

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

**AGENDA**

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – June 7, 2021
- III. Unfinished Business
- IV. Hearings:

**ZBA 21-12:** Petitioner, Todd Bergeron of 4 West Hill Rd., Troy, NH, represented by Jim Phippard of Brickstone Land Use Consultants, 185 Winchester St., requests a Variance for property located at 26 Fairbanks St., Tax Map #116-032-000-000-000 that is in the High Density District. The Petitioner requests a Variance to permit a building lot containing 5,583 square feet in the High Density District where 6,000 square feet is required per Section 102-791, Basic Zoning Dimensional Requirements of the Zoning Ordinance.

- 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

3  
4  
5 ZONING BOARD OF ADJUSTMENT  
6 MEETING MINUTES  
7

8 **Monday, June 7, 2021**

**6:30 PM**

**Hybrid: Council  
Chambers/Zoom**

**Members Present:**

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

**Staff Present:**

John Rogers, Zoning Administrator  
Corinne Marcou, Zoning Clerk

**Members Not Present:**

9  
10 Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to  
11 Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions  
12 of RSA 91-A (which regulates the operation of public body meetings) during the declared  
13 COVID-19 State of Emergency. He called the meeting to order at 6:33 PM.  
14

15 **I) Introduction of Board Members**

16 Roll call was conducted.  
17  
18

19 **II) Minutes of the Previous Meeting – April 20, 2021, and May 3, 2021**

20  
21 Mr. Hoppock made a motion to approve the April 20, 2021 meeting minutes. Mr. Welsh  
22 seconded the motion, which passed by unanimous vote.  
23

24 Mr. Hoppock made a motion to approve the May 3, 2021 meeting minutes. Mr. Welsh seconded  
25 the motion, which passed by unanimous vote.  
26

27 **III) Hearings**

28  
29 Chair Gorman stated that Petitioner Jaime Dyer, of 44 Pierce Ln., Westmoreland, is requesting a  
30 Motion to Re-hear ZBA 21-11, located at 110-120 Main St., owned by R&M Weinreich, LLC, of  
31 Keene, Tax Map 575-062-000, which is in the Central Business District.

32 John Rogers, Zoning Administrator, stated for clarification, this is for the Board to discuss and as  
33 this is not a public hearing, there will be no public comment. He continued that as a Motion to  
34 Re-hear must be submitted 30 days after the action of the Board by the Petitioner, the Board has  
35 30 days once it is received to discuss the re-hearing. This was the first opportunity for that;  
36 otherwise, the Board would have had to call a special meeting later in the month. Staff felt  
37 tonight was a good time for the Board to discuss the matter.  
38

39 Mr. Hoppock stated that RSA 677:2 governs the standard for review for a Motion for Re-  
40 hearing, and provides for 30 days from the date of the decision, which was May 3. He continued  
41 that if this Motion to Re-hear was received on June 4, it is not a timely application. A timely  
42 application would have been received on or before June 2.  
43

44 Mr. Rogers replied that if that is a mistake, that was a mistake on staff's part, regarding the  
45 recommendation they gave the applicant. He continued that his math was wrong. Chair Gorman  
46 stated that given that, the Board will take the application for a Motion to Re-hear as being timely  
47 by the request of staff.  
48

49 Ms. Taylor stated that she is glad Mr. Hoppock made that point. She continued that she does not  
50 mind discussing this, but thinks the Board should decline to hear it, because it is not timely,  
51 regardless of staff's advice. That being said, she thinks they should still discuss whether the  
52 Board would be in favor or opposed to this on other grounds, not just timeliness.  
53

54 Chair Gorman stated that he thinks what Mr. Rogers is saying is that he (Mr. Rogers) advised the  
55 applicant that he had until Friday, June 4, so he (Chair Gorman) thinks the Board should hear  
56 this. Ms. Taylor replied that is why she suggested they discuss it. She continued that she does  
57 not think they need to debate municipal estoppel at this point, but it is still not timely filed. The  
58 applicant is charged with having knowledge of what his responsibilities are.  
59

60 Mr. Hoppock stated that RSA 677:2 governs the Standard of Review, and it is a simple standard:  
61 re-hearing is granted if good reason is stated in the motion. The question is, is there good reason  
62 in this motion? He continued that he agrees with Ms. Taylor that this is not timely filed and that  
63 the burden is on the applicant to know when the deadlines are. Setting that aside for a moment,  
64 in reading this application dated June 4 and received on that date, he does not see good reason  
65 stated. The applicant seems to be trying to say, "I should have mentioned this at the first  
66 hearing" and trying to get another bite at the apple. The letter from the insurance folks is simply  
67 an example of new evidence being submitted with this, to try to address something that was not  
68 addressed, apparently, on May 3. He is not persuaded that "good reason" is stated in the motion,  
69 so for that reason, he would deny the motion.  
70

71 Ms. Taylor stated that she agrees. She continued that the Board has to look at whether there is  
72 new evidence and look at whether the Board made a mistake. She does not agree that a letter  
73 from an insurance company constitutes new evidence. Insurance agents are there to sell policies,  
74 and just because something is insurable, does not mean it is relevant to the Board's decision as to

75 whether it met the standard for a Special Exception. Additionally, she would say the Board was  
76 correct in their decision, because based on the evidence presented, with regard to the facility's  
77 layout and use, they did not see any evidence that the facility was designed to provide the proper  
78 operation with the use of alcohol being permitted. Additionally, there are two places in the  
79 minutes where Mr. Weinreich [addressed this]: he stated that the applicant said he could run the  
80 business just fine without alcohol, and that his lease would include a prohibition against alcohol;  
81 and stated that one of the great things about the proposal is that there will not be any alcohol.  
82 Thus, she is not sure what the issue is. She thinks the Board properly decided on the application  
83 and therefore she would not support the Board re-hear this or reconsider their decision.  
84

85 Mr. Gaudio stated that he has similar question about whether there is enough new information.  
86 He continued that there is no additional information here about how protection is going to be  
87 provided at the facility when people are drinking alcohol potentially to the people who might be  
88 injured, the number of people who will be providing protection, how they would do it, and so on  
89 and so forth. He would have thought they would go to the Police, or some law enforcement  
90 authority, and bring evidence about the number of episodes of intoxication at one of these  
91 facilities in another place. If it had been low, that would have been good evidence. If not, it  
92 might not have been good evidence.  
93

94 Mr. Welsh stated that like Ms. Taylor, he was struck by the difference between the  
95 minutes/testimony from last time and the desire to be able to sell alcohol expressed this time. He  
96 continued that he was not necessarily compelled that anything else had been exchanged, except  
97 for the desire to change the nature of the business. He is not compelled to approve the Motion to  
98 Re-hear. The main thing he thought was different was the imagination of the facility being used  
99 as a rented out facility for parties, weddings, and so on and so forth, where alcohol is not  
100 necessarily sold but it is permitted to be brought in. Had that been discussed last month he may  
101 have been sympathetic, but the idea of selling on facility is something he would rule the same on  
102 based on the evidence he has seen.  
103

104 Chair Gorman stated that he has mixed feelings on this. He continued that he thinks it is sort of a  
105 180 by the applicant here, compared to what the Board heard initially, which is bothersome, but  
106 he wonders if the Board perhaps put that on to him because the Board members were the ones  
107 who brought up the alcohol. He also thinks that as a function use such as a bowling alley or  
108 something similar that people reserve for a venue, he would consider BYOB, to echo what Mr.  
109 Welsh said. He thinks there is more information to be heard. He does not think the Board had a  
110 clear path to what the applicant wanted. He thinks maybe the applicant did not know he needed  
111 to apply for the right to serve alcohol, since it would already be permitted at that location. With  
112 all of those things said, he would be fine to re-hear it, and hear what the applicant actually wants  
113 to do.  
114

115 Ms. Taylor stated that the Board members brought up alcohol in the context of the hearing  
116 because prior to the public hearing, the newspaper article brought it up. Thus, the Board was

117 requesting more information. She continued that it was not something that the Board brought up  
118 out of thin air. She recalls a brief discussion in the minutes about renting it out.

119  
120 Mr. Welsh stated that from his reading of the minutes and from his recollection, alcohol was a  
121 topic brought up by Mr. Weinreich himself. He continued that line 106 of the minutes is the start  
122 of a paragraph and states: *“One of the great things about the proposal is it will not have alcohol*  
123 *in the mix, so he will be able to have 6-10 year old children there with their parents. It is a great*  
124 *family-type activity.”* That, to him (Mr. Welsh), was one of the compelling visions of the  
125 facility.

126  
127 Chair Gorman asked if anyone else had further comment. Hearing none, he asked for a motion.

128  
129 Mr. Hoppock made a motion to deny the request for the Motion to Re-hear ZBA 21-11. Ms.  
130 Taylor seconded the motion.

131  
132 Chair Gorman asked if the motion should first come in the affirmative. Mr. Rogers replied that  
133 most times, a motion is for a positive action first, but since this is a discussion just amongst the  
134 Board it is okay to have the motion as Mr. Hoppock stated it.

135  
136 The motion passed with a vote of 4-1. Chair Gorman was opposed.

137  
138 **IV) Unfinished Business**  
139 **Revisions to the ZBA Regulations, Section II, I-Supplemental Information**

140  
141 Mr. Rogers stated that the Board can take up the Supplemental Information discussion that Ms.  
142 Taylor has presented. He continued that all Board members have received the proposed  
143 language. He showed the current language in the Rules of Procedures, on page 7, item I. He  
144 continued that it has some limitation. In his opinion, the current language gives the Board a  
145 little more flexibility than the proposed language, for a couple reasons. One reason is that as  
146 the Board has experienced, sometimes someone will bring in/email information to staff on the  
147 day or the meeting. Sometimes one page of information is technical and complex and requires  
148 more time, and other times, it is just one page and not too much to absorb and the Board might  
149 be able to take that in. He believes the language Ms. Taylor proposed also does as well, but  
150 one of the issues he is not sure about is *“C. No such submission limitations shall be imposed*  
151 *upon an abutter or other party wishing to submit comments or information about the subject*  
152 *application at the public hearing.”* That could be a problem for the Board. An abutter could  
153 bring a packet of, say, real estate values, which the Board gets sometimes. An abutter could  
154 hire someone to do a real estate valuation to show that the applicant would reduce the abutter’s  
155 property value. The Board might want to put that off and continue the public hearing. Thus, he  
156 thinks C. might be problematic. He believes that the current language is sufficient. It does give  
157 the Board some flexibility to do as needed. He is not sure this revision is needed. However,  
158 that is for the Board to discuss, and they can let staff know if they want staff to bring back a  
159 new Rules of Procedure with the language changes as so desired.

160  
161 Ms. Taylor stated that she drafted this in response to the Board’s frustration that many times,  
162 applicants do not submit information in a timely fashion, so that it is virtually impossible for  
163 the Board to consider the information appropriately. She continued that she should add that  
164 this [proposed] rule is not entirely original; she lifted parts of it from other municipalities in NH  
165 that have a similar rule. All the ones she looked at had a 10-day advance period, with the  
166 theory being that they could then distribute the information appropriately to the Board members  
167 with the application in preparation for the meeting. The second paragraph [B.] provides that  
168 opening, so that if there *is* late information that the Board should be considering, the Board can  
169 determine whether they should hear it that night, or if it is too much and they need to postpone.  
170 There are certain studies that the Board does need more time to look at, not just a few hours  
171 [before the meeting]. The third paragraph [C.] is one she found in several other municipalities.  
172 Abutters generally do not have the information in as timely a fashion as the applicant does.  
173 The purpose of C. is to ensure that an abutter will not be deterred from speaking up at a public  
174 hearing. If someone submits a map and an abutter says “But that map isn’t correct; this is  
175 what’s correct,” she does not think the Board should discourage that from being presented at a  
176 public hearing. She supposes that any information the Board gets would be subject to hearing  
177 at a future meeting. There is nothing in the rules and nothing in the statutes she is aware of that  
178 says the Board cannot continue a hearing on an application if they feel they need more  
179 information. They have done that in the past. Ms. Taylor continued that she is not wedded to  
180 this language, but she thinks that the current rule as it is drafted is very squishy.

181  
182 Mr. Hoppock stated that the way he reads A. and B. together, it seems that the two options are  
183 for the Board to either accept the supplemental information and do nothing and consider it,  
184 because it is not so voluminous or complicated as to be a concern; or to grant a continuance.  
185 He continued that that would be only if the material was filed within the 10 days. B. is not  
186 clear about that. For example, if staff receives supplemental information 11 days before the  
187 public hearing, it should be okay, and presumably, the Board would receive it either that day  
188 via email, or within enough time to study it. B. should be clearer about that 10-day timeframe.  
189 If it is outside the 10 days, the applicant ought to be informed that they will lose their right to a  
190 prompt hearing because they filed it late. He cannot remember what the rule is about this – if a  
191 person files an application do they get a hearing within 45 days? Ms. Taylor replied something  
192 like that. She continued that as she said, she has no problem with the Board amending her  
193 proposed language or taking it to wordsmith and bringing it back next time.

194  
195 Mr. Gaudio stated that he has three suggestions, one of which Mr. Hoppock just made. He  
196 continued that B’s second line is about whether to accept the supplemental information, and he  
197 suggests adding “*submitted after the deadline of subsection A.,*” which goes directly to this  
198 point. He also has a suggestion for C., if the Board wants to keep C. He suggests “*The*  
199 *limitations in subsections A. and B. shall not be imposed,*” so it is clear. He is bothered by the  
200 last sentence of A., which states that an applicant’s failure to submit supplemental information  
201 within 10 days of the public hearing “may” result (in the information not being considered at

202 the public hearing), but it may not. He suggests deleting that sentence, because B. takes care of  
203 the other side of that coin. Ms. Taylor replied that those are all good suggestions.

204

205 Chair Gorman asked Mr. Rogers what the current limitation is. He continued that this seems  
206 less restrictive. Mr. Rogers replied that it currently states, *“Any information and/or evidence*  
207 *that is provided after the submittal deadline, which the Board determines to be material and*  
208 *necessary, may result in a continuation of the public hearing in order to allow the Board an*  
209 *opportunity to review the information and/or evidence and/or to have the City staff, legal*  
210 *counsel, abutters, or other interested persons review and provide input or advice to the Board*  
211 *in regards to such information and/or evidence.”*

212

213 Chair Gorman asked, when that references the deadline, is it referencing the deadline that the  
214 applicant has? In other words, it abandons all supplemental information post-application. Is  
215 that accurate? Mr. Rogers replied that many times the deadline date is when a lot of  
216 applications come in the door. He continued that basically it would be supplemental  
217 information staff received from the applicant anytime from that deadline. As the Board is  
218 aware, sometimes staff gets information the day of the meeting. The current Supplemental  
219 Information covers any of that from the deadline to anything submitted right up until the  
220 meeting, which gives the Board the ability to make that determination, as they have in the past,  
221 as to whether they need more time to review the information or not. He thinks that what Ms.  
222 Taylor has submitted does the same thing. What he is not 100% sure about is C., regarding  
223 abutters and people at the meeting being able to bring material in. He thinks the Board should  
224 still have the ability to make that same decision, regardless of whether it is coming from the  
225 applicant or the public.

226

227 Chair Gorman stated that he agrees with Mr. Rogers about that. He continued that as Ms.  
228 Taylor mentioned earlier, there was nothing withholding the Board from continuing a hearing  
229 based on new information. However, with this language, The Board might think, “Oh, there *is*  
230 *something from precluding us from [continuing the hearing based on new information],”*  
231 *because they are openly stating [in C.] that the Board allows submissions from anyone who is*  
232 *not an applicant, whenever they want. It is actually rare that the applicant is creating the*  
233 *problem. Many times, the abutters are the ones submitting information/materials late. Through*  
234 *the years he has been on the Board, he thinks the few times they have had to continue a hearing*  
235 *have been due to extreme volume from the public that comes pouring in late. He thinks C.*  
236 *could put them in a compromising position. He recalls the Water St. application had to be*  
237 *postponed because they received over 100 letters. There have been a few other, high-profile*  
238 *hearings throughout the years where they have received strenuous amounts of materials to*  
239 *review. Most Board members have day jobs. Receiving 30, 40, or 50 letters the day before the*  
240 *meeting poses a problem. For him to get on board with Ms. Taylor’s proposed changes there*  
241 *has to be some wiggle room for the Board, in terms of public input, too. Whether it is five days*  
242 *or up to the discretion of the Board, there needs to be something, just in case.*

243



244 Ms. Taylor replied that it is fine to get rid of C. She continued that however, she wants to note  
245 that people submitting letters is similar to people making an appearance at a public hearing.  
246 She does not think it is quite the same thing as a submission. She will not quibble about it if  
247 the Board wants to just remove C. She does think there is a serious issue with the way the  
248 current rule reads. Maybe staff should be taking a harder line, so that people know that if they  
249 are going to submit an application they need to have information in by X day, such as 10 days  
250 prior to the hearing or whatever the number is. That is a certain issue of fairness for the  
251 applicant as well. Her sense is that applicants feel they can just submit whatever they want to,  
252 right up until whenever they come and appear at a public hearing. That is unfair to the Board,  
253 and unfair to the public, whether they are abutters, interested parties, opponents, or whoever.  
254 She thinks they need a more solid rule for when items that are going to be entered into evidence  
255 at a public hearing need to be submitted. If someone cannot submit something prior to that 10-  
256 day period, then the applicant can always ask for a continuance because their study has not  
257 arrived on time or they cannot get their survey done, or whatever the cause. The Board needs  
258 to assist but they do not need to just drop everything.  
259

260 Mr. Gaudio stated that he thinks there are two different kinds of information that the abutter or  
261 another party might be supplying. One would be information in response to the applicant's  
262 original petition. The other is information that is in response to supplemental information  
263 provided by the applicant. Information that is responsive to the original application, in his  
264 opinion should be supplied within the same 10 days. The responsive information to the  
265 supplemental information should be later, whether it is, say, three days before or maybe no  
266 days before. If it is responsive information there ought to be some time for the abutter to be  
267 able to deal with that.  
268

269 Chair Gorman asked how the applicant would reply to the abutters. He continued that if the  
270 applicant has a certain amount of time, then the abutter has a certain amount of time and brings  
271 something three days prior that is "responsive information," the applicant [does not have time].  
272 To him, this is less restrictive. Currently, Mr. Rogers can just tell the applicant "This is what  
273 you have, this is what you gave us, and anything else you come in with [later] is up to the  
274 Board." Whereas [what Ms. Taylor proposes] says, "Here you go, thanks for applying; now  
275 you've got many more days to come bring more stuff."  
276

277 Mr. Rogers stated that the 10 days that Ms. Taylor proposed would put the timeline pretty close  
278 to the deadline as it sits now. He continued that Corinne Marcou could speak to this better than  
279 he could, because she knows the dates very well. If the Board desires, the 10 days is not a bad  
280 number for staff. Chair Gorman replied that it seems like it is fairly parallel with the current  
281 language then. It is just more specific, which could be a good thing. Mr. Rogers replied that is  
282 correct.  
283

284 Mr. Rogers stated that it is up to the Board's discretion, but if they want, staff could take the  
285 language Ms. Taylor has proposed and incorporate it. He continued that the Board could give  
286 staff direction regarding whether they want to include C. Staff can look at the meeting minutes,

287 take some of the Board members' suggestions for possible changes, and wordsmith this a bit,  
288 and then bring it back to the Board at next month's meeting.

289  
290 Mr. Hoppock suggested adding a section D. that says, "Nothing herein will deprive the Board  
291 of its discretion to rule on the admissibility of the additional information or whether to continue  
292 the hearing so the Board has sufficient time to review it." He continued that he thinks Chair  
293 Gorman is right that C. has the potential to open up floodgates (although that word may be  
294 overstating the case) of information from abutters and others. He has never seen an abutter  
295 bring voluminous amounts of documents to the Board to consider at a hearing. Sometimes  
296 pictures, but not such a voluminous amount that the Board cannot process it as they are sitting  
297 in the meeting. Mr. Gaudio mentioned the expert appraisal example – if an abutter says they  
298 have an appraiser who says their property value will go down, on a Variance case, that is  
299 something the Board wants to read. They might not be able to read it in five minutes during the  
300 meeting while the case is being heard. Therefore, something that preserves the Board's  
301 discretion to continue the hearing if they think that is appropriate is probably a good fourth  
302 section in this draft.

303  
304 Ms. Taylor asked Mr. Hoppock if B. does that. Chair Gorman replied it does not accomplish  
305 that with the abutters, though, only the applicants. Mr. Hoppock replied that he was really  
306 speaking about the abutters. He continued that B. accomplishes that with the applicant or the  
307 applicant's agent, but not with the abutters. Mr. Gaudio stated that he thinks they would have  
308 to either place B. after C. and make it broad to say both, or do an A. and B. for applicants and a  
309 C. and D. for abutters.

310  
311 Chair Gorman stated that the situations he is thinking of are the high-profile cases where the  
312 abutters do have a real dog in the fight. He continued that the Board has received Police  
313 reports from abutters, professional appraisal opinions, and large droves of people showing  
314 interest in a hearing and submitting letters that the Board might miss something in if they just  
315 quickly comb through them. He agrees that with 99% of the hearings, none of those issues  
316 arise, but he thinks C. offers some problems when they do arise. Maybe they could consider  
317 five days for part C., for final submittal from abutters. That gives them five days advance for a  
318 situation like Mr. Gaudio described, and the Board would still be able to accept the  
319 information. Inside the five day window the Board would decide for themselves if it was too  
320 much or not. If it is five small letters they can obviously take it, but if it is a slew of  
321 professional opinions, they would have to reconsider.

322  
323 Mr. Rogers stated that the only issue he sees with the five days is that many times the abutters  
324 are not noticed until five days before the meeting. He continued that therefore, by the time the  
325 notices get to them, they would have no time to do any research or produce documentations to  
326 submit. Mr. Gaudio replied that goes to the question of whether there is enough lead time in  
327 the whole process, or if it should be longer. Ms. Taylor replied that is partially the statutory  
328 time limits.

329

330 Chair Gorman suggested having no restrictions for abutters, but that the Board still has the right  
331 to consider whether the information is too much. He continued that if they just add that, that it  
332 is up the Board's discretion, as Mr. Hoppock was saying. It could be that all submissions by  
333 abutters have no time restraint; however, the Board does reserve the right to take extra time to  
334 review. Ms. Taylor replied that the only problem is they could potentially, since this is a public  
335 hearing, run into procedural due process issues. Chair Gorman replied that they have done that  
336 before, though. They canceled the whole Water St. hearing the night of because they had too  
337 much information. Ms. Taylor replied that it is one thing to postpone, and another thing to just  
338 simply deny. Chair Gorman replied no, he was talking about a continuance if they took in too  
339 much information from abutters.

340  
341 Mr. Gaudio stated that he worries that allowing an abutter to bring in a swarm of information  
342 with five minutes to go is a good way of delaying the process, if someone was thinking  
343 strategically. Chair Gorman replied that that would be up to the Board, if they thought that was  
344 the play being made. Mr. Gaudio replied that it would be okay as long as the Board had the  
345 ability to deny as well as postpone. Ms. Taylor replied that she is not sure they could have the  
346 ability to deny submission at a public hearing. Mr. Gaudio replied that if it does not meet the  
347 deadline they could, but they were talking about not having a deadline.

348  
349 Mr. Rogers stated that as a Board member mentioned, there are not many times when the Board  
350 receives a ton of information from abutters. He continued that most times it is letters of support  
351 or opposition to an application. At this point, staff's recommendation is to allow staff to draft  
352 something for the Board to consider, now that staff has heard this discussion. They could  
353 discuss it further next month with some proposed language. Chair Gorman replied that that  
354 sounds good to him.

355  
356 Mr. Welsh replied that he is in favor of that, too. He continued that all of the comments he has  
357 heard are very interesting and he is confident in staff's ability to weight and balance between  
358 them when they conflict. One that he would like to see emphasized is the preservation of the  
359 discretion of the Board to continue or not, based on the Board's comfort with the evidence  
360 provided.

361  
362 Mr. Hoppock stated that he assents as well. Chair Gorman replied that they will await staff's  
363 draft. Ms. Taylor replied that is fine with her, too.

364  
365 **V) New Business**

366  
367 **VI) Communications and Miscellaneous**

368  
369 **VII) Non-Public Session (if required)**

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373 **VIII) Adjournment**

374

375 There being no further business, Chair Gorman adjourned the meeting at 7:20 PM.

376

377 Respectfully submitted by,

378 Britta Reida, Minute Taker

# 26 FAIRBANKS ST. ZBA 21-12



**Image to the left:** Front of property at 26 Fairbanks St;

**Image below/right:** Rear of property at 26 Fairbanks St (photo taken from Wetmore St by City Staff on June 23, 2021).



Petitioner requests a Variance to permit a building lot of 5,583 square feet where 6,000 square feet is required per Section 102-791 of the Zoning Ordinance.



**City of Keene**  
*New Hampshire*

## **NOTICE OF HEARING**

### **ZBA 21-12**

A meeting of the Zoning Board of Adjustment will be held on Tuesday, July 6, 2021 at 6:30 PM in City Hall Council Chambers, 2<sup>nd</sup> floor, 3 Washington St, Keene, New Hampshire to consider the petition of Todd Bergeron of 4 West Hill Rd., Troy, NH, represented by Jim Phippard of Brickstone Land Use Consultants, 185 Winchester St., who requests a Variance for property located at 26 Fairbanks St., Tax Map #116-032-000-000-000; that is in the High Density District. The Petitioner requests a Variance to permit a building lot containing 5,583 square feet in the High Density District where 6,000 square feet is required per Section 102-791, Basic Zoning Dimensional Requirements of the Zoning Ordinance.

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

Corinne Marcou, Zoning Clerk

Notice issuance date June 23, 2021

# APPLICATION FOR APPEAL

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

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 21-12</u>
Date Filed	<u>6/18/21</u>
Received By	_____
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Reviewed By	_____

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

## TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

## **SECTION I - GENERAL INFORMATION**

Name(s) of Applicant(s) TODD K BERGERON Phone: C/O 357-0116  
Address 4 WEST HILL ROAD TROY NH 03465  
Name(s) of Owner(s) TODD K BERGERON  
Address 4 WEST HILL ROAD TROY NH 03465  
Location of Property 26 FAIRBANKS STREET

## **SECTION II - LOT CHARACTERISTICS**

Tax Map Parcel Number 116-032-000 Zoning District HD  
Lot Dimensions: Front 55.2' Rear 55.2' Side 98.48' Side 103.81'  
Lot Area: Acres .26 Square Feet 11,165 SF  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 12.8% Proposed 25.6%  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 20% Proposed 40%  
Present Use SINGLE FAMILY HOME  
Proposed Use UNMERGE LOTS - ADD SINGLE FAMILY HOME ON 2ND LOT

## **SECTION III - AFFIDAVIT**

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

James P. Phippard Date 06-18-2021  
(Signature of Owner or Authorized Agent)

Please Print Name JAMES P. PHIPPARD, AGENT





5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one because:

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

**PROPERTY ADDRESS 26 Fairbanks Street and 0 Wetmore Street**

**APPLICATION FOR A VARIANCE**

- A variance is requested from Section (s) 102-791, Table 1, Basic Zone Dimensional Requirements of the Zoning Ordinance to permit: A building lot containing 5583 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 11,165 sf lot (0.26 acres). The applicant is seeking to unmerge the lots and build a single family home on the second lot. When the lots are unmerged, each lot will be approximately 5583 sf +/- (0.13 acres). 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.

**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 +/- (5583 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 5583 sf +/- which is only 417 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.

ABUTTERS TO 26 FAIRBANKS STREET

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

116-013-000-000-000  
451 WINCHESTER STREET LLC  
549 US HWY. 1 BYPASS  
PORTSMOUTH, NH 03801

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

110-015-00  
TOBIN MICHELLE FAMILY TRU  
21 FAIRBANKS ST.  
KEENE NH 03431

110-017-000-000-000  
BANTAM REALTY TRUST LLC  
61 BRADFORD RD.  
KEENE, NH 03431

110-016-000-000-000  
KNOX EVERETT L.  
236 SOUTH RD.  
SULLIVAN, NH 03445

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

116-011-000-000-000  
COOK JOHN C.  
24 WETMORE ST.  
KEENE, NH 03431

116-009-000-000-000  
KONIG MARKUS S.  
18 WETMORE ST.  
KEENE, NH 03431

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

116-026-000-000-000  
DAVIS NANCY E.  
31 WETMORE ST.  
KEENE, NH 03431

BRICKSTONE LAND  
USE CONSULTANTS  
185 WINCHESTER ST.  
KEENE, NH 03431

116-032-000  
BERGERON TODD K  
4 WEST HILL ROAD  
TROY NH 03465

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

116-012-000-000-000  
LOWER FRED D.  
77 HALLWOOD DR.  
SURRY, NH 03431

116-010-000  
LOWER, FRED D  
77 HALLWOOD DR  
SURRY NH 03431

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

115-033-000-000-000  
NIEMELA GREGORY A.  
12 WETMORE ST.  
KEENE, NH 03431

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

116-029-000-000-000  
PARKHURST NORMAN E.  
17 WETMORE ST.  
KEENE, NH 03431

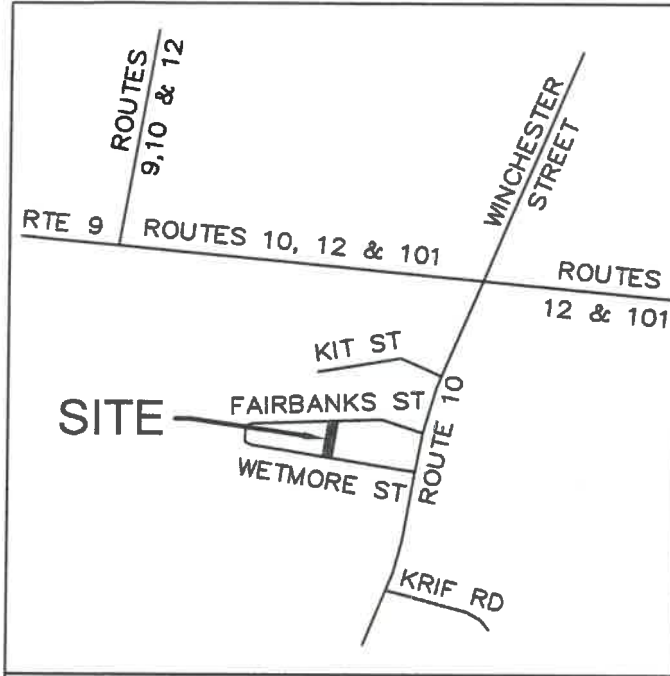
116-031-000-000-000  
HOOK DAVID G. SR. REV. TR  
22 FAIRBANKS ST.  
KEENE, NH 03431

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

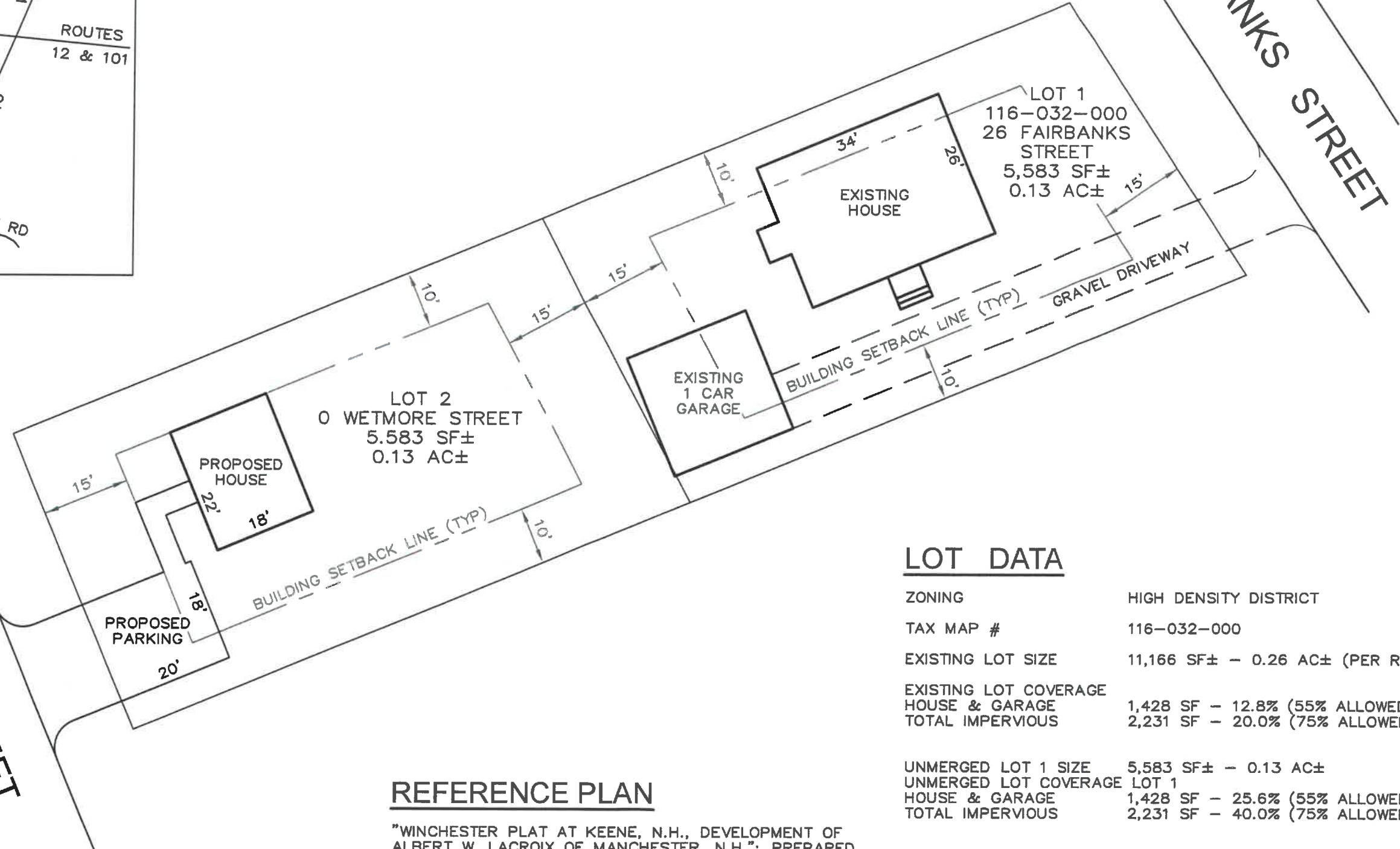
110-014-000-000-000  
JARVIS ROY J.  
25 FAIRBANKS ST.  
KEENE, NH 03431

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

116-028-000-000-000  
SELBY GENE L.  
21 WETMORE ST.  
KEENE, NH 03431



**LOCUS**  
NOT TO SCALE



**LOT DATA**

ZONING	HIGH DENSITY DISTRICT
TAX MAP #	116-032-000
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.