEGRASS	97	85	25
REDTOP	95	80	5
<b>TOTAL</b>			<b>120</b>



- SPREAD LOAM TO SPECIFIED DEPTH AND RAKE TO REMOVE ALL UNSUITABLE MATERIALS. ROLL LOAM TO COMPACT.
- SPREAD LIMESTONE AT A RATE OF 80 LBS/1000 SF OF SURFACE AREA.
- FERTILIZE WITH 10-10-10 FERTILIZER AT A RATE OF 20 LBS/1000 SF.
- SEED AT 2.75 LBS/1000 SF.

LOAM AND SEED DETAIL  
NOT TO SCALE



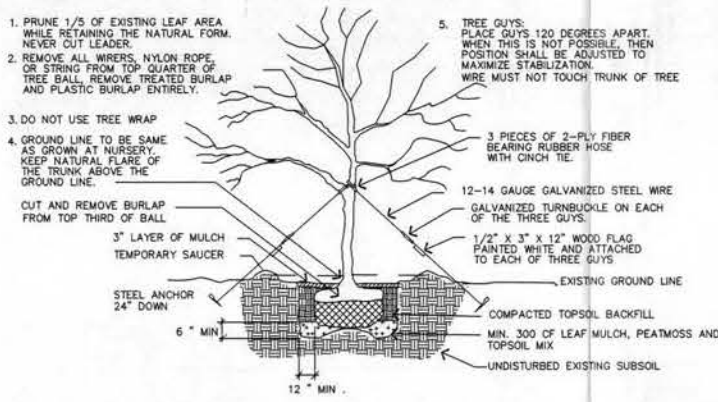
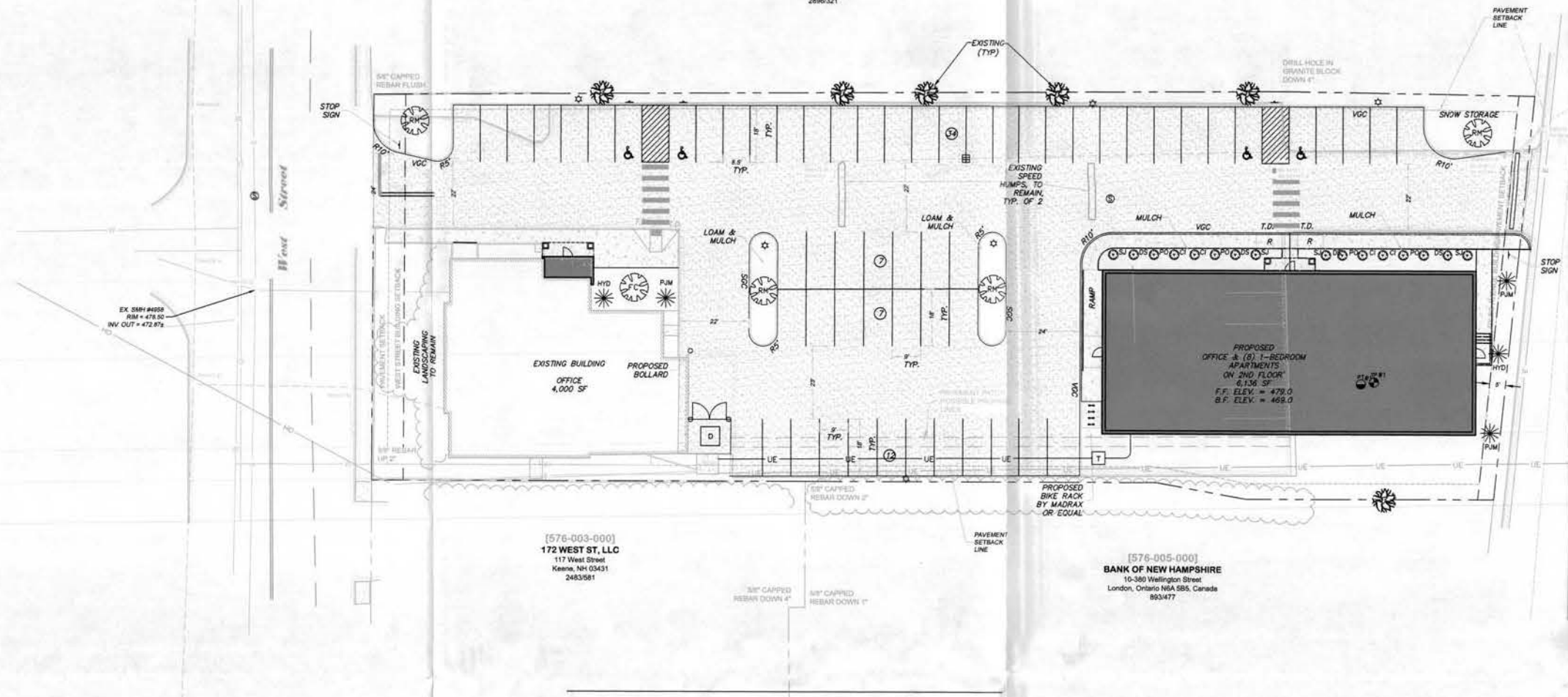
- SPREAD LOAM TO SPECIFIED DEPTH AND RAKE TO REMOVE ALL UNSUITABLE MATERIALS. ROLL LOAM TO COMPACT.
- SPREAD LIMESTONE AT A RATE OF 80 LBS/1000 SF OF SURFACE AREA.
- FERTILIZE WITH 10-10-10 FERTILIZER AT A RATE OF 20 LBS/1000 SF.
- SPREAD MULCH IN AREAS SHOWN ON PLAN.

LOAM AND MULCH DETAIL  
NOT TO SCALE

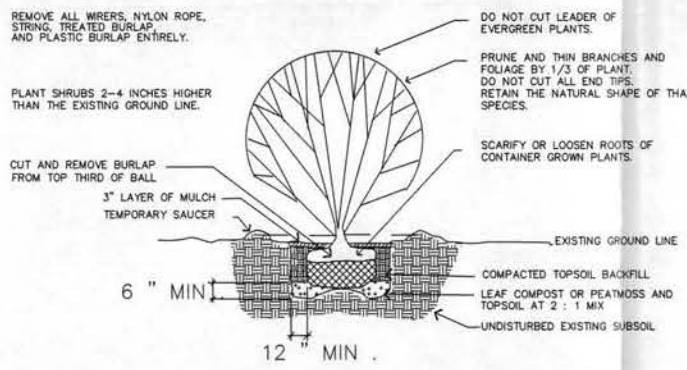
[576-001-000]  
PEOPLES UNITED BANK N.A.  
850 Main Street  
Bridgeport, CT 06604  
2866/321

[576-003-000]  
172 WEST ST, LLC  
117 West Street  
Keene, NH 03431  
2483581

[576-005-000]  
BANK OF NEW HAMPSHIRE  
10-360 Wellington Street  
London, Ontario N6A 5B5, Canada  
863/477



DETAIL OF TREE PLANTING AND GUYING  
NOT TO SCALE



DETAIL OF SHRUB PLANTING  
NOT TO SCALE

LANDSCAPE LEGEND

TYPICAL BED PLANTINGS TO INCLUDE:

TYPE	QUANTITY	PLANTING SIZE	MATURE HEIGHT
DS DAPHNE SPIREA	4 EA	12"	2 FEET
PO GOLDFINGER POTENTILLA	4 EA	12"	4 FEET
SI SEA GREEN JUNIPER	4 EA	12"	2 FEET
CI COMPACT INKBERRY	4 EA	12"	4 FEET
RHODODENDRON	3 EA	2'-3'	6 FEET
ANNABELLE HYDRANGEA	2 EA	2'-3'	6 FEET
RED MAPLE	4 EA	3 1/2" CAL(8" HEIGHT 6' WIDTH)	35 FEET
DRIFLINE AT MATURITY			
SNOW DRIFT FLOWERING CRAB	1 EA	1 - 1 1/2" CAL(6" HEIGHT 4' WIDTH)	15 FEET

LIZA P. SARGENT  
R.C.E. NUMBER: 13365  
**FOR PERMITTING**

DATE	DESCRIPTION

**SVE**  
Engineering  
Planning  
Landscape Architecture  
Surveying

SVE Associates  
P.O. Box 1818  
439 West River Road  
Brattleboro, VT 05302  
T 802.257.0561  
F 802.257.0721  
www.sveassoc.com

**LANDSCAPING PLAN**

166 WEST STREET

FLYBOY REALTY LLC  
117 WEST STREET  
KEENE, NEW HAMPSHIRE

0 10' 20' 40'  
GRAPHIC SCALE 1" = 20'

PROJ. # K2699  
DATE: 17-SEPT-20  
DESIGN: LPS  
DRAWN: LPS  
CHECKED: RH

**LA-1**

15 KIT ST  
ZBA 20-18



Petitioner requests a Special Exception to allow Office for professional purpose per Section 102-632 of the Zoning Ordinance.



**NOTICE OF HEARING**

**ZBA 20-18**

A meeting of the Zoning Board of Adjustment will be held on Monday, October 5, 2020 at 6:30 PM to consider the petition of Ryan Gagne of 119 Clear Creek Way, Manchester, NH. 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](http://www.zoom.us/join) or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 852 3438 4919. 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](http://www.ci.keene.nh.us/zoning-board-adjustment) and on the enclosed document

**ZBA 20-18:** The Petitioner requests a Special Exception for property located at 15 Kit Street, Tax Map #110-017-000; that is in the Industrial District. The Petitioner requests a Special Exception per Section 102-632 to allow Office for professional purposes.

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 September 25, 2020



# APPLICATION FOR APPEAL

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

<b>For Office Use Only:</b>	
Case No.	ZBA 20-18
Date Filed	9/18/20
Received By	CSM
Page	1 of 17
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) Ryan Gagne Phone: 603.438.3276  
Address 119 Clear Creek Way Manchester, NH 03102  
Name(s) of Owner(s) Bantam Realty Trust LLC  
Address 61 Bradford Road Keene, NH  
Location of Property 15 Kit Street

## SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 110-017 Zoning District Industrial  
Lot Dimensions: Front 343 Rear 947 Side 1445 Side 732  
Lot Area: Acres 10.14 acres Square Feet 441698.4  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 25% Proposed NC  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 62% Proposed NC  
Present Use Office and manufacturing  
Proposed Use Office and manufacturing

## 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.

Turner Hansel Date 9/18/20  
(Signature of Owner or Authorized Agent)

Please Print Name Turner Hansel

***APPLICATION FOR A SPECIAL EXCEPTION***

- Section of the Zoning Ordinance under which the Special Exception is sought:  
Division 16-Industrial Sec 102-632

The Zoning Board of Adjustment shall have the power to hear and decide Special Exceptions to the terms of the Zoning Ordinance, and in doing so, may grant approval in appropriate cases and subject to appropriate conditions and safeguards for the protection of the public health, safety and welfare. Special Exceptions may be approved if the Board can make the following findings. All four conditions must be completed and satisfied.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION.

1. The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use.

As a professional office use, this is similar to the authorized use of Home Offices of insurance, publishing and manufacturing companies. The location within the building has been used as office space by the owner and by tenants. We would use approximately 8,000 SF on the first floor which is completely upfitted as office space with offices, a conference room, cubicles and bathrooms

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

The space would continue to be used as office. There are no developed abutting parcels in the Industrial District which would be impacted by the proposed use, so property values would not be impacted. The proposed use is similar to previous uses and is indoors so our use will not be injurious, obnoxious or offensive to the neighborhood.

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

We will have 5-6 employees which is considerably lower than the previous tenant which had more than 50. Vehicle trips per day will be substantially lower than the previous tenant. As our use is less impactful than previous uses there will be no nuisance or serious hazard to vehicles or pedestrians

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

The site is serviced by public water and sewer. Kit Street is a city maintained road. There is ample parking on site to accommodate our use.

110-008-000-000-000  
BANTAM REALTY TRUST LLC  
61 BRADFORD RD.  
KEENE, NH 03431

111-009-000-000-000  
HEISLER HEIDI A.  
17 FAIRBANKS ST.  
KEENE, NH 03431

115-038-000-000-000  
MTAME LLC  
417 WINCHESTER ST.  
KEENE, NH 03431

116-036-000-000-000  
BANTAM REALTY TRUST LLC  
61 BRADFORD RD.  
KEENE, NH 03431

116-037-000-000-000  
HIENKLE DONALD J.  
PO BOX 125  
KEENE, NH 03431

115-040-000-000-000  
MTAME LLC  
417 WINCHESTER ST.  
KEENE, NH 03431

116-038-000-000-000  
BANTAM REALTY TRUST LLC  
61 BRADFORD RD.  
KEENE, NH 03431

116-024-000-000-000  
HIENKLE DONALD J.  
PO BOX 125  
KEENE, NH 03431

115-036-000-000-000  
PERRINI JOSEPH J. JR.  
1010 WOOL AVE.  
FRANKLIN SQUARE, NY 11010

116-023-000-000-000  
BANTAM REALTY TRUST LLC  
61 BRADFORD RD.  
KEENE, NH 03431

116-025-000-000-000  
HILOW MARK D.  
35 WETMORE ST.  
KEENE, NH 03431

110-012-000-000-000  
PREVOST GARY J.  
29 FAIRBANKS ST.  
KEENE, NH 03431

116-032-000-000-000  
BERGERON TODD K.  
4 WEST HILL RD.  
TROY, NH 03465

116-031-000-000-000  
HOOK DAVID G. SR. REV. TR  
22 FAIRBANKS ST.  
KEENE, NH 03431

116-034-000-000-000  
SARTINI TODD M.  
32 FAIRBANKS ST.  
KEENE, NH 03431

111-012-000-000-000  
BRICK HOUSE TILE CO  
411 WINCHESTER ST.  
KEENE, NH 03431

110-014-000-000-000  
JARVIS ROY J.  
25 FAIRBANKS ST.  
KEENE, NH 03431

111-015-000-000-000  
SERVICE CREDIT UNION  
2010 LAFAYETTE RD.  
PORTSMOUTH, NH 03801

116-035-000-000-000  
DRAGON, MAGGIE M.  
40 FAIRBANKS ST.  
KEENE, NH 03431

110-011-000-000-000  
JOHNSON, FRED H. JR.  
31 FAIRBANKS ST.  
KEENE, NH 03431-3904

116-033-000-000-000  
SHARPTON WILLIAM E.  
65 PIERCE LN.  
WESTMORELAND, NH 03467-4203

116-030-000-000-000  
DRISCOLL BRIAN P.  
20 FAIRBANKS ST.  
KEENE, NH 03431

110-010-000-000-000  
JOHNSON, FRED H. JR.  
31 FAIRBANKS ST.  
KEENE, NH 03431-3904

110-015-000-000-000  
TOBIN MICHELLE FAMILY TRU  
21 FAIRBANKS ST.  
KEENE, NH 03431

116-027-000-000-000  
FISH DOUGLAS K.  
25 WETMORE ST.  
KEENE, NH 03431

110-016-000-000-000  
KNOX EVERETT L.  
490 SUNSET BEACH DR.  
VENICE, FL 34293-2636

115-039-000-000-000  
TOUCHETTE KATHLEEN  
PO BOX 205  
GILSUM, NH 03448

111-010-000-000-000  
HEISLER HEIDI A.  
17 FAIRBANKS ST.  
KEENE, NH 03431

111-011-000-000-000  
LEXDEN LLC  
417 WINCHESTER ST.  
KEENE, NH 03431

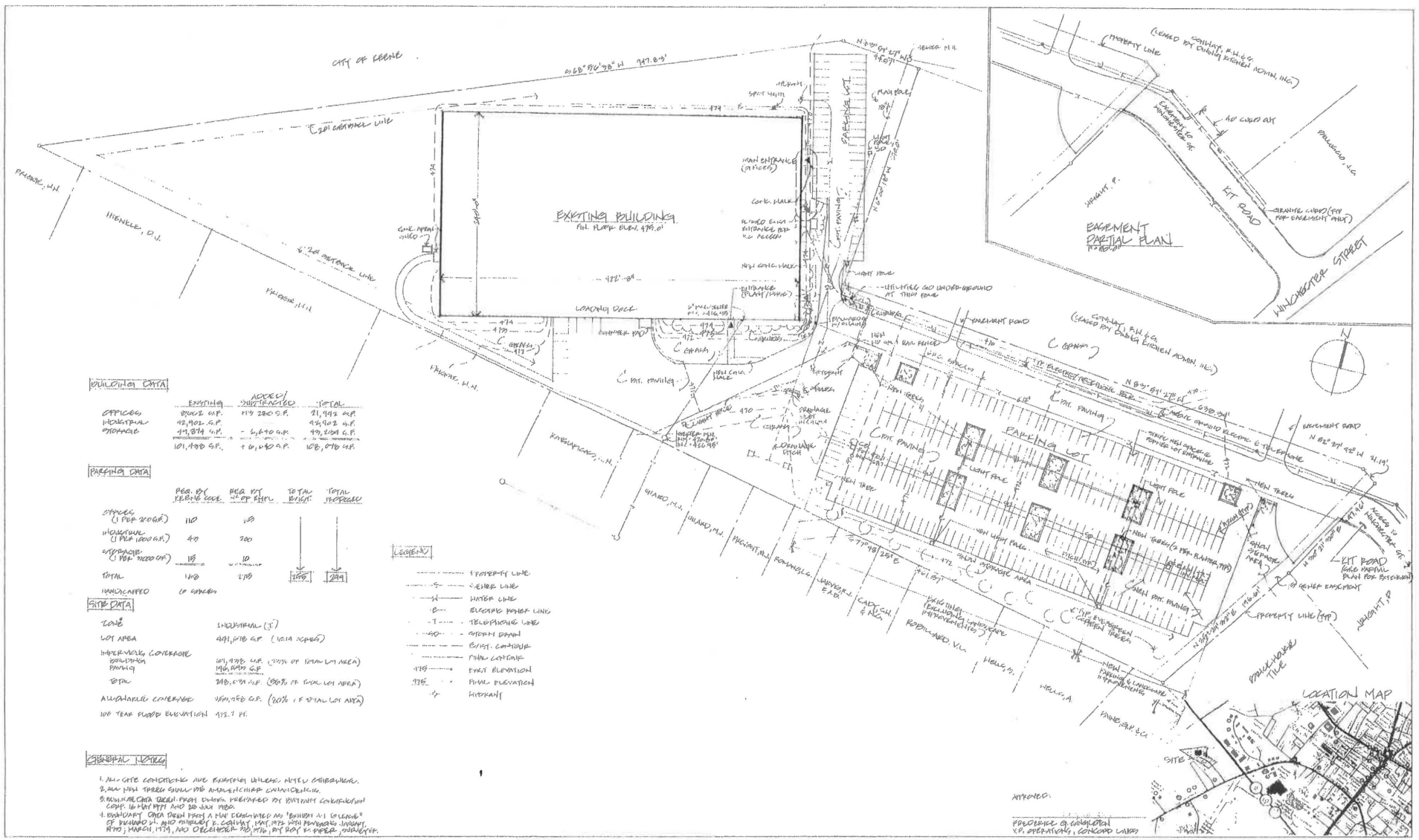
111-014-000-000-000  
VIDHI HOSPITALITY LLC  
440 BEDFORD ST.  
LEXINGTON, MA 02420

111-013-000-000-000  
VOISINE SHAWN M.  
407 WINCHESTER ST.  
KEENE, NH 03431

110-013-000-000-000  
VOUDREN, RYAN M.  
27 FAIRBANKS ST.  
KEENE, NH 03431

110-009-000-000-000  
WASHBURN, EAMON L.  
123 EDGEMONT RD.  
SUNAPEE, NH 03782





**BUILDING DATA**

	EXISTING	ADDED/DEDUCTED	TOTAL
OFFICES	SPACE SQ. FT.	119,280 SQ. FT.	21,492 SQ. FT.
INDUSTRIAL STORAGE	49,874 SQ. FT.	- 6,470 SQ. FT.	43,404 SQ. FT.
	101,490 SQ. FT.	+ 6,020 SQ. FT.	107,510 SQ. FT.

**PARKING DATA**

	PER. BY PERM. CODE	PER. BY "D" OF CH. 11	TOTAL PERM.	TOTAL REQUIRED
OFFICES (1 PER 200 SQ. FT.)	110	100		
INDUSTRIAL (1 PER 1000 SQ. FT.)	40	200		
STORAGE (1 PER 2000 SQ. FT.)	15	10		
<b>TOTAL</b>	<b>165</b>	<b>310</b>	<b>475</b>	<b>475</b>

**SITE DATA**

	INDUSTRIAL (I)	INDUSTRIAL (I)
LOT AREA	491,570 SQ. FT. (2014 RECORD)	
IMPERVIOUS COVERAGE	101,490 SQ. FT. (20% OF TOTAL LOT AREA)	146,800 SQ. FT.
PERM. PAVING	240,000 SQ. FT. (50% OF TOTAL LOT AREA)	
AVAIL. COVERAGE	150,000 SQ. FT. (30% OF TOTAL LOT AREA)	
100 YEAR STORM ELEVATION	473.7 FT.	

- SPECIAL NOTES**
- ALL GATE CONDITIONS AND EASEMENTS SHALL BE AS SHOWN ON THE RECORD PLANS.
  - ALL NEW OPENINGS SHALL BE ANTI-CRACKING CONSTRUCTION.
  - STRUCTURAL CHANGES SHALL BE DESIGNED BY A LICENSED STRUCTURAL ENGINEER AND SHALL BE SHOWN ON THE RECORD PLANS.
  - FOUNDATION DATA SHALL BE FROM A SOIL EXAMINATION AND FOUNDATION ANALYSIS BY A LICENSED CIVIL ENGINEER. THE FOUNDATION ANALYSIS SHALL BE SHOWN ON THE RECORD PLANS.

- LEGEND**
- PROPERTY LINE
  - CENTER LINE
  - WATER LINE
  - EGRESS ROUTE LINE
  - TELEPHONE LINE
  - STORM DRAIN
  - CURB CONTOUR
  - FENCE LOCATION
  - FIN. ELEVATION
  - FIN. ELEVATION
  - HYDRANT

**PROJECT:** CONCORD LABORATORIES  
 INTERIOR ALTERATIONS  
 KIT ROAD, KEENE, NH

PROJECT NO. 150  
 PARTNER-IN-CHARGE: CJA

**DRAWING TITLE:** SITE PLAN 1

SCALE: 1" = 50'

**DISCLAIMER**

THIS DRAWING HAS BEEN PREPARED UNDER AN AGREEMENT FOR LIMITED PROFESSIONAL SERVICES AND DOES NOT PROVIDE DESIGN OR CONSULTING SERVICES FOR THE DESIGN OR CONSTRUCTION OF ANY STRUCTURE OR SYSTEM OR THE OPERATION OF ANY SYSTEM. THE CLIENT IS RESPONSIBLE FOR THE ACCURACY AND COMPLETENESS OF THE INFORMATION PROVIDED AND FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE ARCHITECTS ASSUME NO LIABILITY FOR ANY DAMAGE TO PERSONS OR PROPERTY CAUSED BY THE OPERATION OF ANY SYSTEM OR THE FAILURE OF ANY STRUCTURE OR SYSTEM. THE ARCHITECTS SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF ANY STRUCTURE OR SYSTEM ONLY IF THE CLIENT PROVIDES THEM WITH ALL NECESSARY INFORMATION AND IF THE CLIENT PROVIDES THEM WITH ALL NECESSARY INFORMATION AND IF THE CLIENT PROVIDES THEM WITH ALL NECESSARY INFORMATION.

DATE	ISSUED TO/FOR	NO.	DATE	NO.	DATE
1/16/20	CONCORD LABS				

**PIETZ & MICHAL ARCHITECTS**  
 22 WEST STREET, KEENE, NH 03431  
 (603) 357-4031

**DRAWING:** L-1



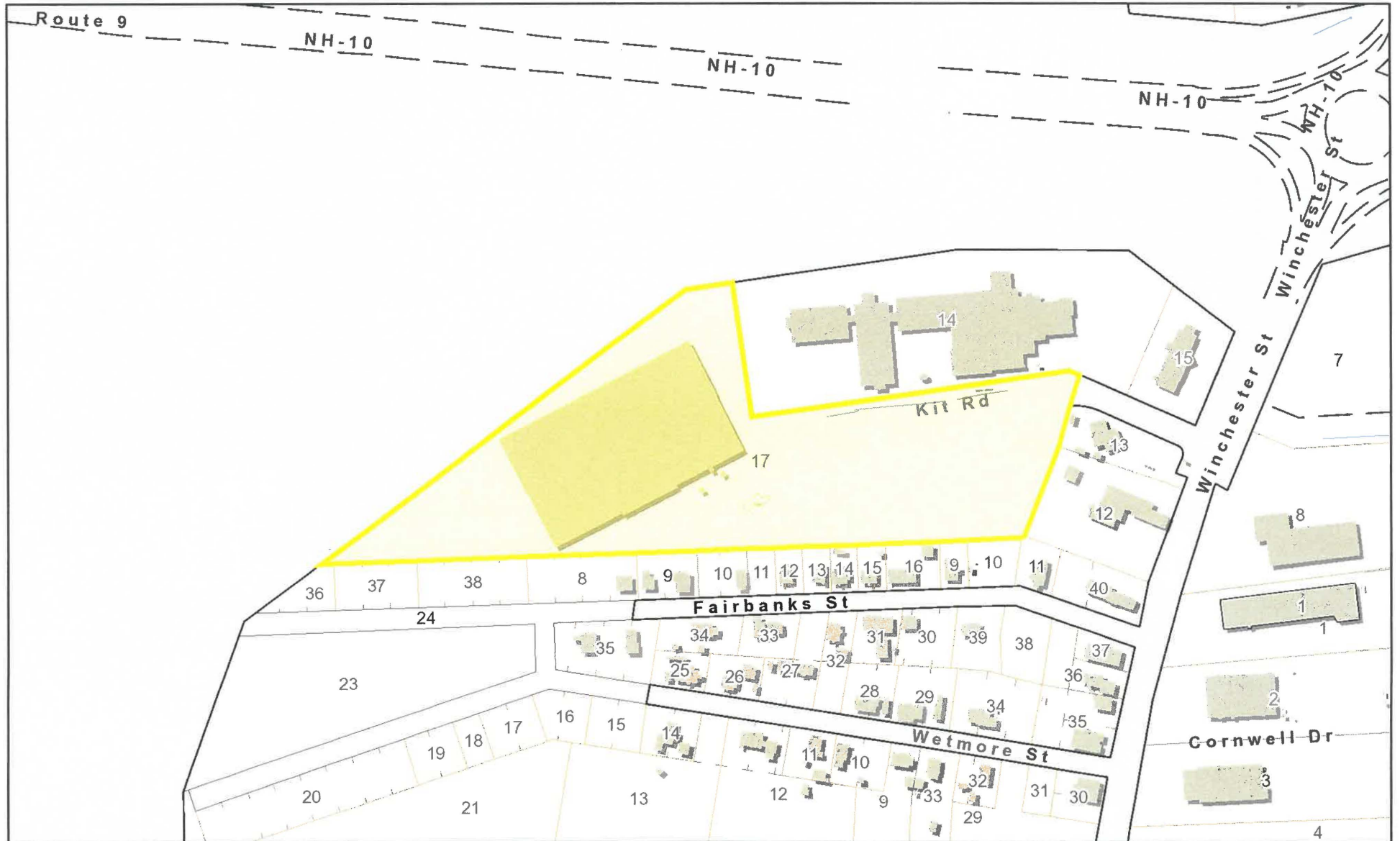
Keene, NH



1 inch = 275 Feet



September 18, 2020



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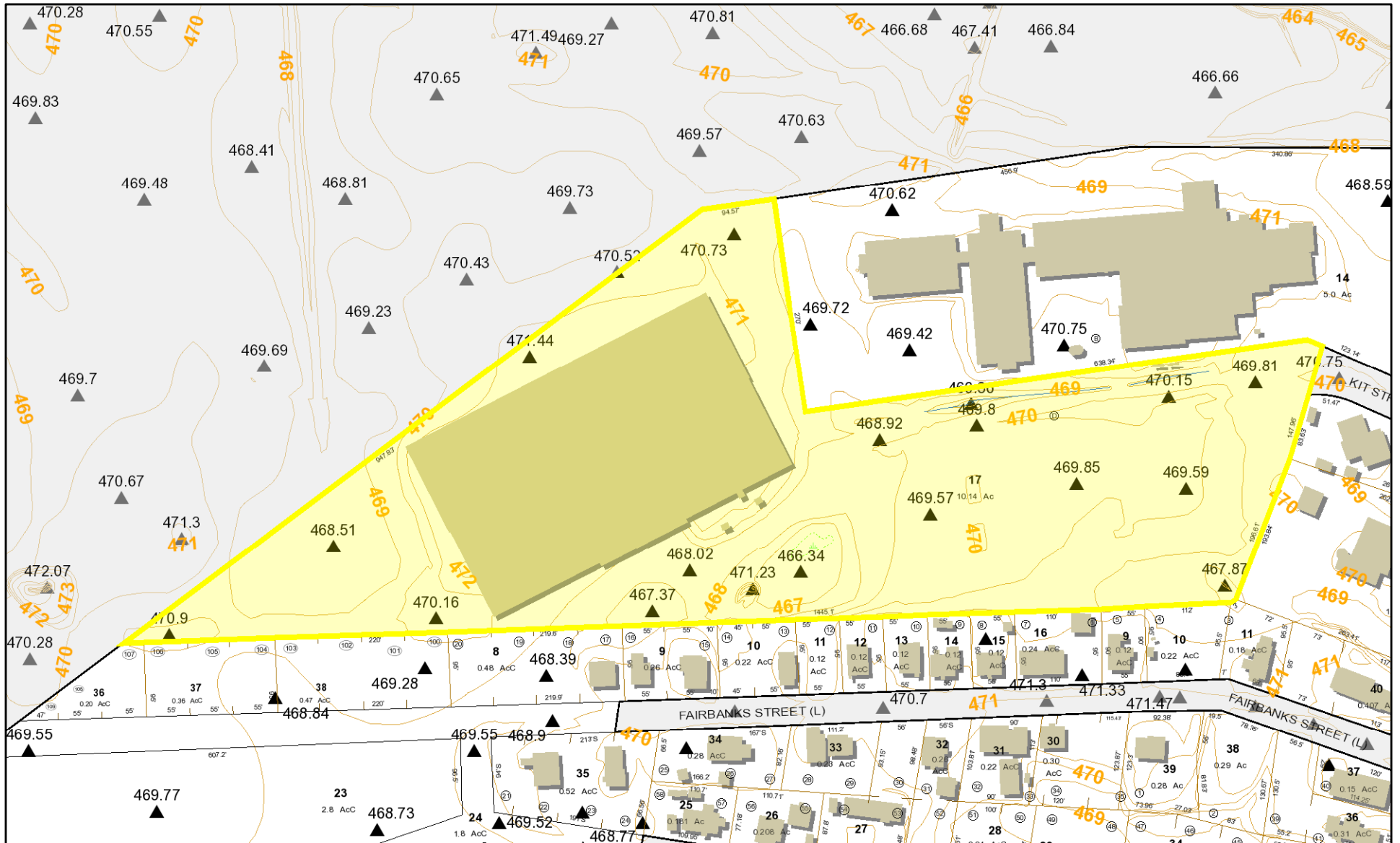


Keene, NH

1 inch = 175 Feet

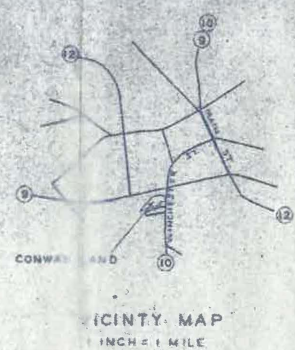


September 25, 2020



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THE STATE OF NEW HAMPSHIRE

PARCEL B  
LEASED TO  
JOHN C. CHAKALOS  
5.00 ACRES

PARCEL C  
33107 SQUARE FEET

STREET  
12,787 SQUARE FEET

PARCEL E  
23,344 SQUARE FEET

EDWARD P. LABOUNTY  
& ANN T. LABOUNTY

PARCEL D  
10.14 ACRES

**CERTIFICATE OF OWNERSHIP**  
I HEREBY CERTIFY THAT RICHARD W. CONWAY  
AND SHIRLEY K. CONWAY ARE THE OWNERS OF  
THE LAND PLATTED HEREON FOR SUBDIVISION

OWNERS' DEED REFERENCE  
VOL. 838 PG. 326  
VOL. 764 PG. 588

OWNERS' ADDRESS  
132 WEST STREET  
KEENE, N. H. 03401

**NOTE**  
THESE PARCELS ARE SUBJECT TO  
CONWAY DEED VOL. 838 PG. 326  
VOL. 764 PG. 588  
AND TO THE CITY OF KEENE  
PLAT NO. 116-18  
RECORDED DECEMBER 30, 1974



APPROVED: *Richard W. Conway*  
Commissioner  
Date: 12/30/76

**RICHARD W. AND SHIRLEY K. CONWAY**  
LABOUNTY AND KINGSBURY LANDS  
**KEENE, NEW HAMPSHIRE**

18.53 ACRES  
1 INCH = 50 FEET  
MAY 1972

PARCEL DIVISIONS ADDED  
JANUARY 1973

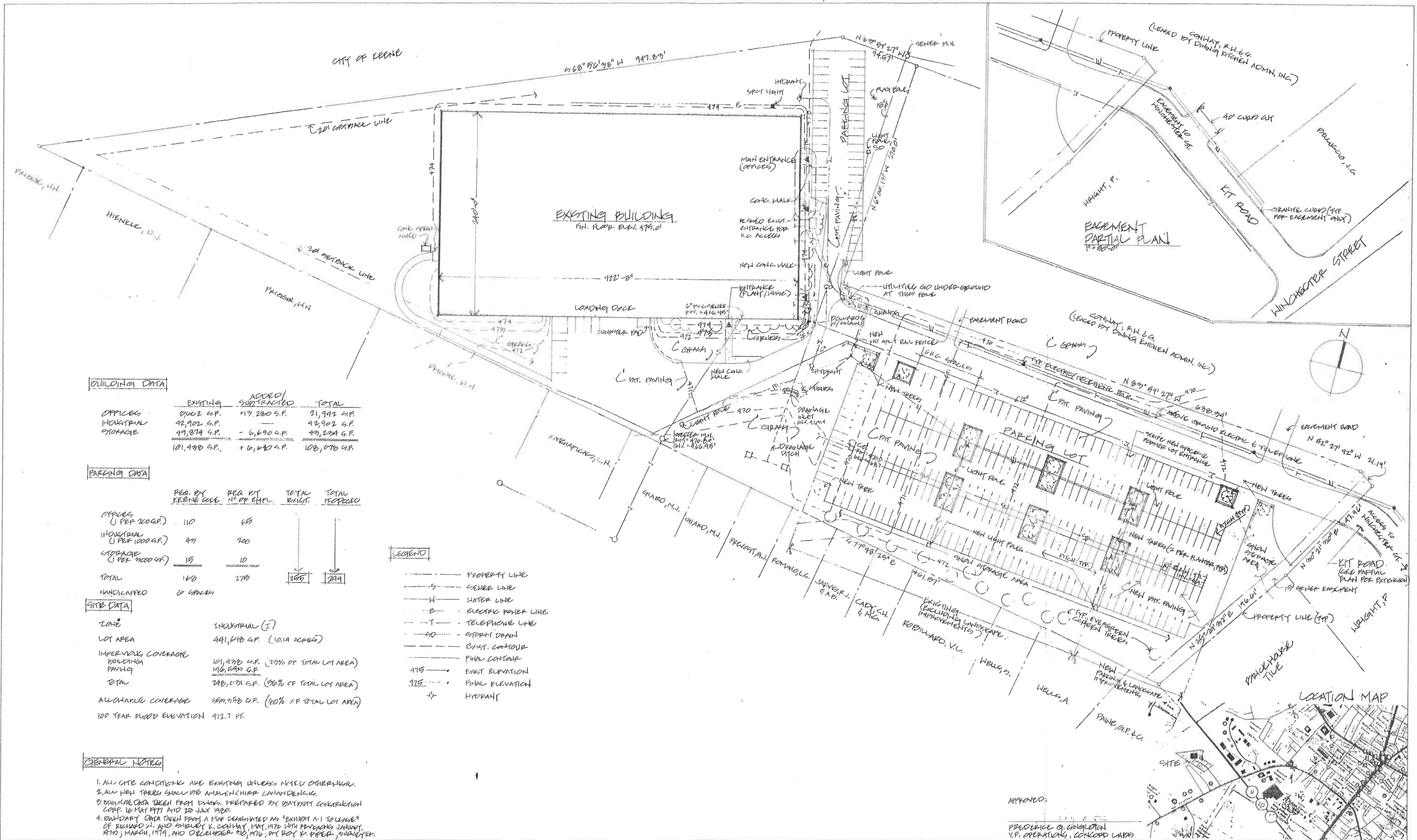
ADDITIONS AND REVISIONS  
MARCH 15, 1974

STREET ENTRANCE AND PARCEL E  
ADDED DECEMBER 30, 1974

R. V. PIPER, SURVEYOR

NOTE: AS A CONDITION OF THIS SUBDIVISION,  
PARCEL C AND PARCEL E EACH CAN HAVE A  
MAXIMUM OF ONE IN MOVEMENT AND ONE  
OUT MOVEMENT ON THE NEW ENTRANCE  
STREET. TOTAL CURB CUTS NOT TO EXCEED  
TWO IN NUMBER ON EACH SIDE OF SAID  
STREET.

RECORDED 12/30/76



**BUILDING DATA**

	EXISTING	ADDED/ SUBTRACTED	TOTAL
OFFICES	21,002 G.F.	117,280 S.F.	21,942 G.F.
INDUSTRIAL	42,902 G.F.		42,902 G.F.
STORAGE	49,874 G.F.	- 6,640 G.F.	49,234 G.F.
TOTAL	113,778 G.F.	+ 110,640 G.F.	108,070 G.F.

**PARKING DATA**

	REQ. BY KEENE CODE	REQ. BY NO. OF EMP.	TOTAL EXIST.	TOTAL PROPOSED
OFFICES (1 PER 200 G.F.)	110	65		
INDUSTRIAL (1 PER 1000 G.F.)	49	200		
STORAGE (1 PER 1000 G.F.)	15	10		
TOTAL	174	275	265	299

UNACCESSED 6 SPACES

**SITE DATA**

ZONE	INDUSTRIAL (I)
LOT AREA	441,418 G.F. (10.14 ACRES)
IMPERVIOUS COVERAGE BUILDING	101,478 G.F. (23% OF TOTAL LOT AREA)
IMPERVIOUS COVERAGE PAVING	146,840 G.F.
TOTAL	248,318 G.F. (56% OF TOTAL LOT AREA)
ALLOWABLE COVERAGE	267,958 G.F. (60% OF TOTAL LOT AREA)
100 YEAR FLOOD ELEVATION	472.7 FT.

**LEGEND**

- P — PROPERTY LINE
- S — CENTER LINE
- W — WATER LINE
- E — ELECTRIC POWER LINE
- T — TELEPHONE LINE
- SD — STORM DRAIN
- — — — — EXIST. CONTOUR
- — — — — FINAL CONTOUR
- 475 — EXIST. ELEVATION
- 475 — FINAL ELEVATION
- H — HYDRANT

**GENERAL NOTES**

1. ALL SITE CONDITIONS ARE EXISTING UNLESS NOTED OTHERWISE.
2. ALL NEW SPACES SHALL BE AMENITIES COMPLIANT.
3. DIMENSION DATA TAKEN FROM DIMS. PREPARED BY DATED CONSTRUCTION COPY. 16 MAY 1971 AND 20 JULY 1980.
4. BOUNDARY DATA TAKEN FROM A MAP DESIGNATED AS "EXHIBIT A-1 TO LEASE" OF RICHARD J. AND ANNE E. CONWAY, 1972 WITH REVISIONS JANUARY, 1973; MARCH, 1974, AND DECEMBER 22, 1976; BY ROY K. PIERCE, SURVEYOR.

PROJECT: **CONCORD LABORATORIES**  
 INTERIOR ALTERATIONS  
 KIT ROAD, KEENE, N.H.

PROJECT NO. 350  
 PARTNER-IN-CHARGE: CJM

DRAWING TITLE: **SITE PLAN 1**

SCALE: 1" = 50'

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DISCLAIMER

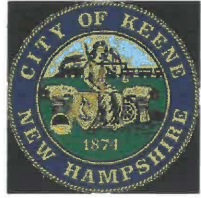
THIS DRAWING HAS BEEN PREPARED UNDER AN AGREEMENT FOR LIMITED ARCHITECTURAL SERVICES. THE INFORMATION PROVIDED SERVES ONLY TO FIX THE SCALE AND RELATIONSHIP OF PROJECT COMPONENTS AND WHERE INDICATED TO DESCRIBE THE MATERIALS USED. THE CONTRACTOR IS RESPONSIBLE FOR THE MEANS AND METHODS OF CONSTRUCTION. NO GUARANTEE OF CONSTRUCTION IS PROVIDED BY THE ARCHITECTS UNLESS SPECIFICALLY CONTRACTED FOR. THE ARCHITECTS ASSUME LIABILITY ONLY FOR ERRORS IN THE INFORMATION PROVIDED, AND NOT FOR ANY OMISSIONS HEREIN. WRITTEN QUOTATIONS HAVE PRECEDENCE OVER SCALED DIMENSIONS. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND BE RESPONSIBLE FOR CONDITIONS AT THE BUILDING SITE.

DATE: 9/16/80  
 ISSUED TO/ FOR: CONCORD LABS  
 DISTRIBUTION LOG

NO.	DATE	NO.	DATE

PIETZ & MICHAL ARCHITECTS  
 222 WEST STREET, KEENE, NH 03431  
 (803) 357-4031

DRAWING: **L-1**

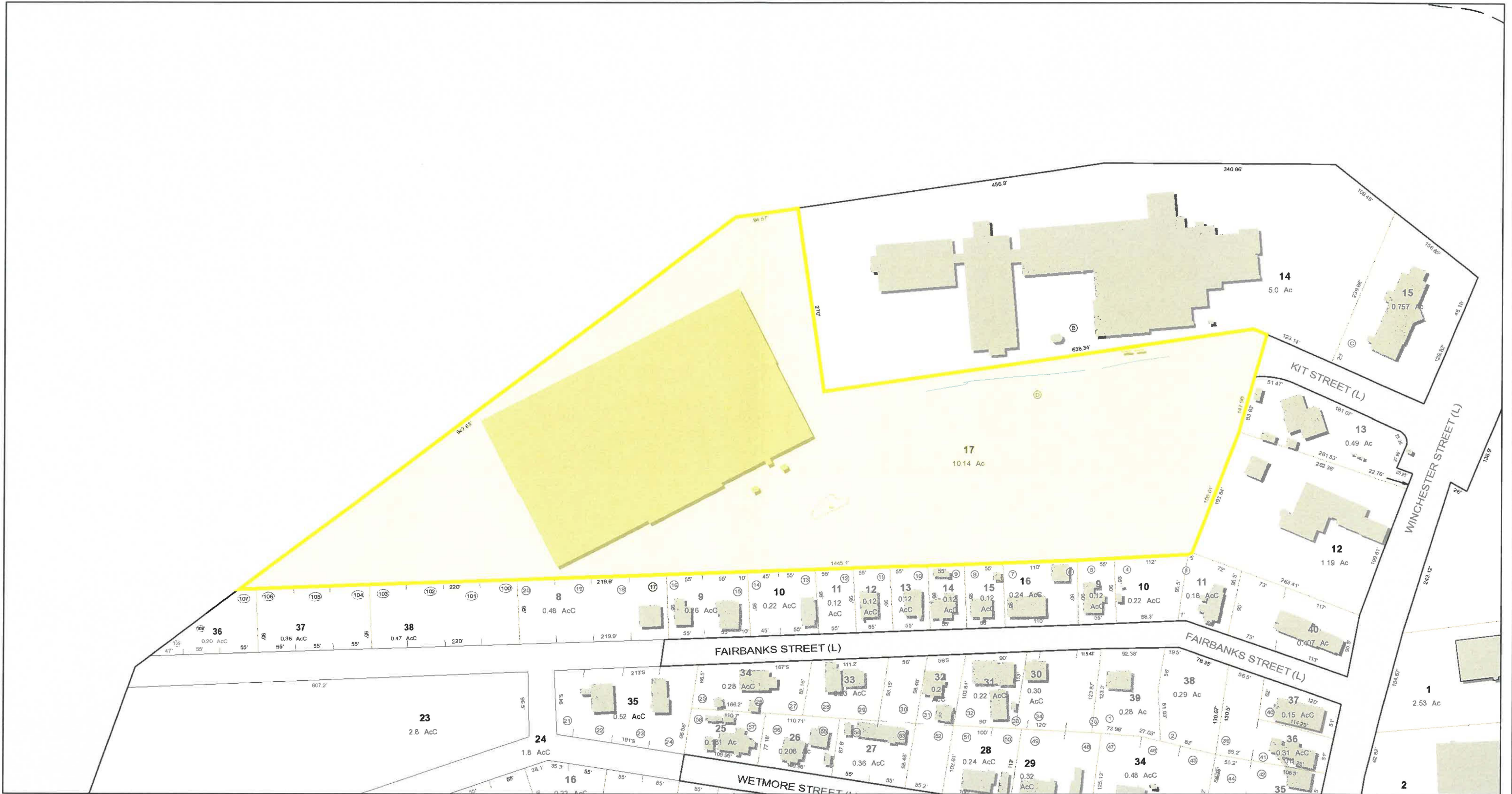


Keene, NH

1 inch = 137 Feet



September 18, 2020



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# 40 BROOK ST ZBA 20-19



**Petitioner requests a Variance for a side setback of five feet on the north side of the property to build a garage where ten feet is required per Section 102-791 of the Zoning Ordinance.**



**NOTICE OF HEARING**

**ZBA 20-19**

A meeting of the Zoning Board of Adjustment will be held on Monday, October 5, 2020 at 6:30 PM to consider the petition of Brett Cooke of 40 Brook St, Keene, NH. 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](http://www.zoom.us/join) or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 852 3438 4919. 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](http://www.ci.keene.nh.us/zoning-board-adjustment) and on the enclosed document

**ZBA 20-18:** The Petitioner requests a Variance for property located at 40 Brook Street, Tax Map #553-084-000; that is in the High Density District. The Petitioner requests a Variance for a side setback of five feet on the north side of the property to build a garage with an apartment per Section 102-791 of the Zoning Ordinance where ten feet is required.

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 September 25, 2020

# APPLICATION FOR APPEAL

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

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 20-19</u>
Date Filed	<u>9/18/2020</u>
Received By	<u>CM</u>
Page	<u>1</u> of <u>14</u>
Reviewed By	_____

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

## TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

### SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Brett J Cooke Phone: 603-209-1443  
Address 40 Brook street Keene, NH 03431  
Name(s) of Owner(s) Brett J Cooke  
Address 40 Brook street Keene, NH 03431  
Location of Property 40 Brook street Keene, NH 03431

### SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 84 Zoning District \_\_\_\_\_  
Lot Dimensions: Front 66' Rear 99' Side 198' Side 132'  
Lot Area: Acres 0.37 Square Feet 16117.2  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 12 % Proposed 23 %  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 22 % Proposed 40 %  
Present Use residential  
Proposed Use residential

### SECTION III - AFFIDAVIT

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

  
(Signature of Owner or Authorized Agent) Date 09/17/2020

Please Print Name Brett J Cooke

PROPERTY ADDRESS 40 Brook Street Keene NH  
03431

**APPLICATION FOR A VARIANCE**

- A Variance is requested from Section (s) 102-791 of the Zoning Ordinance to permit:  
The need for setback of 5' on north side of property. I have a fairly narrow lot (66') and if garage had to be at a 10' setback, I would only have approx. 17' length for parking.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

The garage/apt would be partially replacing my existing barn. The barn is an eyesore and would be taken down upon completion of garage/apt. This addition would only bring value to surrounding homes as it would enhance property.

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

The spirit of the ordinance will be observed as this setback variance is consistent with most other buildings in the area.

3. Granting the variance would do substantial justice because:

My father will be living in the new apartment. He is getting on in age so it will be good to have him close by. In addition, this will allow us to park in garage and access home from within.

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

Granting this variance for 5' side setback for garage/apt. will not diminish surrounding property values but would further enhance there values. 1. The construction of garage/apt. adds value to the neighborhood. 2. Upon completion of garage/apt. the barn would be taken down.

## 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:  
I am asking for this variance because my property is only 66' wide. In order to have enough room for driveway and parking in front of garage would require the 5' setback. Also, the existing house is just 7' from property line so the garage would only be 2' closer.

and

ii. The proposed use is a reasonable one because:  
The garage will have an apartment above it and this is the only place it can go because it has to be attached to existing house.

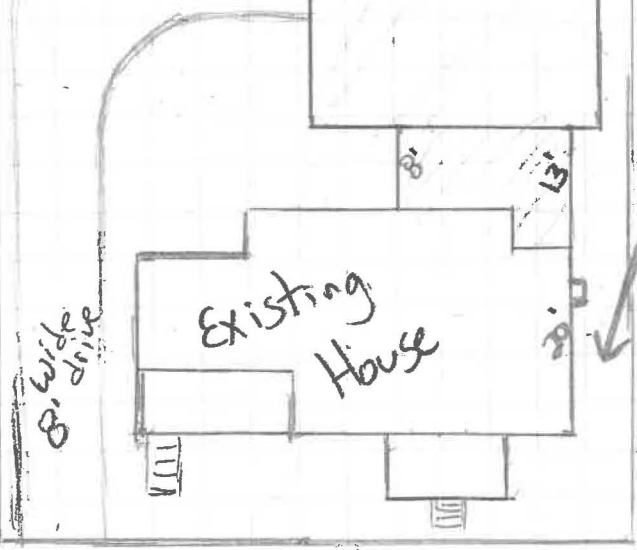
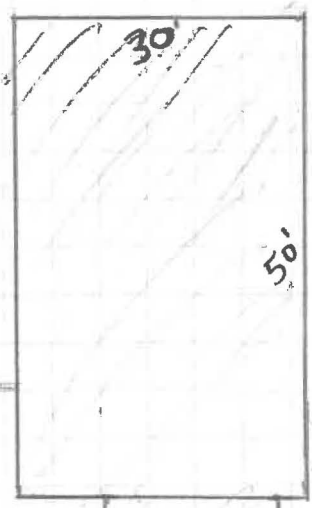
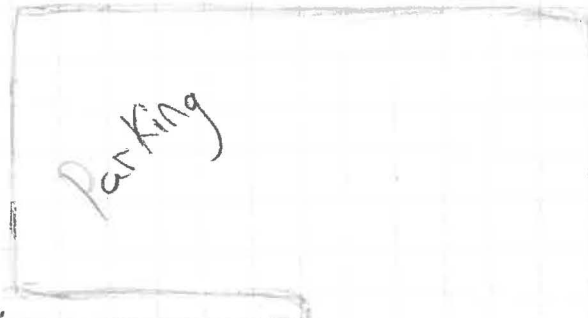
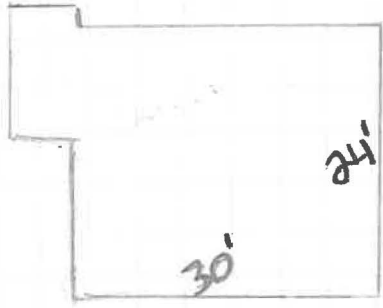
B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with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

This is the only spot the garage/apt. can be placed as it needs to be attached to existing house. There are many homes/multi family homes in the area so this would not look out of place and a 5' setback would be further back than many other buildings in the area.



99'

132'



5' setback  
7' setback



# 200 foot Abutters List Report

Keene, NH  
September 21, 2020

## Subject Property:

Parcel Number: 553-084-000  
CAMA Number: 553-084-000-000-000  
Property Address: 40 BROOK ST.

Mailing Address: COOKE, BRETT J.  
40 BROOK ST.  
KEENE, NH 03431

## Abutters:

Parcel Number: 553-077-000  
CAMA Number: 553-077-000-000-000  
Property Address: 81 BEAVER ST.

Mailing Address: CITY OF KEENE  
3 WASHINGTON ST.  
KEENE, NH 03431

Parcel Number: 553-078-000  
CAMA Number: 553-078-000-000-000  
Property Address: 69 BEAVER ST.

Mailing Address: ROELOFS JOAN  
69 BEAVER ST.  
KEENE, NH 03431

Parcel Number: 553-079-000  
CAMA Number: 553-079-000-000-000  
Property Address: 63 BEAVER ST.

Mailing Address: ROBERTSON W. HOWARD  
63 BEAVER ST.  
KEENE, NH 03431

Parcel Number: 553-080-000  
CAMA Number: 553-080-000-000-000  
Property Address: 55 BROOK ST.

Mailing Address: ROGERS EDGAR C. JR. ROGERS  
ROSEMARY A.  
55 BROOK ST.  
KEENE, NH 03431

Parcel Number: 553-081-000  
CAMA Number: 553-081-000-000-000  
Property Address: 51 BROOK ST.

Mailing Address: JC&C RENTALS LLC  
83 EASTERN AVE.  
KEENE, NH 03431

Parcel Number: 553-082-000  
CAMA Number: 553-082-000-000-000  
Property Address: 45 BROOK ST.

Mailing Address: GONCALVES TONY S.  
PO BOX 252  
KEENE, NH 03431

Parcel Number: 553-083-000  
CAMA Number: 553-083-000-000-000  
Property Address: 39 BROOK ST.

Mailing Address: KERNOZICKY RANDY K. KERNOZICKY  
SHELLY R.  
39 BROOK ST. 1  
KEENE, NH 03431-3214

Parcel Number: 553-085-000  
CAMA Number: 553-085-000-000-000  
Property Address: 46 BROOK ST.

Mailing Address: SHJ PROPERTIES LLC  
216 UPPER TROY RD.  
FITZWILLIAM, NH 03447

Parcel Number: 553-086-000  
CAMA Number: 553-086-000-000-000  
Property Address: 54 BROOK ST.

Mailing Address: POLING SUELAIN M. MYRICK BRUCE  
H.  
54 BROOK ST.  
KEENE, NH 03431

Parcel Number: 553-087-000  
CAMA Number: 553-087-000-000-000  
Property Address: 55 BEAVER ST.

Mailing Address: JEAN ALLEN APARTMENTS LLC  
55 BEAVER ST. #2  
KEENE, NH 03431-3490



www.cai-tech.com

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# 200 foot Abutters List Report

Keene, NH  
September 21, 2020

Parcel Number: 553-088-000  
CAMA Number: 553-088-000-000-000  
Property Address: 45 BEAVER ST.

Mailing Address: COLLETT JANET I.  
45 BEAVER ST.  
KEENE, NH 03431

Parcel Number: 553-089-000  
CAMA Number: 553-089-000-000-000  
Property Address: 37-39 BEAVER ST.

Mailing Address: BEAVER CAROL A.  
37 BEAVER ST.  
KEENE, NH 03431

Parcel Number: 553-090-000  
CAMA Number: 553-090-000-000-000  
Property Address: 29 BEAVER ST.

Mailing Address: PLUMPTON LINDSAY M. LEVESQUE  
NATHAN J.  
29 BEAVER ST.  
KEENE, NH 03431

Parcel Number: 553-091-000  
CAMA Number: 553-091-000-000-000  
Property Address: 21 BEAVER ST.

Mailing Address: CHABOT THOMAS F. CHABOT KAREN E.  
21 BEAVER ST.  
KEENE, NH 03431

Parcel Number: 553-095-000  
CAMA Number: 553-095-000-000-000  
Property Address: 0 WASHINGTON ST.

Mailing Address: CITY OF KEENE  
3 WASHINGTON ST.  
KEENE, NH 03431

Parcel Number: 569-003-000  
CAMA Number: 569-003-000-000-000  
Property Address: 32 TAYLOR ST.

Mailing Address: HAAS FREDERICK H. III  
PO BOX 664  
KEENE, NH 03431-0664

Parcel Number: 569-004-000  
CAMA Number: 569-004-000-000-000  
Property Address: 36 TAYLOR ST.

Mailing Address: CHEEK TIMOTHY N.  
135 EDGEWATER DR.  
QUINCY, MA 02169-3614

Parcel Number: 569-005-000  
CAMA Number: 569-005-000-000-000  
Property Address: 42 TAYLOR ST.

Mailing Address: PARTRIDGE, JOSHUA S. PARTRIDGE,  
SARAH J.  
42 TAYLOR ST.  
KEENE, NH 03431

Parcel Number: 569-006-000  
CAMA Number: 569-006-000-000-000  
Property Address: 46 TAYLOR ST.

Mailing Address: DOSTILIO ANTHONY JOHN  
46 TAYLOR ST.  
KEENE, NH 03431

Parcel Number: 569-007-000  
CAMA Number: 569-007-000-000-000  
Property Address: 52 TAYLOR ST.

Mailing Address: BORGESON RICKY A.  
71 BROOK ST.  
WEST CHESTERFIELD, NH 03466

Parcel Number: 569-008-000  
CAMA Number: 569-008-000-000-000  
Property Address: 47 TAYLOR ST.

Mailing Address: LEZCANO JOSE M.  
47 TAYLOR ST.  
KEENE, NH 03431

Parcel Number: 569-009-000  
CAMA Number: 569-009-000-000-000  
Property Address: 16 TOWNS ST.

Mailing Address: WARD MICHAEL C. WARD ANNE R.  
16 TOWNS ST.  
KEENE, NH 03431



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# 200 foot Abutters List Report

Keene, NH  
September 21, 2020

Parcel Number: 569-010-000  
CAMA Number: 569-010-000-000-000  
Property Address: 37 TAYLOR ST.

Mailing Address: BEAUREGARD FAMILY REV. TRUST  
127 WASHINGTON ST.  
KEENE, NH 03431-3106

Parcel Number: 569-011-000  
CAMA Number: 569-011-000-000-000  
Property Address: 35 TAYLOR ST.

Mailing Address: AGEE, CHELSEA M.  
35 TAYLOR ST.  
KEENE, NH 03431

Parcel Number: 569-020-000  
CAMA Number: 569-020-000-000-000  
Property Address: 58 SPRING ST.

Mailing Address: O'KEEFE SUSAN  
26 MAPLE AVE.  
ATKINSON, NH 03811

Parcel Number: 569-021-000  
CAMA Number: 569-021-000-000-000  
Property Address: 64 SPRING ST.

Mailing Address: BEAUREGARD FAMILY REV. TRUST  
127 WASHINGTON ST.  
KEENE, NH 03431-3106

Parcel Number: 569-022-000  
CAMA Number: 569-022-000-000-000  
Property Address: 66 SPRING ST.

Mailing Address: JOHNSON SUSAN E.  
66 SPRING ST.  
KEENE, NH 03431

Parcel Number: 569-024-000  
CAMA Number: 569-024-000-000-000  
Property Address: 12 BROOK ST.

Mailing Address: HARTZ PETER H. REV. TRUST  
12 BROOK ST.  
KEENE, NH 03431

Parcel Number: 569-025-000  
CAMA Number: 569-025-000-000-000  
Property Address: 20 BROOK ST.

Mailing Address: TOUSLEY CHARLES D. REVOCABLE  
TRUST  
PO BOX 626  
KEENE, NH 03431

Parcel Number: 569-026-000  
CAMA Number: 569-026-000-000-000  
Property Address: 26 BROOK ST.

Mailing Address: BEMIS AMANDA  
26 BROOK ST.  
KEENE, NH 03431

Parcel Number: 569-027-000  
CAMA Number: 569-027-000-000-000  
Property Address: 34 BROOK ST.

Mailing Address: RUSSELL DAVID A. & JUDY B. REV.  
TRUST  
34 BROOK ST.  
KEENE, NH 03431

Parcel Number: 569-028-000  
CAMA Number: 569-028-000-000-000  
Property Address: 33 BROOK ST.

Mailing Address: TILTON, KEVIN C. TILTON, CAROLYN  
LONG  
33 BROOK ST.  
KEENE, NH 03431

Parcel Number: 569-029-000  
CAMA Number: 569-029-000-000-000  
Property Address: 27 BROOK ST.

Mailing Address: CROSBY DANIEL CROSBY KELLY  
27 BROOK ST.  
KEENE, NH 03431

Parcel Number: 569-030-000  
CAMA Number: 569-030-000-000-000  
Property Address: 21 BROOK ST.

Mailing Address: BASSETT KEITH E. VELAZQUEZ MAYRA  
C. GUTIERREZ  
21 BROOK ST.  
KEENE, NH 03431



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# 200 foot Abutters List Report

Keene, NH  
September 21, 2020

Parcel Number: 569-031-000  
CAMA Number: 569-031-000-000-000  
Property Address: 8 LEVERONI CT.

Mailing Address: HAAS DAVID J. HAAS LINDA L.  
8 LEVERONI CT.  
KEENE, NH 03431

Parcel Number: 569-033-000  
CAMA Number: 569-033-000-000-000  
Property Address: 82 SPRING ST.

Mailing Address: BEAUREGARD FAMILY REV. TRUST  
127 WASHINGTON ST.  
KEENE, NH 03431-3106



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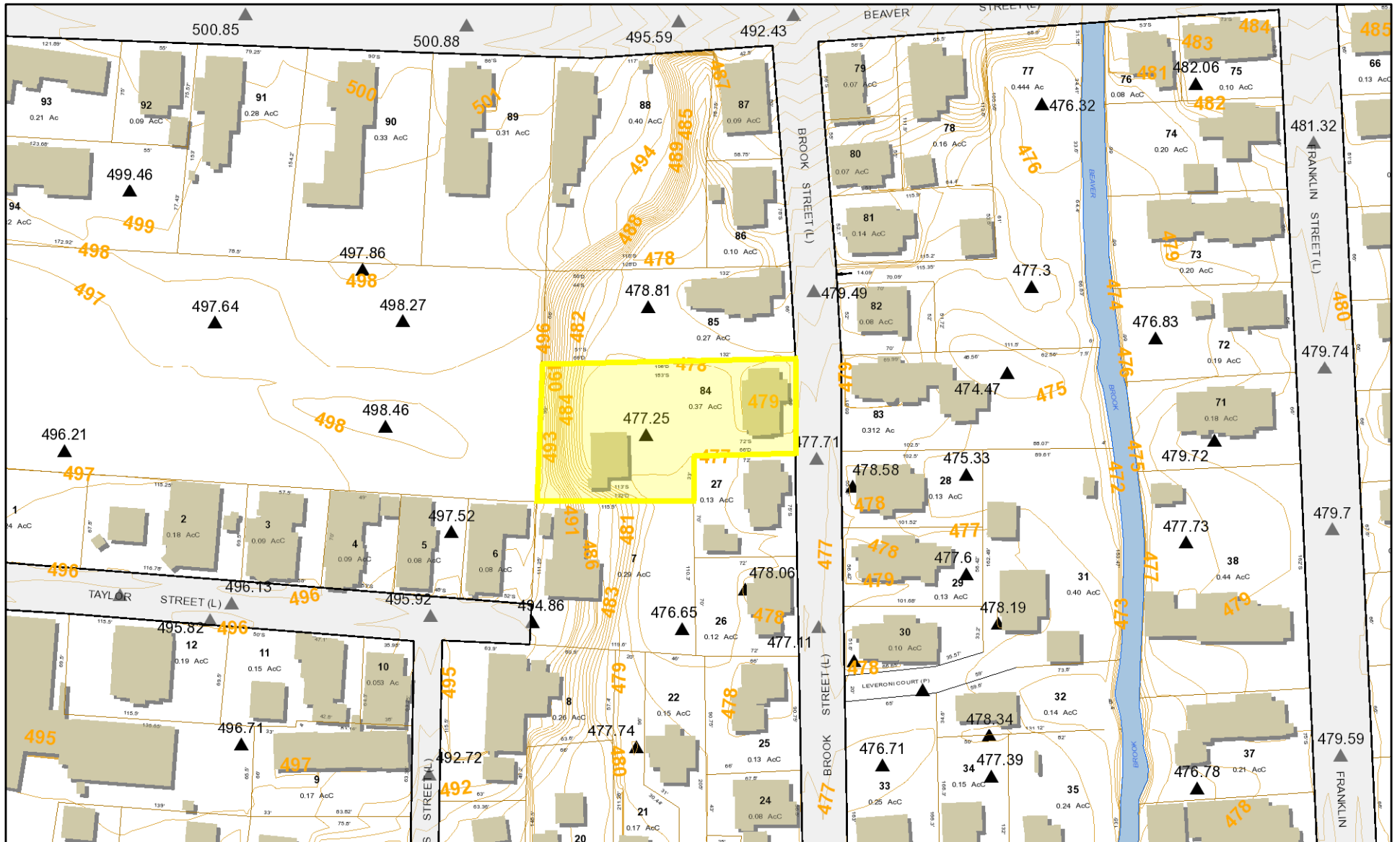


Keene, NH

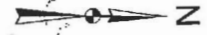
1 inch = 100 Feet



September 25, 2020



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Keene, NH

1 inch = 17 Feet



CAI Technologies  
Precision Mapping. Complete Solutions.

September 17, 2020

116'S  
128'D

66'D

44'S

0.10 Acc  
86

132'

85

0.27 Acc

132'

51'S

66'D

84

0.37 Acc

198'D

83'S

8

40 Brook

99'

Existing House is 7' from Boundary Line

Garage will be 4'-5' from Boundary Line

Barn to be taken down after garage completion.

30'

113'S  
132'D

Driveway

30'

30'

33'

22' Long for Parking

0.13 Acc  
27

34 Brook

75'S

115.5'

7

0.29 Acc

110'

72'