

Zoning Board of Adjustment
Monday, February 7, 2022 6:30 p.m.
City Hall Council Chambers
3 Washington Street, 2nd Floor

AGENDA

- I. Introduction of Board Members
- II. Voting Chair and Vice Chair for 2022
- III. Minutes of the Previous Meeting December 6, 2021
- IV. Unfinished Business:
- V. Hearings:

ZBA 22-01: Petitioner, Jessica Aguirre, 164 Mountain Rd., Greenfield, NH, requests a Variance for property located at 127 Cross Street, Tax Map #554-034-000-000-000 that is in the High Density District. The Petitioner requests a Variance to permit the conversion of a multi-family dwelling with three units into a multi-family dwelling with four units on a lot size of 10,800 sq. ft. where 21,000 sq. ft. is required per Chapter 100, Article 3.6.2 of the Zoning Regulations.

ZBA 22-02: Petitioner, Alec Doyle, of the Colonial Theater, 95 Main St., requests a Variance for property located at 95 Main St., Tax Map #575-008-000-000-000 that is in the Downtown Core District. The Petitioner requests a Variance to permit an internally illuminated, electronically activated changeable copy sign where electronically activated changeable copy signs are a prohibited sign per Chapter 100, Article 10.3 of the Zoning Regulations.

- VI. New Business:
 - Rules of Procedure
- VII. Communications and Miscellaneous:
- VIII. Non Public Session: (if required)
- IX. Adjournment:

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

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

8 **Monday, December 6, 2021**

6:30 PM

**Council Chambers
City Hall**

Members Present:

Joshua Gorman, Chair (arrived at 6:39 PM)
Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh
Arthur Gaudio

Staff Present:

Michael Hagan, Plans Examiner
Corinne Marcou, Zoning Clerk
Rhett Lamb, Community Development
Director (retired)

Members Not Present:

John Rogers, Zoning Administrator

9
10
11 **I) Call to Order**
12

13 Vice Chair Hoppock called the meeting to order at 6:32 PM and explained the procedures of the
14 meeting.
15

16 **II) Minutes of the Previous Meeting – October 18, 2021, and November 1, 2021**
17

18 Ms. Taylor made a motion to approve the meeting minutes of October 18, 2021. Mr. Welsh
19 seconded the motion, which passed by unanimous vote.
20

21 Mr. Gaudio made a motion to approve the meeting minutes of November 1, 2021. Mr. Welsh
22 seconded the motion, which passed by a vote of 3-0. Ms. Taylor abstained.
23

24 **III) Unfinished Business**
25

26 Vice Chair Hoppock asked if there was any unfinished business. Mr. Hagan stated that he is not
27 aware of any.
28

29 **IV) Hearings:**
30

31 **A) ZBA 21-23:** Petitioner, Alpine Bike Works, of 2326 US Rte. 4, Killington, VT,
32 owned by Tony Accurso, requests a Variance for property located at 15 King Court,
33 owned by Raette F. Trombly Living Trust, Tax Map #112-022-000-000-000 that is in the

34 Low Density District. The Petitioner requests a Variance to permit a bicycle shop on a lot
35 located within the Low Density District where a retail business is not a permitted use per
36 Chapter 100, Article 3.3.5; Permitted Uses in the Low Density District of the Zoning
37 Regulations.
38

39 Mr. Welsh stated that he needs to recuse himself, because his employer is an abutter, and he
40 recused himself the last time the Board looked at this site. Vice Chair Hoppock replied that he
41 recalls that.
42

43 At 6:36 PM, Vice Chair called for a recess to wait for Chair Josh Gorman to arrive. At 6:39 PM,
44 Chair Gorman arrived and the meeting resumed.
45

46 Chair Gorman conducted roll call. He introduced Plans Examiner Michael Hagan, who is filling
47 in for Zoning Administrator, John Rogers. He continued that retired Community Development
48 Director Rhett Lamb is also present.
49

50 Chair Gorman asked Mr. Hagan to introduce ZBA 21-23.
51

52 Mr. Hagan stated that this is an existing, non-conforming property located in the Low Density
53 District. He continued that in 1981 it received a variance from the Board for a change in non-
54 conforming use and in 2018 it received another change in non-conforming use for a fitness
55 facility. The Petitioner is looking to bring it back to a retail establishment, with a Variance under
56 different process now. Under the old Zoning Code there was an application for a non-
57 conforming use; now it is a Variance application.
58

59 Chair Gorman asked if anyone had questions for Mr. Hagan. Hearing none, he asked Mr.
60 Phippard to begin.
61

62 James Phippard of 185 Winchester St. stated that he is here on behalf of the property owner,
63 Raette Trombly Living Trust, and the Applicant, Alpine Bike Works. He continued that the
64 Applicant is aware that there is a four-member Board tonight and wishes to proceed.
65

66 Mr. Phippard stated that the Applicant is seeking a Variance to allow retail sales in the existing
67 building on this property. He continued that this is the third or fourth time over the years that he
68 has come before the Board dealing with applications on this property. The building was built in
69 1920, on a small lot of 0.28 acres, which became smaller as the State of New Hampshire
70 improved Route 101 and widened the right-of-way in those areas over the decades. It has been a
71 non-conforming property for as long as he can remember, and he has been a Land Use
72 Consultant for 45 years. The property's previous uses included a retail sales business, Indian
73 King Framery, and most recently, a fitness center, which is no longer in business. The building
74 is vacant. It sits on a .28-acre lot and is in the Low Density District, which has not made sense to
75 him in this particular location, close to Route 101. It is an existing brick building over 5,000
76 square feet in size and was clearly never meant to be a residential structure, and therefore has

77 always been non-conforming. He has kept coming back, over the years, asking the Board's
78 permission to change the uses in the building, and here they are once again.

79
80 Mr. Phippard continued that the good news is that Alpine Bike Works is a new business trying to
81 come to Keene, which is what everyone wants. This is a good use for this location. This low-
82 intensity commercial use will fit very well on this property. This property is accessed via King
83 Court. He showed the location on the image, and continued that there is existing parking for 23
84 cars. The property is serviced by City water and City sewer. This is an appropriate location for
85 a small business. The building is almost 5,200 square feet in gross floor area. The Zoning
86 regulations, as amended in September 2021, reduced the required parking to 21 spaces. This use
87 is thus in compliance with the on-site parking requirements.

88
89 Mr. Phippard showed a blow-up of the City's tax map. He continued that the property before the
90 Board tonight is outlined in red. This area is surrounded by mixed uses. There are businesses
91 located directly opposite on Route 101. Keene State College is to the north and west of the site.
92 There are residential buildings along Appleton St. and lower Main St. On King Ct. there are two
93 existing office buildings leading into the site. There have been many types of offices over the
94 years since the barn was converted into offices. They have done well in this location and are not
95 big traffic generators and have not created many issues on this section of lower Main St. All of
96 that is important background information for the Board.

97
98 Mr. Phippard continued that Alpine Bike Works is a year-round business, but the hours vary
99 seasonally, which makes sense. In this environment, the primary bicycle season is April through
100 October. That is when they are open seven days a week, 9 AM to 5 PM or 6 PM. From January
101 through March, they have limited hours, mostly three or four days a week instead of seven, five
102 days a week maximum. From October through December, they are open Wednesday through
103 Sunday from 9 AM to 5 PM. There are no nighttime hours, just early evening, so there will not
104 be activity on the property that could bother or become a nuisance to the residential uses located
105 to the north of this site.

106
107 Mr. Phippard went through the criteria.

108
109 *1. Granting the Variance would not be contrary to the public interest because:*

110
111 Mr. Phippard stated that today this is a vacant building, and vacant buildings, no matter what
112 kind, are not in the public interest. It does not add value to the neighborhood and can quickly
113 become a nuisance property if not properly maintained. It is always good to get a vacant
114 building occupied and becoming a positive entity in the community once again, and that is part
115 of what this proposal does. The fitness center that was in this location, mostly due to the
116 COVID-19 pandemic, was unable to maintain its business and closed almost a year ago. It does
117 not take long for a building to start to deteriorate, so it is important to get another business in this
118 location. It is in the public interest to grant a Variance to allow a bicycle shop in this location. It
119 is a low-intensity commercial use and does not operate at night, so it should not be creating a

120 nuisance in the neighborhood. Their traffic is not as such that it cannot be handled by King Ct.,
121 and they have adequate onsite parking to support their customer base.

122
123 2. *If the Variance were granted, the spirit of the Ordinance would be observed because:*

124
125 Mr. Phippard stated that the spirit of the Ordinance is to protect the public health, safety, and
126 welfare. One way of doing that is to allow vacant buildings to become redeveloped and
127 occupied. That would help to maintain the public health and safety in this area. Also, putting in
128 an appropriate use in such a location helps maintain the integrity of the neighborhood and the
129 property values in the area.

130
131 3. *Granting the Variance would do substantial justice because:*

132
133 Mr. Phippard stated that this is a vacant building, which no one wants. The property owner does
134 not want that. It has been difficult to get a user for this building. He came before the Board
135 seven months ago for an institutional use, a homeless shelter, and was denied the change in non-
136 conforming use to allow that request. The homeless shelter was deemed not appropriate for the
137 neighborhood. He believes this proposed use is very appropriate for this area. There is an
138 existing bicycle shop directly to the south, across Route 101, Norm's Ski & Bike Shop, and they
139 have done well in this location. They work as a "gateway business," as this is a very visible
140 location for people coming into the community. These are the types of uses people want.

141
142 Mr. Phippard continued that Alpine Bike Works would have some outside displays, as you
143 would expect from a bicycle shop. On the diagram, he indicated the location of the open lawn
144 area, on the west side of the building. He continued that there is plenty of room for Alpine Bike
145 Works to display the variety of bicycles that they carry. The parking is on the east and north
146 sides of the building, to the side and rear primarily, which is a Planning Board guideline they try
147 to follow. All of this is consistent with the City's Ordinance and will allow substantial justice for
148 this property to be redeveloped and put back as a productive property on our tax base. He does
149 not believe there is any benefit to the public to deny such a Variance.

150
151 4. *If the Variance were granted, the values of the surrounding properties would not be*
152 *diminished because:*

153
154 Mr. Phippard stated that there are office buildings along King Ct. leading to this site. Those are
155 consistent uses with the type of use proposed for this site. The residential properties along
156 Appleton St. are very well screened from this site by an existing forested area. He believes that
157 the properties along south Main St. would not even be aware that Alpine Bike Works is there.
158 Alpine Bike Works is not a noise generator, nor is it the type of business that generates fumes or
159 odors. They should not be a nuisance at all to any of the properties in the area. They are a fairly
160 low-volume traffic generator. During the summer months, they expect to have an average of
161 about 20 customers per day, and over their 10 or 11 hours of business hours during the summer

162 months, that is not a lot of traffic. It is not a cause for concern. He does not believe this will
163 have any negative effect on surrounding property values.

164

165 5. *Unnecessary Hardship*

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

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

170

171 Mr. Phippard stated that this is clearly a unique property, built in 1920, not as a residential
172 building but as some type of business. He does not know what business it was back then, but it
173 was clearly not a residential building. Over the years, it has been changing uses and has come
174 before this Board many times to get permission to occupy different businesses in this location,
175 because it is in the Low Density District. As a low-intensity commercial business, a bicycle shop
176 is a very appropriate use for this location. Because of the site's proximity to Route 101, it will
177 never be used as a single-family home. Therefore, a Variance is needed to allow a reasonable
178 use on this site.

179

180 *and*

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

182

183 Mr. Phippard stated that for all the reasons he has already stated, he thinks this is a very
184 reasonable use. He thinks the Board should be thrilled with this type of use coming into Keene
185 in this location. This is a new business, bringing new jobs and new visibility. It is a new interest
186 in Keene that will promote the community. It fits in with many of the community goals
187 regarding promoting recreation and being a destination city.

188

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

194

195 Mr. Phippard stated that for all the reasons he has stated, he thinks it clearly is an unnecessary
196 hardship to deny a Variance for this use. This is non-conforming property with a non-
197 conforming building; it will never be residential, as it has never been residential in its 100 years
198 of existence. That creates a special condition for this property that requires a Variance for it to
199 be redeveloped.

200

201 Mr. Phippard stated that he would be happy to answer questions. He continued that with him
202 tonight is Tony Accurso, owner of Alpine Bike Works, who can answers questions about the
203 business.

204 Mr. Hoppock asked what the zoning is where Norm's Ski & Bike shop is located. Mr. Phippard
205 replied that it is the Commerce District.

206
207 Ms. Taylor stated that Mr. Phippard said there would be some outside display, and her question
208 is whether there would be outside storage. Mr. Phippard replied no, bicycles would be brought
209 out during the business hours and brought in at the end of the day. He continued that that is
210 typical activity, also seen at Norm's and at the bicycle shop that used to be on Winchester St.
211 His office is right across the street from the latter, and he would see them wheeling the bicycles
212 out in the morning and then wheeling them back in every night. If it was raining, the bicycles
213 would be put on the porch. Nothing was left out overnight. Nothing will be stored outside at
214 Alpine Bike Works.

215
216 Ms. Taylor asked Mr. Hagan if this would go to the Planning Board for site plan review, since it
217 is a change of use. She continued that she is definitely not up to speed with the new Code. Mr.
218 Hagan replied that it requires a review of the change of use but he does not think it will need to
219 go before the full Planning Board.

220
221 Chair Gorman asked if it is possible that it would just be an administrative process. Mr.
222 Phippard replied that he intends to apply for administrative approval. He continued that they are
223 not proposing any physical changes to the building. They are not changing the awning. They
224 want to put in an entry door that is more appropriate for a retail store, which would be the only
225 physical change visible from the right-of-way. There is plenty of parking. No changes to the
226 site are necessary or proposed. He does not think it will generate enough traffic to warrant
227 additional work or a study. He will apply for administrative approval and believes it will be
228 eligible, but that is not his call.

229
230 Chair Gorman replied yes, but at the end of the day, this will have to go through some kind of
231 Planning Board approval. Mr. Phippard replied yes.

232
233 Chair Gorman asked for public comment. Hearing none, he closed the public hearing and asked
234 the Board to deliberate on the criteria.

235
236 *1. Granting the Variance would not be contrary to the public interest.*

237
238 Mr. Gaudio stated that he believes this would be in the public interest. He continued that the
239 existence of the vacant parcel of land and the potential for vandalism is a risk they should try to
240 avoid. It would be in the public interest to have this property occupied. Another aspect is that,
241 as Mr. Phippard said, this is a low-intensity business and it will not have anything that is contrary
242 to the public interest. This property has had low-intensity uses for perhaps 100 years.

243
244 Mr. Hoppock stated that he agrees, and thinks that the application is consistent with the basic
245 objective of the zone, which is to keep low intensity uses going there. It will be filling a lot that
246 is not being used at all, so he believes it meets the criteria. It would not alter the essential

247 character of the neighborhood. They heard that there would be no visible changes to the outside,
248 except for bicycles coming in and out, which is the same thing happening across the street. He
249 does not have any problem with these criteria in this application.

250

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

252

253 Chair Gorman stated that he thinks Mr. Hoppock spoke to this criterion already, saying that this
254 use does in fact placate the intent of the Ordinance, being low intensity.

255

256 Mr. Hoppock stated that the other piece to this criterion is whether it would pose a threat to the
257 public health, safety, or welfare, and he does not see any basis in the application where you could
258 make that connection between what the applicant proposes to do and those concerns for public
259 safety. He does not see any problem here.

260

261 Ms. Taylor stated that she does not think there would be any harm to the public from this type of
262 use. She continued that it is clearly a commercial building, not intended for residential use, and
263 again, it is low-intensity, so the residential neighborhood should not have a great deal of impact.

264

265 Chair Gorman stated that he agrees with all of that.

266

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

268

269 Mr. Hoppock stated that this property, as Mr. Phippard pointed out, is not one that the Board is
270 unfamiliar with. He continued that he is not saying they are tired of seeing all of the applications
271 for this property, just that they are not unfamiliar with it. By virtue of the fact that it has been
272 before the Board so often, there is a strong case to be made that the Applicant will suffer loss if
273 the owner has to continue doing this every time a use changes. That seems to him to be the
274 history of this property. He sees a loss to the individual that is significant if the Variance is not
275 approved. The loss to the public, if the Variance is not approved, can also be equally
276 problematic, in terms of the vacant building. There is a win/win here, where the owner,
277 applicant, and public can gain.

278

279 Chair Gorman stated that he agrees.

280

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

283

284 Chair Gorman stated that he thinks Mr. Phippard made a good argument for this criterion, with
285 this building being vacant for a year. A vacant building certainly can degrade property values.
286 He thinks Mr. Phippard is accurate in saying that the City would be lucky to have this use for this
287 building. It is going to be a use, as they have all agreed, that will require a Variance. He sees
288 that this use can benefit surrounding property values.

289

290 Ms. Taylor stated that even though they do not have any direct evidence, it appears that such
291 things as traffic, whether vehicular or pedestrian, will not really change from what the historic
292 use was when the building was occupied. She continued that based on that historic perspective,
293 she does not think there will be a diminution of property values.

294
295 5. *Unnecessary Hardship*

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

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

301 ii. *The proposed use is a reasonable one because:*
302

303 Mr. Hoppock stated that he thinks that the size of the building in relation to the size of the lot is a
304 special condition. He continued that the fact that it is a 5,000+ square foot building near
305 residential homes, and its obvious inconvertibility to a residential use without a significant cost,
306 is another special condition. In its history, no one has ever tried to use it as a residential home.
307 He thinks those special conditions justify a Variance to the terms of the Ordinance.

308
309 Ms. Taylor stated that she thinks they probably have not seen a more clear example of the lack of
310 relationship between the zoning, which is low density residential, and this actual parcel, which as
311 far as anyone can determine, has never had a residential use. She thinks that says it all, and the
312 use does appear to be reasonable.

313
314 Mr. Gaudio stated that with regard to the lack of relationship, this is a property that should have
315 been, in his opinion, zoned the same as the other side of the road. There is a problem with
316 drawing the line down the middle of the street rather than through the backyards. He does not
317 believe there is any importance to maintaining the use of this as a residential property. As was
318 pointed out, no one wants to have a bedroom next to a major highway. This would probably not
319 be usable at all as a residential property.

320
321 Chair Gorman stated that given that the Board thinks the application meets 5.A., they will not
322 move on to 5.B. He asked for a motion.

323
324 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve the Applicant's
325 request for ZBA 21-23 for a Variance to permit a retail business in the Low Density District per
326 Chapter 100, Article 3.3.5 of the Zoning Regulations. Mr. Gaudio seconded the motion.

327
328 1. *Granting the Variance would not be contrary to the public interest.*
329

330 Met with a vote of 4-0.

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

333 Met with a vote of 4-0.

334

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

336

337 Met with a vote of 4-0.

338

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

341

342 Met with a vote of 4-0.

343

344 5. *Unnecessary Hardship*

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

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

349 *and*

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

351

352 Met with a vote of 4-0.

353

354 The motion to approve ZBA 21-23 passed with a vote of 4-0.

355

356 **V) New Business:**

357 **A) Update to the Rules of Procedure**

358

359 Mr. Hagan stated that the back of the agenda packet has a proposed change to the Rules of
360 Procedure, to come more in conformance with the new Land Use Code. He continued that they
361 want to conform to the definition of an abutter stated in Article 28, so that it says the same thing.
362 Currently they are required to go to the other side of a right-of-way or stream for the abutters list,
363 which can make the abutters list quite long. Tonight's case, for example, had a long abutters list
364 because they had to jump across the street. For some other City Boards, that is not a
365 requirement. They want it to be uniform throughout the City Boards. Another section needs to
366 be stricken from this paragraph, which is the 200 feet. They would bring it back for review.
367 "...properties located within 200 feet..." would also be stricken from that Section. If the Board
368 wants, Staff can provide a draft to review. Rather than piecing it together, they will give it to the
369 Board fully rewritten. If the Board wants to adopt that change now, they can.

370

371 Ms. Taylor stated that before they vote on this, she would like them to double check what the
372 State statute says, because she does not remember. Mr. Hagan replied that the State statute is
373 referenced in the abutters section. Ms. Taylor stated that her recollection is that the State statute
374 does reference the across the street and across the stream, so she is concerned that when they

375 have something like this where across the street is more than 200 feet they will not be in
376 compliance with the State statute. Her recollection may be incorrect.

377
378 Chair Gorman asked Rhett Lamb if he had any information about that. Mr. Lamb replied that he
379 recalls that the new definition of “abutter,” which applies across the board now, is the State
380 statutory language. He continued that in some cases, the 200 feet requirement is that for each
381 Board there are specific requirements, which might add on to what the State law requires. The
382 definition of “abutter” is, effectively, the State law.

383
384 Chair Gorman asked if it would be fair to say that currently, the Board is more stringent than the
385 State RSA, and what they are trying to do is align with it and unilaterally align the Planning
386 Board and Board so that the same requirements are introduced to an Applicant through all those
387 procedures. Mr. Lamb replied yes. He continued that also, there are unique circumstances, like
388 the one they had tonight, where it is more than 200 feet to get across that highway, and thus, to
389 comply with State law might be *more* than 200 feet, even though the City’s line stops at 200 feet.

390
391 Ms. Taylor stated that she looked it up, and the State statute, 672:3, defines an “abutter” as “any
392 person whose property is located in New Hampshire and adjoins or is directly across the street or
393 stream from the land under consideration by the local land use board.” She continued that her
394 concern is, again, using today’s example, that if you have a property that is across the street that
395 is more than 200 feet away, they will not be noticed.

396
397 Mr. Lamb replied that is not true. He continued that they *would* notice that, even if it were more
398 than 200 feet away, because it meets the definition of “abutter” in the State law. The language
399 Ms. Taylor just read is identical to what is in the Land Use Code. Each Board has its own
400 section in the Land Use Code, and that is where the 200 feet comes in. The Boards that require
401 200 feet, which include the Planning Board and the Zoning Board, have a section that says there
402 is a requirement to meet the State’s “abutter” definition, plus 200 feet. It is the overlap of the
403 200 feet plus the State law. The Historic District Commission does not use 200 feet; it just uses
404 the State’s definition.

405
406 Chair Gorman thanked Mr. Lamb and asked the Board if there were any more questions.
407 Hearing none, he asked if the Board wanted to vote on this tonight and let Staff move on with the
408 amendments. Ms. Taylor stated that she would like to see the amendment first. Chair Gorman
409 replied that they will put this item on more time, and if Staff gives the Board a draft of the
410 amendment, they will be prepared to vote on it at the next meeting.

411
412 **B) 2022 Calendar**

413
414 Chair Gorman asked if there were any objections to the calendar. Hearing none, he asked for
415 everyone in favor of the calendar to say “aye.” The calendar was approved.

416
417 **C) Board Memberships**

418 Ms. Marcou stated that Mr. Hoppock's and Ms. Taylor's first terms are up at the end of
419 December. She continued that their names are being presented to the City Council, at the
420 Council's next meeting on December 16, as nominations to serve a second term.

421
422 Mr. Hoppock asked if he and Ms. Taylor's nominations will have been approved by the time the
423 Board meets in January 2022. Mr. Lamb replied that even if not, members' whose terms have
424 expired continue to serve until they are replaced.

425
426 Ms. Taylor stated that the State law changed about six years ago to say that if a replacement has
427 not been found, the member whose term expired have to stay, if they are willing. Chair Gorman
428 replied that he is glad Mr. Hoppock and Ms. Taylor are both willing. He continued that they will
429 be down to a four-member Board, so if anyone knows someone who would be interested,
430 capable, and qualified, they should give names to the Mayor.

431
432 Chair Gorman took a moment to thank Mr. Gaudio very much for serving on the Board. He
433 continued that they will miss him. He has been a real asset.

434
435 **VI) Adjournment**

436
437 There being no further business, Chair Gorman adjourned the meeting at 7:18 PM.

438
439 Respectfully submitted by,
440 Britta Reida, Minute Taker

441
442 Reviewed and edited by,
443 Corinne Marcou, Zoning Clerk

444
445 Reviewed and edited by,
446 Jane Taylor, Board Member

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127 CROSS ST. ZBA 22-01



Petitioner requests a Variance to permit a four unit multi-family dwelling on a lot with 10,800 sq. ft. where 21,000 sq. ft. is required per Chapter 100, Article 3.6.2 of the Zoning Regulations.



NOTICE OF HEARING

ZBA 22-01

A meeting of the Zoning Board of Adjustment will be held on Monday, February 7, 2022, at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition. Petitioner, Jessica Aguirre, 164 Mountain Rd., Greenfield, NH, requests a Variance for property located at 127 Cross Street, Tax Map #554-034-000-000-000 that is in the High Density District. The Petitioner requests a Variance to permit the conversion of a multi-family dwelling with three units into a multi-family dwelling with four units on a lot size of 10,800 sq. ft. where 21,000 sq. ft. is required per Chapter 100, Article 3.6.2 of the Zoning Regulations.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm. or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date January 28, 2022

APPLICATION FOR APPEAL

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

For Office Use Only:	
Case No.	<u>ZBA22-01</u>
Date Filed	<u>1/21/22</u>
Received By	<u>CJM</u>
Page	_____ of _____
Reviewed By	_____

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

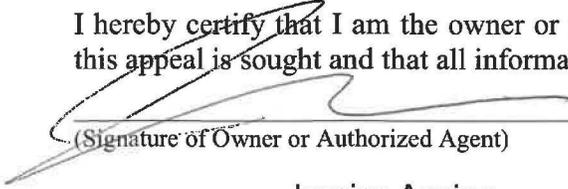
Name(s) of Applicant(s) Jessica Aguirre Phone: 603-265-0964
Address 164 Mountain Rd, 03047 Greenfield, NH
Name(s) of Owner(s) Jessica Aguirre
Address 164 Mountain Rd, 03047 Greenfield, NH
Location of Property 127 Cross Street, 03431 Keene, NH

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 554-034-000-000 Zoning District High Density (HD)
Lot Dimensions: Front 64 Rear 64 Side 165,5 Side 178,5
Lot Area: Acres 0.25 Square Feet 10800
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 22% Proposed 22
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 41 Proposed 50
Present Use Residential, Multi Family, 103
Proposed Use Residential, Multi Family, 104

SECTION III - AFFIDAVIT

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


(Signature of Owner or Authorized Agent) Date 01/19/2022

Please Print Name Jessica Aguirre

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one because:

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

I am applying for a variance to permit the conversion of a multi-family dwelling with three units into a multi-family dwelling with four units on a lot size of 10,800 sq. ft., where 21,000 sq. ft. is required per section 3.6.2 of the land development code.

I just purchased the property in mid-January, with the intention of renovating and upgrading it to meet the standards of the neighborhood. But mostly, I intend to use one of the units as my family residence, where I will live with my husband and our daughter. The building consists of a main house and an attached barn. Currently there are three units, each with two bedrooms. They are in the main house and on the 2nd floor of the barn. I would like to transform the first floor of the barn into a studio unit.

The LDC supports high intensity residential districts, and the '2010 Keene Comprehensive Master Plan' describes the purpose of such a district. It is to provide housing of various styles, various sizes and at different price points. Since the district is already fully developed, further development should be in accordance with the existing urban fabric; the usages should support each other and the intensity of use shouldn't inflict disturbance on the neighborhood. I believe that transforming the unused barn space into a small residential unit supports the idea of the LDC and the Masterplan in their true spirit. The restrictions defined in section 3.6.2 of the LDC, 'Dimensions & Siting,' are supposed to ensure the character of the neighborhood. Open spaces should be preserved, the urban tissue should remain permeable and the street scape should remain open and "airy."

The variance I apply for supports all of the criteria above.

The shape and volume of the building will remain intact and the number of people living at the property won't increase beyond an acceptable measure. The impervious coverage will stay low, at around 50%, where 75% is permitted; this will allow for high quality open spaces that are comfortable to be in, that allow for natural seepage and that maintain local ecologies. The different apartment sizes I will be able to offer if the variance is granted will range from a studio to a three-bedroom apartment, providing housing for various needs. Furthermore, the variance is in line with the city's expressed desire for sustainable moderate densification within the center of the city. Currently underused spaces in the building that are already built up will be upgraded. Only a minimal amount of additional construction material will be needed. Moreover, the existing units will benefit because resources like water and heat will be used more efficiently with four instead of three units, and the insulation of the barn will help minimize emissions of the existing units.

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

The existing use and the proposed use are both residential uses. 127 Cross Street is composed of a six-bedroom, three-bathroom house that is connected to town gas, water and sewer. There is already ample parking for eight vehicles when they are parked behind each other, but it is easily possible to improve the lot so that each vehicle can easily drive in and out. The variance

would not create a higher density of the built-up area, since the shape and volume of the existing building would remain the same. Granting the variance would allow use of the existing space in a more sustainable manner, without disturbing the integrity of the current urban fabric or the usages and character of the neighborhood. Additionally, since the variance would allow for the conversion and repurpose of the barn, it would facilitate its rehabilitation and support the preservation and viability of an historic structure.

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

The ordinance intends to create a coherent residential neighborhood that includes single family, two-family and multi-family dwellings, along with the supporting uses. Therefore, the proposed variance creates a condition that is substantially compatible with the neighborhood as it currently exists.

The LDC states: "The High Density (HD) District is intended to provide for high intensity residential development," and the '2010 Keene Comprehensive Master Plan' points out the need to create housing options for various income groups and various household sizes. Furthermore, the "Master Plan" stresses the importance of sustainable further development of the city. Moderate densification is suggested, especially in the central areas, and the conversion of bigger houses into smaller units is explicitly encouraged.

The property is located within the high-density district, and its location provides excellent connection to the city center and services. The proposed layout would provide a wider range in apartment size and would make use of currently unused spaces. Granting the variance would therefore support the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

The benefit to the petitioner outweighs any potential loss caused by it to the general public. I believe the denial of the proposal has no likely benefit to the public, in fact I believe the neighborhood, as well as the city, would profit from the small expansion of this allowed use as it supports the intent of both the Land Development Code and the Comprehensive Master Plan. The attached list shows that several other nearby properties are also varying in a similar manner from the current ordinance. Out of the 30 abutting properties, 18 (on the list within the box) have duplex or multi-family dwellings, 16 (marked in blue and yellow on the list) are on lots smaller than permitted in the high density district and seven (marked in blue on the list) vary similarly or more dramatically than the property on 127 Cross Street (in green on the list) would if the variance was granted.

Granting of the variance would not cause an increase in impacts to the neighborhood or general public that doesn't already exist. Additionally, the benefit that would be granted to the petitioner is not greater than that permitted to other two-family and multi-family property owners in the neighborhood, yet it would significantly outweigh any negative impact to the general public. Granting the variance would allow the property on 127 Cross Street to be similarly used as other surrounding properties and would therefore do substantial justice.

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

Currently the barn is in slight disrepair. A renovation of the barn would upgrade the appearance of the building with a positive impact on its surrounding. The intensity of the usage, and the usage of the building, remain in a similar scope, and the volume of the building wouldn't change. The changes are in accordance with the spirit of the surrounding apartment buildings and single-family houses, and the upgraded house would support the overall character of the neighborhood. Allowing the variance could therefore have a positive impact on the value of the surrounding houses and could even serve as model for future variances in the neighborhood. The value of the surrounding properties would therefore not diminish.

5. *Unnecessary Hardship*

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

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

The conditions and structures of this property are unique in various ways. First of all, the structures have existed for more than 150 years. They precede the modern ordinance. The property has a main building that dates back to 1854, which consists of about 2,600 square feet of living area and has a full basement; the two-story barn offers about 900 square feet and was built at a similar time. The upper floor of the barn was recently converted into living space but the first floor is unused. Furthermore, the physical state of this specific property is worse than many of the surrounding properties. The relevant part of the building, in particular, is in urgent need of renovation, which can only be reasonably financed if it comes with a benefit for the petitioner. Due to unique features in the floor plan, the first floor of the barn remains inaccessible from other parts of the building. It is behind the stairway and separated by the bathrooms of units two and three; therefore, the space cannot be added in a reasonable way to either of the existing units, which would be allowed by the ordinance and would not require a variance.

Denial of this variance would effectively disallow reasonable use of the first floor of the barn, thus creating a hardship. When the structure was built, a barn was an adequate use in the area, but today it lays empty and is consequently in disrepair. Although a variance is required to allow for four units on a 0.25-acre lot, the ordinance provision already allows for the current use – multi-family housing – which would not change.

The main building – along with the 2nd floor of the barn, which is currently in use – has three units with two bedrooms each. I believe the restriction of units per lot set forth in the code is a means of preventing overcrowding within a building. This is not applicable to this specific property, as the additional unit would not affect any of the other units or change the footprint of the building.

In addition, the necessary amount of parking spaces can be provided on the lot without coming close to the allowed margin of impervious coverage. Seventy-five percent coverage is allowed, but with the proposed additional parking places only about 50% of the lot would have an impervious coverage.

And

ii. The proposed use is a reasonable one because:

The proposed use is a sensible expansion of an already existing and permitted use, and the expansion is well 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. The Master Plan specifically mentions conversion of larger buildings into smaller flats “...For example, in-law apartments or the conversion of a large home into condominiums can fit seamlessly into the built environment, without drastic change to the outward appearance... this type of residential infill allows for a change in density, not a change in intensity of residential use, which in turn supports the community’s goal to create a compact, walkable community and provide choice in housing. ...”

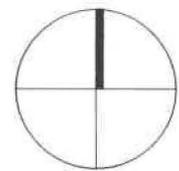
B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with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

If this variance is not granted, the first floor of the barn cannot be reasonably used for any purpose, which creates an unfair and unnecessary hardship. All other permitted uses in the zone would have a much more dramatic and negative impact on the neighborhood and would also require variances. Additionally, other permitted uses would have a negative impact on the current use of the property.

Given that there is no other reasonable use that would be allowed for the existing structure within this zone, I am applying for the variance for an additional unit as I believe it has the smallest impact while providing the greatest gain for the property, its abutters, and the community.

List of all properties abutting 127 Cross Street showing units per lot size
 (All Data taken from: <https://www.axisgis.com/keenenh/>)

Parcel Number	Property Address	Size	Units	Size Needed	Variance over in %
554-017-000	161 COURT ST.	12197	6	31000	254%
554-016-000	171 COURT ST.	14375	5	26000	181%
554-031-000	116 CROSS ST.	5663	4	21000	371%
554-034-000	127 CROSS ST.	10890	4	21000	193%
554-036-000	113 CROSS ST.	13068	4	21000	161%
549-100-000	120 ELM ST.	6300	3	16000	254%
554-029-000	90 ELM ST.	11326	3	16000	141%
554-035-000	121 CROSS ST.	11761	3	16000	136%
549-101-000	124-126 ELM ST.	5850	2	11000	188%
549-105-000	144 HIGH ST.	5900	2	11000	186%
549-109-000	8 MYSTIC PL.	7405	2	11000	149%
554-037-000	105 CROSS ST.	7405	2	11000	149%
549-113-000	201-203 COURT ST	8712	2	11000	126%
549-104-000	134 HIGH ST.	8750	2	11000	126%
554-032-000	124 CROSS ST.	10019	2	11000	110%
549-112-000	209 COURT ST.	10454	2	11000	105%
554-028-000	84 ELM ST.	11761	2	11000	94%
549-103-000	136 ELM ST.	15700	2	11000	70%
554-018-000	151 COURT ST.	20473	2	11000	54%
554-038-000	116 ELM ST.	4792	1	6000	125%
549-110-000	7 MYSTIC PL.	6098	1	6000	98%
554-013-000	195 COURT ST.	6098	1	6000	98%
549-106-000	152 HIGH ST.	6400	1	6000	94%
549-108-000	6 MYSTIC PL.	6970	1	6000	86%
549-107-000	4 MYSTIC PL.	6970	1	6000	86%
549-111-000	158 HIGH ST.	7405	1	6000	81%
554-030-000	104 CROSS ST.	7405	1	6000	81%
554-014-000	189 COURT ST.	9583	1	6000	63%
554-015-000	183 COURT ST.	10019	1	6000	60%
554-033-000	133 CROSS ST.	10019	1	6000	60%
549-102-000	130 ELM ST.	Commercial	Commercial	Commercial	Commercial



Scale 1" = 40'

Property address
127 Cross Street,
03431 Keene, NH

Petitioner/Owner
Jessica Aguirre
164 Mountain Rd
03047 Greenfield, NH



127 Cross Street

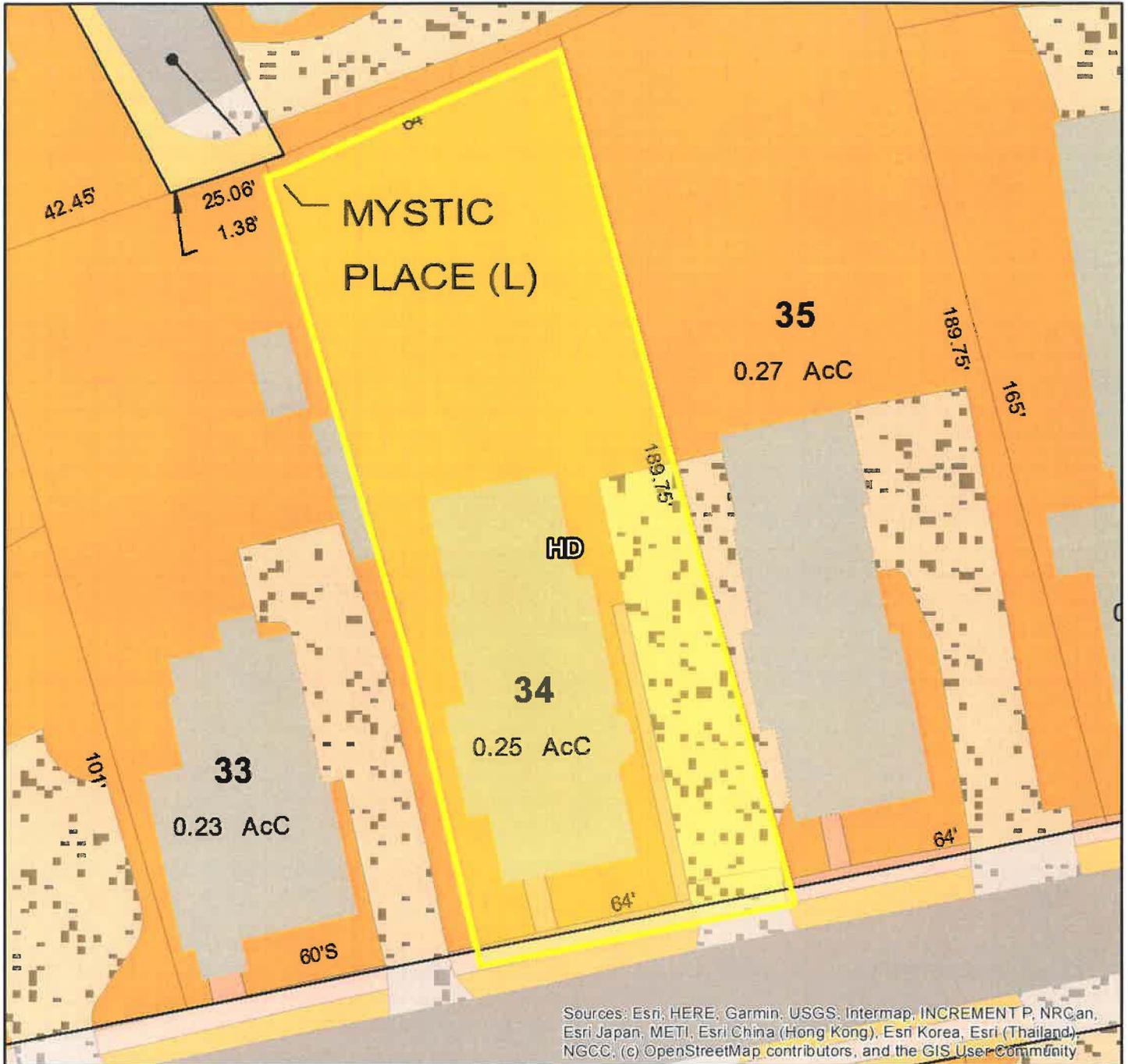
Keene, NH



January 5, 2022

1 inch = 30 Feet

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Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

	Property Line		Driveway
	Public Road		Other Impervious Area
	Buildings		Road
	Right of Ways		HIGH DENSITY

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



127 Cross Street

Keene, NH



January 19, 2022

1 inch = 50 Feet

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Sources: Esri, HERE, Garmin, Intermap, increment P. Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster-NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

	Property Line		Right of Ways		MEDIUM DENSITY
	Public Road		Driveway		HIGH DENSITY
	Buildings		Other Impervious Area		
	Shadow		Road		

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200 foot Abutters List Report

Keene, NH
January 21, 2022

Subject Property:

Parcel Number: 554-034-000
CAMA Number: 554-034-000-000-000
Property Address: 127 CROSS ST.

Mailing Address: AGUIRRE, JESSICA CAMILLE
127 CROSS ST. UNIT 1
KEENE, NH 03431

Abutters:

Parcel Number: 549-100-000
CAMA Number: 549-100-000-000-000
Property Address: 120 ELM ST.

Mailing Address: K & K HORIZONS LLC
8 WARMAC RD.
SWANZEY, NH 03446

Parcel Number: 549-101-000
CAMA Number: 549-101-000-000-000
Property Address: 124-126 ELM ST.

Mailing Address: KM PROPERTIES OF ELM STREET LLC
4 DUCHESS RD.
NASHUA, NH 03063

Parcel Number: 549-102-000
CAMA Number: 549-102-000-000-000
Property Address: 130 ELM ST.

Mailing Address: BINNEY JONATHAN K. BINNEY KERRY C.
93 MAPLE GROVE RD.
WALPOLE, NH 03608

Parcel Number: 549-103-000
CAMA Number: 549-103-000-000-000
Property Address: 136 ELM ST.

Mailing Address: GERMAIN JAMES B. GERMAIN LORA L.
136 ELM ST.
KEENE, NH 03431

Parcel Number: 549-104-000
CAMA Number: 549-104-000-000-000
Property Address: 134 HIGH ST.

Mailing Address: WYMAN MARTIN J.
134 HIGH ST.
KEENE, NH 03431

Parcel Number: 549-105-000
CAMA Number: 549-105-000-000-000
Property Address: 144 HIGH ST.

Mailing Address: SCULLY DAVID R. SCULLY ROSE MARIE A.
144 HIGH ST.
KEENE, NH 03431

Parcel Number: 549-106-000
CAMA Number: 549-106-000-000-000
Property Address: 152 HIGH ST.

Mailing Address: TREBILCOCK ROBERT P. TREBILCOCK MARGARET M.
152 HIGH ST.
KEENE, NH 03431

Parcel Number: 549-107-000
CAMA Number: 549-107-000-000-000
Property Address: 4 MYSTIC PL.

Mailing Address: POLLITT GEOFFREY
4 MYSTIC PL.
KEENE, NH 03431

Parcel Number: 549-108-000
CAMA Number: 549-108-000-000-000
Property Address: 6 MYSTIC PL.

Mailing Address: BLOUIN, PATRICIA A.
6 MYSTIC PL.
KEENE, NH 03431

Parcel Number: 549-109-000
CAMA Number: 549-109-000-000-000
Property Address: 8 MYSTIC PL.

Mailing Address: HUDSON, DEBORAH J.
8 MYSTIC PL.
KEENE, NH 03431



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200 foot Abutters List Report

Keene, NH
January 21, 2022

Parcel Number: 549-110-000
CAMA Number: 549-110-000-000-000
Property Address: 7 MYSTIC PL.

Mailing Address: ORCIARI, CARLO J. ORCIARI, JUDITH
7 MYSTIC PL.
KEENE, NH 03431

Parcel Number: 549-111-000
CAMA Number: 549-111-000-000-000
Property Address: 158 HIGH ST.

Mailing Address: MATTHEWS, JOHN MATTHEWS, SUSAN
158 HIGH ST.
KEENE, NH 03431

Parcel Number: 549-112-000
CAMA Number: 549-112-000-000-000
Property Address: 209 COURT ST.

Mailing Address: EMINETH, TROY J. EMINETH, JULIE
209 COURT ST.
KEENE, NH 03431

Parcel Number: 549-113-000
CAMA Number: 549-113-000-000-000
Property Address: 201-203 COURT ST.

Mailing Address: RICHARDS DAVID C. RICHARDS
KATHLEEN M.
201-203 COURT ST.
KEENE, NH 03431

Parcel Number: 554-013-000
CAMA Number: 554-013-000-000-000
Property Address: 195 COURT ST.

Mailing Address: PATEL ALPESH R. PATEL, SHIVKUMAR
56 MONADNOCK HWY.
NORTH SWANZEY, NH 03431

Parcel Number: 554-014-000
CAMA Number: 554-014-000-000-000
Property Address: 189 COURT ST.

Mailing Address: SCHUERMAN CHARLOTTE K. REV.
TRUST
189 COURT ST.
KEENE, NH 03431-3416

Parcel Number: 554-015-000
CAMA Number: 554-015-000-000-000
Property Address: 183 COURT ST.

Mailing Address: BENNING, SARAH K. ROLLASON-CASS,
JOHN
183 COURT ST.
KEENE, NH 03431

Parcel Number: 554-016-000
CAMA Number: 554-016-000-000-000
Property Address: 171 COURT ST.

Mailing Address: DAZWA PROPERTIES LLC
PO BOX 521
KEENE, NH 03431

Parcel Number: 554-017-000
CAMA Number: 554-017-000-000-000
Property Address: 161 COURT ST.

Mailing Address: 161 COURT STREET APARTMENTS LLC
151 COURT ST.
KEENE, NH 03431

Parcel Number: 554-018-000
CAMA Number: 554-018-000-000-000
Property Address: 151 COURT ST.

Mailing Address: NICHOLS JASON E. NICHOLS EMILY M.
151 COURT ST.
KEENE, NH 03431

Parcel Number: 554-028-000
CAMA Number: 554-028-000-000-000
Property Address: 84 ELM ST.

Mailing Address: HANSEL, GEORGE
84 ELM ST.
KEENE, NH 03431-3052

Parcel Number: 554-029-000
CAMA Number: 554-029-000-000-000
Property Address: 90 ELM ST.

Mailing Address: SCAPPACE WILLIAM E.
90 ELM ST. 1
KEENE, NH 03431-3052



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1/21/2022

Page 2 of 3



200 foot Abutters List Report

Keene, NH
January 21, 2022

Parcel Number: 554-030-000
CAMA Number: 554-030-000-000-000
Property Address: 104 CROSS ST.

Mailing Address: SANDY, KARL ROBERT
104 CROSS ST.
KEENE, NH 03431

Parcel Number: 554-031-000
CAMA Number: 554-031-000-000-000
Property Address: 116 CROSS ST.

Mailing Address: KUMOREK STEPHEN P. KUMOREK
DONNA L.
PO BOX 17
KEENE, NH 03431

Parcel Number: 554-032-000
CAMA Number: 554-032-000-000-000
Property Address: 124 CROSS ST.

Mailing Address: COOMBS ARNOLD P.
124 CROSS ST.
KEENE, NH 03431

Parcel Number: 554-033-000
CAMA Number: 554-033-000-000-000
Property Address: 133 CROSS ST.

Mailing Address: BALLARD, KENNETH R. BALLARD,
KELLY E.
133 CROSS ST.
KEENE, NH 03431-3014

Parcel Number: 554-035-000
CAMA Number: 554-035-000-000-000
Property Address: 121 CROSS ST.

Mailing Address: GAO, MEI LIAN
121 CROSS ST.
KEENE, NH 03431

Parcel Number: 554-036-000
CAMA Number: 554-036-000-000-000
Property Address: 113 CROSS ST.

Mailing Address: CARBONE, NATHAN B.
113 CROSS ST.
KEENE, NH 03431

Parcel Number: 554-037-000
CAMA Number: 554-037-000-000-000
Property Address: 105 CROSS ST.

Mailing Address: BROWN MICHAEL A. BROWN DEBORAH
L. AUSTIN
53 PINE AVE.
KEENE, NH 03431

Parcel Number: 554-038-000
CAMA Number: 554-038-000-000-000
Property Address: 116 ELM ST.

Mailing Address: THORNBLAD, VERNON
116 ELM ST.
KEENE, NH 03431



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95 MAIN ST. ZBA 22-02



Petitioner requests a Variance to permit an electronically activated changeable copy sign, which are prohibited per Chapter 100, Article 10.3 of the Zoning Regulations.



NOTICE OF HEARING

ZBA 22-02

A meeting of the Zoning Board of Adjustment will be held on Monday, February 7, 2022, at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition. Petitioner, Alec Doyle, of the Colonial Theater, 95 Main St., requests a Variance for property located at 95 Main St., Tax Map #575-008-000-000-000 that is in the Downtown Core District. The Petitioner requests a Variance to permit an internally illuminated, electronically activated changeable copy sign where electronically activated changeable copy signs are a prohibited sign per Chapter 100, Article 10.3 of the Zoning Regulations.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm. or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date January 28, 2022

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	<u>ZBA21-02</u>
Date Filled	<u>1/21/22</u>
Rec'd By	<u>CM</u>
Page	of
Rev'd by	

If you have questions on how to complete this form, please call: (603) 352-5440 or email: communitydevelopment@keenenh.gov

SECTION 1: APPLICANT / OWNER INFORMATION

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. If authorized agent, a signed authorization to the agent from the property owner is required.

OWNER / APPLICANT	PRINT NAME: Colonial Performing Arts Center	APPLICANT / AUTHORIZED AGENT (if different than Owner)	PRINT NAME: Alec Doyle
	SIGNATURE:		SIGNATURE: 
	MAILING ADDRESS: 95 Main Street, Keene, NH 03431		MAILING ADDRESS: 95 Main Street, Keene, NH 03431
	PHONE:		PHONE: (603) 357-1233
	EMAIL:		EMAIL: alec.doyle@thecolonial.org

SECTION 2: GENERAL PROPERTY INFORMATION

Property Address: 95 Main Street, Keene, NH

Lot Dimensions: Front: E 74.45' Rear: W 72.2' Side: N 220.1' Side: S 221.8'

Lot Area: Acres: 0.37 Square Feet: 16,354

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 95 Proposed: 95

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 95 Proposed: 95

Present Use: Theatre Marquee

Proposed Use: Theatre Marquee

SECTION 3: APPLICATION REQUIREMENTS

A complete application must include the following items and submitted by one of the options below:

- **Email:** communitydevelopment@keenenh.gov, with "ZBA Variance Application" in the subject line
 - **Mail / Hand Deliver:** Community Development (4th Floor), Keene City Hall, 3 Washington St, Keene, NH 03431
- The submittal requirements for a Variance application are outlined further in **Article 25.5** of the [Land Development Code](#).

<input type="checkbox"/> SECTION FOUR-APPLICATION CRITERIA: Briefly respond to each criteria to provide a clear description of the proposed project.	<input type="checkbox"/> WRITTEN NARRATIVE: Briefly describe the property location, and explain the purpose and effect of, and justification for, the proposed variance.
<input type="checkbox"/> ABUTTERS LIST: A complete list of abutters within 200 feet of the subject parcel. See the attached Notice List Instruction Sheets for details.	<input type="checkbox"/> SITE PLAN: The plan should show the locations and dimensions of all structures and open spaces on the lot in question and on the adjacent lots. Plans do not need to be professionally drawn.
<input type="checkbox"/> APPLICABLE FEES: \$100 application, \$62.00 legal ad and the current USPS certified mailing rate per abutter (checks made payable to City of Keene)	

SECTION 4: APPLICANTION CRITERIA

A Variance is requested from Article (s) 10.3 of the Zoning Regulations to permit:

Internally Illuminated Sign

Electrically Activated Changeable Copy Sign

Briefly describe your responses to each criteria:

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

The Colonial Theatre, and in particular the marquee on the Theatre, has been a long-standing landmark in the City of Keene. The marquee sign is an important part of the history of theatre that serves as an integral piece of Keene and its downtown streetscape. Maintaining the sign in its historic configuration while providing much needed upgrades to make it both safer for operations of the theatre as well as improved signage technology in line with today's theatre standards will allow the Colonial and the maquee to remain the landmark it has become and a vibrant part of the Keene community. The proposed sign improvements maintain the historic configuration of the marquee while allowing for improved wayfinding for patrons and visibility for sponsors and others.

It is clear that given the minor nature of the proposed improvements to the marquee and the longstanding presence of the marquee in downtown Keene, granting the variance will not alter the essential character of the neighborhood nor threaten public health, safety or welfare.

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

The Colonial Theatre marquee is a historic landmark, an integral part of the Keene streetscape and a valuable contribution to the history of Main Street. The configuration, shape and size of the marquee structure will not change. The configuration, size and shape of the lit area for signage will not change. The only change will be the technology utilized to light and create the signage area. With this change to create a more safe and energy efficient sign, the new signage area will resemble the existing sign in shape and size observing the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

The Colonial Theatre marquee is in a current state of disrepair. As a good partner of the community, the Colonial believes it is important to provide the much-needed repairs at his time for several reasons. No major repairs have been done to the sign for multiple decades. The wiring is confirmed to be from the previous mid-century. The light fixtures are of the same time frame and replacement parts are no longer available. improvements making the sign electrically safe and efficiently operational are justified. Additionally, the existing sign requires staff members to manually change letters for upcoming events. Since most of the Colonial events occur during fall, winter and spring months, this adds undue risk of a fall or injury to the employees. The new sign will eliminate the need for ladder access and will allow all employees of any mobility to change the sign remotely from controls within the theatre, in a safe and efficient manner.

Given these circumstances, it's clear the Colonial Theatre and the downtown area is benefited by granting the variance.

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

The Colonial Performing Arts Center is investing in a substantial renovation and addition project thanks to the generosity of the Keene community. This work is being done to position the Colonial to remain as an important anchor to the downtown environment for the next generation. Colonial shows 50,000 + people to downtown each year which supports restaurants, retail and other surrounding businesses. The improvement of the marquee sign will enable the Colonial to remain highly relevant and improve its standing in the community which will in turn support the surrounding properties for decades to come.

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:

Repairs and improvements to the marquee will only enhance the Colonial Theatre's positive impact on the neighborhood and community.

The intent of the zoning ordinance is to encourage property owners to maintain and upgrade their properties to ensure a vibrant downtown.

and

ii. The proposed use is a reasonable one because:

Given the unique and special conditions of this property – the last remaining historic theatre in Keene and a major local and regional landmark as well, the proposed variance is reasonable.

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.

Given the unique and special conditions of this property – it is the only historic theatre in Keene and is a recognized landmark as well, the proposed variance is reasonable in seeking to upgrade the marquee to incorporate modern technology while retaining its historic charm.

WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

The Colonial Theatre, as part of a historic downtown district, has had a distinctive marquee sign for more than half a century. There are three major components to this marquee: the red neon channel letters spelling out the name of the venue; the back-lit copy board with black exchangeable letters listing events and other content; and the many small incandescent bulbs which illuminate a classic "chase" along the marquee's length. Of these three elements, one stands out as an opportunity for improvement: The back-lit copy board, which displays upcoming events, sponsor recognitions, community messages, and other opportunities for our constituents.

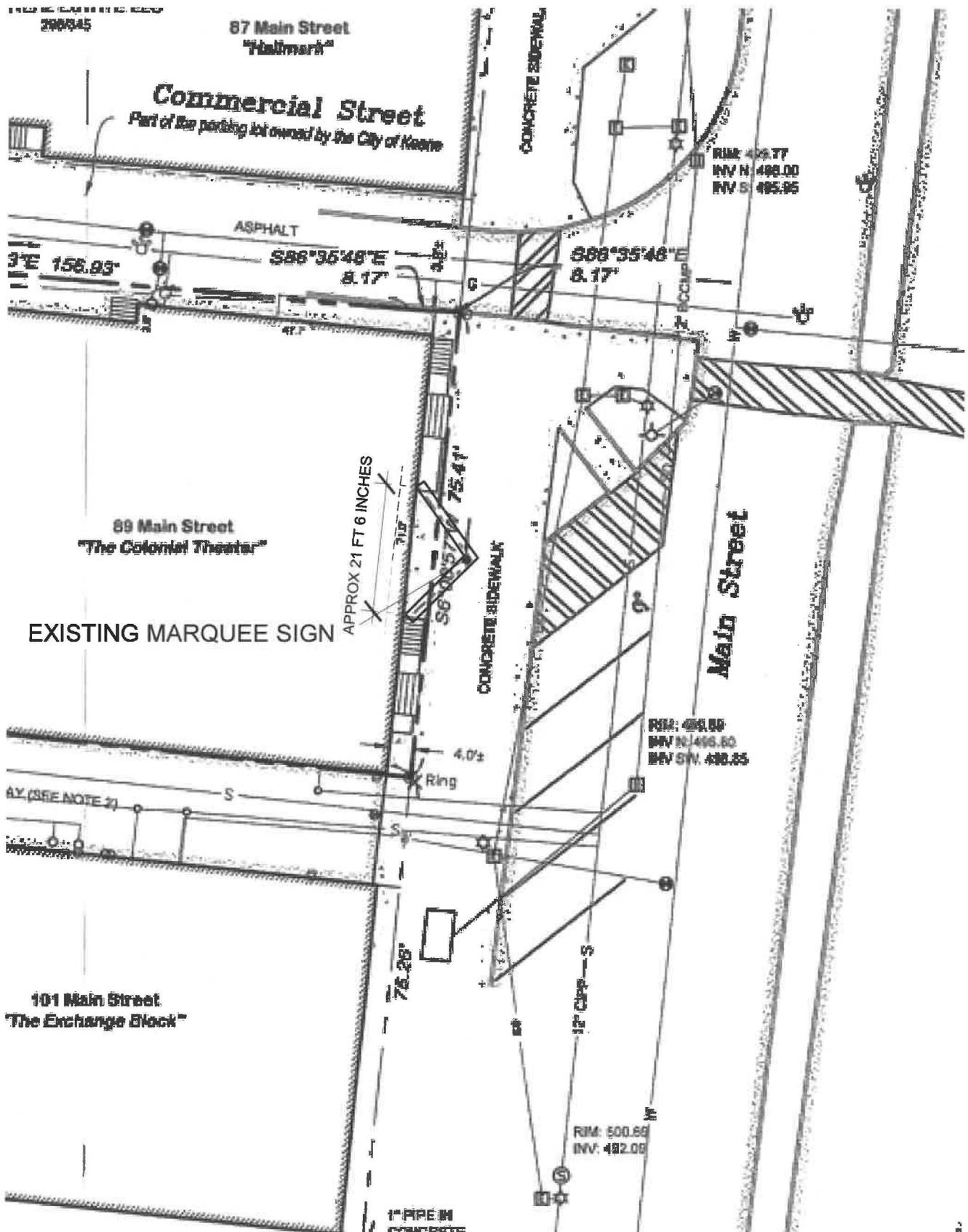
The Colonial Performing Arts Center, owners of the establishment, propose a replacement of the back-lit copy board with an internally illuminated, electronically changeable copy board on both sides of our marquee. This would consist of a custom-manufactured display, utilizing full-color LED lights housed in weather-proof black panels, interconnecting to fill the same space and dimensions occupied by the existing copy boards.

This new electronic copy board would match, and not exceed, the overall brightness of the current copy board's back-lighting.

The intended benefits of this new copy board are three-fold:

- 1) Replacement of outdated elements such as wiring, lamp sockets, and rusted metal within the frame of the current copy board. This has great value in preserving the longevity of our marquee.
- 2) Removing potential life safety hazards, especially during winter months to our employees. Currently the sign letters are changed and re-arranged manually, doing so either by climbing a ladder or with a spring-loaded extension pole. In either case, both employees and pedestrians may be at risk of injury. The new proposed copy board requires no physical intervention to change copy.
- 3) The proposed electronic copy board is meant to be part of the greater project to revitalize the Colonial Theatre as a modern performing arts center. While nearly all of the historic elements inside and outside the building remain, the Colonial Performing Arts Center sees immense value in supplementing these elements with safer, modern, forward-thinking, and energy-efficient additions. Unlike the outdated copy board with its very limited two lines of copy and only 23 characters per line, an upgraded board would allow us to present more detailed and frequently updated information about our programming, more robust exposure for the businesses, individuals, and nonprofit partners that support, or are engaged in, the arts in our region, and provide a welcoming and informative billboard for visitors who may be unfamiliar with all the theatre that the greater Keene community has to offer.

Our sign vendor, as well as the electronic copy board manufacturer, will be present at this hearing to help address any concerns or questions the City might have.



**SITE PLAN locating Marquee
2021 Addition and Renovation**

SK 089

WELLER & MICHAL ARCHITECTS





21
0.71 AcC

0.11 AcC

MAIN STREET (L)

BUILDING 1
UNIT C UNIT B UNIT A
14
0.19 AcC

BUILDING 2
13
0.04 AcC

10
1.59 Ac

12
0.35 AcC

11
0.13 AcC

COMMERCIAL STREET (L)

8
0.37 Ac

7
0.69 AcC

9
0.20 AcC

4
0.14 AcC

75
0.19 AcC

5
0.43 AcC

6
0.31 AcC

RAILROAD

58
0.064

CYPRE

142.80'

E/

65
0.24 AcC

64
0.65 AcC

63
0.17 AcC



200 foot Abutters List Report

Keene, NH
January 20, 2022

Subject Properties:

Parcel Number: 575-008-000
CAMA Number: 575-008-000-001-003
Property Address: 89 MAIN ST.

Mailing Address: COLONIAL THEATRE GROUP INC
PO BOX 77
KEENE, NH 03431

Parcel Number: 575-008-000
CAMA Number: 575-008-000-001-005
Property Address: 89 MAIN ST.

Mailing Address: COLONIAL THEATRE GROUP INC
PO BOX 77
KEENE, NH 03431

Abutters:

Parcel Number: 574-042-000
CAMA Number: 574-042-000-000-000
Property Address: 0 RAILROAD ST.

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

Parcel Number: 575-004-000
CAMA Number: 575-004-000-000-000
Property Address: 31 EMERALD ST.

Mailing Address: COLONIAL THEATRE GROUP INC
PO BOX 77
KEENE, NH 03431

Parcel Number: 575-005-000
CAMA Number: 575-005-000-000-995
Property Address: 7 EMERALD ST.

Mailing Address: 7 EMERALD STREET LLC
7 EMERALD ST.
KEENE, NH 03431

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-101
Property Address: 7 EMERALD ST. #101

Mailing Address: BOURQUE, JOHN G. BOURQUE, DANA R.
179 OLD CRAIGVILLE RD.
HYANNIS, MA 02601

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-102
Property Address: 7 EMERALD ST. #102

Mailing Address: CORY, DEBORAH J.
7 EMERALD ST. #102
KEENE, NH 03431

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-103
Property Address: 7 EMERALD ST. #103

Mailing Address: 7 EMERALD STREET LLC
7 EMERALD ST.
KEENE, NH 03431

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-104
Property Address: 7 EMERALD ST. #104

Mailing Address: 7 EMERALD STREET LLC
7 EMERALD ST.
KEENE, NH 03431

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-201
Property Address: 7 EMERALD ST. #201

Mailing Address: VDOVIK, STEPHEN MARKOW,
MEREDITH
5225 SPEAR ST. PO BOX 308
SHELBURNE, VT 05482

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-202
Property Address: 7 EMERALD ST. #202

Mailing Address: 7 EMERALD STREET LLC
7 EMERALD ST.
KEENE, NH 03431



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200 foot Abutters List Report

Keene, NH
January 20, 2022

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-203
Property Address: 7 EMERALD ST. #203

Mailing Address: FLYNN, ANASTASIYA
112 GENERAL MILLER HWY.
TEMPLE, NH 03084

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-204
Property Address: 7 EMERALD ST. #204

Mailing Address: TORSELLI, MARK
1 WOODLAND TERR.
PROSPECT, CT 06712

Parcel Number: 575-005-000
CAMA Number: 575-005-000-001-205
Property Address: 7 EMERALD ST. #205

Mailing Address: DUTEAU, COURTNEY DUTEAU,
AUGUSTA
6 SUMMIT RD. UNIT 12
KEENE, NH 03431

Parcel Number: 575-006-000
CAMA Number: 575-006-000-000-000
Property Address: 115-117 MAIN ST.

Mailing Address: MCGREER HOLDINGS LLC
115 MAIN ST.
KEENE, NH 03431

Parcel Number: 575-007-000
CAMA Number: 575-007-000-000-000
Property Address: 101 MAIN ST.

Mailing Address: WICHLAND BROTHERS REALTY
105 MAIN ST.
KEENE, NH 03431

Parcel Number: 575-008-000
CAMA Number: 575-008-000-000-000
Property Address: 89 MAIN ST.

Mailing Address: COLONIAL THEATRE GROUP INC
PO BOX 77
KEENE, NH 03431

Parcel Number: 575-008-000
CAMA Number: 575-008-000-001-003
Property Address: 89 MAIN ST.

Mailing Address: COLONIAL THEATRE GROUP INC
PO BOX 77
KEENE, NH 03431

Parcel Number: 575-008-000
CAMA Number: 575-008-000-001-005
Property Address: 89 MAIN ST.

Mailing Address: COLONIAL THEATRE GROUP INC
PO BOX 77
KEENE, NH 03431

Parcel Number: 575-009-000
CAMA Number: 575-009-000-000-000
Property Address: 20 COMMERCIAL ST.

Mailing Address: COLONIAL THEATRE GROUP INC
PO BOX 77
KEENE, NH 03431

Parcel Number: 575-010-000
CAMA Number: 575-010-000-000-000
Property Address: 0 COMMERCIAL ST.

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

Parcel Number: 575-011-000
CAMA Number: 575-011-000-000-000
Property Address: 87 MAIN ST.

Mailing Address: PCT REAL ESTATE LLC
87 MAIN ST.
KEENE, NH 03431

Parcel Number: 575-012-000
CAMA Number: 575-012-000-000-000
Property Address: 81 MAIN ST.

Mailing Address: KEENE HOLDING CO LLC
200 GRIFFIN RD. SUITE 1
PORTSMOUTH, NH 03801-7145



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200 foot Abutters List Report

Keene, NH
January 20, 2022

Parcel Number: 575-013-000
CAMA Number: 575-013-000-000-000
Property Address: 2 GILBO AVE.

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

Parcel Number: 575-013-000
CAMA Number: 575-013-000-001-000
Property Address: 2 GILBO AVE.

Mailing Address: MASTROGIOVANNI, ROBERTA
67 MAIN ST.
KEENE, NH 03431

Parcel Number: 575-014-000
CAMA Number: 575-014-000-000-000
Property Address: 12 GILBO AVE.

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

Parcel Number: 575-014-000
CAMA Number: 575-014-000-001-00A
Property Address: 12 GILBO AVE.

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

Parcel Number: 575-014-000
CAMA Number: 575-014-000-001-00B
Property Address: 12 GILBO AVE.

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

Parcel Number: 575-014-000
CAMA Number: 575-014-000-001-00C
Property Address: 12 GILBO AVE.

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

Parcel Number: 575-015-000
CAMA Number: 575-015-000-000-000
Property Address: 0 GILBO AVE.

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

Parcel Number: 575-057-000
CAMA Number: 575-057-000-000-000
Property Address: 82 MAIN ST.

Mailing Address: CAMPY LLC
71 EAGLE DR.
BEDFORD, NH 03110-4414

Parcel Number: 575-058-000
CAMA Number: 575-058-000-000-000
Property Address: 88-90 MAIN ST.

Mailing Address: XANTHOPOULOS GEORGE & ELENI
LIVING TRUST
553 WASHINGTON ST.
KEENE, NH 03431

Parcel Number: 575-059-000
CAMA Number: 575-059-000-000-000
Property Address: 100 MAIN ST.

Mailing Address: CHOW DOWN INVESTMENTS LLC
PO BOX 143
KEENE, NH 03431

Parcel Number: 575-060-000
CAMA Number: 575-060-000-000-000
Property Address: 102 MAIN ST.

Mailing Address: 102 MAIN STREET ASSOCIATES LLC
PO BOX 3
WALPOLE, NH 03608

Parcel Number: 575-061-000
CAMA Number: 575-061-000-000-000
Property Address: 106 MAIN ST.

Mailing Address: FARINA RONALD A. REV. TRUST
17 MCKINLEY ST.
KEENE, NH 03431



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200 foot Abutters List Report

Keene, NH
January 20, 2022

Parcel Number: 575-062-000
CAMA Number: 575-062-000-000-000
Property Address: 110-120 MAIN ST.

Mailing Address: R & M WEINREICH LLC
110 MAIN ST.
KEENE, NH 03431

Parcel Number: 584-075-000
CAMA Number: 584-075-000-000-000
Property Address: 37 EMERALD ST.

Mailing Address: FOX BARRY JOEL
50 EASTVIEW RD.
KEENE, NH 03431



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- b. A public hearing shall be held within forty-five (45) days of the receipt of an application, unless extended by the Board for good cause shown. Public notice of public hearings on each application shall be published in the local newspaper and shall be posted at two locations, of which one posting may be on the City internet website, not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, all applicable provisions of the zoning ordinance, the type of appeal being made, and the date, time, and place of the hearing.
 - i. Personal notice shall be made by Certified Mail to the applicant and to all abutters and holders of conservation, preservation or agricultural preservation restrictions not less than five (5) days before the date of the hearing.
- c. **Plot Plans:** A scale drawing showing the location and dimensions of all structures and open spaces on the subject lot and on the adjacent lots. Plans need not be professionally drawn, but must be a sufficient and accurate representation of the property. Plans deemed to be insufficient by the Clerk shall be returned, and no public hearing shall be scheduled until the receipt of an acceptable plan. The plot plan is to be a minimum of 8 ½ x 11 inches.
- d. **Abutter Notification Materials:** For the purpose of abutter notification, the following items shall be submitted with the application:
 - i. An abutters list that includes all owners of properties that directly abut and/or that are across the street or stream from the parcel(s) that will be subject to review, and all owners of properties located within two hundred (200) feet of the parcel(s) that will be subject to review. ~~The two hundred (200) foot measurement shall not include the width of any streets or streams.~~ The certified list shall include all property owner names, property street addresses, property tax map parcel numbers, and mailing addresses if different from the property address. In the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association as defined in RSA 356-B:3, XXIII.
 - ii. Two (2) sets of legible mailing labels (Avery size 5160 or equivalent) for each abutter and including the owner of the property that will be subject to review and his/her designated agent(s).
 - iii. A check in an amount sufficient to cover the cost of legal notice advertising and mailing of certified letters to abutters.