

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

AGENDA

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: May 2 2022
- III. Unfinished Business:
- IV. Hearings:
 - ZBA 22-11:** Petitioner, Thomas Bogar, represented by Dan Bartlett, of 185 Winchester St., requests a Variance for property located at 94 Key Rd., Tax Map #110-018-000-000-000 that is in the Commerce District. The Petitioners requests a Variance to permit the construction of an open, rigid canopy structure for customer weather protection 10 feet into the setback where 20 feet is required, per Chapter 100, Article 5.1.2 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

3
4
5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Monday, May 2, 2022**

6:30 PM

**Council Chambers
City Hall**

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh
Richard Clough

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Michael Hagan, Plans Examiner

9
10
11 **I) Introduction of Board Members**
12

13 Chair Gorman 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: April 4, 2022**
17

18 Ms. Taylor stated that she has a correction to line 95: the minutes state “especially if it can be
19 done in accordance with the latest Zoning requirements is possible,” and she thinks it should read
20 either “as is possible” or “which is possible.” She continued that there seems to be a dropped
21 word.
22

23 Mr. Welsh made a motion to approve the meeting minutes as amended. Mr. Hoppock seconded
24 the motion, which passed by unanimous vote.
25

26 **III) Unfinished Business**
27

28 Chair Gorman asked staff if there was any unfinished business. John Rogers, Zoning
29 Administrator, replied no.
30

31 **IV) Hearings**
32

33 **A) ZBA 22-06: Petitioners, John B. & Judith A. Hulslander Living Trust,**
34 **represented by James Phippard, of Brickstone Land Use Consultants, LLC,**

35 **requests a Variance for property located at 0 Belmont Ave, Tax Map #598-030-000-**
36 **000-000 that is in the Low Density District. The Petitioners requests a Variance to**
37 **permit a building lot containing 5,625 square feet with 50 feet of frontage, and 50**
38 **feet width at the building line in the Low Density District where 10,000 square feet**
39 **lot size, 60 feet of frontage, and 70 feet width at the building line is required, per**
40 **Chapter 100, Article 3.3.2 of the Zoning Regulations.**

41
42 Chair Gorman asked to hear from staff.

43
44 Mr. Rogers began by reminding the Board the need to determine whether there is a material
45 change for this application to proceed. He continued that the Applicant is applying for the same
46 Variance this property applied for in 1988, which was denied. There is an allowance for the
47 Board to hear this petition if a material change has occurred. Staff has asked the Applicant to
48 present their case as to what the material change in this situation would be.

49
50 Ms. Taylor stated that the Board does not have a copy of what the prior application. She asked if
51 Mr. Rogers could fill them in, asking if the Variance was solely limited to the lot size.

52
53 Mr. Rogers replied that the Variance request in 1988 was to build a single-family dwelling on the
54 lot that had the same square footage that it does today, 5,625 square feet. At that time, the square
55 footage requirement was 15,000 square feet and today it is 10,000 square feet. They also were
56 only going to have 50 feet at the building line where 80 feet was required at the time; today it is
57 70 feet. Reviewing the current application, it states 50 feet of frontage, which is the same as in
58 1988. The two petitions are identical with the only difference is that in 1988 the requirement was
59 15,000 square feet and today it is 10,000 square feet in the Low Density District.

60
61 Chair Gorman asked if anyone had further questions for staff. Hearing none, he asked to hear
62 from the Applicant.

63
64 Jim Phippard of Brickstone Land Use Consultants stated that he is here on behalf of the John and
65 Judith Hulslander Living Trust. He continued that Mr. Rogers described what the material
66 change was, the change in the zoning dimensional requirements that occurred, he thinks, in 1986.
67 They applied for a Variance in 1988, which was denied, where 15,000 square feet was required
68 and this lot is only 5,625 square feet. The material change, which he believes is significant
69 enough to justify hearing another Variance application, is the change in the dimensional
70 requirement to 10,000 square feet.

71
72 Mr. Phippard continued that the Board should be aware of this lot's history. This lot was created
73 in 1924, as part of an approved subdivision, which he has a copy of from the Cheshire Count
74 Registry of Deeds. Back in the day, when they subdivided properties, they would do slivers of
75 land, 25 feet wide and varying in length. In the area where Belmont Ave. was constructed, they
76 did 112 of these lots, 25 feet wide. People would buy between two to five lots, combine them,
77 and build a house. That is how the neighborhood was developed. Belmont Ave. was developed

78 as a City street. The subdivision, at that time, called for other streets – Neil St., Amherst St., and
79 Princeton St., which were never constructed. They became lots in private ownership, City-owned
80 properties for possible future right-of-ways or utility corridors. In 1959, the Hulslanders
81 purchased two of the lots on Belmont Ave., which he pointed out were are outlined in red/pink
82 on the presented plans. They are lots 32 and 33 in the original subdivision. At that time, this
83 property was zoned “Single Family District” and the minimum lot size was 4,000 square feet. By
84 buying two parcels, the Hulslanders exceeded the minimum lot size and had a legal building lot.
85 In the 1970’s there was another major zone change, changing the minimum lot size to 10,000
86 square feet and changed the name of the Single Family District to the Low Density District.
87 Thus, Low Density required a minimum of 10,000 square feet and the Hulslanders have 5,625
88 square feet. They applied for and received a Variance in 1980 to build a house on the property.
89 When 10,000 square feet was the minimum lot size, the Board made determinations that the
90 Hulslanders met all the criteria and were entitled to a Variance. Then in the 1980’s, the change
91 went to 15,000 square feet, which became such an extreme difference that the Board was not
92 comfortable, and denied the Variance application. Going back to the 10,000 square feet is a
93 significant, material change that justifies rehearing the Variance application.
94

95 Mr. Hoppock asked Mr. Phippard to repeat the dates of the two Variances, the one that was
96 granted and the one that was denied. He also asked for an explanation to the Variance that was
97 granted. Mr. Phippard replied that the one that was granted, in 1980 expired prior to the owners
98 acting on the property, further explaining that at the time, approvals were valid for 6 months. At
99 the end of 6 months, the Hulslanders applied for and were granted an extension. That Variance
100 was thus valid for one year. At that time, the Hulslanders could not afford to build a house, so the
101 Variance lapsed. It was not until 1988 that they decided to try again, and at that time, the
102 regulations were “going in the wrong direction,” depending on your perspective. People thought
103 Keene was growing too fast, and proposed changes to the regulations to slow it down. One of the
104 ways to do that was to create larger lots.
105

106 Mr. Hoppock asked if that was when the 15,000 square foot minimum came into effect. Mr.
107 Phippard replied yes, and he believes it was 1986. He continued that the Hulslanders applied to
108 the Board in 1988 and were denied. He reviewed the records, and minutes of the meeting, stating
109 the denial was mostly because the Board at the time thought that lot size was so extreme. He
110 stated that the Board was requiring larger lots, where now they are not with the pendulum has
111 swung the other way. Now, they are running out of building lots and buildable land, and
112 recognizing that we need to make lots available at a reasonable price so people can afford to stay
113 in the community. We can have workers in the community. Young people, our children, can
114 afford to buy or build a home and stay in the community. The City Council and the City of
115 Keene are increasingly pressured to find ways to make that happen. In his office, he is seeing
116 more and more applications for in-fill development, lots that were left over in subdivisions for
117 whatever reason. Now he is seeing those people come forward, wanting to know if now is the
118 right time to build on these properties. He is seeing more marginal land areas, like steep slopes
119 and areas with wetlands, get proposals for development. The community is trying to respond.
120 The Hulslander family felt that this is the time for them to come back to their lot, which they

121 have held onto since 1959, paying taxes all those years on the property that was too small to put
122 in current use.

123
124 Mr. Phippard asked if he could now proceed with the Variance criteria. Chair Gorman replied
125 that the Board needs to deliberate first, and vote on whether it is actually a material change.

126
127 Ms. Taylor asked if it makes a difference to Mr. Phippard whether the particular lot they are
128 looking at today or whether the Zoning provision required 6,000, 7,000, or more square feet. Mr.
129 Phippard replied that it could make a dramatic difference, depending on the property. Ms. Taylor
130 replied that she is only talking about this property. She asked if he would still need to come in to
131 request a Variance. Mr. Phippard replied yes, unless it dropped below 5,625 square feet, they
132 would need a Variance.

133
134 Mr. Welsh asked for clarification/confirmation that both Variances, the one that was denied and
135 the one that was approved, were heard before a Zoning Board like this one. Mr. Phippard replied
136 the Keene Zoning Board of Adjustment heard them.

137
138 Mr. Hoppock asked what makes this change, from 10,000 square feet to 15,000 square feet,
139 material. He is having a hard time understanding that. He asked if there are any cases on this,
140 because he did not have time to research. Mr. Phippard replied that in reading the minutes of the
141 1988 meeting, and the testimony that was heard, he sees that when 15,000 square feet was the
142 minimum lot size, that was the direction of the City, with larger building lots. The Zoning Board
143 in 1988 felt that at 5,625 square feet, it was roughly a third of the minimum lot size, and that was
144 too extreme. Now with a required minimum of 10,000 square feet, the Hulslanders are at a little
145 over half of the required minimum lot size. Looking closer at this, you can see that depending on
146 the lot and the lot constraints, it can make a huge difference based on the size of the property.
147 Mr. Phippard questioned if it is adequate to build a single-family house and meet the other
148 dimensional requirements in the zone with a lot size of 0,000 square feet, with setbacks of 10
149 feet on the sides, 20 feet in the rear, and 15 feet in the front. He continued that it is possible to
150 build a conventional, single-family home, by today's standards, on that property, and still meet
151 the dimensional requirements of setbacks and lot coverage. In his mind, that is of major
152 significance and would make this lot eligible to be built on, because it meets all of the criteria
153 other than lot size. A homeowner living on this lot would just have a smaller lawn to mow.

154
155 Chair Gorman stated that he thought they were saying it needed 60 feet of frontage and has 50
156 feet. Mr. Phippard replied yes, that is the second part of the zone dimensional requirements this
157 lot does not conform too. There is 70 feet width at the building line, 60 feet of lot frontage, and
158 then the 10,000 square foot lot size. Chair Gorman asked if it meets the setback requirements.
159 Mr. Phippard replied that it could still meet all the setback requirements. Chair Gorman asked if
160 that has changed. He asked if it still would have met the setback requirements under the old
161 zoning requirements of 15,000 square feet. Mr. Phippard replied that he did not look at that, but
162 he has that information in his office, because he kept all the old regulations over the years. He

163 asked if Mr. Rogers knows. Mr. Rogers replied no, he does not have that information readily
164 available.

165
166 Chair Gorman asked if there were any other points Mr. Phippard wanted to make before the
167 Board deliberates. Mr. Phippard replied no. Chair Gorman asked if anyone had further questions
168 for Mr. Phippard. Hearing none, Chair Gorman stated that the Board needs to determine whether
169 they deem this a substantial change that actually does impact the initial decision.

170
171 Ms. Taylor stated that she does not see a material change. She continued that the standard set in
172 Fisher v. Dover was that in order to be considered, the successive Variance proposal has to
173 *“demonstrate (1) a material change in the proposed use of the land, or (2) material changes in*
174 *the circumstances affecting the merits of the application.”* There does not appear to be a material
175 change in the use of the land. The question before the Board is whether the change in the Zoning
176 Ordinance for the amount of land that will support a single-family dwelling affects the merits of
177 the application. Her opinion is that it does not, because whether it is 15,000 square feet, 10,000
178 square feet, or 6,000 square feet, you still have the same circumstances affecting the underlying
179 merits of the application.

180
181 Mr. Welsh stated that not having been presented with any of the other factors that may be
182 weighing in, such as setbacks, and frontages, he looks at the behavior of the two prior Board’s
183 that have considered this. He continued that the denial by the second Board, under circumstances
184 when 15,000 square feet was the minimum lot size, is different from the approval of the Board
185 prior to that when it was 10,000 square feet. He assumes that this is enough of a material change
186 to warrant denial by one, as opposed to approval by a prior. The requirement moving back to
187 10,000 square feet, therefore, to him seems like material change of the same sort, although in the
188 opposite direction. He is inclined to see this as a material change, of the second kind that Ms.
189 Taylor mentioned.

190
191 Chair Gorman stated that with the history of this property, and now the return to a 10,000 square
192 foot minimum, so he thinks there is a good case for considering this application. He continued
193 that they still have to treat it as a Variance and walk through all the criteria.

194
195 Mr. Hoppock stated that he tends to agree with Ms. Taylor on the point of materiality, for the
196 reasons she stated. He continued that he sees Chair Gorman’s point, too, but just does not think
197 that one change is sufficient and material. Chair Gorman replied that he could see that point as
198 well. Mr. Clough stated that he could see both points, too.

199
200 Mr. Hoppock made a motion for the Zoning Board of Adjustment to find that there is a material
201 change in circumstances. Chair Gorman seconded the motion, which passed with a vote of 3 to 2.
202 Mr. Hoppock and Ms. Taylor were opposed.

203
204 Chair Gorman stated that the Board will consider the application, and asked to hear from Mr.
205 Phippard.

206

207 Mr. Phippard stated that because of the zone changes that occurred over the years, most of this
208 existing neighborhood on Belmont Ave. and Colby St. have become non-conforming. The
209 subdivision was created in 1924. Most of the lots were purchased and homes were built
210 throughout the 1930's through 1960's. The neighborhood was well built. Today, this is the last
211 remaining vacant lot on Belmont Ave. Looking at the dimensions and square footage for each of
212 these properties today, it will be obvious that 68 of the properties along Belmont Ave. and Colby
213 St. vary in lot size from 0.129 acres to 0.63 acres. Forty-eight of those 68 lots are non-
214 conforming due to lot size and are smaller than the size required, even when the requirement is at
215 10,000 square feet. He thinks there was only one conforming lot when it was at 15,000 square
216 feet. This is the character of the neighborhood and it is well established. That is important to
217 understand.

218

219 Mr. Phippard went through the criteria.

220

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

222

223 Mr. Phippard stated that the public interest today, in the City of Keene in general, not just of the
224 neighbors who do not want to see this lot developed, is to make building lots available to
225 members of the community. He continued that Keene needs housing and affordable lots, and
226 obviously, a small lot is more affordable than a 5-acre lot would be in Keene. That will enable
227 people to build more housing and allow people and their children to stay in Keene, and allow
228 workforce housing to be created. This neighborhood is close to Markem Co. and the Industrial
229 Park area off Optical Ave. This neighborhood was created as workforce housing. It is in the
230 public interest to allow a vacant lot in this neighborhood to be developed, provided that it can
231 meet all the other criteria. The Applicant proposes building a single-family home on this lot,
232 which is just under 0.13 acres. Belmont Ave. has three other developed lots of the same size,
233 which were built, he believes in the 1950s and 1960s, as legal lots at that time and became non-
234 conforming as the Zoning Ordinance changed. Many lots of this size exist in the neighborhood
235 and to his knowledge, have created no problems being developed at that lot size.

236

237 Mr. Phippard continued that that he was alluding to earlier, in answering Ms. Taylor's question
238 about whether the size of the lot makes a difference, that it can make a difference. If there is a
239 steep slope, wetland area on the property, ledge outcrops, etc., that can make a big difference on
240 the viability of building on the lot. This lot does not have any of those constraints. It is flat, level,
241 and has sandy soil. City water and sewer exist on Belmont Ave. and would be adequate to
242 support another house constructed here.

243

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

245

246 Mr. Phippard stated that the Land Development Code says the intent of the Low Density District
247 is "to allow single-family homes, low intensity development, on lots with City water and City
248 sewer." He continued that is exactly what this property is; a lot that could support a single-

249 family house on City water and City sewer, and can meet the setback and lot coverage
250 requirements. He thinks this lot clearly meets the spirit of the Ordinance as a low-density lot.

251
252 3. *Granting the Variance would do substantial justice.*

253
254 Mr. Phippard stated that when the lots were created, and when the Hulslander family purchased
255 them in 1959, they were legal building lots. He continued that it became a non-conforming lot
256 due to changes in the Zoning regulations, so through no fault of their own, the Hulslanders' legal
257 building lot became non-conforming. That is why in 1980 they had to apply for a Variance to
258 build a house. Unfortunately, they were not able to act on that Variance and it expired. They
259 reapplied, but the regulations had changed, and their Variance request was denied. Now that the
260 City is back to a 10,000 square foot minimum, it is the same situation where the Variance was
261 granted in 1980. It would do substantial justice to allow the Hulslanders to construct a single-
262 family home on this lot.

263
264 4. *If the Variance were granted, the values of the surrounding properties would not be*
265 *diminished.*

266
267 Mr. Phippard stated that the existing neighborhood is all built out with three other lots exactly
268 the same size, with single-family homes, and this lot can be developed with no significant effect
269 on property values in the area. He continued that an abutter expressed concern that if this became
270 a rental unit with an inattentive landlord, it could create a situation where property values could
271 be negatively affected, if people living there are not taking care of the property. That is not the
272 intent. Mr. Hulslander wants to give this lot to his daughter, Wendy, and she wants to build a
273 single-family home, which will be for sale. She will not construct a rental unit in this location.

274
275 Mr. Phippard continued that in 1990, Powers Appraisal was asked to look at the impact of
276 putting a single-family house on this property, which they did, providing a letter at that time. He
277 did not turn it in as part of this application, because he did not think he would need it. He knows
278 the Board does not like to get information last minute, but he wants the Board to have it for the
279 record.

280
281 Ms. Taylor stated that under the Board's revised rules, they need to vote on whether to accept
282 that letter. She continued that the letter is 30 years old.

283
284 Mr. Phippard stated that he would ask the Board to consider that there have been no changes in
285 the neighborhood, other than the dimensional requirements, because it is a full, built out
286 neighborhood. There have been no other homes built, and he thinks that the conditions that Mr.
287 Powers reviewed are still in place today.

288 Chair Gorman stated that his inclination would be not to accept the letter. He continued that they
289 are hearing this Variance request because there has been a change in circumstances, and now
290 they are being asked to accept documentation of old circumstances, which they are also being

291 asked to overlook as irrelevant. His inclination is to not put it on the record. He does not think
292 they can process it properly, either.

293

294 Mr. Hoppock asked if Mr. Phippard could tell them what the letter says. He continued that he
295 would like to see the letter, if Mr. Phippard thinks it is important enough to show them. He may
296 not give it any weight, but would like a summary of the letter.

297

298 Mr. Phippard stated that Richard Powers wrote the letter, as the owner of Powers Appraisal, who
299 has since retired. The conclusion of his letter, in large, bold print, says, "*The placement of a*
300 *modest home on the Hulslander property does not change the density or character of the*
301 *neighborhood, and does not cause a diminution of value to the neighborhood as a whole.*"

302

303 Ms. Taylor stated that she agrees with Chair Gorman and is inclined not to accept it, primarily
304 because it is 30 years out of date. She continued that she has dealt with a number of assessors,
305 and not many would be willing to approve of what they said 30 years ago without further
306 investigation.

307

308 Chair Gorman stated that also, given that Mr. Phippard has himself voiced how much things
309 have changed since 1990, there are too many variables to accept something 32 years old.

310

311 Mr. Welsh stated that it looks like a long letter, and he is inclined to go with the Board. He
312 continued that he thinks they can deliberate and make a decision in the absence of the letter.

313

314 Chair Gorman asked for a vote on whether to admit the letter. The Board members unanimously
315 opposed.

316

317 Mr. Phippard thanked the Board for considering the letter, and stated that regarding property
318 values, he wants to show an example. He presented a prepared sketch, and stated that it shows a
319 lot 50 x 112.5 feet, labeled on the plan, and drawn to scale. He continued that it is a single-family
320 home, 24.5 feet wide and 50 feet long. He showed the setback lines as 10 feet on the side, 15 feet
321 in the front, and 20 feet in the rear, clarifying that it fits easily within the setback lines. A
322 driveway leads to what would be a single-car garage, directly in from Belmont Ave. He
323 continued that the total lot coverage calculations is a little over 33% and the Low Density
324 District allows 55%. Mr. Phippard stated that this single-family house on a property lot meets the
325 front and rear setbacks, with room for landscaping around the building, room for a driveway and
326 safe access in and out. This is a flat, level lot, with good, sandy soils, with the ability to connect
327 to City water and sewer. He thinks a new home would not negatively affect property values in
328 the area.

329

330 Mr. Phippard continued that an abutter interestingly wrote in their letter that if this were a new
331 home offered for sale, given the current sale prices, it may raise property values in the area,
332 affecting neighborhood property taxes. Thus, it is the opposite of a diminution in value. He hopes
333 abutters' property taxes do not go up because of this, but he thinks it would be an improvement

334 to the property value on this lot, and thinks it will have no negative effect on property values in
335 the neighborhood. Again, eight lots away on Belmont Ave. are three other lots exactly the same
336 size. He does not believe they have had a negative effect on the property values.
337

338 5. *Unnecessary Hardship*

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

341 i. *No fair and substantial relationship exists between the general public purposes of the*
342 *ordinance provision and the specific application of that provision to the property because:*
343

344 Mr. Phippard stated that clearly, a special condition was created on this property when the zone
345 requirements changed. He continued that the City does not single out properties to do this to; this
346 happens all the time as changes occur in zoning. In this particular neighborhood, this is the last
347 undeveloped lot, that makes it unique in the neighborhood. Then the City changed the zoning
348 regulations, which makes it impossible to do any building on this lot without a Variance.
349

350 *and*

351 ii. *The proposed use is a reasonable one because:*
352

353 Mr. Phippard stated that the Board saw that a single-family home does fit, does meet the
354 setbacks, does meet the lot coverage requirements, and can be an asset on Belmont Ave. rather
355 than just a vacant lot. He continued that he is happy to answer questions.
356

357 Chair Gorman stated that regarding the site proposal with the structure and setbacks, it is his
358 understanding, and maybe it changed in the new Zoning Code, that parking needs to be behind
359 the front line of a house. He asked Mr. Rogers if that is no longer in effect. Mr. Rogers replied
360 that there are two options, and one is that it would have to be behind the front setback. He
361 continued that many older homes sit within that front setback; that is where that front building
362 line parking requirement comes into play.
363

364 Mr. Welsh stated that the Board received, via email this afternoon, letters from neighbors on this
365 case. He asked if the same situation applies to admitting those letters as part of the record, as the
366 letter Mr. Phippard requested go in the record. Chair Gorman replied that the Applicant has a
367 deadline for submittal, but people contesting or supporting the application do not. Mr. Rogers
368 replied that is correct. He continued that many times letters come from people who are not able
369 to attend the meeting, and historically they have accepted the letters of support or opposition.
370

371 Mr. Phippard stated that he has a clarification to add in relation to the parking for this lot. Mr.
372 Rogers mentioned that parking requirement is behind the front setback; Mr. Phippard referenced
373 the single-family home drawing, stating that there is adequate room on the property and in the
374 garage to park well, which is behind the front setback line.
375

376 Ms. Taylor asked how many bedrooms the 24.5' by 50' proposed dwelling unit has. Mr.
377 Phippard replied that the actual house is in design, but continued that if it were a single story
378 ranch, it would probably be a two-bedroom. If it were a two-story or a Cape-style, which it could
379 be, there would be space for three bedrooms. Ms. Taylor stated that you would need two parking
380 spaces, one of which could be in the garage. She asked how long the driveway is. Mr. Phippard
381 replied that the drawing is to scale. Mr. Rogers replied that Ms. Taylor is correct that a dwelling
382 unit would require two parking spaces, depending, and he would stress that at this point, this is
383 just a proposed drawing. He continued that if this Variance were approved, and a building permit
384 were submitted, it could be something completely different. He wants it to be clear that behind
385 the front setback you would need 18 feet in order for it to be considered a parking space.
386 Alternatively, there could be a two-car garage built underneath the structure. Mr. Phippard stated
387 that the front of the building, or the entrance to the garage, is about 27 feet behind the front
388 setback line, thus, there is more than adequate parking. There is also room to widen the driveway
389 providing space for two cars side by side.

390
391 Chair Gorman asked to hear from the public, beginning with anyone in support of this.

392
393 William Hope of 43 Belmont Ave. stated that he lives across from said lot, and he does not see
394 any problem with John Hulslander building a house here.

395
396 Chair Gorman asked if anyone wanted to speak in opposition to this proposal. Hearing none, he
397 stated that he would read the letters into the minutes. He continued that three have very similar
398 content. Mr. Rogers replied yes, all three have the same bullet points.

399
400 Chair Gorman read:

401
402 *"To: Members of the Zoning Board*
403 *Re: ABA 22-06*

404
405 *We went through this years ago; the lot size has not changed since then and is still too small for*
406 *zoning requirements. Why are we doing this again??*

407
408 *Sincerely,*

409
410 *Dennis W. Lackenal*
411 *29 Belmont Ave.*
412 *Keene, NH 03431*

413
414 *4/29/22"*

415
416 *"Chair of the Zoning Department*
417 *City of Keene*
418 *3 Washington St.*

419 *Keene, NH 03431*

420

421 *4/29/22*

422

423 *Re: ABA 22-06*

424

425 *To: Members of the Zoning Board*

426

427 *I am writing in agreement with other abutters to O Belmont Ave. to share my concerns regarding*
428 *the request for a variance by John B. and Judith A. Hulslander Living Trust to build a home on*
429 *this lot. My objections to the request to build a house on this property are as follows:*

430

431 • *The size of the lot does not conform to the current zoning requirements.*

432 • *Construction of a house will cause long term disruption to the existing neighborhood.*

433 • *Plans for the building do not indicate number of floors.*

434 • *This house might be built for immediate resale of the property, thus raising the value and*
435 *having an impact on neighboring tax levels, or it could be used for rental purposes lowering the*
436 *value of neighboring homes.*

437 • *Those who live opposite and adjacent to this property want to keep this space open to avoid*
438 *overcrowding and retain the aesthetic sense of open space in the neighborhood.*

439

440 *Sincerely,*

441

442 *Sally Luksevish/Houghton*

443 *37 Belmont Ave., Keene, NH*

444

445 *04-30-22”*

446

447 *“Chair of the Zoning Department*

448 *City of Keene*

449 *3 Washington St.*

450 *Keene, NH 03431*

451

452 *4/29/22*

453

454 *Re: ABA 22-06*

455

456 *To: Members of the Zoning Board*

457 *I am writing in agreement with other abutters to O Belmont Ave. to share my concerns regarding*
458 *the request for a variance by John B. and Judith A. Hulslander Living Trust to build a home on*
459 *this lot. My objections to the request to build a house on this property are as follows:*

460

461 • *The size of the lot does not conform to the current zoning requirements.*

- 462 • *Construction of a house will cause long term disruption to the existing neighborhood.*
463 • *Plans for the building do not indicate number of floors.*
464 • *This house might be built for immediate resale of the property, thus raising the value and*
465 *having an impact on neighboring tax levels, or it could be used for rental purposes lowering the*
466 *value of neighboring homes.*
467 • *Those who live opposite and adjacent to this property want to keep this space open to avoid*
468 *overcrowding and retain the aesthetic sense of open space in the neighborhood.*

469
470 *Sincerely,*

471
472 *Dennis W. Lachenal and Sandra Lachenal*
473 *29 Belmont Ave., Keene NH*

474
475 *4/29/22”*

476
477 *“Chair of the Zoning Department*
478 *City of Keene*
479 *3 Washington St.*
480 *Keene, NH 03431*

481
482 *4/29/22*

483
484 *Re: ABA 22-06*

485
486 *To: Members of the Zoning Board*

487
488 *I regret that I am unable to attend the meeting in person because I will be taking care of my*
489 *handicapped daughter that evening so I am writing, along with other abutters to 0 Belmont Ave.,*
490 *to share my concerns regarding the request for a variance by John B. and Judith A. Hulslander*
491 *Living Trust to build a home on this lot. My objections to the request to build a house on this*
492 *property are as follows:*

- 493
494 • *The size of the lot does not conform to the current zoning requirements.*
495 • *Construction of a house will cause long term disruption to the existing neighborhood.*
496 • *Plans for the building do not indicate number of floors.*
497 • *This house might be built for immediate resale of the property, thus raising the value and*
498 *having an impact on neighboring tax levels, or it could be used for rental purposes lowering the*
499 *value of neighboring homes.*
500 • *Those who live opposite and adjacent to this property want to keep this space open to avoid*
501 *overcrowding and retain the aesthetic sense of open space in the neighborhood.*

502
503 *Recognizing the burden of paying taxes on a non-conforming piece of property, if the petition*
504 *fails, I would be willing to consider purchasing the land at its appraisal value of \$3,600 to keep*

505 *it as open space adjoining my property at 21 Colby St., depending on the amount of annual tax*
506 *paid for it.*

507
508 *Sincerely,*

509
510 *Lucy G. Truslow*
511 *21 Colby St.*
512 *Keene, NH 03431*

513
514 *Date: April 30, 2022”*
515

516 Chair Gorman asked if Mr. Phippard wanted to speak in response to the letters.

517
518 Mr. Phippard stated that he is glad to see people take the time to express their concerns to the
519 Board because many times, there is no public input. He answered the first four
520 questions/concerns already. Regarding the last comment, that those who live adjacent to the
521 property want to keep this space open to avoid overcrowding and retain the aesthetic sense of
522 open space, he thinks if he lived next to this lot, he would want to keep it open, too. That is
523 human nature; people enjoy the sense of space where they live, especially if they are out in the
524 yard. You want to enjoy your property and not have to fence it in to maintain your privacy.
525 However, at the same time, it is not fair to a landowner to lose their rights to use their property if
526 they can comply with the dimensional requirements, and use it in a way that maintains the
527 character of the neighborhood and the sense of space in the neighborhood, and he thinks this
528 proposal does that. He hopes the Board does not agree with that last concern, because that is an
529 injustice to the property owner. He hopes they can grant the Variance and allow this to proceed.

530
531 Mr. Hoppock asked Mr. Phippard what other reasonable use this property could there be for this
532 property, in this area. Mr. Phippard replied that he discussed that with Mr. Rogers prior to the
533 meeting. He continued that the list of principal uses is not long in the Low Density District.
534 Single-family residence is the primary use. Small group home is also on the list, but it is subject
535 to a Conditional Use Permit from the Planning Board, and difficult to receive, depending on the
536 circumstances. Other uses are a community garden or a conservation area. A .13-acre lot is not a
537 significant land area for a conservation parcel. Most conservation parcels in Keene are very large
538 tracts of land or adjacent to other conservation areas, creating a significant resource for wildlife
539 habitat, recreation, hiking trails, etc. This property is not appropriate for that. It is a small lot to
540 be a community garden. His vegetable garden behind his house, for example, would just barely
541 fit on this lot. He does not think that is realistic for a community garden. He thinks a single-
542 family home is the only reasonable use for a property like this, especially since it is in the middle
543 of an existing single-family neighborhood. The only way the Hulslanders can do that is through a
544 Variance.

545
546 Chair Gorman asked if there were any further questions. Hearing none, he closed the public
547 hearing and asked the Board to deliberate on the criteria.

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

Mr. Welsh stated that to reiterate what he has heard from the Applicant, there does seem to be a short supply of building lots in Keene. It seems to indicate that the public interest is in finding building lots. He was on the committee that put the last Master Plan together, and there was an emphasis on encouraging in-fill development to look for small parcels of land that could possibly be developed. That was considered a good thing. Thus, he comes down on the side of this being in the public interest.

Ms. Taylor stated that to provide counterpoint, not every square foot of land is appropriate for construction or in-fill. She continued that “paving paradise” and putting up houses is not necessarily the way to go. Just because it is there, does not mean it is appropriate.

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

Mr. Hoppock stated that this is a classic illustration of the relief valve they are supposed to exercise when they grant a Variance. He continued that someone has owned this property longer than he has been alive, paying taxes on it. They had an opportunity to develop it, but for whatever reason did not, and he does not hold that against them. The Variance expired, and they are back again, for the second time in 30 years. He does not think a single-family dwelling would alter the essential character of the neighborhood, nor is it a Variance that would threaten public health, safety, or welfare. He thinks the first two criteria are met, and is rather persuaded that the rest of them are as well. He asked Mr. Phippard what other uses there are for this property, in this zone, and thinks that a community garden is not realistic. That is not what a property owner expects when they exercise their right to own property and have it protected from unreasonable denials of reasonable uses. He thinks a Variance is in order in this case.

Chair Gorman stated that he agrees and thinks that this is in likeness with the neighborhood. He thinks the concerns voiced by abutters are not valid, because any house in Keene could be rented. You do not need to say how many floors you are going to build, if the house is a reasonable use. Traveling on Belmont Ave., it is evident that this will be consistent with what is there. The lot has the ability to connect to City water and sewer, and this would not create safety issues or traffic issues. It will be a single-family home, tucked amongst other single-family homes, all on similar lot sizes, as Mr. Phippard illustrated and articulated. He is inclined to favor this Variance application.

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

Mr. Hoppock stated that he has a hard time seeing what the gain to the public would be if this Variance were denied, and the loss to the individual is significant, because these people have not had an opportunity to develop their land in any fashion, aside from the instance in 1980. He thinks that substantial justice requires that the individual loss here would be significant and not outweighed by any gain to the public by leaving it the way it is.

591
592 Ms. Taylor stated that they have not heard any testimony from the property owner, and she has
593 no idea what the development potential thought process would have been on the part of the
594 property owner. Thus, it is hard to judge the substantial justice portion of it, because they do not
595 have any testimony as to what the intent of the property owner was when the property was
596 purchased. She does not know if any of these lots have been merged. Some lots look as they
597 were probably purchased together and then combined, but she does not know. The Board has a
598 complete lack of information on this criterion.

599
600 Chair Gorman asked if it is correct that this was a building lot in 1959 and met Zoning criteria at
601 that point. He asked if that is Ms. Taylor's understanding. Ms. Taylor replied that it may have
602 been, and quite possibly was, but she is not sure if that is relevant today.

603
604 4. *If the Variance were granted, the values of the surrounding properties would not be*
605 *diminished.*

606
607 Mr. Welsh stated that he thinks he has heard evidence on all sides of this one, from the quick
608 description of the letter from 1990 to the testimony of the abutters indicating property values
609 could go up or property values could go down, all of which presumes development of the
610 property. It is also reasonable to wonder what happens to home values if the property is not
611 developed. The Board has looked at a number of cases over the past couple months regarding
612 vacant lots that were not well cared for and seen as diminishment of the surrounding property
613 values, which is a trajectory this property could go if it stayed vacant. He does not think the
614 Board has much evidence that this Variance would do bad things to property values. If he had to
615 come down on one side or the other, he guesses that it would be consistent with the
616 neighborhood and probably break even on property values.

617
618 Mr. Hoppock stated that to add to that, if the owners carry out their plan, which is to build a
619 Cape-style or ranch-style single-family residence, odds are significant that it would enhance the
620 values of the immediate area, including that of the owners. He continued that he is persuaded that
621 this criterion is met.

622
623 5. *Unnecessary Hardship*
624 A. *Owing to special conditions of the property that distinguish it from other properties in the*
625 *area, denial of the variance would result in unnecessary hardship because:*
626 i. *No fair and substantial relationship exists between the general public purposes of the*
627 *ordinance provision and the specific application of that provision to the property*
628 *and*
629 *ii. The proposed use is a reasonable one.*
630 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
631 *hardship will be deemed to exist if, and only if, owing to special conditions of the property that*
632 *distinguish it from other properties in the area, the property cannot be reasonably used in strict*

633 *conformance with the ordinance, and a variance is therefore necessary to enable a reasonable*
634 *use of it.*

635
636 Ms. Taylor stated that she is probably in the minority, but to echo what Mr. Welsh stated, the
637 Board consistently sees requests for Variances on properties that are too small to develop in the
638 zones in which they exist. She continued that she took the time to go through some past case law.
639 What they say, in summary, going back since before the first time this property had a Variance,
640 was that the important first criteria is: is the property unique in its environment. Mr. Phippard
641 demonstrated well that this parcel is not unique in its environment, because of the 68 parcels;
642 there are not just those three others of the same size that he pointed out, but many parcels that do
643 not mean the current standards, whether they are built on or not. She does not find that this
644 particular parcel of land is unique in its setting. The case law supports that by saying that a parcel
645 is not unique just because it does not have something, like a building or a garage, if it is the same
646 size as all of the other lots in the area. She thinks the Board should apply the appropriate
647 standard and not just approve everything because “Gee, it’s the only vacant lot around.”
648

649 Mr. Hoppock stated that he disagrees slightly. He continued that he thinks the lot can be claimed
650 as unique because it is undeveloped and can be built within the confines of the setbacks. He is
651 not sure about the other three, if they are in Variance to those measurements either and that
652 might be useful to know, but that unique setting of the property and the fact that there is no other
653 reasonable use for this property is what bothers him. He is happy to condition approval of this on
654 the construction of a single-family dwelling, if that assuages fears. A home the size of what Mr.
655 Phippard described fits right into this neighborhood.

656
657 Chair Gorman stated that he agrees with Ms. Taylor’s points that this lot is not unique in size, but
658 it is unique in vacancy. He thinks that 5.A.ii. is met - the use is reasonable, simply because the
659 use exists everywhere around it. If it was not reasonable at one point, it is now, given that it will
660 be the same as everything around it once it is developed. The 5.A.i. criterion is more difficult, in
661 terms of uniqueness, but 5.B., special conditions that distinguish it from other properties, is easy
662 to see. All the other properties have been afforded a use, this one has not. He understands that
663 case law probably does side with what Ms. Taylor is saying, but he also thinks there is ample and
664 adequate case law for the granting the property some form of reasonable use and that would go
665 further than a community garden. He thinks this property meets the criteria of 5.B.

666
667 Ms. Taylor stated that that goes back to what is called a “Grey Rocks decision.” She continued
668 that what comes first under that is that the land be unique, but also that the hardship is the result
669 of some unique condition of the land and not the personal circumstances of the owner. She thinks
670 this is the personal circumstances of the owner, so she does not think it meets 5.B., either.

671 Chair Gorman asked if anyone had more to say about the criteria. Hearing none, he asked for a
672 motion.

673

674 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve BOARD 22-06
675 with one condition that only a single-family residence be constructed on it. Mr. Welsh seconded
676 the motion.

677

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

679

680 Met with a vote of 4-1. Ms. Taylor was opposed.

681

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

683

684 Met with a vote of 4-1. Ms. Taylor was opposed.

685

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

687

688 Met with a vote of 4-1. Ms. Taylor was opposed.

689

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

692

693 Met with a vote of 5-0.

694

695 5. *Unnecessary Hardship*

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

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

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

702

703 Met with a vote of 3-2. Chair Gorman and Ms. Taylor were opposed.

704

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

710

711 Met with a vote of 4-1. Ms. Taylor was opposed.

712

713 The motion to approve ZBA 22-06 with the condition passed with a vote of 4-1. Ms. Taylor was
714 opposed.

715

716 **B) ZBA 22-07: Petitioner, White House Group, represented by James Phippard,**
717 **of Brickstone Land Use Consultants, LLC, requests a Variance for property located**
718 **at 441 Main St., Keene, Tax Map #112-020-000-000-000 that is in the Low Density**
719 **District. The Petitioner requests a Variance to permit a personal service**
720 **establishment in an existing building in the Low Density District where a personal**
721 **service establishment is not a permitted use per, Chapter 100, Article 3.3.5 of the**
722 **Zoning Regulations.**
723

724 Mr. Welsh stated that his employer is an abutter of the property in question and he will recuse
725 himself from this hearing. Chair Gorman asked if the Petitioner was aware and still wants to
726 move forward with this application to be heard by the other four members. Mr. Phippard replied
727 that he was aware that Mr. Welsh would request to recuse himself, and he himself does not feel
728 that is necessary, but yes, his client wishes to proceed with the four-member Board.
729

730 Chair Gorman asked to hear from Staff. Mr. Rogers stated that this property, 441 Main St., is on
731 the corner of the lower part of Main St. and the highway system where Rt. 101 and Rt. 12 join,
732 and is in the Low Density District. This property received a Variance in 1984 to allow for
733 professional offices only, calling out particular uses. He read the Board decision at the time:
734 *“There shall be professional offices only, provided the occupants are low intensity uses,*
735 *including but not limited to attorneys, architects, engineers, doctors, insurance agents, dentists,*
736 *accountants, and the real estate office of the owner, excluding such traffic-generating uses such*
737 *as travel agents, beauty salons, etc.”* That is why the application is currently before the Board.
738 Under the older Zoning Code, some of these uses, especially travel agent and possibly beauty
739 salons and such, were considered professional offices, since many were by appointment only and
740 licensed by the State, but the Board at that time felt the need to condition that approved use.
741 Since then, with the new Zoning Code, the Personal Service Establishment is defined as *“An*
742 *establishment that provides services of a personal nature including, but not limited to,*
743 *barbershops or hair salons, spas, nail salons, laundromats, dry cleaners, tailors, tattoo or body*
744 *piercing parlors.”* The Applicant is before the Board because what they are proposing was
745 specifically called out in the previous Variance that was granted.
746

747 Ms. Taylor asked if it is correct that the original Variance excluded things that were considered
748 “personal service,” and the new Zoning Code includes the very broad definition of “personal
749 service.” She questioned that if the Board were to approve the Variance that allows “personal
750 service,” would that be much broader than this specific request. Mr. Rogers replied that the
751 request is for “personal care services,” and that is, yes, a broad definition that brings in many
752 different services. He continued that the previous Code might have spoken of them as more of a
753 “retail service,” although it is not straight-up retail. The current definition that the Applicant is
754 seeking a Variance to allow to occur is a broad definition.
755

756 Ms. Taylor stated to Chair Gorman that it might be appropriate, later on, for the Board to
757 consider some conditions.
758

759 Chair Gorman asked to hear from Mr. Phippard.

760

761 Mr. Phippard stated that he was presenting on behalf of White House Group. He continued that
762 the property at 441 Main St. is well known as the big white house that sits on the hill and is
763 considered a historic, gateway property to Keene. The Variance granted in 1984 was very
764 important at the time. It is very large building if you consider it a single-family dwelling, with
765 5,000 square feet on the first and second floors and a 2,000 square foot basement. Even by
766 today's standards, with big mansions being built on the lakes, this is a big house/building. In
767 1984, they came before the Board and received relief to lease out professional office space in the
768 building. The debate at that time, and why it is described as "professional office space," was
769 because they wanted to limit the uses to low intensity. He agrees with Ms. Taylor that if they can
770 grant a use Variance it should come with conditions. They are not trying to throw away the
771 previous Variance that was granted; they are trying to respect it. They think that over time, the
772 occupations have changed and the definitions have changed. Keene did not have a definition for
773 a "personal service establishment" in 1984. He does not know if it would have changed the result
774 at all, but it came out of the development of the new Land Development Code (LDC). He was
775 not even aware of the addition of this definition until Mr. Rogers called it to his attention.

776

777 Mr. Phippard continued that the request specifically before the Board is to allow a professional
778 use, in this case, an aesthetician. The operator specializes in facials, lip treatments, eyelashes,
779 eyebrows, and other services centered on the face. The Variance should also include a
780 cosmetologist, which is a similar profession. Both are required to be licensed in the State of NH.
781 In the 1980's when they argued about what a "professional office space" was, that was usually
782 the first thing they cited, the requirement to be licensed, not just someone opening an office.
783 Requiring a person be licensed tends to restrict the business to places where people call to make
784 appointments instead of just walking in. It was not meant to include retail-type offices. That is
785 why they were so specific. He included a copy of the 1984 approval, because that is what
786 introduced this controversy. His client seeks permission to allow professionals like an
787 aesthetician and a cosmetologist, provided they are licensed professionals and operate as sole
788 proprietors. This is not a beauty salon with six or eight chairs, providing multiple services at the
789 same time, with a lot of activity that would not be appropriate in this existing, residential
790 neighborhood on that section of Main St. He thinks it is appropriate to have a condition that
791 restricts this to sole proprietors with business by appointment only, with no walk-in service or
792 retail-type service.

793

794 Mr. Phippard stated that he provided an existing condition plan. He continued that they are not
795 proposing to change anything on the site. Eighteen parking spaces exist on the property. If all of
796 the usable area for offices were used, at one parking space per 250 square feet, 16 parking spaces
797 would be required. The existing site is appropriate for professional offices with the limited uses,
798 and meets the current parking requirements.

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

800

801 Mr. Phippard stated that in 1984, the Board deemed it appropriate to allow professional offices in
802 this building, and found it to be in the public interest, which he agrees with. He continued that
803 since the pandemic started, so much has changed, including the way people do business. This
804 property was affected more than most of the other businesses he works for. After 1984 when the
805 Variance was granted, primarily psychotherapists and physical therapists, who operated by
806 appointment only and were licensed by the State, occupied this building. It has worked very well
807 since 1984. The tenants and their customers were respectful of the property, and it has served the
808 property well. However, with the pandemic, all that changed. The therapists quickly learned that
809 they could provide services online, and did not need physical office space. One by one, the
810 offices in the white house became vacant.

811
812 Mr. Phippard continued that the building's principal occupant is JR Coughlin Real Estate, who
813 has owned the building all along, and that is why "*real estate office of the owner*" was
814 mentioned in the approval in 1984. They continue to operate that space in the building, but as
815 realtors go, Mr. Coughlin is really a specialist. He does not have a dozen realtors working for
816 him, and does not have the large, retail-type real estate office that you might see at Masiello or
817 Re-max. The use has fit, and it fit that main restriction that was developed in the previous
818 Ordinance. He thinks it is in the public interest to allow other professional office uses, as he has
819 described them, sole proprietors, licensed by the State, appointment-only, in the building. That
820 fills a need of the public. For an aesthetician or a cosmetologist, one person can make an
821 appointment and occupy the space for 2 or 3 hours at a time. There is not a lot of turnover or
822 activity. The new definitions of "personal service establishment" are not fair to people like that,
823 who are operating as sole proprietors under those conditions, but the Board can address that in its
824 conditions.

825
826 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
827

828 Mr. Phippard stated that the spirit here is best addressed by the conditions of the 1984 Variance.
829 He continued that he and his client think that the use, as he proposed it to the Board, fits nicely
830 under that condition, with those conditions in place. He is not asking the Board to open this up to
831 all personal service establishments. He thinks they do need to be restricted, and that is
832 appropriate, especially on this property, and that would meet the spirit of the Ordinance.

833
834 3. *Granting the Variance would do substantial justice.*
835

836 Mr. Phippard stated that he does not see value to the public if the Board denied this request. He
837 questioned what benefit to the public would there be if they did not allow a sole proprietor,
838 working by appointment only, in an office space in that building. He has to admit that there are
839 existing uses in the building that fall under this definition of a personal service establishment.
840 How this has occurred, he does not know. It is obvious did not go to the City for permission.
841 They are professionally licensed sole proprietors, working in the building by appointment only,
842 and it has worked very well. For the last 2 or 3 years as the therapists left and these new
843 establishments entered, there have been no disruptions, no disturbance to the neighborhood, and

844 no excessive parking or noise created. They conduct all of their activities inside the building,
845 which helps make this work. It would accomplish substantial justice, especially for the building
846 owner, to allow these types of tenants, because these are the people looking for these spaces.
847 They each occupy one or two rooms in the building, with a single employee and business by
848 appointment only.

849
850 4. *If the Variance were granted, the values of the surrounding properties would not be*
851 *diminished.*

852
853 Mr. Phippard stated that he does not need to repeat all of what he said before. They have been
854 doing it successfully at the site, very quietly. They do not exceed the number of parking spaces
855 required on the property and have not created any disturbances.

856
857 5. *Unnecessary Hardship*

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

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

862
863 Mr. Phippard stated that in 1984, the Board agreed that the size of the building is a special
864 condition for this property that results in a hardship to a normal, residential use as you would see
865 in the Low Density District. He continued that they therefore granted the Variance to allow these
866 offices. Where he wants to vary from the previous approval is to include the uses under
867 “personal service establishment” under the right conditions: sole proprietors, a single employee
868 in the building, appointment only, and licensed professionals. That protects the character of the
869 neighborhood and of this property, and fulfills the requirement imposed in 1984 under the
870 original Variance.

871 *and*

872
873 ii. *The proposed use is a reasonable one because:*

874
875 Mr. Phippard stated that he thinks those uses, as he is proposing them, are reasonable. They will
876 not increase traffic or create excessive noise, and will not have any effect on the surrounding
877 properties. He hopes the Board supports this request.

878
879 Mr. Hoppock asked if it is correct that Mr. Phippard is interested in a Variance to allow a
880 personal service business, so long as the person is a sole proprietor, works by appointment only,
881 and licensed by the State. Mr. Phippard replied yes. Mr. Hoppock asked if those are three
882 conditions, Mr. Phippard invites the Board to adopt. Mr. Phippard replied yes.

883
884 Chair Gorman stated that Mr. Phippard mentioned uses going on right now that are similar to
885 what he is requesting. He asked what has provoked the application, if it is already happening.
886 Mr. Phippard replied that he thinks it came about because someone approached the City about a

887 form that is required for licensing by the State of NH, making it aware that this use is taking
888 place on the property. He is trying to correct that situation.

889
890 Ms. Taylor stated that he said there is no parking on the north side of the property. She asked if it
891 is the three spaces that are not supposed to be used. Mr. Phippard replied that he does not know
892 the history of those three spaces, but when he went out to do the existing site conditions, he saw
893 those spaces there. Mr. Coughlin restricts the use of those spaces to his office. His office gains
894 access from that side of the building, so it is not open to the public and those spaces probably
895 preexisted the condition from the Board. He asked Mr. Coughlin to speak to this.

896
897 J.R. Coughlin stated that he owns 441 Main St., Keene. He asked if the question is who has the
898 use of the parking on the north side. Ms. Taylor replied that her question is the conditions of the
899 1984 Variance said there was not to be any parking on the north side of the building. Mr.
900 Coughlin replied that there is a rental property across the street, and sometimes those neighbors
901 park there, with his permission. He continued that it is also for order delivery and rubbish
902 pickup.

903
904 Ms. Taylor stated that her question is now for Mr. Rogers. She continued that she is in a bit of
905 quandary, if the condition of the original approval is not being observed. Mr. Rogers replied that
906 he would caution the Board that this is a prime example of a condition that has been put on a
907 piece of property with the Variance that is difficult to enforce. He continued that moving
908 forward, if the Board were to place conditions, this is a good example to remember. He further
909 stated that it is not sure how the enforcement or even interpretation of the condition, but his
910 understanding is that it was meant for either the real estate office there, the owner of the
911 building, and/or an agreement he had with the abutting property to use those spaces.

912
913 Ms. Taylor replied that it is ambiguous at best. She continued that her follow-up question is
914 whether the intent of Mr. Coughlin's application is to keep the existing conditions intact. Mr.
915 Phippard replied yes, and the intent is to allow the current occupants to remain, and to specify
916 more clearly, what "personal service establishment" use can be, with the right conditions.

917
918 Ms. Taylor asked if he would have any objection to the Board clarifying the parking, to say that
919 the parking on the north side of the building is limited to the building owner, or similar. Mr.
920 Phippard suggested "Not to be used by the occupants of the professional offices." Ms. Taylor
921 replied yes, with the intent to limit the traffic on that side of the building, which seems to be part
922 of the intent. Mr. Phippard replied that she is right, it was ambiguous the way the 1984 Board
923 listed the condition. He continued that access to those spaces is by a separate driveway. Driving
924 to those parking spaces, it looks like the driveway to the house next door, and it is. In observing
925 the traffic going to the existing office users in the building, they all turn through the front and
926 park in the area adjacent to King Ct. He thinks they are practicing what the intent was, but
927 clarification would be beneficial.

928

929 Ms. Taylor stated that regarding Mr. Phippard's comment about sole proprietors, that might also
930 have an enforceability issue. There are many different kinds of legal entities and it would be
931 nearly impossible to try to limit it to someone who wanted to have, say, an LLC, but they are
932 only one person. Mr. Phippard replied that his intent was to allow one employee in the space, and
933 not have a business with three employees that can operate at the same time.

934
935 Chair Gorman asked if it would be aptly put to say that it would be a single member operation,
936 so to Ms. Taylor's point, it could be a single member LLC, or a sole proprietor. He continued
937 that he is more referring to the fact that this not a situation of, say, eight employees, rather, one
938 professional who is making appointments, and that is a condition Mr. Phippard would be
939 satisfied with. Mr. Phippard replied yes.

940
941 Ms. Taylor stated that she thinks it is apt to say that they would be a licensed professional,
942 because beauticians, hair salons, barbers, and such, have to be licensed as well. She continued
943 that she is not sure how to limit it, but she understands the intent. Chair Gorman asked Mr.
944 Phippard if there are any uses he has in mind that would be licensed, or that are existing. Mr.
945 Phippard replied that he himself is a sole member LLC and is not licensed, but he also has two
946 employees, and does not think his business would fit. Chair Gorman replied yes, but he is not
947 providing the type of service that they are alluding to here. Mr. Phippard replied true, but his
948 business does not meet the intent of this request as he has meetings at his office with 8 or 10
949 people, all arriving in separate vehicles, making it a busy location. At other times, it is just him
950 and his wife. He hopes the Board members have had the opportunity to visit the property. It is
951 worth going in as it is beautiful, and needs to be protected and preserved. Mr. Coughlin and his
952 family have done a wonderful job taking care of this landmark property for the City. He thinks
953 that restricting the use, as described, continues the protection for the area, so the parking does not
954 expand and they do not have to change the appearance.

955
956 Chair Gorman asked if members of the public had comments in support of this application.
957 Hearing none, he asked if anyone wanted to speak in opposition. Hearing none, he closed the
958 public hearing and asked the Board to deliberate.

959
960 1. *Granting the Variance would not be contrary to the public interest.*

961
962 Ms. Taylor stated that she does not believe this will be contrary to the public interest, as long as
963 the Board can figure out the conditions to attach to it, especially since it will be contained within
964 the building and there does not appear to be any intent to alter it structurally. It would simply be
965 a continuing use.

966
967 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

968
969 Mr. Hoppock stated that this proposed use, like the other one, is consistent with the essential
970 character of the neighborhood and would not do anything to alter it. He continued that it sounds
971 like Mr. Coughlin is just trying to keep tenants and the space filled with viable businesses, which

972 also serves a public interest. He does not see that as a threat to the health, safety, or welfare of
973 the area or the community. He thinks these criteria are satisfied.

974
975 3. *Granting the Variance would do substantial justice.*

976
977 Ms. Taylor stated that she does not see any harm to the public under this criterion, from the mere
978 fact that apparently it has been happening without any disruption or public notice. Chair Gorman
979 agreed.

980
981 4. *If the Variance were granted, the values of the surrounding properties would not be*
982 *diminished.*

983
984 Chair Gorman stated that he thinks they have touched upon it not affecting the exterior of the
985 property, and there being no impact to the interior of the property, and a use that allegedly is
986 already occurring. Thus, he thinks it is a wash. He does not think it will have a positive impact
987 on values, but it does not have to; it just cannot have a negative impact, and he does not believe
988 that it does.

989
990 5. *Unnecessary Hardship*

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

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

996 ii. *The proposed use is a reasonable one.*
997

998 Mr. Hoppock stated that he agrees with the predecessor Board from 1984 that the size of the
999 building can certainly be a special condition, then and now, especially when they are looking at
1000 ways to lease spaces. He continued that in his line of work, he deals with counselors
1001 occasionally, and most of them, if not uniformly across the Board, are remote. Some are
1002 reluctantly going back to in-person, but it is up to each individual. Counselors, who work
1003 remotely from home, save a ton of overhead and do not have to worry about paying someone like
1004 Mr. Coughlin rent, which is Mr. Coughlin's problem now. Mr. Coughlin has come upon a
1005 reasonable way to try to fill the space, maintain his property, and let it continue to exist the way
1006 it has been. He has no trouble identifying the size of the building as a special condition and then
1007 saying that no fair and substantial relationship exists between the general public purpose of
1008 restricting professionals in that building as it is applied to this property. It passes that test.

1009
1010 Ms. Taylor stated that she agrees with Mr. Hoppock, and the concept of a building providing its
1011 own special condition, so to speak, was the Farrar v. Keene case, which is the basic case that said
1012 that a building could by itself be a special condition. She thinks there is some concern, though,
1013 that the conditions be carefully outlined.

1014

1015 Chair Gorman stated that he agrees, and he thinks covering all these criteria and supporting them
1016 is directly correlated to conditioning it. Mr. Hoppock asked if they could discuss the conditions.
1017 Chair Gorman replied yes, and they also need to discuss Mr. Rogers's valid point. He continued
1018 stating that the Board needs to understand that while conditions could be placed, actually
1019 governing these situations is next to impossible. That said, they would put their best foot forward
1020 on some conditions that work for everyone and hope they are followed.

1021
1022 Mr. Hoppock replied that it is the honor system. He continued that Applicants tell the Board
1023 what their plans are, in good faith, and the Board takes them at their word. He is not too
1024 concerned about the Board's conditions being enforced down the road; he thinks that when
1025 people leave here they understand what the conditions are and will do their best to follow them.
1026 Chair Gorman replied that he thinks that no news is good news. He continued that if there is an
1027 issue, City staff will find out about it, and if there is not an issue, then it seems like they are
1028 coming close enough to the conditions.

1029
1030 Mr. Hoppock stated that he was going to bring forward the three conditions that Mr. Phippard
1031 suggested, but then Ms. Taylor mentioned the sole proprietorship and that being ambiguous. He
1032 would change that to an individual, without employees, who schedules appointments only with
1033 walk-in appointments, and holds a license by the State. He is of mixed mind about the three
1034 parking spaces to the north. He does not want to make this more difficult for Mr. Rogers's office.

1035
1036 Ms. Taylor stated that she is concerned, because it is just the flat out "no parking" and there are
1037 clearly identified parking spaces. She continued that she would like to see some limitation on the
1038 parking on the north side of the building, such as it being reserved to the building owner, so that
1039 it is clearly stated not customer parking. Chair Gorman replied that it could be for "occupants,"
1040 not necessarily just the owner. He continued that it could be used by professionals who are
1041 renting there, or Mr. Coughlin himself.

1042
1043 Mr. Rogers replied that his recommendation was going to be to limit it to occupants of the
1044 building. He continued that the concern might have come before because as Mr. Phippard said,
1045 that driveway leads to a single-family home right next to his property. If it was for customers
1046 coming and going it would generate quite a bit of traffic right next to that single-family home,
1047 but if it was an occupant of the building they would probably come in at 8:00 AM to work then
1048 leave at 5:00 PM.

1049
1050 Chair Gorman asked if everyone agrees with having that parking be for occupants only, not
1051 clients. Other Board members agreed.

1052
1053 Chair Gorman asked if there were further comments about the criteria.

1054 Ms. Taylor asked Mr. Hoppock on limitations to one individual, or an individual plus an
1055 employee. Clearly, the intent is not to have a crowd. Mr. Hoppock asked how many spaces they
1056 are talking about there.

1057

1058 Chair Gorman reopened the public hearing to hear from Mr. Phippard. Mr. Phippard stated that
1059 there are seven office spaces. Mr. Hoppock replied that if they limit it to an individual plus one
1060 employee, they are bumping up against parking problems.

1061
1062 Mr. Rogers replied that most licensed professionals have a workstation, such as a hairdresser
1063 with one chair. He imagines that some of the other professionals that Mr. Phippard mentioned
1064 would have a workstation. A possible recommendation would be to limit it to one workstation
1065 per individual. He agrees that two employees might have a higher impact in the Low Density
1066 District than the Board intends.

1067
1068 Chair Gorman asked, since the public hearing is open, if Mr. Phippard had any further
1069 commentary on this.

1070
1071 Mr. Coughlin stated that he has been in the building for 38 years, and watches the parking. He
1072 continued that it has to be low intensity, which it is. Services are by appointment only, and
1073 appointments are one to two hours, so it is not like people arrive every 20 minutes. He is there
1074 every day, watching the building and who is coming in, and he does a good job. He thinks this
1075 would be better, because before, there were about 10 therapists and they all had appointments
1076 and it was a lot of traffic. With this new use, there are not that many people doing it aesthetician
1077 services, and it is a lot less traffic.

1078
1079 Mr. Hoppock asked if they could limit each unit to one individual personal service provider. He
1080 asked if that would be a way to characterize it, instead of saying "proprietor."

1081
1082 Chair Gorman stated that the Board understands that Mr. Coughlin polices the parking and does
1083 a great job with the building, but this Variance will go on with this property long after Mr.
1084 Coughlin no longer owns it. It is up to the Board to condition the approval to what fits the needs
1085 of the community and fits Mr. Coughlin's needs to keep the building running well. He asked if
1086 Mr. Coughlin is in situations where people have two employees, or one employee plus
1087 themselves. He asked what Mr. Coughlin's preference is in terms of employee limit per office.

1088
1089 Mr. Phippard stated that it would be nice to allow one employee. He continued that a person
1090 might have an assistant or secretary. He has an employee to answer the phone for him if he is out
1091 and helps take care of his business, but it does not generate more business as this is an
1092 accommodation. The ability to have an employee and still lease the space would be beneficial,
1093 but probably not mandatory. The users in the building today are all single person users. Mr.
1094 Coughlin stated that they have answering machines and things of that nature. Mr. Phippard
1095 replied yes, and email, to monitor what is coming in.

1096
1097 Chair Gorman asked if there were any other questions before he closes the public hearing again.
1098 Hearing none, he closed the public hearing.

1099

1100 Chair Gorman stated that with seven offices, if everyone had an employee, there is a potential
1101 parking problem. He continued that he also thinks that limiting it to one person might not be the
1102 perfect business model for everyone, but that behind the scenes, it will work. He does not know
1103 how many employees people have could be policed and is not sure the Board could control that.
1104

1105 Ms. Taylor stated that it seems that the original Variance regarding “professional offices only”
1106 stays intact, and that the Board is now adding the category of “personal services” to that
1107 “professional offices only.” If the original Variance stays intact, that is why she wanted to clarify
1108 the parking, because it is ambiguous. If that stays intact, she does not have a concern with
1109 limiting specifically just the personal services aspect of that.
1110

1111 Mr. Hoppock stated that he thinks they can condition approval on one individual working per
1112 unit, who does it by appointment only, and licensed by the State, for whatever the particular
1113 personal service might be as they are talking about an aesthetician in this case. Then they want to
1114 deal with the parking. Chair Gorman suggested “northside parking to be used by tenants only.”
1115 Mr. Hoppock suggested “building occupants only.”
1116

1117 Mr. Hoppock made a motion to approve ZBA 22-07 subject to the following conditions:
1118

- 1119 • The personal service uses shall be restricted to one professional personal service provider
1120 per unit, who schedules by appointment only, and is licensed by the State for their
1121 particular profession or personal service.
- 1122 • Parking on the north side of the building be restricted to occupants of the building.
1123

1124 Ms. Taylor seconded the motion.
1125

1126 1. *Granting the Variance would not be contrary to the public interest.*
1127

1128 Met with a vote of 4-0.
1129

1130 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
1131

1132 Met with a vote of 4-0.
1133

1134 3. *Granting the Variance would do substantial justice.*
1135

1136 Met with a vote of 4-0.
1137

1138 4. *If the Variance were granted, the values of the surrounding properties would not be
1139 diminished.*

1140 Met with a vote of 4-0.
1141

1142 5. *Unnecessary Hardship*

- 1143 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1144 *area, denial of the variance would result in unnecessary hardship because:*
1145 i. *No fair and substantial relationship exists between the general public purposes of the*
1146 *ordinance provision and the specific application of that provision to the property*
1147 *and*
1148 ii. *The proposed use is a reasonable one.*

1149
1150 Met with a vote of 4-0.

1151

1152 The motion to approve ZBA 22-07 with conditions passed with a vote of 4-0.

1153

1154 Chair Gorman recessed the meeting for a break at 8:30 PM. He called the meeting back to order
1155 at 8:36 PM. He stated that Mr. Welsh is rejoining and they are a five-member Board again.

1156

1157 **C) ZBA 22-08: Petitioner, Brady Sullivan Keene Properties, LLC of 670 North**
1158 **Commercial St., Manchester, NH, represented by Amy Sanders of Fuss and O’Neill**
1159 **of 50 Commercial Street, Manchester, NH, requests a Variance for property located**
1160 **at 210-222 West St, Keene, Tax Map #576-009-000-000-000 that is in the Commerce**
1161 **District. The Petitioner requests a Variance to permit a multifamily dwelling with**
1162 **five residential units where residential uses are not a permitted use in the**
1163 **Commerce District per Chapter 100, Table 8-1 Permitted Principal Uses by Zoning**
1164 **District of the Zoning Regulations.**

1165

1166 Chair Gorman asked to hear from Staff. Mr. Rogers stated that this property is on 210-222 West
1167 St., the Colony Mill property. He continued that in 2016 the Board granted a Variance for the
1168 multi-family uses, conditioned to 90 units. His understanding is that 89 units were built in the
1169 larger mill building. Some secondary buildings are on the property; one currently occupied as a
1170 casino, and was a restaurant prior. There is a newly constructed building with three units not yet
1171 occupied. The former candy shop was converted into a bank. The Applicant is before the Board
1172 tonight because of the condition placed on the original Variance for the multi-family of 90 units.
1173 They are requesting five units that they have in their application.

1174

1175 Mr. Hoppock asked if the five units are planned for where the casino is now. Mr. Rogers replied
1176 that is his understanding, but he would let the Applicant speak to the details. Mr. Hoppock asked
1177 if it is correct that they are one under the limit now. Mr. Rogers replied that his understanding is
1178 that they have developed 89 units out of the 90 that were proposed.

1179

1180 Mr. Welsh asked if the casino is a permitted use, or if a Variance was given to that. Mr. Rogers
1181 replied that that was a permitted use, under the Code as “indoor recreational use.”

1182

1183 Ms. Taylor asked Mr. Rogers if the original condition for the 2016 Variance was 90 units for the
1184 *property* or 90 units in that building that was the Colony Mill building. Mr. Rogers replied that it
1185 was not really in the description in the notice of decision. In the minutes, the Applicant said that

1186 it was going to be in the main building at that time, but even during the testimony, which might
1187 have been before they had the bank as a possible tenant, there was conversation about possibly
1188 converting that building into some units. The Board applied no stipulation to the Variance they
1189 granted other than the number of units, not necessarily the location on the property.

1190

1191 Ms. Taylor stated that the application references Table 8-1. She asked why it did not reference
1192 the permitted uses in the Commerce District, which is Article 5.1.5. Mr. Rogers replied that it
1193 could be that the Applicant initially saw Table 8-1 and did not realize there were smaller tables
1194 within the districts themselves. Ms. Taylor asked if they are essentially the same. Mr. Rogers
1195 replied they are absolutely the same.

1196

1197 Chair Gorman asked for further questions for Mr. Rogers. Hearing none, he asked to hear from
1198 the Applicant.

1199

1200 Amy Sanders from Fuss & O'Neill introduced Ben Kelley, representing Brady Sullivan
1201 Properties, LLC, as the owner. She continued that the intent is to convert the existing casino
1202 building to five residential units. Four of the units would be two-bedroom, and one unit would be
1203 one-bedroom. It would be conducted entirely within the existing building, without any major
1204 external changes to the building. It would keep the same aesthetics and feel that currently exists
1205 on the property. They feel that this is a justified use because Keene needs residential units.

1206

1207 Ms. Sanders stated that she would go through the criteria.

1208

1209 *1. Granting the Variance would not be contrary to the public interest.*

1210

1211 Ms. Sanders stated that housing is a fundamental challenge and is in high demand in Keene. She
1212 continued that permitting the existing building to be converted to residential units helps to
1213 achieve one of the goals of the Comprehensive Master Plan, which is to provide additional
1214 housing within a conveniently located area. This property is certainly convenient. The area
1215 around it has commercial units, existing residences, and trails, and it is close to downtown, so it
1216 is walkable. Additionally, the Colony Mill Marketplace building that exists on the property
1217 includes 89 apartment buildings, so the residential use is compatible with the surrounding uses
1218 that exist on the site today.

1219

1220 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1221

1222 Ms. Sanders stated that converting the existing building into residential units would create
1223 additional housing opportunities in a convenient location that is adjacent to a recreational trail
1224 and within walking distance of various businesses and the downtown. Those all meet the spirit
1225 and intent of the Ordinance.

1226

1227 *3. Granting the Variance would do substantial justice.*

1228

1229 Ms. Sanders stated that the Variance would allow for additional residential units that are greatly
1230 needed in the city. She continued that residential housing units would be developed consistent
1231 with the Comprehensive Master Plan, within an existing structure and conveniently located.
1232

1233 4. *If the Variance were granted, the values of the surrounding properties would not be*
1234 *diminished.*

1235
1236 Ms. Sanders stated that converting the existing building would have no impact on the
1237 surrounding property values. It will be consistent with its existing appearance. She does not think
1238 anyone would notice much of a difference, except that the residential uses would use a lot less
1239 parking than perhaps the casino currently. Overall, the character would feel the same and it
1240 would not have an impact to surrounding properties.

1241
1242 5. *Unnecessary Hardship*

1243 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1244 *area, denial of the variance would result in unnecessary hardship because*

1245 i. *No fair and substantial relationship exists between the general public purposes of the*
1246 *ordinance provision and the specific application of that provision to the property because:*

1247
1248 Ms. Sanders stated that this is a unique building within the property and sits on the lot centralized
1249 and almost hidden from the surrounding streets by the existing mill building. She continued that
1250 the surrounding area could support and benefit from an increase in residential housing. The
1251 surrounding area includes various businesses, recreation, cultural opportunities, and
1252 opportunities for residents to work, play, dine, and shop.

1253
1254 *and*

1255 ii. *The proposed use is a reasonable one because:*

1256
1257 Ms. Sanders stated that as previously mentioned, there is a shortage of housing in Keene and this
1258 proposed use would provide additional housing units surrounded by existing various amenities
1259 that make it a desirable location to live.

1260
1261 Ms. Sanders stated that that she is happy to answer questions.

1262
1263 Ms. Taylor asked if these would be market rate apartments. Mr. Kelley replied yes. Ms. Taylor
1264 asked if it is correct that they would not qualify as “affordable housing.” Mr. Kelley replied that
1265 from a tax credit standpoint, they do not qualify as “affordable housing.”

1266
1267 Ms. Taylor stated that she was unable to figure out which apartments are where, from what was
1268 in the packet. She asked the Applicant to walk the Board through which apartments are on which
1269 floor. Mr. Kelley replied that there are two townhouse-style units, which is why it is a little
1270 difficult to read. He continued that the first and third are the townhouse-style units, if you are
1271 looking at it from left to right. Three of the four two-bedrooms are two bed, two bath units. From

1272 a use standpoint, the building is a little over 6,000 square feet. It is efficient with five nicely
1273 sized units with no common area. The first one would have well over 1,000 square feet. Ms.
1274 Taylor asked for him to point out which is which. Mr. Kelley stated that he is calling the one bed,
1275 one bath unit the third unit and that is townhouse-style. The top view is the second floor. The
1276 first unit is also the townhouse-style with second floor space above with the master suite upstairs.

1277
1278 Ms. Taylor stated that when she looks at this she sees four units. Lines around them might help.
1279 Michael Hagan, Plans Examiner, stated that the top of the page on the “#2” plan is the fifth unit.
1280 He continued that that is one-bedroom unit on the second floor. The first one on the left-hand
1281 side has the top and bottom, with a living room, kitchen, and bathroom on the first, all the way
1282 on the left, and then upstairs there are two bedrooms. Right next to that on the second floor is a
1283 separate unit coming up from that main entrance. That one is a one-bedroom on its own. On the
1284 first floor are the other three units.

1285
1286 Chair Gorman asked if the Board had further questions for the Applicant. Hearing none, he
1287 called for public comment, beginning with anyone speaking in favor. Hearing none, he asked if
1288 anyone wanted to speak in opposition. Hearing none, he closed the public hearing and asked the
1289 Board to deliberate.

1290
1291 *1. Granting the Variance would not be contrary to the public interest.*

1292
1293 Ms. Taylor stated that she does not think this application is contrary to the public interest, but she
1294 wishes that every application the Board sees did not try to justify itself on a housing need. She
1295 continued that she does not know if there is a housing need for market rate apartments as
1296 opposed to affordable housing, but she does not see anything that has been presented that says
1297 this is against the public interest.

1298
1299 Mr. Hoppock stated that Ms. Taylor’s words summed up his view on this. He continued that
1300 even at market rate, it is in the public interest to increase the housing stock.

1301
1302 Chair Gorman stated that he agrees.

1303
1304 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1305
1306 Mr. Hoppock stated that this is an interesting development from the 90 units previously
1307 approved, because now it fits into the character of the neighborhood. He continued that they are
1308 just adding more residential units to a segment of land that was developed for residential
1309 purposes. He does not find any problem with this criterion, either.

1310
1311 Ms. Taylor asked Mr. Rogers if this changes the parking equation. Mr. Rogers replied that he is
1312 not sure if the Applicants address it in their application, but this site has abundant parking. He
1313 continued that it would meet the ten spaces required for this use, and the amount of required
1314 parking spaces could possibly be a decrease from those required for the current use.

1315 Ms. Taylor asked if this would go before the Planning Board. Mr. Rogers replied that it might go
1316 before the new Minor Project Review Committee. He does not believe this rises to the Planning
1317 Board level, under the new LDC standards, but he would have to check. Ms. Taylor replied that
1318 she raises the question because for that building, it is a significant change in use. Mr. Rogers
1319 replied that is correct. He continued that some of the triggers for Planning Board review would
1320 be if they were to be doing work outside, but he heard from the Applicant that minimal outside
1321 work would occur. If that changed, it could end up at the Planning Board.

1322

1323 3. *Granting the Variance would do substantial justice.*

1324

1325 Mr. Hoppock stated that this is one of those cases in which granting the Variance could cause a
1326 gain to the individual/owner as well as the public. He continued that it would fulfill a housing
1327 need, and the owner would be putting the property to use where there is public demand for it.

1328

1329 Chair Gorman stated that he agrees.

1330

1331 4. *If the Variance were granted, the values of the surrounding properties would not be*
1332 *diminished.*

1333

1334 Chair Gorman stated that he does not think this would substantially change the character of the
1335 property or the neighborhood, in terms of aesthetics, given that no work would be done to the
1336 outside of the building. He continued that he does not see any possible adverse impact to
1337 surrounding property values by creating five new dwelling units where there already are 89. He
1338 does not think it would raise surrounding property values, but he does not think it would
1339 diminish them, either.

1340

1341 5. *Unnecessary Hardship*

1342 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1343 *area, denial of the variance would result in unnecessary hardship because*

1344 i. *No fair and substantial relationship exists between the general public purposes of the*
1345 *ordinance provision and the specific application of that provision to the property*
1346 *and*

1347 ii. *The proposed use is a reasonable one.*

1348

1349 Ms. Taylor stated that she does not have any problem with it being a reasonable use. She
1350 continued that her concern is the special condition of the property and its zone. She is still
1351 weighing in her own mind whether that is adequate to create a hardship. It is a commercial
1352 property that had a commercial use, and now they would change it to a residential use. She is not
1353 sure the hardship.

1354

1355 Chair Gorman stated that he sees a certain element of uniqueness to the property, given that it is
1356 so large. It needs to be adapted to today's needs. It will not be a mill anymore, and clearly will
1357 not be a shopping mall as it was when he was a kid. Now, it is primarily residential, with the

1358 exception of the restaurant, the bank, the three-unit commercial building that was just
1359 constructed, and this casino. He thinks the size and scale of this property makes it unique, which
1360 could be viewed as a hardship.

1361
1362 Mr. Welsh stated that during his 20 years here he has seen four or five different uses in this
1363 building, which last a few years. He always presumed that one of the difficulties with the
1364 commercial use of the building is its hidden nature, as the Applicant referred to, and he thinks
1365 that is not a liability at all, when it comes to residential use of this property.

1366
1367 Chair Gorman replied he agrees it is in a unique location to be a commercial use, given that it
1368 does not have visibility from any of the streets, especially now that the rest of the property is not
1369 used commercially.

1370
1371 Ms. Taylor stated that going back to her question; the commercial practicality is different from
1372 what the uniqueness of the property is. She continued that she is trying to find the special
1373 condition of the property that makes it unique. She moved here in the 1980's, and until the
1374 casino, this building always had some sort of restaurant use. She is questioning what the
1375 demonstrated hardship is that has resulted from this unique piece of property. Chair Gorman
1376 asked if there is any merit in re-opening the public hearing and asking for more input. Ms. Taylor
1377 replied probably not; she is just struggling aloud.

1378
1379 Mr. Hoppock stated that its size, configuration, and location make it difficult for commercial use.
1380 He continued that he thinks the owners are doing the next best thing, filling a need for housing
1381 by developing it for housing. That is unique to that site. It is so large it can accommodate these
1382 numbers.

1383
1384 Ms. Taylor stated that they just constructed a three-unit commercial building on the site. She
1385 asked Mr. Hoppock if that goes counter to his statement that this is not an appropriate
1386 commercial site. Mr. Hoppock replied that he thinks the commercial building just constructed
1387 will be a storage facility. Chair Gorman replied that it is a three-unit building but has excellent
1388 visibility, in contrast to the casino. Ms. Taylor stated that she thinks it will be a drive-thru
1389 Domino's Pizza but does not know what the other two units will be. Mr. Hoppock replied that a
1390 pizza place would be consistent with serving residential dwellings.

1391
1392 Chair Gorman stated that he thinks that the newly constructed building is in a different situation
1393 than this one, because it is not buried in the center of the complex. It has much better commercial
1394 visibility and accessibility. Mr. Hoppock asked if it is across the street from where the bike path
1395 starts. Chair Gorman replied yes, right on Island St.

1396
1397 Mr. Rogers stated that Ms. Marcou has pulled up the map again. He explained the location of the
1398 newly constructed building in relation to the building in question.

1399

1400 Chair Gorman stated that if they are going to grant this Variance, he thinks the motion should
1401 confine the five units to that building, because there is the possibility that if they approve five
1402 units they could go in the main building, for all the Board knows. Then this building could
1403 eventually be used for something else, without placing specific parameters on the five units.
1404

1405 Mr. Hoppock asked if this building has a specific address. Is it 222 West St., or 210 West St.?
1406 Chair Gorman asked Mr. Rogers if the entire property is a single address. Mr. Rogers replied that
1407 it has multiple ones. He continued that he believes this building would be 216 West St., while
1408 210 West St. starts where the bank is, and the main building is 222 West St. Chair Gorman
1409 replied that they could approve the units for building 216 West St.
1410

1411 Chair Gorman asked for further comments. Hearing none, he asked for a motion.
1412

1413 Mr. Hoppock made a motion to for the Zoning Board of Adjustment to approve ZBA 22-08 to
1414 permit a multi-family dwelling complex with five residential units permitted as a permitted use
1415 in the Commerce Zone, contrary to Chapter 100, Table 8-1. Those five units will be restricted to
1416 building 216 West St. Mr. Welsh seconded the motion.
1417

1418 1. *Granting the Variance would not be contrary to the public interest.*
1419

1420 Met with a vote of 5-0.
1421

1422 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
1423

1424 Met with a vote of 4-1. Ms. Taylor was opposed.
1425

1426 3. *Granting the Variance would do substantial justice.*
1427

1428 Met with a vote of 5-0.
1429

1430 4. *If the Variance were granted, the values of the surrounding properties would not be
1431 diminished.*
1432

1433 Met with a vote of 5-0.
1434

1435 5. *Unnecessary Hardship*

1436 A. *Owing to special conditions of the property that distinguish it from other properties in the
1437 area, denial of the variance would result in unnecessary hardship because:*

1438 i. *No fair and substantial relationship exists between the general public purposes of the
1439 ordinance provision and the specific application of that provision to the property
1440 and*

1441 ii. *The proposed use is a reasonable one.*
1442

1443 Met with a vote of 4-1. Ms. Taylor was opposed.

1444

1445 The motion to approve ZBA 22-08 with the condition passed with a vote of 4-1. Ms. Taylor
1446 voted in opposing.

1447

1448 **D) ZBA 22-09: Petitioners, Scott and Kerry Bachynski of 136 Hastings Ave.,**
1449 **Keene, requests a Variance for property located at 136 Hastings Ave., Tax Map**
1450 **#523-039-000-000 that is in the Low Density District. The Petitioners request a**
1451 **Variance to permit both the rear and side setbacks to six feet where 20 feet is**
1452 **required for the rear and 10 feet is required for the side setbacks in order to install**
1453 **an 18 foot above ground swimming pool, per Chapter 100, Article 3.3.2 of the**
1454 **Zoning Regulations.**

1455

1456 Chair Gorman asked to hear from Staff. Mr. Rogers stated that this property is in the Low
1457 Density District. He continued that he has a correction: the notice of hearing states that 20 feet is
1458 required in the rear setback, when actually there is an exception within the LDC that would allow
1459 for swimming pools to be within 10 feet of the rear setback. Thus, the Applicants are asking to
1460 have six feet setbacks where 10 feet are required, both at the side and the rear, making this a
1461 smaller ask.

1462

1463 Ms. Taylor stated that on this application and the next one, too, she noticed that where it says
1464 “Zoning District,” the text “Zoning Districts” is just typed in, as opposed to what the district
1465 really is. Mr. Rogers asked where she sees this. Ms. Taylor replied section 2 of the application.
1466 She asked staff to double check this when the applications come in.

1467

1468 Ms. Taylor asked if the area that aboveground pools sit on adds to impervious surface or not. Mr.
1469 Rogers replied that it could, if a swimming pool is installed properly, as it is highly unlikely that
1470 a pool like this would just be set on top of the grass. Most likely, the grass would be removed
1471 and some type of compactable material would be placed, because putting a pool on unstable
1472 ground is not the best idea for the pool’s longevity.

1473

1474 Ms. Taylor replied that the reason she is asking is that it says “percentage of lot covered by
1475 structures,” existing and proposed, and then says “percentage of impervious coverage, structures
1476 plus driveways,” and it says “proposed: N/A,” which does not match up with the percentage of
1477 the lot covered by structures. She found that confusing. Mr. Rogers replied that he assumes the
1478 Applicants are speaking to the fact that the change to the percentage that they are doing is the
1479 number that is allowed for the overall of the structures plus driveways and parking areas. He
1480 continued that the coverage is going to be a higher number, with the Applicants were looking at
1481 it since the first percentage speaks to pools, he is assuming that is why there is no increase in the
1482 square footage on the second percentage. He stated this was an item Staff should have picked up
1483 on. Ms. Taylor replied that it does not include driveways, and she does not know what the
1484 percentage is, or what it would be, or if it meets, or is correct. She was hoping for guidance from
1485 Mr. Rogers. Mr. Rogers replied that they are at the 17%, which includes the house and this new

1486 pool. He can do some quick calculations, but just looking at what is in front of the Board, he
1487 thinks that the additional percentage of what that driveway and turnaround lane is will probably
1488 be minimal. However, Ms. Taylor brings up a valid point that they should be looking at some of
1489 these issues. He can see that in some circumstances this could be a problem, though he does not
1490 in this case. Ms. Taylor replied that she is not familiar enough with the percentages and where
1491 this information is in the new Code in order to figure it out.

1492
1493 Chair Gorman asked if there were any other questions for Mr. Rogers. Hearing none, he asked to
1494 hear from the Applicants.

1495
1496 Scott Bachynski stated that the only reason he and Kerry Bachynski are even here is the Code
1497 says any pool above 24 inches would need a building permit, which more or less means any pool
1498 you buy from a store. He continued that he did not even know they needed to do this, until he
1499 called. His neighbors do not understand why they are seeking a Variance and think they should
1500 install the pool, but they do not want to do that, because this house has been in his wife's family
1501 for many years and they plan on having children and staying there.

1502
1503 Kerry Bachynski stated that she and Mr. Bachynski are requesting a Variance to six feet from the
1504 rear to allow an 18-foot above ground swimming pool to be installed.

1505
1506 1. *Granting the Variance would not be contrary to the public interest.*

1507
1508 Ms. Bachynski stated that it would not alter the property values of the abutters.

1509
1510 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1511
1512 Ms. Bachynski stated that the yard surrounding the proposed pool location is fully sectioned off
1513 by six-foot privacy fencing. She continued that it will have no visual or other impact that the
1514 setbacks are designed to preserve. She did not know it was 10 feet in the rear for a swimming
1515 pool, so that maybe helps them.

1516
1517 3. *Granting the Variance would do substantial justice.*

1518
1519 Ms. Bachynski stated that it will cause no harm to the public or abutters. She continued that the
1520 pool installation and use will comply with all requirements imposed by the proper building
1521 permit and City Ordinances. A professional installer will install the pool. They will level the
1522 ground and prepare it. Everything will be done to Code.

1523
1524 4. *If the Variance were granted, the values of the surrounding properties would not be
1525 diminished.*

1526
1527 Ms. Bachynski stated that this lot is in a desirable residential area that attracts mainly families; it
1528 is not apartments. This property has recently had multiple exterior improvements. She and Mr.

1529 Bachynski have repainted; put up the vinyl fencing and a new, metal-shingled roof; and done
1530 landscaping and tree removal. They are working on the inside, too. Their property is good. She
1531 does not think [the swimming pool] would diminish surrounding property values.
1532

1533 5. *Unnecessary Hardship*

1534 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1535 *area, denial of the variance would result in unnecessary hardship because*

1536 i. *No fair and substantial relationship exists between the general public purposes of the*
1537 *ordinance provision and the specific application of that provision to the property because:*
1538

1539 Ms. Bachynski stated that she realizes that not being able to have a pool is not considered a
1540 hardship, so this (criteria) was a little difficult, but the lot is unique. She continued that you can
1541 see on the plans that the lot is sort of a rhombus, with the house in the center and slightly offset.
1542 They do not really have a backyard. There is just 33 feet from the exterior wall of the house to
1543 the rear property line. They were told that they cannot put a pool on the right side of their
1544 property because the City water and sewer lines are there. Thus, the only place the pool could
1545 feasibly be installed is on the rear west corner of the lot. In the photos, you can see where the
1546 house is located and how it slopes down, and how the left rear is the only place where a pool
1547 could be. It is the most level. Given the current setback, they would have to pay considerably
1548 more to level the space closer to the house. In addition, the practical and visual appeal would
1549 increase if the pool could be installed with the proposed Variances. Installed closer to the house
1550 and therefore higher on the slope, the pool would be more visible to the abutters. If that was a
1551 concern at all, and abutters do not want to see the above ground pool, the further back into the
1552 yard the better.
1553

1554 *and*

1555 ii. *The proposed use is a reasonable one because:*
1556

1557 Ms. Bachynski stated that the proposed use is a reasonable one because it will allow the owners
1558 to continue to improve the property, thereby increasing the value of the property.
1559

1560 Ms. Taylor asked about the picture. She asked if the location of the play structure is
1561 approximately, where they want the pool. Mr. Bachynski replied yes, they would be moving the
1562 swing set to the right hand side of the house.
1563

1564 Ms. Taylor stated that she looked this up on the City's GIS and put the layers on, printed it out,
1565 and brought it with her. She continued that regarding all the blue, she did not know if there were
1566 wetlands or if this is in any kind of flood area. That was her only concern. Mr. Rogers replied
1567 that he needs a minute to pull that up on the map and look at it.
1568

1569 Mr. Hoppock asked if the Bachynskis' yard slopes off into the corner in the map. Mr. Bachynski
1570 replied that it is the flattest spot in their whole yard. Ms. Bachynski added that it then slopes up.
1571 Mr. Hoppock asked if they are saying that off-picture, the slope was concerning them. Ms.

1572 Bachynski replied yes. Chair Gorman asked if it is correct that that is the lowest point of the
1573 property and the flattest. Ms. Bachynski replied yes. Mr. Bachynski replied that they have a
1574 neighbor who has offered many times to let them use his pool, but they would like their own. He
1575 does not think anyone would want to see it in the front yard.

1576

1577 Mr. Hoppock asked if “18 feet” is the diameter of the pool. Mr. Bachynski replied yes.

1578

1579 Mr. Welsh stated that they mentioned that the right side of the yard has sewer and water, and the
1580 City told them not to put the pool there. Mr. Bachynski replied yes. They did improvements to
1581 the house, including plumbing, and had many problems with roots and trees going to the sewage
1582 lines, so they took all the trees down and put up a fence in its place. He continued that they just
1583 assumed the City did not want anything built on top of the sewer lines. He called and spoke with
1584 two people at City Hall; one was supposed to call him back and Corinne Marcou called him back
1585 instead and went through the rules with him and Ms. Bachynski, which is the reason why they
1586 are here.

1587

1588 Mr. Rogers stated that to try to answer Ms. Taylor’s question, he pulled up GIS mapping. He
1589 continued that with the City’s mapping system, you could add different layers. When he included
1590 the wetlands and floodplain layers, nothing indicates in this neighborhood and he would be
1591 shocked if it did. He sees what Ms. Taylor said appear to be bodies of water on the mapping
1592 from 2015, and he has no idea what those represent. The 2020 version of that map does not have
1593 those blue areas. He thinks it is a glitch in the GIS mapping system.

1594

1595 Chair Gorman asked if anyone had further questions for the Applicants. Hearing none, he asked
1596 for public comment. Hearing none, he closed the public hearing and asked the Board to
1597 deliberate.

1598

1599 *1. Granting the Variance would not be contrary to the public interest.*

1600

1601 Mr. Hoppock stated that he did not hear anything that would suggest that this application would
1602 present a situation that would be contrary to the public interest. The Bachynskis have a fence
1603 around the yard and have thus taken safety precautions already, or privacy measures, however
1604 you want to define it.

1605

1606 Ms. Taylor stated that if the abutters were going to object, she is sure the Board would have
1607 heard from them. That is probably one of the stronger gauges of what the public interest is.

1608

1609 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1610

1611 Mr. Hoppock stated that he sees nothing in the application that presents a threat or danger to
1612 public health, safety, or welfare or would alter the essential character of the neighborhood. In
1613 fact, they heard about there being a pool next door, so this would be consistent with it.

1614

1615 Chair Gorman replied that he agrees, and thinks the fence helps any privacy issues that may
1616 arise.

1617
1618 3. *Granting the Variance would do substantial justice.*

1619
1620 Mr. Clough stated that because of the siting of the house, there are not many choices. It is
1621 centered, so if you are trying to put a pool in any corner, that limits it. He does not see any issue
1622 with this criterion.

1623
1624 Chair Gorman stated that he thinks the benefit to the property owner outweighs any adverse
1625 impact to any of the abutters. As Ms. Taylor pointed out, if they had a problem with it, they
1626 would probably be here.

1627
1628 4. *If the Variance were granted, the values of the surrounding properties would not be*
1629 *diminished.*

1630
1631 Mr. Hoppock stated that there is nothing in the record that would show any value diminution
1632 anywhere as a result of this project.

1633
1634 Mr. Welsh stated that in listening to the Applicants, it sounds like the surrounding property
1635 owners are enthusiastic to see this happen.

1636
1637 5. *Unnecessary Hardship*
1638 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1639 *area, denial of the variance would result in unnecessary hardship because*
1640 i. *No fair and substantial relationship exists between the general public purposes of the*
1641 *ordinance provision and the specific application of that provision to the property*
1642 *and*
1643 ii. *The proposed use is a reasonable one.*

1644
1645 Mr. Hoppock stated that he thinks the special conditions on this property are the sloping land
1646 away from where they want to put the pool, leaving that area partially within the setback
1647 available to them, and the location of the water and sewer lines. He continued that if you ever
1648 had a problem with trees growing into sewer lines, you know that is something to avoid. He
1649 cannot imagine anyone would want to put a pool on top of that. Other lots probably have sewer
1650 lines in them, but they are not interfering with the use of the property. When you look at that
1651 special condition, applying the setback restriction to this lot makes it unfair and creates the
1652 hardship.

1653
1654 Chair Gorman stated that he agrees, and does not believe there is any better place on the property
1655 for the pool. He thinks it is reasonable to want to have a pool on your property, and this is their
1656 best attempt at it, given all the restrictions that their property creates.

1657

1658 Ms. Taylor stated that she agrees with Mr. Hoppock and Chair Gorman. She continued that she
1659 wants to note that when the Board is presented with these requests, sometimes it is a matter of
1660 gradation. For example, if they had wanted to put, say, a two-story addition on the house that
1661 would go within four feet of the property line, she might have a problem seeing the hardship, but
1662 when you look at the nature of the application and the configuration of the property, she thinks it
1663 makes sense. Chair Gorman replied that is well put and he agrees.

1664
1665 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 22-09. Ms.
1666 Taylor seconded the motion.

1667
1668 1. *Granting the Variance would not be contrary to the public interest.*

1669
1670 Met with a vote of 5-0.

1671
1672 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1673
1674 Met with a vote of 5-0.

1675
1676 3. *Granting the Variance would do substantial justice.*

1677
1678 Met with a vote of 5-0.

1679
1680 4. *If the Variance were granted, the values of the surrounding properties would not be*
1681 *diminished.*

1682
1683 Met with a vote of 5-0.

1684
1685 5. *Unnecessary Hardship*

1686 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1687 *area, denial of the variance would result in unnecessary hardship because*

1688 i. *No fair and substantial relationship exists between the general public purposes of the*
1689 *ordinance provision and the specific application of that provision to the property*
1690 *and*

1691 ii. *The proposed use is a reasonable one.*

1692
1693 Met with a vote of 5-0.

1694
1695 The motion to approve ZBA 22-09 passed with a vote of 5-0.

1696
1697 **E) ZBA 22-10: Petitioner, Steve Sweeney of 146 Armory St., Keene, requests a**
1698 **Variance for property located at 146 Armory St., Tax Map #529-020-000-000-000**
1699 **that is in the Low Density District. The Petitioner request a Variance to permit the**

installation of a proper driveway with one foot from the property line instead of the minimum of three feet, per Chapter 100, Article 9.3.2 of the Zoning Regulations.

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Chair Gorman asked to hear from staff. Mr. Rogers stated that this property is in the Low Density District, down the street from the back of Fuller School’s recreation field. He continued that they are seeking a Variance from the part of the Zoning Code that requires one- or two-family dwellings to maintain a three-foot buffer from driveways and parking areas. Concern here, much of the time, is with drainage; water flowing off the travel surface or parking surfaces is to be maintained on your property. He will let the Applicant speak to the hardship here, but the picture the Board has shows the driveway being proposed where there is not enough room to put a travel lane and maintain that three feet.

Ms. Taylor stated that the picture confuses her. She continued that #146 is the subject property and asked if it is correct that the white dash above it, #150, is on the neighboring property. Mr. Rogers replied yes, a house has been built there now. When this GIS mapping was taken it was a vacant lot. The agenda packet shows the house that is there. The gray piece is the driveway for that #150 property, not for the Applicant’s property.

Mr. Hoppock stated that the picture on the introductory page has a rock wall between a tree and what looks like a driveway, going into the opening in the foundation wall. He asked if that is the driveway, a garage, or where the driveway would go on this property. He is trying to figure out the location. Mr. Rogers replied that his understanding is that most likely previously when he had a small vehicle that was a drive-under garage space for this property. He is not certain what the current use is, but where the actual driveway will be, addresses Ms. Taylor’s issue. The new house shown sitting back a bit is new and is the neighbor. He thinks the driveway will be going to the right of the blue house. Mr. Hoppock replied that he would let the Applicant speak to that.

Chair Gorman asked if there were further questions for Mr. Rogers. Hearing none, he asked to hear from the Applicant.

Steven Sweeney of 146 Armory St. stated that he has already a permitted driveway there. He continued that he wants to make the driveway more usable. Right now, you have to choose whether you are in mud season or not and whether you are going to park there. Right now in front of his property, there is actual parking on the street. Where the rock wall is, there is a garage underneath the house, where that was originally a parking spot that he no longer uses. He is not looking to add that into the property as a driveway additional to the permitted driveway that is already there.

Chair Gorman asked if that is visible in the photograph. He asked if it is on the other side of the retaining wall. Mr. Sweeney replied that it is on the opposite/north side of the retaining wall. He continued that what he is looking to make a more usable driveway with either Surepak or recycled asphalt. He is asking for a one-foot Variance instead of three-foot because his driveway

1742 is not directly on the edge of his house. In winter, there is frost, and he wants to keep his
1743 driveway a little further to the side of the house to minimize the wear on the house's foundation.

1744
1745 Chair Gorman asked how far from the house. Mr. Sweeney replied that now it is set at about a
1746 foot, and he wants to go a foot further from the edge of the house. Chair Gorman replied that
1747 literally, if he did not get the couple feet on the property line side; he would be up against the
1748 foundation. Mr. Sweeney replied that is correct.

1749
1750 Ms. Taylor stated that the picture in the agenda packet is a little different from the one on the
1751 screen. She asked to see the GIS picture again. She asked if it is correct that Mr. Sweeney wants
1752 this driveway the full length of his property. Mr. Sweeney replied yes, which was already in the
1753 property pictures in the GIS. Ms. Taylor replied that it did not come through and she is trying to
1754 understand. She asked if the driveway permit Mr. Sweeney gets is for access off the road. Mr.
1755 Sweeney replied yes. Ms. Taylor asked the purpose of it going the whole length of the property.
1756 Mr. Sweeney replied in case someone in the future wanted to put an actual garage in the back.
1757 Ms. Taylor asked where Mr. Sweeney parks now. Mr. Sweeney replied on the street. Ms. Taylor
1758 asked what he does when there are parking prohibitions in the winter. Mr. Sweeney replied that
1759 he has not run into an issue with that yet. If there will be a bad storm, he parks on the side of the
1760 house where the driveway is.

1761
1762 Chair Gorman asked if it is correct that Mr. Sweeney's vehicle is not actually on the street when
1763 parked there, because there is a vehicle space set back off the street. Mr. Sweeney replied yes,
1764 there is a wooden barrier wall in front of the house with probably seven feet between that and the
1765 road for parking. During school hours, Armory St. is lined with vehicles. He will get rid of the
1766 parking in the front, making the space tapered. Chair Gorman stated that in a way, it could be
1767 said that Mr. Sweeney will make it more conforming, because that parking in the front line of the
1768 house would not be allowed by the current Zoning regulations. Mr. Sweeney replied yes, that
1769 would all be cut back down to the road to make it more of a front yard.

1770
1771 Mr. Welsh stated that it sounds like Mr. Sweeney would be getting rid of the bush in the picture.
1772 Mr. Sweeney replied yes.

1773
1774 Chair Gorman asked if there were more questions. Hearing none, he stated that Mr. Sweeney can
1775 proceed through the criteria.

1776
1777 1. *Granting the Variance would not be contrary to the public interest.*

1778
1779 Mr. Sweeney stated that people at other properties do not have to park on the street. He
1780 continued that the Variance would allow more usable driveway by allowing vehicles to park
1781 closer to the property line and a little further from the house, allowing better access to both sides
1782 of the vehicle and allowing maintenance of the driveway.

1783
1784 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1785 Mr. Sweeney stated that the driveways are laid out in the same fashion along the street; the
1786 driveways between 145 and 149 have approximately the same layout as his.

1787
1788 3. *Granting the Variance would do substantial justice.*

1789
1790 Mr. Sweeney stated that it would allow vehicles not to be parked on the side of the road,
1791 allowing more room for navigation and a clearer sight line down the road for other drivers, and
1792 allowing easier plowing of Armory St. during winter months. He continued that the drop-off for
1793 Fuller School is along Armory St., directly in front of the house. During pick-off or drop-off for
1794 the school, the road is one lane. Having vehicles parked on the side of the home would allow the
1795 street to be more passable during these hours.

1796
1797 4. *If the Variance were granted, the values of the surrounding properties would not be*
1798 *diminished.*

1799
1800 Mr. Sweeney stated that he does not think this would have any negative effect on the
1801 surrounding properties because it would not impede on any other property. It would allow for
1802 uniformity on the streets. He will make his front yard more appealing, which will help the
1803 property's value. All properties on Armory St. have parking on the side of the homes.

1804
1805 5. *Unnecessary Hardship*

1806 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1807 *area, denial of the variance would result in unnecessary hardship because:*

1808 i. *No fair and substantial relationship exists between the general public purposes of the*
1809 *ordinance provision and the specific application of that provision to the property because:*
1810 *and*

1811 ii. *The proposed use is a reasonable one because:*

1812
1813 Mr. Sweeney stated that it would cause him hardship if he were not allowed to put in the proper
1814 driveway, which would allow him to park off the street. He continued that this makes his home
1815 less desirable than other homes in the area. The public would benefit from the cars being parked
1816 in a proper driveway, due to there being more room to drive on Armory St., especially during
1817 Fuller School's drop-off and pick-up.

1818
1819 Chair Gorman asked how close Mr. Sweeney's property line is to the house of the abutter to the
1820 side of the proposed driveway. Mr. Sweeney replied that the abutter has their driveway between
1821 his property line and their house, so it is probably about 20 to 25 feet. Chair Gorman asked if Mr.
1822 Sweeney could speak to the space that is going to be between the abutter's driveway and his
1823 driveway. He asked if it is like a lawn area. Mr. Sweeney replied yes, it is grass.

1824
1825 Ms. Taylor stated that Mr. Sweeney partially addressed this before and she did not quite catch it.
1826 She asked if the wall that is on the other side of the bush that Mr. Welsh mentioned is on Mr.
1827 Sweeney's property or the abutter's. Mr. Sweeney replied that it is on his property.

1828 Ms. Taylor asked if Mr. Sweeney is only one foot from the property line and he has a car there,
1829 how does he get in the passenger side, if he parks head in. Mr. Sweeney replied that he has room.
1830 There are 16 to 17 feet between his property line and the house, so there is room to open the
1831 doors fully on each side of the vehicle and on that side of the yard. Ms. Taylor replied that she is
1832 missing something, then, because Mr. Sweeney says the driveway will only be a foot from the
1833 property line and she assumes that wall is probably slightly on his property. Mr. Sweeney replied
1834 that he has, from the outside of the rock wall where the bush is over to about 15 or 16 feet, he
1835 believes. Ms. Taylor replied that maybe they are not talking about the same wall.

1836
1837 Chair Gorman asked Mr. Sweeney to come to the screen and point to what he is describing. Mr.
1838 Sweeney did so, and determined that the “wall” Ms. Taylor was asking about is in fact the
1839 abutter’s paved driveway. Chair Gorman replied that it looks like the abutter’s driveway is not
1840 three feet from the property line. Ms. Taylor asked if the proposed driveway would go where the
1841 bush is. Mr. Sweeney replied yes.

1842
1843 Chair Gorman asked if it is correct that Mr. Sweeney said there are 16 or 17 feet between his
1844 boundary and his house. Mr. Sweeney replied yes, from the edge of the house, he think it is
1845 about 15 feet. Chair Gorman asked how wide he proposes the driveway be. Mr. Sweeney replied
1846 about 9 or 9.5 feet.

1847
1848 Ms. Taylor asked why Mr. Sweeney does not have three feet to work with. Mr. Sweeney replied
1849 that he would have, but it just pushes it up against the side of the house. Ms. Taylor stated that
1850 with a 10-foot wide driveway and about 15 feet to the property line, you could still do it, but
1851 maybe her addition is off. Mr. Sweeney replied that if you get out of the vehicle you are
1852 essentially getting out onto the lawn.

1853
1854 Mr. Hoppock replied that he would want to keep snow build up away from the foundation. Mr.
1855 Sweeney replied yes, and also, a fence runs along the property line, which is not visible in the
1856 picture, but it starts about eight feet back from the front of his property and runs the entire length.
1857 Mr. Hoppock asked if it is the neighbor’s fence. Mr. Sweeney replied yes. Chair Gorman stated
1858 that Mr. Sweeney needs to be able to get out of his passenger door. Mr. Sweeney replied yes, and
1859 if there were not a fence there, it would not be a big deal.

1860
1861 Ms. Taylor stated that was the foundation of her original question, if you are driving head in,
1862 how do you get out of the passenger side while staying on your property. Mr. Sweeney replied
1863 that is why he wants the one foot, so that there is ample space to get out of the vehicle. Chair
1864 Gorman stated that he wonders if the driveway is a foot from the fence, a car door is much bigger
1865 than that and questioned how an opened car door wouldn’t hit the fence. Mr. Sweeney replied
1866 that he could open the doors on his truck, on both sides, in the drive area. Mr. Hoppock asked if
1867 his truck is higher than the fence. Mr. Sweeney replied a little bit. Mr. Welsh stated that he
1868 assumes Mr. Sweeney wants the swing of the vehicle door to be over the pavement, instead of
1869 over the grass. Mr. Sweeney replied yes. Chair Gorman replied that the driveway would then be
1870 wider than 10 feet, he thinks, with door-swing on both sides of the vehicle.

1871 Mr. Rogers stated that obviously, there are multiple pieces of this, such as the right-of-way
1872 access point/curb cut, the driveway, parking space, and traditional parking spaces per the Code
1873 would require a 9’x18’ area that you could park. Obviously, a little wider is beneficial, but
1874 mostly what you see for parking space itself is about 9-foot wide. Chair Gorman replied that this
1875 is all coming together. If you have a 10-foot driveway with a foot on the side of it, you are good,
1876 because a car can fit in a nine-foot spot and open its doors. There would be about three or four
1877 feet of space away from Mr. Sweeney’s foundation, and one foot on the opposite side, with a 10-
1878 foot wide driveway.

1879
1880 Chair Gorman asked if there were any further questions from the Board. Hearing none, he asked
1881 for public comment.

1882
1883 James Thompson of 149 Armory St. stated that he is here on behalf of the neighborhood to
1884 express their support. He continued that he does not think there is any downside to this for
1885 anyone on the street. He cannot express the views of people who are not here, but perhaps he
1886 could express how he could come to his own perspective, which was reaching out to Michael
1887 Grotton at 150 Armory St. In his conversation with him, Mr. Grotton also expressed no concerns
1888 with the driveway.

1889
1890 Chair Gorman closed the public hearing and asked for deliberation.

1891
1892 *1. Granting the Variance would not be contrary to the public interest.*

1893
1894 Mr. Hoppock stated that he sees nothing in the application that would be contrary to the public
1895 interest. He continued that if anything, Mr. Sweeney is making an effort to reduce the congestion
1896 on the street, so it would improve the public interest.

1897
1898 Chair Gorman stated that he agrees. He thinks a big of part of this is getting rid of that parking in
1899 front of the house, which does not even meet the Zoning requirements. Getting a driveway on a
1900 property that is constrained to have one, getting the cars off the street, especially in an area
1901 where there is a lot of school traffic, all makes sense.

1902
1903 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1904
1905 Chair Gorman stated that the intent of the Ordinance is to prevent run-off from someone’s
1906 driveway from adversely impacting an abutter, and that is why he asked the questions about what
1907 would be on the opposite side of the driveway. It turns out it is, in fact, lawn. There is also a
1908 fence there, which helps the cause. He thinks that the grass buffer between the two driveways
1909 preserves the intent of the Ordinance.

1910
1911 *3. Granting the Variance would do substantial justice.*

1912

1913 Chair Gorman stated that it is reasonable for someone to have a driveway. He continued that as
1914 he stated, the property does have constraints. Mr. Sweeney is doing his best to meet his needs
1915 without adversely impacting his house. Chair Gorman stated would not want a driveway one foot
1916 off his foundation, either, for reasons including snow removal and frost.

1917

1918 4. *If the Variance were granted, the values of the surrounding properties would not be*
1919 *diminished.*

1920

1921 Mr. Hoppock stated that there is no basis to believe that to be true.

1922

1923 Mr. Welsh stated that they have heard from neighbors and they have attested that this is not a
1924 problem for them.

1925

1926 5. *Unnecessary Hardship*

1927 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1928 *area, denial of the variance would result in unnecessary hardship because:*

1929 i. *No fair and substantial relationship exists between the general public purposes of the*
1930 *ordinance provision and the specific application of that provision to the property*
1931 *and*

1932 ii. *The proposed use is a reasonable one.*

1933

1934 Mr. Hoppock stated that this is a small lot, about a quarter of an acre. He continued that the
1935 available space on this lot for a driveway is not much, due to the size. That special condition
1936 would make applying the setback rule unfair to this property.

1937

1938 Chair Gorman stated that he agrees.

1939

1940 Mr. Clough made a motion to approve ZBA 22-10; 146 Armory St. Mr. Hoppock seconded the
1941 motion.

1942

1943 1. *Granting the Variance would not be contrary to the public interest.*

1944

1945 Met with a vote of 5-0.

1946

1947 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1948

1949 Met with a vote of 5-0.

1950

1951 3. *Granting the Variance would do substantial justice.*

1952

1953 Met with a vote of 5-0.

1954

1955 4. *If the Variance were granted, the values of the surrounding properties would not be*
1956 *diminished.*

1957
1958 Met with a vote of 5-0.

1959
1960 5. *Unnecessary Hardship*

1961 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1962 *area, denial of the variance would result in unnecessary hardship because:*

1963 i. *No fair and substantial relationship exists between the general public purposes of the*
1964 *ordinance provision and the specific application of that provision to the property*
1965 *and*

1966 ii. *The proposed use is a reasonable one.*

1967
1968 Met with a vote of 5-0.

1969
1970 The motion to approve ZBA 22-10 passed with a vote of 5-0.

1971
1972 **V) New Business**

1973
1974 Chair Gorman asked if there was any new business. There was none.

1975
1976 **VI) Adjournment**

1977
1978 Chair Gorman adjourned the meeting at 9:58 PM.

1979
1980 Respectfully submitted by,
1981 Britta Reida, Minute Taker

1982
1983 Reviewed and edited by,
1984 Corinne Marcou, Zoning Clerk

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94 KEY ROAD ZBA 22-11



Petitioner requests to construct an open, rigid canopy structure 10 ft. from the setback where 20 ft. is required per Article 5.1.2 of the Zoning Regulations.



City of Keene

New Hampshire

NOTICE OF HEARING

ZBA 22-11

A meeting of the Zoning Board of Adjustment will be held on Monday, June 6, 2022, at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition. Petitioner, Thomas Bogar, represented by Dan Bartlett, of 185 Winchester St., requests a Variance for property located at 94 Key Rd., Tax Map #110-018-000-000-000 that is in the Commerce District. The Petitioners requests a Variance to permit the construction of an open, rigid canopy structure for customer weather protection 10 feet into the setback where 20 feet is required, per Chapter 100, Article 5.1.2 of the Zoning Regulations.

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

Corinne Marcou, Zoning Clerk
Notice issuance date May 27, 2022



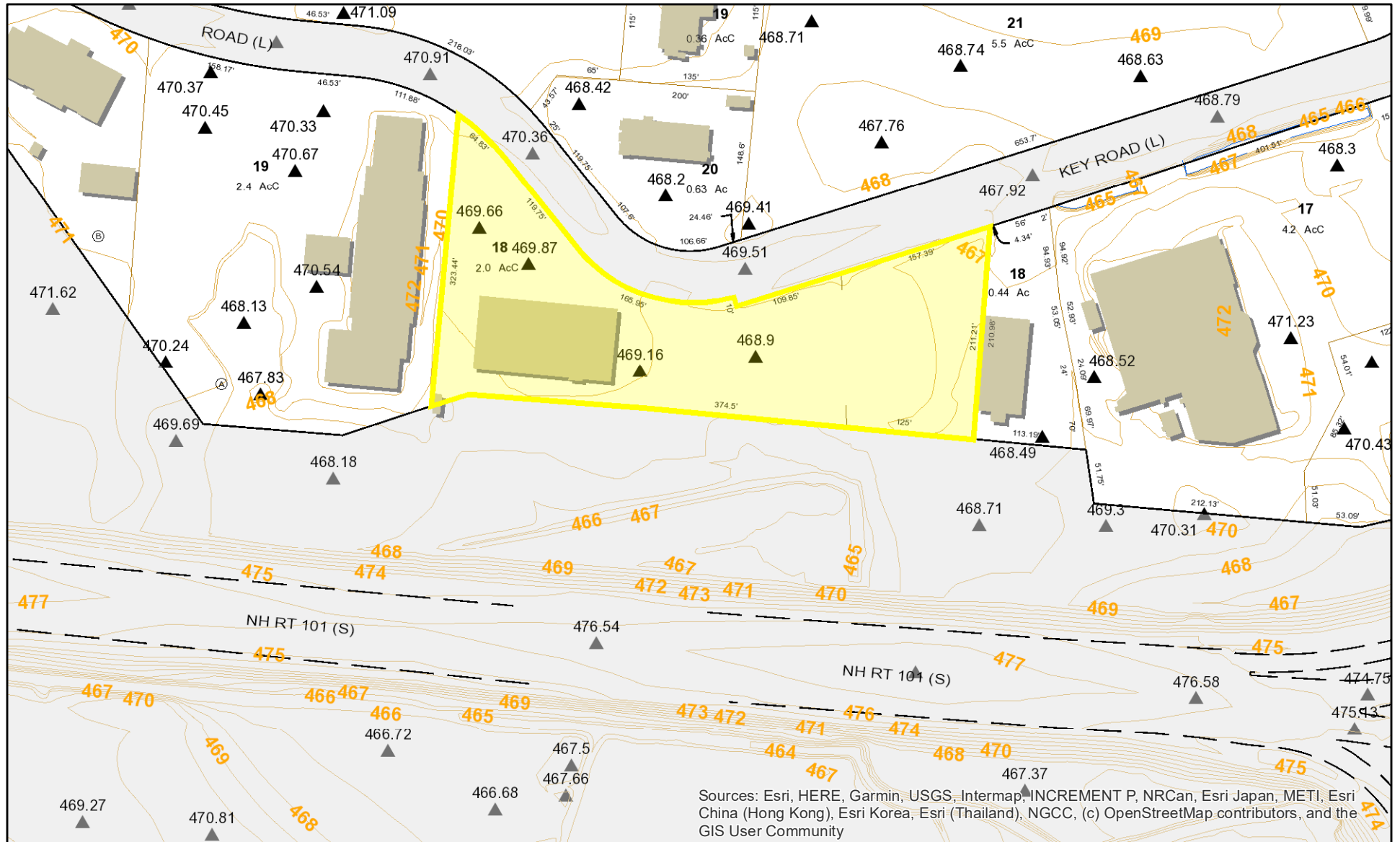
Keene, NH



May 26, 2022

1 inch = 137 Feet

www.cai-tech.com



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

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City of Keene, NH

Zoning Board of Adjustment Variance Application



For Office Use Only:

Case No. ZBA22-11

Date Filled 5/20/22

Rec'd By CM

Page 1 of 9

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: Spencer Grayson Real Estate LLC

MAILING ADDRESS: 286 Old Keene Road Walpole NH 03608

PHONE:

EMAIL: tbogar@autexinc.com

SIGNATURE: Thomas Bogar

Digitally signed by Thomas Bogar
Date: 2022.05.23 13:30:36 -04'00'

PRINTED NAME: Tom Bogar

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Dan Bartlett

MAILING ADDRESS: 185 Winchester Street

PHONE: (603) 762-1956

EMAIL: dan@bartlett.net

SIGNATURE: Dan Bartlett

Digitally signed by Dan Bartlett
Date: 2022.05.23 14:32:08 -04'00'

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: PROPERTY INFORMATION

Property Address: **94 Key Road Keene**

Tax Map Parcel Number: **Tax Map 110, Lot 18**

Zoning District: **Commerce**

Lot Dimensions: Front: **617.77** Rear: **374.5** Side: **323.44** Side: **211.21**

Lot Area: Acres: **2.0AcC** Square Feet: **87120 SF**

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **9872 sf** Proposed: **10779 sf**

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: **~80%** Proposed: **no increase**

Present Use: **Auto Dealership**

Proposed Use: **no change**

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 is located on Key Road in the Commerce Zone. The proposed new canopy will be on the side of the existing building that faces Key Road, located in an already-paved area. (No increase in impervious coverage; no change to surface run-off).

The owner is
Spencer Grayson Real Estate LLC
286 Old Keene Road
Walpole NH 03608

This canopy is located at the customer service entrance, and is intended to provide customers with weather protection when they drop off their cars for service. Currently the area of the proposed canopy is entirely within an already-paved area.

Because of the angle and location of the setback line as it crosses the proposed canopy, along with the need to have the customer service entry remain where it is, neither moving the canopy location nor making it smaller serves as a workable solution.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 5.1.2 of the Zoning Regulations to permit:

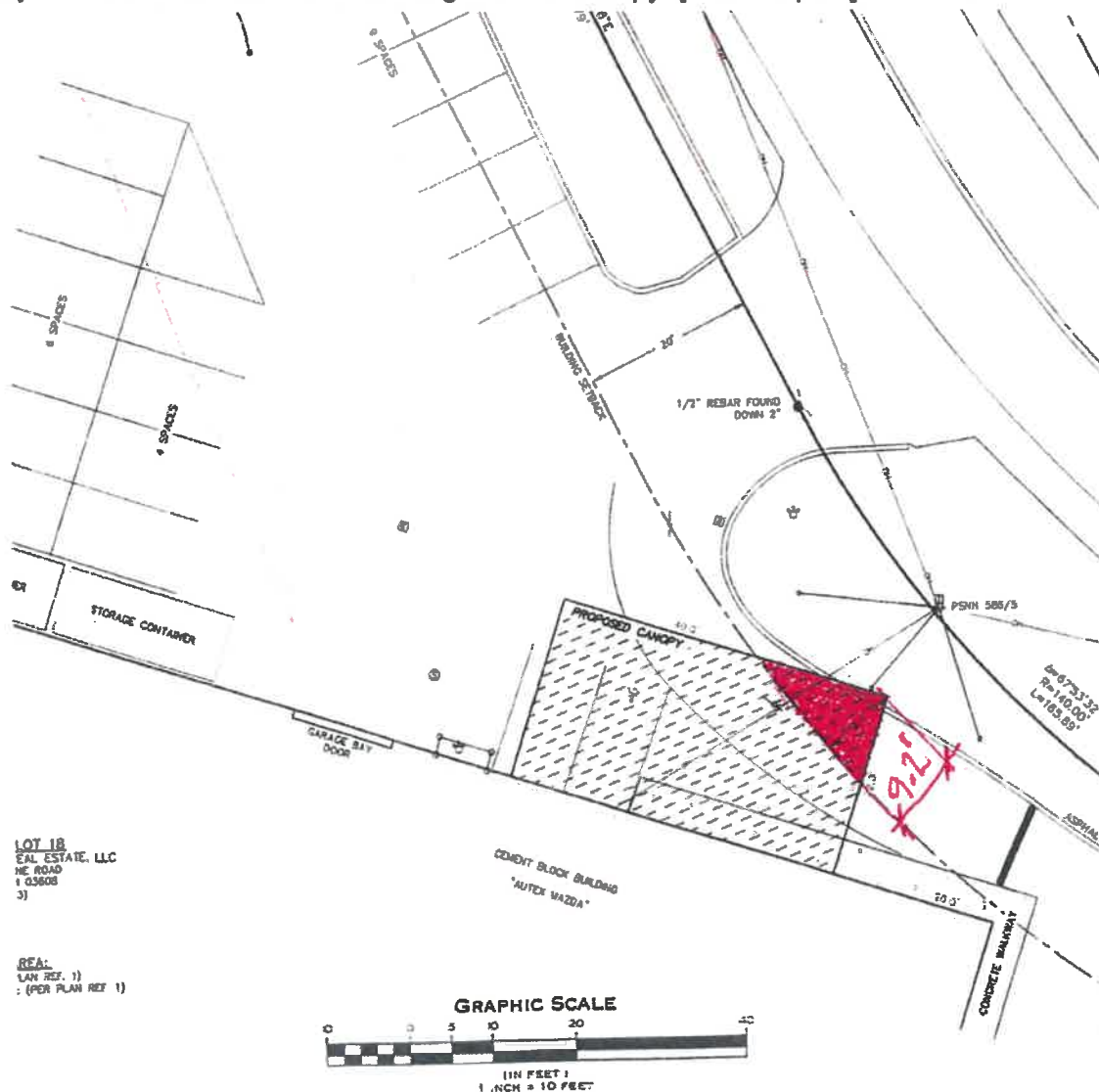
Construction of an open, rigid canopy structure for customer weather protection.

The Ordinance calls for a 20' setback. The setback line crosses diagonally across a corner of the proposed canopy. That corner point encroaches into the setback a distance of 10'; the two sides of the canopy recede from there. See partial site plan below – encroachment is shaded red.

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:

This sort of canopy is not out of place in a commercial zone, nor does it produce any objectionable offenses to the way business is conducted in that area. Owing to the curve of the roadway, the proposed encroachment into the setback has less of an impact than if the road were straight; the road starts to curve away from the structure within the length of the canopy. [see site plan]



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

The spirit of the Ordinance would be observed by providing enhanced attractiveness, preserving natural systems such as run-off, while not imposing costs upon the City. No part of this request would result in shortchanging any of these objectives. A basic tenet of setbacks is to maintain openness and order along the street frontage. This open canopy, in this location, does not adversely affect openness or sightlines.

3. Granting the variance would do substantial justice because:

It would provide motorists with the weather protection they have come to expect at other services, such as drive-up windows, gas stations, hotel entrances and other auto dealer service shops. In other words, this canopy would bring this facility into parity with other similar service entries.

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

The value of the subject property would be enhanced by this amenity upgrade, which should not affect surrounding properties. It would not change or affect current uses of the site such as occupancy, traffic, sightlines, or surface water run-off.

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:

A) This is an existing dealership that has been designed to accept service customers at a particular location on the site that works within the existing site circulation and vehicular entry to and exit from the site.

i) The general public purposes of the Ordinance include ensuring visibility and a sense of visual cohesion along the right-of-way. Street setbacks are meant to maintain visual order and a sense of openness along the length of a stretch of road.

The road at this particular location curves away from the proposed canopy, so the alignment is naturally interrupted while the sense of openness is increased. Thus the relationship between the provision of the Ordinance and the specific site condition is greatly reduced.

and

ii. The proposed use is a reasonable one because:

ii) The motoring public has developed expectations for increased convenience at many types of service establishments. The Owner's reason for doing this project has to do with maintaining a competitive relationship with other dealerships.

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.

The conditions of the existing facility require the service entry to remain where it is; there is no practical alternative for the proposed location. Denial of this request would result in the Owner not being able to provide this amenity that other dealerships are able to offer.

Zoning Board of Adjustment Certified Notice List



For Office Use Only:	
Case No.	_____
Date Filled	_____
Rec'd By	_____
Page _____ of _____	
Rev'd by	_____

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

25.2.4 PUBLIC NOTICE

The **submittal requirements for Public Notices** are outlined further in **Article 25.2** of the [Land Development Code](#)

Article 25.2.4.A.1: When a mailed notice is required, the applicant shall submit 2 sets of mailing labels for each abutter or person entitled to such notice in accordance with state law or the City code of Ordinances, and a mailing fee equal to the cost of the current United States Postal Service Certified Mail rate, at the time of application submission, unless otherwise specified in the Land Development Code.

Article 25.2.4.A.2: The appropriate review authority, or their designee, shall be responsible for issuing the mailed notice.

Article 25.2.4.A.3: The mailed notice shall include, at a minimum, the date, time, place and purpose of such public hearing; the names of the applicant and property owner; and the address of the subject property. **Such information shall be current to within 10 days of application submittal.**

Article 25.2.4.A.4: The mailed notice shall be sent to the address used for mailing local property tax bills, which may be obtained from the City of Keene Assessing Department.

Article 25.2.4.A.5: The required timeframe for issuing mailed notice is specified in Table 25-2. This timeframe shall not include the day such notice is postmarked or the day of the public hearing or public meeting at which the application is first considered.

NOTICE LIST & MAILING LABELS

A notice list and two sets of mailing labels identifying any parties that require notice as part of the application process, will be submitted. **Such information shall be current to within 10 days of application submittal.** Per [NH RSA 676:7\(l\)\(a\)](#), and **Article 25** of the [Land Development Code](#), the following parties must be noticed by verified mail no less than five days prior to the scheduled meeting:

- Property owner
- Applicant and, if appropriate, authorized agent
- All owners of property located within 200 feet of the subject parcel as well all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel
- Holders of conservation, preservation, or agricultural preservation restrictions

The Notice List shall include the following:

- Property owner's name
- Property owner's mailing address
- Street address, if different from mailing address
- Property tax map parcel (TMP) number

The mailing labels shall include the following:

- Property owner's name
- Property owner's mailing address
- Property tax map parcel (TMP) number

The City of Keene's [GIS Database](#) (axisgis.com/keenenh/) can be used to generate a Notice List and mailing labels. Instructions for creating these can be found following this link [Notice List Instructions](#) or on the [Zoning Board of Adjustment](#) page on the City website, under *ZBA Applications*.

CERTIFY ACCURACY

By signing below, you are certifying that the submitted notice list is accurate and true to the best of your ability and that per **Article 25.2.4.A.3**, the notice list is current to within 10 days of the application submittal.

Dan Bartlett

Print Name

Signature

5-20-22

Date



200 foot Abutters List Report

Keene, NH
April 07, 2022

Subject Property:

Parcel Number: 110-018-000
CAMA Number: 110-018-000-000-000
Property Address: 94 KEY RD.

Mailing Address: GRAYSON SPENCER REAL ESTATE LLC
286 OLD KEENE RD.
WALPOLE, NH 03608

Abutters:

Parcel Number: 110-019-000
CAMA Number: 110-019-000-000-000
Property Address: 120 KEY RD.

Mailing Address: JAZZLYN HOSPITALITY II LLC
440 BEDFORD ST.
LEXINGTON, MA 02420-1547

Parcel Number: 110-022-000
CAMA Number: 110-022-000-000-000
Property Address: 109-147 KEY RD.

Mailing Address: NORTHAMPTONBOYS3 LLC
70 BEMIS RD.
HOLYOKE, MA 01040

Parcel Number: 111-017-000
CAMA Number: 111-017-000-000-000
Property Address: 58 KEY RD.

Mailing Address: WINCHESTER KEY LTD PARTNERSHIP
632 WASHINGTON ST.
SOUTH EASTON, MA 02375-1169

Parcel Number: 111-018-000
CAMA Number: 111-018-000-000-000
Property Address: 68 KEY RD.

Mailing Address: KGRE LLC
12 PARK PL.
EVANSVILLE, IN 47713-1121

Parcel Number: 111-019-000
CAMA Number: 111-019-000-000-000
Property Address: 101 KEY RD.

Mailing Address: NORTHAMPTONBOYS3 LLC
70 BEMIS RD.
HOLYOKE, MA 01040

Parcel Number: 111-020-000
CAMA Number: 111-020-000-000-000
Property Address: 85 KEY RD.

Mailing Address: 85 KEY ROAD LLC
15 FOX MEADOW LN.
MERRIMACK, NH 03054

Parcel Number: 111-021-000
CAMA Number: 111-021-000-000-000
Property Address: 55 KEY RD.

Mailing Address: KEY ROAD IMPROVEMENTS LLC
565 TAXTER RD. STE. 400
ELMSFORD, NY 10523

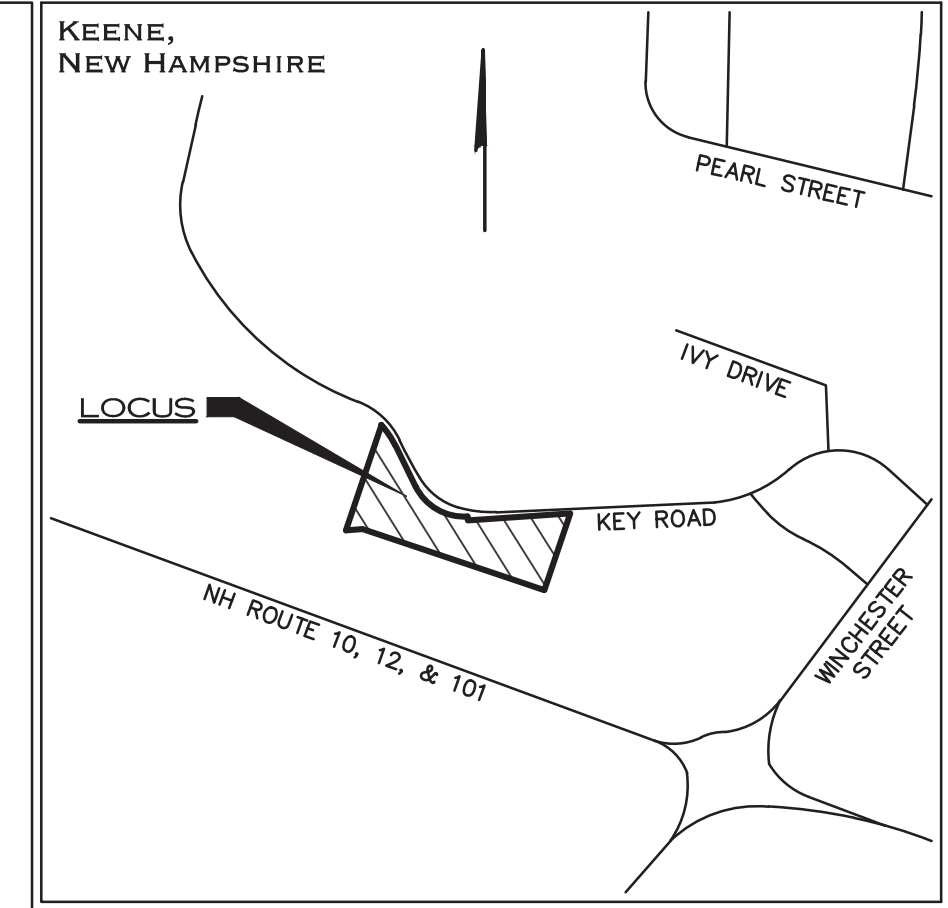


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4/7/2022

Page 1 of 1

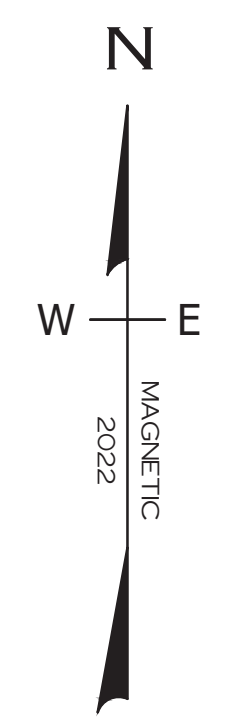


LOCUS MAP
SCALE: 1"=500'±

LEGEND

	CATCH BASIN
	GAS SHUTOFF
	SEWER MANHOLE
	TELEPHONE PEDESTAL
2661/3	DEED VOLUME & PAGE
CCRD	CHESHIRE COUNTY REGISTRY OF DEEDS
	UTILITY POLE W/GUY WIRES, OVERHEAD LINES AND NUMBERS
PSNH 586/5	

MAP 111, LOT 20
85 KEY ROAD, LLC
15 FOX MEADOW LANE
MERRIMACK, NH 03054
(2960/678)



SURVEY NOTES

1. THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED 22' X 40' CANOPY TO BE CONSTRUCTED ON TAX MAP 110, LOT 18, KEENE, NH.
2. KEY ROAD IS A CLASS V PUBLIC WAY. THE RIGHT-OF-WAY WIDTH ALONG THE PORTION OF THE LOCUS LOT SHOWN HEREON IS 50' WIDE PER DEED BOOK 806, PAGE 127.
3. EASEMENTS EXIST ON THE LOCUS PARCEL THAT ARE NOT SHOWN AS PART OF THIS SURVEY.
4. UNDERGROUND UTILITIES EXIST ON THIS SITE THAT ARE NOT SHOWN AS PART OF THIS SURVEY. DIG SAFE SHALL BE CONTACTED PRIOR TO ANY EXCAVATION OR DRILLING.
5. KEENE ZONING DISTRICT: COMMERCE
 - 5.1. MINIMUM LOT AREA: 15,000 SQ. FT.
 - 5.2. MINIMUM ROAD FRONTAGE: 50'
 - 5.3. MINIMUM FRONT, SIDE, AND REAR SETBACK: 20'
 - 5.4. MAXIMUM BUILDING COVERAGE: 80%
 - 5.5. MAXIMUM IMPERVIOUS COVERAGE: 80%
 - 5.6. MINIMUM GREEN/OPEN SPACE: 20%
 - 5.7. MAXIMUM BUILDING HEIGHT: 35'

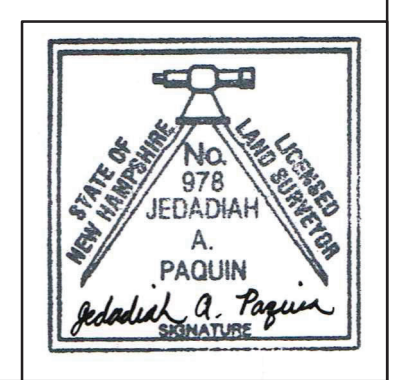
PLAN REFERENCES

1. "PROPOSED LOT FOR J & W REALTY INC.", BY ROY K. PIPER, DATED MARCH 1970. (CCRD PLAN BOOK 18, PAGE 2A)
2. "ALTA/ACSM LAND TITLE SURVEY LAND OF GURU NANAK HOTELS, LLC", BY SVE ASSOCIATES, DATED 9/14/07. (CCRD PLAN CABINET 13, DRAWER 3, #199)

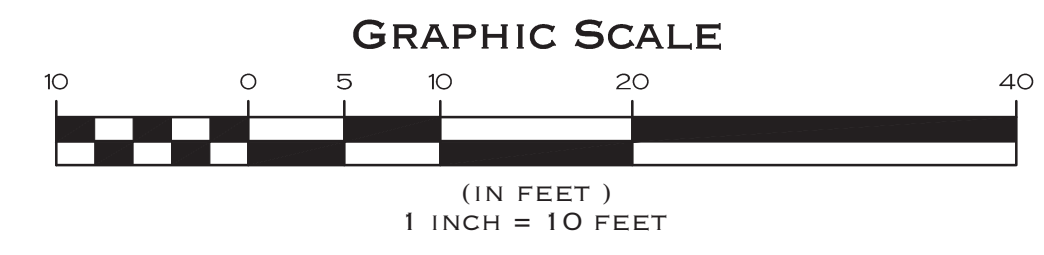
SURVEYOR'S CERTIFICATION

THIS SURVEY AND PLAT WERE PRODUCED BY THIS OFFICE FROM A TOTAL STATION AND DATA COLLECTOR TRAVERSE THAT MEETS OR EXCEEDS THE ALLOWABLE RELATIVE POSITIONAL ACCURACY FOR URBAN AREAS AS DEFINED IN TABLE 500.1, "ACCURACY MEASUREMENTS, LOCAL ACCURACY OF CONTROL SUPPORTING THE SURVEY," BY THE STATE OF NEW HAMPSHIRE, AND IS BASED ON INFORMATION RECORDED AT THE CHESHIRE COUNTY REGISTRY OF DEEDS, KEENE CITY HALL, AND PHYSICAL EVIDENCE FOUND.

THIS IS A PARTIAL SITE PLAN AND IS SUBSTANTIALLY CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



PARTIAL SITE PLAN		DATE PLAN: 4/27/2022
PREPARED FOR SPENCER GRAYSON REAL ESTATE, LLC		DATE SURVEY: 4/22
IDENTIFIED AS TAX MAP 110, LOT 18		DRAWN BY: JAP
#94 KEY ROAD, KEENE, CHESHIRE COUNTY, NEW HAMPSHIRE		SCALE: 1"=10'
PAQUIN LAND SURVEYING, PLLC		CAD FILE #: 22-15 SITE PLAN
1281 MAIN STREET, UNIT G, DUBLIN, NH 03444 JED@PAQUINLANDSURVEYING.COM (603) 313-3858		© 2022



MAP 110, LOT 18
SPENCER GRAYSON REAL ESTATE, LLC
286 OLD KEENE ROAD
WALPOLE, NH 03608
(2661/3)

TOTAL AREA:
2 ACRES (PER PLAN REF. 1)
TOTAL FRONTAGE: 627.8'± (PER PLAN REF. 1)

