



City of Keene Zoning Board of Adjustment

AGENDA

Monday, June 3, 2024 **6:30 p.m.** **City Hall, 2nd Floor Council Chambers**

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: **May 6, 2023**
- III. Unfinished Business:
- IV. Hearings:
 - ZBA-2024-12:** Petitioner, Thomas Burton requests a variance for property located at 45 Dover St., Tax Map #569-082-000 and is in the Medium Density District. The Petitioner requests a variance to replace the required 10 ft. side setback with a 3 ft. side setback per Article 3.5.2 of the Zoning Regulations.
 - ZBA-2024-13:** Petitioner, Jim Phippard of Brickstone Land Use Consultants, LLC of 185 Winchester St., requests a variance for property located at 0 Wetmore St., Tax Map #116-032-001, is in the High Density District and is owned by the Bergeron Family Revocable Trust of 2021. The Petitioner requests a variance to permit a building lot containing 5,544 sq. ft. where 6,000 sq. ft. are required per Article 3.6.2 Minimum Lot Area of the Zoning Regulations.
 - ZBA-2024-14:** Petitioner, Martine Fiske requests a variance for property located at 10 Adams Ct., Tax Map #590-006-000 and is in the Low Density District. The Petitioner requests a variance to permit a 16 ft x 19 ft deck on a lot that is non-conforming at 7, 620 sq. ft. where 10, 000 sq. ft. is required, making it unable to conform with the impervious coverage per Article 3.3.3 of the Zoning Regulations.
 - ZBA-2024-15:** Petitioner, Jason Reimers of BCM Environmental and Land Law, PLLC, of 41 School St., representing Ryan Gagne of Live Free Recovery Services, LLC, 9 Dutton Circle, Mt. Vernon, NH, requests a variance for property located at 973 Marlboro Rd., Tax Map #294-004-000, is in the Rural District and is owned by BTD Properties, LLC of 1 Main St., Marlborough, NH. The Petitioner requests

a variance to permit a non-medical Residential Drug/Alcohol Treatment Facility where such use is not permitted per Article 3.1.5 of the Zoning Regulations.

ZBA-2024-16: Petitioner, Heather Francisco requests a variance for property located at 271 Elm St., Tax Map #536-086-000 and is in the Medium Density District. The Petitioner requests a variance to turn a single family home with an Accessory Dwelling Unit into a two family on a lot with 11,325.6 sq. ft. where 13,400 sq. ft. is required per Article 3.5.2 of the Zoning Regulations

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

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

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

8 **Monday, May 6, 2024**

6:30 PM

**Council Chamber,
City Hall**

Members Present:

Joseph Hoppock, Vice Chair
Jane Taylor, Vice Chair
Richard Clough
Edward Guyot

Staff Present:

Corinne Marcou, Zoning Clerk
Michael Hagan, Plans Examiner

Members Not Present:

David Weigle, Alternate

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10
11 **I) Introduction of Board Members**
12

13 Chair Hoppock called the meeting to order at 6:30 PM and explained the procedures of the
14 meeting. Roll call was conducted.
15

16 **II) Minutes of the Previous Meeting - March 4, 2024; and April 1, 2024**
17

18 Ms. Taylor made a motion to approve the meeting minutes of April 1, 2024. Mr. Guyot seconded
19 the motion, which passed by unanimous vote.
20

21 **III) Unfinished Business**
22

23 Chair Hoppock asked if there was any unfinished business. Mr. Hagan replied no.
24

25 **IV) Hearings**
26

27 **A) Continued ZBA-2024-06: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo**
28 **Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21**
29 **Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2**
30 **Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a mix**
31 **of commercial and residential uses on a single 24.38 acre tract per Article 8.1.3 of**
32 **the Zoning Regulations.**
33

34 Chair Hoppock asked if the Applicant wants to proceed with a four-member board. Ariane Ice
35 replied yes.

36
37 Chair Hoppock asked to hear from staff, regarding the multiple applications for the same
38 property.

39
40 Mr. Hagan stated that several applications are continued from last month, beginning with ZBA-
41 2024-06, (a Variance) to allow multiple principal uses on one property. He continued that ZBA-
42 2024-07 is to allow for a three-family where only a single-family is allowed in the Rural Zone,
43 and ZBA-2024-08, a Variance for the scale house and accessory uses that go along with it. ZBA-
44 2024-09 is for the agricultural retail store, and ZBA-2024-10 is for the accessory structure in the
45 setback where 50 feet is required.

46
47 Mr. Hagan stated that this this property has a long, lengthy history with many decisions made by
48 the ZBA. He continued that in 1974, this property was known as Palmer Lodge. On February 25,
49 1974, a request for a Special Exception for a multi-use campground was approved. He does not
50 have a ZBA number for that. In 1979, it was a Hebrew Masonic Center and received a Variance
51 on April 14, ZBA-79-38, for a church and conference center. In 1985, it became Whispering
52 Pines and the Mountain Lodge, receiving a Special Exception on December 12, ZBA-84-52. In
53 1989, it received a Variance, ZBA-89-52, which altered some of the allowed uses on the property
54 to include a hospital clinic, detoxification facility, and a lodging house. The property's most
55 recent use, as of January 8, 1999, was the Otter Brook Community Center, which no Variances
56 were needed for.

57
58 Mr. Hagan continued that the property is zoned Rural, sits on 24.38 acres, and has 14 buildings.
59 The Applicants are seeking to make some alterations.

60
61 Ms. Taylor stated that the Applicants propose increasing the impervious surface and is does not
62 know what the proportion is in this Zone for this size property, asking if that is an issue. Mr.
63 Hagan replied that he can look into it. He continued that at first glance, it does not seem to be an
64 issue as they will be removing a lot of impervious coverage for trails, as well as three road loops,
65 to reduce that. The Applicants have a lot of land to be able to cover the proposed use.

66
67 Chair Hoppock asked to hear from the Applicant.

68
69 Ariane Ice stated that she will have the engineering team give an overview of the property and
70 how it all fits together, and then she will go through the Variance criteria.

71
72 Justin Daigneault from Granite Engineering stated that with him is Ariane Ice from Ice Legal,
73 Jeff Merritt from Granite Engineering, Applicant Cody Gordon, and a couple representatives
74 from Habitat for Humanity.

75

76 Mr. Daigneault stated that this project will revitalize the property at 21 Rt. 9. He continued that
77 the ZBA members should have received three plan sheets. The second is an existing conditions
78 survey of the subject property owned by G2 Holdings, LLC, referenced as Tax Map #215, and is
79 23.09 acres. When they submitted the application, there was a discrepancy, an issue with the
80 town line. With the latest survey included in the package, it has a new area of 23.09 acres, with
81 the client owning both pieces.

82
83 Ms. Taylor asked if the ZBA has all the information Mr. Daigneault is referring to. Mr. Hagan
84 replied that it is on page 51 of 95 in the agenda packet.

85
86 Mr. Daigneault stated that on the first sheet, the one that shows the entire parcel in relationship to
87 the other parcels, the property to the south is Granite Gorge. He continued that the Applicant
88 owns the three abutting parcels. Lot 7 to the west, Tax Map #215-07, was permitted with a
89 Special Exception for a gravel pit in August 2022. The Applicant is currently in the process of
90 permitting an expansion of that pit that has its access further down on Rt. 9. As Mr. Hagan
91 stated, the subject property was the Palmer Lodge in 1940. They referenced septic plans back to
92 1971. The site consisted of a main lodge, a couple of motels, a recreation building, and several
93 cabins. The property was used as a Masonic Center in the late 1970's and was last used as a drug
94 rehabilitation center and juvenile detention center. When the latter owned the property, they
95 converted the existing lodge to office space. There will be a reference (in tonight's presentation)
96 for that office space. The property has been vacant for nearly 20 years and has fallen into
97 disrepair. The Applicant purchased the property in 2022.

98
99 Mr. Daigneault stated that the ZBA Site Plan sheet shows the Applicant's proposal, a change of
100 use and revitalization of the property. The project would consist of renovating two buildings on
101 the property and removing the rest. The first to be renovated would be the existing "office
102 building," converted to an agricultural retail center. The retail center would consist of 32 parking
103 spaces, an outdoor display area, and an outdoor material bay where people could come pick up
104 loam, gravel, and other materials. All other onsite structures will be removed, including the
105 majority of the parking area behind the proposed retail center, including the driveways. The
106 intent is to clean up the property. The second building to be renovated is the one in the northwest
107 portion of the site that was used as housing with 10 bedrooms with a common kitchen and
108 bathrooms. The intent is to convert it into a three-unit, multi-family building. The purpose is
109 primarily to serve the employees of the retail center or the adjacent gravel pit.

110
111 Mr. Daigneault continued that in the area of the existing commercial building, they will convert
112 that and use the existing pavement with six parking spaces and a dumpster, to meet the City's
113 parking requirements. This site has two entrances off Rt. 9 with the plan to utilize the existing
114 entrances, which they will go to the NHDOT for regarding permits. The driveway on the left will
115 be primarily used for the retail center and access to the multi-family building and the majority of
116 the existing driveway will be reused. The driveway on the right will primarily be used by trucks
117 checking in at the scale house with an at-grade scale so the Applicant can measure his materials
118 and quantify everything he is selling at the agricultural retail center. He will be able to weigh

119 there and then put his materials in the outdoor storage area, knowing exactly what quantity he is
120 selling.

121
122 Mr. Daigneault stated that lastly, regarding the large, paved area that exists on the far right, the
123 Applicant needs a Variance for outdoor storage within the setback. The Applicant currently has
124 two storage containers used by Habitat for Humanity for storage of their equipment and
125 furniture. That paved area is mainly in the setback, but the Applicant's intent is to place those
126 storage containers on the parking area and give Habitat their own spot for storage.

127
128 Mr. Daigneault stated that in summary, the project will work in conjunction with the permitted
129 gravel pit on the Applicant's lot next door with material generated from the pit to be sold at the
130 retail center. He noted that the gravel pit has one access point. Customers looking to come in and
131 pick up a couple yards of stone or loam have to use the same access as the gravel trucks, in the
132 pit area. Having a designated spot on this (other) lot for (the customers coming for smaller
133 quantities than the gravel trucks) will segregate it and make it safer. People would come in, stop
134 at the retail store, and pay for their materials.

135
136 Mr. Daigneault continued that the Applicant needs the following Variances: multiple principal
137 uses, multi-family, commercial use for the scale house, commercial use in the Rural Zone for the
138 agricultural retail store, and accessory storage within the side setback.

139
140 Ms. Taylor stated that she did not understand there were supposed to be any retail sales at the
141 gravel pit and was surprised by that. She continued that she was on the Board when that was
142 presented, and retail was not a part of it.

143
144 Ms. Ice replied that the Applicant sees this as a separate project from the gravel pit. She
145 continued that only a portion of one of the five Variances (before the Board tonight) is an
146 accessory use to the gravel pit. The rest of them, including the agricultural retail store, are
147 independent uses on this parcel. There is some connection because of what the Applicant is
148 doing there, but it is a separate application and would stand alone. Ms. Taylor replied that she
149 was just expressing her surprise to hear that there were retail transactions at the gravel pit,
150 because that was not the ZBA's understanding when they awarded it, which is a separate issue.

151
152 Ms. Taylor asked what the Applicant plans for the internal movement on this site. She continued
153 that with only one access point to the gravel pit, how the materials get from the gravel pit over to
154 the storage areas.

155
156 Mr. Daigneault stated that on the site plan, the entrance to the left will be strictly for the
157 agricultural retail center, and access for the people in the multi-family unit building. People
158 would come in, go straight, and use the existing driveway, connecting into the existing parking
159 lot. Ms. Taylor asked where people would go if they used that entrance to access the residential
160 building. Mr. Daigneault indicated it on the plan and Ms. Marcou assisted with a laser pointer.

161

162 Ms. Taylor asked if the materials from the gravel pit will come in and out where it states,
163 “proposed access to adjacent gravel pit.” Mr. Daigneault replied yes, they will use that one
164 exclusively to go through the scale house and get weighed, then go straight out onto Rt. 9 to
165 leave. Ms. Taylor asked if that would be one-way. Mr. Daigneault replied yes, and strictly for
166 trucks and in addition, anything that would be stored in the outdoor material bays or brought
167 down would be placed there using that same access. Customers coming to the retail center to
168 purchase something inside the building or within the material bins will use the same entrance he
169 just mentioned on the left. Thus, there is segregation between the retail center and the gravel
170 operation.

171
172 Ms. Taylor stated that regarding the proposed outdoor storage, she drove by, and they look like
173 movable boxes people can rent. She asked if it is correct that if they were to get a Variance for
174 outdoor storage, they could replace those two trailers with other trailers on that site, owned by
175 other people. Mr. Hagan replied that the City of Keene is currently working on a definition of
176 these “mobile storage trailers” or “mobile storage boxes.” He continued that there are many
177 different types. With this application, if the ZBA allowed the storage boxes in this location, the
178 Applicant would need a permit as a permanent accessory structure and would need to comply
179 with the requirements for that.

180
181 Mr. Hagan stated that (to answer Ms. Taylor’s earlier question), the impervious maximum is
182 20%. He continued that the application in the agenda packet identifies that they currently have
183 8.96% of impervious coverage and they propose 11.09%.

184
185 Ariane Ice stated that she will go through the Variance criteria for ZBA-2024-06, for a mix of
186 commercial and residential primary uses on a single tract.

187
188 *1. Granting the Variance would not be contrary to the public interest.*

189
190 Ms. Ice stated that the first step in analyzing whether a Variance would be contrary to the public
191 interest is to examine the Zoning Ordinance. She continued that the pathways to determine
192 whether a Variance will violate a Zoning Ordinance or basic zoning objectives is to determine
193 and examine whether the Variance would alter the essential character of the neighborhood and
194 whether it would threaten the public health, safety, or welfare. Abutting this property is the 86-
195 acre gravel pit operation to the west, owned and operated by G2 Holdings, who is the Applicant,
196 and a 102-acre forested area owned by the same Applicant in Sullivan to the north.

197
198 Ms. Ice continued that this is a unique parcel as it is in Keene which abuts the towns of Sullivan
199 and Roxbury. Directly across Rt. 9 to the south is Granite Gorge, which is in Roxbury and is a
200 141-acre ski area. Much of the area beyond these immediate neighbors is forested and
201 undeveloped, but it also contains a smattering of single-family homes. As they will discuss in
202 other applications, neither use is inconsistent with the essential character of the neighborhood.
203 Given that the tract is now 12 times the minimum lot size for the Rural District, which is
204 currently two acres, and that the distance between the proposed commercial site and the

205 residential site is significantly more than the length of a football field, the fact that these are
206 multiple uses on the tract will not be readily apparent.

207
208 She continued that additionally, this Variance would not threaten public health, safety, or
209 welfare. Given the wide separation of the two uses, the allowance of these uses on a single tract
210 would not present any additional public hazards. To the extent that this project contemplates the
211 removal and renovation of derelict structures, it will improve the safety of the public in the area.

212
213 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

214
215 Ms. Ice stated that the Rural District is intended to provide areas of very low-density
216 development, primarily of a residential or agricultural nature. She continued that the Rural
217 District allows commercial and residential uses. The specific commercial and residential uses
218 (proposed tonight) are very close to permitted uses. For the agricultural retail center, they are
219 looking for a use that is an extension of a permitted use of greenhouse/nursery. Regarding the
220 three-family dwelling, if the Applicant were applying under the conservation rules that allow for
221 more conservation land and tighter density of housing, it would be allowed. They believe it
222 meets the spirit of the Ordinance.

223
224 Ms. Ice continued that allowance of both uses will promote current goals of increasing the
225 housing supply. For example, a current NH House Bill seeks, as one part of a multifaceted
226 approach to resolve the housing shortage, to allow the use of new or rehabilitated housing units
227 in a commercial zone. Here, the mixed use would be in a residential zone, but the effect would
228 be to support the purposes of these recent changes in the Land Development Code (LDC),
229 designed here to increase housing. That is obviously something the City has been looking at for a
230 while. She understands the City might even be looking at moving the two-acre number
231 downward. Thus, the Applicant feels that their application meets the spirit of the Ordinance.

232
233 3. *Granting the Variance would do substantial justice.*

234
235 Ms. Ice stated that the case of Malachy Glen Associates v. the Town of Chichester talked about
236 how the only guiding rule for this substantial justice criterion is that any loss to the individual
237 that is not outweighed by a gain to the general public is an injustice. She continued that they look
238 at whether the proposed development is consistent with the area's present use, and as discussed,
239 both the proposed uses are consistent, not only with the permitted use but with the actual uses of
240 the surrounding properties. Furthermore, both proposed uses are much closer to the permitted
241 uses and the neighboring uses than the property's previous uses, such as a juvenile detention
242 center. An independent dwelling for three families to live in, and an agricultural retail center fit
243 nicely into the agricultural district.

244
245 Ms. Ice continued that in Harrington v. Town of Warner, the NH Supreme Court concluded that
246 an applicant who sought to expand a manufactured housing park showed substantial justice
247 would be done in granting the Variance because it would improve a dilapidated area of town and

248 provide affordable housing in the area. Here, this project would renovate already existing
249 dilapidated buildings for residential and commercial uses, thereby improving the overall tract by
250 removing the derelict structures. Additionally, residences on the same parcel as a commercial
251 establishment would help increase the supply of affordable housing in the area.

252

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

255

256 Ms. Ice stated that the value of surrounding properties would not be diminished. She continued
257 that the derelict structures on the property are an eyesore. Renovating and removing them would
258 cause the values of surrounding properties to increase rather than decrease. All recreational and
259 residential uses are sufficiently distant from the project property to be affected.

260

261 5. *Unnecessary Hardship*

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

265

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

269

270 Ms. Ice stated that the public purpose of the Ordinance, which is the separation of different uses
271 for aesthetic and safety reasons, is met. She continued that that is the purpose of not having these
272 multiple uses on one. Each of these uses involves the rehabilitation of the existing buildings; this
273 makes it a unique property. Accordingly, the restriction applied to this property does not serve
274 the public purpose in a fair and substantial way. The special conditions of the property cause the
275 proposed use to be reasonable and the use does not alter the existing character of the
276 neighborhood. The special condition is that this property is in a very rural area but has 14
277 structures on it.

278

279 Ms. Ice continued that it is appropriate to consider existing buildings as a special condition of a
280 property, as was stated in the case *Harborside v. Parade Residence Hotel*, which cited *Farrar v.*
281 *City of Keene*. That talked about a Variance sought to convert a large, historical, single use
282 residence to a mixed use of two residences and an office space, and the size of the residence was
283 relevant to determining whether the property was unique in its environment. Here, the existing
284 buildings make the property different in a meaningful way from other properties in the area, and
285 therefore, it is burdened more severely by the Zoning restriction. Denial of this Variance may
286 restrict any feasible use of the building, resulting in further deterioration of the structures.

287

288 Ms. Ice continued that another special condition of the property is that it has always had some
289 element of mixed residential and commercial use. They heard some of that from Mr. Hagan and
290 Mr. Daigneault. The allowance of the Variance for the mixed use does not bring the property

291 further out of conformance with Zoning standards. Instead, the overall project will bring the
292 property closer to compliance with modern standards.

293
294 *and*

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

296
297 Ms. Ice stated that the proposed uses are reasonable, and very similar to the permitted uses. She
298 continued that they meet the intent of the Ordinance and recent changes to encourage an increase
299 in the housing supply. Here, the Applicant only needs to show that the proposed multiple uses
300 are reasonable ones, and given the special conditions, they believe that as discussed above, the
301 buildings make the use a reasonable one.

302
303 Chair Hoppock asked about the traffic, and the trucks hauling the gravel from the pit to this site.
304 He asked how that will be regulated and how heavy they will be.

305
306 Cody Gordon, property owner, stated that the families who would be in the residence would have
307 their own private road, so to speak, cutting up through the center of the property. He continued
308 that they would not be impacted by the trucks going up on the truck road to the back of the pit.
309 The residents in the house will be his employees, who will be at work during the day. You come
310 off the driveway for the commercial end of things, go through the scale house and scale, drive up
311 the hill, and go out into the gravel pit then you come down that way. That will mainly be for
312 commercial vehicles, such as larger dump trucks and large landscape vehicles. All the
313 homeowners (with smaller vehicles) would stay down at the bottom to not congest the road
314 going up to the pit while bigger trucks are on it.

315
316 Chair Hoppock asked if the public will be able to get in and out of there on that road. Mr.
317 Gordon replied yes. He continued that an approved, existing road goes up to his gravel pit.
318 People are going up and down that. The commercial part will be (for) over a certain yardage or a
319 certain size truck; they would be going back up into the pit versus staying down (below). The
320 gravel pit expansion is separate from this.

321
322 Mr. Guyot asked if the access road to the existing pit would be abandoned and replaced by this
323 new road. Mr. Gordon replied to no. He continued that he is not completely sure, but he would
324 like to keep it for emergency access, because it is not ideal to have only one access up there. It
325 would be safer to have two. The main access would be over the scale, for efficiency. When they
326 (he and his employees) move product down, they lose ten to fifteen percent when they are
327 loading it with a loader in the back of the truck and a person is taking it away, versus having
328 someone pay by weight. With pay-by-weight, there are no complaints. Everyone, whether a
329 homeowner or (commercial person) is getting the same amount, and he is being paid for what he
330 sells. There would be the main entrance, and maybe his employees would use the other road. He
331 would definitely keep both roads.

332

333 Mr. Guyot asked if that is the reason for having the scale on this property versus the current
334 property with the gravel pit. Mr. Gordon replied that this would be set up better if he receives all
335 these Variances, because the staff person in the scale house could come out and load the product
336 into a customer's pick-up truck, then go over to the scale house and scale a truck in. It would
337 work better there where there is power and water, which the pit does not have.

338
339 Mr. Guyot asked if it is correct that it is to serve not only the commercial gravel traffic, but also
340 the retail gravel traffic. Mr. Gordon replied yes.

341
342 Chair Hoppock asked if there were any further questions from the Board. Hearing none, he
343 opened the public hearing and asked if there were any comments in opposition to the application.
344 Hearing none, he asked if there were any comments in support.

345
346 Venkat Sadasivan of 28 Concord Hill Dr. stated that he is a board member and treasurer of the
347 local Habitat for Humanity affiliate. He continued that the Habitat for Humanity board and
348 volunteers all support this project. Habitat uses the two storage containers on this property,
349 mainly to store building materials people donate to them. If Habitat can use the donations, they
350 do, and if not, they sell them. Their long-term plan is to start a ReStore, which is for recycled and
351 reused materials. Most successful Habitat chapters have a good ReStore operation. In two or
352 three years, if everything works well, Habitat wants to start a ReStore operation and be
353 successful in the Monadnock region. They build affordable workforce housing in the region. The
354 board and volunteers strongly support Mr. Gordon and his team.

355
356 Ms. Taylor asked if the long-term plan is for the ReStore to be on this site or somewhere else.
357 Mr. Sadasivan replied that they have had high-level discussions with Mr. Gordon, and he thinks
358 Habitat's plan is to have something more permanent than a container. Ms. Taylor asked if it
359 would be here at this site or somewhere else. Mr. Gordon replied to it would hopefully be here
360 on the site's 20+ acres, but they have not figured out exactly where; maybe in Sullivan or
361 Roxbury. Ms. Ice added that that is aspirational and not a part of tonight's application.

362
363 Chair Hoppock asked if there was any more public input. Hearing none, he asked if the
364 Applicant had anything more to add. Ms. Ice replied to no. Chair Hoppock closed the public
365 hearing and asked the Board to deliberate.

366
367 *1. Granting the Variance would not be contrary to the public interest.*

368
369 Chair Hoppock stated that this property has been sitting without any activity for over 20 years.
370 He continued that he drives by it all the time and remembers when it was a juvenile detention
371 center. The buildings are falling down, which this project seeks to correct. He thinks that is a
372 huge public interest to consider. If those properties were located downtown, they would be
373 occupied with who-knows-what, and he is surprised there is not trouble out there already. This is
374 a chance to get rid of dilapidated properties and to restore the property, which is what the
375 Applicant proposes to do.

376 Ms. Taylor stated that she respectfully disagrees. She continued that the property may have had
377 many Variances and Special Exceptions in the past, but the ZBA has to take this as new. Her
378 concern is the purpose of the Ordinance as written and as mentioned talks about low-density
379 development, predominantly residential or agricultural. She sees this as not being in the public
380 interest because she does not think it will be any closer to what the purpose of this particular
381 zoning district is, and she thinks it will not be advantageous to public health, safety, or welfare.
382

383 Chair Hoppock stated that in terms of altering the essential character of the neighborhood, it is to
384 a degree serving a neighboring property owned by the same owner, but they have trucks going in
385 and out of the gravel pit anyway. He continued that this project might shift that volume to the
386 next property over, where the materials are weighed and transported out. The map shows that it
387 has a separate exit onto Rt. 9. They did not hear anything about traffic, but he does not see
388 anything that would really impact traffic in that area, because it is not usually congested in that
389 area. Traffic is only heavy in the morning and at night at the end of the workday.
390

391 Chair Hoppock continued that he sees this as a public advantage, and not altering the essential
392 character of the neighborhood, largely due to the size of the lot. Rounding up, it is 25 acres,
393 spread out over a wide area. Given the size of the lot, he thinks they have done a very good job
394 of making that separation. As the Applicant noted earlier, the other abutter is forested land to the
395 north, and to the west is the gravel pit, and smattered around the area are various residential
396 houses. A little further north on Rt. 9 are a few single-family homes, but they are too far away to
397 be impacted by this. The gravel operation will be largely retail, from what he is hearing. An
398 agricultural center is more like a garden store, selling loam and landscaping materials. He does
399 not see that creating a heavy use on the property would impact quality of life in that area.
400

401 Ms. Taylor stated that she disagrees, because when they approved the Special Exception on the
402 gravel pit, it was to be for commercial use. She continued that this is a tremendous expansion of
403 use for commercial retail. It will be extremely visible. She is not saying what is there now is
404 particularly beautiful, but it still, in her view, completely inconsistent with the intent of this
405 Ordinance for this particular zoning district.
406

407 Mr. Guyot stated that he is in agreement with the Chair for the record, regarding the public
408 benefit and public interest.
409

410 Mr. Clough stated that he is in general agreement with something that has the separation they are
411 seeing here. He continued that he was on the Board also for the other Special Exception
412 (regarding the gravel pit), and regarding the traffic, that is a 55 MPH zone. To the best of his
413 knowledge, there is no extra spacing for passing people, if someone is pulling off. He does not
414 know what the shoulder width is. He does not know if there were traffic studies about this. He
415 remembers there were traffic studies regarding the gravel pit, about how many vehicles would be
416 coming in. The ZBA agreed with that because it had a low number of vehicles. This could have
417 high volumes at certain times, in a high-speed zone. He does not know what traffic-calming

418 measures might be in place or could potentially be put in place for that element. That is his
419 concern, broadly.

420

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

422

423 Chair Hoppock stated that this proposed use is not creating any additional uses beyond what is
424 anticipated, residential and agricultural. He continued that regarding the gravel pit operation, he
425 knows the weighing and scale house part of this is not particularly before the ZBA in this
426 application. He regards that as an accessory use to the gravel pit next door. It serves a collateral
427 purpose to that operation, and he does not think it impacts the agricultural or residential nature of
428 the proposal for this application.

429

430 Chair Hoppock continued that there will be an expansion of housing with this project. With the
431 size of the land, and those distances, there is no reason why there could not be even more in the
432 future if this is successful for the Applicant. He does not expect to see a condo project out there,
433 but it leaves room for (more housing). That seems to be what the Applicant suggests in some
434 places (of the narrative) – “allowance of both uses will promote current goals of increasing the
435 housing supply.” He agrees.

436

437 Chair Hoppock continued that he does not see alteration of the essential character of the
438 neighborhood, for the reasons already explained. He does not see these operations presenting a
439 danger in terms of public health, safety, or welfare. If the operations in the traffic study that Mr.
440 Clough just mentioned on the gravel pit were carried over to this property, it would be
441 impossible to see an increase. There is no more gravel going out of there than in the past, he does
442 not imagine. He thinks the second criterion is satisfied.

443

444 Ms. Taylor stated that she again disagrees. She continued that a Special Exception is a use that is
445 a permitted use as long as it meets certain criteria. A Variance is what a Variance does; it varies
446 from the zoning; it needs to be justified by these criteria. She truly does not see how expanding a
447 permitted commercial use to a use that will have retail, commercial, and residential is going to
448 have the same results, in terms of traffic, visuals, or other aspects that the criteria contemplate.
449 Three residential units far out of town will not solve the housing problem. It is a drop in the
450 proverbial bucket.

451

452 Mr. Guyot stated that this will be onsite housing for employees of this facility, and presumably if
453 they did not have onsite housing, they would have to find housing elsewhere. He continued that
454 he agrees with Ms. Taylor that it is a small increment in solving a housing crisis, particularly
455 workforce housing, but it at least is a step for workers on this property.

456

457 Chair Hoppock added that one could also consider what happens when you drop a pebble in a
458 pond. He continued that they have had many cases with a few housing units here, a couple
459 housing units there, and they add up eventually. He looks at this cumulatively.

460

461 Mr. Clough stated that this is an interesting split for him, because he completely supports the
462 housing, and he thinks it makes perfect sense to put something like that in, but he is not sure
463 about the commercial use. He continued that since those are both in this Variance, (he is unsure).
464 He could certainly vote for the housing element of this, but he is not sure about the commercial
465 part.

466
467 3. *Granting the Variance would do substantial justice.*
468

469 Chair Hoppock stated that the gain to the public is that it provides housing; supplies an economic
470 base for jobs, in connection with the agricultural retail center and the scale; and provides a place
471 for a public service, which is an interesting twist in this project. He continued that he thinks the
472 gain to the public is outweighed by any harm, if there is any, from the commercial side of this
473 and he does not see harm from the commercial operation. The gain to the public is a gain, and
474 the loss to the individual, if this project cannot go forward, is a piece of property that would be a
475 loss to the public because it would sit there and look the way it has been looking for the past 20
476 years. He thinks there is a big benefit to having that corrected.

477
478 Ms. Taylor stated that she will not argue one way or the other on this particular criterion, but
479 there is certainly nothing to prevent somebody, whether this owner or another owner, from going
480 in and redeveloping that property that is more consistent with the Zoning.

481
482 4. *If the Variance were granted, the values of the surrounding properties would not be*
483 *diminished.*

484
485 Chair Hoppock stated that with this application, he does not think he has ever seen a shorter
486 abutters' list. He continued that there are only five entities on the list, and the Applicant owns
487 two of the properties around it, although that does not matter. The point the Applicant makes
488 about cleaning up the property is important. That will improve the value of his own property as
489 well as the surrounding ones. He does not think this criterion plays into the overall analysis very
490 deeply, and if the Variance were granted, the values of the surrounding properties would not be
491 diminished, from what he has seen.

492
493 5. *Unnecessary Hardship*

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

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

500
501 Chair Hoppock stated that as he sees it, the special conditions are the size of the lot; the number
502 of buildings on it, which are "useless;" the separation between the two major proposed uses,
503 residential and commercial scales, and agricultural retail center; and the roadway going in and

504 out from the gravel pit. He thinks that does make the application of the Ordinance difficult for
505 this property, such as there is no fair and substantial relationship existing between the purpose,
506 which he believes the Applicant correctly identified is to maintain separation of different uses for
507 aesthetic and safety reasons. He does not see any safety reasons. If these operations are safely
508 undertaken, there should be no problem in terms of public safety. The rehabilitation of the
509 property and its separate uses, to his mind, indicate a public benefit that should be approved.
510

511 Ms. Taylor stated that she does not see the size as a special condition if you compare the size of
512 this particular parcel with those around it. She continued that they are all fairly large. Except for
513 the gravel pit, the other parcels are mostly undeveloped. Again, there is nothing that would
514 prevent this from being developed more in conformance with the Zoning Ordinance. She also
515 notes that both the Harborside case and the Farrar case concerned existing buildings. The
516 Harborside Associates one was a sign case. If this was one or several massive buildings, she
517 might think differently, but she does not feel in this case that the size creates a special condition,
518 nor does she feel that the derelict condition of the buildings creates a special condition.
519

520 Mr. Guyot asked if the fact that it is a site with scattered buildings makes it unusual relative to
521 the adjacent properties. He continued that that might create a hardship for this property. In that
522 sense, it is unique. Chair Hoppock replied that that is a good point, but the Applicant is only
523 saving two of the 14 buildings. He continued that most of them will be gone. Mr. Guyot replied
524 yes, when the project is completed, but at the beginning of this application, it does create that
525 unique aspect to the property, in his mind.
526

527 Ms. Taylor replied that her sense was that the intent is to demolish so many of the buildings that
528 even if that were to be a special condition, removing the special condition is in the plan. She sees
529 it from a different perspective.
530

531 Chair Hoppock stated that as he sees it, they will have a commercial and residential use on the
532 property, keeping these two uses significantly separate from one another, and the parcel is large
533 enough to allow that. He continued that perhaps Carroll Concrete in Swanzey is a good example
534 of a similar situation. A big gravel pit operation is right by the high school and retail operations,
535 on a much smaller land area. It works in harmony, as far as he can tell with the many times he
536 drives by. That is what it will be like with this, with the agricultural retail store, which he does
537 not believe will generate a lot of traffic. The space within the lot itself is large enough to keep
538 (the uses) separate. To him, the ability to develop the property in a way that separates these uses
539 is a special condition. As Ms. Taylor said, once you get to that point, those 12 other buildings are
540 gone. They are preserving two buildings to make the scale house and the three-family residential
541 dwelling in the northwest corner, which also has its own separate way to get in. The trucks will
542 not go there but will go in and out on one road.
543

544 Mr. Guyot replied that he thinks the agricultural retail center is also a preserved building, so it
545 would be three buildings. He continued that the scale house is being relocated. Chair Hoppock

546 replied that his understanding is that the existing shed will be moved to where it says “relocated”
547 on the plan. Mr. Guyot agreed.

548
549 Chair Hoppock stated that on the plan, he sees ample parking for all this activity. He continued
550 that the special condition being the size of the lot that allows this kind of development is an
551 important feature of it. It allows for safe distances between the uses.

552
553 Mr. Clough stated that he is not completely sure of the history, but he knew the O’Brien family
554 who lived at this property in the interim. He continued that it was a family of four, and they did
555 not know what to do with the property. The son would tell him about trying to do things like
556 brush hog the property. He agrees that there is a special condition as it is very difficult to purpose
557 all those existing buildings and it was too much for that family. It would need a major renovation
558 of some sort. Many times, it is less expensive to take the buildings down, if they have no
559 historical significance, because they are dangerous. The three buildings the Applicant is keeping
560 are ones the O’Brien family utilized, so they were maintained a little more than the others. The
561 outlying cabins and other buildings were too many for a four-person family.

562
563 Chair Hoppock replied that none of those outbuildings has been occupied for over 20 years. He
564 continued that this seems to be a responsible management plan and project idea for the property,
565 from his perspective.

566
567 Chair Hoppock asked if there were any more comments from the Board. Hearing none, he asked
568 for a motion.

569
570 Ms. Taylor made a motion to approve ZBA-2024-06, Petitioner Ariane Ice of Ice Legal, who has
571 requested a Variance for property located on 21 Rt. 9, Tax Map #218-008-000 in the Rural
572 District, owned by G2 Holdings, 25 North St., Jaffrey, to permit a mix of commercial and
573 residential uses on a single 24.38-acre tract per Article 8.1.3 of the Zoning Regulations. Mr.
574 Guyot seconded the motion.

575
576 1. *Granting the Variance would not be contrary to the public interest.*

577
578 Met with a vote of 3-1. Ms. Taylor was opposed.

579
580 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

581
582 Met with a vote of 3-1. Ms. Taylor was opposed.

583
584 3. *Granting the Variance would do substantial justice.*

585
586 Met with a vote of 4-0.

587

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

590

591 Met with a vote of 4-0.

592

593 5. *Unnecessary Hardship*

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

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

600 *and*

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

602

603 Met with a vote of 3-1. Ms. Taylor was opposed.

604

605 The motion passed with a vote of 3-1. Ms. Taylor was opposed.

606

607 **B) Continued ZBA-2024-07: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo**
608 **Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21**
609 **Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2**
610 **Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the**
611 **renovation of an existing structure to be a three family residence per Article 3.1.5 of**
612 **the Zoning Regulations.**

613

614 Chair Hoppock introduced ZBA-2024-07 and asked if staff had anything further to add. Mr.
615 Hagan replied to no.

616

617 Ms. Taylor stated that since there are multiple applications for this property, she would like it
618 clarified for the record what this one is specifically for. Chair Hoppock replied to a Variance for
619 a three-family residence. He asked to hear from Ms. Ice.

620

621 Ms. Ice stated that she has talked about the overall property, and it is in the application that this
622 property is comprised of about 24.7 acres, abutting Rt. 9, located in the northeast corner of the
623 city limits in the Rural District. G2 Holdings, LLC owns the parcels abutting and 2.5 sides of the
624 triangular-shaped project property with one of those the site of the gravel pit. As already
625 discussed tonight, this property used to be the Palmer Lodge, then a drug rehabilitation and
626 juvenile detention center. Most recently, it was owned by a family who used multiple sites for
627 housing.

628

629 Ms. Ice continued that this application is for renovation of the existing structure to be a three-
630 family residence.

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

632
633 Ms. Ice stated that the Applicant does not believe it would be contrary to the public interest,
634 because the requirement that it not be contrary to the public interest relates to the requirement
635 that the Variance be consistent with the spirit of the Ordinance. She continued that the two ways
636 to determine whether a Variance will violate a Zoning Ordinance’s basic zoning objectives are to
637 examine whether the Variance would alter the essential character of the neighborhood and
638 whether the Variance would threaten public health, safety, or welfare. She does not think the
639 requirement is for the Variance to be advantageous to public health, safety, or welfare, just that it
640 not threaten it.

641
642 Ms. Ice continued that they do not think the Variance would alter the essential character of the
643 neighborhood as this parcel has an 86-acre gravel pit operation to its west and the Granite Gorge
644 ski area is across to the south. Much of the area beyond is forested and undeveloped, with a
645 smattering of single-family homes. This application is for one specific building on the property.
646 The revised use of that building as a three-family dwelling would not be inconsistent with the
647 surrounding uses like dwellings. It all falls within the character promoted by the Rural
648 designation.

649
650 Ms. Ice continued that notably, the purpose of the recent change in the City of Keene from a
651 five-acre to a two-acre minimum lot size in the Rural District is to encourage a greater density.
652 The allowance of one three-family dwelling on a 24-acre tract will be consistent with that goal,
653 yet it will maintain a far lower density than allowed if the property were subdivided. This
654 property could be subdivided to 12 parcels, which could mean 12 dwellings.

655
656 Ms. Ice continued that the Variance does not threaten public health, safety, or welfare. To the
657 extent that it contemplates removal and renovation of derelict structures, it will improve the
658 safety of the public in that area.

659
660 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

661
662 Ms. Ice stated that if the Applicant can sufficiently demonstrate the spirit of the Ordinance is
663 observed, this criterion should be approved. She continued that the Rural District is intended to
664 provide areas of very low density. Three-family dwellings would be allowed in this District if
665 they met the Conservation Residential Development (CRD) Subdivision regulations. For various
666 reasons unique to what this property is, the Applicant does not think trying to do a CRD
667 Subdivision is possible. However, it certainly meets the spirit of the CRD Subdivision regulation
668 by allowing a three-family dwelling. The CRD Subdivision’s purpose is to provide “*greater*
669 *flexibility and creativity in the design of residential development... by allowing for clustering of*
670 *dwelling units in a higher density.*” Here, the building to be renovated meets all the CRD
671 frontage and setback requirements, and the limit of three dwellings per structure, which is in the
672 Workforce Housing density incentive, Article 19.3.3. The tract is nearly 2.5 times the CRD
673 minimum tract size and contains far more unused land than the open space requirements would

674 demand. Under the CRD rules, the allowable density would be four times the dwelling units
675 proposed here.

676
677 Ms. Ice continued that they feel that this proposed three-family unit very nearly meets all the
678 residential requirements of Article 3.1.5. In essence, this waiver only seeks relief from the
679 necessity for CRD Subdivision, where the proposed tract and building would otherwise meet all
680 the fundamental CRD requirements. The three-family unit therefore meets the spirit of the
681 Ordinance.

682
683 3. *Granting the Variance would do substantial justice.*

684
685 Ms. Ice stated that they think granting this Variance would do substantial justice. She continued
686 that in the case of Harrington v. the Town of Warner, the applicant seeking to expand a
687 manufactured housing park showed that substantial justice would be done in granting the
688 Variance because it would improve a dilapidated area of town and provide affordable housing.
689 Here, the project would renovate an already existing, dilapidated building for residential use and
690 therefore increase housing in the area. It may not be a significant increase, but here they are
691 balancing density issues with increased housing. This is an opportunity to, instead of creating
692 new spaces, renovate an existing building to create a three-unit dwelling and remove the derelict
693 structures.

694
695 4. *If the Variance were granted, the values of the surrounding properties would not be*
696 *diminished.*

697
698 Ms. Ice stated that the derelict structures are an eyesore. She continued that renovating the
699 structures would cause the values to increase rather than decrease.

700
701 5. *Unnecessary Hardship*

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

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

708
709 Ms. Ice stated that the purpose of the Ordinance limiting the number of housing units in the
710 Rural District is to encourage the building of housing while maintaining open space, and that
711 purpose is met. She continued that the specific application of the Ordinance to this property,
712 however, would not allow a three-family home without CRD Subdivision, even though it would
713 meet or exceed the CRD requirements. The restriction applied to this property does not serve the
714 public purpose in a fair and substantial way. They have talked about the special conditions of this
715 property, and they do not alter the essential character of the neighborhood. One special condition
716 is that it already has an existing building with a prior non-conforming use. It is appropriate to

717 consider existing buildings as a special condition of the property. Here, the building makes the
718 property different in a meaningful way from the other properties in the area and is therefore
719 burdened more severely by the Zoning restriction. The denial of this Variance may restrict any
720 feasible use of this building, resulting in further deterioration of the site.

721

722 *and*

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

724

725 Ms. Ice stated that the proposed use is reasonable. She continued that it is very similar to
726 permitted use, and it meets the intent of the Ordinance. Here, the Applicant merely needs to
727 show that the proposed three-family residence is a reasonable use of the property, given the
728 special conditions. They believe the existing building makes the use a reasonable one. Lastly, she
729 will note that it *has* been used as a residence. They are just looking to expand it to a three-family
730 dwelling.

731

732 Mr. Clough asked what the building's square footage is. Mr. Daigneault replied 3,174 square
733 feet.

734

735 Chair Hoppock asked if there are fire suppression utilities in the area. Mr. Gordon replied that it
736 already has it. He continued that the whole thing is sprinkled. Ms. Ice stated that it was used as a
737 "commercial housing" site for many years and many purposes. He continued that the last family,
738 whom Mr. Clough knew, was using the property in an odd way, as a single-family home. All
739 other (owners) used it dormitory style.

740

741 Ms. Taylor stated that if she is reading the plan correctly, the road for the trucks that comes down
742 from the gravel pit, and the road that comes up from Rt. 9 to go to the residential area, look to
743 have "coexisted" at one point. She asked how those conflict points will be handled so that people
744 going to the residential building will travel safely and the gravel trucks do not run into passenger
745 vehicles. Mr. Daigneault replied that he thinks that could be handled with signage. Mr. Gordon
746 added that the area where the two roads go together is wide and open, so vehicles are easily seen
747 from either direction. He continued that once the other buildings are taken down, they will be
748 able to regrade the slope a little to make it even more visible and make the road/driveway even
749 wider so a vehicle going up and coming down can bypass it with no problem.

750

751 Ms. Ice stated that she will add that this project has to go through site plan review, and (the
752 Planning Board) will be looking at issues such as traffic flow and many of these concerns that
753 are raised. It will have to pass muster before it gets approved. Tonight, they should focus on the
754 zoning criteria. If the ZBA approves this, the application will go to (the Planning Board), who
755 will be looking carefully at safety issues such as traffic flow.

756

757 Chair Hoppock asked if being an employee of (Mr. Gordon's) business will be a requirement for
758 living here. Mr. Gordon replied that he does not exactly know. He continued that he has 40

759 employees, and everyone needs housing. Ms. Ice replied that it would be safe to say that
760 employees might get priority for housing, but it would not be a mandate.

761
762 Chair Hoppock asked if the Board had further comments. Hearing none, he asked for public
763 comment in opposition to or in support of the application. Hearing none, he closed the public
764 hearing and asked the Board to deliberate.

- 765
766 1. *Granting the Variance would not be contrary to the public interest.*
767 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
768

769 Ms. Taylor stated that with this application, she believes that granting the Variance would be in
770 the public interest and that it does meet the spirit of the Ordinance, in large part for the reasons
771 given. She continued that it is residential, which is a permitted use, and although she is not very
772 familiar with the CRD requirements, it certainly has adequate space and meets a community
773 need. She thinks it meets the first two criteria.

774
775 Chair Hoppock stated that he agrees with Ms. Taylor's comments.

776
777 Mr. Guyot stated that he agrees. He asked if the CRD is part of what the ZBA is voting on. Chair
778 Hoppock replied no, they are only voting on the five criteria. Mr. Guyot asked if it is correct that
779 the CRD is not a factor in this vote, just adjunct material. Chair Hoppock replied that it is not a
780 factor in this vote. He thinks it is just a point the Applicant is making to show that under certain
781 circumstances, the application would satisfy the spirit of the Ordinance.

- 782
783 3. *Granting the Variance would do substantial justice.*
784

785 Chair Hoppock stated that although this is only three residential units, he believes in the
786 cumulative effect of housing units, and this benefits the public by adding to the housing stock.
787 He continued that it may not be a huge jump in the numbers, but it is a step in that direction, and
788 they add up. He believes the gain to the public is high, and the loss to the individual would be
789 greater if denied. He does not see why this could not be approved, in terms of doing substantial
790 justice. He agrees with the Applicant that the proposed use is much closer to the permitted uses
791 and neighboring uses than the previous uses. They cited a detention center. He would rather have
792 housing than a detention center.

793
794 Ms. Taylor stated that in terms of the scales of public benefit versus the owner benefit, she thinks
795 in this case it is "pretty much a wash." She continued that she thinks the approval of three
796 housing units in this location benefits the public, and it benefits the property owner. Perhaps it
797 tips a little more in the direction of public benefit, because if the Applicant could not renovate
798 this building as a three-family structure, it still could be used. Other portions of the property
799 could still be used. She thinks it is overwhelmingly a public benefit in this case.

800

801 Chair Hoppock stated that the other piece is the cleanup of the property. He continued that it will
802 be a much safer property with the dilapidated buildings removed.

803
804 4. *If the Variance were granted, the values of the surrounding properties would not be*
805 *diminished.*

806
807 Chair Hoppock stated that he does not see how approving this application would affect the
808 surrounding properties at all. He continued that he does not think the fourth criterion is a
809 problem as this project will not diminish property values; it will improve them when the property
810 is improved.

811
812 5. *Unnecessary Hardship*

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

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

819 *and*

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

821
822 Chair Hoppock stated that the special conditions of the property that they discussed earlier justify
823 the approval of this application as well. He continued that you could have a single-family
824 residence here, but not a three-family residence, and the way this property is constructed, it
825 seems to him that it is like a single-family residence patched together in one larger building. It
826 appears to meet the CRD Subdivision requirements, which is just an illustration of the point that
827 it is within the spirit of the Ordinance.

828
829 Ms. Taylor stated that she agrees. She continued that she thinks the salient point is there does not
830 appear to be any fair or substantial relationship between the purpose of the Ordinance, which is a
831 rural area with some residential use, and application of that provision to this property, because it
832 is residential, and 24 acres certainly should be adequate to support three housing units. Chair
833 Hoppock replied that he agrees and sees other ZBA members nodding.

834
835 Mr. Guyot made a motion to ZBA-2024-07, for property located at 21 Rt. 9, to address Article
836 3.1.5 to permit to renovate a three-family residence on this property. Mr. Clough seconded the
837 motion.

838
839 1. *Granting the Variance would not be contrary to the public interest.*

840
841 Met with a vote of 4-0.

842
843 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

844 Met with a vote of 4-0.

845

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

847

848 Met with a vote of 4-0.

849

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

852

853 Met with a vote of 4-0.

854

855 5. *Unnecessary Hardship*

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

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

862 *and*

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

864

865 Met with a vote of 4-0.

866

867 The motion passed with a vote of 4-0.

868

869 Chair Hoppock stated that next on the agenda is ZBA-2024-08, a Variance to permit a
870 commercial and accessory use of a truck scale and scale house per Article 3.1.5 of the Zoning
871 Regulations.

872

873 Ms. Ice asked if it would make sense to address ZBA-2024-09 first, Variance for the agricultural
874 retail store, since part of the scale house in ZBA-2024-08 is an accessory use to that building.

875 Chair Hoppock agreed and stated that if there are no objections from the Board, they will address
876 ZBA-2024-09 first.

877

878 C) **Continued ZBA-2024-09: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo**
879 **Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21**
880 **Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2**
881 **Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the**
882 **renovation of an existing structure to be an agricultural retail store per Article 3.1.5**
883 **of the Zoning Regulations.**

884

885 Chair Hoppock introduced ZBA-2024-09 and asked if staff had anything further to add regarding
886 this application. Mr. Hagan replied to no. Chair Hoppock asked to hear from the Applicant.

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

888 Ms. Ice stated that the Variance would not be contrary to the public interest because the use of
889 this property as an agricultural retail center would not be inconsistent with the surrounding
890 developed uses, which are commercial in character. She continued that this is particularly true
891 regarding the sale of gravel pit products, which is currently a use of an abutting property. Thus,
892 the Variance would not alter the essential character of the neighborhood. Additionally, this
893 Variance would not threaten the public health, safety, or welfare. A retail establishment would
894 not present any additional public hazards. To the extent it proposes to remove and renovate
895 derelict structures, it will improve the safety of the public in that area.

896

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

898

899 Ms. Ice stated that Article 3.1.5 does not discourage commercial uses in this district. Rather, it
900 allows more than any other residential district. It specifically encourages commercial uses that
901 are consistent with a rural, agricultural environment. You see community gardens and farming in
902 the permitted open space uses. More importantly, the permitted commercial uses, such as animal
903 care facilities, kennels, and nurseries, are those that provide services and products residents in
904 the rural district need. This proposed agricultural retail store, which would sell hardscaping tools
905 and supplies, animal products, and be similar to “Agway with some hardscaping,” is exactly the
906 type of commercial use contemplated by the Ordinance. This use will become even more
907 important since the provision of these products, such as hardscape materials, will support the
908 additional development encouraged by the recent move from the five- to two-acre minimum lot
909 sizes in this district.

910

911 Ms. Ice continued that additionally, the proposed use includes, in large part, uses already
912 permitted. For example, the agricultural retail store will include the operations of a greenhouse
913 nursery, a permitted use defined as, “[a]n establishment where flowers, shrubbery, vegetables,
914 trees, and other horticulture and floricultural products are propagated and sold and may include
915 the sale of items directly to their care and maintenance.” The proposed operations that are
916 beyond the most basic greenhouse/nursery business, such as selling the hardscaping tools and
917 supplies and the animal care products, are still very similar to those of a greenhouse/nursery.
918 They would attract the same or a similar customer base. Moreover, the sale of hardscaping
919 supplies, such as gravel and crushed stone products, is the same as the permitted use with Special
920 Exception in the Rural Zone of a gravel pit.

921

922 Ms. Ice continued that they feel very strongly that the spirit of the Ordinance is observed.

923

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

925

926 Ms. Ice stated that here, the proposed project would renovate the ramshackle main building for
927 use as retail space and remove derelict structures around the property, which would do
928 substantial justice.

929

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

932
933 Ms. Ice stated that if the Variance were granted, the values of surrounding properties would not
934 be diminished, because the derelict structures are an eyesore. She continued that renovating them
935 would cause the values to go up.

936
937 5. *Unnecessary Hardship*

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

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

944
945 Ms. Ice stated that the public purpose of the Ordinance, to encourage rural or agriculturally
946 related businesses, would be met. She continued that the specific application of the Ordinance to
947 this property, however, would not allow an agricultural retail store, even though it has many of
948 the same elements as a permitted use (greenhouse/nursery). Accordingly, the restriction applied
949 to this property does not serve the public purpose in a fair and substantial way. Here, the existing
950 buildings make the property different in a meaningful way from the other properties in the area,
951 and it is therefore burdened more severely by the Zoning restriction.

952
953 Ms. Ice continued that another special condition is its proximity to the Applicant's abutting
954 gravel pit. This facilitates the delivery of gravel pit products to a location accessible to retail
955 buyers, a fact that distinguishes it from commercially zoned properties that are far from the
956 gravel pit.

957
958 *and*

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

960
961 Ms. Ice stated that the existing building in proximity to the Applicant's gravel pit makes the use
962 reasonable.

963
964 Ms. Ice stated that in summary, the Applicant thinks it is a very similar use to what is already
965 permitted in this Rural District. She continued that in fact, some of it already will be selling
966 things that are related to nurseries or greenhouses, and the rest of the uses are very similar, not
967 only in the customers who will use them, but in the way, customers would come and access
968 them. An example is the hardscaping bays, which you will see in any nursery or Agway.

969
970 Ms. Taylor asked for clarification regarding the comparison to the greenhouse/nursery. She
971 asked if this agricultural retail store will be selling that type of supply. Ms. Ice replied yes, one of
972 the items G2 Holdings has identified it wants to sell in addition to hardscape and animal care

973 products is plants. He continued that Mr. Gordon envisions a large area where greenhouse-grown
974 plants would be sold.

975
976 Mr. Gordon stated that part of his whole thinking with the store is that G2 Holdings makes the
977 products and thus wants to sell the products down at a closer location that is more visible for the
978 public. He continued that in turn, it makes it easier and safer than having people going up to the
979 gravel pit (as they) currently (do). If someone shows up in a pick-up truck and wants half a yard
980 of stone, trying to load it with his big loader is hard. Whereas at the agricultural retail store, it
981 would make more sense. At the store, he wants to sell stone products, mulches, hardscape-type
982 products. He continued that the back has an old pool, which he wants to clean out and turn into a
983 fishpond and hardscape the back of it so people can walk around to see different types of stone
984 products on the ground. Behind that, up on the hill, would be a nursery with native plant species,
985 where people can come in and buy them. He would put up a greenhouse and sell starter plants
986 and similar items. In the store would be rakes, shovels, grass, fertilizers, grain, hay, and similar
987 products. He wants the products he brings in to be USA-made. That is his game plan.

988
989 Chair Hoppock stated that he has a question about a comment made under the second criterion.
990 He continued that they are suggesting that this additional development would be encouraged by
991 the recent move from five- to two-acre minimum lot sizes in rural districts. He asked if that is
992 correct. Ms. Ice replied that she was saying the agricultural retail store would service all those
993 new homes and families moving in. She continued that the permitted uses in agriculture in the
994 Rural District that are commercial tend to be businesses that are of added value to the community
995 that is living right there, such as kennels and nurseries. This would certainly be an added value to
996 all the new homes that will be built there and the new residents who will be living there as the
997 density is increased in this district. That was the point they were trying to make.

998
999 Chair Hoppock asked for further questions from the Board. Hearing none, he asked for public
1000 comment in opposition to or support of the application. Hearing none, he closed the public
1001 hearing and asked the Board to deliberate.

1002
1003 Ms. Taylor stated that she is struggling a bit with the analogy to greenhouse/nursery. She
1004 continued that it appears to her, from everything they have heard on this and other applications,
1005 that the primary use will be commercial and retail sale of products produced by the gravel pit.
1006 She is struggling a bit because, it is on a separate lot, it cannot be an accessory use, it needs to be
1007 an independent use. Again, back to earlier discussions, she still has a concern with the scale of
1008 commercial and retail sale of products from the gravel pit and its impact in this zoning district.

1009
1010 Chair Hoppock stated that perhaps he is misinterpreting what the Applicants are saying, but they
1011 are just suggesting that greenhouses and nurseries are permitted commercial uses in a rural zone,
1012 which is true. He thinks that is the only point they were trying to make on that section of the
1013 application. The other concern is the degree of traffic, with customer activity. He asked if that is
1014 a correct understanding of Ms. Taylor's comments.

1015

1016 Ms. Taylor replied yes, the scale of the operation is a concern, but her understanding was that the
1017 similarity was to the greenhouse/nursery use and that there would be some of that with this
1018 particular use. Chair Hoppock replied that it sounds like there will be. Ms. Taylor replied that she
1019 thinks the primary use of what has been presented will be the sale of hardscaping materials and
1020 supplies.

1021
1022 Mr. Guyot stated that the sale of the hardscaping materials supplied by the pit already exists. He
1023 continued that is how he sees it; this is just shifting to add a retail component versus a
1024 commercial component. Ms. Taylor replied that going back to earlier comments, there was not
1025 supposed to be any retail with the gravel pit operation when the ZBA approved the Special
1026 Exception. She continued that accessory use has to be on the same lot. Thus, this has to be a use
1027 that stands on its own merits, because it cannot be accessory to the pit itself, according to the
1028 legal terminology in the Code. Mr. Guyot replied that he understands that, but he is looking at it
1029 as an expansion to a retail level with this outlet, for this application. The scale brings in another
1030 factor, but they are not discussing that one just yet. He is looking at this as adding retail sales of
1031 hardscape materials, which are produced by the pit and delivered here as a separate step.

1032
1033 Chair Hoppock stated that he does not see that as an accessory use of the pit, because it is being
1034 brought in separately, as Mr. Guyot says. He continued that it is an approved use now, by virtue
1035 of the ZBA-2024-06 application. Ms. Taylor replied that what she is getting at is not just retail,
1036 but the actual commercial use expansion is of concern. She has a hard time with all the
1037 commercial use expansion that will involve the store and the scale that will be an accessory use
1038 to that store. It is hard for her to make an analogy to the greenhouse/nursery.

1039
1040 Mr. Guyot replied that he sees her point. He continued that as a counterpoint, he thinks the
1041 expansion of the commercial activity on this site, from the pit, in his mind is attached to the scale
1042 and the scale house, which the ZBA will discuss next. He is bifurcating that aspect of it.

1043
1044 Chair Hoppock replied that if you look at it in a sense that the scale and scale house's purpose
1045 would be for weighing the materials leaving that operation, he is right. He continued that the
1046 question there becomes whether it is accessory to the agricultural retail store or accessory to the
1047 gravel pit. That is a good question, and he does not know the answer. However, he thinks the
1048 similarity to a greenhouse or nursery does suggest that it meets the spirit of the Ordinance.
1049 Article 3.1.5 clearly permits greenhouse/nursery use. He does not disagree with the Applicant's
1050 comments that substantial justice is done, because it is a rural-oriented, commercial, and open
1051 space use. It is not going to interfere with the use of the properties in the surrounding areas and
1052 will not diminish the surrounding properties' values.

1053
1054 Chair Hoppock continued that the Applicant makes the point that the specific application of the
1055 Ordinance to the property would not allow an agricultural retail store even though it has many of
1056 the same elements as the permitted greenhouse/nursery. He knows the counter argument to that
1057 is the (hardscaping) that will be sold, and maybe that is a distinction with a difference. In the

1058 application of the rule to this property, he does not think its purpose is achieved in a fair and
1059 substantial way. He agrees with the Applicant's assessment.

1060
1061 Ms. Taylor stated that she is still thinking through his point, but she disagrees with the
1062 Applicant's statement that its proximity to the gravel pit creates a special condition. She
1063 continued that if it were a separate use it could exist, potentially, without it being in proximity to
1064 the gravel pit; that is just a bonus or a convenience.

1065
1066 Chair Hoppock replied that (the materials) could be shipped in from anywhere. Ms. Taylor
1067 replied that is right. Mr. Guyot stated that he agrees with that observation. Ms. Taylor stated that
1068 she has one more minor point, for the record, regarding the statement that a special condition of
1069 the property is that it has a commercial building with a prior non-conforming use. That prior use
1070 was by Variance, which is distinguishable from a non-conforming use. Chair Hoppock replied
1071 that he is not sure which Variance that is on the long list of ones Mr. Hagan gave them earlier,
1072 but it probably does not matter for their purposes now.

1073
1074 Chair Hoppock stated that he is still of the view that one of the special conditions of this property
1075 that allows this kind of development on it is its size. He continued that he knows that in relation
1076 to surrounding properties, the gravel pit is not as big as the forested area, which is undeveloped.
1077 This is very developed, in fact dilapidated and that is another special condition of the property to
1078 clean up. Hearing from the Applicant that it will be similar to an Agway, to him suggests a rural,
1079 commercial use, even if they are selling hardscape or gravel. He goes back to the Carroll
1080 Concrete example he talked about earlier; it is not an inconsistent use in that area. Ms. Taylor
1081 replied that they do not know what that zoning was or when it was approved, so it may have been
1082 different circumstances. Chair Hoppock replied that is true; he does not know what the zoning is
1083 in Swanzey. However, he looks at the area as it is developed, and it is not an issue for that area,
1084 that he can see and that area is far more developed than this area of Rt. 9.

1085
1086 Chair Hoppock stated that he thinks they have covered the criteria. He asked for a motion.

1087
1088 Mr. Clough made a motion to approve ZBA-2024-09, a Variance on a property located at 21 Rt.
1089 9, Tax Map #218-008-000 in the Rural District, to permit the renovation of an existing structure
1090 to be an agricultural retail store per Article 3.1.5 of the Zoning Regulations. Mr. Guyot seconded
1091 the motion.

1092
1093 1. *Granting the Variance would not be contrary to the public interest.*

1094
1095 Met with a vote of 4-0.

1096
1097 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1098
1099 Met with a vote of 3-1. Ms. Taylor was opposed.

1100

1101 3. *Granting the Variance would do substantial justice.*

1102

1103 Met with a vote of 4-0.

1104

1105 4. *If the Variance were granted, the values of the surrounding properties would not be*
1106 *diminished.*

1107

1108 Met with a vote of 4-0.

1109

1110 5. *Unnecessary Hardship*

1111 A. *Owing to special conditions of the property that distinguish it from other*
1112 *properties in the area, denial of the variance would result in unnecessary hardship*
1113 *because*

1114 i. *No fair and substantial relationship exists between the general public*
1115 *purposes of the ordinance provision and the specific application of that provision*
1116 *to the property because:*

1117 *and*

1118 ii. *The proposed use is a reasonable one.*

1119

1120 Met with a vote of 3-1. Ms. Taylor was opposed.

1121

1122 The motion passed with a vote of 3-1. Ms. Taylor was opposed.

1123

1124 **D) Continued ZBA-2024-08: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo**
1125 **Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21**
1126 **Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2**
1127 **Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a**
1128 **commercial and accessory use of a truck scale and scale house per Article 3.1.5 of**
1129 **the Zoning Regulations.**

1130

1131 Chair Hoppock introduced ZBA-2024-08 and asked if staff had any further information to share.

1132 Mr. Hagan replied to no. Chair Hoppock asked to hear from the Applicant.

1133

1134 Ms. Ice stated that in this application, they are looking at not whether commercial use should be
1135 allowed on this parcel that is zoned for residential, because the ZBA has already approved that
1136 tonight. She continued that it is more like the application they just approved; they need to look at
1137 whether this specific use of the scale house meets the criteria for a Variance. The relief they are
1138 seeking under Article 3.1.5 would consist of permitting this commercial use of a scale house and
1139 scale. The proposal consists of installing a truck scale as well as renovating and relocating an
1140 874 square foot existing building to serve as the scale house. The scale and the scale house
1141 would be used to weigh sand, gravel, and crushed stone to customers of the agricultural retail
1142 store, which has already been approved. It would also be used to weigh the products of the
1143 abutting gravel pit.

1144 1. *Granting the Variance would not be contrary to the public interest.*

1145
1146 Ms. Ice stated that the Applicant does not feel that it would be contrary to the public interest in
1147 this instance. She continued that much of the area beyond the immediate neighbors, which
1148 include the Granite Gorge ski area, the gravel pit, and some forested area owned by the
1149 Applicant, is forested and undeveloped, containing a smattering of single-family homes. The
1150 proposed weigh station would consist of an existing building and an in-ground scale that is flush
1151 with the road and therefore not readily visible from neighboring areas. The Variance therefore
1152 would present very little change to the aesthetics of the site, and as such would not alter the
1153 essential character of the neighborhood. Moreover, to the extent that the character of the
1154 immediate neighborhood is influenced by the existing gravel pit operation next door, a weigh
1155 station is standard for many gravel pits and would not alter the character of the surroundings. It
1156 would not threaten public health, safety, or welfare, given the wide separation between the types
1157 of uses. The allowance of the use of a single tract would not present any additional public
1158 hazards. To the extent that the overall proposed project contemplates the removal and renovation
1159 of derelict structures, it will improve the safety in the area.

1160
1161 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1162
1163 Ms. Ice stated that the specific proposed use here is both an accessory to the commercial use of
1164 the agricultural retail store and an extension of the permitted open space use of the gravel pit
1165 next door. She continued that the weigh station meets the accessory use criteria of the Code
1166 because with respect to the agricultural retail store, the proposed use is incidental; subordinate in
1167 area, extent, and purpose; located on the same site; and does not preexist the principal use. The
1168 weigh station would not create a public or private nuisance.

1169
1170 Ms. Ice continued that to the extent that the gravel pit next door would also use the weigh station,
1171 the spirit of the Ordinance would be observed, since the Rural District permits gravel pit
1172 operations with Special Exception. Since a weigh station is clearly incidental and customarily
1173 found in connection with the principal use of a gravel pit, it should meet the criteria of an
1174 accessory use of the existing gravel pit, except for the same site requirement correctly pointed
1175 out by Ms. Taylor. They (the Applicant) are not saying it is an accessory use to the gravel pit,
1176 because it would not meet the accessory use requirement to be located on the same site.
1177 However, they feel it meets the spirit of the Ordinance, because other than having the parcel lines
1178 drawn so the gravel pit is “here” and this (subject property) is “here,” the same site requirements
1179 would be met. The importance of the same site requirement here is highly attenuated, given that
1180 the abutting gravel pit and the subject property have the same owner and may be treated as
1181 though they have been merged.

1182
1183 3. *Granting the Variance would do substantial justice.*

1184
1185 Ms. Ice stated that granting the Variance would do substantial justice because this would
1186 renovate an existing dilapidated building to use as the scale house.

1187 4. *If the Variance were granted, the values of the surrounding properties would not be*
1188 *diminished.*

1189
1190 Ms. Ice stated that renovating the structures would cause the surrounding properties' values to go
1191 up. She continued that all recreational and residential uses in the general area are sufficiently
1192 distant from the subject property to be unaffected. The scale itself will have no effect on the
1193 values of surrounding properties, since it will be flush with the road and will present virtually no
1194 change to the neighborhood aesthetic, nor would the weigh station change the existing level of
1195 truck traffic to the gravel pit.

1196

1197 5. *Unnecessary Hardship*

1198 A. *Owing to special conditions of the property that distinguish it from other*
1199 *properties in the area, denial of the variance would result in unnecessary hardship*
1200 *because*

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

1204

1205 Ms. Ice stated that a special condition is that it has a deteriorating existing building with a prior
1206 non-conforming use. She continued that it is appropriate to consider existing buildings as a
1207 special condition. Here, the existing building makes the property different from other properties
1208 in the area and it is therefore burdened more severely by the restriction. Denial of the Variance
1209 may restrict any feasible use of the building, resulting in further deterioration of the structure on
1210 the site.

1211

1212 *and*

1213 ii. *The proposed use is a reasonable one.*

1214

1215 Ms. Ice stated that the Applicant needs to show that the proposed use is reasonable, given the
1216 special conditions. She continued that as discussed; the existing building makes the use a
1217 reasonable one. Additionally, the weigh station is a reasonable accessory use for the agricultural
1218 retail store and would be for the gravel pit, aside from the "same parcel" requirement.

1219

1220 Ms. Taylor asked how they will schedule use of the scale between commercial use and retail use.
1221 Mr. Gordon replied that regarding coordinating from this (subject property) to the gravel pit, this
1222 (weigh station) has a certain number of bunks with 20 yards each bunk, which one truck can
1223 hold. If someone comes, for example, and buys three quarter stone and some loam, and those
1224 piles run out in a morning, you can go with two trucks and fill them back up again. That is that
1225 and you do not necessarily need to touch it right now. Then, normal commercial trucks can run
1226 over during the day, and fill up when that shuts down for the day, or whenever.

1227

1228 Ms. Taylor asked how it works when a retail customer comes in. She continued that Mr. Gordon
1229 knows a certain area holds X amount of loam, rock, or whatever. She asked how he knows how

1230 much the customer is loading into his or her truck, without weighing it. Mr. Gordon replied that
1231 he and his employees scale for themselves to put the materials into those bunks, and there is an
1232 equation for tons to yardage. He continued that the bucket on the mini loader, skid steer, tractor,
1233 or whatever has scaled it has a stamp right on the bucket that says, "one cubic yard." Then the
1234 customer pulls in with a pick-up truck, loads it up with that bucket, and they (know it is) a yard
1235 that goes out.

1236
1237 Ms. Taylor asked if it is correct that they are not weighing the individual retail customers'
1238 vehicles. Mr. Gordon replied that is correct. He continued that they are weighing (the material)
1239 as it goes in, so they can more accurately allocate to make sure that the customer is not putting in
1240 (the wrong amount). He continued that if there are 20 yards of material in a pile and five trucks
1241 come in a day, each holding one yard, and the pile empties, that would indicate a problem he
1242 would need to address. That is more how they would be using the scale.

1243
1244 Chair Hoppock asked what is inside a scale house asking Mr. Gordon to describe what a person
1245 would see if they walked into one. Mr. Gordon replied that Cold River, for example, or other
1246 scale houses, have trays of different products. He continued that everything his company sells
1247 would be right there. Chair Hoppock asked if it is pre-weighed materials. Mr. Gordon replied
1248 yes, anything in general, so you can see what you have. He continued that scale houses typically
1249 have a computer to print out a slip and a place to take payments, a mini-computer for the scale,
1250 the scale itself outside, and typically something like a 5-gallon bucket of each product to show
1251 what each product is. Thus, if someone comes in without being sure of what they want, they can
1252 look at the products and choose what they want without having to walk too far or get out of their
1253 vehicle up in the quarry or pit.

1254
1255 Chair Hoppock asked if the scale house is for warehousing the pre-weighed material until
1256 someone buys it. Mr. Gordon replied no, just for samples of the materials, so people could see
1257 them. Ms. Ice added that the scale house is only 800 square feet, which is small. Mr. Gordon
1258 agreed and added that there would also be an employee operating the scale house, a person who
1259 sits inside and goes out to load the vehicles of the customers who come. Ms. Ice added that it
1260 would be more akin to a guardhouse, with the employee there and some basic information. She
1261 continued that the weigh station is mainly there to house the computer for the scale and to take
1262 payment.

1263
1264 Chair Hoppock asked what equipment they use to load something like a pick-up truck. Mr.
1265 Gordon replied something like a skid steer with a small bucket. He continued that currently they
1266 are using a 10-yard loader, with a bucket approximately the size of the bench the ZBA members
1267 are on. It is massive, and difficult to load small vehicles with.

1268
1269 Chair Hoppock asked what the size of the scale is and how deep underground it goes. Mr.
1270 Gordon replied that the size of the scale usually runs about 14 feet wide by 60-75 feet long,
1271 depending on what you get. He continued that you could picture a tractor trailer truck on it. A

1272 truck comes onto the scale empty, gets weighed, gets loaded, gets weighed again; then a slip for
1273 tonnage is generated, and the driver pays for the tonnage.

1274

1275 Ms. Taylor asked, in the operation itself, what happens if a commercial truck customer wants a
1276 whole truckload of gravel. She asked if the employee weighs the truck first, then the driver
1277 drives up to the gravel pit and loads then returns to the scale to be weighed again. Mr. Gordon
1278 replied that they weigh the vehicle empty, then they go up to the pit and get loaded, and come
1279 back to get weighed again, to determine the tonnage on the truck.

1280

1281 Mr. Guyot asked if it is fair to say that the majority of the use of the scale will be for commercial
1282 truck traffic versus retail customers for the hardscape material. Mr. Gordon replied yes,
1283 probably, because if a commercial truck is taking 18 yards at a time, to lose 10% of 18 yards
1284 every day or every truck obviously adds up more than selling maybe 20 yards of loam a week or
1285 that type of a thing. Mr. Guyot replied that the purpose of it is clear to him. He continued that it
1286 seems, based on the application and Mr. Gordon's description, that the use of the scale will be
1287 more for commercial purposes.

1288

1289 Ms. Ice replied that she thinks they are both commercial purposes. She continued that one is the
1290 retail commercial purposes. She thinks Mr. Gordon's overall desire is to build the retail store to
1291 be successful. Percentagewise, of course the big trucks are always going to be there. However,
1292 having a scale already is a rarity and a great feature just for the gravel side of things. Being able
1293 to use that to help Mr. Gordon with his bay, so when the retail customers come you can know
1294 exactly what you are getting and they can get it to them quickly, can really help grow that side of
1295 the business, too. Thus, she thinks it is hard to say, now, how important the scale will be to the
1296 growth of the retail store. The gravel pit is operating, so it is easier to know, day one. Mr.
1297 Gordon agreed.

1298

1299 Mr. Guyot asked Mr. Gordon how many trucks he has in and out of the pit in a day. Mr. Gordon
1300 replied that it depends on the season. He continued that in the winter, it could be five trucks a
1301 day. Tomorrow's schedule, on the other hand, has 70 loads running out of the pit. Today, there
1302 were 20. It is relative. The gravel pit sells its products to about 10 area towns. (Crews from) the
1303 towns will call, for example, that they are (back to work) since the roads are dry and they need X
1304 amount of yards. It fluctuates. On the original permit they did, they were talking about an
1305 average of 50-60 trucks a day over the course of the year. He thinks they will have to go back to
1306 the NHDOT and Planning Board, but he thinks when they got the approval on the gravel pit
1307 itself, there were about 27,000 cars a day going by on Rt. 9. Their increase of, say, 60 loads a
1308 day, increases that by less than a percent. It was nearly unnoticeable.

1309

1310 Chair Hoppock asked if the Board had any further questions. Hearing none, he asked for public
1311 comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

1312

1313 1. *Granting the Variance would not be contrary to the public interest.*

1314

1315 Chair Hoppock stated that he thinks the best he can say about this application is that it would not
1316 be *contrary* to the public interest, whereas some of the other applications were *in* the public
1317 interest. He continued that the test is whether it is contrary, not whether it is in. He agrees that
1318 the weigh station will probably have no visual or aesthetic impact on the neighborhood. He was
1319 glad to hear details about the traffic, and he does not believe it would alter the essential character
1320 of the neighborhood, either.

1321
1322 Ms. Taylor stated that she has some concerns regarding public interest and the spirit of the
1323 Ordinance. She continued that she sees this, essentially, as an expansion of the gravel pit use.
1324 Yes, there is the retail operation and the mixed use, but she has serious concerns about the
1325 conflicts on the single tract, with the retail and commercial. She understands the attempts to
1326 segregate by transportation and use, but she is not entirely convinced. She thinks there are
1327 serious public safety concerns.

1328
1329 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1330
1331 Ms. Taylor stated that she thinks this is not in the spirit of the Ordinance, because she thinks it is
1332 basically one way to get around expanding the gravel pit operations.

1333
1334 Chair Hoppock stated that he would agree with that if it were not true that Mr. Gordon could buy
1335 gravel from somewhere else and bring it in, and then retail it there. He continued that that is the
1336 distinction he makes in his mind. Yes, it is next door (to the gravel pit), and it does appear to be
1337 accessory to a next-door operation, but you fall back to the realization that the materials could
1338 theoretically be shipped in from anywhere. That part of it does not concern him as much. Given
1339 the number of trucks going in and out of there, based on what Mr. Gordon said, it does not sound
1340 like the impact on Rt. 9 would be an impact at all. The test is whether the Variance would not be
1341 contrary to the public interest. Nothing here suggests to him that it would be contrary to the
1342 public interest. He does not see a safety issue. There is no alteration to the essential character of
1343 the neighborhood. He does not see anything that puts it *in* the public interest, but that is not the
1344 test.

1345
1346 Ms. Taylor stated that she was trying to make the point that she does find that it is contrary to the
1347 public interest, because of what she considers serious safety concerns.

1348
1349 Chair Hoppock stated that the Applicant makes the observation that the Rural District allows
1350 both commercial and residential uses. He continued that looking at Article 3.1, that is true,
1351 although the commercial uses are greenhouse/nurse, bed and breakfast, animal care facilities,
1352 and kennels, under "Open Space Uses," they see gravel pits and community gardens. There is
1353 something he is not sure how to reconcile. He does not think it matters where the gravel comes
1354 from if it comes from off the property. The Applicant is processing, weighing, and sorting it at
1355 his property. Thus, while it smacks of an accessory use of a neighboring property, he is just not
1356 that bothered by it. Given the nature of the commercial uses that are permitted, he is not sure this

1357 is not within the spirit of the Ordinance. He thinks it is. Suggesting a merger of the two lots
1358 might be going a bit too far, but that is not what they are doing here.

1359
1360 Ms. Taylor stated that Chair Hoppock might be correct that the accessory use and the merger
1361 discussions are not that relevant to this. She continued that the reasons she has concerns about it
1362 not being within the spirit of the Ordinance is because while it is true that the gravel pit is
1363 approved, that is by Special Exception, which is an allowed use. Here, this is not the gravel pit,
1364 but it (the scale and scale house) probably would not be there if the Applicant did not have the
1365 gravel pit next door. She cannot say that for certain, because as Chair Hoppock said, you could
1366 come in with a commercial type of use with a scale to weigh gravel without the gravel pit.
1367 However, she still thinks it is more of the use than the Ordinance contemplates. She does not
1368 think it can be stretched to the greenhouse/nursery use. It certainly does not meet any of the
1369 definitions or restrictions on gravel pits. She does not see any way that it is within the spirit of
1370 the Ordinance.

1371
1372 3. *Granting the Variance would do substantial justice.*

1373
1374 Chair Hoppock stated that criteria three, he is not sure at all how the proposed use is consistent
1375 with not only the permitted use, but also the actual uses. He continued that he is having a hard
1376 time with that one, too.

1377
1378 4. *If the Variance were granted, the values of the surrounding properties would not be*
1379 *diminished.*

1380
1381 Chair Hoppock stated that he does not think there is any issue with this criterion, with respect to
1382 property values being diminished in this application.

1383
1384 5. *Unnecessary Hardship*

1385 A. *Owing to special conditions of the property that distinguish it from other*
1386 *properties in the area, denial of the variance would result in unnecessary hardship*
1387 *because*

1388 i. *No fair and substantial relationship exists between the general public*
1389 *purposes of the ordinance provision and the specific application of that provision*
1390 *to the property because:*

1391 *and*

1392 ii. *The proposed use is a reasonable one.*

1393
1394 Chair Hoppock stated that with respect to the scales and the scale house, he is not sure there are
1395 special conditions on the property that make the application of the Ordinance problematic to this
1396 property with respect to those two items.

1397
1398 Ms. Taylor stated that the statement in here might be considering an extended accessory use in
1399 connection with the abutting gravel pit. She continued that it is her way of thinking that does

1400 absolutely nothing to establish hardship; it establishes convenience. She cannot make the link to
1401 hardship, not for this particular use. Chair Hoppock agreed.

1402

1403 *B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
1404 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
1405 *property that distinguish it from other properties in the area, the property cannot be*
1406 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
1407 *necessary to enable a reasonable use of it.*

1408

1409 Mr. Guyot stated that certainly all these points are valid, relative to the issues they have
1410 discussed before regarding the existing buildings being deteriorated. He continued that however,
1411 he cannot get his head around how those previously stated issues relate to adding the scale.

1412

1413 Chair Hoppock replied or the scale house. Mr. Guyot replied that the scale house is an existing
1414 structure being removed and rehabilitated, but he has a hard time getting the scale into (5.B).

1415 Chair Hoppock replied that it is hard to find it.

1416

1417 Chair Hoppock asked for a motion.

1418

1419 Mr. Guyot made a motion to approve ZBA-24-08, for 21 Rt. 9, a Variance to allow permitted use
1420 under Article 3.1.5 for a truck scale and scale house.

1421

1422 *1. Granting the Variance would not be contrary to the public interest.*

1423

1424 Met with a vote of 3-0. Ms. Taylor was opposed.

1425

1426 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1427

1428 Met with a vote of 3-0. Ms. Taylor was opposed.

1429

1430 *3. Granting the Variance would do substantial justice.*

1431

1432 The vote was 2-2. Ms. Taylor and Chair Hoppock were opposed.

1433

1434 *4. If the Variance were granted, the values of the surrounding properties would not be*
1435 *diminished.*

1436

1437 Met with a vote of 4-0.

1438

1439 *5. Unnecessary Hardship*

1440 *A. Owing to special conditions of the property that distinguish it from other*
1441 *properties in the area, denial of the variance would result in unnecessary hardship*
1442 *because*

1443 i. No fair and substantial relationship exists between the general public
1444 purposes of the ordinance provision and the specific application of that provision
1445 to the property because:

1446 and

1447 ii. The proposed use is a reasonable one.

1448
1449 B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary
1450 hardship will be deemed to exist if, and only if, owing to special conditions of the
1451 property that distinguish it from other properties in the area, the property cannot be
1452 reasonably used in strict conformance with the ordinance, and a variance is therefore
1453 necessary to enable a reasonable use of it.

1454
1455 Not met with a vote of 0-4.

1456
1457 The motion to approve ZBA-2024-08 failed with a vote of 0-4.

1458
1459 Ms. Taylor made a motion to deny ZBA-2024-08, for a Variance for a property located at 21 Rt.
1460 9, Tax Map #218-008-000 in the Rural District, owned by G2 Holdings, 25 North St., Jaffrey, to
1461 permit a commercial and accessory use of a truck scale and scale house, per Article 3.1.5 of the
1462 Zoning Regulations. Mr. Clough seconded the motion, which passed with a vote of 4-0.

1463
1464 E) Continued ZBA-2024-10: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo
1465 **Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21**
1466 **Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2**
1467 **Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the use**
1468 **of accessory storage structures in the 50 ft. setback as measured from an abutting**
1469 **parcel owned by the Applicant per Article 3.1.2 & 8.4.1.C of the Zoning**
1470 **Regulations.**

1471
1472 Chair Hoppock introduced ZBA-2024-10. He asked if staff had anything to add. Mr. Hagan
1473 replied to no. Chair Hoppock asked to hear from the Applicant.

1474
1475 Ariane Ice stated that this application seeks Variance relief from Articles 3.1.2 and 8.4.1.C of the
1476 LDC, which do not allow accessory structures in the 50-foot setback in the Rural District. She
1477 continued that this relief would consist of permitting the accessory use of storage structures on
1478 an existing paved area located in the setback from the lot line between the subject property and
1479 another parcel owned by the Applicant. The storage structures would be Conex containers for the
1480 storage and sale of building materials by Habitat for Humanity. As storage for building materials,
1481 the structures would be an accessory to the agricultural retail store, which would sell related tools
1482 and supplies.

1483
1484 1. Granting the Variance would not be contrary to the public interest.

1485

1486 Ms. Ice stated that it would not be contrary to the public interest because the immediate
1487 neighbors include the gravel pit operation to the west, the forested area owned by the Applicant
1488 in Sullivan to the north, the Granite Gorge ski area in Roxbury, and a smattering of single-family
1489 homes. The character surrounding is diverse and widely separated uses, a character that would
1490 not be altered by storage structures. Additionally, the Variance would not threaten the public
1491 health, safety, or welfare. Given the wide separation between the types of uses in the general
1492 area, the allowance of accessory structures in the setback would not present any additional public
1493 hazards.

1494

1495 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1496

1497 Ms. Ice stated that importantly, the structures would be in a setback from the Applicant's own
1498 property, a 50-foot-wide strip that extends between the existing paved area where the structures
1499 would be located and Rt. 9. This wooded, non-buildable, 50-foot strip serves several purposes in
1500 meeting the spirit of the Ordinance. It largely shields the paved area from view for the passersby
1501 on Rt. 9, such that the structures would not contribute to any appearance of overcrowding or
1502 negative aesthetic. It eliminates the concern that structures in the setback would interfere with
1503 the neighbors' rights, and it provides a 50-foot buffer between the storage area and Rt. 9, which
1504 satisfies the public safety purposes of separating vehicular traffic from stationary objects. Thus,
1505 the purposes of the setback requirement are met since the subject property and the buffering strip
1506 have the same owner and may be treated for these purposes as though they have been merged.
1507 Finally, the overall project reduces the number of structures on the parcels, such that the storage
1508 structures would not contribute to crowding or the appearance of crowding.

1509

1510 3. *Granting the Variance would do substantial justice.*

1511

1512 Ms. Ice stated that granting the Variance would do substantial justice because it would improve a
1513 dilapidated area of town, (and) provide affordable housing. She continued that all the Variance
1514 factors, particularly substantial justice, and hardship, present a balancing of public benefits or
1515 detriments against the private benefits or detriments of the landowner. Here, granting the
1516 Variance benefits the public, because it assists a charitable, non-profit organization, Habitat for
1517 Humanity, with little or no corresponding public detriment.

1518

1519 Ms. Ice asked that the ZBA refer to the record of the public comments tonight in support of this
1520 project by the board member from Habitat for Humanity. Chair Hoppock replied that they will be
1521 noted.

1522

1523 4. *If the Variance were granted, the values of the surrounding properties would not be
1524 diminished.*

1525

1526 Ms. Ice stated that as discussed, the structures will be largely shielded from view of the road and
1527 neighboring properties. She continued that it would not create a negative aesthetic that would
1528 diminish the values of surrounding properties, many of which belong to the Applicant. When

1529 viewed as but one part of the overall project that will renovate and restore the derelict structures,
1530 granting the Variance would cause the values of the surrounding properties to increase rather
1531 than decrease. All residential and recreational properties in the general area not owned by the
1532 Applicant are sufficiently distant from the subject property, such that there would be no
1533 appreciable effect on value.

1534

1535 5. *Unnecessary Hardship*

1536 A. *Owing to special conditions of the property that distinguish it from other*
1537 *properties in the area, denial of the variance would result in unnecessary hardship*
1538 *because*

1539 i. *No fair and substantial relationship exists between the general public*
1540 *purposes of the ordinance provision and the specific application of that provision*
1541 *to the property because:*

1542

1543 Ms. Ice stated that special conditions of the property cause the use to be reasonable and the use
1544 does not alter the essential character of the neighborhood. She continued that one special
1545 condition of the property is the area for the storage structures is a paved area already in the
1546 setback. It is appropriate to consider an existing manmade feature as a special condition of the
1547 property, see *Harborside v. Parade Residence Hotel*. Here, the paved area makes the property
1548 different in a meaningful way from the other properties in the area and is therefore burdened
1549 more severely by the Zoning restriction. Denial of the Variance restricts any feasible use of the
1550 paved area.

1551

1552 *and*

1553 ii. *The proposed use is a reasonable one.*

1554

1555 Ms. Ice stated that the proposed use is reasonable. She continued that it meets the intent of the
1556 Ordinance. The Applicant merely needs to show it is a reasonable use.

1557

1558 Chair Hoppock asked what the dimensions of the paved area are, and how long it has been there.
1559 Mr. Daigneault replied that he believes that was done when Rt. 9 was being redone by NHDOT.
1560 Chair Hoppock asked if that was about five years ago, when NHDOT put that pad down when
1561 they stored some of their construction equipment. Mr. Daigneault replied yes. Jeff Merritt from
1562 Granite Engineering stated that it is about 150 feet by 50 feet at its widest point, and then “necks
1563 down to the west.”

1564

1565 Chair Hoppock asked how far the pad itself encroaches if it was the whole thing. Mr. Merritt
1566 replied not entirely, but almost. He continued that there is about eight feet of the pad that is
1567 beyond the setback. Chair Hoppock replied that it sounds like eight feet of the pad is okay.

1568

1569 Chair Hoppock asked how long Habitat has been using the space. Mr. Gordon replied less than a
1570 year. He continued that he thinks they did one or two sales there this fall. The Habitat president
1571 asked (to use the space), and he talked about it with him, and he (Mr. Gordon) said agreed.

1572 Chair Hoppock asked if there would be any issue with conditioning any approval on only them
1573 (Habitat) using the space. Mr. Gordon replied that that is all he plans and is seeking this Variance
1574 for that. Chair Hoppock replied that he understands and admires Mr. Gordon for doing this. He
1575 continued that he is just trying to find a way to make it work. Ms. Ice stated that the answer is
1576 yes, Mr. Gordon would agree to condition it. Mr. Gordon replied yes.

1577
1578 Ms. Taylor stated that she thinks they can only do a Variance related to conditions of the land.
1579 She continued that they cannot do it related to the ownership or the people using it. Chair
1580 Hoppock replied that that is what he was afraid of.

1581
1582 Mr. Gordon stated that he was not planning to have the land used by anyone, but then Habitat
1583 came to him with the request, and he agreed because it was for a good cause. If it were not for
1584 Habitat (making the request), he would not be doing it at all, so it is not like if Habitat moves out
1585 someone else would move in.

1586
1587 Ms. Taylor stated that she has a question about the introduction's statement that "*As storage for*
1588 *building materials, the structures would be accessory to the agricultural retail store.*" She asked
1589 how (that is). Ms. Ice replied that it is because the proposed use by Habitat is to sell the building
1590 materials stored there, so they have sales on a regular basis. The board member was talking about
1591 the ReSale stores. The most successful Habitat chapters have this element because it fits with
1592 their model. Habitat can only use some of the donations they receive, and the surplus can be sold.
1593 An agricultural retail store will have different supplies, and this fits nicely with that.

1594
1595 Ms. Taylor replied that she is familiar with ReStores. She continued that her experience with
1596 them is that they sell whatever has been donated to them, and the donations Habitat receives are
1597 not usually new products. She was curious about whether this agricultural retail store will also
1598 sell used items, in addition to new. Mr. Gordon replied no, the store would only sell new
1599 products. He continued that (Habitat) sells used and "new old stock." Ms. Ice replied that her
1600 understanding is that it is not all used. She continued that just to be clear and to not pigeonhole,
1601 there may be no intent to sell used products (in the agricultural retail store), but it has some
1602 interesting elements to it with hardscape. There may be some opportunity. She thinks it would be
1603 more accurate to say Mr. Gordon does not foresee selling used products at the present time, but
1604 he does not know what will happen in the future, other than Habitat materials. Mr. Gordon
1605 replied that he sells asphalt regrinds, which is asphalt that used to be on the road, then ground.
1606 He continued that the question is whether that is new or used.

1607
1608 Ms. Taylor asked Mr. Hagan if these structures/boxes need to be an accessory to something else,
1609 or if they can be standalone uses. Mr. Hagan replied that his understanding is that the way the
1610 Applicant is proposing the use, and the way the Applicant is asking for the Variance, is accessory
1611 to the store use. He continued that it is another entity selling used products. Ms. Taylor replied
1612 that she is asking what the Zoning Ordinance allows. Mr. Hagan replied that when it was
1613 presented it was an "accessory storage structure" for the products. He continued that the mention
1614 tonight of selling retail items from the storage box is new to him. Storing materials and selling

1615 them online is perfectly fine. However, the information that has been presented tonight is
1616 different from what was presented to him originally. He cannot answer Ms. Taylor's question at
1617 the moment; he would have to look at it again.

1618
1619 Ms. Taylor stated that what she is getting at is, if you have for example, Lot A with no structures
1620 and just open land, and you put a couple of MI-BOX storage containers on, she wonders if the
1621 Zoning Ordinance would permit that, or if the storage containers would have to be accessory to
1622 something. Chair Hoppock replied that they need to be incidental to another primary use. Mr.
1623 Hagan replied that it depends on what you are using them for and how you are using them. He
1624 continued that as he mentioned earlier, the City is looking to clarify that. The only place that the
1625 Ordinance mentions "motor vehicle storage" or "storage trailers," or anticipates these types of
1626 uses, is Article 8.4, Accessory Structures. It is page 8-25, under "I. Motor vehicle or trailer
1627 storage." The Community Development Department is working to come up with and identify
1628 these uses and where they sit in the Ordinance, or whether they do not fit in the Ordinance and
1629 thus are not permitted. They think they found a way, because they are so popular and used in
1630 many different places, so the City has to identify them somehow. They will not just go away;
1631 they will continue to be a new use and a major use, as they are affordable. They are identified in
1632 the Building Code as structures that can be used, and how to evaluate them for permanent use
1633 buildings. As far as the storage containers in this instance, storage containers can be used as an
1634 accessory use to this main use. As the ZBA has heard testimony tonight, the Applicant is looking
1635 to use it as a separate use. He thinks the Variance still covers that separate use; under the
1636 Variance they are asking for.

1637
1638 Ms. Taylor asked, in the Code, whether they were looking at this under subsection I.1.c. Mr.
1639 Hagan replied yes. Ms. Taylor replied that subsection I.1.c says, "*The use of trailers and/or*
1640 *vehicles, either registered or unregistered, for the storage or warehousing of goods or materials*
1641 *is not a permitted accessory use and is prohibited in all zones. This section shall not limit or*
1642 *prohibit registered trailers [...]*" She continued that that is ambiguous. Mr. Hagan replied that is
1643 why a policy is needed, and staff are working diligently to try to get that out. He continued that
1644 they want to get the wording right, so they do not need to backtrack or change it. They hope to
1645 have something out soon. They want to have a clear, consistent path for everyone for these. If the
1646 City is going to permit these, if someone has a "mobile storage structure" on a piece property,
1647 they have to go through the same requirements. If it is a commercial property, depending on the
1648 size of the structures, you would have to go through site plan review and get approval for them,
1649 and a building permit, because they are not a temporary structure. They are a permanent structure
1650 and should meet all the requirements that come with permanent structures. You can see how this
1651 morphs into a bigger discussion and they want to make sure they touch on all the points. For
1652 tonight's application, the way it was proposed was a storage structure, and as mentioned before,
1653 there is no policy at this time. It is anticipated that they would use these as structures, and they
1654 would need to go through the permit process.

1655
1656 Chair Hoppock asked how far they are within the setback. Mr. Daigneault replied that they are
1657 40 feet, so, within 10. Chair Hoppock asked if he meant they are within 10 feet from the outer

1658 limits of the setback. Mr. Daigneault replied yes. Chair Hoppock replied that that means if you
1659 move the structures 11 feet back, this would not be an issue. Mr. Daigneault agreed. He
1660 continued that then you only have eight feet of pavement. Chair Hoppock asked if they needed
1661 the pavement. Mr. Daigneault replied yes if they want to keep the (structures) on the pavement.
1662 Chair Hoppock asked if the pavement is needed to store these structures on. Mr. Gordon replied
1663 not, but it would be preferable. Chair Hoppock replied that he gets that, and it would probably be
1664 drier, too.

1665
1666 Ms. Taylor stated that she drove by the other day, and she knows it was represented in the
1667 application that they (the storage structures) are not that visible, but to her they were “pretty
1668 stark.” They are closer to the road than she thought they would be, which she supposes is why
1669 they are here (before the Board), because the structures are in the setback. She continued that the
1670 structures seemed to be very visible, and she got confused when she read the application. Mr.
1671 Gordon replied that they are being relocated. Mr. Daigneault stated that the proposal is to
1672 relocate them. Mr. Gordon stated that where they are sitting now, is “up proud” of where they are
1673 actually putting them. They would be putting them out around the corner.

1674
1675 Ms. Taylor replied that now she is more confused. She asked if the application before the ZBA is
1676 for where the storage containers are, or where they will be. Mr. Gordon replied yes.

1677
1678 Chair Hoppock asked if the Board had any more comments for the Applicants. Hearing none, he
1679 asked for public comment. Hearing none, he closed the public hearing and asked the Board to
1680 deliberate.

1681
1682 Chair Hoppock stated that this application is for a good cause. He continued that you know
1683 immediately when you read the application that Mr. Gordon is not doing this to benefit himself;
1684 he is trying to help Habitat for Humanity, which is admirable. He continued that however, the
1685 problem is the Zoning Ordinance. In his view, this application does not meet the Variance
1686 criteria. It is not contrary to the public interest, and it probably will not alter the essential
1687 character of the neighborhood. The justice it does is that it helps a non-profit that helps people in
1688 need. It will not affect the surrounding properties. However, as with the other application, this
1689 “hits the rocks” when it comes to the unnecessary hardship criterion. If they move the structures
1690 back eight feet, the problem goes away, at least for the time being, until they (the City) can
1691 figure out Article 8.4, *“The use of trailers and/or vehicles, either registered or unregistered, for
1692 the storage or warehousing of goods or materials is not a permitted accessory use and is
1693 prohibited in all zones.”* He continued that he is not sure if these containers can be considered
1694 vehicles or even trailers, but they are certainly warehousing goods or materials in a container-
1695 like object. Thus, he is not sure the setback is even the issue here.

1696
1697 Ms. Taylor stated that she has another question for Mr. Hagan, going back to her original
1698 question, whether a storage container would be allowed if it were not an accessory use. Mr.
1699 Hagan replied yes. He continued that if it were a permanent structure, and permitted as a
1700 permanent structure, as part of your business or an accessory use to your business, you can

1701 permit a Conex to be a structure on that location, used accessory to the main business, as a
1702 building. That is where they need to redefine the use of it, because the Code now addresses these
1703 types of structures to be used. Again, they are kind of mixing building and zoning here. In terms
1704 of Zoning, if they consider it a structure, it can be used as an accessory structure. Chair Hoppock
1705 asked if he means like a shed. Mr. Hagan replied yes, but it has to meet [Building] Code
1706 requirements and go through the permitting process.

1707
1708 Ms. Taylor stated that she has a question for the Applicant. Chair Hoppock opened the public
1709 hearing so Ms. Taylor could ask her question.

1710
1711 Ms. Taylor stated that if the Board were to vote on this application and deny it, the Applicant
1712 would not be able to bring it back. Her question to the Applicant, so long as the Chair agrees, is
1713 whether the Applicant would be willing to withdraw the application without prejudice, and
1714 potentially find a location for the storage trailers that is not within the setback. She continued
1715 that they can then concern themselves with Code Enforcement to see if the containers could be
1716 permitted as structures.

1717
1718 Ms. Ice asked for a couple of minutes to consult with her client. Chair Hoppock agreed.

1719
1720 Ms. Ice stated that after consultation with her client, they have decided to withdraw the
1721 application for the setback Variance, without prejudice.

1722
1723 Chair Hoppock stated that for the record, ZBA-2024-10 is withdrawn by the Applicant without
1724 prejudice to a right to bring it forward if she so chooses.

1725
1726 **F) ZBA-2024-11: Petitioner, John Noonan of Fieldstone Land Consultants, 206**
1727 **Elm St., Milford, requests a Variance for property located at 510 Washington St.,**
1728 **Tax Map 532-003-000, is in the Commerce District and is owned by OM 510**
1729 **Washington Street, LLC, 5 Patriot Lane, Wilbraham, MA. The Petitioner requests a**
1730 **Variance to permit the rear setback of 19.1 feet where 50 feet is required per Article**
1731 **5.1.2 of the Zoning Regulations.**

1732
1733 Chair Hoppock introduced ZBA-2024-11 and asked to hear from staff.

1734
1735 Mr. Hagan stated that this property has a lengthy history of Variances and Special Exceptions.
1736 He continued that 510 Washington St., zoned Commerce, is located on .744 acres. It currently
1737 has a retail store, vehicle fueling station, and a laundromat with a total building area of 2,172
1738 square feet. The history goes back in the City's file to a Special Exception granted on March 11,
1739 1975. Another Special Exception was granted in 1977, ZBA-77-20, for a miniature golf business.
1740 It already had the laundromat and an ice cream shop. In 2010, two Variances he could not get the
1741 details on were approved, ZBA-10-30. In 2011, a Variance on March 7 was approved, ZBA-11-
1742 14. A fifth Variance was granted on July 6, 2015, ZBA-15-09, for electronically-activated signs.

1743

1744 Ms. Taylor asked if it is correct that the vehicle fueling station was added at some point. Mr.
1745 Hagan replied yes, and he imagines that it had something to do with the 2010 and 2011
1746 Variances, which are about six months apart. He continued that maybe it was the station first and
1747 then the sign; he is not sure. Ms. Taylor asked if that is a permitted use. Mr. Hagan replied that
1748 things have changed a little bit now. He continued that under the new LDC, yes, a vehicle fueling
1749 station is allowed in the Commerce Zone. To give history to the Variance application before the
1750 Board tonight, this is part of the LDC changes. This was one of the added requirements, going
1751 from 50 feet in the rear. It used to be an additional ten feet to any residential, but the new LDC
1752 increased it.

1753
1754 Ms. Taylor asked what he means by “additional ten feet.” Mr. Hagan replied that on page 5-2,
1755 under “5.1 Commerce” is “5.1.2 Dimensions and Siting.” He continued that it says that the
1756 minimum rear setback if abutting residential district is 50 feet. Before the adoption of this LDC,
1757 this was actually in another section. Staff brought the information into this section so people
1758 would not have to go looking for it. It used to be that if a commercial property abutted a
1759 residential property, it was an additional 10-foot (requirement). That used to be in the same
1760 section as identifying corner lots and setback requirements.

1761
1762 Chair Hoppock asked if the Board had any further questions for staff. Hearing none, he asked to
1763 hear from the Applicant.

1764
1765 John Noonan of Fieldstone Land Consultants stated that for 510 Washington St., they are seeking
1766 a Variance for encroaching the rear setback. He continued that as Mr. Hagan mentioned, the
1767 setback was 20 feet, but because it abuts residential, it is 50 feet. The rear property is owned by
1768 the Tousley Trust, it is an unconventional residential property listed on the tax card as
1769 “apartment/commercial.” And it is not your typical single-family home with 14 units on the
1770 property. They are looking for the closest corner of the proposed building to be 19.1 feet from
1771 the back rear lot. The lot is not exactly square, so the other corner of the building is a little
1772 further than 19.1 and meets the 20-foot just barely. It is about 20 feet at the northwest corner, but
1773 the closest corner proposed is 19.1 feet. Based on the 50-foot setback, they are encroaching 31.4
1774 feet on the rear.

1775
1776 Mr. Noonan stated that the existing use is Dinkbee’s Gas Station and Convenience Store. He
1777 continued that they are looking to expand and add another station for filling. If they do two gas
1778 stations, one on each side, and potentially two diesel stations, one on each side, it would
1779 potentially be going from four filling stations to eight, but it would be three (places) where cars
1780 would park. You have seen the combination (stations) where you can choose between gas and
1781 diesel fuels. They are looking to raze or demolish the existing building, build a new building
1782 with two units. Currently, the convenience store and laundromat are combined in one unit and it
1783 is small, so they have never been able to do a food option or have restrooms for customers (in the
1784 convenience store). The laundromat is also small. They want to separate those uses and have a
1785 larger convenience store, potentially with a hot and cold food option instead of just packaged
1786 goods and have more parking. They have increased parking along one side, to have six parking

1787 spaces on the southern portion, dedicated more to the employees. It would separate where
1788 clientele is coming in versus employees, whereas currently employees park in front of the
1789 building.

1790
1791 Mr. Noonan continued that overall, the site is 79.6% impervious. This (proposal) has a slight
1792 reduction of 5.5%, which would be 74.1% impervious. Municipal water and sewer serve this
1793 location. There are utilities that cross and crossing agreements currently in the deed for allowing
1794 to that multi-use/multi-tenant residential to the rear; those would remain. They are calling them
1795 out in the plan, so when this goes to the Planning Board, they would either finalize the easements
1796 where they are, or keep it as a rather “blanket” easement.

1797
1798 Mr. Noonan continued that he thinks people are familiar with this property on Washington St.,
1799 which serves that end of town very well, as there are no other gas station options on that side. He
1800 continued that it serves Rt. 9 drivers’ needs to fill up with gas.

1801
1802 Chair Hoppock asked if it is correct that the dumpster enclosure is well within the setback. Mr.
1803 Noonan replied yes. He continued that (where Chair Hoppock is looking on the plan) is where
1804 the dumpsters currently reside. They are not enclosed. In talking with the former owner, he
1805 believes the dumpsters have always been in that location. If this goes to site plan review, the
1806 Applicant knows the (Planning Board) will want an enclosure, so they propose keeping the
1807 dumpsters in the same location and putting an enclosure around them.

1808
1809 Chair Hoppock replied that he cannot see where the setback line is on this plan. Mr. Noonan
1810 stated that he will bring the plan closer to show the Board. He indicated the color-coded lines
1811 showing the setbacks, and the dumpster location. He continued that the Applicant is thinking of
1812 using fencing for the enclosure. A special feature of the property is that there is “almost an island
1813 of commerce zoning,” and an area of low-density residential. Mr. Noonan pointed to the plan to
1814 show these two areas in relation to one another, explaining that that is what drives the 50-foot
1815 (minimum setback requirement) instead of 20 feet. He continued that (this) corner meets the 20
1816 feet, and (this corner) is 19.1 feet.

1817
1818 Chair Hoppock asked if it is correct that they are not factoring in the dumpster enclosure right
1819 now, because it is pre-existing. Mr. Noonan shook his head no, and replied that there is no
1820 enclosure now, but that is the location of the existing dumpster. He continued that if that were to
1821 require a Variance, they could either go for it when they go to the Planning Board or look at
1822 maybe an alternative for screening, such as landscaping.

1823
1824 Ms. Taylor stated that the current plan shows, if she is reading it correctly, a gravel road around
1825 the building. Mr. Noonan replied yes, to the existing conditions, indicating the location of the
1826 building and the pavement out to the back of the building. He continued that it juts out toward
1827 the Tousley Trust property. The smaller, dashed line out to the dumpster location is gravel, then
1828 a gravel half driveway comes back to the Tousley Trust property. Ms. Taylor asked if that gravel
1829 road/pathway that exists now has a use. She continued that she assumes it is going away. Mr.

1830 Noonan replied yes, it is going away. He continued that they are expanding the building out in
1831 that area. He showed where they propose the pavement ending, and where the current gravel area
1832 would be grass.

1833

1834 *1. Granting the Variance would not be contrary to the public interest.*

1835

1836 Mr. Noonan stated that granting the Variance for the reduced rear setback would not be contrary
1837 to the public interest. He continued that the Commerce District is intended to provide an area for
1838 intense commercial development that is predominantly accessed by vehicles. The subject parcel
1839 is a standalone property for this district in this area. The residential abutters to the rear are
1840 atypical. One, Lot 519-037, is an undeveloped wood lot with no frontage on any public way and
1841 the assessing records list it as Land Use Code 700 – Forest White Pine. He showed the area and
1842 continued that it is owned by the Fox Trail Farm, LLC. The other rear abutter, Lot 531-045, is a
1843 multi-family commercial development with 14 cottage-style apartments. The assessing record
1844 describes this property as Land Use Code 108 – Apartments-Commercial.

1845

1846 Mr. Noonan continued that the general public purpose of the Ordinance is to separate the
1847 commercial use from residential uses. The rear abutters are not typical residential use; they are
1848 more commercial. For these reasons, and because the proposed Variance would not alter the
1849 essential character of the neighborhood, or threaten public health, safety, or welfare, or otherwise
1850 injure public rights, the Applicant believes granting the proposed Variance would not be contrary
1851 to the public interest.

1852

1853 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1854

1855 Mr. Noonan stated that granting the Variance would observe the spirit of the Ordinance because
1856 it would allow this commercial property to be redeveloped. He continued that intense
1857 commercial development is the purpose of the Commerce District. The spirit of the Ordinance is
1858 to separate commercial uses from residential uses. While the abutting properties to the rear of the
1859 subject parcel are zoned as residential, in practice, these properties are not in keeping with the
1860 typical residential uses. One of the parcels to the rear is a wooded lot and the other is a 14-unit,
1861 multi-family dwelling. For these reasons, and because the Variance would not alter the essential
1862 character of the neighborhood, or threaten public health, safety, or welfare, or otherwise injure
1863 public rights, the Applicant believes granting the proposed Variance would observe the spirit of
1864 the Ordinance.

1865

1866 *3. Granting the Variance would do substantial justice.*

1867

1868 Mr. Noonan stated that granting the Variance for reduced rear setback would do substantial
1869 justice because the redevelopment of this property would benefit the Applicant and the general
1870 public by replacing the aging structure and layout with a modern facility that complies with
1871 current standards and regulations. He continued that granting the Variance would allow for the
1872 redevelopment of this property, the expansion of the convenience store that serves many

1873 neighborhood residents, and additional gas pumps. The public would realize no appreciable gain
1874 for denying the Variance.

1875
1876 4. *If the Variance were granted, the values of the surrounding properties would not be*
1877 *diminished.*

1878
1879 Mr. Noonan stated that the Variance allows for the existing use to continue in a new, expanded
1880 facility. He continued that there is no evidence that a reduction to the rear setback would
1881 diminish surrounding properties' values. In their experience, new development and investment in
1882 communities often results in positive impacts to property values. They would foresee that with
1883 the renovation and redevelopment of this property.

1884
1885 5. *Unnecessary Hardship*

1886 A. *Owing to special conditions of the property that distinguish it from other*
1887 *properties in the area, denial of the variance would result in unnecessary hardship*
1888 *because*

1889 i. *No fair and substantial relationship exists between the general public*
1890 *purposes of the ordinance provision and the specific application of that provision*
1891 *to the property because:*

1892
1893 Mr. Noonan stated that the property has special conditions that distinguish it from other
1894 properties in the area. He continued that as previously stated, the subject property is the only
1895 property amongst its immediate neighbors that is in the Commerce District. This property has the
1896 only vehicle fueling station in this part of the city, and the only fueling station available for
1897 people traversing Rt. 9 from the east. This property's store and gas station serve important
1898 functions for the immediate neighborhood and for travelers from outside the neighborhood. The
1899 property is in need of modernization and expansion to keep up with the demand for the services
1900 in this area.

1901
1902 Mr. Noonan continued that the general purpose of the Ordinance is to prevent the proximity of
1903 unlike uses from being detrimental to property owners. The specific application of the rear
1904 setback requirement on this property, to further separate an existing use in an altered footprint,
1905 does not align with the general public purpose of the Ordinance. Due to the special conditions of
1906 this property, the Zoning restriction as applied to this property does not serve its purpose in a fair
1907 or substantial way.

1908
1909 *and*

1910 *ii. The proposed use is a reasonable one.*

1911
1912 Mr. Noonan stated that the proposed use is a reasonable one because it will replace an existing,
1913 aging facility with a new facility that complies with modern standards.

1914

1915 *B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
1916 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
1917 *property that distinguish it from other properties in the area, the property cannot be*
1918 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
1919 *necessary to enable a reasonable use of it.*
1920

1921 Mr. Noonan stated that the special conditions of the property as previously set forth distinguish
1922 this property from other properties in the area and prevent the property from being developed in
1923 strict conformance with the Ordinance. He continued that a Variance is therefore necessary to
1924 enable reasonable use of it, because the zoning of the property and its lack of proximity to other
1925 properties in its zoning district limit the developmental potential of this property in strict
1926 conformance with the Ordinance. The Variance for a reduced rear setback is reasonable because
1927 it meets the spirit of the Ordinance, it will not diminish the values of surrounding properties, and
1928 it will do substantial justice to the property owner and the general public.
1929

1930 Ms. Taylor asked where the road access is for the 14 cottage-style units on the abutting parcel.
1931 Mr. Noonan replied that currently, they have a blanket easement that calls out that it is 20 feet
1932 wide at the southern portion of the property. He continued that it comes off Washington St. and
1933 comes along at an angle on the southern portion, crosses the pavement, and then gravel then
1934 comes across the back, indicating on the plan where people travel. He continued that the plan
1935 shows a proposed crossing easement in the center line, based on the center line of the drive aisle.
1936 Ms. Taylor asked if it is correct that that is a vehicular easement. Mr. Noonan replied yes. He
1937 continued that in talking with the abutters, Toby Tousley, if they go forward with the site plan
1938 following this Variance, they would either do it as a blanket easement or, like this, call it out
1939 with varying distances. The easement would remain to allow the (residents) to access through the
1940 property.
1941

1942 Chair Hoppock asked if it is correct that it is not a public way. Mr. Noonan replied that was
1943 correct and that it is a blanket easement allowing (residents) to travel the southern route to get to
1944 the property. Chair Hoppock asked if they can currently go around the existing building and exit
1945 the convenience store parking lot that way, onto the private right-of-way and then onto
1946 Washington St. Mr. Noonan replied yes, it is a gravel path behind there, and they can currently
1947 drive where there is space behind the existing building. He continued that in addition, people
1948 exiting “this” could loop through “there,” which would go away with the proposed plan as it
1949 stands now.
1950

1951 Chair Hoppock asked if the Board had any further questions. Hearing none, he noted that this
1952 would be the time for public comment, but no members of the public are present.
1953

1954 Mr. Hagan stated that Board Clerk, Ms. Marcou found some information about the previous
1955 Variances for this property. He continued that the 2010 one was a Variance approved to allow
1956 for a 15-foot setback where 30 feet was required. The 2011 one was an appeal of an
1957 administrative decision, and the administrative decision was upheld. Chair Hoppock asked if Mr.

1958 Hagan knows what side of the building the setback was on, regarding the 2010 Variance. Mr.
1959 Hagan replied to no. He continued that the new LDC allows for a lesser setback than what was
1960 required when the 2011 Variance was given. On page 9-9, Table 9-2: Travel & Parking Surface
1961 Setbacks shows the requirements are less than what was required at the time the 2011 Variance
1962 was given. Under this, it would be less than 30,000 square feet, so the setback would be eight.
1963 Even if it were the 30,000 foot, two-acre parking lot area, it would still only be ten. There was a
1964 minor reduction.

1965
1966 Ms. Taylor stated that they like to phrase these as to what the incursion into the setback is. She
1967 asked if it is roughly correct that this is hoping to be 21 feet into the setback. Mr. Noonan replied
1968 31.4 feet into the setback, because it is a 50-foot setback, and they are 19.1 feet from the
1969 proposed building to the rear property line. Ms. Taylor stated that when the Board makes a
1970 motion, she would like to suggest that they make it so that it states, "not more than 31.4 feet into
1971 the setback." Chair Hoppock replied that he is getting 15.5 feet on it, though. Mr. Noonan stated
1972 that 31.4 feet is up at "this" portion, indicating on the plan. He continued that it should be 30.9,
1973 would be the largest. Up "here," he indicated on the plan, it meets 20 feet. It would be 30.9 feet.

1974
1975 Chair Hoppock asked if 30.9 feet would be the deepest incursion into the setback. Mr. Noonan
1976 replied yes.

1977
1978 Chair Hoppock closed the public hearing and asked the Board to deliberate.

1979
1980 Chair Hoppock stated that it seems to him that this property is unusually shaped and small. He
1981 continued that a lot behind it, on the side they are discussing, is landlocked. And the other one, it
1982 makes sense to call it atypical.

1983
1984 *1. Granting the Variance would not be contrary to the public interest.*

1985
1986 Chair Hoppock stated that he does not think this is contrary to the public interest.

1987
1988 Ms. Taylor stated that she thinks in some ways it would be *in* the public interest, because if you
1989 eliminate that gravel road that goes around the back, it provides a safer environment if you turn
1990 that area into grass. (It would be) safer for the abutters or for people who are using the business,
1991 especially at night.

1992
1993 Chair Hoppock stated that eliminating the gravel drive also would create more of a buffer for
1994 noise from the street and business. He continued that Ms. Taylor was right.

1995
1996 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1997
1998 Chair Hoppock stated that this is a Commerce District. He continued that its purpose is to allow
1999 for commercial development, and this is a property surrounded by residential low density. It
2000 makes it difficult to allow this property to achieve the purpose of the Commerce District. That

2001 might be a special condition more than anything else, but it seems to him that that also supports
2002 the spirit of the Ordinance, regarding what the owner is trying to do.

2003
2004 3. *Granting the Variance would do substantial justice.*

2005
2006 Chair Hoppock stated that he does not see any gain to the public that outweighs the harm to the
2007 owner, if this were denied, because that would prevent the redevelopment he is proposing.

2008
2009 4. *If the Variance were granted, the values of the surrounding properties would not be*
2010 *diminished.*

2011
2012 Chair Hoppock stated that he agrees with the Applicant. He continued that he does not see any
2013 prospect for surrounding properties' values being diminished in light of what is proposed. What
2014 is proposed would probably improve the neighborhood and improve the services this place
2015 would offer in the future. He has gone there for gas, and it is crowded.

2016
2017 5. *Unnecessary Hardship*

2018 A. *Owing to special conditions of the property that distinguish it from other*
2019 *properties in the area, denial of the variance would result in unnecessary hardship*
2020 *because*

2021 i. *No fair and substantial relationship exists between the general public*
2022 *purposes of the ordinance provision and the specific application of that provision*
2023 *to the property because:*

2024 *and*

2025 ii. *The proposed use is a reasonable one.*

2026
2027 Chair Hoppock stated that in his view, there are no shortages of special conditions. He continued
2028 that the placement of this property in connection with the Zoning boundaries illustrates his point.
2029 The Low Density Zone is to the north, west, and south. It abuts one landlocked property. Forcing
2030 this property owner into a 50-foot setback when everyone around them has 20 feet, and given the
2031 width of the property, you really cannot develop it. He supposes that is why the building is so
2032 small now.

2033
2034 Mr. Clough stated that he agrees, and the 50-foot setback really does jump out at you when it is
2035 like a quarter of the property, or 30%. He continued that he does not know how they would be
2036 able to do anything with the property.

2037
2038 Mr. Clough made a motion to approve ZBA-2024-11, a Variance for a property located at 510
2039 Washington St., Tax Map #532-003-000, located in the Commerce District, requesting a
2040 Variance to permit the rear setback of 19.1 feet where 50 feet is required per Article 5.1.2 of the
2041 Zoning Regulations. The encroachment will be no greater than 30.9 feet. Ms. Taylor seconded
2042 the motion.

2043

2044 1. *Granting the Variance would not be contrary to the public interest.*
2045
2046 Met with a vote of 4-0.
2047
2048 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
2049
2050 Met with a vote of 4-0.
2051
2052 3. *Granting the Variance would do substantial justice.*
2053
2054 Met with a vote of 4-0.
2055
2056 4. *If the Variance were granted, the values of the surrounding properties would not be*
2057 *diminished.*
2058
2059 Met with a vote of 4-0.
2060
2061 5. *Unnecessary Hardship*
2062 A. *Owing to special conditions of the property that distinguish it from other*
2063 *properties in the area, denial of the variance would result in unnecessary hardship*
2064 *because*
2065 i. *No fair and substantial relationship exists between the general public*
2066 *purposes of the ordinance provision and the specific application of that provision*
2067 *to the property because:*
2068 *and*
2069 ii. *The proposed use is a reasonable one.*
2070 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
2071 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
2072 *property that distinguish it from other properties in the area, the property cannot be*
2073 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
2074 *necessary to enable a reasonable use of it.*
2075
2076 Met with a vote of 4-0.
2077
2078 The motion to approve ZBA-2024-11 passed with a vote of 4-0.
2079
2080 V) **New Business**
2081
2082 VI) **Communications and Miscellaneous**
2083 VII) **Non-Public Session (if required)**
2084
2085 VIII) **Adjournment**
2086

2087 There being no further business, Chair Hoppock adjourned the meeting at 10:43 PM.

2088

2089 Respectfully submitted by,

2090 Britta Reida, Minute Taker

2091

2092 Reviewed and edited by,

2093 Corinne Marcou, Board Clerk

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45 DOVER ST.
ZBA-2024-12



Petitioner requests a Variance to permit a 3 ft. side setback where 10 ft. is required per Article 3.5.2 of the Zoning Regulations



NOTICE OF HEARING

ZBA-2024-12

A meeting of the Zoning Board of Adjustment will be held on **Monday, June 3, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-12: Petitioner, Thomas Burton requests a variance for property located at 45 Dover St., Tax Map #569-082-000 and is in the Medium Density District. The Petitioner requests a variance to replace the required 10 ft. side setback with a 3 ft. side setback per Article 3.5.2 of the Zoning Regulations.

You are receiving notice of this hearing as an abutter to or owner of property within 200-ft. of the subject parcel.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Please be advised that this may be the only certified notice you will receive. You are encouraged to review future Zoning Board of Adjustment agendas for the status of this application at keenenh.gov/zoning-board-adjustment. If you have any questions, please contact me at the Community Development Department at (603) 352-5440.

Corinne Marcou, Zoning Clerk
Notice issuance date May 24, 2024

City of Keene, NH

Zoning Board of Adjustment Variance Application



For Office Use Only:

Case No. ZBA-2021-12
Date Filled 5/2/21
Rec'd By CJM
Page 1 of 12
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: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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 applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: **Thomas Burton**

MAILING ADDRESS: **45 Dover St. Keene, NH 03431**

PHONE: **(603) 209-4001**

EMAIL: **thesurfking@gmail.com**

SIGNATURE: *Thomas Burton*

PRINTED NAME: **Thomas Burton**

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: PROPERTY INFORMATION

Property Address: **45 Dover St. Keene, NH 03431**

Tax Map Parcel Number: **569-082**

Zoning District **Medium Density**

Lot Dimensions: Front: **66** Rear: **66** Side: **132** Side: **132**

Lot Area: Acres: **0.21** Square Feet: **8,712**

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **26%** Proposed: **43%**

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: **14%** Proposed: **12%**

Present Use: **Two family home**

Proposed Use: **Two family home with Garage and third unit**

SECTION 3: 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.

Property Location:

The property is located at 45 Dover St., Keene, Cheshire County, NH 03431. Situated in a predominantly residential area, it is in close proximity to the well-known Robin Hood Park, a popular community gathering spot and green space. This location offers the dual advantage of a quiet neighborhood feel while being only minutes away from the central business district of Keene.

Owner of the Subject Property:

The property at 45 Dover St., Keene, NH 03431, is owned by Thomas Burton. He is the sole proprietor and manages all aspects related to the property.

Purpose of the Proposed Variance:

The purpose of the requested variance is to reduce the side setback requirement from the current 10 feet to 3 feet. This modification is necessary to enable the construction of a new building—a garage with an apartment above. The existing zoning restriction limits the usable space on the property, making it impractical to develop this additional living and storage space which is essential for accommodating the property owner's needs.

Effect of the Proposed Variance:

Granting the requested variance to reduce the side setback from 10 feet to 3 feet will allow the construction of a garage with an apartment above, thus optimizing the use of the property without significant encroachment into the open space. The structure is designed to be aesthetically pleasing and in harmony with the existing neighborhood's architectural style. The addition of this building will not only meet the owner's need for additional living and storage space but will also enhance the overall property value. Moreover, this development is carefully planned to ensure that it does not adversely affect the light, air, or privacy of neighboring properties. Importantly, by adding a new housing unit, this project will contribute to alleviating the local housing demand, supporting community efforts to address housing shortages in the area.

Justification for the Proposed Variance:

The justification for the proposed variance stems primarily from the unique constraints of the property's size and existing structures. Adhering to the standard 10-foot side setback significantly restricts the feasible development of the property, particularly in adding necessary residential and storage space. The lot's dimensions and positioning, relative to existing buildings, render any alternative expansion impractical. Reducing the side setback to 3 feet represents the minimum adjustment necessary to feasibly construct the proposed garage with an apartment above, without excessively infringing on zoning norms.

Furthermore, the proposed development is carefully designed to ensure that it maintains the character and privacy of the surrounding neighborhood, mitigating any potential adverse effects. It also directly contributes to addressing the local housing shortage, thereby serving a broader public interest. Granting this variance not only alleviates an undue hardship on the property owner but also supports community-wide objectives to enhance residential capacity in a manner that respects existing urban planning goals.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 3.5.2 of the Zoning Regulations to permit:

To replace the required 10 foot side setback with a 3 foot side setback.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

Granting the variance to reduce the side setback from 10 feet to 3 feet to allow for the construction of a garage with an apartment above at 45 Dover St., Keene, NH, aligns with public interest for several compelling reasons:

Enhances Housing Availability: The addition of the apartment helps address the local housing demand, thereby supporting community efforts to tackle housing shortages. This development contributes positively to the area's residential capacity without necessitating new infrastructure or extensive urban sprawl.

Respects Community Character: The design and placement of the proposed structure have been meticulously planned to match the existing neighborhood's architectural style, ensuring that it complements the area's aesthetic and does not disrupt the visual harmony of the community.

Minimal Impact: The variance allows for a more efficient use of the property without significant encroachment into the surrounding space. The planned development ensures that there is no adverse effect on the light, air, or privacy of neighboring properties, maintaining the quality of life for residents.

Economic Benefits: By enhancing the property's functionality and appearance, the project is expected to increase property values not only for this property but potentially for the neighborhood as well, contributing to the economic vitality of the area.

Environmental Considerations: The project avoids unnecessary land consumption and preserves more open space compared to alternative expansions, aligning with sustainable development practices that benefit the community at large.

Granting this variance represents a balanced approach to development, enhancing individual property use while protecting and promoting the collective interests of the community. It supports essential residential development without compromising public values or the regulatory intent of the zoning laws.

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

If the variance to reduce the side setback from 10 feet to 3 feet at 45 Dover St. were granted, the spirit of the ordinance would be observed for the following reasons:

Consistency with Zoning Objectives: The underlying intent of zoning ordinances is to ensure orderly and beneficial development while preventing overcrowding and maintaining the character of neighborhoods. By proposing a development that is aesthetically in line with the surrounding area and does not impinge significantly on neighboring properties in terms of light, air, or privacy, this project upholds these fundamental goals.

Promoting Residential Development: Many zoning ordinances aim to encourage residential development that meets the needs of the community without compromising the existing neighborhood fabric. The proposed construction of a garage with an apartment above addresses a critical need for additional housing within the community, directly supporting local residential growth objectives.

Sustainability and Efficient Land Use: The request for a variance demonstrates a commitment to sustainable land use by optimizing the available space on an existing property rather than extending development into undeveloped land. This approach minimizes environmental impact, aligns with sustainable development principles, and supports efficient municipal service delivery.

Enhancement of Property Value and Community Welfare: The project is designed to enhance property values, which can increase tax revenues and, in turn, fund public services. By improving and utilizing property within the community, the project contributes to the overall economic and social welfare.

Minimum Variance Necessary: The request for reducing the side setback to 3 feet represents the minimum modification needed to achieve the desired development, complying with the spirit of the ordinance which favors minimal deviations from established regulations whenever possible.

Granting this variance therefore not only respects but actively promotes the intentions of the zoning ordinance, ensuring that development is beneficial, respects the existing community structure, and is carried out in an environmentally responsible manner.

3. Granting the variance would do substantial justice because:

Granting the variance to reduce the side setback from 10 feet to 3 feet at 45 Dover St. would do substantial justice because:

Balancing Property Rights and Community Interests: The variance allows the property owner, Thomas Burton, to utilize his property more effectively and fulfill a legitimate need for additional living and storage space. This need cannot be met under the current strict zoning restrictions due to the unique size and shape of the property. Granting the variance does not infringe on the rights or interests of the community or the neighbors, as the project is designed to be unobtrusive and harmonious with the neighborhood's character.

Minimizing Harm: There is no evident harm to the public interest or to individual neighbors if the variance is granted. The planned construction respects the privacy, light, and air of adjoining properties and complies with environmental and aesthetic standards set by the community. In contrast, denying the variance could impose significant hardship on the property owner, restricting his ability to improve and enjoy his property.

Fulfilling Community Housing Needs: By allowing the construction of an additional residential unit, the variance directly supports community efforts to address local housing shortages, thus serving a broader public good. This not only benefits the property owner but also helps meet critical housing demand in the area.

Upholding Zoning Intentions: The request for a variance is consistent with the spirit of the zoning laws, which aim to prevent overcrowding and maintain neighborhood character while also adapting to the changing needs of the community. By granting the variance, the zoning board would uphold these intentions, ensuring that development is both responsible and responsive to current needs.

Granting this variance thus represents a just balance between the individual's right to use their property and the community's interest in regulating development for the general welfare. It aligns with principles of fairness and practicality, ensuring that zoning regulations serve their intended purpose without causing undue hardship.

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

If the variance were granted to reduce the side setback from 10 feet to 3 feet at 45 Dover St., the values of the surrounding properties would not be diminished for several key reasons:

Architectural Harmony: The planned garage with an apartment above is designed to complement the existing architectural style of the neighborhood. By ensuring that the new construction is aesthetically pleasing and consistent with the character of the surrounding homes, it enhances the visual appeal of the area, which can positively influence property values.

Quality Construction: The development will use high-quality materials and design standards that align with those of the neighborhood, ensuring that the new structure is an asset rather than a detriment to the area.

Enhanced Usability and Functionality: By adding a garage and additional living space, the property at 45 Dover St. will meet more of the modern functional needs of potential homeowners, making it more attractive to buyers. This can have a positive ripple effect on the desirability and thus the value of neighboring properties.

Prevention of Negative Impacts: The project plans include measures to ensure that there are no adverse effects on the light, air, or privacy of neighboring properties. Such considerations help maintain or even increase the attractiveness of the area for current and potential residents.

Addressing Housing Demand: The addition of a new housing unit within the community addresses a critical local need for more residential options. This helps stabilize or increase property values by contributing to a balanced local housing market.

Community and Economic Benefits: The improved property will potentially lead to higher property tax contributions based on increased valuation, benefiting local services and infrastructure. This economic uplift can positively affect the perceptions and real values of properties in the vicinity.

In conclusion, granting this variance is unlikely to diminish the values of surrounding properties and may, in fact, contribute to their appreciation by enhancing the overall quality and functionality of the neighborhood.

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:

Denial of the variance for the property at 45 Dover St. would result in unnecessary hardship owing to special conditions of the property that distinguish it from other properties in the area:

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:

Community Housing Shortage: The local area is currently experiencing a significant housing shortage, which the zoning ordinance aims to alleviate by encouraging the efficient use and development of existing residential properties. The property at 45 Dover St. presents a unique opportunity to contribute to solving this problem by adding a new residential unit in the form of an apartment above a garage. The strict application of a 10-foot side setback significantly limits the potential to address this urgent community need on this particular lot, where reducing the setback to 3 feet would allow for the construction of needed housing without compromising the ordinance's broader objectives of maintaining neighborhood aesthetics and ensuring privacy.

Unique Suitability for Additional Housing: The property's location and configuration make it especially suitable for this type of development, which would not only utilize the land more efficiently but also provide much-needed housing without extending into undeveloped areas. This type of infill development is critical in urban areas where land is scarce, and it directly supports community goals of density and sustainability.

Proportional Impact: By allowing the variance, the development still respects the essential intent of the zoning laws, which is to prevent overcrowding and preserve the character of neighborhoods. The specific application of the standard setback rules to this property, however, does not substantially further these goals but rather impedes the ability to meet critical housing needs. Therefore, a strict application of these rules lacks a fair and substantial relationship to their intended public purpose when applied to 45 Dover St.

In summary, the unique circumstances of the property at 45 Dover St. and the pressing local need for additional housing create a scenario where the strict application of the zoning ordinance's setback requirements does not reasonably serve its intended public purposes. Instead, it imposes an unnecessary hardship that prevents addressing a critical public need, underscoring the lack of a fair and substantial relationship between the law's general objectives and its specific application to this property.

and

ii. The proposed use is a reasonable one because:

The proposed use of the property at 45 Dover St. for constructing a garage with an apartment above is a reasonable one for several key reasons:

Alignment with Zoning Objectives: The primary goals of zoning are to ensure that land use is beneficial, orderly, and efficient, while also preserving the character and stability of the community. The proposed development aligns with these objectives by making effective use of the existing land, enhancing property functionality, and increasing residential density in a manner that is compatible with the neighborhood's existing style and scale.

Fulfillment of Community Housing Needs: There is a recognized need for more housing in the community, particularly units that can accommodate small families or individuals. The addition of an apartment addresses this need directly, providing a type of housing that is in short supply in the area. This use is not only reasonable but necessary to help alleviate the local housing shortage, thus supporting broader community and regional planning goals.

Practicality Given Property Characteristics: The specific characteristics of the property, including its location and dimensions, make the proposed use particularly practical. The property is ideally situated near local amenities and transit options, making it an excellent candidate for increased residential density. Moreover, the design of the project is such that it maximizes the utility of the property without encroaching excessively on neighboring lots or altering the area's character.

Minimal Impact on Neighbors and Community: The design and planned management of the new structure ensure that it will not adversely affect the neighboring properties in terms of privacy, light, or noise. The thoughtful placement and high-quality construction of the garage and apartment will maintain, if not enhance, the overall aesthetic and economic value of the area.

Compliance with Environmental and Building Standards: The proposed construction will adhere to all relevant environmental and building codes, ensuring that the development is safe, sustainable, and durable. This compliance further underscores the reasonableness of the proposed use, demonstrating a commitment to maintaining community standards and safety.

In conclusion, the proposed use of constructing a garage with an apartment above at 45 Dover St. is reasonable due to its alignment with zoning objectives, its practicality based on the property's characteristics, its minimal impact on the community, and its significant contribution to addressing a crucial housing need. It represents a thoughtful and beneficial utilization of the property that supports both the property owner's interests and the community's goals.

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.

An unnecessary hardship will be deemed to exist for the property at 45 Dover St., if and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The application of this criterion to the property at 45 Dover St. can be justified as follows:

Special Conditions of the Property: The property at 45 Dover St. has unique conditions that differentiate it from others in the area. These include its specific dimensions and its current structure placement, which limit the feasible development options under the existing zoning laws. The requirement for a 10-foot side setback severely restricts the ability to construct any meaningful addition to the property, including the proposed garage with an apartment above.

Unreasonable Use Under Strict Conformance: If the property were to adhere strictly to the 10-foot side setback rule, it would be unable to undergo any substantial development that maximizes its utility and meets the owner's needs. The strict conformance would therefore leave the property underutilized, which is particularly critical given the local housing demand and the property's potential to contribute effectively to alleviating this issue.

Necessity of the Variance for Reasonable Use: Granting a variance to reduce the setback to 3 feet is essential for the reasonable use of the property. Without this variance, the owner would be unable to construct the planned garage and apartment, which is a reasonable and beneficial use of the property that aligns with community goals and zoning objectives. The variance would allow the property to be developed in a manner that is economically viable, environmentally responsible, and socially beneficial, thus representing a necessary adjustment to the rigid application of the zoning rules.

In summary, due to the special conditions of 45 Dover St. and the unreasonable limitations imposed by strict adherence to the zoning ordinance, a variance is necessary to allow for a reasonable and effective use of the property. This development would not only meet the immediate needs of the property owner but also serve broader community interests, thus justifying the hardship under the zoning law criteria.

Parcel Number: 569-079-000-000-000
36 DOVER STREET INVESTMEN
93 WESTBROOK RD.
WESTFORD, MA 01886

Parcel Number: 570-006-000-000-000
ERICKSON TATE S.
ERICKSON DEVONEY A.
175 DARLING RD.
KEENE, NH 03431-4940

Parcel Number: 569-085-000-000-000
LEHANE BRIAN S.
25 DOVER ST.
KEENE, NH 03431

Parcel Number: 570-013-000-000-000
AVERA ACRES LLC
37 BEECH ST.
KEENE, NH 03431

Parcel Number: 553-069-000-000-000
FOX CHRISTOPHER J.
27 MECHANIC ST.
KEENE, NH 03431-3446

Parcel Number: 570-005-000-000-000
MF PROPERTY MANAGEMENT LL
160 RANDOLPH AVE.
JERSEY CITY, NJ 07305-4415

Parcel Number: 569-040-000-000-000
BEAUREGARD FAMILY REV. TR
127 WASHINGTON ST.
KEENE, NH 03431-3106

Parcel Number: 553-070-000-000-000
FULLER, DAVID W.
63 FRANKLIN ST. APT. 2
KEENE, NH 03431

Parcel Number: 553-061-000-000-000
MONADNOCK AFFORDABLE HOUS
831 COURT ST.
KEENE, NH 03431

Parcel Number: 569-039-000-000-000
BILENDUKE ANDREW
FORTIN CORINE
57 FRANKLIN ST.
KEENE, NH 03431

Parcel Number: 553-056-000-000-000
GAGNE BERNARD J.
GAGNE ANN J.
69 DOVER ST.
KEENE, NH 03431-3205

Parcel Number: 570-011-000-000-000
MONADNOCK DEVELOPMENTAL S
121 RAILROAD ST.
KEENE, NH 03431

Parcel Number: 553-058-000-000-000
BLAIS KALI P
78 COAKLEY RD
PORTSMOUTH, NH 03801-4134

Parcel Number: 569-081-000-000-000
GITALAN ARGYLLE
50 DOVER ST.
KEENE, NH 03431-3204

Parcel Number: 553-062-000-000-000
OAK VIEW PROPERTIES LLC
111 LONDON RD.
WESTMORELAND, NH 03467-4713

Parcel Number: 570-015-000-000-000
CHALICE MICHELE A.
25 BEECH ST.
KEENE, NH 03431

Parcel Number: 552-082-000-000-000
HEIKKINEN JOHN D REV TRUS
707 OLD NEW IPSWICH RD
RINDGE, NH 03461

Parcel Number: 553-053-000-000-000
O'CONNOR JOHN & PEGGY REV
131 BEAVER ST.
KEENE, NH 03431

Parcel Number: 570-007-000-000-000
CLARENDON TRUST
ELECTRA C. CUMMINGS TRUSTEE
65 MECHANIC ST.
WINCHESTER, NH 03470

Parcel Number: 569-042-000-000-000
JG FLATS LLC
146 PEG SHOP RD.
KEENE, NH 03431

Parcel Number: 552-083-000-000-000
PATNODE, DANIEL
61 JORDAN RD.
KEENE, NH 03431

Parcel Number: 570-009-000-000-000
DESAI AMISHI
SEGRAVE-DALY CHRIS
18 BEECH ST.
KEENE, NH 03431-3202

Parcel Number: 553-057-000-000-000
JOYAL, RICHARD M.
132 PARTRIDGEBERRY LN.
SWANZEY, NH 03446

Parcel Number: 552-087-000-000-000
PRINDLE, JASON
PRINDLE KARI
66 BEECH ST.
KEENE, NH 03431

Parcel Number: 569-080-000-000-000
DOVER STREET INVESTMENT L
93 STONY BROOK RD.
WESTFORD, MA 01886

Parcel Number: 552-084-000-000-000
LARSON, NATHAN A.
LARSON MELODY
46 BEECH ST.
KEENE, NH 03431

Parcel Number: 569-084-000-000-000
ROKES BERNARD A. JR.
ROKES JANE E.
31 DOVER ST.
KEENE, NH 03431

Parcel Number: 569-083-000-000-000
DUZINSKI, SARAH V.
JONES GREGORY W.
9418 HUNTER TRACE
AUSTIN, TX 78758

Parcel Number: 569-041-000-000-000
LCW INVESTMENTS LLC
PO BOX 466
GREENVILLE, NH 03048

Parcel Number: 570-014-000-000-000
ROWNTREE KIMBERLY C.
31 BEECH ST.
KEENE, NH 03431

Parcel Number: 569-078-000-000-000
SARFIELD CORINNE REV TRU
CORINNE SARFIELD TTEE
28 DOVER ST
KEENE, NH 03431

Parcel Number: 570-010-000-000-000
SEIFER CLIFFORD A.
SWITZER HILARY C.
20 BEECH ST.
KEENE, NH 03431

Parcel Number: 569-077-000-000-000
SKINNER, RAFAEL
SKINNER DONNA M.
14 DOVER ST.
KEENE, NH 03431

Parcel Number: 553-060-000-000-000
STONE RICHARD L. JR.
STONE DONNA M.
PO BOX 212
HARRISVILLE, NH 03450

Parcel Number: 553-059-000-000-000
UNDERKOFFLER, LARA
51 DOVER ST.
KEENE, NH 03431

Parcel Number: 552-086-000-000-000
WHEELER KATHLEEN L
WHEELER DENISE A
58 BEECH ST
KEENE, NH 03431

Parcel Number: 570-012-000-000-000
WILLETT DEBORAH A.
38 BEECH ST.
KEENE, NH 03431

Parcel Number: 552-085-000-000-000
WOOD THOMAS J.
54 BEECH ST.
KEENE, NH 03431

Sarah Duzinski
37 Dover St
Keene, NH 03431
sarahduzinski@gmail.com
04/29/2024

Keene Zoning Board
3 Washington Street
Keene, NH 03431

Dear Members of the Zoning Board,

I hope this letter finds you well. I am writing to you regarding the proposed construction of an accessory dwelling unit (ADU) by my neighbor at 45 Dover St, Keene, NH 03431, which is directly adjacent to my property.

I understand that the proposed ADU will be built five feet from our shared property line. I would like to formally express my support for this project. I believe that the addition of an ADU on this property will not only benefit my neighbor but will also contribute positively to our neighborhood by providing additional housing options.

I am confident that the proposed distance from the property line will not negatively impact my property in any significant way.

Please let this letter serve as my official approval for the project moving forward, respecting the noted distance from the property line. Should you require any further information or wish to discuss this matter in more detail, please feel free to contact me at the above address or via email.

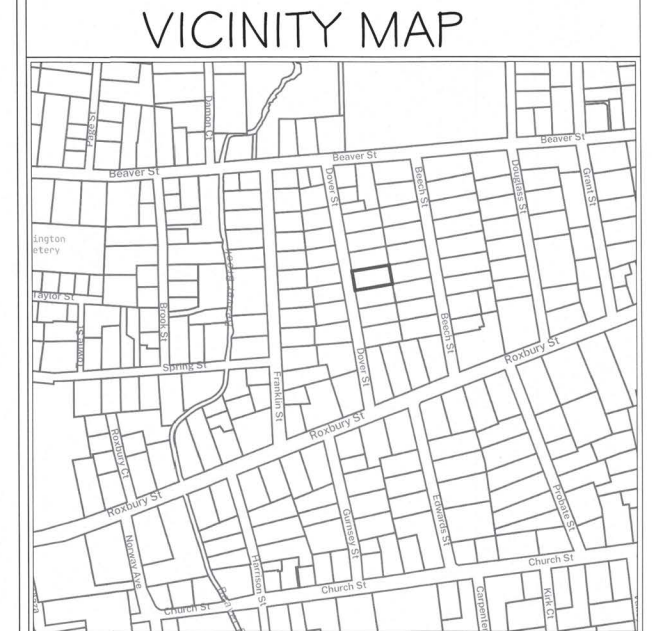
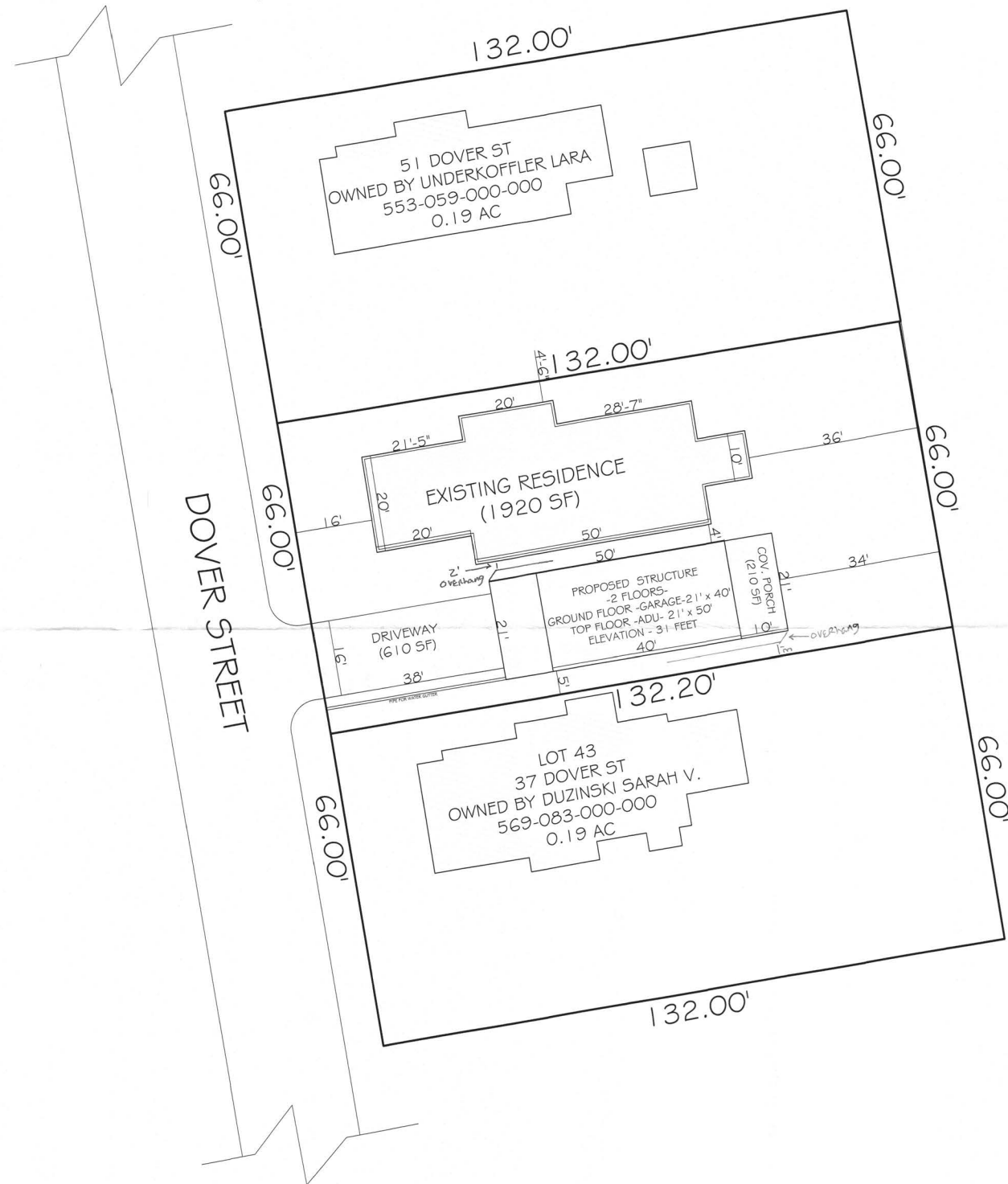
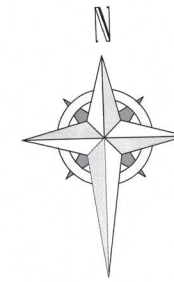
Thank you for your attention to this matter. I look forward to seeing the positive changes this development will bring to our community.

Sincerely,

Sarah Duzinski

SITE PLAN

LOCATION: 45 Dover St, Keene, NH 03431, USA
 PARCEL ID: 569-082-000-000/ ZONING CODE: MD
 LEGAL DESCR.,: CHESHIRE COUNTY, NH. LOT 82



SCOPE OF WORK

SITE PLAN OF THE PROPERTY UNDER REVIEW
 SHOWING THE PROPOSED GARAGE AND
 ACCESSORY DWELLING UNIT DEVELOPMENT.

LOT COVERAGE

EXISTING RESIDENCE	-	1920 SF
EXISTING DRIVEWAY	-	610 SF
PROPOSED STRUCTURE	-	1260 SF
TOTAL	-	3790 SF
		LOT COVERAGE (%)

43.87 %

LOT SIZE

0.2 Acres
 =
 8,640 SF

SHEET TITLE
SITE PLAN

LOT OWNER:

**BURTON
 THOMAS**

DEEN'S CONSULTS
 Architects, Planners & Project Managers
 ISMAILAOTU@GMAIL.COM
Page 67 of 137

ARCHITECT	Deen's consult
DRAWN	Deen's consult
CHECKED BY	Deen's consult
SCALE: 1"=20'	DATE: 02-28-2024

SHEET NO.
01

0 WETMORE ST.
ZBA-2024-13



Petitioner requests a Variance to permit a building lot with 5,544 sq. ft. where 6,000 sq. ft. is required per Article 3.6.2 of the



NOTICE OF HEARING

ZBA-2024-13

A meeting of the Zoning Board of Adjustment will be held on **Monday, June 3, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-13: Petitioner, Jim Phippard of Brickstone Land Use Consultants, LLC of 185 Winchester St., requests a variance for property located at 0 Wetmore St., Tax Map #116-032-001, is in the High Density District and is owned by the Bergeron Family Revocable Trust of 2021. The Petitioner requests a variance to permit a building lot containing 5,544 sq. ft. where 6,000 sq. ft. are required per Article 3.6.2 Minimum Lot Area of the Zoning Regulations.

You are receiving notice of this hearing as an abutter to or owner of property within 200-ft. of the subject parcel.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Please be advised that this may be the only certified notice you will receive. You are encouraged to review future Zoning Board of Adjustment agendas for the status of this application at keenenh.gov/zoning-board-adjustment. If you have any questions, please contact me at the Community Development Department at (603) 352-5440.

Corinne Marcou, Zoning Clerk
Notice issuance date May 24, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	<u>ZBA-2024-13</u>
Date Filled	<u>5/9/2024</u>
Rec'd By	<u>CM</u>
Page	<u>1</u> of <u>15</u>
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: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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 applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: BERGERON FAMILY REV. TRUST OF 2021

MAILING ADDRESS: 347 ELM ST. KEENE, NH 03431

PHONE:

EMAIL:

SIGNATURE: 

PRINTED NAME: TODD BERGERON, TRUSTEE

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: SAME

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: JAMES P. PHIPPAARD BRICKSTONE LAND USE CONSULTANTS LLC

MAILING ADDRESS: 185 WINCHESTER ST. KEENE, NH 03431

PHONE: 603 357-0116

EMAIL: JPHIPPAARD@NE.RR.COM

SIGNATURE: 

PRINTED NAME: JAMES P. PHIPPAARD

SECTION 2: PROPERTY INFORMATION

Property Address: 0 WETMORE ST. KEENE, NH

Tax Map Parcel Number: 116 - 032 - 001 - 000 - 000

Zoning District HIGH DENSITY

Lot Dimensions: Front: 54.96' Rear: 55.20' Side: 98.22' Side: 103.52'

Lot Area: Acres: 0.13 ac. +/- Square Feet: 5544 SF

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 0 Proposed: 16% +/-

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 0 Proposed: 16% +/-

Present Use: VACANT LOT

Proposed Use: SINGLE FAMILY HOUSE

SECTION 3: 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.

SEE ATTACHED .

PROPERTY ADDRESS 26 Fairbanks Street and 0 Wetmore Street

APPLICATION FOR A VARIANCE

- A variance is requested from Section (s) 3.6.2. Minimum Lot Area of the Zoning Ordinance to permit: A building lot containing 5544 sf in the High Density District where 6000 sf is required.

Background: All of the lots on Fairbanks and Wetmore Street were created in 1926 as part of a residential development by Albert W. Lacroix. It consisted of 172 house lots varying in size from 4800 sf (0.11 acres) to 22,000 sf (0.50 acres). The applicant owns lots 31 and 52 in the original development plan, which were merged by the City to form a 11,074 sf lot (0.26 acres). The city unmerged the lots in 2021 leaving two lots of approximately 5530 sf (0.13 ac) and 5544sf (0.13 ac). One lot has an existing single family house and the second lot is vacant. The property is in the High Density district where 6000 sf is required for the first residential unit and 5000 sf is required for additional units. As a separate lot, a variance is required to build a single-family home. A variance was granted in 2021 but expired after two years.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

- 1. Granting the Variance would not be contrary to the public interest because:**
The entire neighborhood of Fairbanks and Wetmore Street is made up of small residential lots varying in size from 5200 sf (0.12 ac +/-) to 87,000 sf (2 ac +/-). Six existing lots on Fairbanks Street are 0.12 acres in size. It is in the public interest to allow construction of a single family home on a lot similar in size to the other lots in the neighborhood. The construction of a small new home will enhance the appearance on the street and enhance property values of nearby homes.
- 2. If the variance were granted, the spirit of the ordinance would be observed because:** The spirit of the ordinance in this case is to allow high density/high intensity residential uses on lots served by city water and city sewer. This is a small lot of 0.13 acres +/- (5544 sf +/-) in an area of small lots which are all served by city water and city sewer. The proposed new home will meet all the zone dimensional requirements (frontage, setbacks, lot coverage) except for the minimum lot size of 6,000 sf. This is a viable option for an affordable housing site which is very difficult to find in Keene. This meets the spirit of the ordinance and is consistent with one of the community goals to create more affordable housing in Keene.
- 3. Granting the variance would do substantial justice because:** The existing property is 5544 sf +/- which is only 456 sf (0.009 acres) short of the required minimum lot size. This is larger than the 5000 sf required for a second unit on a larger lot. A single family home on this site is consistent with other lots in the neighborhood

and will maintain the character of the neighborhood. It will allow construction of an affordable housing unit and will do substantial justice for the property owner.

4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** Construction of a new home on this lot will enhance the appearance of the property, improve its property value and help to improve the value of nearby properties. The property currently is used to store equipment. By cleaning up the lot and constructing the new home, the surrounding property values will not be diminished.

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 lots in this area were created in 1926, prior to the zoning ordinances which exist today. Many of the lots became legally nonconforming when the current HD zoning was adopted in 1970, changing the minimum lot sizes. The property meets all current zone dimensional requirements (frontage, setbacks, lot coverage) except for the minimum lot size; and it is served by city water and city sewer. It serves no public purpose to deny the variance when all of the other dimensional requirements are met.

And

- ii. **The proposed use is a reasonable one because:** This is an area of single family homes on very small lots which are served by city water and city sewer. A new single family home on this lot is consistent with the character of the neighborhood and consistent with the purpose of the ordinance. It will create an affordable single family home in a residential neighborhood served by city water and city sewer. This is a reasonable use.

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

This was a legal, conforming lot when it was created in 1926. It became nonconforming due to changes in zoning over the last 95 years. This results in a special condition of this property which results in a variance being necessary to construct a single family home on it. The lot is served by city water and city sewer and can meet all zone dimensional requirements except for the minimum lot size. This proposal matches the character of the neighborhood and is a reasonable use.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 3.6.2 of the Zoning Regulations to permit:

A BUILDING LOT CONTAINING 5544 SF WHERE 6000 SF IS REQUIRED.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

SEE ATTACHED NARRATIVE

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

3. Granting the variance would do substantial justice because:

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

SEE ATTACHED NARRATIVE

5. Unnecessary Hardship

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

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

SEE ATTACHED NARRATIVE

and

ii. The proposed use is a reasonable one because:

SEE ATTACHED NARRATIVE

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

SEE ATTACHED NARRATIVE

NOTICE LIST

This template can be used to record the name, mailing address, street address, and tax map parcel (TMP) # for each party that is required to be noticed as part of an application.

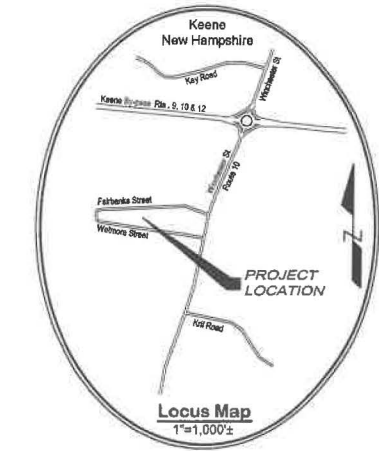
OWNER NAME	MAILING ADDRESS	STREET ADDRESS (If different from mailing address)	TAX MAP PARCEL (TMP) #
Bergeron Family Rev Trust 2021 Todd K Bergeron TREE	347 Elm St Keene NH 03431	0 Wetmore St	116-032-001-000-000
Fred H Johnson Jr Allison Johnson	31 Fairbanks St Keene NH 03431	0 Fairbanks St 31 Fairbanks St	110-011-000-000-000 110-010-000-000-000
Gary J Prevost Elizabeth H Prevost	29 Fairbanks St Keene NH 03431		110-012-000-000-000
Ryan M Voudren Katelyn E Bemis	27 Fairbanks St Keene NH 03431		110-013-000-000-000
Xu Yongli Chen Ling	25 Fairbanks St Keene NH 03431		110-014-000-000-000
Michelle Tobin Family Trust	21 Fairbanks St Keene NH 03431		110-015-000-000-000
Jacob A Cushing	19 Fairbanks St Keene NH 03431		110-016-000-000-000
Gregory A Niemela Laura H Niemela	12 Wetmore St Keene NH 03431		115-033-000-000-000
Markus S Konig Evelyn W Konig	18 Wetmore St Keene NH 03431		116-009-000-000-000
Fred D Lower	77 Hallwood Dr Surry NH 03431	22 Wetmore St	116-010-000-000-000
John C Cook Elizabeth J Cook	24 Wetmore St Keene NH 03431		116-011-000-000-000
Fred D Lower Judith A Lower	77 Hallwood Dr Surry NH 03431	30 Wetmore St	116-012-000-000-000
451 Winchester Street LLC	10 Farmington Rd Rochester NH 03867	0 Wetmore St	116-013-000-000-000
Connor Place	31 Wetmore St Keene NH 03431		116-026-000-000-000
John Beaudry	25 Wetmore St Keene NH 03431		116-027-000-000-000
Gene L Selby	21 Wetmore St Keene NH 03431		116-028-000-000-000
Norman E Parkhurst SR Revocable Trust	17 Wetmore St Keene NH 03431		116-029-000-000-000
Brian P Driscoll	20 Fairbanks St Keene NH 03431		116-030-000-000-000
David G Hook SR Rev Trust	22 Fairbanks St Keene NH 03431		116-031-000-000-000
Winn Street Realty Trust Frank Patel Trustee	433 Winchester St Keene NH 03431	26 Fairbanks St	116-032-000-000-000
William E Sharpton	65 Pierce LN Westmoreland NH 03467	30 Fairbanks St	116-033-000-000-000
Todd M Sartini Susie Sartini	32 Fairbanks St Keene NH 03431		116-034-000-000-000
Brickstone Land Use Consultants	185 Winchester St Keene NH 03431		



[110-013-000]
RYAN M. VOUDREN &
KATELYN E. BEMIS
27 Fairbanks Street
Keene, NH 03431
2984/435

[110-014-000]
ROY J. JARVIS
25 Fairbanks Street
Keene, NH 03431
623/283

[110-015-000]
MICHELLE TOBIN
FAMILY TRUST
21 Fairbanks Street
Keene, NH 03431
3070/1020



Plan References

REFERENCES INCLUDE ALL INFORMATION REFERRED TO ON ANY OF THE FOLLOWING PLANS

1. PLANS

Notes

1. THE BEARINGS SHOWN ON THIS PLAN ARE REFERENCED TO NAD83 NH STATE PLANE GRID, BASED ON A STATIC GPS SURVEY PERFORMED ON JULY 6, 2021 USING AN IGS3 GNSS RECEIVER.
2. THE BOUNDARY LINES SHOWN ON THIS PLAN WERE CALCULATED FROM RECORD PLANS, DEEDS AND PHYSICAL EVIDENCE FOUND DURING THE FIELD SURVEY.
3. TOPOGRAPHY SHOWN ON THIS PLAN IS FROM AN ACTUAL FIELD SURVEY BY HUNTLEY SURVEY & DESIGN, PLLC PERFORMED DURING THE MONTH OF JULY, 2021. THE VERTICAL DATUM IS NAVD 88 OBTAINED BY DIFFERENTIAL LEVELING/TRIGONOMETRIC LEVELING/GPS SURVEY DESCRIBED IN NOTE No.1. CONTOUR INTERVAL IS ONE (1) FOOT.
4. UNDERGROUND UTILITIES, STRUCTURES AND FACILITIES HAVE BEEN PLOTTED FROM DATA OBTAINED FROM FIELD SURVEY OF SURFACE LOCATIONS, PREVIOUS MAPS AND RECORDS OBTAINED FROM THE CITY OF KEENE. THEIR EXISTENCE MUST BE CONSIDERED APPROXIMATE. THERE MAY BE OTHER UNDERGROUND UTILITIES THE EXISTENCE OF WHICH ARE NOT KNOWN. THE SIZE AND LOCATION OF ALL UTILITIES AND STRUCTURES MUST BE VERIFIED PRIOR TO ANY AND ALL CONSTRUCTION. CALL DIG-SAFE PRIOR TO ANY CONSTRUCTION.
5. JURISDICTIONAL WETLANDS WERE NOT OBSERVED.
6. THE PARCELS SHOWN ARE LOCATED IN ZONE AE AND ARE WITHIN IN A SPECIAL FLOOD HAZARD AREA PER FEMA PANEL 33005C0286E EFFECTIVELY DATED MAY 23, 2006. THE 1% ANNUAL CHANCE FLOOD HAZARD ELEVATION IS 471.2 NAVD88 PER CROSS SECTION F.

[116-027-000]
DOUGLAS K. FISH
25 Wetmore Street
Keene, NH 03431
1041/153

[116-032-000]
5,630 Sq.Ft.

[116-031-000]
DAVID G. HOOK Sr.
REVOCABLE TRUST
22 Fairbanks Street
Keene, NH 03431
3061/2019

Zoning Districts
ZONE:HD (High Density)
REQUIREMENTS

MAX HEIGHT 2 STORIES/35'
LOT SIZE 6,000 SF
FRONTAGE 50'
MIN. LOT WIDTH AT BLD 50'

BUILDING SETBACKS
FRONT 15'
SIDE 10'
REAR 15'

MAX BUILDING COVERAGE 55%
MAX IMPERMEABLE COVERAGE 75%

SEE CITY OF CODE CONCERNING ANY ADDITIONAL REQUIREMENTS PERTAINING TO PARCEL

Lot Statistics

LOT 116-032-000
FRONTAGE 55.94 FEET ON FAIRBANKS STREET

LOT SIZE 5,530 SF

EXISTING COVERAGE
BUILDING 1,496 / 27 %
IMPERMEABLE 2,426 / 43.8%

LOT 116-032-001
FRONTAGE 54.98 FEET ON WETMORE STREET

LOT SIZE 5,544 SF

EXISTING COVERAGE
BUILDING 0.0 %
IMPERMEABLE 0.0 %

PURSUANT TO RSA 676: 18 III AND RSA 672: 14, I CERTIFY THAT THIS SURVEY AND PLAT WERE PRODUCED BY ME OR THOSE UNDER MY DIRECT SUPERVISION FROM A TOTAL STATION AND DATA COLLECTOR TRAVERSE WITH A POSITION TOLERANCE OF 0.03 + 100 ppm THAT MEETS OR EXCEEDS NH LAN 500 AND THE ALLOWABLE RELATIVE POSITIONAL ACCURACY FOR URBAN AREAS AS REQUIRED BY THE STATE OF NEW HAMPSHIRE IN TABLE 500.1, "ACCURACY MEASUREMENTS, LOCAL ACCURACY OF CONTROL SUPPORTING THE SURVEY," AND IS BASED ON INFORMATION RECORDED AT THE CHESHIRE COUNTY REGISTRY OF DEEDS AS REFERENCED HEREON, INFORMATION PROVIDED BY THE CLIENT AND PHYSICAL EVIDENCE FOUND.

PURSUANT TO RSA 676:18, III AND RSA 672:14, I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.



Existing Conditions Plan

LAND OF
Todd Bergeron
located at
Tax Map Parcel Nos. 116-032 & 116-032-01
26 Fairbanks Street, Keene, Cheshire County, New Hampshire
Book 2418, Page 0005

Scale 1" = 16'

Surveyed 07/02/2021 Plan prepared 07/08/2021
Project No. H21-038 Cad File No. H21-038A.dwg

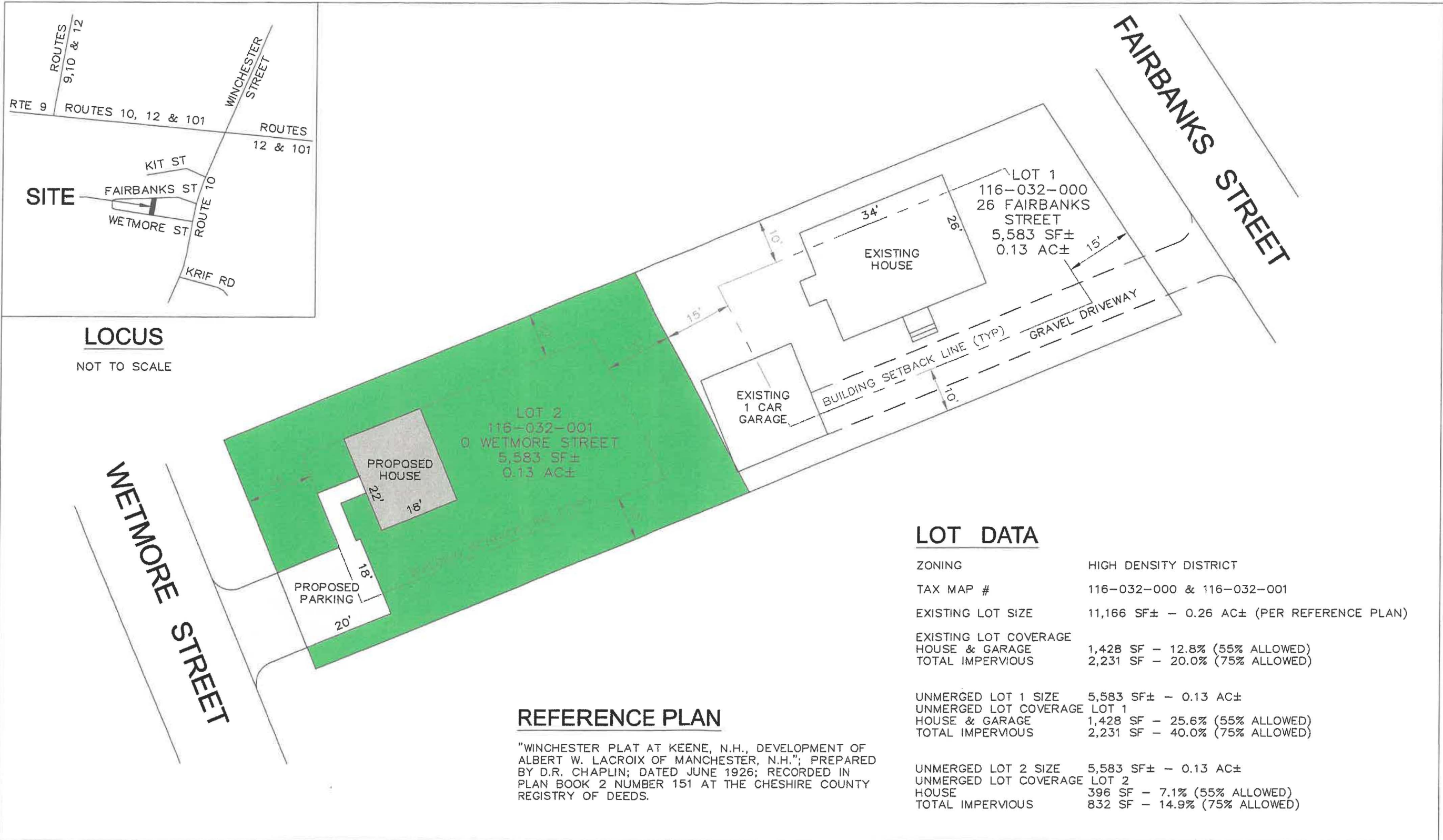
Huntley Survey & Design, PLLC
NH & VT Land Surveying, Wetlands & NH Septic System Design
859 West Road, Temple, NH 03084 (603) 924-1669 www.huntleysurvey.com

GRAPHIC SCALE



(IN FEET)
1 inch = 16 ft.

NO.	DATE	REVISION	BY



LOCUS
NOT TO SCALE

LOT DATA

ZONING	HIGH DENSITY DISTRICT
TAX MAP #	116-032-000 & 116-032-001
EXISTING LOT SIZE	11,166 SF± - 0.26 AC± (PER REFERENCE PLAN)
EXISTING LOT COVERAGE	
HOUSE & GARAGE	1,428 SF - 12.8% (55% ALLOWED)
TOTAL IMPERVIOUS	2,231 SF - 20.0% (75% ALLOWED)
UNMERGED LOT 1 SIZE	5,583 SF± - 0.13 AC±
UNMERGED LOT COVERAGE LOT 1	
HOUSE & GARAGE	1,428 SF - 25.6% (55% ALLOWED)
TOTAL IMPERVIOUS	2,231 SF - 40.0% (75% ALLOWED)
UNMERGED LOT 2 SIZE	5,583 SF± - 0.13 AC±
UNMERGED LOT COVERAGE LOT 2	
HOUSE	396 SF - 7.1% (55% ALLOWED)
TOTAL IMPERVIOUS	832 SF - 14.9% (75% ALLOWED)

REFERENCE PLAN

"WINCHESTER PLAT AT KEENE, N.H., DEVELOPMENT OF ALBERT W. LACROIX OF MANCHESTER, N.H."; PREPARED BY D.R. CHAPLIN; DATED JUNE 1926; RECORDED IN PLAN BOOK 2 NUMBER 151 AT THE CHESHIRE COUNTY REGISTRY OF DEEDS.

10 ADAMS CT. ZBA-2024-14



Petitioner requests a Variance to permit a deck on a lot that is 7,620 sq. ft. with 10,000 sq. ft. needed, making it unable to conform to the impervious coverage per Article 3.3.3 of the Zoning Regulations.



NOTICE OF HEARING

ZBA-2024-14

A meeting of the Zoning Board of Adjustment will be held on **Monday, June 3, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-14: Petitioner, Martine Fiske requests a variance for property located at 10 Adams Ct., Tax Map #590-006-000 and is in the Low Density District. The Petitioner requests a variance to permit a 16 ft x 19 ft deck on a lot that is non-conforming at 7, 620 sq. ft. where 10, 000 sq. ft. is required, making it unable to conform with the impervious coverage per Article 3.3.3 of the Zoning Regulations.

You are receiving notice of this hearing as an abutter to or owner of property within 200-ft. of the subject parcel.

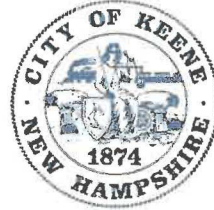
This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keeenh.gov/zoning-board-adjustment>

Please be advised that this may be the only certified notice you will receive. You are encouraged to review future Zoning Board of Adjustment agendas for the status of this application at keeenh.gov/zoning-board-adjustment. If you have any questions, please contact me at the Community Development Department at (603) 352-5440.

Corinne Marcou, Zoning Clerk
Notice issuance date May 24, 2024

City of Keene, NH

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	ZBA-2011-14
Date Filled	5/13/11
Rec'd By	CSM
Page	1 of 17
Rev'd by	

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

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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 applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: Martine Fiske

MAILING ADDRESS: 10 Adams Court, Keene, NH 03431

PHONE: (802) 355-9060

EMAIL: martifiske@gmail.com

SIGNATURE: *Martine Fiske*

PRINTED NAME: Martine Fiske

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Same

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Same

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: PROPERTY INFORMATION

Property Address: **10 Adams Court, Keene**

Tax Map Parcel Number: **590-066-000-000-000**

Zoning District **Low Density**

Lot Dimensions: Front: **72.30** Rear: 69.86 Side: 107.93 Side: 106.61

Lot Area: Acres: **.17** Square Feet: 7,620

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **27** Proposed: 31

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 46 Proposed: **48**

Present Use: **Primary residence**

Proposed Use: **Primary residence**

SECTION 3: 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.

10 Adams Court is located in a mixed neighborhood of single family and multifamily conversions. The street is located in Ward 1, low density zone, less than one block to Main Street, on a dead-end street which terminates in the parking lot of Alpine nursing residence, across from Keene State College. The lot is non-conforming at 7,620 sq. ft..

The property is the primary, and only, residence of the owner. There is currently a 22.5 ft. x 8 ft. stone patio in the rear yard which is crumbling due to masonry failure. Only 2/3 of the patio can be used due to steps up into the house or down to the yard. A BBQ just fits between the stairs. The current space is only the width of a narrow porch, so small that once a rain barrel is placed at one end only two chairs fit in the space. The space is so narrow that a dining table for four would not fit, even without other seating.

If granted a variance, a 16 ft. x 19 ft. deck would be built in the rear of the property over the existing patio. The new deck, would double the depth to 16 ft. and reduce the width to 19 ft. to align with the house. It would meet all setback requirements with side the property line approximately 11 ft. away and the back line approximately 37 ft., away with lawn and garden between. The new deck would allow the owner to have an outdoor living and entertaining space. The two houses nearest the side property have the depths of their own backyards to the property line. The owner's rear yard is surrounded by fencing and shrubs.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 3.3.3 of the Zoning Regulations to permit:

16 x 19 ft. deck

The lot is non conforming @ 7,620^{sq} instead 10,000^{sq} making it unable conform with impervious coverage.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

The proposal does not infringe on setbacks to neighboring properties. The nearest neighbors to the proposed deck include two single family homeowners who have included a letter of support. (See letters from Nancy and Paul Vincent and Allison and Joe Lucas.) Increases to impervious surfaces would be negligible at only 2% (152 sq. ft.).

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

All set back requirements would be met. Impervious surfaces would increase by only 152 sq. ft.

3. Granting the variance would do substantial justice because:

The proposed deck keeps within the spirit of the building code, given that the building lot is 2,380 sq.ft. below the minimum requirements.

The lot contains a two bedroom home which could comfortably accommodate four people. The current patio size does not allow for more than two people to be on the patio at one time. A family in residence is not be able to use the existng space together. With a variance granted, the homeowner will have reasonable enjoyment of their property without intrusion on the space of neighbors.

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

The deck will not encroach on the required set backs to property lines and would in no way effect the neighbors' use and enjoyment of their own properties. The new deck would actually be further away from the side property line than the existing patio. The increase in impervious surfaces would be a negligible amount to the community, but of great value to the homeowner.

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 lot already does not meet zoning code (3.3.2 Dimensions & Siting), being 2,380 sq. ft. short of the code required of 10,000 sq. ft in area. Because of its nonconforming size, it already does not meet codes 3.3.3 for maximum impervious coverage. The increased impervious surface is a negligible amount.

The purpose of protecting neighboring properties from encroachment will met. The proposed deck would still meet with all set back requirements outlined in 3.3.2. (min. side setback 10 ft, min. rear setback 20 ft.). The increase in impervious surfaces is only 152 sq. ft.

and

ii. The proposed use is a reasonable one because:

A two bedroom room could be the home of three to four people. The existing space would not allow a family of four to use the space together and certainly does not allow for visiting family or friends in the space.

The neighbors will be in no way effected by the granting of the variance. Both adjacent live-in homeowners support the project.

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

The property, at 7,620 sq.ft., the lot already does not meet codes as written. The current codes do not allow for reasonable use of the property even while meeting setback requirements.

Parcel Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner City	Owner State	Owner Zip
590-059-000-000-000	24 ADAMS ST.	UNION SCHOOL DISTRICT		193 MAPLE AVE.	KEENE	NH	03431-1602
590-060-000-000-000	60 ADAMS ST.	UNION SCHOOL DISTRICT		193 MAPLE AVE.	KEENE	NH	03431-1602
590-061-000-000-000	66 ADAMS ST.	66 ADAMS STREET LLC		88 FOX ST.	FAIRFIELD	CT	06824
590-062-000-000-000	72 ADAMS ST.	HONOROF, DOUGLAS NATHAN		72 ADAMS ST.	KEENE	NH	03431
590-063-000-000-000	77 ADAMS ST.	PACILIO CAROL A TRUST		37 ROYAL AVE	KEENE	NH	03431
590-064-000-000-000	65 ADAMS ST.	LUCAS JOSEPH WESLEY	VAIVODA ALLISON MARY	65 ADAMS ST	KEENE	NH	03431
590-065-000-000-000	61-63 ADAMS ST.	PATRIQUIN MATTHEW	PATRIQUIN SARAH	11 HIGHLAND AVE.	KEENE	NH	03431
590-067-000-000-000	20 ADAMS CT.	ANBER DERSIS S.		73 RIVER RD	WALPOLE	NH	03608
590-068-000-000-000	17 ADAMS CT.	CHASE HIEN T		17 ADAMS CT	KEENE	NH	03431
590-069-000-000-000	51 ADAMS ST.	TENT, COURTNEY J.		51 ADAMS ST.	KEENE	NH	03431
590-070-000-000-000	47 ADAMS ST.	LANTRY, JACLYN	LANTRY SHAWN	47 ADAMS ST.	KEENE	NH	03431
590-071-000-000-000	51 ELLIOT ST.	FORTE DONNA J		134 DAVIS ST	KEENE	NH	03431
590-072-000-000-000	45 ELLIOT ST.	FORTE DONNA J		134 DAVIS ST	KEENE	NH	03431
590-073-000-000-000	41 ELLIOT ST.	STEINBERG WARREN J		41 ELLIOT ST	KEENE	NH	03431
590-074-000-000-000	35 ELLIOT ST.	FORTE DONNA		134 DAVIS ST	KEENE	NH	03431
590-075-000-000-000	31 ELLIOT ST.	SCHWEIZER PAUL G.	SCHWEIZER JANET L.	606 WEST ST.	KEENE	NH	03431
590-076-000-000-000	19-21 ELLIOT ST.	GREEN DOUGLAS F.	GREEN JULIENNE F.	54 ALDRICH RD.	KEENE	NH	03431
590-113-000-000-000	298 MAIN ST.	KEENE SNF REALTY LLC		C/O THE PORTOPICCOLO GROUP	BROOKLYN	NY	11235

594-001-000-000-000	324 MAIN ST.	NEWCOMBE JOHN T. & JENNIE E. REV TRUST OF 2021		JOHN T. & JENNIE E. KEENE NEWCOMBE TRUSTEES	NH	03431
594-002-000-000-000	24 GATES ST.	VINCENT CHARLES & NANCY REV. TRUST		24 GATES ST. KEENE	NH	03431
594-003-000-000-000	44 GATES ST.	FORTE DONNA J		134 DAVIS ST KEENE	NH	03431
594-004-000-000-000	90 ADAMS ST.	BELLUSCIO FAMILY REV. TRUST		90 ADAMS ST. KEENE	NH	03431
594-043-000-000-000	53 GATES ST.	ASBURY MELINDA L		53 GATES ST KEENE	NH	03431
594-044-000-000-000	47 GATES ST.	BLUNT, ALISON K.	BLUNT DEREK C.	47 GATES ST. KEENE	NH	03431
594-045-000-000-000	43 GATES ST.	FORTE DONNA J		134 DAVIS ST KEENE	NH	03431
594-046-000-000-000	33 GATES ST.	WELKIND GROUP LLC		81 TERRACE ST. KEENE	NH	03431
594-047-000-000-000	27 GATES ST.	INNISFREE REV LIVING TRUST JON S PARENTEAU HOME REMODELING & REPAIR		JACOB M & NANCY C WESTSTRATE TTEES 60 SOUTH MINE LEDGE RD	PETERBOROU GH NH	03458
594-066-000-000-000	10 Adams CT	FISKE, MARTINEM.		10 ADAMS CT. KEENE	NH	03431

MARTINE FISKE

□ = 2 FEET

EXISTING:

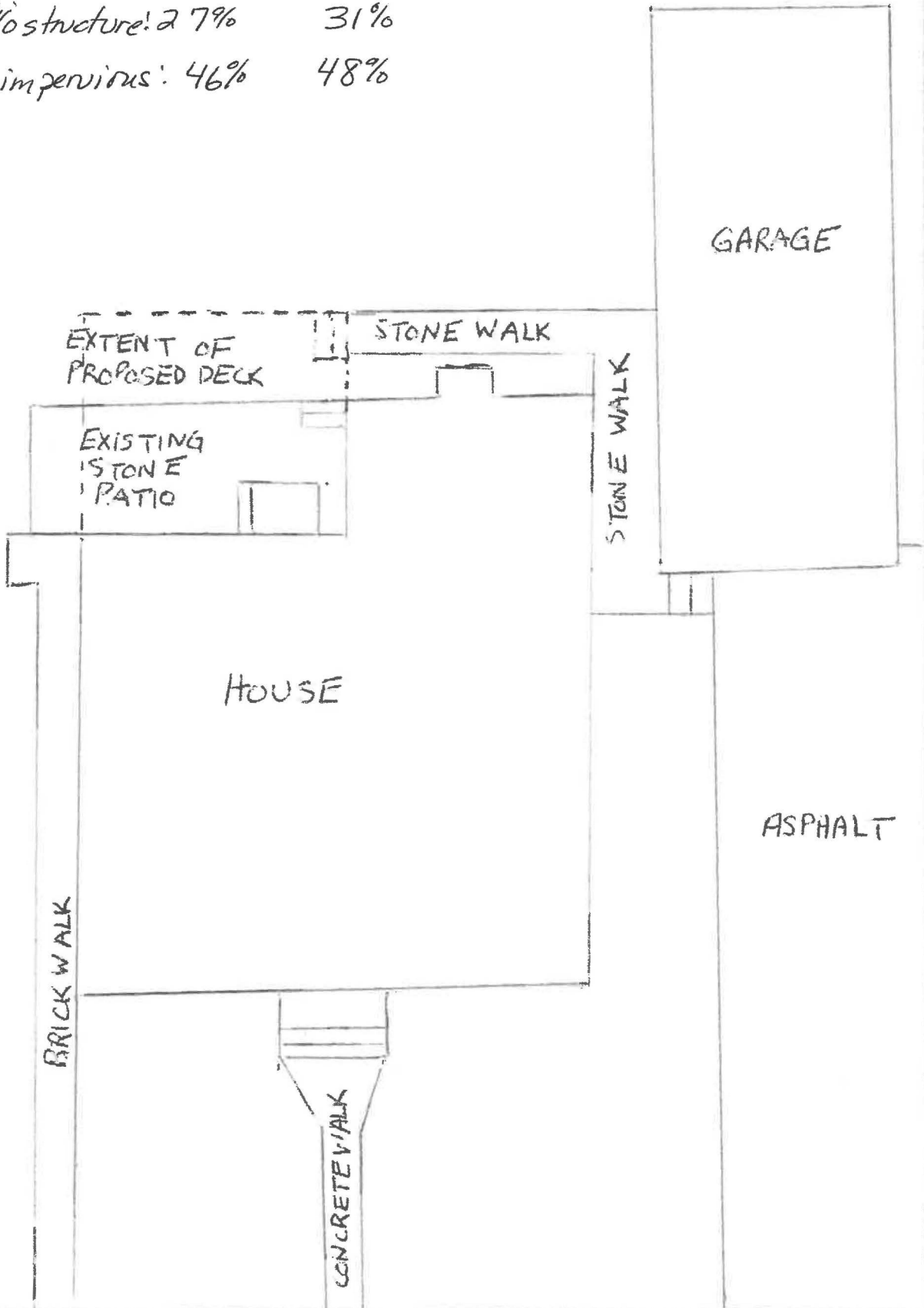
PROPOSED:

% structure: 27%

31%

% impervious: 46%

48%



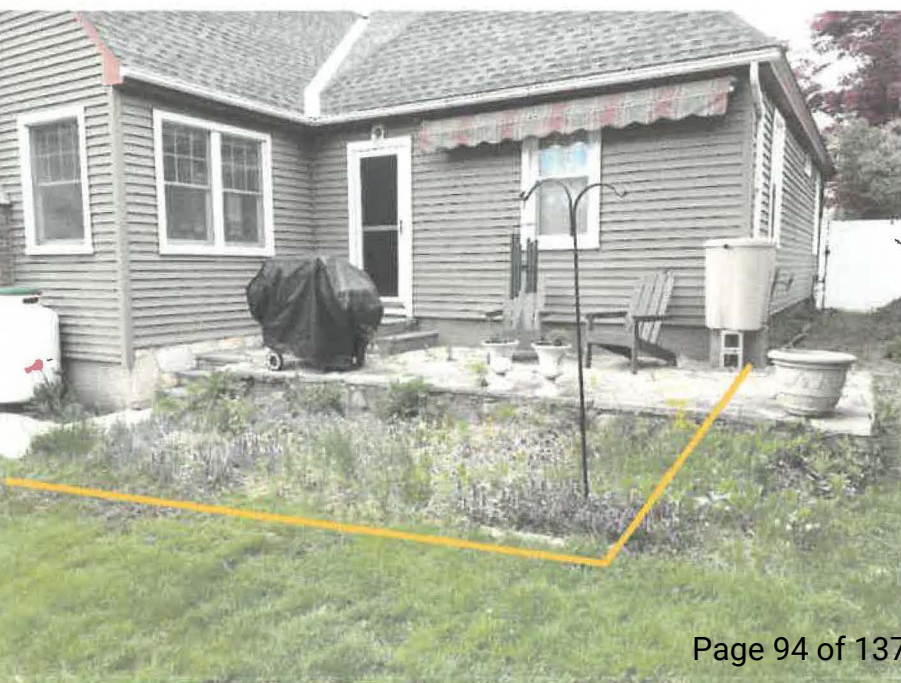


Martine Fiske

Map parcel #: 590-066-000-000-000

10 Adams Court

Photos show existing stone patio with yellow lines as the approximate bounds of the proposed deck.



Keene Zoning Board
City of Keene
Keene, NH 03431

To Whom it may concern:

As neighbors directly abutting the rear property line of Marti Fiske's home, we support the granting of a variance and permit that would allow Ms. Fiske to build a 16x20 deck behind her 10 Adams Court home. We see no reason that the deck would cause any hardship regarding our property. We understand that the deck must meet with all set back requirements, and that it would leave lawn and garden space in the rear lawn. We're also aware, as an aside, that Ms. Fiske has made several notable and commendable improvements to her property.

Sincerely, Paul and Nancy Vincent
24 Gates Street
Keene, NH 03431



May 6, 2024

City of Keene

To Whom It May Concern:

We are current neighbors to Martine Fiske and we fully support her project to construct a 19'x16' deck in her backyard.

Please let us know if you need any other supporting documentation from us.

Sincerely,

Allison Lucas (Vaivoda)
Joseph Lucas
65 Adams St
Keene, NH 03431



973 MARLBORO RD.
ZBA-2024-15



Petitioner requests a Variance to permit a Residential Drug/Alcohol Treatment Facility where such use is not permitted per Article 3.1.5 of the Zoning Regulations.



NOTICE OF HEARING

ZBA-2024-15

A meeting of the Zoning Board of Adjustment will be held on **Monday, June 3, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-15: Petitioner, Jason Reimers of BCM Environmental and Land Law, PLLC, of 41 School St., representing Ryan Gagne of Live Free Recovery Services, LLC, 9 Dutton Circle, Mt. Vernon, NH, requests a variance for property located at 973 Marlboro Rd., Tax Map #294-004-000, is in the Rural District and is owned by BTB Properties, LLC of 1 Main St., Marlborough, NH. The Petitioner requests a variance to permit a non-medical Residential Drug/Alcohol Treatment Facility where such use is not permitted per Article 3.1.5 of the Zoning Regulations.

You are receiving notice of this hearing as an abutter to or owner of property within 200-ft. of the subject parcel.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Please be advised that this may be the only certified notice you will receive. You are encouraged to review future Zoning Board of Adjustment agendas for the status of this application at keenenh.gov/zoning-board-adjustment. If you have any questions, please contact me at the Community Development Department at (603) 352-5440.

Corinne Marcou, Zoning Clerk
Notice issuance date May 24, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:
 Case No. ZBA-2024-15
 Date Filled 5/17/24
 Rec'd By CJM
 Page 1 of 26
 Rev'd by _____

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

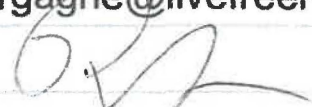
SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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 applicant or authorized agent, a signed notification from the property owner is required.


OWNER / APPLICANT

NAME/COMPANY: **BTD Properties, LLC**
MAILING ADDRESS: **1 Main Street, Marlborough, NH**
PHONE:
EMAIL: **See Agent Info.**
SIGNATURE: **See attached Owner Authorization Letter**
PRINTED NAME:

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: **Live Free Recovery Services, LLC**
MAILING ADDRESS: **9 Dutton Circle, Mount Vernon, NH**
PHONE:
EMAIL: **rgagne@livefreerecoverynh.com**
SIGNATURE: 
PRINTED NAME: **Ryan Gagne**

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: **BCM Environmental and Land Law, PLLC**
MAILING ADDRESS: **41 School Street, Keene, NH 03431**
PHONE: **(603) 225-2585**
EMAIL: **reimers@nhlandlaw.com; kessler@nhlandlaw.com**
SIGNATURE: 
PRINTED NAME: **Jason Reimers**

SECTION 2: PROPERTY INFORMATION

Property Address:

Tax Map Parcel Number:

Zoning District

Lot Dimensions: Front: Rear: Side: Side:

Lot Area: Acres: Square Feet:

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

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

Present Use:

Proposed Use:

SECTION 3: 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.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s)

of the Zoning Regulations to permit:

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

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

3. Granting the variance would do substantial justice because:

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

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 criterial 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.

USE VARIANCE APPLICATION
973 Marlboro Road, Keene, NH (Parcel ID: 249-004-000)

PROJECT NARRATIVE

The Applicant, Live Free Recovery Services, LLC (“Live Free Recovery” or “Applicant”), is seeking a use variance from Section 3.1.5 and Table 8-1 of the City of Keene Land Development Code to operate a non-medical Residential Drug/Alcohol Treatment Facility at 973 Marlboro Road (aka Route 101) (Parcel ID: 249-004-000) in the Rural District. The property, which includes an existing 4,462 sq. ft. building and 17-space parking lot, is located partly in Keene (1.1 acres) and partly in Marlborough (0.96 acres). The town line runs through the existing building.

Live Free Recovery provides a comprehensive range of inpatient and outpatient rehabilitation services and residential programs for persons being treated for and recovering from addiction in New Hampshire. Since 2020, Live Free Recovery has successfully operated programs in Keene including two large group homes, an outpatient facility, and a detoxification facility. Most recently, Live Free Recovery received approval to operate a Residential Drug/Alcohol Treatment Facility in the former Phoenix House building on Roxbury Street.

The proposed Residential Drug/Alcohol Treatment facility will be a 24-hour, state-licensed, residential program for up to 20 individuals in recovery to receive non-medical therapeutic and clinical support services after having previously completed a detoxification program in another location. Residents, who willingly enter the program, are required to be abstinent and will not be permitted to leave the facility unsupervised during their stay, which is typically 4 to 6 weeks. The facility will be staffed 24/7 by a team of experienced and licensed clinicians. Staff will assist residents with the services and skills needed in their transition to independent, sober living.

The Applicant has entered into a purchase and sales agreement with the current owner of the property, BTD Properties, LLC, which is contingent on obtaining all necessary land use approvals. If this variance is granted, the Applicant will need to obtain a Congregate Living and Social Service (CLSS) Conditional Use Permit from the Keene Planning Board as well as a CLSS Operating License from the Keene CLSS Licensing Board. With respect to the Town of Marlborough, the Applicant will need to obtain a Special Exception and Site Plan approval for the proposed change of use. In addition, the facility will be licensed at the state-level by the NH Department of Health and Human Services.

The Applicant does not propose to make any changes to the exterior of the building or site.

RESPONSES TO VARIANCE CRITERIA

1. Granting the variance is not contrary to the public interest

The first two variance standards are related and are considered together. See Harborside Assocs. v. Parade Residence Hotel, 162 N.H. 508, 514 (2011). For a variance to be sufficiently contrary to public interest or the spirit of the zoning ordinance, it “must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Nine A LLC v. Town of Chesterfield, 157 N.H. 361, 366 (2008). While judging whether

“granting a variance violates an ordinance basic zoning objectives, [the court considers], among other things, whether it would alter the essential character of the locality or threaten public health, safety, or welfare.” Id. This includes whether granting the variance would “alter the essential character of the neighborhood.” Harborside Assocs., 162 N.H. at 514.

The proposed use is of a similar intensity as previous commercial uses of the property and will not adversely impact surrounding properties or the public interest. Since the 1970s, the subject parcel has been used for commercial purposes. The site was formerly Bud and Dolly’s restaurant, the building for which was torn down in the 1980s. In the late 1980s and early 1990s, planning and zoning approvals were obtained for commercial uses of the site, including a restaurant/convenience store and a greenhouse/retail space; however, these plans never materialized. In 2003, Monadnock Log Homes received approval to construct the existing building, which was used for several years as a model log home showroom and log home sales offices. The most recent use of the building/site was for a therapy clinic for youth diagnosed with autism and other developmental disabilities.

The proposed Residential Drug/Alcohol Treatment Facility will generate minimal traffic/parking on the site. As residents will not be permitted to leave the facility or have vehicles during their stay, which will range from 4 to 6 weeks, the vast majority of daily vehicle trips will be by staff. This 24-hour facility will have three staff shifts, with 5 to 7 staff present during the first shift, and no more than 5 staff present during the second and third shifts. It is estimated that there will be an average of 30 vehicle trips to/from the site daily. This level of traffic generation is more consistent with that of a residential neighborhood than of the commercial corridor, Route 101, on which the parcel fronts.

The existing parking area has space for 17 vehicles; however, only 10 onsite parking spaces are required for the proposed use per Table 9-1 of the City’s Land Development Code. It is anticipated that no more than 7 vehicles will be parked on site at a time. The site presently has two driveways off Marlboro Rd. (NH Route 101) that provide access to the site/parking area.

Residents of the proposed facility will be supervised 24 hours a day and will have scheduled time for breaks outside in a fully-enclosed outdoor area, which currently exists on the site. Due to the high level of supervision and limited activity on the exterior of the site, the proposed use will not generate adverse levels of noise or disturbance to surrounding properties.

The Applicant does not propose to make changes to the existing building or site, which are well screened from neighboring properties and are in good condition. The parcel is currently screened from the abutting property to the east by a solid wooden fence along the property line. The parcels to the south and west are undeveloped and are densely forested/vegetated. There are existing, mature evergreen shrubs and trees planted between the roadway and the front of the site that partially screen the existing parking area and building from the roadway and abutters to the north.

With respect to utilities, the site is currently served by the Town of Marlborough’s municipal sewer and a private well on site for water supply. The Applicant will install a holding tank to provide fire protection water for a sprinkler system that will also be installed.

In all, the proposed use will not alter the essential character of the neighborhood or threaten public health, safety, or welfare. Therefore, granting the variance will not be contrary to the public

interest. Further, Live Free Recovery’s mission of assisting individuals to live sober lives is a benefit to the public and in furtherance of public health, safety, and welfare.

2. If the variance is granted, the spirit of the ordinance would be observed

The proposed use is not contrary to the spirit or intent of the ordinance. The purpose of the Rural District is “...provide for areas of very low density development, predominantly of a residential or agricultural nature. These areas are generally outside of the valley floor, beyond where city water, sewer and other city services can be readily supplied.” See Section 3.1.1 of the Keene Land Development Code.

The site, as currently developed with a commercially designed building, and given its location along a heavily-trafficked state highway, is unlikely to accommodate a less impactful use that is permitted outright in the Rural District. Uses permitted outright in the Rural District include: single-family dwelling, greenhouse/nursery, kennel, cemetery, golf course, farming, community garden, conservation area, cemetery, small-scale solar energy system, and telecommunications facility.

The proposed non-medical Residential Drug/Alcohol Treatment Facility will be a low-intensity use that has residential characteristics consistent with the intent of the Rural District. Residents of the non-medical facility will live onsite, primarily inside the building for 4 to 6 weeks at a time and will receive full-time support services from a small team of trained/qualified staff. These residents will have previously completed a detoxification program (at a separate facility) and will be in the process of transitioning to independent living. The site-related impacts (e.g., noise, traffic, visual) of the facility will not be more intense than previous commercial uses and less intense than many uses that are permitted by right in the Rural District. As noted earlier, residents will not be permitted to leave the facility or to have vehicles and will be supervised by staff 24-hours a day. Staff will provide transportation to residents if they need to make trips offsite for medical appointments.

The site is serviced by the Town of Marlborough’s municipal sewer, and is located approximately 0.5 miles to west of Marlborough’s downtown and approximately 0.5 miles to the east of the Cheshire County Department of Corrections. This area does not reflect typical characteristics of the City’s Rural District, which include low-density residential/agricultural neighborhoods spaced away from commercial centers on roads that are not well traveled.

As the use will not alter the essential character of this unique Keene/Marlborough neighborhood or threaten public health, safety, or welfare, granting the variance would observe the spirit of the Ordinance. See Harborside Assocs. v. Parade Residence Hotel, 162 N.H. at 514 (stating that the first two variance standards are related and considered together using similar inquiries).

3. Granting the variance will do substantial justice

“Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007). This criterion is a balancing test. If the variance is denied, there *will* be a loss to the landowner and the Applicant, and this loss will not be outweighed by any gain to the general public.

The loss to the landowner would be that the sale of the property would fall through, and this property is unique and not suited for most uses permitted in the Rural District. The loss to the Applicant would be the loss of an opportunity to use this property for its important mission. This is a unique property and building in a unique location. It is very difficult to find properties with existing structures that are as well-suited for the Applicant's proposed use as this is. If the variance is denied and the Applicant must seek an alternative, suitable location to serve the region's needs, it would delay the Applicant's business and delay the delivery of its important services to people who need and want them. This loss is not outweighed by *any* gain to the general public because the public would not gain from the denial of this variance. Therefore, denial of the variance would cause an "injustice", as that term is used in Malachy Glen Assocs. v. Town of Chichester. Granting this variance will benefit the general public, as the Applicant's services are sought after and needed in the greater Monadnock region.

That denial of the variance will not benefit the general public is further supported by the facts that the property has historically been used for commercial purposes and the building was designed for a commercial use. Granting the variance will allow the Applicant to utilize the existing building and site, which is currently vacant, in a manner that is consistent with the long history of commercial uses of the parcel and in a way that will not adversely impact surrounding land uses.

As denial of the variance will unquestionably cause a loss to the Applicant and landowner without any benefit to the general public, much less a benefit that outweighs the losses, substantial justice will be done by granting the variance.

4. Granting the variances does not diminish the values of surrounding properties

As noted above, the proposed use will be of similar (if not lesser) intensity as previous commercial uses of the parcel and other nearby commercial uses on Route 101, which is a state highway and commercial corridor. In addition, the Applicant will maintain the appearance of the existing building and site, which are in good condition and in keeping with the appearance of surrounding development. As such, granting the variance will not diminish the values of surrounding properties.

The proposed non-medical Residential Drug/Alcohol Treatment Facility will not increase traffic to the site or surrounding area from current levels, as vehicles trips will be limited to staff entering/leaving the facility during each employment shift. Residents will not be permitted to have vehicles, and parking on site will be limited to staff. It is expected that there will be no more than 7 vehicles parked on site at a given time.

With respect to visibility, the proposed use will not have a noticeable visual impact on the surrounding area. The Applicant does not propose to alter the exterior of the site or building, which is a log-home-style building. Currently, the paved, parking area is screened from abutting properties and the roadway by existing landscaping/vegetation as well as a wooden fence along the eastern property boundary. Additionally, residents will be supervised 24-hours a day and will only be permitted to be outside of the building in a fully screened outdoor area during scheduled times.

The proposed use on this commercial corridor will be the same or less intensive as the property's prior uses. The proposed use will not change the character of the neighborhood or threaten public health, safety, or welfare. There is nothing to suggest that this use will diminish surrounding property values.

5. Denial of the variance would cause an unnecessary hardship

The "unnecessary hardship" element is satisfied when "owing to special conditions of the property that distinguish it from other properties in the area: (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." RSA 674:33, I(b)(5)(A).

The property is unique with special conditions that distinguish it from other properties in the area. The existing property and building span municipal boundaries, with 1.1 acres in Keene and 0.96 acres in Marlborough and the town line running through the building. There is a firewall in the existing 4,462 sq. ft. building that divides it into two distinct but attached spaces. The western end of the building, which is located entirely in Keene, was originally built as a model log home residence. The east side contains 7 offices and 2 bathrooms and is located mostly in Marlborough. The proposed use is permitted by Special Exception in Marlborough; however, a variance is required in Keene.

Further, the existing building was designed and built in 2004 for the commercial use of log home retail sales and showroom, which makes it different from other properties in the area. The owner at that time received a variance for this use, which is not permitted in the Rural District. In 2019, the use of the building changed to an outpatient therapy clinic for youth with autism and developmental disabilities. This use is also not permitted in the Rural District. However, at that time, the Keene Zoning Regulations permitted a building to transition from one non-conforming use to different use of the same or more conforming classification. This provision was removed with the adoption of the Land Development Code in 2021. Prior to the development of the existing building, the lot was historically used for commercial purposes including a restaurant in the 1970s and 1980s. The site impacts of the proposed use will be less intense than the previous commercial uses permitted on the site (e.g. restaurant, retail, outpatient clinic); especially, with respect to vehicle traffic.

The parcel is a lot of record predating the minimum lot size requirement for the Rural District. Unlike most parcels in the Rural District, it is served by municipal sewer (by the Town of Marlborough) and can support greater density than if it had a private septic system.

The location of the parcel at the edge of Keene's city limits in proximity to commercial development along Route 101 does not reflect the typical land use pattern of the Rural District, which is characterized by low-density residential/agricultural neighborhoods located away from commercial centers on low-trafficked roads.

Due its location along a state highway, the design of the existing commercial building, and the developed nature of the site, many of the uses that are permitted outright in the Rural District would not be suitable as the primary use of this parcel, unlike other properties in the area. These

permitted uses include single-family dwelling, manufactured housing, greenhouse/nursery, cemetery, community garden, conservation area, farming, golf course, small-scale solar energy system and telecommunications facility. See Section 3.1.5 of the Keene Land Development Code.

While it may be possible to convert the existing building to be a kennel or animal care facility, which are permitted outright in the Rural District, these uses would have more adverse land use impacts (e.g., traffic, noise) on the surrounding area than the proposed use. Strictly applying the permitted uses of the Rural District to this the property will not further the intention of the zoning, and therefore, there is not a fair and substantial relationship between the Ordinance provision and its application to this property.

For the reasons noted above, the proposed use is a reasonable way to utilize the existing vacant building/site on the subject parcel with minimal impact on the surrounding area and in a manner that is consistent with, if not less intense than, previous commercial uses of the site.

The proposed non-medical Residential Drug/Alcohol Treatment Facility will be similar to the most recent use of the property, which was an outpatient therapy clinic for youth with autism and developmental disabilities. The proposed facility will be an inpatient, residential program with less daily traffic demand than an outpatient clinic. The proposed use will not alter the exterior appearance of the building or nature of how the site has been used with previous uses. The proposed use is, therefore, reasonable, especially for this unique location.

A. 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.

As the criteria in RSA 674:33, I(b)(5)(A) are satisfied, a response to this alternative unnecessary hardship test is not necessary. Nevertheless, because of the special conditions of the property (e.g., history of non-conforming uses, presence of a commercial building, location on a state highway and in two municipalities, etc.), a denial of the variance would render this property practically unusable for the purposes for which it is zoned. Therefore, a variance is necessary to enable a reasonable use of it.

NOTICE LIST FOR 973 MARLBOROUGH RD, KEENE, NH (PID: 249-004-000) / 1 MAIN ST, MARLBOROUGH, NH (TAX MAP 1, LOT 13)

KEENE ABUTTERS WITHIN 200' OF SUBJECT PARCEL:				
Parcel Number	Property Address	Owner Name	Owner Mailing Address	
249-001-000	0 MARLBORO RD.	PENNY BELL	PO BOX 122	KEENE, NH 03431
249-002-000	974 MARLBORO RD.	DOROTHY D. WILCOX	58 BARTEMUS TRL	NASHUA, NH 03063
249-003-000	976 MARLBORO RD.	RYAN C. BENN	4 MAIN ST.	MARLBOROUGH, NH 03455
249-005-000	0 MARLBORO RD.	BRUCE A. ROBBINS	PO BOX 611	MARLBOROUGH, NH 03455
249-004-000	973 MARLBORO RD.	BTD PROPERTIES LLC	1 MAIN ST.	MARLBOROUGH, NH 03455
MARLBOROUGH ABUTTERS WITHIN 200' OF SUBJECT PARCEL:				
Parcel Number	Property Address	Owner Name	Owner Mailing Address	
01-13	1 MAIN ST.	BTD PROPERTIES LLC	1 MAIN ST.	MARLBOROUGH, NH 03455
01-12	MAIN ST. S/S	BRUCE A. ROBBINS	PO BOX 611	MARLBOROUGH, NH 03455
01-11	17 MAIN ST.	LAURIE F. & MICHAEL J. DONOHUE	17 MAIN ST.	MARLBOROUGH, NH 03455
11-01	5 MAIN ST.	BRUCE A. ROBBINS	PO BOX 611	MARLBOROUGH, NH 03455
11-11	4 MAIN ST.	RYAN C. BENN	747 OLD MARLBOROUGH RD.	CONCORD, MA 01742
APPLICANT & AGENT:				
LIVE FREE RECOVERY SERVICES LLC			9 DUTTON CIRCLE	MOUNT VERNON, NH 03057
BCM ENVIRONMENTAL & LAND LAW PLLC			41 SCHOOL ST.	KEENE, NH 03431

973 MARLBORO RD. – EXISTING CONDITIONS



973 MARLBORO RD. – EXISTING CONDITIONS



973 MARLBORO RD. – EXISTING CONDITIONS





973 MARLBORO RD. – EXISTING CONDITIONS



Plot Plan - 973 Marlboro Rd.

City of Keene, NH

1 inch = 75 Feet



www.cai-tech.com

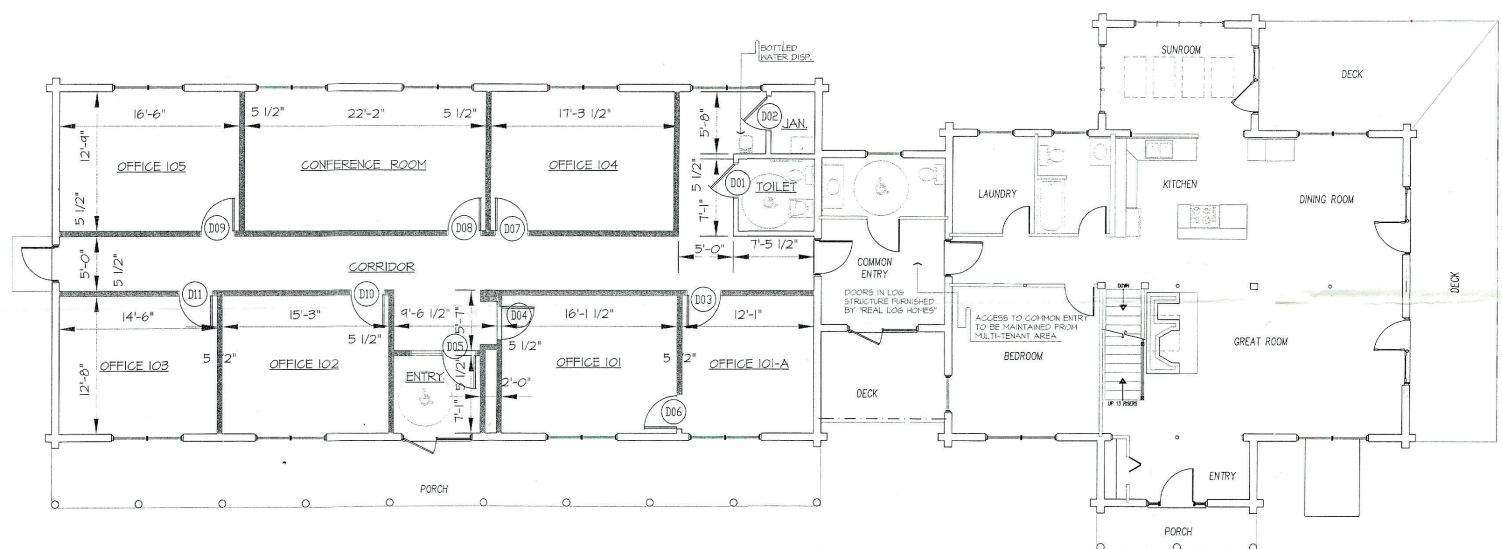
May 17, 2024



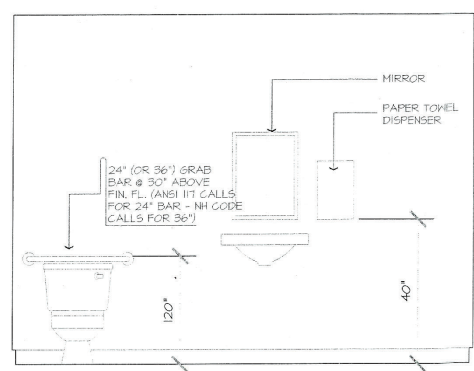
..... Town Line	River	Existing Fence
Property Boundary	Existing Building	Driveways & Parking Lot
	Post-Mounted LIghts	

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

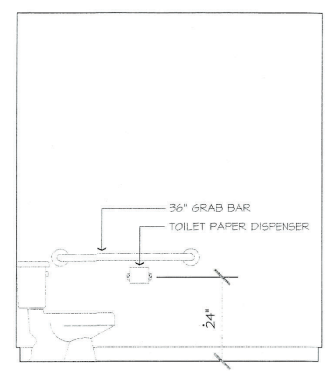
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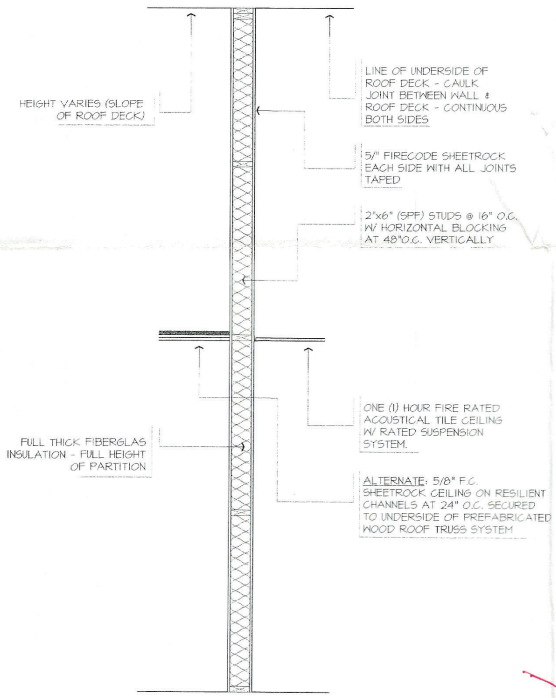
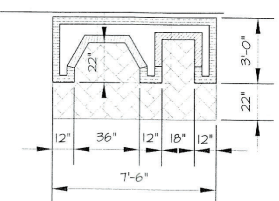
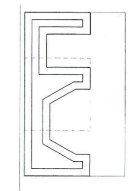
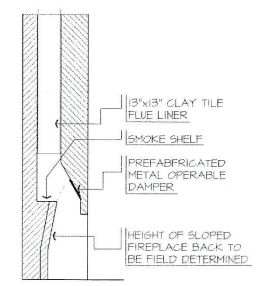
PROPOSED FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"



TYPICAL TOILET ROOM ELEVATIONS
SCALE: 1/2" = 1'-0"



NUMBER	SIZE	FIRE	MATERIAL	FRAME
D01	3'-0" x 7'-0"	NO	WD	WD
D02	3'-0" x 7'-0"	NO	WD	WD
D03	3'-0" x 6'-6"	1 HR	WD	WD
D04	3'-0" x 6'-6"	1 HR	WD	WD
D05	3'-0" x 6'-6"	1 HR	WD	WD
D06	3'-0" x 6'-6"	1 HR	WD	WD
D07	3'-0" x 6'-6"	1 HR	WD	WD
D08	3'-0" x 6'-6"	1 HR	WD	WD
D09	3'-0" x 6'-6"	1 HR	WD	WD
D10	3'-0" x 6'-6"	1 HR	WD	WD
D11	3'-0" x 6'-6"	1 HR	WD	WD



ONE (1) HR RATED WALL SECTION
SCALE: 1/2" = 1'-0"

Reviewed for Code Compliance
7/14/03
City of Keene

RECEIVED
JUL 11 2003
INSPECTIONS DEPT.
PERMIT

GENERAL NOTE
THE GENERAL CONTRACTOR, ALL SUB-CONTRACTORS, MATERIAL SUPPLIERS & VENDORS SHALL NOT DELIVER TO THE JOBSITE OR INSTALL ANY MATERIALS OR PRODUCTS FOR THIS PROJECT THAT ARE NOT IN COMPLIANCE WITH ALL FEDERAL, STATE AND/OR LOCAL BUILDING, FIRE, HEALTH OR LIFE SAFETY CODES AND SHALL CERTIFY TO THE LOCAL BUILDING INSPECTOR, CODE ENFORCEMENT OFFICER OR OFFICIAL RESPONSIBLE FOR ISSUANCE OF A CERTIFICATE OF OCCUPANCY THAT ALL CODES HAVE BEEN MET. SPECIFICALLY THE INTERNATIONAL BUILDING CODE (IBC) - LATEST ADOPTED EDITION AND THE CODES REGARDING GLASS & GLAZING - WALL & FLOOR COVERINGS (SMOKE DENSITY & FLAME SPREAD).

DESIGN LOADS

LOAD TYPE	LOAD VALUE
FLOOR DESIGN LOADS:	
OFFICE SPACES:	
LIVE LOAD:	50 LBS/ SF
DEAD LOAD:	10 LBS/ SF
TOTAL LOAD:	60 LBS/ SF
RESIDENTIAL SPACES:	
LIVE LOADS:	40 LBS/ SF
DEAD LOADS:	10 LBS/ SF
TOTAL LOAD:	50 LBS/ SF
ROOF DESIGN LOADS:	
FOR ROOF DESIGN LOADS REFER TO DOCUMENTATION PROVIDED BY 'REAL LOG HOMES'	

NOTE
CONTRACTOR IS TO REFER TO DRAWINGS PREPARED BY 'REAL LOG HOMES' FOR ROBERT COLGATE - ANY DISCREPANCIES IN DIMENSIONS OF STRUCTURE ARE TO BE BROUGHT TO THE ATTENTION OF DRAFTING & DESIGN ASSOCIATES AND/OR ROBERT COLGATE FOR A CLARIFICATION BEFORE PROCEEDING WITH ANY FURTHER WORK. SHOULD WORK BE PERFORMED WITHOUT A CLARIFICATION BEFORE PROCEEDING WITH ANY FURTHER WORK, REPLACEMENT BECAUSE OF A DISCREPANCY NO ADDITIONAL MONIES REQUESTED BY THE CONTRACTOR OR ANY VENDORS OR MATERIAL SUPPLIERS WILL BE CONSIDERED BY THE OWNER OR DRAFTING & DESIGN ASSOCIATES.

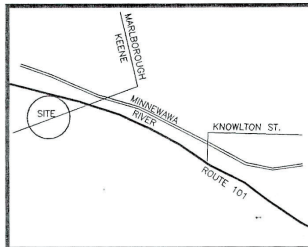
NOTICE
THESE DRAWINGS HAVE BEEN PREPARED UNDER AN AGREEMENT FOR LIMITED ARCHITECTURAL DESIGN SERVICES. THE INFORMATION PROVIDED HEREIN IS ONLY TO THE SCALE AND RELATIONSHIP OF THE PROJECT COMPONENTS AND WHERE INDICATED TO DESCRIBE THE MATERIALS USED. NO OBSERVATION OF CONSTRUCTION IS PROVIDED BY THE DESIGNER UNLESS SPECIFICALLY CONTRACTED FOR BY A SEPARATE WRITTEN AGREEMENT. THE DESIGNER CANNOT ASSUME RESPONSIBILITY FOR THE CORRECTNESS OF SHOP DRAWINGS WHERE PROVIDED OR FOR THE LACK OF THEM. THE CONTRACTOR OR THE OWNER IS RESPONSIBLE FOR THE COORDINATION OF ALL TRADES. ANY DISCREPANCIES IN DIMENSIONS, FIELD OR LAYOUT CONDITIONS SHALL BE THE RESPONSIBILITY OF THE OWNER. THE CONTRACTOR OR THE OWNER'S AGENT TO VERIFY BEFORE PROCEEDING WITH THE WORK. THIS NOTE SHALL APPLY TO ALL DOCUMENTS CONTAINED WITHIN THIS CONTRACT SET.

REVISIONS - ISSUED FOR	DATE	BY

Ted Crombie, CPBD, AIBD
DRAFTING & DESIGN Associates
Original Professional Building Designer
NO. B BERALD ST. KEENE, NH
(603) 352-9909

MONADNOCK REAL LOG HOMES
KEENE, NH
RT 101 WEST,
REVISED FIRST FLOOR (AMENDED) PLAN
SCALE: 1/8" = 1'-0"

DRAWN BY: Ed Crombie
DATE: JUNE 2003
COMM. NO.: N-03-155-C
SHT NO. OF



REVISIONS: DATE:

- MARCH 21, 2003
ADD SUN ROOM
REVISE LOT COVERAGE
REMOVE DUMPSTER
REVISE GRADING
ADD LANDSCAPING
REVISE PARKING
- MAY 9, 2003
EXTEND ROOF OVERHANG AT ENTRY
EXTEND CONNECTOR
ADD NOTES
ADD SIG. BLOCKS

LANDSCAPE LEGEND

SYMBOL	NAME	SIZE	QUANT
○	SEAGEEN JUNIPER	24	12
○	PJM	24	11
○	RUGOSA ROSE	24	11
○	POTENTILLA	18	4
○	GLOBE ARBORVITAE	24	12
○	EMERALD ARB	24	4

ANNUAL FLOWERS AS DESIRED

○	ASH	3" CAL - TOTAL 6 TREES
○	FLOWERING CRAB	1 1/2" - 2" CAL - TOTAL 2 TREES



LEGEND

○	HYDRANT
○	TELEPHONE POLE
□	CATCH BASIN
— WS —	WATER SERVICE
— WM —	WATER MAIN
— SS —	SEWER SERVICE
— SM —	SEWER MAIN
— E —	ELECTRIC, TV, TELEPHONE
— G —	GAS LINE
—	EXISTING GRADE
□	DUMPSTER WITH 6' HIGH SOLID WOOD FENCE
○	LIGHT ON POLE
○	PROPANE TANK
— SF —	SILT FENCE, HAYBALES

OWNER:
ADELPHIA, INC.
133 MAIN STREET
KEENE, NH 03431

GENERAL NOTES

GENERAL CONTRACTOR TO VERIFY LOCATION OF ALL UTILITIES PRIOR TO EXCAVATION.

MAINTAIN 15' VERTICAL AND 10' HORIZONTAL SEPARATION OF ALL UTILITIES.

REFERENCED PLANS:
"PLAT OF ADELPHIA, INC. PROPERTY N. H. RTE. 101 KEENE + MARLBOROUGH, N. H.," DATED APRIL 7, 1987 BY THOMAS W. FLAVIN, JR. LLS 587 7 MAIN ST. KEENE, NH
"ATHENS PIZZA AND CONVENIENCE STORE MARLBOROUGH/KEENE, NH" DATED 3-27-87 REVISED 6-11-87. BY LANDSCAPE, INC. BOX 261 RR1 FITZWILLIAM, NH

UTILITY INFORMATION FROM PLANS ON FILE AT THE CITY OF KEENE ENGINEERING DEPARTMENT AND FROM PLANS ON FILE AT THE MARLBOROUGH TOWN HALL.

FLOOD INSURANCE RATE MAPS (FIRM) FOR THE CITY OF KEENE - PANEL 10 OF 13 DATED 9-30-85
FIRM FOR THE TOWN OF MARLBOROUGH PANEL 3 OF 10 DATED MAY 3, 1982.

NO PORTION OF THIS SITE IS LOCATED IN THE 100 YEAR FLOODPLAIN FOR KEENE OR MARLBOROUGH.

THE NEAREST FIRE HYDRANT IS LOCATED AT THE INTERSECTION OF ROUTE 101 AND KNOWLTON STREET IN MARLBOROUGH APPROX. 1000' EAST OF THE SITE.

INSTALL WATER METER ACCEPTABLE TO THE CITY OF KEENE AT THE POINT WHERE THE WATER LINE ENTERS THE BUILDING FOR THE PURPOSE OF METERING SEWER USE.

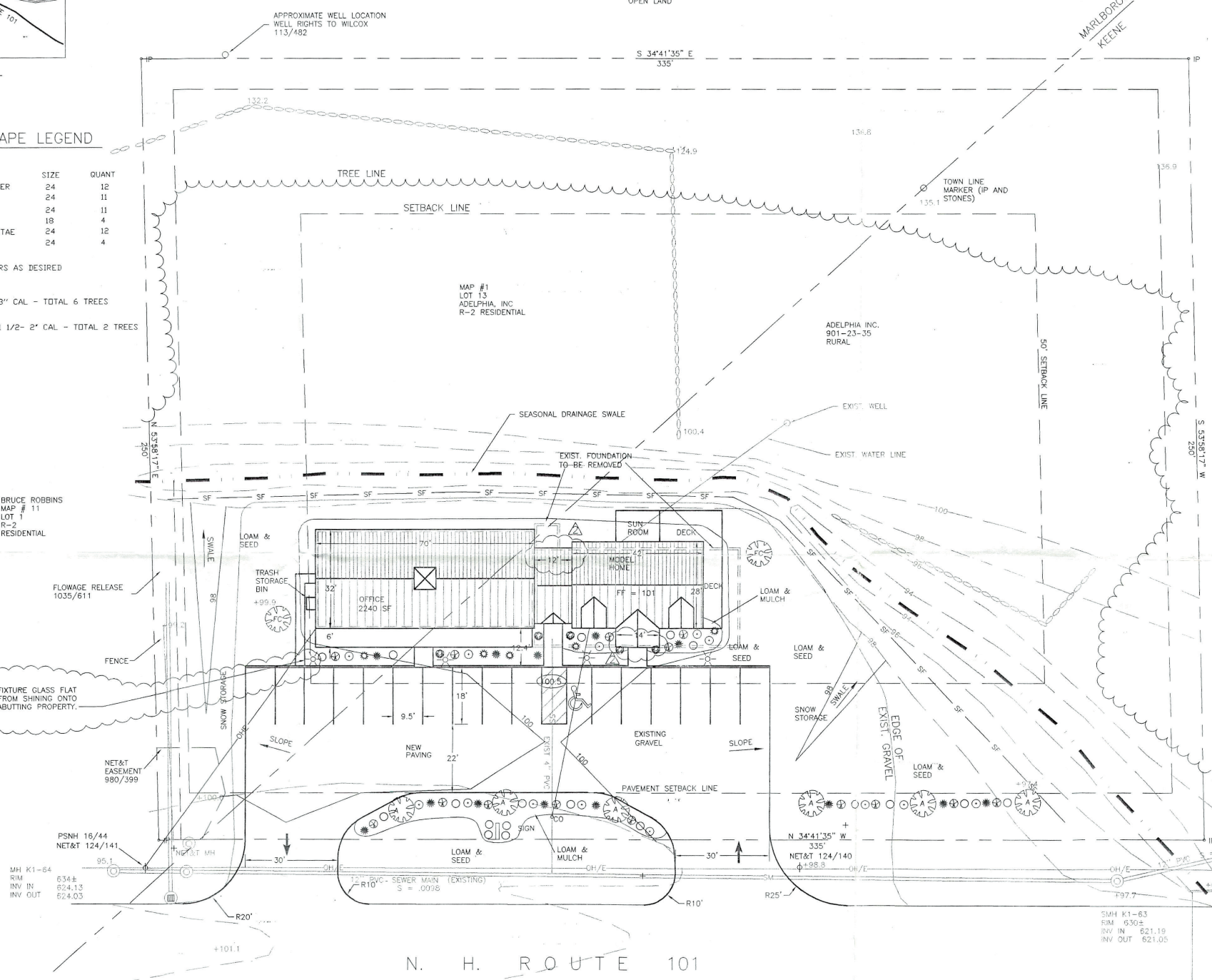
PLANNER:
BRICKSTONE MASONS, INC.
185 WINCHESTER ST.
KEENE, NH 03431
SUITE 1
(603) 357 - 0116
fax (603) 357 - 0118

LEGACY REAL LOG HOMES
ROUTE 101
KEENE AND MARLBOROUGH, NH

SITE PLAN

PLANNING BOARD CONDITIONS OF APPROVAL:

- ISSUANCE OF THE WAIVER OF STANDARD 19 AS IT RELATES TO THE LOCATION OF THE PARKING FIELD.
- OWNERS SIGNATURES MUST BE ON PLAN BEFORE FINAL APPROVAL.
- ALL LIGHTING ON SITE SHALL BE FULLY CUT OFF OR SHIELDED.
- PRIOR TO PLAN SIGNATURE, SUBMITTAL OF ESTIMATES AND ADEQUATE SECURITY FOR LANDSCAPING AS DETERMINED BY THE CITY ENGINEER AND PLANNING DIRECTOR.



LOT DATA

LOT SIZE	83727 SF 1.92 AC±	KEENE RURAL	MARLBOROUGH R-2 SUBURBAN RES.
ZONING			
PARKING:			
OFFICE	2240 SF/200= 11 SPACES	2240 SF/150=15 SPACES	
RESIDENTIAL	2 SPACES	2 SPACES	
PARKING REQUIRED	13 SPACES	17 SPACES	
PARKING PROVIDED:		17 SPACES	
OPEN SPACE	72,097 SF - 86%		
PAVING	7,800 SF - 9%		
BUILDING (FOOTPRINT)	3,830 SF - 5%		

OWNERS CERTIFICATION

I CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN HEREON.

Robert H. Colgate 5/9/03
OWNER DATE

APPROVED BY THE CITY OF KEENE PLANNING BOARD

Robert H. Colgate 6/13/03
CHAIRMAN DATE



SCALE: 1"=20'
DATE FEB. 26, 2003
SHEET 1

FINAL
SPR-976

271 ELM ST.
ZBA-2024-16



Petitioner requests a Variance to convert a single family home with an ADU to a two family home on a lot with 11,325 sq. ft. where 13,400 sq. ft. is required per Article 3.5.2



NOTICE OF HEARING

ZBA-2024-16

A meeting of the Zoning Board of Adjustment will be held on **Monday, June 3, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-16: Petitioner, Heather Francisco requests a variance for property located at 271 Elm St., Tax Map #536-086-000 and is in the Medium Density District. The Petitioner requests a variance to turn a single family home with an Accessory Dwelling Unit into a two family on a lot with 11,325.6 sq. ft. where 13,400 sq. ft. is required per Article 3.5.2 of the Zoning Regulations.

You are receiving notice of this hearing as an abutter to or owner of property within 200-ft. of the subject parcel.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Please be advised that this may be the only certified notice you will receive. You are encouraged to review future Zoning Board of Adjustment agendas for the status of this application at keenenh.gov/zoning-board-adjustment. If you have any questions, please contact me at the Community Development Department at (603) 352-5440.

Corinne Marcou, Zoning Clerk
Notice issuance date May 24, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	ZBA-2024-16
Date Filled	5/20/24
Rec'd By	CM
Page	1 of 10
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: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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 applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: Heather Francisco

MAILING ADDRESS: 271 Elm Street, Keene, NH 03431

PHONE: (802) 380-9646

EMAIL: oneheatherfrancisco@gmail.com

SIGNATURE:

PRINTED NAME: Heather Francisco

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: N/A

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: N/A

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: PROPERTY INFORMATION

Property Address: **271 Elm Street Keene NH 03431**

Tax Map Parcel Number: **536086**

Zoning District **SAU #29**

Lot Dimensions: Front: **136'** Rear: **136'** Side: **86'** Side: **81'**

Lot Area: Acres: **.26** Square Feet: **12,632**

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **17%** Proposed: **17%**

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: **19%** Proposed: **19%**

Present Use: **Single family with ADU**

Proposed Use: **Two Family**

SECTION 3: 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 property location is 271 Elm Street, Keene, NH 03431. It is located in a medium density neighborhood with single family, multi-family, commercial and government housing. Heather Francisco is a resident and owner of 271 Elm as of 11/25/20.

The purpose and effect of the proposed variance is to change the property designation from a single family with ADU to a two-family property.

Justification for the proposed variance is that 271 Elm was originally built to be a two-family home and has been utilized to house two separate households since I purchased it. 271 Elm has square footage for four parking spaces which are all currently in use.

271 Elm actually has two addresses, 271 and 273 Elm.

The house contains two apartments, and there are two separate entrance/exits for each apartment. One apartment is 807 square feet and includes 2 bedrooms and separate dining and living rooms, kitchen, bath and laundry room.

The other apartment is 598.26 square feet and includes all of the above however it has a larger bath that includes a laundry area. Both apartments have covered porches, storage areas in the basement, and a minimum of two parking spaces.

Each apartment has a separate heating system and utilities.

271 Elm's lot size is 11,325.6 square feet and includes a 15 foot by 80-foot-long area driveway area. The square footage falls short of the required 13,400 square foot requirement, however there is room for plenty of parking and also a ramp to the first-floor apartment if need be.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 3, 3,2 of the Zoning Regulations to permit:

Turn a single family home with an ADD into a two family.
Lot size currently 11,325.6 w/ required 13,4000

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

Since 2020 I have received a great deal of positive reinforcement from neighbors and community members. Multiple community members have shared that 271 had formerly been referred to in a negative light and in ill repair. Quickly after I rehabbed the property, the home directly across the street was completely gutted and remodeled, next the other property directly across the street had an exterior remodel, lastly, the two abutting vacant lots that had been used as dumping of construction waste, were purchased and a large, beautiful home was built. Another Abutting property had an exterior remodel just before the newest house was built.

All of this development happened in 3 years following the exterior rehab of 271 Elm. During all three years 271 Elm housed two families. 271 Elm's use a two family has done nothing but allow for it's continued improvement and upkeep.

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

271 is now an attractive modern two-family home that houses two young families with children. If the variance is granted the spirit of the ordinance would be observed because two middle class families who care for the property would remain living at 271 Elm. The yard is sizeable and there is room for it's covered porches, gardens parking and safe play away from the street.

3. Granting the variance would do substantial justice because:

During times I have advertised the bottom unit for rent, I have received well over 100 inquires. Most of the inquires arrived with lengthy explanations of circumstances of hardship finding housing in Keene, especially two-bedroom housing in close proximity to the hospitals and schools. I know firsthand how difficult it is for Keens residents to find affordable housing, even unaffordable housing.

There are severai abutting properties that are distinguished as multi families abutting my property, one has a lot significantly smaller than 271's. Another's lot is not deemed large enough for a two family however it is actually a three-family home. I have marked a map listing all abutting multifamily and commercial properties just a bit further than 200 feet.

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

Following my purchase, and use of 271 Elm as a two family, 4 directly abutting property invested a great deal of money in their properties, the other three invested in landscaping and landscaping and painting of their homes.

271 is already used as a two family.

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:

Denial of the ordinance would immediately make two families homeless with a 30-day notice and it would cause the property to sit vacant for the entirety of my owning it because I will be moving out at the end of June, and as it is designated now as a single family with an ADU if I do not live in one unit, no one can live in the other. I am able to let it sit vacant. 271 sitting vacant would be immediately recognizable to Keene residents.

ii. The proposed use is reasonable because 271 has already been used as a two family since I purchased it in 2020.

B.

Another unnecessary hardship would be to residents of Keene. Denial would immediately prevent Keene residents from having access to affordable multi bedroom housing located near good schools with ample yard space for their children to play in. This would be seen as nothing but unnecessary hardship during Keene's housing crisis.

and

ii. The proposed use is a reasonable one because:

The square footage of the yard is only 768 sq. ft. less than currently required for a two family without a variance. Both apartments provide ample space for families. The lot provides ample space for parking.

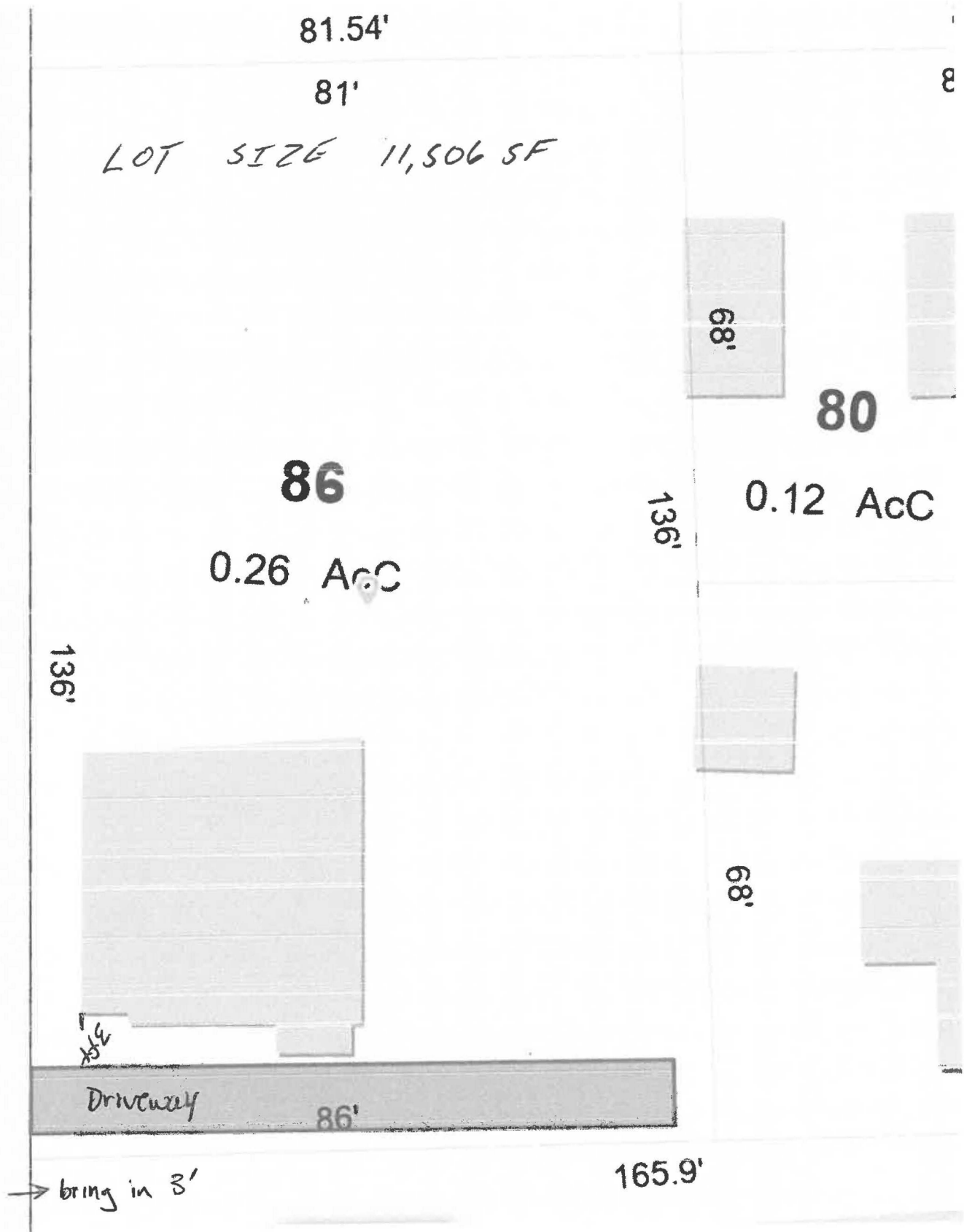
* See above

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

* See above, the text box would not let me type this section.

Parcel Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner City
536-009-000-000-000	0 NORTH ST.	CITY OF KEENE		3 WASHINGTON ST.	KEENE
536-043-000-000-000	147 CARROLL ST.	PRINSEN, CLEYTON	PROVENCHER BRIANNA	119 CHESHIRE TURNPIKE	LANGDON
536-052-000-000-000	152 CARROLL ST.	BABBITT CARL N.		152 CARROLL ST.	KEENE
536-053-000-000-000	253 ELM ST.	GBH REAL ESTATE INVESTORS LLC		53 COUNTY RD.	BEDFORD
536-060-000-000-000	250 ELM ST.	GANOE BRYAN JAMES		250 ELM ST.	KEENE
536-077-000-000-000	51 ARMORY ST.	WHITNEY BETTE J.		51 ARMORY ST. 1	KEENE
536-078-000-000-000	85 SPRUCE ST.	83-87 SPRUCE STREET LLC		55B MAIN ST	KEENE
536-079-000-000-000	170 CARROLL ST.	AUCLAIR RENEE C.		170 CARROLL ST.	KEENE
536-080-000-000-000	176-178 CARROLL ST.	THIMBLEBERR Y INVESTMENTS LLC		151 COLONIAL RD	PROVIDENCE
536-081-000-000-000	287 ELM ST.	ZEHNBauer TIEA	DEVINCENTIS JAMES M.	287 ELM ST	KEENE
536-082-000-000-000	198 CARROLL ST.	SULLIVAN CHRISTOPHER M	SULLIVAN JENNIFER M	198 CARROLL ST	KEENE
536-083-000-000-000	204 CARROLL ST.	KING RICHARD K.		204 CARROLL ST.	KEENE
536-084-000-000-000	307 ELM ST.	TAN, DORIS		2772 EAST BRANDON LN.	FRESNO
536-087-000-000-000	276 ELM ST.	JEB PROPERTIES LLC		151 COURT ST.	KEENE
536-088-000-000-000	280 ELM ST.	BOUTELL, MAUREEN J.		280 ELM ST.	KEENE
536-089-000-000-000	290 ELM ST.	MACHADO GAIL		290 ELM ST.	KEENE
536-090-000-000-000	104-106 NORTH ST.	SOKOL HENRY MARTIN	MANUEL-SOKOL ROCHELLE J.	107 OLD KEENE RD.	TROY
536-091-000-000-000	112 NORTH ST.	ROGERS REVOCABLE TRUST OF 2021		BRUCE A. & CYNTHIA K. ROGERS CO-TTEES	KEENE
536-093-000-000-000	81 ARMORY ST.	SECORD WALTER W.	SECORD GLENDA R.	260 OLD WALPOLE RD.	KEENE
536-094-000-000-000	63-69 ARMORY ST.	SHJ PROPERTIES LLC		216 UPPER TROY RD.	FITZWILLIAM

Owner State	Owner Zip
NH	03431
NH	03602
NH	03431
NH	03110
NH	03431-2966
NH	03431
NH	03431
NH	03431
RI	02906
NH	03431
NH	03431
NH	03431
CA	93720
NH	03431
NH	03431
NH	03431
NH	03465
NH	03431
NH	03431
NH	03447



EXAMPLE # 1, LOCATION:176 CARROLL ST., 178 CARROLL ST. LOT SIZE 5440 SF

BUILDING_NO:1

MDL_DESC:Multi Family

OCC:102

OCC_DESC:2 Family

BLDG_AREA_LIVING:1656

AREA_GROSS:2367

STYLE_DESC:Two Unit

STORIES:2

OCCUPANCY:2

INT_WALL1_DESC:Drywall/Sheetrock

INT_WALL2_DESC:Plaster

EXT_WALL1_DESC:Clapboard

ROOF_COVER_DESC:Metal/Tin

ROOF_STRUCT_DESC:Gable

HEAT_TYPE_DESC:Forced Air

HEAT_FUEL_DESC:Oil

AC_TYPE_DESC:None

NUM_BEDRM:4

NUM_BATHS:2

NUM_HBATHS:0

EXAMPLE #2, LOCATION:85 SPRUCE ST. LOT SIZE 14527 SF

BUILDING_NO:1

MDL_DESC:Multi Family

OCC:103

OCC_DESC:3 Family
BLDG_AREA_LIVING:2573
AREA_GROSS:5146
STYLE_DESC:Three Unit
STORIES:1
OCCUPANCY:3
INT_WALL1_DESC:Drywall/Sheetrock
EXT_WALL1_DESC:Clapboard
ROOF_COVER_DESC:Asphalt
ROOF_STRUCT_DESC:Gable
HEAT_TYPE_DESC:Forced Air
HEAT_FUEL_DESC:Propane
AC_TYPE_DESC:None
NUM_BEDRM:6
NUM_BATHS:3
NUM_HBATHS:0

EXAMPLE #3, LOCATION:106 NORTH ST., 104 NORTH ST. 13355 SF

BUILDING_NO:1
MDL_DESC:Multi Family
OCC:102
OCC_DESC:2 Family
BLDG_AREA_LIVING:1728
AREA_GROSS:3724
STYLE_DESC:Two Unit
STORIES:1

OCCUPANCY:2
INT_WALL1_DESC:Drywall/Sheetrock
EXT_WALL1_DESC:Vinyl
ROOF_COVER_DESC:Asphalt
ROOF_STRUCT_DESC:Gable
HEAT_TYPE_DESC:Electric
HEAT_FUEL_DESC:Electric
AC_TYPE_DESC:None
NUM_BEDRM:4
NUM_BATHS:2
NUM_HBATHS:0

EXAMPLE #4, LOCATION:322 ELM ST. LOT SIZE 5865 SF

BUILDING_NO:1
MDL_DESC:Multi Family
OCC:102
OCC_DESC:2 Family
BLDG_AREA_LIVING:1722
AREA_GROSS:3094
STYLE_DESC:Two Unit
STORIES:1.75
OCCUPANCY:2
INT_WALL1_DESC:Drywall/Sheetrock
EXT_WALL1_DESC:Clapboard
ROOF_COVER_DESC:Asphalt
ROOF_STRUCT_DESC:Gable

HEAT_TYPE_DESC:Hot Water

HEAT_FUEL_DESC:Oil

AC_TYPE_DESC:None

NUM_BEDRM:5

NUM_BATHS:2

NUM_HBATHS:0

EXAMPLE #5, LOCATION:326 ELM ST. LOT SIZE 6488 SF

BUILDING_NO:1

MDL_DESC:Multi Family

OCC:102

OCC_DESC:2 Family

BLDG_AREA_LIVING:1622

AREA_GROSS:3378

STYLE_DESC:Two Unit

STORIES:1.75

OCCUPANCY:2

INT_WALL1_DESC:Drywall/Sheetrock

EXT_WALL1_DESC:Clapboard

ROOF_COVER_DESC:Asphalt

ROOF_STRUCT_DESC:Gable

HEAT_TYPE_DESC:Hot Water

HEAT_FUEL_DESC:Oil

AC_TYPE_DESC:None

NUM_BEDRM:5

NUM_BATHS:2

NUM_HBATHS:0

EXAMPLE #6, LOCATION:110 SPRUCE ST. LOT SIZE 11506 SF

BUILDING_NO:1

MDL_DESC:Commercial

OCC:108

OCC_DESC:Apartments - Com

BLDG_AREA_LIVING:4838

AREA_GROSS:4883

STYLE_DESC:5-8 UNIT APT

STORIES:3

OCCUPANCY:6

INT_WALL1_DESC:Drywal/Sheetrock

EXT_WALL1_DESC:Clapboard

ROOF_COVER_DESC:Asphalt

ROOF_STRUCT_DESC:Gable

HEAT_TYPE_DESC:Electric

HEAT_FUEL_DESC:Electric

AC_TYPE_DESC:None

BLD_BLDG_NAME:6 UNIT APT