

**City of Keene**  
**New Hampshire**

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

**Monday, October 18, 2021**

**6:30 PM**

**Council Chambers**

**Members Present:**

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

**Staff Present:**

John Rogers, Zoning Administrator  
Corinne Marcou, Zoning Clerk

**Members Not Present:**

*All Present*

**I) Introduction of Board Members**

Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted.

**II) Minutes of the Previous Meeting – September 7, 2021**

Ms. Taylor gave corrections to the meeting minutes of September 7, 2021:

Line 78: “subdivide” should be “subdivided.”

Line 96: the phrase “There might condition some sort of easement” should be “They might condition some sort of easement.”

Line 101: the word “are” should be inserted so it reads, “Mr. Welsh asked for clarification as to where the 19-foot and 38-foot frontages are.”

Line 120: “He continue” should be “He continued.”

Line 888: The vote is reversed. It should say, “not met with a vote of 0-5.”

Line 1302: “Thinks that this is true to many of the” should be, “Thinks that this is true of many of the”

Mr. Hoppock made a motion to approve the meeting minutes as amended. Mr. Gaudio seconded the motion, which passed by unanimous vote.

### **III) Unfinished Business**

Chair Gorman asked staff if there was any unfinished business. John Rogers, Zoning Administrator, replied no.

Chair Gorman stated that the Board received a Motion to Rehear ZBA 21-15, from the Petitioner, Amerco Real Estate Company, of Phoenix, AZ. The property is located at 0 Krif Rd. and 472 Winchester St. in Keene, Tax Map # 115-019-000-000-000 and 115-020-000-000-000. The property is in the Commerce Limited District. The Petitioner requested to construct a roof to provide cover to vehicles approaching the building setback per Section 102-791 of the Zoning Ordinance. He continued that this is not a public hearing; this is for the Board to discuss.

Mr. Gaudio stated that the question the Board raised last time was whether or not the proposed roof location was a self-inflicted choice or whether it was a necessity. The Motion to Rehear suggests, the Board does not know at this point, because it is not presented– that there is reason to believe that there may be a necessity, contrary to the Board’s prior view. He continued that therefore, he thinks that perhaps it might be appropriate to have a rehearing.

Ms. Taylor stated that she takes a contrary view, in that in response to direct questions from the Chair, Mr. Noonan essentially said, no, this is just the way the business wanted to do it. She continued that if there was suddenly a change of heart from this being something that was just the way the business wanted to do things, she is looking for something in the Motion that addresses that and she does not see anything. Thus, she would not be in favor of a rehearing.

Mr. Hoppock stated that for reasons stated by Ms. Taylor, he does not think they should consider rehearing. He continued that the statute requires good reason or good cause. He thinks Ms. Taylor is right about the lack of good reason or good cause in the Motion, for reasons she explained, and he would apply that standard to the Motion and agree with her.

Mr. Welsh stated that this Motion to Rehear was not part of the agenda packet and he assumes it was emailed to the Board at a later time, and it might have gone into his spam folder, because he has not seen it. He continued that speaking off the top of his head, if there is evidence to warrant an argument that it is a necessity; he would be inclined to rehear. He does remember that being the focal point.

Chair Gorman stated that he will give Mr. Welsh five minutes to review the Motion to Rehear, and if Mr. Welsh thinks that is adequate, they can move forward. Mr. Welsh agreed.

Ms. Taylor stated that the ZBA handbook states: *“No purpose is served by granting a rehearing unless the Petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing.”* She continued that if Mr. Noonan did not adequately prepare his case the first time, she does not see anything different and is not sure anything has changed to the degree that would support a rehearing.

Chair Gorman stated that this application for rehearing, from what he gathered, says that the Board's deliberations included things Mr. Noonan was not able to rebuke or rebut. He continued that specifically, Mr. Noonan says the Board contemplated, in its deliberations, whether this roof location was necessity or a wish list item. If that was the case and the Board did not discuss it in the public hearing, he would see cause for a rehearing; however, the Board did discuss it in the public hearing and actually quite specifically. On lines 717 through 724 of the September 7 Minutes, Chair Gorman asked, *"Is it safe to say that one of the reasons for the choice of location for this overhang is to create a façade for the customer base that has visibility on primary streets?"*, to which Mr. Noonan replied yes, and then he (Chair Gorman) further asked, *"Is it safe to say that they probably could put the overhang somewhere else, as Mr. Gaudio has suggested, but that it would not accommodate the company's total wish list of having visibility and a customer entrance at that visibility?"*, and Mr. Noonan replied yes, that is correct, and then continued about ADA parking. Thus, the topic was brought up in the public hearing, and he believes that supports the Board's deliberation of it post-public hearing. Therefore, he does not think there is any cause to think that the Board acted unreasonably.

Mr. Welsh stated that he has concluded reading. He continued that he thinks Chair Gorman's argument is good, especially looking back at the minutes. He sees detailed discussion of the reasons that other possible sites may not work. At this point, he would still be inclined to rehear, but he thinks there are good arguments on both sides and if that is not the will of the Board, it does not hurt his feelings.

Mr. Hoppock made the following motion, which was seconded by Ms. Taylor.

On a vote of 3-2, the Zoning Board of Adjustment denied the Motion to Rehear ZBA 21-15. Mr. Welsh and Mr. Gaudio were opposed to denying.

#### **IV) Hearings**

**A) ZBA 21-20: Petitioner, Joshua Gorman of 85 Park Ave., Keene, requests a Variance for property located at 112 Washington St., Tax Map # 554-085-000-000-000 that is in the Downtown Transition District. The Petitioner requests a Variance for eleven guest rooms where no more than nine guest rooms are permitted per Chapter 100, Article 8.3.2.G.2 of the Zoning Regulations**

Chair Gorman stated that he needed to recuse himself due to an interest in the subject property.

Vice Chair Hoppock asked to hear from staff. Mr. Rogers stated that this property is in one of the new districts created with the new Land Use Code, the Downtown Transition District (DT-D), which was previously the Office District. He continued that the change to the DT-D happened September 1, 2021. He stated a bed & breakfast is an allowed use in the DT-D. The general-purpose statement in the Land Use Code describes this District as *"intended to accommodate a variety of residential, open space, and other low-intensity uses in a mixed-use environment of attached and detached structures. Development within the Downtown Transition District is intended to complement and transition into existing residential neighborhoods*

*adjacent to downtown Keene.*” This is an allowed use, but the definition of “bed & breakfast” limits it to nine rooms. The Applicant is before the Board seeking permission for eleven rooms. This is an existing building, and under the parking calculations, if this use were to be approved to have 11 sleeping rooms as well as an owner /manager’s apartment, it would require 13 parking spaces, which are currently provided onsite. It has the appropriate parking and an accessible space as required by Building Code.

Ms. Taylor asked if the requirement is one parking space for every guest room. Mr. Rogers replied yes, one parking space per sleeping room, and two for any dwelling the manager’s apartment proposed as part of the carriage house. Ms. Taylor replied that maybe this is a question for the Applicant, but her understanding from the application is that there is already a caretaker’s apartment in the house. She asked if this would be a second apartment unit in the carriage house. Mr. Rogers replied that that is a question for the Applicant. Ms. Taylor asked how many parking spaces would be required if there were in fact two apartment-style units. Mr. Rogers replied fifteen. Each dwelling unit would be required to have two parking spaces. He continued that his understanding is that there would only be one dwelling unit for the owner/manager, but that is for the Applicant to clarify. Ms. Taylor asked if it is correct that there are 13 parking spaces on site. Mr. Rogers replied yes.

Vice Chair Hoppock asked to hear from the Applicant.

Joshua Gorman of 85 Park Ave. responded to Ms. Taylor’s question that there are currently nine rooms in the property. He continued that eight qualify as guest rooms and one is the operator’s quarters, which does not have a kitchen in it; it has a little kitchenette. There is an operator’s kitchen in the building, down the stairway to the left, so it is not part of that sleeping room. That existing operator’s quarters, which is far less adequate than what he will be constructing as a real apartment in the carriage house, will turn into a guest room. That would bring the total in the existing structure to nine, where currently it is eight plus the operator’s quarters. There would be nine guest rooms in the main building and then two more guest rooms in the carriage house with a loft apartment above, which brings the new total to eleven plus the dwelling unit, arriving at a parking requirement of 13 spaces, which he meets with zero to spare.

Ms. Taylor asked Mr. Gorman to show the parking on the map. Mr. Gorman did so, noting there are six in one location and six in another, plus an accessible spot for the accessible room.

Mr. Gaudio asked if it is nine for the whole property or nine for the building, or if there is an interpretation issue with that regard, so that one interpretation might be nine in the main building and two in the other building and they still have to have parking for all of that on the premises. Mr. Rogers replied that as the Zoning Administrator, he would interpret that bed & breakfast is the primary use for this property, regardless of whether it is in one, two, three, or four buildings. Thus, the restriction of nine rooms would apply to the number on the whole piece of property, regardless of how many are in each structure.

Mr. Gaudio asked what the occupancy rate is and how often are all of the units occupied. Mr. Gorman replied that he has limited experience; they just opened the bed & breakfast in June. He continued that he waited until the Governor lifted the mandates to operate. He does not have a lengthy history, but having said that, despite the bed & breakfast being poorly marketed, on the Internet in its first year, they maintained 100% occupancy every weekend from July to the present. There has been very limited occupancy during the week. Based on what statistics he has been able to find, he anticipates approximately 60% occupancy. It has been booked every weekend. He plays basketball at the Rec Center at 6:30 AM Saturday mornings, and sees that there are never as many cars at the bed & breakfast as there are people, because usually it is folks carpooling to the same wedding or event. Thus far, even when it is full, it is tame when he goes by in the morning. It does not appear overtaxed.

Ms. Taylor stated that under the old Code, you needed a square footage requirement for a dwelling unit, and she assumes this loft apartment qualifies. She asked Mr. Rogers for clarification under the new Code. Mr. Rogers replied that the requirement for a dwelling unit has always been two parking spaces. Ms. Taylor asked about the required square footage for a dwelling unit. Mr. Rogers replied that within the Zoning Code there is no square footage associated with a dwelling unit. He continued that the Building Code requires a dwelling unit to have one room that can be occupied; he thinks it is 110 square feet.

Ms. Taylor stated that Mr. Gorman's application says there are not any conforming uses for the existing carriage house. She asked if that is one of those items where staff is still trying to figure it out that this is considered an accessory structure and asked how the new Code addresses that. Mr. Rogers replied that as it sits now, it could be an accessory structure; he just does not know what a bed & breakfast would really need for an accessory structure, as opposed to normal houses/dwelling units that could have many accessory structures, such as for parking vehicles or lawn mowers. He does not know if that is the case with a bed & breakfast.

Vice Chair Hoppock asked if there were any more questions. Hearing none, he turned the floor over to Mr. Gorman to go through the criteria.

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

Mr. Gorman stated that the property and its existing carriage house has adequate off-street parking, separate City water and sewer lines, and separate 200-amp electrical service, and traffic will not be materially impacted by this proposal. He continued that therefore, there is no foreseeable threat to the general health, safety, or welfare of the general public. Furthermore, this proposal will not alter the essential character of the neighborhood. The existing structure will not be physically altered from its current exterior appearance, and in traveling up and down Washington St. one can see that many of the existing, historic carriage houses have been converted to various uses in order to support their preservation and viability. Regarding Ms. Taylor's question about the size of the unit and accessory use for carriage house, this is literally a full foundation, three story house. It is difficult to find a good use for it in combination with what already exists on the property. This proposal will likely support and benefit the public

interest by providing the repurpose, and subsequent rehabilitation and maintenance of this once dilapidated, vacant carriage house, which is a local historical landmark. The use will also support downtown vitality by bringing guests to everything Keene has to offer. Both of these end results are in line with the objectives set forth in the City's Comprehensive Master Plan.

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

Mr. Gorman stated that per the current Land Development Code, the spirit of the Ordinance is to accommodate a variety of residential, open space, and other low-intensity uses in a mixed-use environment of attached and detached structures. He continued that development within the DT-D is intended to complement and transition into existing residential neighborhoods adjacent to downtown Keene. A bed & breakfast is an allowed use in this district, but it caps out at nine guest rooms. This affirms that a bed & breakfast use is within the spirit of the Ordinance, given that it is already allowed. The addition of the carriage house guest rooms and operator's quarters certainly supports the use of detached and attached structures, as well as complementing and transitioning into existing residential neighborhoods adjacent to downtown. Other permitted uses in this district are as follows: offices, multi- and single-family dwelling units, duplexes, a funeral home, and a telecommunications facility. Upon examining all of these uses, it is clear to the applicant that the use which is being proposed has the least likelihood of impact and is more aligned with the spirit of the Ordinance, as it simply adds to the same purposeful and allowed use that already exists on the property.

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

Mr. Gorman stated that the general question here is whether the proposed use enables the just and reasonable use of the property without causing unjust or undue strain on the abutters and the entire community. In other words, does denial of the application create a loss to the individual greater than the gain to the general public? He believes this proposal supports the needs and reasonable use of the property and its existing structures. When applying the current Land Development Code there are not any conforming uses for the existing carriage house, as all of the uses listed previously would require some form of a Variance. The applicant believes the denial of the proposal has no foreseeable gain to the public. To the contrary, the small expansion of this allowed use supports the intent of both the Land Development Code and the Comprehensive Master Plan. As stated previously, guests will likely benefit the public by supporting downtown merchants while discovering this wonderful community, while having no evident adverse impact on the community or surrounding properties.

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

Mr. Gorman stated that granting this Variance would not diminish surrounding property values. He continued that the carriage house on this property is one of a kind. A few years ago the entire property was vacant and in disrepair. The carriage house was on the brink of being demolished, as the previous potential buyers had contemplated tearing it down. The purposeful reuse of this

historic property has allowed for extensive renovation and restoration and the use of the carriage house will ensure its remaining renovations and future maintenance are sustainable. This preservation and use will likely add value to abutters and ultimately the entire downtown community.

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:*

Mr. Gorman stated that the conditions and structures of this property are unique in that they have existed for 170+ years and therefore were not constructed with today's ordinances in mind. The property has a main building circa 1853, consisting of about 3,800 square feet; the circa 1853 two-story carriage house, consisting of about 1,400 square feet; and a full basement. Denial of this Variance would effectively disallow reasonable use of the carriage house, thus creating a hardship. The Ordinance provision allows for the use but only up to nine guest rooms. The main building currently has nine sleeping rooms (eight guest rooms and an operator's quarters), and an operator's kitchen and a common parlor. That is the same number of rooms the main building had prior to the extensive renovations and it is likely the number of rooms the building had in its original form. He interprets the nine-guest room limit set forth in the Code as a means of preventing overcrowding within a building. This is not applicable to this specific property, given the existing size and layout of the structures, along with the adequate onsite parking.

*and*

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

Mr. Gorman stated that the proposed use is a reasonable expansion of an already existing and allowed use, in which said expansion is comfortably supported by the property and its existing infrastructure. The use is also supported by the intent of the Land Development Code as well as the Comprehensive Master Plan.

*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.*

Mr. Gorman stated that if this Variance is not granted, the carriage house could not be reasonably used for any purpose, which creates an unfair and unnecessary hardship. He continued that the uses permitted in the zone are as follows: office, which would not meet parking requirements, based on the square footage; multi- and single-family dwelling units, which he could not do with the existing bed & breakfast; duplex, [which would not work]; funeral home, which would not be

good at all; and telecommunications facility, which he does not think would fit very well. All of those permitted uses would not only interfere with the current use of the property but would also require a Variance for issues such as parking, lot size, and so on and so forth. Given that there is no single use that would be allowed for the existing structure within this zone the applicant seeks a use which seemingly has the least impact on the property, its abutters, and the community.

Vice Chair Hoppock asked if anyone from the public had questions for the applicant. He continued that he sees no members of the public present, but the Board did receive a letter that speaks in favor of the applicant and he would like to read it into the record. It is from Christina Devine, dated October 15, 2021, regarding ZBA 21-20.

*“I am writing you this letter to give my support for Joshua Gorman's variance for the property located at 112 Washington Street Keene, NH. I am in favor of this application increasing the guest rooms to eleven. Since Mr. Gorman has owned the property, he improved it to become one of the nicest properties on Washington Street. He has been a real asset to this community and has been a great neighbor.”*

Mr. Welsh stated that he was thinking about the fact that they are dealing with two buildings here. He continued that sometimes with two buildings, there are two parcels of land. If, somehow, in some alternative scenario, there were a property line between these two buildings, they would not be here about the number of units in a bed & breakfast. There would be two compliant bed & breakfast facilities under proposal. Maybe setbacks, maybe parking, or something like that would need to be addressed. That is his way of thinking about the intent of the new Ordinance as written, whether it is about the full property or buildings. Thus, he does not really have a question, but is thinking that this is perhaps an unfortunate situation of it being one piece of property with two buildings, as opposed to two separate parcels.

Vice Chair Hoppock stated that regarding the hardship criteria, he has no problem finding that there are unique characteristics of this lot. He continued that for starters, the size is .27 acres, which is very small. It has a historic carriage house located on it, and you have to manage that space and the use of that space within this lot. As Mr. Gorman said, the size and layout of these structures show no substantial relationship to the nine-room limit as applied to this property, because of those layouts and the carriage house building there, and the obvious interest in preserving a historic building is important. He therefore has no trouble finding the unique characteristics of the lot, together with no substantial relationship being found.

Ms. Taylor asked if they are in the discussion part or if the public hearing is still open. Vice Chair Hoppock replied that he is being as flexible as possible about this, since there are no members of the public present. He continued that those are his observations. Yes, they are still in a public hearing, but since there is no one here to speak for or against, he can close it. He asked if Mr. Gorman had anything to add first. Mr. Gorman replied not unless there are further questions. Hearing none, Vice Chair closed the public hearing and asked the Board to deliberate.

Ms. Taylor stated that what she has to say seems to address nearly all of the criteria. She continued that what strikes her about this is they call it “adaptive reuse.” It has been restored and now needs a use, and she cannot think of another use that would be in the public interest the way this is by preserving the historic property. She believes it is on the edge of the Historic District, although she may be wrong, and she believes this property is on the national register.

Mr. Gorman asked for permission to speak. Vice Chair Hoppock agreed. Mr. Gorman stated that it is immediately abutting the Historic District but he put the property on the state register for future preservation, shortly after purchasing it. Both structures are thus on the New Hampshire State Register of Historic Places.

Ms. Taylor stated that she thinks it is definitely in the public interest to try and preserve a historic property. She continued that as Vice Chair Hoppock said earlier, it certainly is not contrary to the spirit of the Ordinance, because there are no additions or physical changes to the property. Moreover, certainly, the carriage house is about as big as her own house, so if overcrowding is the underlying reason for the limitation of nine rooms, it would not necessarily be true with this structure and property. She does not think there is any detriment to the public with this change. The value has already been tremendously enhanced and would be more so with it being fully restored. She agrees with what Vice Chair Hoppock said earlier about this property not being conducive to any other particular use and that there is no substantial relationship for the particular Zoning provision as applied to this property. She thinks this is definitely a reasonable use.

Vice Chair Hoppock stated that he agrees with all of Ms. Taylor’s comments. He asked if anyone wanted to add anything else. He noted that Mr. Welsh was nodding his head in agreement as well. He asked if there was any further deliberation or if anyone had a motion.

Ms. Taylor made a motion for the Zoning Board of Adjustment to approve ZBA 21-20 for a Variance to allow eleven guest rooms where nine are permitted per Chapter 100, Article 8.3.2.G.2 of the Zoning Regulations. Mr. Gaudio seconded the motion.

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

Mr. Welsh stated that they have heard good discussion indicating that it would not be contrary to the public interest and he agrees with all of that. He continued that also, they have heard approval from a member of the public. All of the evidence the ZBA has seen is that it is not contrary to the public interest.

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

Mr. Gaudio stated that, as they already spoke about, the intent of limiting it to nine rooms is, in his opinion, to prevent overcrowding in the building, rather than there just being an arbitrary number, and that is actually complied with, so the Board does not have to worry about that violation of the spirit of the Ordinance. Also, the spirit of the Ordinance is really to have a

transition zone and historic preservation in that transition zone, and he thinks this accomplishes that. It is in keeping with the spirit of the Ordinance.

Vice Chair Hoppock stated that he agrees.

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

Vice Chair stated that here, in his view, the gain to the public of approving this is significant. He continued that the balance is skewed because there is no loss to the public; there is a significant gain if the Board approves this, and the loss to the individual would be significant as well if it were denied. As Ms. Taylor said before, this is a well-restored property looking for a use, and he does not know what other use could be made of it, other than what it is being proposed as. Thus, he thinks this criterion is satisfied.

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

Mr. Welsh stated that they have heard no discussion and entertained no scenarios in which the values of surrounding properties would be diminished by granting this Variance, and once again, they have heard from a member of the public who said that it is good for the neighborhood and presumably increases property values from their perspective.

Vice Chair Hoppock stated that he agrees and he interprets that letter as indicating that it would enhance the property values of the area.

5. *Unnecessary Hardship*

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

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

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

Vice Chair Hoppock stated that he will not repeat everything he has already said, but he thinks there are special conditions of the property, indicated by the size and layout of the structures and the historic carriage house that needs to be incorporated into whatever use the property is put to; if you want to preserve the historic nature of the building. He continued that he does not think a fair and substantial relationship exists between the limitation of nine and the application of that limitation to this property. There is no density issue because of the layout; it is spread out enough. There is enough parking.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

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

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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 and*

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

Met with a vote of 4-0.

The motion to approve ZBA 21-20 passed with a vote of 4-0.

**V) New Business: Land Development Code Review**

**VI) Communications and Miscellaneous**

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

**VIII) Adjournment**

There being no further business, Chair Gorman adjourned the meeting at 7:25 PM.

Respectfully submitted by,  
Britta Reida, Minute Taker

Reviewed and edited by,  
Corinne Marcou, Zoning Clerk