

**Zoning Board of Adjustment  
Monday, February 1, 2021, 6:30 p.m.  
City Hall Council Chambers  
3 Washington Street, 2<sup>nd</sup> Floor**

**AGENDA**

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – January 4, 2021
- III. Unfinished Business
- IV. Hearings:  
**ZBA 21-04:** Petitioner, Nathan and Karen Manlove of 188 East Shore Rd., Swanzey, NH, represented by Chad Branon of Fieldstone Land Consultants of Milford, NH, requests a Variance for property located at 163 Washington St., Tax Map #553-011-000; that is in the Office District and owned by Kontor Partners, LLC of 188 East Shore Rd., Swanzey, NH. The Petitioner requests a Variance to allow 8 parking spaces where the minimum of 13 is required per Section 102-793 of the Zoning Ordinance with one parking space for every 200 square feet of gross area for an Office Use.
- V. New Business:  
Update Rules of Procedure-clarify abutter language
- VI. Communications and Miscellaneous:
- VII. Non Public Session: (if required)
- VIII. Adjournment:

Page intentionally left blank

1 City of Keene  
2 New Hampshire

3  
4  
5 Zoning Board of Adjustment  
6 MEETING MINUTES  
7

8 **Monday, January 4, 2021**

**6:30 PM**

**Remotely via Zoom**

**Members Present:**

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

**Staff Present:**

John Rogers, Zoning Administrator  
Corinne Marcou, Zoning Clerk

9  
10 Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to  
11 Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions  
12 of RSA 91-A (which regulates the operation of public body meetings) during the declared  
13 COVID-19 State of Emergency.  
14

15 **I. Introduction to Board Members**

16  
17 Chair Gorman called the meeting to order at 6:35 PM. Roll call was conducted.  
18

19 **II. Minutes of the Previous Meeting – December 7 and December 15, 2021**

20  
21 Mr. Welsh made a motion to approve the meeting minutes of December 7, 2020. Mr. Hoppock  
22 seconded the motion, which passed by unanimous vote.  
23

24 Mr. Welsh made a motion to approve the meeting minutes of December 15, 2020. Mr. Hoppock  
25 seconded the motion.  
26

27 Ms. Taylor noted corrections needed:  
28

29 Line 589 – “Chair Gorman asked staff to give provide relevant comments” should be “Chair  
30 Gorman asked staff to provide relevant comments.”

31 Line 677 – “There will be a decrease in tract” should be “There will be a decrease in traffic.”  
32

33 Mr. Welsh stated that his motion is to approve the minutes with the corrections. Mr. Hoppock  
34 agreed. The motion passed by unanimous vote.

35 **III. Unfinished Business**

36

37 **A. Chair and Vice Chair voting for 2021**

38

39 Mr. Hoppock nominated Mr. Gorman for Chair. Mr. Welsh seconded the motion, which passed  
40 by unanimous vote.

41

42 Mr. Welsh nominated Mr. Hoppock for Vice Chair. Mr. Gaudio seconded the motion, which  
43 passed by unanimous vote.

44

45 Chair Gorman asked if staff had any other unfinished business. Mr. Rogers replied no.

46

47 **IV. Hearings:**

48

49 **A) ZBA 21-01:/ Petitioner, Frank Patel of 6 Woolsack Dr., Westford, MA, represented**  
50 **by Adam Kossayda, of Bragdon, Baron & Kossayda of 82 Court St., Keene, requests**  
51 **a Variance for property located at 443 Winchester St., Tax Map #115-028-000; that**  
52 **is in the Industrial District. The Petitioner requests a Variance to permit an**  
53 **employee lounge at the existing business at 443 Winchester St., for employees may**  
54 **stay in the lounge overnight, as needed, during inclement weather per Section 102-**  
55 **632 of the Zoning Ordinance.**

56

57 Chair Gorman asked staff to provide information about this application.

58

59 Zoning Administrator, John Rogers stated that this property is on Winchester St; as you head  
60 south out of town this property is on the right. He continued that for many years this was a rug  
61 wholesale retail establishment. In 2014, the owners received two Variances – one was for the  
62 convenience store and the other was for the number of parking spaces provided on site. This  
63 property is in the Industrial Zone. Across the street is the Commerce Limited Zone, where the  
64 car dealerships are. Just to the northwest of this property is the High Density Zone with quite a  
65 few single-family homes that are set back off the road, with a Commerce Zone that runs right  
66 along the road frontage of Winchester St.

67

68 Mr. Rogers continued that the Variance given for parking was not very clear regarding the actual  
69 numbers of spaces that were needed to be provided. He stated he researched the minutes and it  
70 appears that they were making the case that, based off of the information they had, only 12  
71 spaces would be needed but they would be providing 14. He believes that is what is currently  
72 there.

73

74 Chair Gorman asked if Board members had questions.

75

76 Mr. Hoppock asked if the retail Variance in 2014 was to allow a retail use in an Industrial Zone.  
77 Mr. Rogers replied yes, it was to allow the convenience store retail in an Industrial Zone where  
78 that would not be an allowed use.

79 Mr. Hoppock asked if Mr. Rogers stated that there are currently 14 parking spaces. Mr. Rogers  
80 replied that based on what the applicant submitted for a site plan and from reading the meeting  
81 minutes for that Variance in 2014, yes, there should currently be 14 parking spaces.

82  
83 Chair Gorman asked if the Board had further questions for Mr. Rogers. Hearing none, he opened  
84 the public hearing and explained how members of the public could participate. He asked to hear  
85 from Adam Kossayda, representing Frank Patel.

86  
87 Shaun Filiault stated that he is will be filling in for Attorney Adam Kossayda and speaking on  
88 behalf of Frank Patel, a small business owner of the Discount Mart at 443 Winchester St. This  
89 application has to do with a minor change to the use of one area of this building. Mr. Patel seeks  
90 to use the back portion of this building, 43 x 20 square feet, as an employee lounge. In  
91 particular, the lounge will be used intermittently during inclement weather so employees can stay  
92 overnight so they do not have to drive home when it is unsafe to do so. Many of this business's  
93 employees are traveling from a half hour or more away and with New England snow it can  
94 become unsafe to drive home. This would allow them the opportunity to, on rare occasions, stay  
95 in this otherwise unused space which will be an employee lounge that would not change the  
96 overall commercial character of the business. It will remain a convenience store and the public  
97 will not be allowed into this lounge. This will not become a permanent residence and people will  
98 not be allowed to stay here on a permanent basis; only on the rare occasion when there is that  
99 New England storm that makes it unsafe to drive home will an employee be allowed to stay in  
100 this lounge.

101  
102 Mr. Filiault continued that looking at the elements of the Variance, this is not contrary to the  
103 public interest because it actually furthers the public interest by taking unsafe drivers off the road  
104 in inclement weather. This is assisting the employees, by not forcing them to drive home for a  
105 half hour or more commute, and assisting Keene drivers by getting drivers off the road during  
106 inclement weather. Additionally, Mr. Patel has noted that on occasion some employees will be  
107 working 10-12 hour shifts and on those very rare occasions those employees as well will be  
108 invited to use this lounge and that will keep sleepy drivers off the road.

109  
110 Mr. Filiault continued that this application is in the spirit of the ordinance because it does not  
111 change the overall industrial nature of the area. The purpose of the Industrial Zone is to ensure  
112 that there isn't a High Density, permanent residences in the industrial area, and indeed, this will  
113 not be a high density, permanent residence. This will be simply an occasionally occupied  
114 employee lounge limited to the employees of this business. Thus, it will retain the industrial  
115 character and the commercial character of this district. It will still be a business and no one will  
116 be living here.

117  
118 Mr. Filiault continued that this application would be doing substantial justice to this business  
119 because it will allow the business to conduct its long hours (it is open 16 hours a day) and  
120 continue its trade during inclement weather by allowing the employees to stay there when it  
121 would otherwise be unsafe to drive home. It will also allow the best and fullest use of the entire  
122 building as currently this 43' x 20' back room is otherwise unused. This will allow the space to  
123 be used for the best benefit of the employees on the rare occasional use during inclement weather  
124 or after an extremely long shift.

125 Mr. Filiault continued that additionally, this will actually improve the values of the surrounding  
126 properties because it will mean that this back room will be furnished and improved. It will  
127 require the implementation of utilities and furnishing to make sure it is safe for that rare occasion  
128 when an employee needs to stay there, and it will not affect the surrounding businesses because  
129 the employee would have already been on site. There will be no additional traffic flowing to the  
130 building because the employee will have already been there. In fact it decreases traffic by  
131 ensuring that employees are not driving home tired or during inclement weather.  
132

133 Finally, it avoids an unnecessary hardship to the business by allowing the business to maximally  
134 use this building, and particularly this small portion of the back area, to its fullest potential. This  
135 is a unique plot as it is nestled at the edge of the Industrial District, right beside the Commercial  
136 District and an Residential District. This use would otherwise be allowed across the street or a  
137 few yards in the either direction.  
138

139 Mr. Filiault continued that additionally, this is a small lot that does not lend itself to industrial  
140 uses because of its size. Allowing this back room to be used for an employee lounge will  
141 maximize the potential and disallowing it will provide a substantial disadvantage to these  
142 employees who are traveling from a half hour away. This proposed use is reasonable, because it  
143 will be limited to those rare times when a New England storm makes it unsafe to drive home or  
144 the very rare occasion when an employee has worked an extra-long shift.  
145

146 Mr. Filiault continue that finally, it will avoid an unnecessary hardship to the business owner  
147 who is himself engaged in those long commutes, coming from Massachusetts to work at his store  
148 in this local community, to make sure that he does not have to drive during inclement weather.  
149

150 He continued that this is not going to become a residence. This is not changing the character of  
151 the building or the character of the district. Rather, it is allowing a small portion of the building  
152 to occasionally be used by employees to maximize to the fullest potential the commercial  
153 potential of the building by giving the employees the opportunity to be safe during inclement  
154 weather.  
155

156 Mr. Hoppock stated that the application states the store is open 15 hours a day, but Mr. Filiault  
157 just said it was 16; he asked for clarification. Mr. Filiault replied that he misspoke, and it is 15.  
158 Mr. Hoppock asked what the hours are for each day, specifically, if they are different. Mr.  
159 Filiault replied that he is not sure, and will leave that question to Mr. Patel. Mr. Hoppock asked  
160 how many employees there are. Mr. Filiault said he will also leave that question to Mr. Patel.  
161

162 Frank Patel of 6 Woolsack Dr., Westford, MA, stated that the store is usually open from 6 AM to  
163 9 PM, depending on the weather. He continued that there are three to four employees.  
164

165 Ms. Taylor stated that the application uses the words “lounge” and “apartment” interchangeably.  
166 Apartment has a very specific definition in the Zoning Ordinance, and is significantly different  
167 from a lounge, which is not defined. She continued that she is curious about which it is, because  
168 it needs to be one or the other but not both. An apartment is defined as “A room or a group of  
169 rooms forming a habitable unit for one family, within a structure containing at least one other  
170 unit, with facilities used or intended to be used for living, sleeping, and including facilities for

171 *cooking and eating.*” She assumes that could include a studio apartment. She asked for  
172 clarification from Mr. Filiault.

173  
174 Mr. Filiault replied that this lounge will not meet the definition of apartment, nor is it intended  
175 too. As noted, this is only intended to provide intermittent, occasional accommodation for an  
176 employee after a shift and it is not intended to meet the definition in the code, nor is the intent to  
177 make a permanent residence or have any possibility of that. He continued that the word  
178 “apartment” was used colloquially and they apologize for that use; the correct word is “lounge.”  
179

180 Ms. Taylor stated that this might be a question for Mr. Rogers, but if it is merely an employee  
181 lounge, is the Variance required. She continued that her understanding is that there are a number  
182 of businesses, both industrial and commercial in the City of Keene that have employee lounges.  
183 She is confused about what the issue is.  
184

185 Mr. Rogers stated that what brought this issue before the Board, was that the application showed  
186 this lounge/apartment, having a kitchen and a full bathroom and that they were asking for people  
187 to spend the night in this area, which rose it above what would be a traditional employee lounge.  
188 He continued that Ms. Taylor is correct this that is an accessory use for many businesses. But  
189 the fact that they were creating more of a unit - which he does not necessarily want to call a  
190 “dwelling unit,” because the applicant stated that it is not intended to be permanently occupied  
191 and only used on a temporary basis - caused staff to feel that it was above the level of what  
192 would normally be considered an employee lounge, since it includes a kitchen, a full bath and a  
193 living area.  
194

195 Mr. Filiault stated that he initially asked the same question as well and emailed Mr. Rogers to see  
196 if this would be a lounge that would be similar to the employee lounges that other businesses are  
197 allowed to have and therefore not need a Variance but just need a permit. They were advised  
198 that Mr. Patel was required to go forth with the Variance because of the plan that was submitted.  
199 But Ms. Taylor is correct, that this is similar to other employee lounges that other businesses are  
200 allowed to have without going through this Variance process.  
201

202 Ms. Taylor stated that in one part of the application, Mr. Patel says “The apartment will only  
203 affect the second floor of one building,” but from what she can tell from the maps and drawings  
204 in the application, it looks like this lounge/apartment is anticipated to be on the ground floor of  
205 what she sees as an L to the building, or the rear portion. She asked Mr. Filiault to clarify.  
206

207 Mr. Filiault replied that she is completely correct and that is a misstatement that should be struck.  
208 It is a one floor building and will remain a one floor building. This is in the back L portion, as  
209 seen on the plan, which will be in the rear of the lot. There is no intention for a second floor.  
210

211 Mr. Gaudio stated that his first question deals with the issue of hardship. He continued that the  
212 hardship has to be due to special conditions of the property. In the presentation, he heard Mr.  
213 Filiault speak a number of times about the hardship to the employees and hardship to the owner,  
214 although in that sense it might be about the owner as an employee also. But he did not hear  
215 anything about a hardship endured by the property. He asked Mr. Filiault to address that.  
216

217 Mr. Filiault stated that as noted during the presentation and application, this is a unique property  
218 because it is nestled so closely to a commercial and to residential lots. He continued that  
219 additionally, this is a very small industrial lot that really would not be suited to industrial  
220 purposes. This is best used as a commercial lot because of its very small size. As Ms. Taylor  
221 noted, many commercial uses include an employee lounge of this sort. To disallow an employee  
222 lounge would be to stymie its commercial uses and since this lot is otherwise stymied by its  
223 extremely tiny size it limits the commercial potential for this particular lot.  
224

225 Mr. Gaudio asked if he is saying that it is the smallness and placement of the lot that is unique to  
226 the property. Mr. Filiault replied that is well summarized.  
227

228 Mr. Gaudio stated that his second question is about other lounges. There are a number of other  
229 commercial and retail businesses on the street that he assumes all have employee lounges and if  
230 there is bad weather and an employee wants to stay over - he thinks the car dealership service  
231 customers until 9 PM – will the Board be in the position of having to issue Variances for each  
232 one of them.  
233

234 Mr. Filiault replied that he cannot speak to the decisions of other businesses but Mr. Patel wanted  
235 to allow employees to stay overnight in his business. Again, they emailed Mr. Rogers about  
236 whether a Variance was needed for this or if it would be a permit that was needed; they were  
237 advised that the Variance was required which is what brought them to the Board. He continued  
238 that he agrees that a simple permit probably would have done, but due to the advice they were  
239 given they are requesting a Variance.  
240

241 Mr. Hoppock stated that he has a question for Mr. Rogers. He continued that Mr. Filiault has  
242 been saying this lounge will be used “very rarely” and used the word “rare” at least half a dozen  
243 times, for occasional overnights. Would there be an issue if this morphed into something that is  
244 more permanent and they started having multiple employees staying there or someone staying  
245 there every night.  
246

247 Mr. Rogers stated that if the Board were to put a condition on this property such as “only for an  
248 employee on an occasional use” it can be difficult to enforce that type of situation. He continued  
249 that he wants to step back and address what Mr. Filiault said about why he pointed them in this  
250 direction. This is, in his opinion, more than just a lounge. Certainly many businesses have an  
251 employee lounge with a little kitchenette and a table where people can relax and have a meal, but  
252 City staff was told that this lounge would have a kitchen, bed, and a bath with a shower. He is  
253 not sure how many lounges have a bed or a pull-out bed. That is why he, as the Zoning  
254 Administrator, pointed Mr. Patel towards a Variance. In his opinion this is a step above what a  
255 lounge would be considered.  
256

257 Chair Gorman asked if there were any other questions. Hearing none, he stated that that Mr.  
258 Filiault is talking about the building not being fit for industrial use, but that is not the fact of its  
259 use, due to the Variance from 2014. It is aptly used as a commercial retail operation, which the  
260 Board did approve. Now there is this question at hand that it appears that Mr. Patel is seeking to  
261 create an apartment. He does not know that the Board has much scope of how the space is used,  
262 and certainly would not be able to police it nightly. He questions this, because there are a lot of



263 small businesses with employees who work long hours and have to drive home, and this is New  
264 England, with many of us have to make some slippery commutes on occasion. That is just part of  
265 living here. Sometimes he, too, is tired during his drive home from work, but that is just part of  
266 working. His question is what separates this business from so many others, where this business  
267 would have a lounge that is not a lounge and be able to have people sleep there as they saw fit.  
268 Chair Gorman stated that he guesses that the area probably has about 10 snowstorms a year, so it  
269 seems odd to him that Mr. Patel would build an apartment for that limited use. He asked if Mr.  
270 Filiault could speak to those questions.

271  
272 Mr. Filiault stated that many of the businesses that would be anticipating this type of a lounge  
273 would not be located in an industrial zone and this particular lot is located extremely close to a  
274 commercial and residential zone. If this business was 50 yards down the road and applying from  
275 one of those zones, this would not be an issue. He continued that each individual lot that is  
276 anticipated to need this lounge could be evaluated on an individual basis. The Board has the  
277 ability to take each application on its own individual merits. The merits here are that this would  
278 not increase the traffic to the lot, and this would not be used on a substantial basis, and it would  
279 improve the overall value for this building as well as the neighborhood, and protect public safety.  
280 Based on those merits, the Board ought to allow this Variance to protect the public safety and to  
281 increase the value of the lot and then evaluate future applications as they come based on those  
282 merits. It seems unlikely that many future applications will come, since very few businesses will  
283 have the unique circumstances that this one does, of being nestled so closely to commercial and  
284 residential zones.

285  
286 Ms. Zerba stated that her question is about semantics. When she thinks of the word “lounge” and  
287 how people might hear it in the future, she thinks that some people might say that a lounge is  
288 able to invite the public to it and serve alcohol, but if they use the term “Employee Lounge” it  
289 provides the definite definition that they are seeking.

290  
291 Ms. Taylor asked if employees would be paid for or charged for staying in this lounge. Mr. Patel  
292 replied no.

293  
294 Mr. Gaudio asked if this is added income to the employees. He continued that is an income tax  
295 question and it goes back to his question of who benefits from this. Mr. Filiault replied that he  
296 appreciates the insight to the income tax potential for this, which is certainly a topic of research.  
297 He continued that in terms of the benefit, it benefits both the employees, by staying off the road,  
298 and the public, by keeping sleepy or drivers off the road during a storm.

299  
300 Chair Gorman asked if Board members had further questions. Hearing none, he asked for public  
301 comment and explained how members of the public could participate. Hearing no public  
302 comment, he closed the public hearing. He stated that he will reopen the public hearing as  
303 necessary to ask procedural or technical questions.

304  
305 The Board deliberated on the criteria.

306  
307 *1. Granting the Variance would not be contrary to the public interest.*  
308

309 Ms. Taylor stated that she has some real concerns about public interest, because this is, frankly, a  
310 little “squishy.” It appears to be introducing a residential type of use into a zone where generally  
311 is not permitted. She continued that she does not think it is particularly relevant that it may be  
312 close to other districts. It is up to the City Council to decide how it wants to zone the City. She  
313 does not see it as being in the public interest to add an overnight component to this property,  
314 especially since that does potentially introduce some public safety issues for police and fire,  
315 when they have to be concerned with somebody actually being on the property when it is closed  
316 to the public.

317  
318 Mr. Hoppock stated that he thinks the applicant confuses the concept of zoning public interest  
319 versus safety public interest. He continued that he agrees with Ms. Taylor. What they are asking  
320 about here in terms of public interest is the question of whether or not the Variance would be  
321 contrary to the public interest as to whether it is related to the requirement that it be consistent  
322 with the spirit of the ordinance. He did not hear anything about the spirit of the ordinance in  
323 connection with public interest. He heard about tired drivers and bad weather, which as Chair  
324 Gorman said, they all have to get used too. He is not persuaded that this criterion is satisfied.

325  
326 Mr. Welsh stated that something he finds compelling is that a Variance has already been granted  
327 for the property as a retail business in an industrial zone. He continued that what they are looking  
328 to do is modify the characteristics of that varied property. He finds it fairly compelling that  
329 another public interest is interest in safe roads and interest in businesses being able to operate  
330 with their staff. He would be inclined to vote positively on the first criterion.

331  
332 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

333  
334 Mr. Welsh stated that he would vote positively on this criterion too.

335  
336 Ms. Taylor stated that she has similar concerns as to what she expressed earlier and as expressed  
337 by Mr. Hoppock in that granting this would take it even a step further away from the intent of the  
338 Industrial Zone. Even if a Variance has already been granted, this would almost make it like a  
339 “Variance plus,” by taking it even further away from the original intent of the Industrial Zone as  
340 stated in the ordinance.

341  
342 Mr. Gaudio stated that he agrees with Ms. Taylor. He continued that this is a non-cumulative  
343 form of zoning, and the idea behind that is to protect industrial and commercial uses from  
344 residential use, and adding a residential-type use might bring in problems that were intended to  
345 be avoided.

346  
347 *3. Granting the Variance would do substantial justice.*

348  
349 Mr. Hoppock stated that the question at hand is the loss to the individual outweighed by the gain  
350 to the general public and if it is, it is an injustice. He continued that he is struck by Mr. Gaudio’  
351 comments in terms of protecting the commercial and industrial uses from encroaching residential  
352 uses, and he is having a hard time determining what the loss to the individual is, if this request is  
353 denied. This strikes him as not very different from the curb cut application they had a few weeks  
354 back where the applicant was seeking a convenience. He looks at this as a convenience - a

355 lounge for some employees to sleep over in bad weather, to be used rarely and on occasion. If  
356 someone is in the back of the store sleeping, someone has to be in the front of the store working,  
357 so you are increasing the density in the building. He does not see a loss to the individual if this is  
358 not granted, so he is not persuaded by criteria three.

359  
360 4. *If the Variance were granted, the values of the surrounding properties would not be*  
361 *diminished.*

362  
363 Ms. Taylor stated that the applicant's representative has stated that the values would not be  
364 diminished but she did not see any evidence presented regarding that point, and she thinks it is  
365 his burden to show that to the Board. She continued that she thinks it is an open question. If you  
366 have businesses that are closed and darkened at night but there is one property where someone is  
367 sleeping, she has to question whether or not values would be impacted and she does not think the  
368 Board has heard anything one way or the other.

369  
370 Mr. Welsh stated that for this criterion, quite often in the absence of data the Board goes with  
371 their impressions. He continued that the minority of the time they have data regarding property  
372 values and the impact a Variance or other action might take. He thinks this is *de minimis* either  
373 way. It will be a very occasional use in a property where few people would even notice it, and  
374 there will be some other kinds of uses taking place, people sleeping, a few hundred yards away  
375 or less. He does not see the values of the surrounding properties being diminished by this.

376  
377 5. *Unnecessary Hardship*  
378 A. *Owing to special conditions of the property that distinguish it from other properties*  
379 *in the area, denial of the Variance would result in unnecessary hardship because:*  
380 i. *No fair and substantial relationship exists between the general public purposes of*  
381 *the Ordinance provision and the specific application of that provision to the*  
382 *property*  
383 *and*  
384 ii. *The proposed use is a reasonable one.*  
385  
386 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*  
387 *hardship will be deemed to exist if, and only if, owing to special conditions of the*  
388 *property that distinguish it from other properties in the area, the property cannot be*  
389 *be reasonably used in strict conformance with the ordinance, and a variance is*  
390 *therefore necessary to enable a reasonable use of it.*

391  
392 Mr. Gaudio stated that he is having difficulty seeing where the special conditions of the property  
393 exist as a hardship. He continued that he understands there are hardships to the employees and to  
394 the owner/employer, but he does not see a hardship to the property. Regarding the idea that it is a  
395 small commercial property, it is a commercial property because of a Variance that was given, not  
396 because of the condition of the property. He does not think the smallness is unique. He does not  
397 see the unnecessary hardship.

398  
399 Mr. Hoppock stated that he agrees with Mr. Gaudio and adds the following; even if there was a  
400 special condition - and he heard the applicant speak to certain conditions, but he is not persuaded

401 that they are special to the property - there is no tying together of the relationship between the  
402 general public purpose of the ordinance and the specific application to this property. To him that  
403 relationship was not established by the applicant so he is having a hard time with this one, too.  
404

405 Ms. Taylor stated that her concern is that she does not see the hardship. She continued that it  
406 appears that this is primarily a convenience to the property owner in part based on economic  
407 considerations, and as the Board has discussed previously, while that could be a consideration, it  
408 is not a sole determining factor in deciding whether a hardship exists.  
409

410 Mr. Welsh stated that again, he sees that this property did satisfy the array of questions necessary  
411 for it to be granted a Variance in the first place, one of which was expression of a hardship, for  
412 its ability to be used in other ways. He continued that the Board is on record for recognizing a  
413 hardship for other uses for this property. Now that they are looking at a retail operation that has  
414 presumably longer hours than some of the other industrial uses around it, they may be looking at  
415 situations where people want to stay overnight. He is not too troubled by asserting that there is a  
416 hardship.  
417

418 Chair Gorman stated that his stance is that they have heard, in a nutshell, that approving this will  
419 keep people safe and off of the streets and not driving during bad weather or when they are tired,  
420 which he views as a personal responsibility, not a responsibility of the Board. If someone feels  
421 that they are unsafe to get behind the wheel, he suggests that they do not get behind the wheel.  
422 The looseness of this is a concern to him and he does not know how this is going to be used. The  
423 Board only knows what they are being told, which seems fairly harmless, but they also know that  
424 in reality they are granting a Variance for the property that will go on through multiple owners or  
425 even multiple uses. The Board is approving an apartment, plain and simple. They cannot police  
426 who stays there, when they stay there, whether they work there, how long they have been there,  
427 whether they are tired, or whether the weather is bad. Those are things that are not in the Board's  
428 purview. Thus, as soon as those things start to get mentioned as facts he tends to disregard them.  
429 At the end of the day, if they wanted a lounge they could have one with a permit, but now they  
430 want an apartment, and that requires a Variance. When looking at putting an apartment in there,  
431 he does not put much weight on how the person intends to use it because it will create muddy  
432 waters later. They have heard that the hardship of the property is that it is small and it is a bad  
433 industrial location, but they know it is not even used for industrial purposes. The fact that it is  
434 small would lead him to believe that maybe they should not be expanding its non-conforming  
435 use, given that it is small and has already been granted a Variance by the Board. Collectively  
436 when he weighs these five criteria he has trouble approving an apartment at this site.  
437

438 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 21-01. Chair  
439 Gorman seconded the motion.  
440

441 *1. Granting the Variance would not be contrary to the public interest.*  
442

443 Not met with a vote of 1-4. Mr. Welsh was in favor.  
444

445 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*  
446

447 Not met with a vote of 1-4. Mr. Welsh was in favor.

448

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

450

451 Not met with a vote of 1-4. Mr. Welsh was in favor.

452

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

455

456 Met with a vote of 3-2. Ms. Taylor and Mr. Hoppock were opposed.

457

458 5. *Unnecessary Hardship*

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

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

464 *and*

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

466

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

472

473 Not met with a vote of 1-4. Mr. Welsh was in favor.

474

475 The motion to approve ZBA 21-01 failed with a vote of 1-4. Mr. Welsh was in favor.

476

477 Mr. Hoppock made a motion for the Zoning Board of Adjustment to deny ZBA 21-01. Ms.  
478 Taylor seconded the motion, which passed with a vote of 4-1. Mr. Welsh was opposed.

479

480 Tim Sampson requested that the Board hear ZBA 21-03 before ZBA 21-02. Chair Gorman and  
481 the Board agreed.

482

483 **B) ZBA 21-03:/ Petitioner, Angela and Adam Robinson of 17 Birch St., Keene,**  
484 **NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury**  
485 **St., Keene, requests a Variance for property located at 17 Birch St., Tax Map**  
486 **#545-030-000; that is in the Low Density District. The Petitioner requests a**  
487 **Variance to allow the expansion of an existing one car garage by an**  
488 **additional two feet to allow the garage to be utilized to store two cars. The**  
489 **existing garage sits with four feet of the property line. The proposed garage**  
490 **proposes to site within two feet of the property line per Section 102-791 of the**  
491 **Zoning Ordinance.**

492

493 Ms. Taylor stated that she is an abutter and needs to recuse herself.

494 Chair Gorman asked Mr. Rogers to give relevant information about this application.

495

496 Mr. Rogers stated that Ms. Zerba will be stepping in for Ms. Taylor as a voting member. With a  
497 map of 17 Birch St. on the screen, he stated that it is in the Low Density District. He continued  
498 that the existing garage is a one-car garage and rather oversized. The dimensions of it are 18 feet  
499 wide, which is a little bigger than the typical one-car garage. The existing garage already violates  
500 the setbacks. As the application mentions, it is already four feet to the property line. The  
501 applicant proposes tearing this one down and building a new one within two feet of the property  
502 line. When the Board is deciding whether to approve this application, they should get a better  
503 idea of what that distance is going to be, since they would require a surveyor to document how  
504 close to the property line this structure would end up being.

505

506 Chair Gorman stated that what Mr. Rogers stated is correct that Ms. Taylor is recused for this  
507 application and Ms. Zerba will be filling in as a voting member.

508

509 Mr. Gaudio stated that first of all, this is currently a non-conforming use, for the garage to be  
510 within four feet. He asked if the fact that the garage is going to be torn down and another garage  
511 is going to be built is the reason why it is not an application for an expansion of a non-  
512 conforming use, or if there is another reason that he is not understanding correctly. Mr. Rogers  
513 replied that it is not that it is a non-conforming use, it is that they are building within the setback.  
514 He continued that even though this current garage is within the setback, they are actually going  
515 to be going even further into the setback with the proposed new garage, and that is why it is  
516 before the Board. Mr. Gaudio stated that he understands but continued that it currently is a non-  
517 conforming structure. Mr. Rogers replied that is correct. He continued that if a structure that is  
518 non-conforming due to dimensional requirements, the Zoning Ordinance does allow for  
519 expansion upon that structure as long as the structure does not come any closer/violates the  
520 setback any further, which is what this application is asking.

521

522 Ms. Zerba stated that she would like to confirm what Mr. Rogers just said. She continued that  
523 she did not read that the garage was going to be torn down. She asked if just the end of the  
524 garage that is going to be expanded or will it be completely torn down so a new one can be  
525 constructed. Mr. Rogers showed a slide of the existing footprint of the garage, and the proposed,  
526 newer footprint. He stated that that the proposed, newer footprint is significant different than the  
527 existing garage. Mr. Sampson, the project architect can correct him if he is wrong, but his  
528 understanding is that the current garage would be torn down and a new garage would be built.

529

530 Mr. Welsh asked to look again at the slide showing the various houses in the neighborhood, from  
531 above, and their proximity to the property line. He continued that it seems like there are a  
532 number of non-conforming properties. He asked if these lots were subdivided and sold as non-  
533 conforming, or if the zoning came in and had a setback in place that made them non-conforming.  
534 Mr. Rogers replied that his understanding is that this was a development from the 1950's. He  
535 continued that the file for this property does not have the building permit from when this house  
536 was initially built. It does have several permits from when subsequent owners did work on the  
537 house. He assumes that this was when the house was built and the setback came since then.

538



539 Chair Gorman opened the public hearing and explained the procedures for participation. He  
540 asked to hear from the Petitioners and their representative.

541  
542 Angela Robinson of 17 Birch St. stated that she is going to be presenting on her own behalf. She  
543 continued that she and her husband Adam are the owners of 17 Birch St. and reside there as their  
544 primary residence. They have been there for over 13 years and have 2 young children who go to  
545 local schools. She is before the Board as she and her husband desire to renovate and expand  
546 their home to accommodate their growing family. They are seeking a Variance from the side set  
547 back in the Zoning Ordinance to permit an expansion of the existing garage within two feet of  
548 the property line. Granting this Variance will allow her and her husband to rebuild the garage in  
549 accommodate two modern vehicles, based on the size and dimensions of vehicles and trucks in  
550 today's day and age. It will also provide them with much needed space above the garage to  
551 accommodate their growing family. The existing garage is already in the setback and they are  
552 seeking permission to rebuild the garage an additional 80 square feet into the setback. This  
553 additional square footage is nominal in nature but will greatly benefit their aspiration for  
554 expansion of their home. There are other properties on the street with structures that are also in  
555 the setback. Their property is not unique in its non-conformance. Granting approval for the  
556 Variance would have negligible impact on adjacent properties. Their intention for this  
557 renovation improvement to their property will increase the value of their home and of nearby  
558 residences.

559  
560 Ms. Robinson continued that speaking to the application, the existing garage is already within the  
561 setback, and granting the Variance would allow them, as the property owners, to rebuild a garage  
562 structure that would allow room for modern vehicles with minor impact to neighbors, allowing  
563 for a small increase to an existing non-conforming condition. The spirit of the ordinance is to  
564 prevent encroachment of adjacent properties, and the existing garage already sits within the  
565 required setbacks and would be only a minor change to an existing non-conforming condition.  
566 Granting the Variance would allow them as the property owners to build a garage large enough  
567 to store vehicles and provide much needed space above the garage structure for their growing  
568 family. There are a number of properties in the neighborhood with similar conditions and the  
569 non-conformity currently exists. Expansion of the non-conformity would have negligible impact  
570 an adjacent properties. The existing garage currently sits within the setback, and granting the  
571 Variance to expand the non-conformity would allow reasonable use of a new garage and would  
572 be sized to provide storage of two vehicles and also provide additional space for a growing  
573 family. This expansion does not create a new condition and has minimal impact on the  
574 neighbors.

575  
576 Ms. Robinson continued that she wants to add that this is a one-door garage and is larger than  
577 your typical one unit, one-car garage, but with today's vehicles sizes - her husband has a truck  
578 and she has an SUV – they certainly cannot park both of those vehicles in their existing garage.  
579 The proposed expansion has been sized to provide the minimum width required to store two  
580 vehicles. There is an existing garage and it is non-conforming. There is not a proposed new use  
581 for the structure or a new entrance for non-conformity. The expansion proposed is the absolute  
582 minimum needed for proper use. They are trying to be very mindful not to expand more than  
583 completely necessary to accommodate parking of two vehicles. Due to the layout of the house,  
584 the proposed expansion is the only reasonable way to provide an expanded garage that is large

585 enough to store two vehicles as well as provide additional living space above the garage. The  
586 proposed expansion has been minimized to the extent possible while allowing the space to be  
587 properly utilized. The proposed expansion is reasonable, based on an existing, non-conforming  
588 condition and it is already being used outside of the strict enforcement of the ordinance.

589  
590 Ms. Zerba asked if the garage was already there when they purchased the property. Ms.  
591 Robinson replied yes.

592  
593 Ms. Zerba stated that her concern is with the neighbor to the north. She continued that if this  
594 Variance passes, there would only be that two feet and then she notices that there is a fence that  
595 goes directly to the edge of both properties. She asked if the fence is parallel to the garage, not  
596 the one facing the street, belongs to the Robinsons or their neighbors. Ms. Robinson replied that  
597 she and her husband had their property surveyed a couple months ago, and this survey indicated  
598 that their neighbors' fence is right on their property line, and she and her husband also have a  
599 fence that is within six inches of the neighbors' fence. Ms. Zerba asked if she means that there  
600 are two fences there, one right next to the other, on the side. Ms. Robinson replied that it is  
601 difficult to see in the picture, but essentially, the fence for her property starts at the very rear of  
602 the garage structure as it exists today, while the fence for their neighbors to the north extends a  
603 bit more than that.

604  
605 Mr. Hoppock stated that Mr. Rogers made a remark about needing a survey or a site plan  
606 prepared, of where the new garage would be, if this were approved. He questioned regarding the  
607 existence of the fence of the neighbor to the north and whatever objects are on the Robinsons'  
608 neighbors' properties and questioned the reason for the survey is to ensure there is enough space  
609 between the end of Ms. Robinson's garage and that property line? Ms. Robinson replied that the  
610 intent of the survey that she and her family paid for was to ensure that with any type of structural  
611 change, addition to their home, or anything to do with their property, they would be honoring the  
612 boundaries of their property to the most accurate reflection.

613  
614 Mr. Rogers stated that to clarify, many times there are structures being built that are either very  
615 close to the setback or in the setback, like this one, and traditionally it is the City's requirement  
616 that a surveyor verify that. Thus, if the Board were to grant this Variance within two feet of the  
617 property line, the City would be seeking the surveyor so they could verify that that is actually  
618 where the structure has been built.

619  
620 Mr. Gaudio stated that the garage is a slight angle to the property line. He asked where these two  
621 feet are exactly and questioned if it is at the front of the garage or two feet in the back. Ms.  
622 Robinson replied that the expansion will extend two feet out to the side. She continued that it  
623 will essentially result in an additional two feet into the setback with the angle of the property line  
624 as well as the angle of the existing garage, it will ultimately result in the front side of the garage  
625 being closer to the property line and further into the setback than the back of the garage. There is  
626 no plan necessarily to change the angle of the garage. The plan is to add on an additional two feet  
627 to the existing structure, but she clarified the statement of "add on," that their intent is to  
628 demolish the existing garage structure, pour a new foundation, and rebuild. That rebuild will  
629 ultimately result in an expansion of two feet off the side.

630



631 Mr. Gaudio stated that he was looking at it from the other side and questioned how many feet  
632 from the property line will the front of the garage be. Ms. Robinson replied that the front of the  
633 garage, with the two feet expansion, will result in them being about one and a half feet from what  
634 she thought was the setback, but now she is thinking it might be the property line.

635  
636 Tim Sampson stated that the closest point to the property line is going to be in the front, at about  
637 1'6" or 1'10" to the overhang. He continued that it will be about 4'6" to the overhang in the  
638 back and the property line tapers away from the proposed building. That closest encroachment at  
639 1'10", roughly, to the overhang, is in the front corner closest to the street.

640  
641 Ms. Zerba stated that is less than the two feet they are requesting, with the property line less than  
642 two feet than what is stated in the application. Mr. Sampson replied that was a last minute  
643 adjustment. He continued that closest dimension is to the overhang so it will actually be about  
644 2'3" to the actual base of the building. The overhang will be roughly nine feet off the ground  
645 and only at that one outside point.

646  
647 Mr. Rogers stated that Mr. Sampson is correct that the point to measure is the furthest point of  
648 the building, so measuring to the overhang is appropriate. He continued that is why when he was  
649 speaking earlier he mentioned that the Board should get clarity on the distance, because the  
650 application does state "within two feet" but it seems that they are asking for less than two feet.  
651 He thinks it is important for an accurate number to be provided by the applicant and/or Mr.  
652 Sampson, so that if there is an approval, the building permit has a number to work with.

653  
654 Mr. Sampson stated that if this does get approved, they can submit the final number and have a  
655 surveyor come out. He continued that he did the site plan, so he might be off by an inch or two,  
656 which is why the application was worded as is. They could have the final number verified by a  
657 surveyor, if this gets approved.

658  
659 Chair Gorman stated that Mr. Rogers can speak to this, but he thinks the Board needs a number if  
660 they approve it. Mr. Rogers replied that it is up to the Board. He continued that he would also  
661 caution leaving it wide open without a number, because of another concerns, which the Board  
662 might bring up as they have in the past with other setback encroachments, is regarding runoff.  
663 He questioned how will the proposed roof be sloped, and how the applicant will keep water off  
664 their property. If the Board were to leave this as just "within two feet" and they end up building  
665 right to the property line, he is not sure about that. It is up to the Board to make that  
666 determination.

667  
668 Ms. Zerba stated that she did not think about the water coming off of the roof on to the other  
669 property. She asked Mr. Rogers if this will be clarified. Mr. Rogers replied that it is just  
670 something to bring up, because the Zoning Code does speak to no development allowing water to  
671 leave somebody's property. He continued that if this were to be built right to the property line  
672 and then they had to put a gutter on it to control the water flow and keep it on their property, the  
673 gutter could be across the property line. That is just something for the Board to take into  
674 consideration.

675

676 Ms. Robinson stated that she currently does have gutters on her garage and they are angled in  
677 parallel with the driveway. She continued that what she envisions, if permitted with this  
678 Variance, is that they would continue to have gutters on the front of the garage with the down  
679 spout angled parallel to the driveway. There would never be an intention to have it pointed  
680 toward their neighbors, and in fact it would run more toward their own property than their  
681 neighbors' property.

682

683 Chair Gorman asked if Board members had further questions. Hearing none, he welcomed  
684 public comment and explained the procedures for participation.

685

686 Richard Roth of 12 Hillside Ave. stated that he owns 21 Birch St. where his daughter lives. He  
687 continued that he does not know if he should address the application point by point, but he wants  
688 to clarify a few things. The cover letter he received surprised him initially because it said that the  
689 petitioner requests a Variance to allow the expansion of the existing one car garage. The  
690 Robinsons currently park two cars in their garage as it is a two car garage. They would like it to  
691 be a bigger two car garage, from what he understands, but it is currently a small two car garage.  
692 The idea that it is a one car garage and that that is a hardship is repeated a few times. He is  
693 troubled by the presentation of the arguments for the Variance, which amount to, as far as he can  
694 tell, "*We are already really close to the property line and well within the setbacks, so what is  
695 another couple of feet?*" His understanding is that these houses were built prior to the existence  
696 of zoning ordinances, including setbacks. A lot of the properties in that neighborhood, and  
697 probably many neighborhoods in Keene, were built prior to 10' side setbacks and 25' frontage  
698 setbacks and are not up to current code. The second criterion says, "*If the Variance were  
699 granted, the spirit of the Ordinance would be observed*" and the applicants say that the spirit  
700 would be preserved because the spirit of the ordinance is to prevent encroachment to the adjacent  
701 property. In fact, they are already four feet from the property line and are proposing to encroach  
702 another two feet. He hopes that it is the Board's interest that if someone is going to tear down a  
703 structure that is within the setbacks, it would be to improve conformity to newer standard, and  
704 not to reduce conformity, so that if they were going to build a garage from scratch it is the  
705 opportunity to build something that has 10' of clearance on the sides or 25' of clearance in the  
706 front, and so on and so forth. He is a little taken by the fact that the spirit of the Ordinance  
707 would absolutely not be observed if this were granted; it would be further failed to be observed.

708

709 Mr. Roth continued that the third criterion talks about substantial justice and the applicants say  
710 this would allow the owner to build a garage large enough to store vehicles, but again, it is  
711 already a two car garage and has been functioning that way as far as he knows. He talked with  
712 some friends in real estate about how to present an argument about property values and whether  
713 or not surrounding property values would be diminished, because it is very hard to come up with  
714 factual claims about future scenarios. They do not know if his property or any of the properties  
715 in that neighborhood would be enhanced or diminished. The applicants stated in their  
716 presentation that they believe their renovation would enhance property values both for  
717 themselves and for adjacent properties, but that is just an assertion, and he is not prepared to say  
718 that he knows it will harm his property value, because he does not know when he is going to sell  
719 and what will happen. What he wants to speak to instead is the property value of his home at 21  
720 Birch St., because ultimately his plan was to move into that house when he retires in about four  
721 years. The property value would be diminished to him because the neighbor is his southern

722 exposure. When he bought the house he saw that the Robinsons' garage was very close to the  
723 property line, but it is a one story garage and the sunlight was coming in through the dining room  
724 windows and in the upstairs bedroom that is on that side of the house and everything seemed  
725 acceptable. The Robinsons say that they are going to move the garage two feet closer, and the  
726 diagram shows it is also probably two to four feet forward in the driveway, which means it will  
727 be more directly across from the body of his house. Adding a second story to the garage means  
728 there will be a view of that two story wall outside his window with the southern exposure. He  
729 cannot say what that will do to the amount of sunlight or how much it will change the sunlight,  
730 but it may create a hardship for him and may diminish his property value, and that is not being  
731 accounted for. He knows the Robinsons have the current capability of building a second story on  
732 the existing garage; that does not require a Variance. He continued that his daughter told him  
733 she first heard from the Robinsons about a plan to build an addition on the garage and he was  
734 concerned and looked at it but thought there was nothing he could do because they are allowed to  
735 have up to two stories in that neighborhood. He did not know that the Robinsons would then  
736 want to move the whole thing closer to his house, which complicates things.

737  
738 Mr. Roth continued that the application states, regarding the fifth criterion about hardship, "*This*  
739 *expansion does not create a new condition and has minimal impact on neighbors,*" but that is  
740 just a statement that has no provable evidence to support it. In his opinion, there is no  
741 unnecessary hardship that the Robinsons would face if this Variance were not approved. They  
742 have an existing two car garage which they can build additional family space on top of it. They  
743 could honor the minimal four foot setback right now of their current garage by building two feet  
744 wider in the other direction where they have a breezeway between the current garage and their  
745 house. It is not like they are going to go without a garage or without the availability of living  
746 space. He is very concerned that by moving two feet closer, they are setting a new lower bar for  
747 the neighborhood and for the public value of properties in that neighborhood, they are going in  
748 the wrong direction, contrary to the intent of the zoning ordinances.

749  
750 Chair Gorman thanked Mr. Roth and asked Staff if there were any other members of the public  
751 calling in and wishing to speak. Ms. Marcou replied no.

752  
753 Ms. Robinson stated that she values Mr. Roth's perspective as the owner of the property next  
754 door and as a potential future neighbor. She continued that she wants to share with the Board  
755 that upon planning for this addition and expansion, she and her husband had an appraisal  
756 completed on the home several months ago, and during that process the appraiser did indicate in  
757 his report that the Robinsons' garage was considered a one car garage. And then she had to argue  
758 that from an appraisal standpoint she wanted to see the highest value possible on their home, and  
759 she could not sell the fact that even though it is an oversized one car garage, the appraiser, in his  
760 professional opinion and knowing the real estate market, did indicate that this is considered a one  
761 car garage. With that, she and her husband do each have a vehicle and their existing garage does  
762 not allow both of them to park their vehicles inside the garage. They are seeking to enhance their  
763 property and get the most use possible when they seek and put this additional monetary  
764 investment into their property. They have significantly invested in their property over the course  
765 of the 13 years that they have resided here. They intend to make their property better. The two  
766 car garage structure will only be accomplished with a slight expansion of that side of the garage.  
767

768 Mr. Roth stated that presumably the Robinsons want to make their new garage two feet wider to  
769 get to 20 feet, if the existing one is 18 feet. He continued that can be achieved by going in the  
770 other direction, into the breezeway space, without further violating the setback ordinance. Thus,  
771 this plan is not the absolutely only way to accomplish what they want to accomplish. It fits two  
772 cars now, and there are two cars in there. It can be a little wider by facing the house going to the  
773 right instead of the left. That is an option that makes it an unnecessary move.

774  
775 Ms. Robinson stated that while physically they could expand the garage to the right, which will  
776 then diminish the value of their property because now they are removing existing, livable space,  
777 which has a higher square foot value, and adding a lower value per square foot for that garage  
778 space. It would be detrimental to the value of their property to build in the other direction as Mr.  
779 Roth has suggested, unfortunately, but they did consider that.

780  
781 Chair Gorman asked if the breezeway is finished living space at this point. Ms. Robinson replied  
782 yes, and it has a heat source as well.

783  
784 Mr. Hoppock stated that Mr. Roth was concerned about his ability to get light from the southern  
785 exposure if the Robinsons encroached any further than they are encroaching now into the  
786 setback. Mr. Hoppock asked if Ms. Robinson heard that remark. Ms. Robinson replied yes. Mr.  
787 Hoppock asked Ms. Robinson to explain why, if she thinks Mr. Roth is wrong.

788  
789 Ms. Robin stated that it is the southern exposure of the house, but given the way that the sun  
790 comes up over her property and his property, she believes that if she and her husband moved  
791 their garage structure an additional two feet to the north it will make such a minimal difference,  
792 if any difference at all, to be impact of the sunlight, based on the fact that they will end up  
793 building a two story structure. Whether it is in additional story where it stands today or an  
794 additional story with the structure moved two feet to the north, she does not think it will make an  
795 impact to the sunlight on his property.

796  
797 Mr. Hoppock asked if they are planning to increase the height of the garage once it is built into  
798 the setback, if it is. Ms. Robinson replied yes, the intent is to have a second story above the  
799 garage.

800  
801 Mr. Gaudio stated that he has a question about what was described as a breezeway. He  
802 continued that the first floor plan on the drawing shows it as being part of the kitchen after the  
803 renovation. He asked if there will be a breezeway there anymore. Ms. Robinson replied that the  
804 intent is that area will have a small, covered porch structure where essentially from the exterior  
805 of the home, will be a couple stairs and then enter on the same level as the existing structure of  
806 the home which will be a mud room area, so the utility of that space will remain the same. The  
807 backside of the existing breezeway area will be fully open to the existing house. The plan is to  
808 expand adjoined, livable space with the existing house and the new mud room structure that will  
809 be attached to the garage. Mr. Gaudio asked if the mud room will only be about the first five feet  
810 of what would be the breezeway, and everything back behind that will become part of the house.  
811 Ms. Robinson replied that is correct. She continued that the mud room right now is 10' by 10'  
812 and they will use 8' of that depth for that new mud room and the remainder of the space will be  
813 open to the house, whereas right now it is a covered patio area on the backside. She wants to add

814 that while they are intending to build a second story over the garage, it does sit lower than the  
815 concrete foundation for what they intend to build for the new mud room area.

816  
817 Ms. Zerba asked if staff could show the slides of both the Robinsons' and Mr. Roth's properties  
818 so the Board can see how close the house to the north is with regard to the second floor addition.  
819

820 Chair Gorman asked if anyone had further questions. Hearing none, he closed the public  
821 hearing. He stated that he will reopen it to ask procedural or technical questions if necessary.  
822 He stated that the Board will now deliberate.

823  
824 Mr. Hoppock stated that he has a technical or procedural question. He continued that the  
825 application before the Board is not for a two story garage extending into a setback. It is for a one  
826 story garage that goes to about two feet/no more than two feet to the boundary line. It is about  
827 eight feet in on the setback, give or take. Mr. Hoppock questioned, hypothetically, if this is  
828 approved, what happens when the Robinsons submits for a building permit with a proposed  
829 second floor on the garage that is already within the setback, what problems are being created.  
830

831 Mr. Rogers stated that Mr. Roth expressed some of his frustration with the language of the  
832 application itself, as "*expansion of the existing structure*" does not seem to be the case, since  
833 they intend to tear to build a new garage. The fact that the applicant has put forth to the Board  
834 that this is a two story, new structure being proposed is something the Board needs to take into  
835 consideration. If it were to be granted to build a one story garage, the section of the Zoning  
836 Code that might prohibit them from putting a second story on either this existing garage or a new  
837 one if it were built is the Alteration or Expansion of a Non-conforming Use section's 50% rule.  
838 Based off the square footage, if they added a second story they would still have to meet that 50%  
839 rule of square footage. That would be a problem. But again, if the Board is looking at how the  
840 applicant has stated that it is a two story addition, not just an expansion, he will leave that up to  
841 the Board to determine.

842  
843 Mr. Gaudio stated that he, too, has a technical or procedural question. The affidavit does not  
844 have a signature at the bottom. He asked if the office has a signed copy. Mr. Rogers replied no,  
845 in looking at the application now there is not a signature on it.

846  
847 Chair Gorman asked where these issues leave them, procedurally.

848  
849 Mr. Welsh stated that he has a clarifying question, if they were to grant the Variance, and he is  
850 hearing the 50% rule described the way it was meant to be heard, it seems like they would once  
851 again be reviewing the same applicants at some point in the future about the second story.  
852

853 Chair Gorman replied that he would be inclined to agree, that is, provided they are increasing  
854 their constructed square footage by more than 50% of what they are removing. He asked Mr.  
855 Rogers if that is an accurate assessment. Mr. Rogers replied that is correct.

856  
857 Mr. Hoppock stated that he is dissatisfied with the completeness of the application. He  
858 continued that even when he looks at Mr. Sampson's plans, with the side elevation, the rear  
859 elevation, and the front elevation, perhaps the front elevation shows that it is a two story, but it is



860 not entirely clear with the rest of it, and there is nothing in the application that speaks to that.  
861 His understanding, from listening carefully to the applicant, was that they wanted the setback  
862 now and in some point in the future they were going to expand and make it a two story and that  
863 was a separate application down the road, which is why he asked the questions that he did. If he  
864 is wrong about that and this is intended to be a “full package” of a two story garage within a  
865 setback, he is not prepared to support it under the present explanations.

866  
867 Chair Gorman stated that other Board members are welcome to offer their opinions, but he  
868 would like to reopen the public hearing and get clarification this from Ms. Robinson. Other  
869 Board members agreed.

870  
871 Chair Gorman re-opened the public hearing and asked Ms. Robinson to clarify these questions.  
872 Ms. Robinson stated that she is unclear about what additional information the Board is seeking.  
873 She continued that to restate, they are looking for approval to rebuild, which would mean  
874 demolishing the existing garage structure and rebuilding a garage structure with a second floor.  
875 That new structure would move to the north an additional two feet, whereas the garage currently  
876 is built within the setback. The purpose and utility of that space is for accommodation of two  
877 vehicles.

878  
879 Mr. Welsh asked that with this rebuilding, if the applicant is seeking to add a second story to the  
880 garage. Ms. Robinson replied yes, it would be a Cape-style addition, similar to the original  
881 home. The proposed architectural drawings were shared on the screen a moment ago.

882  
883 Hearing no further questions, Chair Gorman closed the public hearing. He asked Mr. Hoppock  
884 how he suggests the Board move forward. Mr. Hoppock stated that now that they have had the  
885 public hearing and people have had their say, and Ms. Robinson has made her position clear as to  
886 what the application is intended to request, the Board is in a position where they should consider  
887 the merits of it.

888  
889 Chair Gorman stated that the Board will review and deliberate on the five criteria.

890  
891 *1. Granting the Variance would not be contrary to the public interest.*

892  
893 Ms. Zerba stated that based on the comments of the neighbor, and she is including him as part of  
894 the “public interest,” she would not support this. She does not think it is in the neighbor’s public  
895 interest to approve this request.

896  
897 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

898  
899 Mr. Hoppock stated that for this criterion, the Board should ask two questions, “*Will granting*  
900 *the Variance alter the essential character of the neighborhood?*” and “*Will it do anything to*  
901 *harm or threaten the public health, safety, or welfare?*” On those two questions, he would have  
902 to say it would not. He noticed when Ms. Zerba asked that they go back to that overall picture,  
903 there are two lots in the neighborhood that he can see, #13 and #11, which he thinks is in the  
904 Low Density District that appear to have very close structural setback implications. Other than  
905 that, all of the other properties appear to have significant space between the boundary lines and

906 the structures on the property. He does not find that this Variance would alter the essential  
907 character of the neighborhood or threaten the public health, safety, or welfare.

908

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

910

911 Mr. Hoppock stated that he is unsure and that in his view, this ties a bit together with the  
912 unnecessary hardship. Mr. Roth properly raised the issue of light and air and space between the  
913 properties. With the second story, he does think there is an impact on Mr. Roth's light and air  
914 expectations. Part of the purpose of an ordinance is to space structures apart so that individual  
915 structures do have sufficient light and air and are not densely congested to threaten firefighting  
916 capabilities and whatnot. He is not saying this structure would do that, but he is saying that a  
917 two story structure is likely to impact Mr. Roth's expectation of light and air. That is a gain to  
918 the public that would be hurt, and it is not outweighed by an individual loss, so he is not prepared  
919 to say yes to this question.

920

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

923

924 Ms. Zerba stated that she cannot say with certainty that the properties would not be diminished,  
925 at least the property to the north of 17 Birch St. She continued that Mr. Roth made some good  
926 points and the Board does not have any definite statements from any realtors that the property  
927 would be diminished as a result of some of the potential losses that Mr. Roth would face.

928

929 Chair Gorman stated that he feels that the Robinsons' attempt to build something that is tasteful  
930 and like the neighborhood would certainly point in favor of not demonetizing surrounding  
931 properties. He continued that also, an addition of extra living space with the intention of making  
932 their house nicer typically would increase values in a neighborhood. He does not see a strong  
933 argument for demonetization of value regarding the sunlight for the house to the north. He notes  
934 that Mr. Roth's house appears pushed almost all the way to the other side of his lot, so there is a  
935 pretty good gap between the two houses. He also notes that it is a Cape-style roof. He does not  
936 know how much taller it is actually going to be, as a dormer. He knows it will not shed water  
937 next door because the roof will be pitched the other way now and might even shed less water.  
938 He does not see some of the demonetizing assertions that the abutter made as fact. He thinks the  
939 Robinsons can build the second story if they like, they just cannot stretch the setback, as long as  
940 it is less than 50%. He does not think this addition will lower property values.

941

942 5. *Unnecessary Hardship*

943

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

946

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

950 *and*

951

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

952 Mr. Hoppock stated that he thinks there is a case for a special condition of the property, which  
953 has to do with the map that was shown from which you can compare this lot with lots #13 and  
954 #11. He continued that he will agree that lot #11 is in the Low Density District, but he is not  
955 sure that matters too much. The only one that appears like lot #17 is its southerly abutter, which  
956 is very close. It seems like at that curve in the road all the properties were pushed to the north.  
957 He is prepared to say that is a special condition of the property. He also questions, given the  
958 general purpose of the ordinance, what is the general purpose of a setback requirement. It is to  
959 reduce density and reduce congestion, and it is to reduce structures being built too close to one  
960 another, so that light and air are not restricted. Thus, he thinks there is a fair and substantial  
961 relationship between the general purpose of the ordinance and its specific application to this  
962 property. For that reason he would not find an unnecessary hardship.

963  
964 Mr. Gaudio stated that this is the most difficult question of the criteria. He continued that he  
965 thinks there probably is an unnecessary hardship in the sense of sub-criteria A., but not  
966 necessarily sub-criteria B., more or less like Mr. Hoppock just mentioned. The houses here were  
967 placed there 50 or 60 years ago prior to the Zoning Ordinance adoption which left property  
968 owners stuck with the circumstances as presented which is a hardship. It is hard to do anything  
969 with the house now to deal with changing circumstances. He thinks that, on balance, there are  
970 special conditions of the property that bring in an unnecessary hardship in this circumstance, and  
971 that it would be a reasonable use.

972  
973 Chair Gorman stated that he is inclined to agree with Mr. Hoppock and Mr. Gaudio on criteria  
974 5.A. This house was built clearly prior to the adoption of the Zoning Ordinance. He continued  
975 that what would normally be reasonable to have on a single-family home with a two car garage  
976 and living space above, is not an easy accomplishment for the Robinsons with this situation  
977 relative to the setback. From his perspective that is a hardship.

978  
979 Chair Gorman asked if anyone had more to say. Hearing none, he asked for a motion.

980  
981 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 20-03. Mr.  
982 Welsh seconded the motion.

983  
984 Mr. Gaudio asked for clarification if this was an approval of a Variance only for the garage  
985 portion and if the Robinsons were to have a residential use above it, will there be a need to have  
986 another request.

987  
988 Chair Gorman stated that they are voting to approve the two story construction. Mr. Hoppock  
989 replied yes, within the setback. Chair Gorman replied that is correct, they are approving a two  
990 story addition to replace what exists currently, that will encroach two feet further into the  
991 setback. They are approving this based on the dialogue from tonight, not necessarily the letter or  
992 specifics of the application.

993  
994 Mr. Rogers asked if the Board wants to be clear as to how far into the setback they are talking  
995 about, because the application just says “within two feet.” Chair Gorman replied that is a great  
996 suggestion. He asked if Mr. Hoppock would be willing to include in his motion a limitation of  
997 one and a half feet. He continued that Mr. Sampson mentioned 1’6” to 1’10” with overhang. He



998 does not know what the Board is comfortable with but he thinks they should make some  
999 assertion about the maximum distance.

1000  
1001 Mr. Hoppock stated that he amends his motion to include “no more than one foot ten inches from  
1002 the northerly boundary line.” Mr. Welsh stated that he will amend his second.

1003  
1004 Chair Gorman clarified that motion is for the Zoning Board of Adjustment to approve ZBA 21-  
1005 03 for a two story replacement of the existing garage, coming no more than one foot ten inches  
1006 from the northern boundary line.

1007  
1008 1. *Granting the Variance would not be contrary to the public interest.*

1009  
1010 Not met 1-4. Ms. Zerba was in favor.

1011  
1012 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1013  
1014 Met 4-1. Ms. Zerba was opposed.

1015  
1016 3. *Granting the Variance would do substantial justice.*

1017  
1018 Met 3-2. Mr. Hoppock and Ms. Zerba were opposed.

1019  
1020 4. *If the Variance were granted, the values of the surrounding properties would not be*  
1021 *diminished.*

1022  
1023 Met 3-2. Mr. Hoppock and Ms. Zerba were opposed.

1024  
1025 5. *Unnecessary Hardship*  
1026 A. *Owing to special conditions of the property that distinguish it from other properties*  
1027 *in the area, denial of the Variance would result in unnecessary hardship because:*  
1028 i. *No fair and substantial relationship exists between the general public*  
1029 *purposes of the Ordinance provision and the specific application of that*  
1030 *provision to the property because:*

1031 *and*  
1032 ii. *The proposed use is a reasonable one.*

1033  
1034 Met 3-2. Mr. Hoppock and Ms. Zerba were opposed.

1035  
1036 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*  
1037 *hardship will be deemed to exist if, and only if, owing to special conditions of the*  
1038 *property that distinguish it from other properties in the area, the property cannot be*  
1039 *reasonably used in strict conformance with the ordinance, and a variance is therefore*  
1040 *necessary to enable a reasonable use of it.*

1041  
1042 Not met 0-5.

1043

1044 The motion to approve ZBA 21-03 was denied with a vote of 0-5.

1045

1046 Mr. Hoppock made a motion to for the Zoning Board of Adjustment to deny ZBA 21-03. Chair  
1047 Gorman seconded the motion, which passed by with a vote of 5-0.

1048

1049 **C) ZBA 21-02:/ Petitioner, DLC Spofford, LLC of Spofford, NH, represented by**  
1050 **Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a**  
1051 **Variance for property located at 800 Park Ave., Tax Map #227-002-000; that**  
1052 **is in the Commerce District. The Petitioner requests a Variance to allow**  
1053 **construction of a covered outdoor seating area within 15 feet of the property**  
1054 **line where a 25 foot setback is required per Section 102-791 of the Zoning**  
1055 **Ordinance.**

1056

1057 Chair Gorman asked Mr. Rogers to give relevant information for this application.

1058

1059 Mr. Rogers stated that this is on Park Ave. and there are two buildings on the property. He  
1060 continued that the building they are referencing tonight is the smaller one, currently being  
1061 operated as Cowlicks Ice Cream which does have some outdoor seating on the back deck. The  
1062 Applicant is seeking to create a covered space in the front of the building which, since this is a  
1063 corner lot, into the side setback. In the Commerce District the rear, side, and front setbacks are  
1064 all 20 feet. The application is asking to be within 15 feet as opposed to the 20 feet.

1065

1066 Mr. Welsh asked Mr. Rogers if the applicant were seeking to expand the patio and put a deck out  
1067 there and not have a covered structure, would the Board be reviewing this application. Mr.  
1068 Rogers replied that if it was simply a patio, most likely not. If it was a structure being built, yes  
1069 that would be required to meet the setback, if it was a deck of any sort. He thinks they are  
1070 proposing to put construct a stone patio with a cover over that. Mr. Welsh asked for clarification  
1071 that if it were a stone patio with tables with umbrellas, the Board probably would not be hearing  
1072 this. Mr. Rogers replied yes, that is correct.

1073

1074 Ms. Taylor stated that for the record she wanted to mention that she is back as a voting member.  
1075 She questioned Mr. Rogers that there is a steep drop off behind this particular building, but if  
1076 there were to be a patio built in either direction to the side, as opposed to the front elevation of  
1077 the building, if that would run into any setback issues. Mr. Rogers replied that there would not  
1078 be any setback issues, continuing, that he would let the applicant speak to this. He knows that  
1079 one side has a handicapped accessible ramp that was built a few years ago, and some parking.  
1080 He continued that he does not know what the property looks like, according to this plan. Ms.  
1081 Taylor replied that her question was specifically for Mr. Rogers, and her question was whether or  
1082 not there were any other setback issues if there were to be any expansion on either side of the  
1083 structure. Mr. Rogers replied no, not that he is currently aware of. He continued that he believes  
1084 this building meets the other setbacks.

1085

1086 Mr. Gaudio asked if the steps and all of the front of the building now come out within the  
1087 setback, or if this will extend out beyond where those steps are. Mr. Rogers replied that his  
1088 understanding is that this will extend out beyond the steps. It is a very basic set of stairs on the  
1089 front of the building.

1090 Chair Gorman asked if there were any more questions for Mr. Rogers. Hearing none, he stated  
1091 that he will open the public hearing, and explained the procedures for participation. He asked to  
1092 hear from Tim Sampson, representing the Petitioner.

1093  
1094 Mr. Sampson stated that he recently received clarification from his client that this space is deep  
1095 enough to allow some seating. He continued that what is also driving this request with the 10  
1096 foot depth, is to allow expanded use because there is very little seating inside, and also minimal  
1097 seating in the back. It is also a way to connect the two parking areas together and connect to the  
1098 stairs and the ramp. Right now there is parking on both sides of the building. Mr. Sampson  
1099 stated that what really is driving this proposed change is to allow customers from the parking lot  
1100 on the side furthest from the entrance in out of the rain to potentially do some take-out from that  
1101 front window, as well as closer to the entry which is towards the back corner of the building. It  
1102 is a fairly simple project. As someone mentioned, if it was just a patio, he is 99% sure he and his  
1103 client would not have submitted an application, but the intent is to have some covered area out  
1104 front and allowing what is the majority of the parking for this use, which is on the right hand side  
1105 of the drawing, in to get people out of the weather and over to the entry for the building. The  
1106 front door is not the main entry to the building at this point. When Kristen's owned it years ago,  
1107 they did some renovations. Regarding those two front rooms that you would normally see in a  
1108 Cape style building like this, one has very limited seating and the other is the kitchen area. There  
1109 is also some kitchen area downstairs. There is about 200 square feet inside for the public. The  
1110 main entry they are trying to get people to, is in the far back corner.

1111  
1112 Mr. Sampson continued that someone had asked if there was a chance to expand either left or  
1113 right. Again, if the intent was purely seating expansion, there could probably expand between the  
1114 stairs and where that ramp comes out between the American Disabilities Act (ADA) parking  
1115 area, but the intent is more than just seating. It is a way to connect the majority of the parking to  
1116 the main entry for the building.

1117  
1118 Ms. Taylor stated that she has several questions, and might be even more confused by Mr.  
1119 Sampson's explanation. She continued that she understands that there is no indoor seating at the  
1120 moment because of the COVID restrictions, but still questions what is the indoor capacity. She  
1121 is also confused by the entrance, because she did not think that that front entrance had been used.

1122  
1123 Mr. Sampson replied that this is potentially going to be a new client, new tenants of the space, so  
1124 he cannot totally speak to what the intention is for indoor seating. He continued that he knows  
1125 that the last plan that he himself did for this building was back when Kristen's moved in and did  
1126 the majority of the renovations. He himself has not been inside since it has been the ice cream  
1127 shop. He showed the ability to seat eight people inside with two tables of four people, and  
1128 seating space outside for about 12 people on the back porch.

1129  
1130 Ms. Taylor asked if that was when it was Kristen's Bakery. Mr. Sampson replied yes, when it  
1131 was Kristen's, continuing that he has not had access to the building since then. He thinks he has  
1132 been there once since it was Cowlick's.

1133  
1134 Ms. Taylor asked when Mr. Sampson says that it is a vacant building, the indistinctness of the  
1135 application is what she is trying to get more specificity on. Mr. Sampson replied that this

1136 application is for a new tenant; it is not for Cowlick's. Ms. Taylor asked if he is saying that it  
1137 does not have a tenant in it currently. Mr. Sampson replied that he does not know if Cowlick's  
1138 still has a current lease for the space, but this application will be for a new use, similar to the ice  
1139 cream store. He believes it will be a sandwich or pizza shop, although he does not have total  
1140 clarity on that.

1141  
1142 Ms. Taylor stated that she was the one who asked if it could be built on either side, and until she  
1143 saw this particular application, she did not realize that it was necessarily part of a larger parcel.  
1144 She asked if it is correct, that it is a part of a larger parcel. Mr. Sampson replied that to his  
1145 knowledge it is all one parcel. Ms. Taylor replied that what is shown on the screen right now is  
1146 800 and 830 and asked if that is all one parcel. Mr. Sampson replied yes, and he had some  
1147 confusion about that originally as well, because he thought the address for this building was 830,  
1148 and he was told by the City that it is all part of the 800 address.

1149  
1150 Ms. Taylor stated that what her questions are essentially getting at is, in trying to establish  
1151 hardship, they need to try and understand what the special conditions are of the property and why  
1152 this particular use or expansion cannot be accommodated within the confines of the Zoning  
1153 Ordinance. She continued that she understands that behind the building there is quite a steep  
1154 drop-off. She understands that might not be a reasonable place to put a walkway or a patio. That  
1155 was the basis for her question of why whatever they wanted with some reconfiguring of parking  
1156 could not be accommodated on one side or the other of the building.

1157  
1158 Mr. Sampson stated that he does not believe that the property owner is looking to reconfigure  
1159 parking. He continued that he thinks this is a simple solution as they are not looking to add  
1160 impervious surface and add to any drainage issues or runoff anywhere. There is sufficient  
1161 parking for what will be the proposed new use, essentially the same as what is there now.  
1162 They're looking for a simple solution to connect to one parking area that is a fair distance from  
1163 the main entry to the building while providing potential customers with an easy, sheltered way to  
1164 get from that parking and perhaps have double use with a little bit of exterior seating. He does  
1165 not feel as though they can accomplish that by going out back on that deck or porch area which  
1166 will begin to interfere with some of the seating. He thinks this is a fairly simple, straightforward  
1167 solution that is also in keeping with some of the commercial spaces out there. There are other  
1168 covered entries on some of the adjacent buildings on that same piece of property, and he thinks  
1169 this ties into that.

1170  
1171 Mr. Gaudio asked if there is a fairly extensive parking area off to the right as he notes that at  
1172 least in the summer months, there is usually a food truck there and the map shows this all on the  
1173 same property, couldn't a covered seating area be put on the right with a covered front while still  
1174 within the 20 foot setback. He also asked that if the steps are not in violation, couldn't that be  
1175 brought across the front and have the covered area with the seating area off to the right of the  
1176 building. Mr. Sampson replied that again, it is more than just the seating area. It is a way to get  
1177 people from that parking area to the existing parking for this building. He continued that he does  
1178 not know how any of the parking is allotted, to which specific buildings. He does not know if it  
1179 is deeded or part of leased space. He assumes that the parking area for this building, around this  
1180 building, is specifically for this. What they seek is a simple solution that is consistent with other  
1181 buildings that have covered walkways.

1182 Mr. Gaudio asked if there is an unofficial subdivision of the land. Mr. Sampson replied that he  
1183 cannot speak to how the leases are written. He continued that he assumes that there is parking  
1184 allotted to specific buildings and specific businesses that are there. He believes that when he  
1185 worked on this years ago, this is how the parking got laid out for this, because they could not  
1186 steal any of the other parking behind the building for this one. He does not know if there is any  
1187 unofficial subdivision or not. He was under the impression that they had different addresses, as  
1188 they seem to be noted on that plan as separate addresses. But when he submitted the application,  
1189 the City corrected his paperwork to say 800 versus 830 Park Ave.

1190  
1191 Ms. Taylor stated that she believes there is a sidewalk on that section of the public street on Park  
1192 Ave. She asked if that is Mr. Sampson's understanding. Mr. Sampson replied that he does not  
1193 know if that sidewalk continues down in front of this building or not. Ms. Taylor asked if that is  
1194 in fact a sidewalk, how close the intended addition is expected to come to that sidewalk. And  
1195 asked if Mr. Rogers has a better understanding on this information.

1196  
1197 Mr. Rogers stated that it does appear there is a public sidewalk on that side of the street and there  
1198 also is a sidewalk that crosses over in front of the building from one parking lot to the other  
1199 which crosses right in front of the two steps leading to the door. The front door leads into the  
1200 kitchen area and a stairway to the second floor. He assumes that the property line that Mr.  
1201 Sampson has on his site plan is from the end of that sidewalk.

1202  
1203 Chair Gorman asked if anyone had more questions for Mr. Sampson. Hearing none, he asked for  
1204 public input. He stated that he does not see anyone wishing to speak. He asked staff if there  
1205 were any callers. Ms. Marcou replied no.

1206  
1207 Ms. Taylor asked Mr. Sampson to tell the Board in a phrase or two specifically what he views as  
1208 the hardship that is involved in this application for this proposed use. Mr. Sampson replied that  
1209 the hardship is that in the area where the ADA ramp is and there is some parking, they are unable  
1210 to expand in that direction. There is a curb cut there that lets into the larger parking areas for the  
1211 other buildings. He knows it looks like there is a lot of space around this building on the plan,  
1212 but it is significantly tighter than it looks based on where all the existing paving is, even based on  
1213 that steep slope in the back of the property. The applicant is not looking for a dedicated seating  
1214 area, they are really seeking is that connection from the parking lot to the main entry to the  
1215 building. There are two ways around the building; one, they would have to build a very steep  
1216 slope and the other, they would have level grade that is already paved, thus, there is a much  
1217 simpler solution without having to jump through hoops building on steep slopes and grades.  
1218 There are those two options – one is very difficult and the other is very straight forward and  
1219 limits the amount of extra impervious surface.

1220  
1221 Chair Gorman closed the public hearing. He stated that the Board will deliberate and stated that  
1222 he will reopen the public hearing if necessary to ask procedural or technical questions.

1223  
1224 The Board deliberated on the criteria.

1225  
1226 *1. Granting the Variance would not be contrary to the public interest.*

1227 Mr. Gaudio stated that he does not see that it would be contrary to the public interest in this case.  
1228 He continued that it is not going to negatively affect other properties or other people. He does  
1229 not think that being a little closer to the street is going to have a negative effect.

1230  
1231 Chair Gorman stated that he would be inclined to agree. Mr. Hoppock stated that he would be  
1232 inclined to agree, too, but he missed how close the setback will come to the sidewalk.

1233  
1234 Chair Gorman reopened the public hearing to let Mr. Rogers answer this question. Mr. Rogers  
1235 stated that looking at the map here and Mr. Sampson's site plan with the sidewalk right there, he  
1236 would make an assumption that the edge of the sidewalk is the property line. He would get  
1237 clarity from the Board, if the Board were to approve this, on how close they can come to the  
1238 property line, because this application also states "within 15 feet." If they are looking to be 15  
1239 feet from the property line they would be 15 feet from the sidewalk.

1240  
1241 Chair Gorman thanked Mr. Rogers and closed the public hearing again.

1242  
1243 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1244  
1245 Mr. Hoppock stated that he does not think there is going to be any alteration to the essential  
1246 character of the neighborhood if this Variance were granted. He continued that given what he  
1247 heard Mr. Rogers say about the distance between the end of the porch and the beginning of the  
1248 sidewalk, roughly 15 feet, he will take that as what it is going to be, and if he makes a motion he  
1249 will state 15 feet. He does not see any threat to public health, safety, or welfare in connection  
1250 with that distance.

1251  
1252 Ms. Taylor stated that she generally agrees with Mr. Hoppock. She continued that her only  
1253 concern here is that even though this is definitely a commercial area, it is possible that the  
1254 laundromat that is down the street is that close to the setback, but generally most of the  
1255 properties in this area have buildings that meet the setback requirements, although the parking  
1256 may not.

1257  
1258 *3. Granting the Variance would do substantial justice.*

1259  
1260 Mr. Hoppock stated that he guesses from the layout, the plan, and what he has heard, he does not  
1261 see any loss to the general public from denying this, but he does see a loss to the individual if  
1262 they deny this. He continued that he is unsure of his stand on this criteria, but he is leaning  
1263 toward being in favor of there being substantial justice by granting this.

1264  
1265 Chair Gorman stated that he is inclined to agree. He continued that he does not see much  
1266 negative or adverse impact to surrounding properties, and he does see some gain to the owners  
1267 who are trying to do business at the property.

1268  
1269 Mr. Gaudio stated that he thinks in this particular case it is actually the same as the first criterion,  
1270 it is not contrary to the public interest, but is in the public interest.

1271



1272 4. *If the Variance were granted, the values of the surrounding properties would not be*  
1273 *diminished.*

1274  
1275 Chair Gorman stated that he does not believe that granting the Variance would diminish  
1276 surrounding properties. He continued that he thinks this will fit in with the appearance and  
1277 generally what is going on around the property.

1278  
1279 Mr. Hoppock stated that he understands the argument that would suggest that if a business were  
1280 able to accommodate people, there would be potentially more business attracted to other  
1281 surrounding businesses. He does not see anything that would diminish property values, and there  
1282 is an argument that it could increase them. Chair Gorman replied that that is a great point he had  
1283 not thought of.

1284  
1285 5. *Unnecessary Hardship*

1286 A. *Owing to special conditions of the property that distinguish it from other properties*  
1287 *in the area, denial of the Variance would result in unnecessary hardship because:*

1288 i. *No fair and substantial relationship exists between the general public*  
1289 *purposes of the Ordinance provision and the specific application of that*  
1290 *provision to the property because:*

1291 *and*

1292 ii. *The proposed use is a reasonable one.*

1293  
1294 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*  
1295 *hardship will be deemed to exist if, and only if, owing to special conditions of the*  
1296 *property that distinguish it from other properties in the area, the property cannot be*  
1297 *reasonably used in strict conformance with the ordinance, and a variance is therefore*  
1298 *necessary to enable a reasonable use of it.*

1299  
1300 Ms. Taylor stated that this criteria is the one she is struggling with. She continued that she really  
1301 has not found where there is a hardship. There might be a hardship in the rear of the building  
1302 because of the drop off, but especially on a corner that already has traffic issues, she does not see  
1303 why this is the only location on that property where the owner wants to do the addition that they  
1304 have proposed.

1305  
1306 Mr. Welsh stated that he thought the applicant did a pretty good job fielding Ms. Taylor's  
1307 question about this. He continued that it conjured the peculiarities of the property and the utility  
1308 of being able to bring people from the parking lot to the west, more directly into the facility. He  
1309 finds that this was demonstrated.

1310  
1311 Mr. Hoppock stated that he is inclined to agree with Mr. Welsh on that point. He continued that  
1312 he would add, based on what he said in regards to the prior application in terms of the general  
1313 purpose of the setbacks is to give space between neighbors to allow light and air and to allow  
1314 safety in terms of fire and containing contagion and whatnot. Here, they do not have the  
1315 problem they had in the last case, so there is no fair and substantial relationship to that overall  
1316 general purpose and its application to this property. He thinks the special conditions of the  
1317 property, mainly the issues that Mr. Welsh raised, enhance that lack of relationship.

1318 Mr. Hoppock made a motion for Zoning Board of Adjustment to approve ZBA 21-02, with the  
1319 structure to be built no more than 15 feet from the sidewalk.

1320

1321 Chair Gorman asked if they are referring to the sidewalk as the property line. Mr. Hoppock  
1322 replied yes, that was his understanding, the Park Ave. sidewalk.

1323

1324 Mr. Welsh seconded the motion.

1325

1326 Chair Gorman stated that they have a motion to approve ZBA 21-02 with the condition of the  
1327 structure for the outdoor seating area not encroaching within 15 feet of the property line and/or  
1328 the sidewalk.

1329

1330 1. *Granting the Variance would not be contrary to the public interest.*

1331

1332 Met 5-0.

1333

1334 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1335

1336 Met 5-0.

1337

1338 3. *Granting the Variance would do substantial justice.*

1339

1340 Met 5-0.

1341

1342 4. *If the Variance were granted, the values of the surrounding properties would not be*  
1343 *diminished.*

1344

1345 Met 5-0.

1346

1347 5. *Unnecessary Hardship*

1348 A. *Owing to special conditions of the property that distinguish it from other properties*  
1349 *in the area, denial of the Variance would result in unnecessary hardship because:*

1350 i. *No fair and substantial relationship exists between the general public*  
1351 *purposes of the Ordinance provision and the specific application of that*  
1352 *provision to the property because:*

1353 *and*

1354 ii. *The proposed use is a reasonable one.*

1355

1356 Met 4-1. Ms. Taylor was opposed.

1357

1358 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*  
1359 *hardship will be deemed to exist if, and only if, owing to special conditions of the*  
1360 *property that distinguish it from other properties in the area, the property cannot be*  
1361 *reasonably used in strict conformance with the ordinance, and a variance is therefore*  
1362 *necessary to enable a reasonable use of it.*

1363



1364 Not met 0-5.

1365

1366 The motion to approve ZBA 21-02 passed with a vote of 4-1. Ms. Taylor was opposed.

1367

1368 **V. New Business**

1369

1370 Mr. Rogers stated that staff does not have any new business.

1371

1372 Mr. Hoppock asked if Mr. Rogers has any update on any appeals that may be pending in court.

1373 Mr. Rogers replied that there was an appeal filed for the Water St. property. He continued that

1374 he is not sure the status though he knows the City Attorney is preparing information for the

1375 appeal..

1376

1377 Mr. Hoppock asked if there was any Motion to Rehear in connection with the Kings Court

1378 petition. Mr. Rogers replied that staff has not seen anything on that one.

1379

1380 **VI. Communications and Miscellaneous**

1381

1382 **VII. Non-Public Session (if required)**

1383

1384 **VIII. Adjournment**

1385

1386 There being no further business, Chair Gorman adjourned the meeting at 9:40 PM.

1387

1388 Respectfully submitted by,

1389 Britta Reida, Minute Taker

1390 Edits submitted by,

1391 Corinne Marcou, Zoning Clerk

Page intentionally left blank

# 163 WASHINGTON ST. ZBA 21-04



Petitioner requests a Variance to allow 8 parking spaces where the minimum of 13 is required per Section 102-793 with one parking space for every 200 square feet of gross area for an Office Use.



**NOTICE OF HEARING**

**ZBA 21-04**

A meeting of the Zoning Board of Adjustment will be held on Monday, February 1, 2021 at 6:30 PM to consider the petition of Nathan and Karen Manlove of 188 East Shore Rd., Swanzey, NH, represented by Chad Branon of Fieldstone Land Consultants, of Milford, 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 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. 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 21-04:** Petitioner, Nathan and Karen Manlove of 188 East Shore Rd., Swanzey, NH, represented by Chad Branon of Fieldstone Land Consultants of Milford, NH, requests a Variance for property located at 163 Washington St., Tax Map #553-011-000; that is in the Office District and owned by Kontor Partners, LLC of 188 East Shore Rd., Swanzey, NH. The Petitioner requests a Variance to allow 8 parking spaces where the minimum of 13 is required per Section 102-793 of the Zoning Ordinance with one parking space for every 200 square feet of gross area for an Office Use.

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 January 21, 2021

# APPLICATION FOR APPEAL

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

### For Office Use Only:

Case No. \_\_\_\_\_  
Date Filed \_\_\_\_\_  
Received By \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_  
Reviewed By \_\_\_\_\_

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

### TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

### SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Nathan and Karen Manlove Phone: 603-762-1369  
Address 188 East Shore Road, Swanzey, NH 03446  
Name(s) of Owner(s) Kontor Partners, LLC  
Address 188 East Shore Road, Swanzey, NH 03446  
Location of Property 163 Washington Street

### SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 553-11 Zoning District Office  
Lot Dimensions: Front 82.50' Rear 82.50' Side 164.18' (N) Side 165.00' (S)  
Lot Area: Acres 0.31+/- Square Feet 13,612+/-  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 26.5% Proposed 26.5%  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 41% Proposed 58%  
Present Use Residential  
Proposed Use Office

### 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.

 Date 1/15/2021  
(Signature of Owner or Authorized Agent)

Please Print Name Chad E. Branon, P.E. w/Fieldstone Land Consultants, PLLC

PROPERTY ADDRESS 163 Washington Street

***APPLICATION FOR A VARIANCE***

- A Variance is requested from Section (s) 102-793 of the Zoning Ordinance to permit:

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

\*See Attached Narrative\*

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

\*See Attached Narrative\*

3. Granting the variance would do substantial justice because:

\*See Attached Narrative\*

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

\*See Attached Narrative\*

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:

\*See Attached Narrative\*

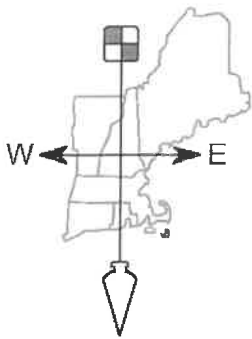
and

ii. The proposed use is a reasonable one because:

\*See Attached Narrative\*

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.

\*See Attached Narrative\*



# FIELDSTONE

Surveying ♦ Engineering  
Land Planning ♦ Septic Designs

LAND CONSULTANTS, PLLC

206 Elm Street, Milford, NH 03055 - Phone: 603-672-5456 - Fax: 603-413-5456  
www.FieldstoneLandConsultants.com

## VARIANCE CRITERIA

(VARIANCE FROM SECTION 102-793)

Tax Map Parcel 553-11

163 Washington Street - Keene, NH

January 15, 2021

Prepared For:

Nathan and Karen Manlove

The subject property consists of approximately 0.31 acres of land and has frontage along Washington Street. The subject site is developed with a 1,943 SF structure with a 916 SF garage and associated site improvements. The property was most recently used as a single-family residence but has a history of commercial uses prior to that. Converting this property back to a commercial office use would make the property more conforming use wise as the site is situated in the office zone.

The proposed use for the property is a shared professional office. The conversion will consist of creating 7 offices with a shared conference room, kitchen and bathroom facilities. The space is will be occupied primarily by therapists. This type of office is by appointment only and will not be open to the public. Due to the unique characteristics of this office use, there is less of a parking demand.

Section 102-793 of the Zoning Ordinance deals with the minimum parking requirements for various uses. The listed requirement for offices under this section is one space per 200 square feet of gross floor area. Our client's calculation of the gross floor area that is not shared/common space or used for storage inside the building will consist of approximately 2,410 square feet. This space would require 13 parking spaces. The subject property could currently support 8 parking spaces per the attached Zoning Exhibit Plan. This is less than the minimum required per Section 102-793 of the Keene Zoning Ordinance which is why we are requesting zoning relief in the form of a variance.

The numbered items below correlate to the questions asked in the City Application for a Variance.

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

Granting this variance would allow for the productive use of the existing property. It would also allow the property to be converted back into a conforming use as the site is situated in the Office Zone. Granting this variance would not be contrary to the public interest as this project will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public.



2. If the Variance were granted, the spirit of the ordinance would be observed because:  
The proposal for this site is consistent with the surround areas and would bring the site into conformance with the underlying zoning. This project will meet all of the dimensional standards and will be in harmony with the neighborhood. This project will increase the City tax base and will have no measurable negative impacts to the public. The proposed use for the project as a professional office that operates by appointment only and is not open to the public is unique and will not require the same demand for parking as standard office space. This proposal will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. For all of these reasons we believe that granting the variance would observe the spirit of the ordinance.
  
3. Granting the variance would do substantial justice because:  
Granting this variance would allow the land owner to reasonably utilize the property with a use that is compatible with the local zoning. Granting this variance would do substantial justice as there would be a clear benefit and gain to the project and my client with no loss to the general public. In other words, a denial of this variance request would be an injustice to my client as there would be no apparent gain to the general public by denying this application.
  
4. If the variance were granted, the values of the surrounding properties would not be diminished because:  
The subject property has been used commercially in the past and was most recently utilized as a single-family residence. This proposal is in harmony with the neighborhood and is less intense use than a standard office or other permitted uses in the zone. The owner of the property will be improving the property and this will ultimately increase the value of the subject property. We do not believe that request for reduced parking in this variance would have any negative impacts on the surrounding property values. For all of these reasons we do not believe that the conversion of this property to a conforming office use would have any negative impacts on the value of surrounding properties.
  
5. Unnecessary Hardship
  - A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
    1. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:  
The subject property is a 0.31-acre site with existing improvements. The size of the property along with the size and location of the existing improvements restrict our client's ability to conform with Section 102-793 of the Keene Zoning Ordinance and the minimum parking requirements for an office use. The proposed use for the property is a shared professional office. The conversion will consist of creating 7 offices with a shared

conference room, kitchen and bathroom facilities. The space is will be occupied primarily by therapists. This type of office is by appointment only and will not be open to the public. Due to the unique characteristics of this office use, there is less of a parking demand and the site will provide for ample parking for this proposed use. It is worth noting that there is on-street parking as well which is utilized for businesses in this area. The conversion of this site to a conforming office use will not require significant site improvements, will not burden local services and will not be a detriment to the surroundings. This proposal will actually increase the Town tax base and be consistent with its surroundings while providing a service to the community that is needed. For the reasons outlined above, we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

2. The proposed use is a reasonable one because:

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- Granting this variance would allow for the productive use of the exist property.
- The conversion of the property from residential to office brings the property into conformance with the underlying zoning which is the Office Zone.
- The proposed use as an office space would be in harmony with the neighborhood.
- The conversion of this property to an office space would not be contrary to the public interest as this project will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public.
- This proposal would in our opinion observe the spirit and intent of the ordinance.
- This project would have no measurable negative impacts on the surroundings or their property values.

For all of the reasons we believe that the proposed use is reasonable.

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

The subject property is located in the office zone and this proposal will convert an existing property into a conforming zone. The property consists of 0.31 acres of land is already developed with a primary structure and a garage with associated site improvements. This project proposes to provide for as much compliant parking on-site as possible working with the existing conditions of the property. The location of the house on this site is situated further into the site when compared to other properties along Washington Street. The location of the house restricts the ability to locate parking since no parking can be located in front of the building line and the location of the house restricts the ability to locate more parking at the rear of the structure due to its proximity to the rear and side boundaries of

Nathan and Karen Manlove  
163 Washington Street – Keene, NH  
Variance Application

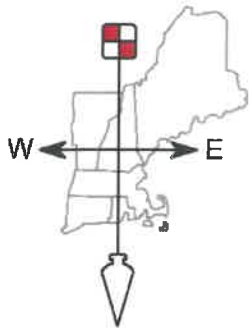
Page 4 of 3

the property. These are all special conditions of the property that distinguish it from other properties in the area. Due to these conditions this property cannot be reasonably used in strict conformance with the ordinance and we are thereby requested a variance from Section 102-793 to enable the reasonable use of the subject property.

This information was prepared by:  
**Fieldstone Land Consultants, PLLC**



Chad E. Branon, P.E.  
Project Manager



# FIELDSTONE

Surveying ♦ Engineering  
Land Planning ♦ Septic Designs

LAND CONSULTANTS, PLLC

206 Elm Street, Milford, NH 03055 - Phone: 603-672-5456 - Fax: 603-413-5456  
www.FieldstoneLandConsultants.com

January 14, 2021

RE: Nathan & Karen Manlove  
163 Washington Street - Keene, NH  
Tax Map 553 Lot 11

To Whom It May Concern:

The undersigned hereby authorizes Fieldstone Land Consultants, PLLC to act as their agent in filing and seeking the necessary local, state and federal approvals for the above referenced project.

Very truly yours,

Signature: *Karen Manlove*

Print: Karen Manlove

Date 1/14/21



# 200 foot Abutters List Report

Keene, NH  
January 19, 2021

## Subject Property:

Parcel Number: 553-011-000  
CAMA Number: 553-011-000-000-000  
Property Address: 163 WASHINGTON ST.

Mailing Address: KONTOR PROPERTIES LLC  
188 E. SHORE RD.  
SWANZEY, NH 03446

## Abutters:

Parcel Number: 550-049-000  
CAMA Number: 550-049-000-000-000  
Property Address: 217 WASHINGTON ST.

Mailing Address: UNION SCHOOL DISTRICT  
193 MAPLE AVE.  
KEENE, NH 03431-1602

Parcel Number: 550-050-000  
CAMA Number: 550-050-000-000-000  
Property Address: 191 WASHINGTON ST.

Mailing Address: BERGERON JULIANA T.  
410 MAIN ST.  
KEENE, NH 03431

Parcel Number: 553-003-000  
CAMA Number: 553-003-000-000-000  
Property Address: 146 WASHINGTON ST.

Mailing Address: BORYNACK DONNA LIVING TRUST  
146 WASHINGTON ST. 1  
KEENE, NH 03431

Parcel Number: 553-004-000  
CAMA Number: 553-004-000-000-000  
Property Address: 154 WASHINGTON ST.

Mailing Address: BERNIUS CATHY L.  
267 COURT ST.  
KEENE, NH 03431

Parcel Number: 553-005-000  
CAMA Number: 553-005-000-000-000  
Property Address: 168 WASHINGTON ST.

Mailing Address: MGJ REALTY LLC  
PO BOX 562  
KEENE, NH 03431

Parcel Number: 553-006-000  
CAMA Number: 553-006-000-000-000  
Property Address: 176 WASHINGTON ST.

Mailing Address: DUNNELL KRISTIN  
176 WASHINGTON ST.  
KEENE, NH 03431

Parcel Number: 553-007-000  
CAMA Number: 553-007-000-000-000  
Property Address: 184 WASHINGTON ST.

Mailing Address: JESSE HELEN L.  
184 WASHINGTON ST.  
KEENE, NH 03431-3111

Parcel Number: 553-009-000  
CAMA Number: 553-009-000-000-000  
Property Address: 181 WASHINGTON ST.

Mailing Address: 181 WASHINGTON STREET LLC  
181 WASHINGTON ST.  
KEENE, NH 03431

Parcel Number: 553-010-000  
CAMA Number: 553-010-000-000-000  
Property Address: 173 WASHINGTON ST.

Mailing Address: JTP PROPERTIES LLC  
PO BOX 314  
KEENE, NH 03431

Parcel Number: 553-012-000  
CAMA Number: 553-012-000-000-000  
Property Address: 153-155 WASHINGTON ST.

Mailing Address: SUNSPACE REALTY INC.  
45 HILLTOP DR.  
KEENE, NH 03431



www.cai-tech.com

Data shown on this report 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 report.



# 200 foot Abutters List Report

Keene, NH  
January 19, 2021

Parcel Number: 553-013-000  
CAMA Number: 553-013-000-000-000  
Property Address: 147 WASHINGTON ST.

Mailing Address: RISE FOR BABY AND FAMILY  
147 WASHINGTON ST.  
KEENE, NH 03431

Parcel Number: 553-014-000  
CAMA Number: 553-014-000-000-000  
Property Address: 127 WASHINGTON ST.

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

Parcel Number: 553-015-000  
CAMA Number: 553-015-000-000-000  
Property Address: 20 BEAVER ST.

Mailing Address: ABBOTT MATTHEW W. ABBOTT  
KATHARINE L.  
20 BEAVER ST.  
KEENE, NH 03431

Parcel Number: 553-016-000  
CAMA Number: 553-016-000-000-000  
Property Address: 24 BEAVER ST.

Mailing Address: CARBONE TIMOTHY J. REV. TRUST  
193 ISLAND ST.  
KEENE, NH 03431

Parcel Number: 553-020-000  
CAMA Number: 553-020-000-000-000  
Property Address: 22 PAGE ST.

Mailing Address: BIRCH KATHLEEN A. BIRCH ROGER  
22 PAGE ST.  
KEENE, NH 03431

Parcel Number: 553-021-000  
CAMA Number: 553-021-000-000-000  
Property Address: 30 PAGE ST.

Mailing Address: MATTSON BRIAN A. MATTSON VIRGINIA  
L.  
30 PAGE ST.  
KEENE, NH 03431

Parcel Number: 553-022-000  
CAMA Number: 553-022-000-000-000  
Property Address: 40 PAGE ST.

Mailing Address: BARRY CHRISTOPHER D. BARRY  
ELIZABETH A.  
40 PAGE ST.  
KEENE, NH 03431

Parcel Number: 553-023-000  
CAMA Number: 553-023-000-000-000  
Property Address: 44 PAGE ST.

Mailing Address: SIBLEY EVA MARIA  
44 PAGE ST.  
KEENE, NH 03431

Parcel Number: 553-024-000  
CAMA Number: 553-024-000-000-000  
Property Address: 56-58 PAGE ST.

Mailing Address: HERTZLER MARK J. HERTZLER  
KRISTEN J.  
148 WINCHESTER RD.  
CHESTERFIELD, NH 03443-4308



www.cai-tech.com

Data shown on this report 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 report.





## ZBA ABUTTERS LIST

ADDRESS: 163 Washington Street

Owner Name	TMP NO.	Mailing Address
Union School District	550-049-000	193 Made Ave. Keene NH 03431
Juliana T. Bergeron	550-050-000	410 Main St. Keene NH 03431
Bornback Donna Living Trust	553-003-000	146 Washington St 2 Keene NH 03431
Cathy L. Bernius	553-004-000	207 Court St. Keene NH 03431
MGS Realty LLC	553-005-000	PO Box 562 Keene NH 03431
Kristin Dunnell	553-006-000	176 Washington St Keene NH 03431
Heleen L. Jessel	553-007-000	184 Washington St. Keene NH 03431
181 Washington St LLC	553-009-000	181 Washington St. Keene NH 03431
JTP Properties LLC	553-010-000	PO Box 314 Keene NH 03431
Sunspace Realty Inc	553-012-000	45 Hilltop Drive Keene NH 03431
Rise for Baby and Family	553-013-000	147 Washington St Keene NH 03431
Beauregard Family Rev. Trust	553-014-000	127 Washington St Keene NH 03431
Matthew W. Abbott	553-015-000	20 Beaver St. Keene, NH 03431
Carbone Timothy J. Rev Trust	553-016-000	193 Island St. Keene NH 03431
Birch Kathleen A Birch Regal	553-020-000	22 Page St. Keene NH 03431
Brian Virginia Mattson	553-021-000	30 Page St. Keene NH 03431
Christopher D. Barry	553-022-000	40 Page St. Keene NH 03431
Sibley Eva Maria	553-023-000	44 Page St. Keene NH 03431
Hertzel Mark J Knisen J	553-024-000	148 Winchester Road Chathamfield, NH 03443

### Notarized Statement

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

Nathan Marlowe

Signature

STATE OF NEW HAMPSHIRE  
CHESHIRE, SS

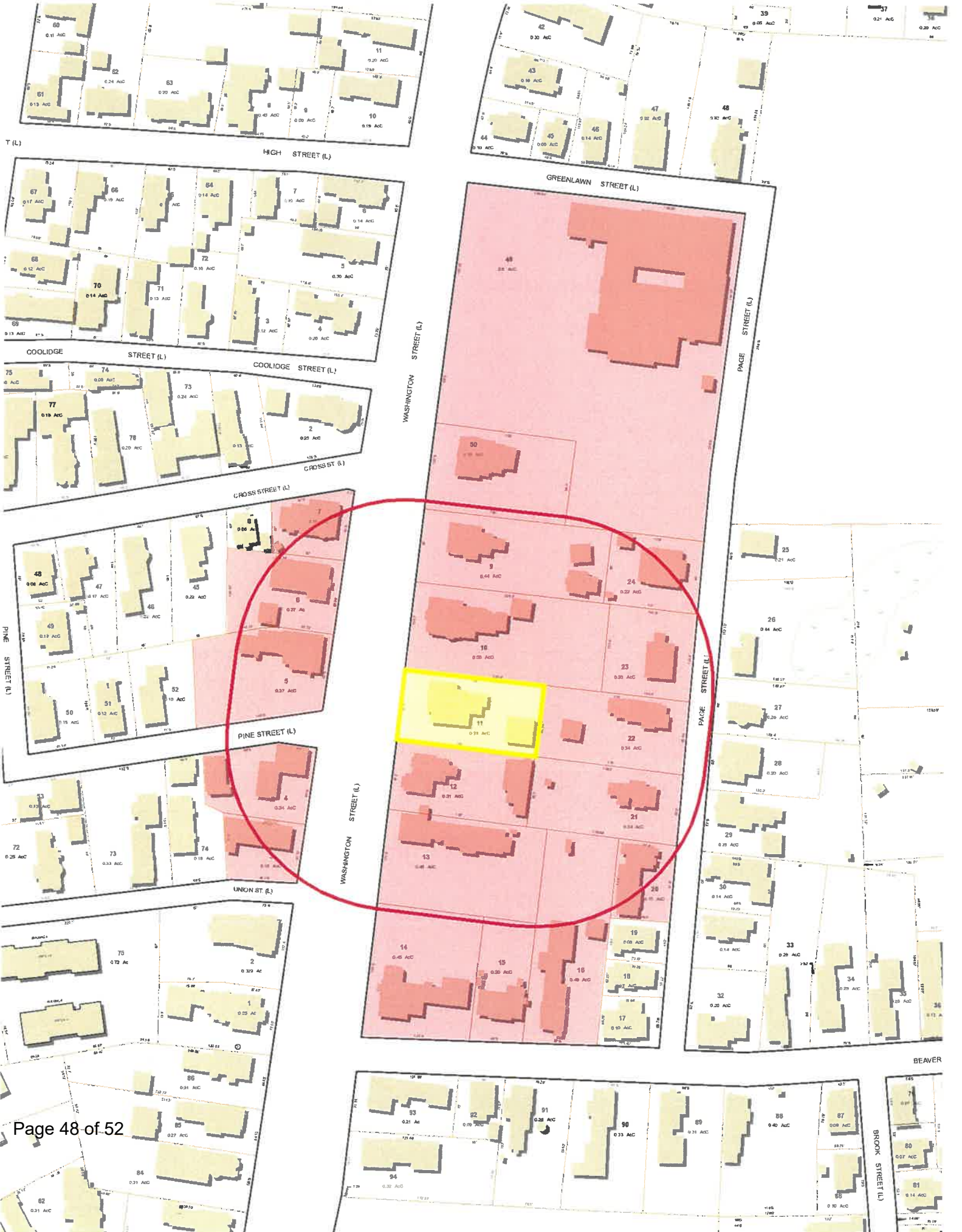
Subscribed and sworn before me this 14<sup>th</sup> day of Jan., 2021.

Deborah Paight

Notary Public/Justice of the Peace

My Commission Expires \_\_\_\_\_

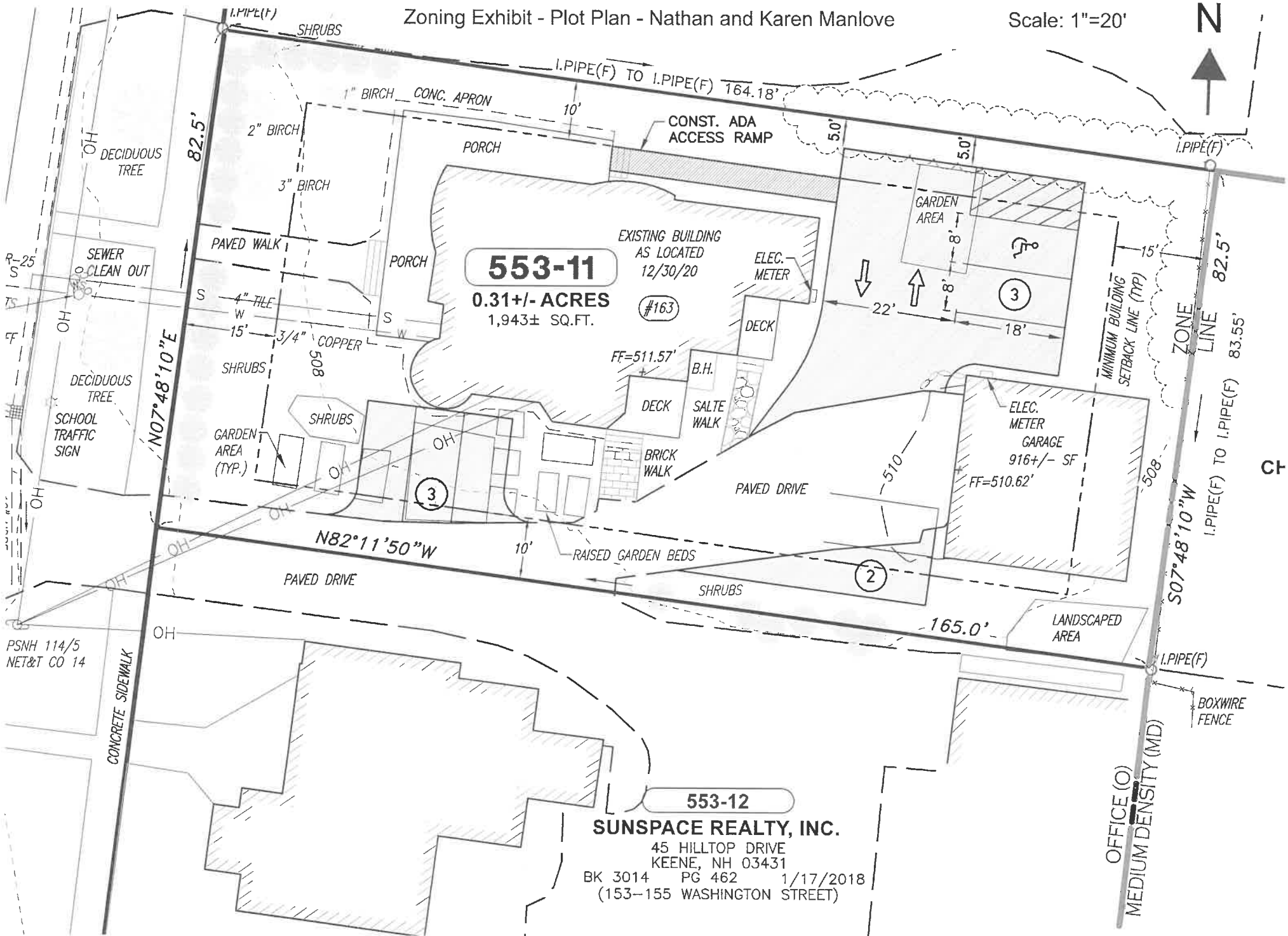
DEBORAH J. PAIGHT  
NOTARY PUBLIC  
State of New Hampshire  
My Commission Expires  
February 10, 2021



Zoning Exhibit - Plot Plan - Nathan and Karen Manlove

Scale: 1"=20'

N



**553-11**  
0.31±/- ACRES  
1,943± SQ.FT.

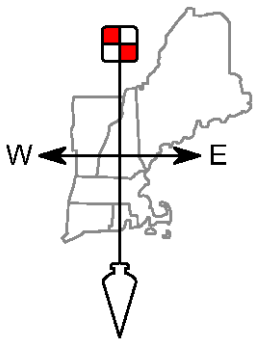
EXISTING BUILDING  
AS LOCATED  
12/30/20

#163

ELEC. METER  
GARAGE  
916±/- SF  
FF=510.62'

**553-12**  
**SUNSPACE REALTY, INC.**  
45 HILLTOP DRIVE  
KEENE, NH 03431  
BK 3014 PG 462 1/17/2018  
(153-155 WASHINGTON STREET)





# FIELDSTONE

Surveying ♦ Engineering  
Land Planning ♦ Septic Designs

LAND CONSULTANTS, PLLC

206 Elm Street, Milford, NH 03055 - Phone: 603-672-5456 - Fax: 603-413-5456  
www.FieldstoneLandConsultants.com

## PARKING SUMMARY

Tax Map Parcel 553-11

163 Washington Street - Keene, NH

January 21, 2021

Prepared For:

Nathan and Karen Manlove

The subject property consists of approximately 0.31 acres of land and has frontage along Washington Street. The property was most recently used as a single-family residence but was occupied by a funeral home prior to that. The plans for this property consist of converting the site into an office use.

The property is currently developed with an existing 3-story building and detached garage. The gross area of the first floor of the structure is 1,818+/- square feet. The second floor has a gross area of 1,679+/- square feet. The attic area has a gross area of 1,804+/- square feet and the basement area of the structure has a gross area of 1,818+/- square feet.

In reviewing Section 102-793 of the City Ordinance pertaining to the minimum parking requirements an office use requires one space for every 200 square feet of gross floor area. The City's definition of gross floor area allows the exclusion of uses accessory to the operation of the building but habitable attics and basements are to be included.

The following is a breakdown of the use per floor:

- Basement Level:** The basement space is unfinished and will be used as storage. Since the storage is accessory to the operation of the building there is not parking requirement for this space.
- First Floor:** The gross floor area of the first floor is 1,818 SF. This floor will include uses accessory to the operation. These include a kitchen, storage and a shared conference room which total 601 SF. Given this the total area for parking calculations on this floor consist of 1,217 SF of office space.
- Second Floor:** The second floor consists of 1,679 SF. The uses accessory to the operation on this floor include extra bathrooms and a laundry room and these spaces total 372 SF. Given this the total area for parking calculations on this floor consist of 1,307 SF of office space.
- Attic Level:** The attic space consists of finished and unfinished space totaling 1,804 SF. Due to the limited egress the entire space will be utilized for storage.

Nathan and Karen Manlove  
163 Washington Street – Keene, NH  
Parking Summary

Page 2 of 2

Given this the total office space for this structure will be 2,524 SF. The office space parking calculation yields a requirement for 12.6 parking spaces.

The total parking requirements for the site is therefore 13 spaces to comply with this section of the ordinance.

This information was prepared by:  
**Fieldstone Land Consultants, PLLC**



Chad E. Branon, P.E.  
Project Manager

**LEGEND:**

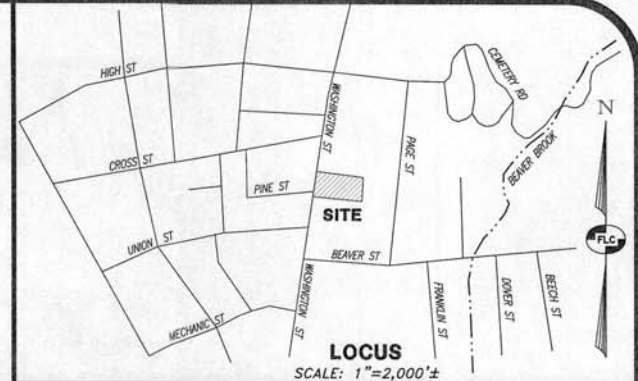
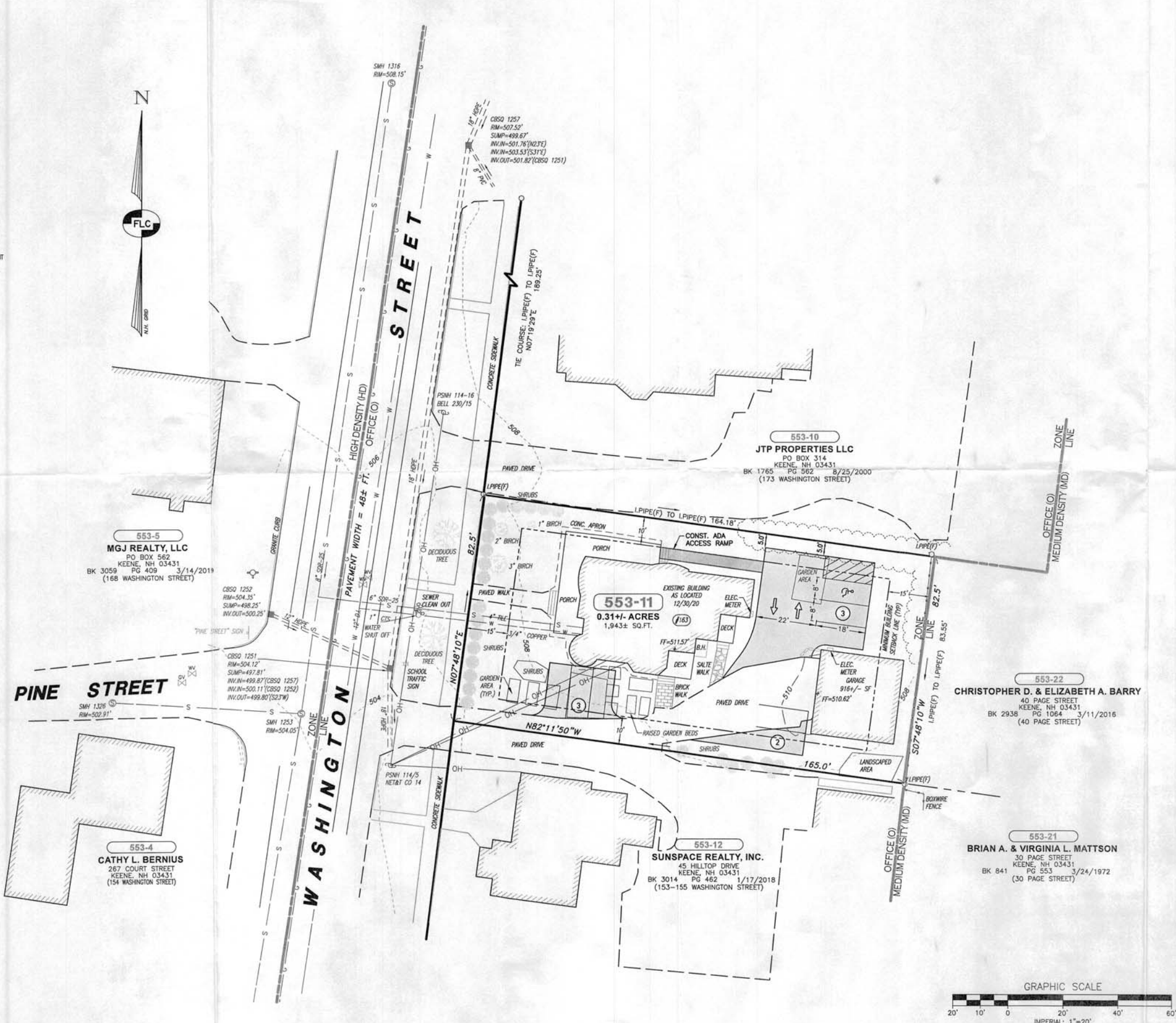
**EXISTING LEGEND**

- RIGHT-OF-WAY LINE
- BOUNDARY LINE
- ABUTTING LOT LINE
- BUILDING SETBACK LINE
- EDGE OF PAVED ROAD
- BOXWIRE FENCE
- 500 10' CONTOUR INTERVAL
- 502 2' CONTOUR INTERVAL
- W WATER LINE
- S SEWER LINE
- ⊕ WATER HYDRANT
- ⊕ WATER SHUTOFF
- CATCH BASIN SQUARE
- ⊕ LIGHT POST
- ⊕ WATER GATE
- ⊕ GAS VALVE
- ⊕ SEWER MAN-HOLE
- ⊕ UTILITY POLE, GUY & LIGHT
- 553-11 TAX MAP & LOT NUMBER

**PROPOSED LEGEND**

- ⓪ PARKING COUNT
- ▭ PAVED AREA

**REFERENCE PLAN:**  
PLOT PLAN PREPARED BY FRANK A. GLINE, JR., DATED: MAY, 1970, SCALE: 1"=10'.



- NOTES:**
- THE OWNER OF RECORD FOR LOT 553-11 IS KONTOR PARTNERS, LLC - 188 EAST SHORE ROAD, SWANZEY, NEW HAMPSHIRE. THE DEED REFERENCE FOR THE PARCEL IS VOL.3145 PG.876 DATED JANUARY 8, 2021 IN THE C.C.R.D.
  - THE PURPOSE OF THIS PLAN IS TO DEPICT THE EXISTING SITE CONDITIONS FOR 163 WASHINGTON STREET (TAX MAP PARCEL 553-11) ALONG WITH THE PROPOSED SITE IMPROVEMENTS FOR THE CONVERSION OF THE EXISTING RESIDENTIAL STRUCTURE INTO A PROFESSIONAL OFFICE BUILDING.
  - THE TOTAL AREA OF TAX MAP PARCEL 553-11 IS 0.31± ACRES OR 13,500± SQ.FT. WITH 82.5 FEET OF FRONTAGE ON WASHINGTON STREET.
  - CURRENT ZONING REQUIREMENTS FOR THE OFFICE ZONE:
 

MINIMUM LOT REQUIREMENTS	REQUIRED	EXISTING
LOT AREA (SQ.FT.)	8,000 SQ.FT.	13,500± SQ.FT.
LOT FRONTAGE (FT)	50'	82.5'
LOT WIDTH (FT)	60'	82.5'
LOT DEPTH (FT)	NONE	165'
  - MINIMUM BUILDING SETBACKS:
 

	REQUIRED	EXISTING
FRONT (FT)	15'	37.6'
SIDE (FT)	10'	15.4'
REAR (FT)	15'	5.6'
MAX. BUILDING STORIES	2	2 W/ATTIC
MAX. BUILDING HEIGHT (FT)	35'	<35'
  - BOUNDARY INFORMATION SHOWN WAS DEVELOPED ENTIRELY FROM THE REFERENCE PLAN & DEED CITED HEREON AND PHYSICAL EVIDENCE LOCATED BY THIS OFFICE. HORIZONTAL ORIENTATION IS N.H. GRID AND VERTICAL DATUM IS NAVD83, PER GPS OPUS OBSERVATIONS.
  - THE UNDERGROUND UTILITIES SHOWN WERE DEVELOPED IN PART BY PLANS OF RECORD AND FIELD LOCATION. THE LOCATION OF UNDERGROUND UTILITIES SHOULD BE CONSIDERED APPROXIMATE AND SHALL BE FIELD VERIFIED PRIOR TO ANY EXCAVATION OR CONSTRUCTION ACTIVITIES.
  - MAP PARCEL 553-11 LIES OUTSIDE THE FLOOD HAZARD AREA AS DETERMINED FROM THE FLOOD INSURANCE STUDY (FIRM), CHESHIRE COUNTY, NEW HAMPSHIRE, COMMUNITY NO. 330023 PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, MAP NUMBER 33005C0259E DATED MAY 23, 2006.
  - SURFACE FEATURES AND SITE TOPOGRAPHY SHOWN ARE THE RESULT OF AN ON SITE FIELD SURVEY DURING THE MONTH OF DECEMBER 2020, TOGETHER WITH THE REFERENCE PLAN CITED HEREON.
  - THE SOIL CLASSIFICATION BY THE N.R.C.S. - CHESHIRE COUNTY, NEW HAMPSHIRE - FOR THE ENTIRE PARCEL IS 26B - WINDSOR LOAMY SAND, 3 TO 8% SLOPES.

REV.	DATE	DESCRIPTION	C/O	DR	CK

**ZONING EXHIBIT PLAN**  
**TAX MAP 553 LOT 11**  
**(163 WASHINGTON STREET)**  
**KEENE, NEW HAMPSHIRE**

PREPARED FOR:  
**NATHAN & KAREN MANLOVE**  
188 EAST SHORE ROAD, SWANZEY, NEW HAMPSHIRE

LAND OF:  
**KONTOR PARTNERS, LLC**  
188 EAST SHORE ROAD, SWANZEY, NEW HAMPSHIRE

SCALE: 1" = 20' JANUARY 13, 2021

Surveying ♦ Engineering ♦ Land Planning ♦ Permitting ♦ Septic Designs



206 Elm Street, Milford, NH 03055  
Phone: (603) 672-5456 Fax: (603) 413-5456  
www.FieldstoneLandConsultants.com