



City of Keene Zoning Board of Adjustment

AGENDA

Monday, November 4, 2024

6:30 p.m.

City Hall, 2nd Floor Council Chambers

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: August 19, 2024 & October 7, 2024
- III. Unfinished Business:
- IV. Hearings:

ZBA-2024-26: Petitioner, Cathy Goodreau, of 690 Court St., requests a variance for property located at 70 Court St., Tax Map #568-041-000. This property is in the Downtown Transition District and is owned by Geno A. Ranaldi, of 75 Court St., Exeter, NH. The Petitioner requests a variance to operate an animal care business per Article 4.1.3 of the Zoning Regulations.

ZBA-2024-27: Petitioner, George Hansel of Tailfeather Strategies, Keene, requests a variance for property located at 7 Aliber Place, Tax Map #590-093-000. This property is in the Downtown Edge District and is owned by Jared Goodell of Keene. The Petitioner requests a variance for new construction within 20' of the minimum interior setback that is required when a parcel in the Downtown Edge District is abutting a parcel in the Downtown Transition District per Article 4.4.1.E 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 SPECIAL MEETING MINUTES
7

8 **Monday, August 19, 2024**

6:30 PM

**Council Chamber,
City Hall**

Members Present:

Jane Taylor, Vice Chair
Richard Clough
Edward Guyot

Staff Present:

Corinne Marcou, Zoning Clerk
Evan Clements, Planner/Deputy Zoning
Administrator

Members Not Present:

Joseph Hoppock, Chair

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

12
13 Vice Chair Taylor called the meeting to order at 6:30 PM. Roll call was conducted.

14
15 **II) Minutes of the Previous Meeting**

16
17 Vice Chair Taylor stated that there are no minutes in need of approval.

18
19 **III) Unfinished Business**

20
21 Vice Chair Taylor asked if there was any unfinished business. Mr. Clements replied no.

22
23 **IV) Hearings**

24 **A) ZBA-2024-21: Petitioner, George Hansel of Tailfeather Strategies, requests a**
25 **variance for property located at 57 Marlboro St., Tax Map #590-093-000. This**
26 **property is in the Downtown Edge District and is owned by Jarod Goodell. The**
27 **Petitioner requests a variance to permit new construction outside of the 0-20 foot**
28 **build to zone that is required in the Downtown Edge District per Article 4.4.1.C of**
29 **the Zoning Regulations.**

30
31 **B) ZBA-2024-22: Petitioner, George Hansel of Tailfeather Strategies, requests a**
32 **variance for property located at 57 Marlboro St., Tax Map #590-093-000. This**
33 **property is in the Downtown Edge District and is owned by Jarod Goodell. The**
34 **Petitioner requests a variance to permit new construction within 20 feet of the**

35 **minimum interior side setback that is required when a parcel in the Downtown**
36 **Edge District abuts a parcel in the Downtown Transition District per Article 4.4.1.E**
37 **of the Zoning Regulations.**
38

39 Vice Chair Taylor introduced ZBA-2024-21 and ZBA-2024-22. She stated that unless the Board
40 objects, they will open these two applications at the same time, since they go together, but vote
41 on them separately.
42

43 Vice Chair Taylor asked to hear from staff. Mr. Clements stated that the subject property is an
44 existing .3-acre, landlocked parcel with access to Marlboro St. via a private road named Aliber
45 Place. He continued that the parcel contains an existing 3-family dwelling and parking area. The
46 property is zoned Downtown Edge, which is subject to form-based dimension requirements.
47 Unlike traditional yard setbacks, the parcel has a Build-to-zone of 0-20' from the front lot line.
48 The Build-to-zone is the area on a lot, measured perpendicularly from the lot line, within which a
49 structure must locate. A Build-to-zone sets a minimum and maximum dimension within which
50 the building façade line must be located. The parcel is also subject to a 20-foot side setback for
51 the western property line, since it abuts the Downtown Transition District, and a 25-foot rear
52 setback for the southern property line, since it abuts a residential zoning district. The subject
53 property is adjacent to the Downtown Edge District to the northwest, north, and east; Downtown
54 Transition to the west; and Residential Preservation to the south. Surrounding uses include the
55 Historical Society of Cheshire County and Keene State Alumni Center to the west, a residential
56 duplex to the north and east, single-family homes to the south, and multi-family and the Savings
57 Bank of Walpole to the north on the side of Marlboro St.
58

59 Vice Chair Taylor thanked Mr. Clements for what she thinks is the clearest explanation of Build-
60 to-zone she has heard. She continued that the proposal is for three duplexes. Her question is why
61 the Board is not seeing a Variance from the definition of "duplex." Mr. Clements replied that the
62 applicant applied for an administrative written Zoning determination, and the acting Zoning
63 Administrator at the time came to the determination that each instance of a duplex is its own
64 principal use, and because this downtown zoning district allows multiple principal uses, multiple
65 duplexes are allowed on this lot.
66

67 Vice Chair Taylor asked if they could add a copy of that to the record. Mr. Clements read the
68 letter (from the Acting Zoning Administrator) for the record:
69

70 *"Dear Mr. Hansel,*

71 *We are in receipt of your request for a written interpretation of the City of Keene Zoning*
72 *Regulations. In response to your request, this letter shall serve as a written zoning*
73 *interpretation.*

74 *You, representing the owner, submitted a request for an interpretation of use standards*
75 *impacting potential development on two parcels: the first located at 57 Marlboro Street, located*
76 *in the Downtown Edge District (TMP#: 590-093-000) and the second, 3 Aliber Place, located in*

77 *the Residential Preservation District (TMP#: 590-092-000). The proposal is to merge these lots*
78 *and construct three duplexes on the portion of the parcel that is located within the Downtown*
79 *Edge District. This would result in a single lot with a single-family home located in the*
80 *Residential Preservation District and a multi-family structure and three duplexes located in the*
81 *Downtown Edge District.*

82 *Article 8, Section 8.3.1.E defines ‘ Dwelling, Two-Family / Duplex’ as ‘One building on a single*
83 *lot containing 2 independent dwelling units, which is designed, occupied or intended for*
84 *occupancy by 2 separate families.’ There are no use standards associated with this use definition.*
85 *This definition implies that the use is tied to the structure, or in other words, each duplex on a lot*
86 *would be a separate principal use. Furthermore, Section 8.1.3 of Article 8 (‘Multiple Principal*
87 *Uses’) states, ‘With the exception of lots located in a residential zoning district, a lot may contain*
88 *more than one principal use, so long as each use is allowed in the zoning district, unless otherwise*
89 *specified in this LDC’.*

90 *According to Table 4.1 of Article 4 of the LDC, ‘ Dwelling, Two-Family / Duplex’ is an allowed*
91 *use within the Downtown Edge District. Since the Downtown Edge District is not a residential*
92 *zoning district as specified in Table 2-1 of the LDC, it is my interpretation that multiple duplexes*
93 *are allowed on a single lot within this district.”*

94 Mr. Clements stated that the letter goes on to cite the appeal period, relevant RSA, and contact
95 information, regarding any questions with this interpretation.

96
97 Vice Chair Taylor thanked him and stated that it is helpful to have that spelled out, because he is
98 probably one of the few experts on what is where on this, and it is not easy to cross-reference. She
99 continued that the next time (staff) does an update, she suggests they clarify how that fit into it
100 with all the rest of the zones, because it seems rather blanket the way it is written.

101
102 Vice Chair Taylor asked if anyone had further questions for Mr. Clements. Hearing none, she
103 asked to hear from the applicant.

104
105 George Hansel of Tailfeather Strategies stated that he is here on behalf of the owner, Jarod
106 Goodell. He continued that he thanks the Board and staff for setting up this special meeting so
107 they can keep this project rolling. As mentioned, this is an unusual circumstance. A bit of
108 background is that the first step was to get clarification from the Zoning Administrator on
109 whether this would be allowed and what they would have to do to get this permitted; that process
110 has taken place. In addition, they had to request that the City Council allow them to build on a lot
111 that has no frontage as per State RSA. They went through that process and the City Council
112 voted on August 1 to allow that.

113
114 Mr. Hansel stated that this next step is to request a couple of Variances to deal with this unique
115 lot. He began with some clarification and a lay of the land by pointing out on the prepared
116 drawing, the location of Marlboro St. and the three parcels all owned by Mr. Goodell. He
117 continued that this project seeks to build three new duplexes, adding six units of housing to this

118 area. As part of the project, Mr. Goodell will voluntarily merge 3 Aliber Place with 57 Marlboro
119 St., creating one lot that will have the existing three-family, the three new duplexes, and a single-
120 family home towards the rear of the lot.

121
122 Mr. Hansel continued that there are three requests before the ZBA tonight; the first two are
123 Variances regarding setbacks, and the third is for relief from the parking requirement, a reduction
124 in the number of parking spaces Mr. Goodell will provide.

125
126 Vice Chair Taylor stated that she forgot the disclaimer earlier, which is that Mr. Hansel is
127 entitled to a five-member Board and there are only three members present. Since approval
128 requires three votes in favor, if the vote is two to one, Mr. Hansel does not have the opportunity
129 to come back unless it is substantially different from the application before them today. Mr.
130 Hansel replied that he and Mr. Goodell are aware of that and it is not a problem.

131
132 Mr. Clements stated that as a point of clarification, if there is not a unanimous action with three
133 votes tonight, the Board needs to continue the application to the next meeting. He continued that
134 a vote of two to one is not a final decision.

135
136 Mr. Hansel stated that the first application seeks relief from the 0-20 foot build-to-zone
137 requirement that would require new development on this parcel to within 20 feet of Marlboro St.,
138 which they decided is the access to this property. The map shows that the 0-20 foot zone is not
139 on the project property, making it difficult to build there. They understand this is a unique case
140 where the property does not have street frontage. They think it is a perfect example of a Variance
141 being required, because there is no possibility of building on a different parcel. These duplexes
142 will be small, and it presents an opportunity to create a new housing site Keene desperately
143 needs.

144
145 *1. Granting the Variance would not be contrary to the public interest.*

146
147 Mr. Hansel stated that this creates six new workforce housing units. He continued that the units
148 will be marketed toward people in the workforce where they are close to downtown, and within
149 walking distance of many amenities. It is a type of housing the city desperately needs. It also
150 promotes in-fill development and “smart growth practices,” which are seen throughout the
151 Master Plan as practices the City of Keene is trying to promote. They looked at many different
152 configurations of this parcel, because it is so unusual and thought about how to best place these
153 new buildings on the lot. They came to this conclusion, because locating these three new
154 buildings where they are proposed, reduces their visibility from the public right-of-way. That
155 reduces the impact to the surrounding neighborhood, and provides privacy for the eventual
156 residents of these new dwellings. The other reason they selected this location is it allows the
157 creation of new green space as part of this project. Where the buildings are now will be a new
158 lawn area, instead of deteriorating concrete and asphalt. They want to create up to 3,000 square
159 feet of green space with this new development.

160

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

162
163 Mr. Hansel stated that his understanding of the 0-20' Build-to requirement, from all of his
164 conversations on the City Council, as Mayor, from serving on the Planning Board, and in regards
165 to the LDC update, is that it is to provide for a consistent look and feel on the streetscape. They
166 wanted to ensure that places of increased density do not have one building right up to the street
167 and one building 20-30 feet back, for example. He does not think that awarding this Variance
168 would be contrary to the spirit of the Ordinance, because an existing building on Marlboro St.
169 already provides for that consistency. Putting in some buildings behind it will not substantially
170 modify the consistent look and feel that is present.

171
172 3. *Granting the Variance would do substantial justice.*

173
174 Mr. Hansel stated that this does not have frontage, so to allow any sort of development, this
175 Variance needs to be granted. He continued that he thinks this will do substantial justice to the
176 neighborhood as it will allow them to put new buildings in an area that is not currently being
177 used to its highest and best use, while creating housing options that are consistent in scale with
178 the rest of the neighborhood. Something else to think about as it relates to this Variance request
179 and the placement of the buildings is that this area of the city is rather unusual. Three different
180 zoning areas come together, thus, it is clearly an edge and appropriately zoned in the Downtown
181 Edge Zone. In some ways, this is like a transition zone between downtown and the much more
182 residential areas to the east and south. Therefore, they feel that the placement of these buildings
183 is actually consistent with the spirit of the Ordinance, because it allows for that higher density,
184 even though it is only over a span of 50 or 60 feet. It allows the higher density to be closer to
185 Main St. as opposed to closer to the east where they are trying to provide that transition area.

186
187 4. *If the Variance were granted, the values of the surrounding properties would not be*
188 *diminished.*

189
190 Mr. Hansel stated that they feel that this project is likely to at least keep the property values in
191 the area the same, or improve them. He continued that this rather underutilized spot needs some
192 refreshing, and this accomplishes that in a way that is consistent with the neighborhood. The size
193 and scale of the new buildings will also be consistent with other similar uses. There are other
194 buildings that are not quite this footprint but not very far off. They are not trying to put these
195 smaller cottages in an area where there are large homes or something wildly out of scale with the
196 rest of the neighborhood.

197
198 5. *Unnecessary Hardship*

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

202 *i. No fair and substantial relationship exists between the general public*
203 *purposes of the ordinance provision and the specific application of that provision*
204 *to the property because:*
205

206 Mr. Hansel stated that this unusual parcel does not have frontage, but it has a great opportunity to
207 add desperately needed housing. He continued that denial of this Variance would constitute
208 unnecessary hardship because it prevents the owner from developing on their land and using it to
209 its highest and best potential. No fair and substantial relationship exists between the general
210 public purposes of this ordinance provision and the specific application of that provision to the
211 property because there is no frontage here and not granting the request would serve no public
212 purpose that they see.

213
214 *and*

215 *ii. The proposed use is a reasonable one.*
216

217 Mr. Hansel stated that they feel this is a reasonable request, because the addition of these
218 buildings represents a creative, new, exciting use to help solve the city's housing crisis.

219
220 Mr. Hansel stated that that is what he has regarding the first Variance request, and he would be
221 happy to answer any questions.

222
223 Mr. Guyot asked about the setbacks of the three units relative to the lot line and the green area
224 and how those shape up. Mr. Hansel replied that that relates to the second Variance request,
225 about the interior lot lines. Mr. Guyot replied that he will hold his question then.

226
227 Vice Chair Taylor stated that the application says the lot size is 13,016 square feet and asked if
228 that is for the one lot, or the merged lots. Mr. Hansel replied probably the one lot. Vice Chair
229 Taylor replied that they will get to the traffic study later, but it was not clear to her where the two
230 lots were being treated together and where they were being treated separately.

231
232 Vice Chair Taylor asked if there were any other questions about ZBA-24-21. Hearing none, she
233 asked Mr. Hansel to continue with ZBA-24-22.

234
235 Mr. Hansel stated that the second request is similar, and he will skip the general overview of the
236 project. He continued that this Variance request has to do with exactly the point Mr. Guyot
237 brought up about the interior setbacks. They are asking for relief from the interior setback
238 requirement that would make them move the buildings 20 feet from the interior lot line, and they
239 are looking to reduce that to five feet. That allows them to tuck the buildings back into the
240 underutilized area without significantly impacting the neighborhood allowing the creation of the
241 new green space on the western side of the new joined lot and allows them to keep the parking
242 area consistent and in one place. Complying with the Ordinance as written would require them to
243 move these buildings in awkward places that would necessitate very difficult vehicular
244 movement throughout the site, and he does not think it would be the best solution; that led them

245 to request this Variance. The packet includes some renderings of what the new buildings would
246 look like from various points on adjoining properties and from the public right-of-way. They feel
247 that the area where they have placed the buildings will provide for minimal impact to the rest of
248 the neighborhood, including the most impacted parcels, the Cheshire County Historical Society
249 and Keene State College's Alumni Center. The renderings show there is quite a bit of vegetation
250 between the two parcels, so the visibility of the new construction will be minimal, even from the
251 parking lot. The picture on the screen was taken from the back door of the Historical Society.
252

253 1. *Granting the Variance would not be contrary to the public interest.*
254

255 Mr. Hansel stated that granting the Variance will not be contrary to the public interest because it
256 will create this new green space. It will allow them to use the parcel and design the project in a
257 way that they think will work best for the neighborhood. He continued that it would facilitate
258 new workforce housing that the city needs, and minimize the visual impact of the development
259 from the public right-of-way. You have to struggle to see this new development from the public
260 right-of-way, which he tried to show with some of the photos. He indicated TPI Staffing's office
261 building, stating that if you were in front of that and looking back you would probably have the
262 best visual shot of these new buildings, but it will still be sort of obstructed, even with them
263 locating the buildings five feet from the property line within the 20-foot interior setback area.
264

265 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
266

267 Mr. Hansel stated that he thinks that granting this Variance serves the spirit of the Ordinance,
268 because this is a genuine transitional area, truly on the downtown edge. It is meant to provide a
269 transition between much denser uses along Main St. and the more residential areas to the east.
270 Allowing them to locate these buildings and keep the building density to the western side of this
271 new parcel accomplishes that and will allow them to be in line with the spirit of the Ordinance.
272

273 3. *Granting the Variance would do substantial justice.*
274

275 Mr. Hansel stated that in this case, granting the Variance will do substantial justice. It will allow
276 for the new development and make the impact to the surrounding neighborhood as minimal as
277 possible, providing privacy for the neighbors and for the new residents of these buildings. All the
278 reasons he mentioned with the last Variance request apply here as well.
279

280 5. *Unnecessary Hardship*

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

284 i. *No fair and substantial relationship exists between the general public*
285 *purposes of the ordinance provision and the specific application of that provision*
286 *to the property because:*
287

288 Mr. Hansel stated that this is a unique property, and the lack of frontage makes it difficult. He
289 continued that it is important to note that this is in the center of a block, over 100 feet from the
290 public street in any direction, which is another way in which it is unique. To use the property to
291 its highest and best use, they need this relief. Not granting this Variance would not serve any
292 public purpose and would just lead to a project that is not as helpful to the neighborhood. That
293 results in no fair and substantial relationship existing between the general public purposes of the
294 Ordinance provision and the specific application of that provision to this property because of its
295 unique characteristics.

296

297 *and*

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

299

300 Mr. Hansel stated that they feel the proposed use is a reasonable one. He continued that they
301 worked closely with City staff, as Mr. Clements can attest, to try to get this project to a place
302 where it could move forward. They are very thankful for the work that has gone into this and for
303 the Board's time and attention.

304

305 Vice Chair Taylor asked if the Board had questions, noting that Mr. Guyot had a question that
306 was held over.

307

308 Mr. Guyot asked what the actual setback is to the lot line in the buildings. Mr. Hansel replied
309 that for the new buildings it will be five feet, if they get this Variance. Mr. Guyot asked about the
310 distance between the two new duplexes and the existing building that will be merged. Mr. Hansel
311 replied that they are making sure every building on the site has at least five feet of separation, per
312 the Fire Code.

313

314 Vice Chair Taylor stated that that was one of her questions, the separation between the three
315 duplexes. She asked if five feet is truly all that Fire Code requires. Mr. Hansel replied yes, and
316 they could actually have them closer if they upgraded the standards of the walls.

317

318 Vice Chair Taylor asked if it is correct that the existing three-family structure will remain. Mr.
319 Hansel replied yes.

320

321 Vice Chair Taylor stated that she is taking her time, because this is a difficult project to try to
322 understand. She asked Mr. Hansel to point out the access from Marlboro St. Mr. Hansel showed
323 the main driveway that comes into the site and stated that everything is existing except for the
324 three buildings. He continued that something he did not mention is that the parking on the site
325 today is rather haphazard, so they hope to straighten out where the parking should be.

326

327 Vice Chair Taylor asked if it is correct that the access is Aliber Place, the private way. Mr.
328 Hansel replied yes, and showed its location, stating that it goes along the western side of the
329 neighboring property, 67 Marlboro St., and goes to serve the single-family home in the back. He
330 continued that as it exists today, it extends to that back section where the residents in the single-

331 family home park. The merging of the two lots will allow them to create a contiguous parking
332 situation on site.

333

334 Vice Chair Taylor asked if Mr. Goodell owns the rights underneath Aliber Place. Mr. Hansel
335 replied yes, Mr. Goodell owns all three parcels.

336

337 Mr. Guyot stated that he had the same question, and he assumes it is a right-of-way situation. He
338 asked if it is permanent to the deed of all the parcels. Mr. Hansel replied yes, it is an existing
339 private road.

340

341 Vice Chair Taylor asked if the intent is to sell these duplexes or to rent them. Mr. Hansel replied
342 to rent. Vice Chair Taylor stated that she does not know the status of the single-family home, but
343 she asked if it is correct that the three-family home and these six units will all be rental
344 properties. Mr. Hansel replied yes, and they are all rental properties today.

345

346 Vice Chair Taylor asked if Mr. Clough had any questions. Mr. Clough replied no, they both seem
347 clear to him.

348

349 Vice Chair Taylor asked for public comment, beginning with anyone wishing to speak in
350 opposition to the application. Hearing none, she asked if anyone wished to speak in favor of it.
351 Hearing none, she closed the public hearing and asked the Board to deliberate, beginning with
352 ZBA-2024-21, the application to vary from the build-to-zone requirement.

353

354 Mr. Guyot stated that he is comfortable with the aspect of additional housing. He continued that
355 he thinks it is great and weighs heavily in his mind. He is comfortable with the unnecessary
356 hardship as well. Because the property is unique, it meets both parts of that standard, in his
357 opinion.

358

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

360

361 Vice Chair Taylor stated that regarding the first criterion, the Variance not being contrary to the
362 public interest, she thinks that is what Mr. Guyot was getting at when he said the project will
363 provide additional housing units when there is a shortage. She continued that she agrees with the
364 applicant that it is intended to promote the in-fill development. She does not know if it will
365 minimize the visual impact and does not know that that is necessary to prove the point that it is
366 in the public interest.

367 Vice Chair Taylor asked if Mr. Clough had any comment. Mr. Clough replied no, he agreed with
368 the presentation. He continued that because of the location, it is a situation in which the Variance
369 addresses an issue that would have to be addressed for anyone to do anything residential there.

370

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

372

373 Vice Chair Taylor stated that the second criterion, in this case, is related to the first, because the
374 Ordinance is intended - especially when it was rewritten a couple of years ago – to encourage
375 underutilized property that was in the city’s center, which this qualifies. She definitely thinks it is
376 consistent with what the City was trying to do when it revised its ordinances and especially
377 created all these separate downtown ordinances.

378
379 *3. Granting the Variance would do substantial justice.*

380
381 Vice Chair Taylor stated that here they have the weighing criterion, that the benefit to the
382 applicant should not outweigh the harm to the general public. She continued that she thinks it is a
383 wash, because if this gets built and occupied the applicant will definitely benefit, and the city
384 will probably benefit from having more housing.

385
386 *4. If the Variance were granted, the values of the surrounding properties would not be*
387 *diminished.*

388
389 Vice Chair Taylor stated that the Board does not have any particular evidence of this, but they
390 have common sense. She continued that if you add green space and build attractive properties, it
391 generally has the impact of increasing values, not diminishing them.

392
393 Mr. Clough stated that he agrees that Keene does not have many places that would be like a
394 maze or warren, like that undifferentiated area. He continued that defining it in more specific
395 ways will improve it. What little of the project that can be seen from the road would still look
396 better, and especially for the abutters, it would have no impact on them.

397
398 *5. Unnecessary Hardship*

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

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

405
406 Vice Chair Taylor stated that they often struggle with the unnecessary hardship criterion. She
407 continued that she agrees that the characteristics of this parcel are unique, but she is not positive
408 that it translates into a hardship. She is not sure it prevents any new development. (For example),
409 maybe it could be utilized with two duplexes, one duplex, or in some other way. What she is
410 looking at is that not having “full utilization” - however a property owner defines that term -
411 does not necessarily, by itself, create a hardship. In this case, she thinks it is a very strange
412 parcel. She defies anyone to find a similar one in the city.

413
414 Mr. Guyot asked if it is correct that the hardship is the 0-20’ rule. He continued that he knows
415 there was a comment about full utilization, but to him, the hardship of this property is the

416 requirement of the 0-20' rule and the unique interface between that rule and the structure of this
417 property. That is where he was going with this.

418
419 Vice Chair Taylor replied that she sees his point, but she also thinks that it happens also because
420 of the nature of the development. She continued that it does not mean that the property is not
421 unique in its setting. Then they have to decide whether there is a relationship between how this
422 development is being proposed and the way the Ordinance is written, and she thinks that goes to
423 his point that there might *not* be a relationship between the 0-20' rule as applied to this particular
424 property.

425
426 Mr. Clough stated that this is always the oddest criterion to address. He continued that he thinks
427 the placement of the property, no matter what you want to do with it, would create situations of
428 someone coming before the Board, because he thinks residential use in that area is a logical one,
429 and to put anything on that lot other than what is there already would require coming before the
430 Board. To him, the condition for the hardship is that the placement of the property is so odd. You
431 cannot change geography. It is stuck there, out of time, out of place.

432
433 *and*

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

435
436 Mr. Clough stated that he would say yes, this project is reasonable. He continued that the area
437 has a number of residential units, and this is a similar use. It addresses a need that is
438 acknowledged in the area. To him, that is a reasonable use.

439
440 Mr. Guyot stated that he agrees.

441
442 Mr. Clements asked if Mr. Guyot is saying he does not believe there is any way that this property
443 could be expanded to meet that 0-20' rule. Mr. Guyot replied yes, he thinks the 0-20' rule is what
444 creates the hardship for this piece. Whether it is one duplex, two duplexes, or three or more, that
445 factor will always be there, because of the "adjacencies," unless he is not understanding that rule
446 correctly. Mr. Clements replied that the rule is that from the property line, 20 feet in, is where the
447 building needs to sit.

448
449 Vice Chair Taylor asked if there were any other comments. Hearing none, she asked for a
450 motion.

451
452 Mr. Clough made a motion for the Zoning Board of Adjustment to approve ZBA-2024-21, for a
453 property located at 57 Marlboro St., Tax Map #590-093-000 in the Downtown Edge District,
454 requesting a variance to permit new construction outside of the 0-20-foot build to zone that is
455 required in the Downtown Edge District per Article 4.4.1.C of the Zoning Regulations. Mr.
456 Guyot seconded the motion.

457
458 *1. Granting the Variance would not be contrary to the public interest.*

459 Met with a vote of 3-0.

460

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

462

463 Met with a vote of 3-0.

464

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

466

467 Met with a vote of 3-0.

468

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

471

472 Met with a vote of 3-0.

473

474 5. *Unnecessary Hardship*

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

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

481 *and*

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

483

484 Met with a vote of 3-0.

485

486 The motion passed with a vote of 3-0.

487

488 Vice Chair Taylor stated that the Board will now deliberate on ZBA-2024-22, to permit new
489 construction within 20 feet of the minimum interior side setback that is required. She continued
490 that the applicant had mentioned in response to Mr. Guyot's question that the intent is to locate
491 the buildings within five feet of the setback. When they get to a motion, she suggests they think
492 about putting a condition on it that the setback be no less than five feet. Mr. Clements replied
493 yes, or "to allow for a five-foot setback when a 20-foot setback is normally permitted."
494

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

496

497 Vice Chair Taylor stated that she believes granting the Variance would not be contrary to the
498 public interest, in part because it backs up to a parking lot. She continued that if it backed up to
499 another house that was 10 feet from the lot line, she might be more concerned. KSC and the
500 Historical Society both tend to use that parking lot, and with parking in that area at a premium,
501 she doubts they are going to build something on it.

502 Mr. Clough stated that he agrees.

503

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

505

506 Vice Chair Taylor stated that she thinks with setbacks in general, the spirit of the Ordinance is
507 about density, (preventing) over-construction or too many buildings in one area. She continued
508 that in this case, it is in a downtown area where properties and buildings tend to be closer
509 together, whether because they are grandfathered or by right under the Ordinance, and it is
510 backing up to a parking lot. She does not think the spirit of the Ordinance is violated.

511

512 Mr. Guyot stated that he does not see any violation.

513

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

515

516 Vice Chair Taylor stated that this is the balancing test whether the benefit to the applicant is not
517 outweighed by harm to the general public. She continued that she does not see any harm at all to
518 the general public on this one.

519

520 Mr. Clough stated that he would say that is true. He continued that he suspects that once
521 construction is done, (the buildings) will be quite innocuous there. He does not think people will
522 be complaining about them. The general public will not be unduly concerned about this. Given
523 the placement of it, they are quite a ways away from the general public and they certainly have
524 no impact on parking areas.

525

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

528

529 Mr. Guyot stated that he agrees that the values of surrounding properties would not be
530 diminished. He continued that the empty parking lot now, with somewhat compromised
531 pavement and excess vegetation, is kind of in rough shape. Having the housing units in there, the
532 additional green space, and activity in that area versus empty space, all help with abutters'
533 property values.

534

535 5. *Unnecessary Hardship*

536

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

539

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

542

and

543

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

544

545 Vice Chair Taylor stated that they have all agreed that this is a unique site. She continued that
546 she does question whether these buildings could be placed in compliance with the Zoning
547 Ordinance. She does not have the expertise to know, and she is not entirely sure about the
548 hardship with this, she would like to hear others' thoughts.

549

550 Mr. Clough stated that if the diagram on the screen is accurate, showing what would happen if
551 they attempted to conform to the restrictions, he believes it would make it difficult to make it a
552 viable enterprise, and that is why they came up with the solutions they came up with. He
553 continued that it is an odd shape, which makes it hard to locate any sort of building on it, while
554 also having parking and green space. He thinks the shape of it dictates why they are before the
555 Board for this. If the shape were more regular, such as more square or rectangular, it would be
556 much easier to place things. This irregular shape makes it quite a challenge.

557

558 Mr. Guyot stated that enforcing the 20-foot setback could potentially, although he cannot say
559 with certainty, reduce the number of units you could fit on that site, making it economically
560 challenging to develop and operate down the line. He continued that he sees that as a hardship as
561 well.

562

563 Vice Chair Taylor replied that as a reminder, the economics of it are a consideration, but they are
564 not a determining factor. It depends on how much weight they want to give it.

565

566 Vice Chair Taylor asked if anyone had further comments on any of the criteria. Hearing none,
567 she asked for a motion.

568

569 Mr. Guyot made a motion for the Zoning Board of Adjustment to approve ZBA-2024-22, for a
570 property located at 57 Marlboro St., Tax Map #590-093-000 in the Downtown Edge District,
571 owned by Jarod Goodell, to permit new construction within 20 feet of the minimum interior side
572 setback that is required when a parcel in the Downtown Edge District abuts a parcel in
573 Downtown Transition District, per Article 4.4.1.E of the Zoning Regulations, with the condition
574 that the property be allowed a five-foot setback where a 20-foot minimum is normally required.

575 Mr. Clough seconded the motion.

576

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

578

579 Met with a vote of 3-0.

580

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

582

583 Met with a vote of 3-0.

584

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

586

587 Met with a vote of 3-0.

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

591
592 Met with a vote of 3-0.

593
594 5. *Unnecessary Hardship*

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

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

601 *and*

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

603
604 Met with a vote of 3-0.

605
606 The motion passed with a vote of 3-0.

607
608 **A) ZBA-2024-23: Petitioner, George Hansel of Tailfeather Strategies, requests a**
609 **special exception for property located at 57 Marlboro St., Tax Map #590-093-000.**
610 **This property is in the Downtown Edge District and is owned by Jarod Goodell. The**
611 **Petitioner requests a special exception to permit the major parking reduction per**
612 **Article 9.2.7.C of the Zoning Regulations.**

613
614 Vice Chair Taylor introduced ZBA-2024-23 and asked to hear from staff.

615
616 Mr. Clements stated that in the Downtown Edge and Residential Preservation zoning districts,
617 each dwelling unit is required to have two parking spaces. He continued that the applicant has
618 submitted a traffic and parking analysis for the subject parcel at 57 Marlboro St.; the parcel to the
619 north, 59 Marlboro St., with the frontage on Marlboro St.; and the parcel to the south, 3 Aliber
620 Place. The existing and proposed uses have a combined parking requirement of 18 spaces. The
621 applicant is requesting a reduction to provide 13 parking spaces in total. He will let the applicant
622 go into the details, but the reason why staff and the applicant both agree that the unique existing
623 conditions of the three parcels are fundamentally connected to each other, so looking at the
624 parking analysis and the reduction as a whole makes more practical sense.

625
626 Mr. Guyot stated that he is trying to count the parking spaces as it is not clear on the print the
627 Board has. He wants to understand the relationship between 59 Marlboro St.'s parking and asked
628 where that is located.
629

630 Mr. Clements stated that the property line actually intersects the top part of the parking area. He
631 continued that part of the reconfiguration of these two spots would be more or less designated for
632 59 Marlboro St. Mr. Guyot asked if those are the first two that appear on the map with the
633 property line going through the middle. Mr. Clements replied that is correct. Mr. Guyot asked if
634 it is correct that there are four spaces across there. Mr. Clements replied yes. Mr. Guyot replied
635 that when he adds up the rest, he gets to 13, because there are seven across that lateral portion at
636 the base of 57 Marlboro St. and two next to the dumpster. He asked if that is correct. Mr.
637 Clements replied yes. Mr. Guyot asked if that is 13 spaces versus 18. Mr. Clements replied yes,
638 at two parking spaces per unit for all three lots, it would be 18. Mr. Guyot asked if it is correct
639 that that parking space count included 59 Marlboro St. Mr. Clements replied yes.

640
641 Vice Chair Taylor asked if there were any other questions for Mr. Clements. Hearing none, she
642 asked to hear from the applicant.

643
644 George Hansel of Tailfeather Strategies stated that he is here on behalf of the owner, Jarod
645 Goodell. He continued that he wishes this project was easy to explain, but having three different
646 parcels in the same place with the same owner, there is a lot going on and it certainly gets
647 confusing. He appreciates everyone going through this exercise that he has gone through over the
648 last couple of months to understand how this will work.

649
650 Mr. Hansel continued that they are requesting a major parking reduction. There would normally
651 be two spots required for each residential unit. He encourages them, as Mr. Clements said, to
652 think about how this works with these three parcels. Even though 59 Marlboro St. is not
653 technically part of this application, that is the frontage to Marlboro St. and every person, every
654 resident of these back units, will have to go through there. Thus, what they are trying to
655 accomplish here is a more contiguous parking arrangement for the future with this new
656 development. It is important to note that this is right on the downtown edge. If it were about 50
657 feet to the west, there would not necessarily even be a parking requirement, because it would be
658 part of the Downtown Core where many residential units do not have any parking requirement.
659 This truly does represent a transition area which is between the residential area to the east and
660 the high density to the west. They are asking for an accommodation to be respective of that fact
661 that this is within walking distance to the Co-op, some public transportation and it is close to the
662 rail trail. In addition, these are small units about 350 square feet, not suitable for a big family
663 with multiple vehicles. They will be marketed for workforce and single people who are looking
664 for an affordable housing option where they can walk to the Co-op and get their groceries,
665 maybe even work downtown. That is why they are asking for this accommodation.

666
667 Mr. Hansel stated that the unique characteristics of the site they discussed tonight, and the fact
668 that it is in proximity to all of these (amenities) in this highly walkable neighborhood. They are
669 in close proximity to Main St. and all of those amenities, and thus feel that the requirement for
670 two spots per housing unit is too restrictive and does not make sense. Even if they did provide
671 this parking, he does not think there would be many people taking advantage of it, because these

672 are economical units that will not house many people. The reduction will not cause long term
673 parking problems for adjacent properties or anticipated future uses.

674
675 He continued that another thing to think about is that this section of three parcels is all
676 residential. There are no commercial uses here and they do not expect this area to be used for any
677 commercial uses. Everyone going onto the site from here is presumably live there or to visit
678 someone who lives here. They feel that will limit any potential impacts to the surrounding
679 properties.

680
681 *1. The nature of the proposed application is consistent with the spirit and intent of the Zoning*
682 *Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all*
683 *applicable standards in this LDC for the particular use.*

684
685 Mr. Hansel stated that they feel the particular use does comply with all the applicable standards
686 in the LDC. He continued that this is in-fill development, and this area of the city, specifically,
687 has been targeted over the last decade to create walkable neighborhoods. Every conversation he
688 had been involved with on the legislative side, deciding how the City was going to regulate this
689 part of the city, was to create a walkable neighborhood where they could preserve the residential
690 character of the neighborhood while making it accessible and walkable. He thinks this
691 development encapsulates many of those sentiments and tries to accomplish that.

692
693 *2.. The proposed use will be established, maintained and operated so as not to endanger the*
694 *public health, safety, or welfare.*

695
696 Mr. Hansel stated that they feel this will not endanger the public health, safety, or welfare. He
697 continued that in fact, reconfiguring this existing condition and better defining the parking will
698 make it a much safer site for the current and future residents.

699
700 *4. The proposed use will be of a character that does not produce noise, odors, glare, and/or*
701 *vibration that adversely affects the surrounding area.*

702
703 Mr. Hansel stated that they are not expecting to do any of these things after construction.

704
705 *5.. The proposed use will not place an excessive burden on public improvements, facilities,*
706 *services, or utilities.*

707
708 Mr. Hansel stated that they are not expecting that the addition of six new housing units will pose
709 an excessive burden or that this parking reduction will have any kind of excessive burden on
710 public facilities, services, or utilities. The project, as it relates to water and sewer evaluation, has
711 gone through the normal process with the City's emergency services staff to make sure the site is
712 accessible as configured.

713
714 *6. The proposed use will not result in the destruction, loss, or damage of any feature determined*
715 *to be of significant natural, scenic, or historic importance.*

716

717 Mr. Hansel stated that this evaluation has been done and they do not feel this will impact any of
718 the historic value of the area.

719
720 *7. The proposed use will not create a traffic safety hazard or a substantial increase in the level of*
721 *traffic congestion in the vicinity of the use.*
722

723 Mr. Hansel stated that they supplied a letter and study from a licensed traffic engineer, who
724 determined that even with the addition of the six units it does not rise anywhere close to the level
725 to cause traffic congestion. Far less than 100 trips per hour, which would be the regularly
726 identified threshold for getting out of normal ebb and flow. The traffic engineer felt they were
727 well below that threshold.

728
729 Mr. Hansel stated that he is happy to answer questions. He continued that the summary is that
730 they feel that these are small units that will not become any bigger and will be targeted towards
731 single people or maybe a pair of people, and the traffic engineer gave them the thumbs up to say
732 that the proposed plan would not have any significant impact on the community at large. Thus,
733 they feel this is a reasonable request.

734
735 Vice Chair Taylor stated that she thinks Mr. Hansel skipped one of the criteria.

736
737 3. The proposed use will be established, maintained, and operated so as to be harmonious with
738 the surrounding area and will not impede the development, use, and enjoyment of adjacent
739 property.

740
741 Mr. Hansel stated that they think these improvements will make it more defined, that this is the
742 parking area for this property. He continued that it would help with what is currently a rather
743 confusing situation where the property lines are not well-defined and the parking surface is
744 deteriorated. This project will help things in the neighborhood.

745
746 Vice Chair Taylor stated that Mr. Hansel said that generally, the uses operate in harmony with
747 each tenant finding a regular spot to park. She asked if he is talking about all three of the
748 properties at the moment. Mr. Hansel replied that that was his personal observation from
749 assessing the properties. He continued that for lack of a better term, it is a bit of a “free for all”
750 among the residents of all those properties and he thinks they will be well served by having this
751 repaved, striped, and having a better understanding of where they should park.

752
753 Vice Chair Taylor asked how many parking spaces are there now, approximately, given what
754 Mr. Hansel said about it being a free-for-all and not well defined. Mr. Hansel replied that
755 currently there are big concrete blocks. He continued that the plan certainly does not take away
756 parking spaces. It probably opens up a few new ones, in fact.

757
758 Vice Chair Taylor asked what the access is for 67 [Marlboro St.]. Mr. Hansel replied that the
759 property line is not well defined at the back edge, but they have their parking (separately). Vice
760 Chair Taylor replied that it is difficult to tell, and she did not know if they accessed their parking

761 through Aliber Place or have a direct access. Mr. Hansel replied that they have a direct access to
762 Marlboro St. on the eastern side of their building.

763

764 Vice Chair Taylor asked if Mr. Hansel knows how many vehicles currently access these
765 properties on a regular basis. Mr. Hansel replied that when he was out there, he did not
766 specifically count, but it is generally understood – from what he understands from the property
767 owner – that the units currently have about one car each. Thus, this (project) will be consistent
768 with what is there.

769

770 Vice Chair Taylor stated that not being a traffic engineer, she has questions about the parking
771 study and wants to make sure she understands what she is looking at. Regarding Table 1, the first
772 column says “single family trips,” and the footnote talks about “detached housing.” Obviously,
773 they are not talking about detached housing, as the materials state, and they did not necessarily
774 have the ability to calculate that exactly. On that column of that chart, where it says, for example,
775 “enter five, exit five,” she asked if that is for each dwelling unit.

776

777 Mr. Hansel replied that there is only one detached single-family home on the site today. He
778 continued that he thinks that is meant to represent what exists today at 3 Aliber Place.

779

780 Vice Chair Taylor asked if the duplexes then qualify as “multi-family.” Mr. Hansel replied yes,
781 but he believes the one that says “single family trips,” if he is interpreting it correctly, refers to 3
782 Aliber Place as the only single-family home in use right now, and then the “multi-family trips”
783 as calculated here would represent the use at 57 Marlboro St. and 59 Marlboro St. Vice Chair
784 Taylor asked if it is correct that it does not include the potential... she thought it was also
785 estimating what the potential would be with the addition of the three duplexes.

786

787 Mr. Hansel replied that the first two columns on Table 1 are the existing uses, and the third
788 column from the left is the projected new (uses), and then the new total of the built-out site as
789 proposed is in the final right-hand column.

790

791 Mr. Clements stated that with trip generation, “single-family” is the most intense trip use per
792 dwelling unit, because there is an assumed scaling down in the amount of vehicle ownership
793 once you get into multi-family. He continued that for a single family, it is five people going out
794 and five people going back, such as two parents and three children. Either that or one person
795 doing multiple trips per day, or five people going out in five cars and coming back. Then, as you
796 scale up into multi-family, each dwelling unit in multi-family does not have that much access to
797 parking spaces, vehicles, or people. That is why it is not just an additive situation. You are not
798 just adding five one-way trips for each dwelling unit. It looks like they used the LDC for a low
799 rise multi-family for five dwellings and six dwellings for the multi-family trips. “B” was a five-
800 dwelling, and then the additional site trips, as Mr. Hansel said, which is for the six duplexes.

801 They consider that a six-dwelling multi-family.

802

803 Vice Chair Taylor replied that that helps a lot. Mr. Clements replied that traffic and parking
804 reports are very conservative when they do their analysis. It is a “What is the most intense
805 scenario for traffic generation for parking usage?” analysis.

806
807 Vice Chair Taylor asked if there were any more questions for Mr. Hansel. Hearing none, she
808 asked for public comment in opposition to or in favor of the application. Hearing none, she
809 closed the public hearing and asked the Board to deliberate.

810
811 Vice Chair Taylor stated that in addition to the Special Exception criteria, the Board has to
812 consider two criteria required for the parking reduction. She suggests they go through each one,
813 for clarity.

814
815 *a. The specific use or site has such characteristics that the number of required parking spots is*
816 *too restrictive.*

817
818 Mr. Clough stated that he thinks, based on the plans, that even though it is six units being added,
819 they are about 320 square feet each, which is very small. He continued that the space would feel
820 full with two people, and probably one person would feel more comfortable, which would
821 indicate there probably would not be two parking spaces utilized per unit. If the units were
822 bigger, he might question the number of parking spaces they are asking for.

823
824 Vice Chair Taylor stated that her only concern in this area was winter parking. She continued
825 that there is a comment in the materials that overnight parking permits are available in the City-
826 owned parking lots and garages within a 10-minute walk from the proposed development, which
827 is great, but she is not sure how willing people will be to use that. Maybe Keene will not have
828 any more winters with four feet of snow and 10 degrees below. That will be up to whoever rents
829 the units, and how many parking tickets they are willing to get. That was her major concern
830 about it.

831
832 *b. The requested reduction will not cause long term parking problems for adjacent properties or*
833 *anticipated future uses.*

834 Vice Chair Taylor stated that once this property is built out, she suspects there will be very
835 limited future uses. She continued that again, she is of mixed mind as to whether there will be
836 long term parking problems. She does not know if the Board is equipped to make a judgment on
837 that.

838
839 Mr. Guyot replied that he agrees that they are not able to judge. He continued that they would
840 need more study to ascertain the effects.

841
842 Vice Chair Taylor stated that she is sure that if this is all built out and there are long term parking
843 problems, the landlord will hear about it.

844

845 *1. The nature of the proposed application is consistent with the spirit and intent of the Zoning*
846 *Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all*
847 *applicable standards in this LDC for the particular use.*
848

849 Vice Chair Taylor stated that she thinks it is consistent with the spirit and intent in that, again,
850 they go back to the in-fill development and also, as Mr. Clough noted, the small size of the units
851 are not conducive to large families with three vehicles apiece.
852

853 Mr. Guyot stated that he agrees with that observation.
854

855 *2. The proposed use will be established, maintained and operated so as not to endanger the*
856 *public health, safety, or welfare.*
857

858 Vice Chair Taylor stated that it is definitely off-street parking, and it is away from the public
859 street, so it will not impact that. She continued that based on the traffic studies, she does not
860 think there will be much impact to the public unless the tenants fight with each other over the
861 parking spaces, but the tenants are not the general public. If it were directly abutting on Marlboro
862 St. that might create a problem, but if it were directly abutting on Marlboro St., they would not
863 even be here (seeking a Special Exception).
864

865 *3. The proposed use will be established, maintained, and operated so as to be harmonious with*
866 *the surrounding area and will not impede the development, use, and enjoyment of adjacent*
867 *property.*
868

869 Mr. Guyot stated that given that the other properties are primarily parking in nature, he does not
870 see how this development and the parking challenge here would affect those in any way.
871

872 Vice Chair Taylor replied that she agrees. She continued that the abutter on the west is TPI, and
873 the abutter directly north is owned by Mr. Goodell. That does not prohibit it from being
874 developed for something else. The abutter to the east is residential. She does not see that it would
875 have a negative effect on the area, and it might actually be a positive effect, if it produces order
876 to a chaotic parking situation.
877

878 *4. The proposed use will be of a character that does not produce noise, odors, glare, and/or*
879 *vibration that adversely affects the surrounding area.*
880

881 Vice Chair Taylor stated that as Mr. Hansel noted, that does not include construction.
882

883 Mr. Clough stated that typically, residential units do not generate any of those issues, and even if
884 these units were maxed out, it would not have had that issue in the first place, so this is even less
885 so. It is reducing anything of that nature.
886

887 Vice Chair Taylor stated that if the units are rented to college students, the City has enacted some
888 ordinances that help control things when they get out of hand.
889

890 *5. The proposed use will not place an excessive burden on public improvements, facilities,*
891 *services, or utilities.*

892
893 Vice Chair Taylor stated that she thinks the services and utilities are all there. She continued that
894 they might need to be expanded, but that is the developer's concern. She does not see that as
895 being impactful on anything else in the area.

896
897 *6. The proposed use will not result in the destruction, loss, or damage of any feature determined*
898 *to be of significant natural, scenic, or historic importance.*

899
900 Vice Chair Taylor stated that it might improve the scenic view. She continued that the building
901 TPI is in might have historic value, but that is not this site.

902
903 *7. The proposed use will not create a traffic safety hazard or a substantial increase in the level of*
904 *traffic congestion in the vicinity of the use.*

905
906 Vice Chair Taylor stated that if you put six more units there, she can see some potential for
907 issues with left hand turns out of Aliber Place, just beyond where Marlboro St. has that big curve
908 in the road, but that is more of a Planning Board issue. She continued that that is the only traffic
909 issue she sees.

910
911 Mr. Clough stated that he would expect school hours, and the bank traffic would be impacted the
912 most, but again, this is a very small number of vehicles, when you take all that into
913 consideration. They just need to be patient drivers.

914
915 Mr. Clements stated that he wants to note that the traffic report stated that the three new duplexes
916 will generate about two or three additional trips per peak hour, versus what exists on the site.
917 Vice Chair Taylor replied that unfortunately, the Board has seen a number of traffic studies that
918 were completely inaccurate, so they have to use common sense at the same time.

919
920 Vice Chair Taylor asked if there were any other comments. Hearing none, she asked for a
921 motion.

922
923 Mr. Clough made a motion for the Zoning Board of Adjustment to approve ZBA-2024-23, a
924 special exception for property located at 57 Marlboro St., Tax Map #590-093-000, to permit the
925 major parking reduction per Article 9.2.7.C of the Zoning Regulations. Mr. Guyot seconded the
926 motion.

927
928 *a. The specific use or site has such characteristics that the number of required parking spots is*
929 *too restrictive.*

930
931 Met with a vote of 3-0.

932
933 *b. The requested reduction will not cause long term parking problems for adjacent properties or*
934 *anticipated future uses.*

935

936 Met with a vote of 3-0.

937

938 *1. The nature of the proposed application is consistent with the spirit and intent of the Zoning*
939 *Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all*
940 *applicable standards in this LDC for the particular use.*

941

942 Met with a vote of 3-0.

943

944 *2. The proposed use will be established, maintained and operated so as not to endanger the*
945 *public health, safety, or welfare.*

946

947 Met with a vote of 3-0.

948

949 *3. The proposed use will be established, maintained, and operated so as to be harmonious with*
950 *the surrounding area and will not impede the development, use, and enjoyment of adjacent*
951 *property.*

952

953 Met with a vote of 3-0.

954

955 *4. The proposed use will be of a character that does not produce noise, odors, glare, and/or*
956 *vibration that adversely affects the surrounding area.*

957

958 Met with a vote of 3-0.

959

960 *5. The proposed use will not place an excessive burden on public improvements, facilities,*
961 *services, or utilities.*

962

963 Met with a vote of 3-0.

964

965 *6. The proposed use will not result in the destruction, loss, or damage of any feature determined*
966 *to be of significant natural, scenic, or historic importance.*

967

968 Met with a vote of 3-0.

969

970 *7. The proposed use will not create a traffic safety hazard or a substantial increase in the level of*
971 *traffic congestion in the vicinity of the use.*

972

973 Met with a vote of 3-0.

974

975 The motion passed with a vote of 3-0.

976

977 **I) New Business**

978

979 Vice Chair Taylor asked if there was any new business. Mr. Clements replied no.

980

981 **II) Communications and Miscellaneous**

982

983 Vice Chair Taylor asked if there were any communications or miscellaneous items. Mr.

984 Clements replied no.

985

986 **III) Non-Public Session (if required)**

987

988 **IV) Adjournment**

989

990 Vice Chair Taylor stated that the next regular meeting is Tuesday, September 3. There being no

991 further business, she adjourned the meeting at 8:10 PM.

992

993 Respectfully submitted by,

994 Britta Reida, Minute Taker

995

996 Reviewed and edited by,

997 Corinne Marcou, Zoning Clerk

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

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

8 **Monday, October 7, 2024**

6:30 PM

**Council Chamber,
City Hall**

Members Present:

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

Staff Present:

Evan Clements, Planner, Deputy Zoning
Administrator

Members Not Present:

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

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

16 **II) Minutes of the Previous Meeting – September 3, 2024**
17

18 Ms. Taylor noted the following corrections to the meeting minutes of September 3, 2024:
19

20 Lines 31 and 32: The sentence reads “...applicant is not present and questioned what next steps
21 the Board to take Evan Clements...,” and should read, “...what next steps the Board should take.
22 Evan Clements...”
23

24 Chair Hoppock stated that he agrees with that correction.
25

26 Ms. Taylor made a motion to approve the meeting minutes of September 3, 2024, as amended.
27 Mr. Clough seconded the motion, which passed by unanimous vote.
28

29 **III) Unfinished Business**
30

31 Chair Hoppock stated that he is not aware of any unfinished business.
32

33 **IV) Hearings**

34 **A) Continued ZBA-2024-19: Petitioner, Timothy Sampson, of Sampson**
35 **Architects, PLLC, requests a variance for property located at 143 Main St., Tax**
36 **Map #584- 061-000. This property is in the Downtown Core District and is owned by**
37 **143 Main St., LLC, of West Swanzey. The Petitioner requests a variance to permit a**
38 **two family/duplex where not permitted per Table 4-1 of the Zoning Regulations.**
39

40 Chair Hoppock introduced ZBA-2024-19. He asked if a representative of the applicant is present
41 tonight. Mr. Clements replied that he does not see anyone in the audience for the application at
42 this time.

43
44 Chair Hoppock stated that he is not willing to continue this again, and he does not think there is
45 enough information in the application to make a decision. Ms. Taylor stated that she thinks she
46 made her position clear at the last meeting.

47
48 Ms. Taylor made a motion for the Zoning Board of Adjustment to deny ZBA-2024-19 for a
49 Variance for a property located at 143 Main St., Tax Map #584-061-000, in the Downtown Core
50 District. Mr. Guyot seconded the motion.

51
52 Chair Hoppock stated that at the last ZBA meeting, the applicant did not appear and failed to
53 give the courtesy of a phone call or email. He continued that while he thinks the application is
54 sufficient to state an application under the Variance statute, he would have questions for the
55 applicant, had he appeared. In his view, there is insufficient information in the application itself
56 for the Board to act on the application. He will thus vote in favor of the motion.

57
58 Chair Hoppock asked for others' thoughts. Mr. Guyot replied that Chair Hoppock gave a good
59 summary, and he agrees.

60
61 The motion passed by unanimous vote.

62
63 Mr. Clements asked if the motion was a denial with no prejudice. Chair Hoppock replied no,
64 there is no reservation of prejudice. Mr. Clements asked if the applicant would be able to reapply
65 with sufficient information presented. Chair Hoppock replied if he has a change of circumstance
66 or meets the Morgenstern criteria, then yes.

67
68 Ms. Taylor stated that it is basically the Fisher rule down through the ages. Chair Hoppock
69 replied yes, the [*Fisher v. Dover*] case.

70
71 **B) ZBA-2024-24: Petitioner, Garry Emge requests a variance for property**
72 **located at 42 Reservoir St., Tax Map 571-006-000. This property is in the Medium**
73 **Density District. The Petitioner requests a variance to replace entrance steps 7.57**
74 **feet from the front setback where 50 feet is required per Article 3.5.2 of the Zoning**
75 **Regulations.**
76

77 Chair Hoppock introduced ZBA-2024-24 and asked to hear from staff.

78

79 Mr. Clements stated that the subject property is an existing .374-acre parcel located at 42
80 Reservoir St. in the Medium Density District. He continued that the property contains an existing
81 approximately 3,000-square foot, two-family home, built in 1890 with a detached 342-square
82 foot garage. The property has approximately 200 feet of frontage along Reservoir St. The
83 property is surrounded by the Medium Density District on the north, south, and west; with the
84 Conservation District to the east. Surrounding uses are residential, with Robin Hood Park and the
85 reservoir directly to the east of the property. The existing structures on the property appear to be
86 non-conforming, as they are located partially within the front yard setback. Section 3.5.2,
87 Dimensions and Siting, of the Land Development Code (LDC), requires a 15-foot front setback,
88 and the structures appear to be closer to 10 feet from the property line.

89

90 Mr. Clements continued that according to the submitted application, the existing masonry front
91 steps are located 7.57 feet from the front property line. The front steps are considered to be a
92 structure that is exempt from the front yard setback requirements, per Section 1.3.3, Setbacks and
93 Build-To Dimensions, subsection A.4.a.i of the LDC. Also exempt under this section are access
94 landings up to 25 square feet, structures necessary to afford access for persons with physical
95 disabilities, and awnings. Due to the proposal to install the new porch and roof overhang with
96 ground-mounted support posts and 54 square feet of landing area, this design does not qualify for
97 any of the exemptions he just listed to the front yard setback, and a Variance is required to move
98 forward.

99

100 Chair Hoppock asked Mr. Clements to repeat the frontage on Reservoir St. Mr. Clements replied
101 about 258 feet.

102

103 Ms. Taylor stated that the agenda indicated the “...*front setback where 50 feet is required.*” She
104 asked if it is correct that it should say “15 feet.” Mr. Clements replied yes, the agenda has a typo.

105

106 Chair Hoppock asked to hear from the applicant.

107

108 Garry Emge stated that he has lived at 42 Reservoir St. for 35 years. He continued that the
109 purpose of the Variance is to replace existing front masonry structure of 6’1” x 6’2”, 38 square
110 feet, with a new structure that includes a 5’2” x 10’4” wood deck and a 6’2” x 12’4” roof,
111 supported by four columns. The existing masonry structure is in serious need of repair or
112 replacement. The new structure would not extend further from the building to the street than the
113 existing structure does. The only difference would be that the width of the structure would be
114 enlarged from 6’1” to about 10’4.” The residence does not meet the current setback
115 requirements, so a Zoning Variance is sought.

116

117 Mr. Emge stated that there would be no effect on anyone other than some intermittent
118 construction noise, usually between 9:00 AM and 3:00 PM on weekdays, with possibly an
119 occasional Saturday. The proposed structure would be contained within the footprint, excluding

120 the steps to the street, as does the existing masonry structure. Other than the steps that lead up to
121 the deck, the main structure would not intrude further into the setback. The current masonry
122 structure is 7.57 feet to the property line and the proposed structure would be the same. The new
123 structure would provide cover from rain, ice, and snow that the existing structure does not. “Curb
124 appeal” would be enhanced, and the City of Keene would probably get a slight assessment
125 increase.

126
127 Mr. Emge continued that in his estimation, surrounding properties’ values would be enhanced as
128 a result of the removal of the masonry structure which has come to be in bad shape over the
129 years, due to sagging and cracked concrete. All of the properties on Reservoir St. currently
130 encroach on the existing front setback. This includes the City of Keene’s Robin Hood pool
131 structure. There is a relatively insignificant addition to the front of the residence, 54 square feet
132 versus the current 38 square feet.

133
134 Mr. Emge continued that this Variance would allow a new roof structure to protect the front
135 entrance from weather and remove space constraint for possible future ramp access in an attempt
136 to “age proof” the property. That space might be required for ramp access because a current
137 elderly occupant, other than himself, is experiencing mobility and balance issues that might have
138 to be addressed in the future.

139
140 Ms. Taylor stated that she realizes the steps themselves are exempt from the setback
141 requirements, but she could not figure out from the drawings exactly where the steps will be off
142 the proposed deck. Mr. Emge replied that the steps would come right off the front of the
143 proposed deck. He continued that he has drawings with him if Ms. Taylor wants to see them. He
144 thought he had submitted them. Ms. Taylor replied that the Board has some drawings; she does
145 not know if there are additional ones. She asked how far the bottom of the new steps will be from
146 the street or the property line. Mr. Emge replied that it would go out approximately a foot more
147 than the deck. He continued that the roof would stay within the limits of the current structure,
148 which has an overhang, and the steps would only protrude about a foot beyond that.

149
150 Ms. Taylor asked if Mr. Emge looked at the possibility of having the steps or potential ramp
151 coming off the side of this proposed deck. Mr. Emge replied yes, he looked at it, and his
152 preference would be to come directly off the front. He continued that the walkway is there, and it
153 did not seem like it would lend itself very well to steps coming out of either side. If a ramp were
154 required at some point, a ramp would probably go up the side. Ms. Taylor replied that that was
155 going to be her next question, because she knows there is not a lot of room to put something
156 there between the houses and the street. She continued that she does not think there is a sidewalk
157 there. In the summer, there is a lot of traffic.

158
159 Ms. Taylor asked, regarding the construction impacts, how Mr. Emge would propose to control
160 the construction vehicles, because they would be impeding traffic for the other residents. She
161 continued that there is no place else to put them. Mr. Emge replied that it is true. He continued
162 that this job will not be a major undertaking. He built houses about 50 years ago, and he would

163 do all this work himself. He has one vehicle and a trailer, which would be there no matter what.
164 As you come off the steps, there may be six feet to the front setback, but there is quite a bit more
165 grass/lawn area until you actually get to the road. He does not know the exact number.
166

167 Ms. Taylor asked if he is not necessarily contemplating having a cement truck coming in. Mr.
168 Emge replied no, he will mix the cement himself. He continued that this is a rather low budget,
169 low-key endeavor.
170

171 Ms. Taylor asked if Mr. Emge would object to a condition saying Mr. Emge would not enclose
172 this deck, so that it would not become another part of the house itself. Mr. Emge replied certainly
173 [not], as he had nothing like that in mind. He continued that it would be all open, other than
174 porch columns and maybe a bench or something similar. There would be nothing enclosed.
175

176 Ms. Taylor asked Mr. Clements if it is correct that this project does not meet the level requiring it
177 to go before the Planning Board. Mr. Clements replied that it is correct. He continued that if the
178 Variance were granted, the next step would be a building permit to perform the work.
179

180 Chair Hoppock stated that Mr. Emge said the house itself is within the setback. He continued that
181 he is trying to get an idea of where the house footprint sits in relation to the setback. Mr. Emge
182 replied that he did not have the exact answer, but he thought it was about 12 feet. Chair Hoppock
183 asked if it would thus be two or three feet within it. Mr. Emge replied yes. He continued that the
184 house is 13.5 feet from the setback. The deck and porch roof are 6.2, so it is about 7.5 feet from
185 the front setback. Then adding one stair tread of about 10 or 11 inches makes it about 7 feet.
186 Chair Hoppock replied that that gets to where it is now at 7.57 feet. He asked if that is how Mr.
187 Emge arrived at that. Mr. Emge replied yes.
188

189 Chair Hoppock asked if Mr. Emge knows if the other houses on Reservoir St. are similarly
190 situated, in terms of the footprint being within the setback. Mr. Emge replied that they all are. He
191 continued that the pool building across the street might have about one foot of setback; it is right
192 on the street, according to the GIS information.
193

194 Chair Hoppock asked what the lot size is. Mr. Clements replied .374 (acres).
195

196 Mr. Clough stated that to clarify, adding 7.57 and 6.1 is how he came up with 13.6 away from
197 the line. Chair Hoppock replied yes, that makes sense to him now.
198

199 Ms. Taylor stated that looking at the application and the map on the screen, she of course does
200 not know how the house is configured. She asked if there was any other entryway to the house.
201 Mr. Emge replied yes, there is a side porch. He continued that facing the front of the house, there
202 are steps leading down and a side porch to the left. There is a basement entrance to the upper
203 apartment level where he lives. That porch has an entrance to the lower apartment, too. From the
204 street, the house looks fairly small, but it sits on the side of a hill, and it is a fairly big structure if
205 viewed from the back.

206 Ms. Taylor stated that one of the reasons she asked that question is because she is looking at the
207 hardship criterion, one of the Board's most difficult criteria to deal with. The issue is a deck, not
208 the front steps. They need to determine whether there is any logical place to put that deck, which
209 is why she asked if there is another entryway. Mr. Emge replied that there is a porch. He
210 continued that you go down steep stairs from the street level to get to it.

211
212 Chair Hoppock asked if that is an enclosed porch, and if it is on the left side of the house. Mr.
213 Emge replied yes to both. He continued that it is enclosed because at some point, someone added
214 storm windows around it. It is not a living space, as it is not heated, and it can only be used as a
215 porch.

216
217 Mr. Clough stated that he has a question, following up on the entrances. He continued that from
218 the street view, (it appears that) someone in a wheelchair could only get to that level from the
219 ramp from the outside. Everything on the inside would be staircases. The other entrance is
220 literally a floor down. Mr. Emge replied yes. Mr. Clough continued that it would be very
221 inconvenient to try to figure out how to (do something), and an elevator would be needed. Mr.
222 Emge agreed. He continued that his speculation about the future, again, is that that (ramp) might
223 be needed.

224
225 Mr. Emge stated that his final comment is that he has to do something with the front steps, which
226 have gotten to the point where they need to be repaired or replaced. He continued that his
227 preference is that if he is going to spend the time and money to do the job he really wants to do,
228 the way he thinks it should be done.

229
230 Chair Hoppock asked if the Board had any further questions for the applicant.

231
232 Mr. Clough stated that regarding the question of noise, the demolition would be (with a) hammer
233 and possibly a jackhammer. Mr. Emge replied that he doubts it would be a jackhammer. Mr.
234 Clough asked if it would be a sledgehammer. Mr. Emge replied yes. Mr. Clough asked if it is
235 correct, then, that the construction noise would be that of a pneumatic nail gun or nails (being
236 hit) by hand. Mr. Emge replied yes, and saws. Mr. Clough replied that it would be sounds that
237 you actually hear around the neighborhood, especially on a weekend. Mr. Emge replied that the
238 noise will be between 9:00 AM and 3:00 PM, because he will not be out there too early in the
239 morning, and he does not work eight hours a day.

240
241 Chair Hoppock asked if there was any public comment, either for or against the application.
242 Hearing none, he closed the public hearing and asked the Board to deliberate.

243
244 Chair Hoppock stated that he does not see anything about the application that would jeopardize
245 public safety in any way. He continued that there will be plenty of sight distance view, on either
246 side of the property as you are coming and going from it. He does not think the porch would
247 impair that view. The setback would be designed, in part, to prevent something like that from
248 happening and to protect against encroaching the road too close, which he does not think would

249 happen, either. Thus, some of the purposes of this Zoning restriction are not germane to this
250 application.

251
252 Ms. Taylor stated that as she mentioned earlier, something the Board really needs to examine is
253 what the hardship is. She continued that her thoughts on that are that (Mr. Emge) is not about to
254 move the house to rebuild the steps. It (the hardship) is the lot itself as it is an unusual shape. The
255 house was clearly built many years ago, and it was built too close to Reservoir St. for current
256 Zoning. It is what it is. Her only concern – which she mentions without casting aspersions on the
257 applicant, because it is something the Board has seen before – is that people who build decks
258 (often) like to enclose them a few years later. If the Board moves to approve this application, she
259 would like to add a condition, as the Board has done in the past, for the deck to remain open and
260 not be enclosed, so it does not become additional living space.

261
262 Ms. Taylor continued that she agrees with Chair Hoppock that there does not seem to be any
263 threat to public health, safety, or welfare. There is certainly detriment to the applicant if he is not
264 able to do this. She can see that improving the entryway is improving the value of the property.
265 She thinks this application demonstrates why there are Variances, as there are times when you
266 definitely need relief from the Zoning Ordinance.

267
268 Mr. Guyot stated that given the age of the property, he presumes that the Zoning Ordinance came
269 into play well after when the house was built. Chair Hoppock replied yes. Mr. Guyot continued
270 that since the house predates the regulations that create special circumstances, he would call a
271 hardship, in addition to Ms. Taylor's comments.

272
273 Chair Hoppock replied that he agrees that hardship is created by the lot's configuration, size, and
274 topography, in conjunction with the house's placement. He continued that the unusual
275 topography is such that you start at the first floor, go down the hill, and there are two floors.

276
277 Chair Hoppock stated that (regarding the fourth criterion), if anything, Mr. Emge will increase
278 the value of his own home, and with that, the surrounding properties' values will (likely increase
279 as well). He continued that he does not see any problem with diminished property values. He
280 agrees with Ms. Taylor that any loss Mr. Emge would suffer as a result of a denial would not be
281 outweighed by any gain to the public for denying the Variance. Thus, he thinks the application
282 meets that (third) criterion, too. Again, he sees no public health or safety concern here. Mr. Emge
283 will not alter the essential character of the neighborhood by putting in a porch. He agrees with
284 Ms. Taylor's proposed condition of not enclosing the porch. He does not see anything that would
285 make this (proposal) contrary to the public interest; he sees the opposite. The public interest is
286 served when property owners can utilize their property in a fair and reasonable way, which is
287 what Mr. Emge has come to the Board to ask for. He is inclined to support this, with the
288 condition of non-enclosure.

289 Mr. Clements asked Chair Hoppock to again articulate his reasoning for the spirit of the
290 Ordinance being observed. Chair Hoppock replied that the spirit of the ordinance goes to issues
291 of public health, safety, and welfare and whether the Variance, if granted, would alter the

292 essential character of the neighborhood. He does not see either one of those things happening
293 here. Consistent with his other remarks, he thinks an un-enclosed porch and a new set of stairs
294 would increase safety, for both the occupants and visitors. It would not alter the essential
295 character of the neighborhood, and would in fact help improve the values there, in the long run.
296 That is with or without a ramp, which he is not worried about right now.

297
298 Ms. Taylor stated that to add to that, the density requirements are to provide for medium
299 intensity residential use, and this (proposal) is definitely not changing that. She continued that
300 thus, as she sees it, it is within the spirit of the Ordinance.

301
302 Chair Hoppock asked if there were any further comments. Hearing none, he asked for a motion.

303
304 Ms. Taylor made a motion for the Zoning Board of Adjustment to approve the request for a
305 Variance, ZBA-2024-24, for property located at 42 Reservoir St., Tax Map #571-006-000, with a
306 request to replace the entrance steps 7.57 feet from the front setback where 15 feet is required per
307 Article 3.5.2 of the Zoning regulations, with a condition that the proposed deck not be enclosed.

308 Mr. Guyot seconded the motion.

309
310 1. *Granting the Variance would not be contrary to the public interest.*

311
312 Met with a vote of 4-0.

313
314 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

315
316 Met with a vote of 4-0.

317
318 3. *Granting the Variance would do substantial justice.*

319
320 Met with a vote of 4-0.

321
322 4. *If the Variance were granted, the values of the surrounding properties would not be*
323 *diminished.*

324
325 Met with a vote of 4-0.

326
327 5. *Unnecessary Hardship*

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

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

334 *and*

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

336
337 Met with a vote of 4-0.

338
339 The motion passed with a vote of 4-0.

340
341 **C) ZBA-2024-25: Petitioner, Jennifer Shay, of 190 Nutting Rd., Jaffrey, requests**
342 **a variance for property located at 973 Marlboro Rd., Tax Map #249-004-000. This**
343 **property is in the Rural District and is owned by BTD Properties, LLC, of Palm**
344 **Beach Gardens, FL. The Petitioner requests a variance to operate a light retail**
345 **establishment in the Rural District per Article 8.3.2.AD of the Zoning Regulations.**

346
347 Chair Hoppock introduced ZBA-2024-25 and asked to hear from staff.

348
349 Mr. Clements stated that the subject property is an existing, approximately 1.9-acre parcel at 973
350 Marlboro Rd. in the Rural District. He continued that the property contains an existing 6,970-
351 foot building, constructed in 2003. The current use is a mixed use, office and single-family
352 residence. The property is split by the Marlborough/Keene municipal boundary, with
353 approximately 1.1 acres of the lot residing in Keene and the remaining .8 acres in Marlborough.
354 The building itself is also split by the municipal boundary, with the residential use on the Keene
355 side and the office use bisected by both Keene and Marlborough. The property is surrounded by
356 the Rural District to the north and west, and by Marlborough's R-2 residential district to the
357 south and east. Surrounding uses include single-family residential to the north, vacant parcels to
358 the west, with the Cheshire County Correctional Facility located approximately 1,300 feet to the
359 west of NH Rt. 101.

360
361 Mr. Clements continued that the property has been utilized in various commercial uses
362 throughout its history. The most recent use was a private, behavioral school for children with
363 learning and behavioral challenges. Before that, it was a model log home and sales operation for
364 log home construction. The existing building was constructed for that purpose in 2003.
365 Throughout its history, the property has also received approval for a restaurant use, a
366 convenience store sometime in the mid-1980's, and commercial aspects that go even further back
367 into the 1970's. Land use authority between Marlborough and Keene for this property has been
368 murky. When the current building was constructed, there was an agreement between the two
369 communities that Keene would be responsible for permitting that project. Staff have been
370 working to reaffirm that agreement for future projects and to give the property owner some
371 clarity, particularly where they should be going for building permits.

372
373 Mr. Clements continued that as this Board is aware, this property recently became before them
374 for the Live Free Recovery facility. They got approval to operate that business from the Keene
375 ZBA then went to the Town of Marlborough for a Special Exception. It seems that the practice is
376 still currently that any use of the property outside of a residential use is going before both
377 municipalities for land use approvals.

378 Chair Hoppock asked what happened in Marlborough for the Special Exception. Mr. Clements
379 replied that the Marlborough Zoning Board denied it on a 2-2 vote. He continued that the
380 applicant chose not to move forward any further with that application.

381
382 Chair Hoppock asked if it is correct that the Live Free Recovery model is set aside for the
383 moment. Mr. Clements replied yes, he believes they are no longer planning to purchase the
384 property. The property is back for sale, and the current applicant is hoping to purchase it for her
385 proposed use.

386
387 Ms. Taylor stated that she is unfamiliar with the Marlborough Zoning Ordinance. She asked what
388 it permits in the R-2 zone. She asked if this would have to go before the Marlborough board
389 again if this is not a permitted use. Mr. Clements replied that he is not sure. He continued that he
390 is not familiar, either, with the Marlborough Zoning Ordinance. Ms. Shay might have an answer
391 to that.

392
393 Chair Hoppock asked if there were any further questions for Mr. Clements. Hearing none, he
394 asked to hear from the applicant.

395
396 Jennifer Shay of 190 Nutting Rd., Jaffrey, stated that she will read the written narrative:

397
398 *“The property this proposed variance is related to is located on State highway route 101 within*
399 *a mile from downtown Marlborough with the closest structure on the same side of the road in the*
400 *other direction being the Cheshire County House of Corrections in Keene. The current owner of*
401 *the property is BTD Properties LLC and prospective owner JLS Properties LLC, operated by*
402 *Jennifer Shay, the applicant for this variance. The purpose of the proposed variance is to allow a*
403 *retail consignment and multi-dealer shop fitting the description of 8.3.2.AD Retail*
404 *Establishment, Light, to operate on the premises of this unique mixed use residential/commercial*
405 *property. A log cabin turned into a quintessential New England boutique outlet that would, in*
406 *addition to having antiques and consignment, invite local artisans, crafters, and goods*
407 *producers to sell their products as part of the group shop. An establishment that embodies the*
408 *community around it and takes part in fundraisers for local non-profits and school groups. The*
409 *most recent use of the property was as a school serving the behavioral health sector, operating*
410 *under the use definition of offices. Retail use has been approved for this property previously for*
411 *a convenience store to operate in the building. As the need for office space has been greatly*
412 *reduced since the COVID pandemic, the owner has struggled to fill the space or sell it under the*
413 *current Zoning restrictions for its use.”*

414
415 *1. Granting the Variance would not be contrary to the public interest.*

416
417 Ms. Shay stated that the proposed business to operate on the property would not be a high
418 volume, large-scale operation that would produce excessive traffic or noise pollution negatively
419 affecting residential properties in the area. She continued that the property is not in a densely
420 populated family neighborhood; it is on NH Rt. 101. With dedicated entrance and exit and ample

421 parking, this property suits a small retail operation well. Hours of operation would be limited to
422 that customary of a small community, while considering seasonal changes. In addition to the
423 retail business that would operate on the property, the residential unit will be utilized in that
424 capacity as a residential dwelling, as intended by the current Zoning.

425

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

427

428 Ms. Shay stated that the existing form along NH Rt. 101 is a mix of residential and small
429 businesses, many homebased businesses operating within a short distance of the property. She
430 continued that a boutique shop of the nature of the one being proposed in the setting of a log
431 cabin fits well with this low-density neighborhood. While the property sits in the Residential
432 District and part of the existing structure will be used for retail purposes, the residential portion
433 of the building will be utilized as residential.

434

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

436

437 Ms. Shay stated that granting the variance would allow a small, community-oriented venture to
438 inhabit a currently unoccupied space that has historically had issues with occupancy due to
439 Zoning restrictions as well as being a mixed use of both commercial and residential property
440 with the buildings physically connected.

441

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

444

445 Ms. Shay stated that the property would be utilized, well cared for, and maintained with both the
446 commercial and residential units occupied. She continued that in its current state of not having
447 any tenants, the unoccupied building has the potential to negatively affect property values for
448 surrounding properties should their owners wish to sell. With the County jail just down the road,
449 this small business would help to create a buffer between the residential homes and the penal
450 institution.

451

452 5. *Unnecessary Hardship*

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

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

459

460 Ms. Shay stated that the standard use for residential property is typically single-family
461 occupancy in low traffic areas, which this property does not conform to. She continued that the
462 unique makeup of this property being a large log cabin housing a residence and commercial
463 space sitting directly on NH Rt. 101, as well as the significant restrictions on options for

464 renovation due to its structure, render the property unsuitable for the majority of currently
465 permitted uses. With the large parking area designed for traffic moving around the site and the
466 interior commercial space plotted for offices, this property has been designed for commercial
467 use.

468
469 *and*

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

471
472 Ms. Shay stated that the type of business being presented is a small, community-friendly
473 operation that would be in harmony with the directly surrounding area where many home-based
474 businesses operate. She continued that few uses for this particular structure would fit the
475 definition of “residential” and utilize both the commercial and residential units. The residential
476 unit would be used residentially, as intended by the current Zoning, while the commercial section
477 of the building would be utilized in a low impact, community-focused manner. No significant
478 changes would be made to the exterior of the building, with only minor interior renovation to
479 accommodate the retail business.

480
481 *B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
482 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
483 *property that distinguish it from other properties in the area, the property cannot be*
484 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
485 *necessary to enable a reasonable use of it.*

486
487 Ms. Shay stated that strict conformity would render a majority of the property unusable. She
488 continued that in this instance, the property is partly commercial and partly residential. If strictly
489 conforming to Code, not even duplex residential units would be allowed. For the entirety of this
490 property to be fully utilized and conform to Code, more than half of the interior square footage
491 would require renovation to convert it and the center corridor connecting the two distinct
492 buildings to an unusually large single-family detached residential structure. Single-family
493 structures rarely require the amount of parking currently provided at this site. With a good
494 portion of the non-structured space taken up with paved driveway, an unusually small amount of
495 green space is available for the square footage this property would consume as a single-family
496 residence. Historically, many variances have been approved for this property, which denotes in
497 and of itself that the property is far beyond the ability to use for purely residential purposes
498 without extensive modifications.

499
500 Ms. Taylor stated that she is a little confused, because the Board’s first charge is to decide
501 whether this is the right application and whether the Board needs to hear it. She continued that
502 she is looking at the definition of “Retail establishment, light,” and looking at Section 3.1.5,
503 Permitted Uses, “residential use, single-family.” In “commercial uses,” it lists “Retail
504 establishment, light, subject to a conditional use permit.” She wonders why this is before the
505 Board. She asked Mr. Clements if it was because of the mixed use, and if he could clarify this
506 confusion for the Board.

507 Mr. Clements replied that the Code Ms. Taylor is referring to relates to the City's Cottage Court
508 Overlay conditional use permit design scheme, which allows for limited commercial activity
509 within a cottage court development, under some rather strict use standards. He continued that the
510 applicant is seeking a Variance to allow traditional, light retail use, not constrained by the use
511 standards in the cottage court, because she is not proposing a cottage court.

512
513 Ms. Taylor replied that the Board does not have a copy of that updated Ordinance, so the
514 conditional use permit she is looking at is on page 3-2. She asked if that is a different conditional
515 use permit requirement than the cottage court. Mr. Clements replied that the only way retail is
516 allowed in a residential zoning district is through the cottage court conditional use permit. Ms.
517 Taylor replied that the Board does not have a copy of that change. Mr. Clements replied yes, that
518 is correct; he has the new copies here for the Board. Ms. Taylor replied that he can understand
519 her confusion, then – if the Board does not have the proper materials to look at, it is hard to
520 figure out. Mr. Clements replied that when staff were looking at this application, they were
521 aware of it. He continued that he apologizes for not giving the Board a heads up about it. This is
522 for unrestrained, light retail use, without a conditional use permit. For example, one of the use
523 standards for the cottage court is that retail space is limited to 1,000 square feet of gross floor
524 area. This (proposal tonight) is significantly greater than that.

525
526 Ms. Taylor asked if the new cottage court Ordinance is for more than one residential unit. Mr.
527 Clements replied yes, and retail can only be on the first floor when there is residential above it,
528 and it needs to be on the corner of an existing public road. He continued that there are significant
529 constraints that would make it so it would not be a viable option for the applicant. The applicant
530 would not be able to get a cottage court conditional use permit without significant investment
531 and modification.

532
533 Ms. Taylor asked if cottage court applies when there is only a single residence. Mr. Clements
534 replied no. Ms. Taylor stated that there is only one residence at issue here. Mr. Clements replied
535 that it is correct. He continued that what he is trying to say is that the cottage court is not
536 germane to this application. Ms. Taylor replied right, which is why she was curious about the
537 conditional use permit only being applicable to cottage courts. Mr. Clements replied that it is
538 correct, for retail in a residential district at this time. Ms. Taylor replied that it does not make
539 sense to her; maybe it will when the Board has the updated Ordinance.

540
541 Mr. Guyot stated that he is seeking clarification on the square footage for retail and the square
542 footage for residential. Mr. Clements replied that the whole building is about 7,000 square feet,
543 and he thinks it is approximately 3,500 square feet commercial, in the office use, and the
544 remainder being residential. He continued that he thinks the applicant might have information
545 about this. Ms. Shay replied about 2,400 for the commercial and about 1,600 for the residential,
546 for a total of about 4,100 square feet.

547

548 Mr. Clements replied that that is a heated, livable area. He continued that then there is a 1,200
549 square foot basement in there, for example, a wood deck and a framed open porch, which gets up
550 to about 7,000 square feet of total building area.

551

552 Mr. Guyot asked if it is correct that the retail space is about 2,400 square feet. Mr. Clements
553 replied yes.

554

555 Ms. Taylor asked, regarding the retail use, if it will all be interior, or if Ms. Shay plans to have
556 any exterior displays or outdoor “kiosks” or sales areas. Ms. Shay replied that there is an outdoor
557 play area, fenced, and she does plan to have gardening things out there, such as pots and trellises.
558 The Planning staff have answered many hypothetical questions for her and helped her to think a
559 lot. For example, she might want to put rocking chairs on the front deck, and put price tags on
560 them, but have them there for people to be able to sit in and enjoy while, for example, waiting for
561 their spouse who is inside browsing. In front, near the sign, she would like to do a seasonal
562 display. Maybe in the summer she would have something that looks like a farm, with something
563 like metal farm animals, and in the fall, she would have scarecrows and a bale of hay. She would
564 also like to take part in the Marlborough town-wide yard sale and be able to use outdoor space to
565 do that. To the Keene side of the structure is the residence that has the deck off it, and a grassy
566 area. She would like to use that area, potentially, to set up for yard sale-type items, as well as in
567 the front area.

568

569 Ms. Shay continued that the topic of traffic and people stopping on Rt. 101 has been brought up
570 to her, and (the need) to keep people from stopping on Rt. 101. There is not much of a
571 breakdown lane there, in terms of paved surface, but there is quite a bit of gravel area before the
572 lawn starts. She will have to get into the permitting processes and figure out what is required
573 from all the different aspects, but she was thinking she could put out orange cones right before
574 the grass, to keep people from stopping on the side of Rt. 101. They would not be in the
575 breakdown lane; theoretically, they would be on the grass out of the way, but it would keep
576 people from stopping there. Maybe she would have people directed with a bigger sign into the
577 parking area. There are 21 parking spaces, which are plenty of parking spaces for people to be
578 able to come in and view things at the yard sale. (That would) keep them from parking on Rt.
579 101 in that type of event.

580

581 Chair Hoppock asked if she knows what the speed limit is there as you are approaching the
582 property. Ms. Shay replied that it goes from 30 to 35 mph and then to 40 mph right in there.

583 Chair Hoppock asked if it is correct that the speed limit drops as you are heading into
584 Marlborough. Ms. Shay replied yes.

585

586 Chair Hoppock stated that he drove by the other day. Referring to the picture, he indicated the
587 driveway and asked if it is a U-shape. He asked if there was another entrance. Ms. Shay replied
588 that the entrance is on the Keene side and the exit is on the Marlborough side, and they are
589 marked “enter only” and “exit only.”

590

591 Chair Hoppock asked Ms. Shay to explain how she proposes to manage traffic. He continued that
592 having 21 parking spaces is a plus. Ms. Shay replied that she hopes people come to the entrance
593 and exit at the exit. She continued that there is a rather wide area [in the parking area], with the
594 original site plans had parking on both sides, along the front of the building and Rt. 101. There
595 are no parking spaces on the side of Rt. 101 (currently), so there is plenty of room on that side
596 for people to come in and maneuver their vehicles around there. There is an accessible space
597 marked, and the space in front of the accessible entrance is no parking. She asked what else
598 Chair Hoppock is looking for with this question.

599
600 Chair Hoppock replied that he was just looking for her thoughts regarding managing the traffic.
601 Ms. Shay replied that there appears to be plenty of space for delivery trucks to park directly
602 behind, on the Rt. 101 side where the sign would be, but in the parking lot. She continued that a
603 UPS truck could easily fit there, and there would still be room for people to easily back out of
604 and pull into the parking spaces, even with the truck behind them.

605
606 Ms. Taylor asked Mr. Clements if the City of Keene has regulations for yard sales. Mr. Clements
607 replied that he does not think Zoning Ordinance has yard sale regulations, but there might be
608 something in the Sign Code about yard sale signs. He continued that there might be something in
609 the City's Code of Ordinances saying someone can have three yard sales per year, but that is just
610 a guess.

611
612 Ms. Taylor replied that she is asking because with a split property, it is possible the City would
613 have some limitation on yard sales that would be different from the Town of Marlborough's,
614 which would impact on the layout of the retail business.

615
616 Mr. Clements stated that the site plan on the screen right now is from the model log home. He
617 showed the line depicting the municipal boundary and continued that while more of the
618 office/commercial use is "there," most of the site itself is on the Keene side.

619
620 Ms. Taylor stated that the site plan is from 2003, and she does not have the expertise to
621 determine whether what was on the site plan has changed, other than the building itself, which is
622 consistent with what it was built for. Regarding whatever other things might be in the site plan,
623 like grass, she asked if Mr. Clements knows if this site plan is relatively consistent with what is
624 there now. Mr. Clements replied that he believes it to be fairly accurate. He continued that he
625 drives by the property every day while coming and going into the city, so he has had a chance to
626 look at it. A possible change is that he does not think this site plan shows the stockade
627 fence/playground area that the behavioral health use installed. Otherwise, it is fundamentally the
628 same site. Chair Hoppock asked if that is the fence in the picture that goes to the left of the
629 building. Mr. Clements replied yes.

630
631 Chair Hoppock asked if Ms. Shay proposes any changes to the structure of the building. Ms.
632 Shay replied minor modifications to the commercial side. She continued that she would like to
633 take out some of the walls, which would need permitting. It has a radiant heating floor, so she

634 does not want to do too much modification. She is thinking of taking some of the walls down to
635 half walls, to open it up more. Her contractor came in to look at it and said there would not be
636 any issues, structurally, with removing any of the walls, because there is nothing (about the wall)
637 supporting the weight of the roof. However, she also wants some wall space to be able to display
638 things for the retail use. She needs wall space, because she does not want to destroy the property
639 by putting holes in to hang things on the logs of the log cabin. With some of those interior walls
640 with the office spaces, she would like to open it up, to deter theft. If she left all the enclosed
641 spaces as they are and put items for sale in there, more of it would be (stolen) that would be if the
642 walls were opened.

643
644 Ms. Taylor asked Ms. Shay to talk about the proposed hours, whether it would be seasonal or
645 year-round, her employees, and that kind of information. Ms. Shay replied that she does not plan
646 to start with any employees. She continued that (it will be) her, her 83-year-old mother,
647 occasionally her sister, and some friends stopping in and helping out here and there. She does not
648 picture this as a big retail operation anytime soon, if at all. She might need to hire one or two
649 employees in the first year; she is not sure, though she was not planning on it. She talked with
650 the City Engineer and had him do a traffic trip generation (analysis), and according to that, it is
651 119 vehicle trips generated per day. That is based on five employees. Five (of the 119 vehicle
652 trips) would be employees, 10 would be residential, and 104 would be “general retail.” Staff said
653 that is the category it would go in. She does not know how that relates to a one-to-one for the
654 size of the business she is planning, but for the square footage, that is what it calculates out too.

655
656 Ms. Shay continued that regarding hours, she was thinking approximately 10:00 AM to 5:00 or
657 6:00 PM, four or five days a week. In the winter, she would not be open later than 4:00 or 5:00
658 PM. In the summer, she would probably be open until 6:00 or 7:00 PM. It would definitely be
659 closed one or two days a week and the schedule will change based on business. If it is not busy,
660 the open flag comes down, and if she stays not busy for a couple of weeks, she would change the
661 official hours. She does not know yet what the demand will be, so she would want some
662 flexibility in (the hours), but she does not want to be open late at night or early in the morning,
663 except maybe on the Marlborough town-wide yard sale day when people come early.

664
665 Chair Hoppock asked if Ms. Shay plans any changes to the outside of the building. Ms. Shay
666 replied no. Chair Hoppock asked if it would have the same appearance. Ms. Shay replied yes,
667 although she is excited to decorate for each holiday. She continued that she would love to put
668 garlands on the posts and things of that nature. She probably wants the ability to have some retail
669 items out on the front porch. She might have a “Welcome to the cabin” sign with or without a
670 price tag; maybe she would want to keep it. She would want to be able to put things inside the
671 fenced area, and possibly on the outside of the fenced area. For example, antique metal signs that
672 would be for retail, not signs advertising the business. She wants it to be tasteful; she does “not
673 want to have a junkyard.” She is very clear on that. She wants it to look clean and orderly and be
674 a place where it is not only her own items or antiques that are sold there. She would like to see
675 community members rent group space to sell their crafts. One example she went over with the
676 Planning staff was people wanting to sell jams and jellies. Her understanding is that any food,

677 whether prepared or not, would require a health permit and health inspection. This is very new to
678 her; she worked in tech her whole life, and this is a career change for her. She will be looking to
679 the Planning staff for guidance on what she needs to do and how to do it.

680

681 Ms. Taylor asked Mr. Clements what the rules are for outside storage in this zone. Mr. Clements
682 replied that there are no clear prohibitions or allowances. He continued that the “Retail, light”
683 definition is silent. “Retail, heavy” discusses outdoor display areas, and to him, “retail, heavy” is
684 something like Home Depot, which puts out snow blowers before the winter and ride-on tractors
685 before the summer, for example, with a large garden center. He (suggests) giving the applicant
686 some guidance on what would be an appropriate amount of outdoor retail space, if the Board so
687 chooses to grant that allowance, and then when they get into the Planning side, they can
688 designate an area on the site plan, for example, where that is allowed. Then if it begins to creep
689 in the future, they can bring it back under control.

690

691 Ms. Taylor replied that that goes to the questions earlier on square footage. It is hard to know
692 what a reasonable condition is on that kind of limitation, if they are unsure of what the square
693 footage is for the various locations on the property. She asked Ms. Shay to further explain to the
694 Board where any outdoor retail would be, other than on the porch she described, and what she
695 would consider “outdoor retail space and “outdoor storage space.”

696

697 Ms. Shay replied that “outdoor retail” versus “outdoor storage” is difficult. She continued that
698 the things in the fenced area would be regularly for sale, and customers would be out there
699 looking at things themselves, picking items up and bringing them into the store to purchase them.
700 She does not know if that is “storage” or “retail space.” When she thinks of storage, she thinks of
701 something like a storage closet or a MyBox, which she understands could only be there (at the
702 store) for 30 days, which is fine, because it would probably only take a day or two to unload.
703 Another example of storage is if she takes all her Christmas items out, has the space decorated
704 for Christmas and sells Christmas items, then puts it into storage when Christmas is over. She is
705 not sure she would consider that outdoor area “storage,” because everything in it would be
706 actively for sale at that time.

707

708 Mr. Clements stated that the Planning Board has regulations related to the screening of things.
709 “Standards Related to Service Areas” is more related to things like dumpster enclosures. In this
710 instance, for outdoor retail, you want customers to be able to see the items that are available for
711 purchase, whereas with storage, you probably do not want items to be easily seen from the public
712 right-of-way to reduce the threat of theft. Maybe the distinction is ‘screened from the public
713 right-of-way’ versus ‘visible from the public right-of-way,’ for the retail use.

714

715 Ms. Taylor stated that what she is getting at is the distinction between what is available for retail
716 use and what is, for example, being stashed some place for next year and is not available on a
717 day-to-day basis, whether it is pop-up canopies for yard sales or Christmas items being put away
718 in January. She is curious about how that will be handled. Ms. Shay replied that there is 2,400
719 square feet of retail space inside the commercial area. She continued that she would probably

720 leave one of those rooms walled off for office and storage, which will not be accessible to the
721 public.

722

723 Chair Hoppock asked if it is correct that there is also a basement. Ms. Shay replied that the
724 basement is in the residence. She continued that she will probably store personal belongings
725 there, not business items. She might rent that side of the building to someone who resides there
726 as it is a three-bedroom, freestanding house. She is not getting rid of her house in Jaffrey,
727 because she lives a mile away from her 83-year-old mother. However, both of her children live
728 in Keene, so at some point, she will probably live in that residence. For now, she needs to have
729 the residence available to her while she moves in and spends a lot of time there setting up the
730 business, but after that, she might rent out part of or all of it.

731

732 Mr. Guyot asked for clarification on “AD. Retail Establishment, Light” relative to the size of the
733 retail space, which says, “3,500 square feet in gross floor area.” He asked if it is safe to assume
734 that that means interior floor, meaning what is going to be the retail side of the building, or if it
735 also includes exterior retail space. He is trying to get a good understanding of the total amount of
736 square footage that will be devoted to retail as they are talking about a fenced area being a
737 potential retail space for garden-type products.

738

739 Ms. Shay replied that part of the 2,400 square feet of interior retail space will not be used.

740

741 Mr. Clements stated that the Use Standard states, “*In the Neighborhood Business District, light*
742 *retail establishments shall occupy less than 3,500 sf in gross floor area.*” He continued that
743 currently, if the Variance were approved with no conditions, there would be no limiting factor
744 like that. If the office space is about 2,400 square feet, they could say 2,400 square feet inside
745 and no more than X amount of exterior retail square footage, which would give the applicant the
746 flexibility to choose where to allot that additional retail square footage on the site plan.

747

748 Mr. Guyot replied that his question was more about the rule that says (no more than) 3,500
749 square feet of gross floor space. His presumption is that that is interior. Mr. Clements replied that
750 it is correct. Mr. Guyot replied that with 2,400 square feet inside and (the limit being) 3,500
751 square feet, that gives 1,100 square feet. He continued that Ms. Shay said the interior would
752 probably not be 2,400 square feet because she might have part of the space closed for storage or
753 an office. He is trying to understand, if there is to be outside retail space, how that interfaces with
754 the standard of 3,500 square feet of interior space, relative to the application.

755

756 Mr. Clements replied that the application is not subject to that 3,500 square feet number, because
757 this is not the Neighborhood Business District. He continued that as it stands, there is no limit; it
758 is not allowed at all. That is what he meant when he said that if the Variance were to be passed to
759 allow for a light retail use with no conditions, there would be no limit on the amount of square
760 footage the use could occupy.

761

762 Mr. Guyot replied that he is confused, because the proposed use is under 8.3.2.AD, which is why
763 he was bringing it up. Mr. Clements replied yes, that is correct, because that is the definition of
764 the use. He continued that within the definition of the use are those specific use standards that
765 apply only when the business is in a specific district.

766
767 Ms. Taylor asked if it is correct, then that this will require a new site plan and go before the
768 Planning Board. Mr. Clements replied not necessarily, although some level of planning review
769 will be required. Ms. Taylor asked if that includes a site plan. Mr. Clements replied that if the
770 traffic generation is under the threshold and there are no exterior changes, it might be able to be
771 done through an administrative planning review. Legally, that is not a site plan review, however,
772 it is some sort of planning oversight. There are three levels of (review), with certain thresholds.
773 The next tier up is the Minor Project Review Committee, which is a technical advisory
774 committee that *is* site plan review. It is a public body, comprised of City staff, and they do site
775 plan reviews of the projects. Usually that is (for projects with) 10,000 square feet of impervious
776 surface, a certain number of square foot building addition, and things like that. Generally
777 speaking, a project like this is just reviewed by staff.

778
779 Ms. Taylor asked if it is correct that change of use, by itself, does not trigger. Mr. Clements
780 replied that it is correct, not necessarily. Ms. Taylor asked if that includes exterior use as well as
781 interior. Mr. Clements replied that they do not look at the interior of the building, just the
782 exterior. He continued that they would want some sort of updated site plan, but it would not
783 necessarily be something prepared by a surveyor or with a professional engineering stamp. They
784 would want some kind of scaled plan to show where on the property changes are being made.
785 Specific to this application, they would want to see a designated outdoor retail area, so that
786 displays cannot just wander aimlessly around the property. It keeps things a little more orderly,
787 and it assures the property owner that staff know what is going on and that they are comfortable
788 with it. On the City's end, staff are not constantly chasing the property owner down when things
789 are moving around.

790
791 Chair Hoppock stated that he heard comments about keeping the retail on the light side. He
792 asked Ms. Shay if it is correct that right now, she is looking at 2,400 square feet of interior retail
793 space. Ms. Shay replied yes, with the exception of whatever she does for a storage room/office
794 area. Chair Hoppock replied that they can set that aside; office/storage would not be included in
795 his comments. He continued that it would just be the floor space dedicated to retail. He asked if
796 the 2,400 square feet is the total space she has there. Ms. Shay replied on the commercial side of
797 the building. Chair Hoppock stated that within that 2,400 feet, she would have to use some of
798 that space for her office and storage, so it would be less than 2,400 square feet for retail. Ms.
799 Shay replied that it is correct.

800
801 Chair Hoppock asked if she would be okay with a condition that limited her retail space to 2,400
802 square feet, which would not include office space, and it would not include storage space. Ms.
803 Shay replied that she would appreciate it if the number could include the fenced area and the
804 porch. She continued that those two areas would be regular retail areas, versus, for example, the

805 space where she would set up tables once a year for the town-wide yard sale. The question then
806 is whether the seasonal display she puts out front would be considered retail space, or just her
807 seasonable displays. She is not sure how the Board would consider it.

808

809 Chair Hoppock asked what the approximate square footage of the porch and fenced area are. Ms.
810 Shay replied that she does not know. Mr. Guyot replied [inaudible]. Ms. Taylor stated that the
811 site plan currently shows that in addition to that 6'x70' (porch) area the office space is 2,240
812 square feet. She continued that she is not sure whether Ms. Shay's 2,400 square feet figure
813 includes the porch. Ms. Shay replied that she wonders if it actually included the first floor
814 bedroom in the residence, because they were using that bedroom as an office. Ms. Taylor asked
815 if she meant when it was the model home. Ms. Shay replied yes. Ms. Taylor replied that it does
816 not appear that way on the site plan, because it gives dimensions for the footprint of the model
817 home. She continued that she cannot be certain, but she thinks that is separate.

818

819 Mr. Clements stated that the assessor's page has the front porch as 70'x6', which is 420 square
820 feet for the porch, and 70'x29' (for the other space). Ms. Taylor replied that the site plan shows
821 70'x32'. Mr. Clements replied that it is another 2,030'. Mr. Guyot replied [inaudible]. Mr.
822 Clements replied that the assessing might be the interior walls, so they will lose a couple of feet
823 back and forth. He continued that for the sake of understanding this, they are talking about the
824 office side, not including the covered entryway that separates the uses, and the front porch,
825 which is about 2,450 square feet (total).

826

827 Ms. Shay stated that regarding the entryway connector in between, she would probably want to
828 include that in retail, but there will not actually be retail floor space there. She continued that she
829 was considering using that area for people to bring their consignment items in. Regular
830 customers would come through the front door in the middle of the commercial side of the
831 building. To keep people who are bringing in consignment items separate, she would have them
832 use that entrance. That is also the accessible entrance and would obviously be the retail entrance
833 for anyone who needed accessible entrance.

834

835 Mr. Clements stated that the enclosed playground area is probably somewhere between 900 and
836 1,300 square feet. He continued that that is a rough estimate.

837

838 Chair Hoppock asked if it is correct that the "connector" they are talking about is the space
839 shown on the plan that is about 12 feet long, connecting the model home and the retail side. Ms.
840 Shay replied yes. Chair Hoppock asked if it is correct that that would be storage for
841 consignments. Ms. Shay replied that it would be where people who are consigning their products
842 come in and drop off their products. Chair Hoppock asked if Ms. Shay would then process the
843 items from there. Ms. Shay replied yes and put them into the retail space. Chair Hoppock asked
844 if it is correct that Ms. Shay would not consider that connector to be retail space. Ms. Shay
845 replied that it is correct; it would be more like temporary storage.

846

847 Mr. Guyot stated that the 2,240 square footage appears to be exterior measurements, as opposed
848 to the interior measurement. He continued that the 32'x70' gets you to 22'x40', which is stated
849 on the plan. That is larger than what the actual interior space will be. Adding 22'x40' plus the
850 420 square feet of porch gives 2,660 square feet that potentially could be retail on that part of the
851 building. They have determined the 12-foot entryway will be storage. If the fenced area is
852 approximately 900 to 1,300 square feet, they could say it is 1,000 square feet. If they add that
853 1,000 square feet – which will not necessarily be used for retail but *could* be – to the 2,660
854 square feet, then the absolute maximum available for retail would be 3,660 square feet. They
855 know that it will be reduced, and they know that number is high. He is trying to get a rough
856 estimate, because they know the 2,240 square feet figure is exterior and they know the interior is
857 smaller.

858
859 Ms. Taylor stated that she would like some clarification. Her understanding is that the applicant
860 would like additional outside retail space and considers that outdoor, fenced area as a separate
861 outdoor retail space. She asked if that is correct. Ms. Shay replied that it is a three-season retail
862 space versus where she would do seasonal displays out front. She would do a Christmas display
863 where the big sign is, on that area, and for the town-wide yard sale she would set up tables in that
864 area, or on the side over by the residence where there is a porch.

865
866 Ms. Taylor stated that her concern is whether there is a reasonable way to both limit and identify
867 a location for the outside retail. She continued that she understands Ms. Shay's desire to have
868 outdoor retail, but it cannot be completely unregulated. With the zoning as it currently is, it is
869 wide open.

870
871 Ms. Shay stated that the fenced area is a square box, easily measurable. She continued that the
872 porch is easily measurable. She asked if they had any measurements for the island in the parking
873 lot. She wonders if there is a way they could define a square footage that could be allowed in that
874 area, and what would be reasonable for that area. Chair Hoppock replied that from the 2003 site
875 plan, he cannot tell what the area of that island is.

876
877 Ms. Taylor stated that her concern there – although she defers to staff – is that she does not know
878 how temporary things are, but that would be within the setback. She does not know if that creates
879 other issues for the Planning staff. Mr. Clements replied that just from a site circulation and
880 pedestrian safety aspect, he would not want any kind of retail activity there. He continued that it
881 is the Rural Zone, so the setback is 50 feet. The snow storage area cannot be encumbered by
882 year-round retail. That said, any kind of seasonal retail would be removed by the time snow
883 storage is needed. There is also a fair amount of topography in play on the property, as well as
884 the tree line.

885
886 Mr. Clements continued that realistically, the only part of the property is “here” (he indicated on
887 the drawing) behind the setback and appears to be unencumbered by topography or any
888 development.

889

890 Chair Hoppock asked if it is correct that that space is on the residential side. Mr. Clements
891 replied yes. Chair Hoppock replied that that might not be convenient for the retail operation.

892
893 Chair Hoppock asked about the fence on the left side. He continued that the picture does not
894 make the length clear. He asked how long it is, and if they know the area behind the fence, as he
895 assumes that is the area Ms. Shay is talking about outside retail. Ms. Shay replied to the fenced
896 area that is attached to the building. She continued that it would be great to attach things to the
897 other fence, but she does not think the neighbor would appreciate it, and she would like to be
898 neighborly. Chair Hoppock replied that he only sees one fence in the picture, so that is what he is
899 asking about. She talked about using “the area by the fence” for outdoor retail. Ms. Shay replied
900 that right now there is the play area. Chair Hoppock asked if that is behind the fence. Ms. Shay
901 replied that there is the fence that goes along the property border on that side, which she believes
902 is what is shown in the site plan. She continued that what is not shown in the site plan is the
903 stockade fence that encloses the play area on the Marlborough side of the building. Ms. Taylor
904 replied that the Board cannot really tell that from the picture or the site plan. Chair Hoppock
905 replied that there is a fence labeled and trash storage bin, but he cannot find those two items,
906 either. The fence that is there now in the picture is not on the site plan. It was put up afterwards.
907 Ms. Shay replied that it is correct.

908
909 Chair Hoppock stated that what he is trying to understand is what is behind the fence, which if
910 looking at the property on the left side of the building, at the end of the retail space. He asked if
911 that is the play area. Ms. Shay replied yes, it is a three-sided fence. She continued that you go out
912 of the building into the fenced area, which is totally enclosed. Chair Hoppock asked if the play
913 area is all that is in there right now. Ms. Shay replied that they took the gym equipment out, so it
914 is just a big lot of recycled rubber, which was the flooring of the play area, and a sandbox in the
915 middle.

916
917 Mr. Clements stated that it is about 1,000 square feet, using the 2021 aerial image. Chair
918 Hoppock replied that if they use that 1,000 square feet figure and add it to the 2,660 square feet
919 that is 3,660 square feet of potential retail space. He agrees with Mr. Guyot’s calculations.

920
921 Mr. Guyot replied that that is on the high side. He asked if Mr. Clements has the Assessor’s
922 interior measurements, so they could refine this. Mr. Clements replied yes, interior
923 measurements are 2,030 square feet for the commercial space, which is not too far off. With that,
924 it is about 3,400 square feet.

925
926 Ms. Taylor stated that if they are trying to narrow the usable, external area to a square footage,
927 they will not get it exact. She continued that whether they should say it should be limited to a
928 specific area and leave that to Planning staff to determine how much of a specific area, or a
929 percentage of the internal space, she does not know. They will not be successful at trying to
930 design square footage.

931

932 Chair Hoppock asked where this goes next, if the Board approves the Variance. He asked if it
933 goes to the Keene Planning Board and Marlborough's Zoning Board. Ms. Shay replied that the
934 Marlborough Zoning Board is scheduled for Wednesday, October 16, at 6:00 PM and she is
935 seeking a Special Exception, meeting with Zoning [Board] and Planning [Board] at the same
936 time. Chair Hoppock asked what the Keene Planning Board's role is here. Mr. Clements replied
937 that he does not think this will go to the Keene Planning Board, so if the ZBA is worried about
938 the amount of outdoor retail utilization, they need to figure it out here.

939
940 Chair Hoppock stated that in terms of the interior retail, the applicant said she will need an office
941 and storage in there. He asked if the ZBA needs to worry about regulating how much retail goes
942 inside versus outside. Mr. Clements replied no.

943
944 Ms. Taylor stated that she was concerned about anyone trying to designate exact square footage
945 without the Board having more information. She continued that she was more concerned with
946 either limiting it to a percentage – such as 50% of the internal, 60%, or something along those
947 lines - as well as the location on the site.

948
949 Mr. Clements asked which is more important, the footprint of the exterior retail use, or the
950 location of that exterior retail use. Chair Hoppock replied both. Mr. Clements replied that the
951 existing 50-foot setback will make it so that permanent structures have to be 50 feet from the
952 property line. Thus, temporary tables going up with displays for a yard sale or a temporary
953 artisan goods display would be less regulated by that 50-foot setback. However, if the Board
954 wanted to say she could have 50% of her total interior retail space as the maximum for the
955 exterior retail space, that gives the applicant an understanding of the amount of space she can
956 work with, and then she can decide where on the property that will go. Then she can show that
957 on the site plan and beholden to that location, and amend that location much easier, instead of
958 having to come back to amend the Variance.

959
960 Ms. Taylor asked why they could not do both, regarding Chair Hoppock's statement that both are
961 important. Mr. Clements replied that it is up to the Board.

962
963 Chair Hoppock stated that to clarify his thoughts, he does not think the applicant putting tables
964 out there for a day would be a problem. He continued that he does not want to tell the applicant
965 where to put things, like "inside the fence where the playground was." If the Board tells her,
966 hypothetically, that she is limited to 2,400 square feet of exterior retail space, the applicant can
967 figure out where it is, so long as it is not in the setback. To him, that makes more sense than the
968 Board telling her where to put it. Mr. Clements replied that it is his recommendation as well for
969 the Board to set a ratio or come up with a square footage amount that the applicant and Board are
970 comfortable with, then let the applicant's business needs dictate where she is going to utilize that
971 square footage.

972
973 Chair Hoppock asked if anyone had further questions for the applicant, before the Board goes
974 into deliberations, which they are almost already doing.

975 Ms. Shay asked if the Board would consider defining “inside retail space,” “permanent outdoor
976 retail space,” and “temporary outside retail space.” She continued that for permanent outdoor
977 retail space, she would like the fenced area that was previously the play area, and the front porch.
978 Then, temporary outdoor retail space could be square footage, which could be in XYZ space as
979 long as it is not in the setback.

980
981 Chair Hoppock asked what “temporary” means, such as a day or a week. Ms. Shay replied one
982 day, a weekend, or a week. She continued that the town-wide yard sale is usually for two or three
983 days. (Maybe) there are some other event in town, Girl Scouts selling cookies for a weekend, or
984 youth doing a car wash. She does not know what type of events she will end up holding. She will
985 talk with Planning staff to make sure everything she tries is within the guidelines.

986
987 Chair Hoppock stated that setting aside the “temporary outdoor retail space” for a moment, and
988 doing nothing about that, he wants to know what would happen if the Board approved outdoor
989 retail up to the front porch and the fenced-in area on the left side of the property. His question for
990 Mr. Clements is whether that is enough detail for enforcement, and his question for Ms. Shay is
991 whether that is enough detail for what she needs.

992
993 Ms. Shay replied that her question would be how she would get the other things approved, such
994 as participation in the town-wide yard sale. She asked what process she would have to go
995 through. Chair Hoppock replied that he does not know, but he thinks she would not need to do
996 anything. He continued that the temporary outdoor retail would be at her discretion, when she
997 wanted. He does not think the ZBA can regulate temporary retail. He is not comfortable with
998 saying she could have X number square feet of outdoor retail, because he has no idea what it will
999 be, and if it is up for a day or a weekend, he assumes it will come down at night and she would
1000 not leave it out overnight. Ms. Shay replied that she probably would, covered with a tarp.

1001
1002 Ms. Shay stated that that it sounds like the idea of having a holiday/seasonal display would not
1003 be allowed in the island area, such as scarecrows and a bale of hay. Mr. Clements replied that
1004 decorations and landscaping are different from retail. He continued that if it were retail, there
1005 would be people wandering around and looking at things, not paying attention to the parking lot
1006 and State highway next to them. Ms. Shay doing decorative landscaping or displays that are
1007 relatively stagnant, which people are not directly interacting with (would be different).

1008
1009 Mr. Clements stated that the City issues periodic event licenses for events such as a car wash,
1010 yard sale, or Girl Scouts. He continued that that is not necessarily something the ZBA needs to
1011 figure out. Ms. Shay replied that it is something she needs to figure out if she needs to get some
1012 type of permit in order to have Girl Scouts selling cookies. Mr. Clements replied yes, a
1013 temporary event license would cover that. He continued that this (what is before the ZBA) is
1014 more about the permanent use of the property. If confining the permanent, year-round, outdoor
1015 retail to the front porch and the fence-in area would be sufficient for Ms. Shay’s needs, then
1016 temporary events are easier to handle. This is more about the fact that if this Variance is
1017 approved, the next person she sells the property will be able to have these special rules, as would

1018 the owner after that. Thus, there have to be limits. Maybe it is the outdoor area, the front porch,
1019 and then 250 additional square feet of outdoor retail space that is outside of the yard setbacks.
1020 That would give her a little bit of flexible space. The ZBA really needs to look at the permanent
1021 future use of the property, more than temporary, occasional uses.

1022
1023 Chair Hoppock stated that hearing no further questions for the applicant, he asks if anyone from
1024 the public wishes to speak for or against the application. Hearing none, he closed the public
1025 hearing and asked the Board to deliberate.

1026
1027 Ms. Taylor stated that strangely enough, she thinks this is one application that does not
1028 necessarily hinge on the unnecessary hardship criterion. She continued that she has concerns
1029 regarding public safety. She will give her overall thoughts rather than address individual criteria.
1030 She does not have any concerns with the inside retail, the outside retail on the porch, or behind
1031 the fenced area. She thinks the Board needs to designate an area for the outside retail that is not
1032 within that front island setback area, because of safety concerns, and not within the parking lot or
1033 paved area. Potentially, that additional outdoor retail could go on the western side. Maybe 250
1034 additional square feet, as Mr. Clements suggested, is a nice round number, but again, she would
1035 want to designate a location for that additional outdoor retail that is not on the porch or behind
1036 the fence.

1037
1038 Chair Hoppock asked, for clarity, if she meant outside retail behind the fence and on the porch
1039 that is over and above the 250 square feet. Ms. Taylor replied yes. Chair Hoppock replied that he
1040 does not have an issue with that.

1041
1042 Mr. Guyot stated that he thinks the 50-foot setback forces the 250 feet of what he will call
1043 “variable space” up to the building, into that quadrant on the west side/Keene side. He continued
1044 that the 50-foot setback, if he is reading the plan correctly, is very close to the porch. Ms. Taylor
1045 replied yes, but the 50-foot setback does not address temporary structures. She continued that her
1046 concern is, again, from a safety perspective. She does not think the front island area should be
1047 used for outdoor retail. She thinks an area on the western side could be used, potentially a small
1048 area on the eastern side where the mailbox and dumpster are shown, but she is not sure. She
1049 would leave the layout to the applicant. However, she does think the Board should quantify the
1050 amount and location of the outside, temporary retail space that is not the porch and not the fence-
1051 in area.

1052
1053 Mr. Clements stated that part of the site plan Planning review is the safe use of the property. He
1054 continued that (examples would be) encumbering parking spaces or driving aisles. They do not
1055 generally allow things like that. Maybe specifying ‘not in the parking area’ and ‘not in the center
1056 island’ would be enough. That gives the applicant the flexibility to work with Planning staff to
1057 identify a safe place for the (temporary outdoor retail).

1058
1059 Ms. Taylor replied yes, that is basically what she was trying to say. She continued that she was
1060 trying to demonstrate that outdoor temporary retail could go in other areas.

1061 Chair Hoppock asked if Mr. Clements, by “Planning,” means the Planning Board, that lower-tier
1062 group, or the administrative level he mentioned before. Mr. Clements replied that whether it is
1063 the administrative review with staff looking at site plans, or the Minor Project Review
1064 Committee, they are still following the Planning Board’s site plan regulations. If a proposal
1065 requires a deviation or a waiver from those regulations, they must go to the Planning Board. The
1066 Planning Board is the only body with the authority to grant those concessions. Especially with
1067 the administrative review, it must check all the boxes, or it gets (elevated to the next tier).
1068

1069 Ms. Taylor stated that the issue she raised is directed at the public health and safety portion of
1070 the Board’s considerations. She continued that for the number of times the Board has seen this
1071 particular piece of property before them, she thinks the property itself creates a hardship for
1072 whoever is trying to develop and use the property, so she will not linger long on (that criterion).
1073 She does not think this proposal is necessarily against the public interest, so long as it is
1074 regulated to the extent that they consider the public health and safety. That is why she suggested
1075 the condition on the outdoor retail.
1076

1077 Ms. Taylor continued that the other condition she thinks they should consider is that it would all
1078 be contingent on also getting approval from the Town of Marlborough. She thinks that is what
1079 the Board said last time (this property was before them). Chair Hoppock replied that he does
1080 recall that.
1081

1082 Chair Hoppock replied that he agrees with Ms. Taylor’s suggestions, especially to minimize any
1083 concerns about public safety. He continued that he does not think granting the Variance would be
1084 contrary to the public interest, because “retail, light” is consistent with what exists out there, in
1085 many ways. There are many uses along that strip. Regarding the spirit of the Ordinance and the
1086 safety issues, it is along a major highway, and the things the Board is talking about will reduce
1087 the number of people outside at any one time, and they will be away from the roadway because
1088 of what they are doing. He thinks it will ameliorate those safety concerns. Even temporary kiosks
1089 will not alter the essential character of the neighborhood. It might even enhance the commercial
1090 value of it. There would be great injustice to the applicant, not outweighed by any public gain if
1091 it were denied. He does not see any evidence, nor can he imagine any, that would indicate there
1092 would be diminished property values in the neighborhood if this were approved. The
1093 characteristics of this property are such that there is a connected commercial and residential use,
1094 which one does not see often. It is split by a town/city line, and he cannot remember another
1095 piece of property the Board has ever had with that problem. In her application, the applicant
1096 describes it as “the unique makeup of this property,” which he thinks is the “understatement of
1097 the year.” Many qualities of this property make it difficult to regulate. It would be unfair to apply
1098 retail prohibition to the property, given the property’s unique features. He agrees that the
1099 conditions the Board is discussing would be appropriate conditions of approval.
1100

1101 Chair Hoppock asked if Mr. Guyot or Mr. Clough had anything to add. Hearing none, he asked
1102 for a motion.

1103 Ms. Taylor made a motion for the Zoning Board of Adjustment to approve ZBA-2024-25 for a
1104 Variance for a property located at 973 Marlboro Rd., Tax Map 249-004-000, to operate a light
1105 retail establishment in the Rural District per Article 8.3.2.AD of the Zoning Regulations, with the
1106 conditions:

- 1107
- 1108 - Approval is contingent on having the necessary Zoning approval from the Town of
 - 1109 Marlborough
 - 1110 - Outdoor, temporary, seasonal retail is limited to approximately 250 square feet, so long
 - 1111 as it is not on the front island between the two entrances or in the parking lot. The
 - 1112 outdoor, temporary, seasonal retail does not include the porches or the fenced-in areas of
 - 1113 the property.
- 1114

1115 Chair Hoppock asked if, for clarification, retail can occur on the porch or in the fenced-in area
1116 without regard to the 250 feet. Ms. Taylor replied yes, that is her intent.

1117

1118 Mr. Clough seconded the motion.

1119

1120 Mr. Clements asked if they want to include in the condition that outdoor retail is allowed on the
1121 porch and in the fence-in area. Chair Hoppock replied that he thinks they did, with his clarifying
1122 question. He continued that outside retail is permitted on the porch and inside the fenced-in area
1123 without regard to the 250 square feet limit. There will be no outdoor retail on the island or in the
1124 parking lot. He asked if that is how everyone understood it.

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

1139 4. *If the Variance were granted, the values of the surrounding properties would not be*
1140 *diminished.*

1141

1142 Met with a vote of 4-0.

1143

1144 5. *Unnecessary Hardship*

1145 A. *Owing to special conditions of the property that distinguish it from other*
1146 *properties in the area, denial of the variance would result in unnecessary hardship*
1147 *because*
1148 *i. No fair and substantial relationship exists between the general public*
1149 *purposes of the ordinance provision and the specific application of that provision*
1150 *to the property.*

1151
1152 Met with a vote of 4-0.

1153
1154 *and*
1155 *ii. The proposed use is a reasonable one.*

1156
1157 Met with a vote of 4-0.

1158
1159 The motion passed with a vote of 4-0.

1160
1161 **V) New Business**

1162
1163 Mr. Clements distributed copies of corrected copies of the Land Development Code to the Board.

1164
1165 **VI) Communications and Miscellaneous**

1166
1167 Mr. Clements stated that there are no communications or miscellaneous items.

1168
1169 **VII) Non-Public Session (if required)**

1170
1171 **VIII) Adjournment**

1172
1173 There being no further business, Chair Hoppock adjourned the meeting at 8:49 PM.

1174
1175 Respectfully submitted by,
1176 Britta Reida, Minute Taker

1177
1178 Reviewed and edited by,
1179 Corinne Marcou, Board Clerk

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70 COURT STREET ZBA-2024-26



Petitioner requests a Variance to permit the Animal Care use in Downtown Transition District per 4.1.3 of the Zoning Regulations.



NOTICE OF HEARING

ZBA-2024-26

A meeting of the Zoning Board of Adjustment will be held on **Monday, November 4, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-26: Petitioner, Cathy Goodreau, of 690 court St., requests a variance for property located at 70 Court St., Tax Map #568-041-000. This property is in the Downtown Transition District and is owned by Geno A. Ranaldi, of 75 Court St., Exeter, NH. The Petitioner requests a variance to operate an animal care business per Article 4.1.3 of the Zoning Regulations.

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

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

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

Corinne Marcou, Zoning Clerk

Notice issuance date October 25, 2024

City of Keene, NH

Zoning Board of Adjustment Variance Application



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

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

SECTION 1: 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: Dog Gone Beautiful Pet Styling

MAILING ADDRESS: 690 Court Street, Keene NH

PHONE: (603) 352-8112

EMAIL: dgbpetstylingsalon@gmail.com

SIGNATURE:

PRINTED NAME: Cathy Goodreau

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

owner

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Geno Ranaldi

MAILING ADDRESS: 385 6th Street Dover, NH 03820

PHONE: 603-750-7501

EMAIL: info@winsorbrook.com ; genoranaldi@gmail.com

SIGNATURE:

DocuSigned by:

10/22/2024

PRINTED NAME: Geno Ranaldi

Zoning Board of Adjustment Variance Application



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Page	1 of 16
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MAILING ADDRESS: 690 Court Street, Keene NH

PHONE: (603) 352-8112

EMAIL: dgbpetstylingsalon@gmail.com

SIGNATURE:

PRINTED NAME: Cathy Goodreau

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: PROPERTY INFORMATION

Property Address: **70 Court Street Keene NH**

Tax Map Parcel Number: **568-041-000**

Zoning District **Downtown Transition**

Lot Dimensions: Front: **147** Rear: 78 Side: 169 Side: 254

Lot Area: Acres: **053** Square Feet:

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **.36** Proposed: .36

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 65% Proposed: **65%**

Present Use: **Mixed Commercial / Residential**

Proposed Use: **Basement Only Use - Dog Grooming Salon**

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.

A. Property Location: 70 Court Street

B. Owner Of Property: Geno Rinaldi

C. I am proposing a variance for the restriction of the property for Personal Use Services in Downtown Transition Zone. Dog Grooming falls under Personal Uses Services. The purpose and effect of the variance would be to allow my dog grooming salon to operate at this location. The justification for the variance is that my dog grooming salon can fit in the zone "downtown transition". Dog Gone Beautiful has been operating in Keene, on Court Street for over 36 years. Dog Gone Beautiful has been in Keene since 1986 and we have been on Court Street for that whole period of time. We have looked all over Keene to find other suitable spaces and there has been none. The property manager of 70 Court Street did a test of the noise coming from the basement to see if it would affect the first floor or second floor and there was minimal noise. After that test the management company gave the okay for us to lease the space. Only after giving a deposit and payment first months rent did we become aware of the zoning conflict. We are sure the noise will not be an issue coming from this basement as it is concrete and concrete block walls. But to be sure, we did a test on our own. We took our personal dog, a Vizsla, into the space and made her bark. I was outside the building and I couldn't hear her. Only if I was near the windows on the back of the building did I hear faint barking.

We are not going to have any outside kennels.

We are not going to have any dogs at the location past 3 pm.

We are not going to have any training and groups outside of the building.

All of our business will be conducted in the basement space, which is underground and surrounded by concrete. The basement being underground and surrounded by concrete is a noise reducer.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 4.1.3 of the Zoning Regulations to permit:

use of downtown transition for animal care.
Animal care is allowed in all but 3 of the current zones in Keene.

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

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

The intent of the downtown transition is to "transition" from downtown district to residential dwelling.

The intent of downtown transition is to accomodate lower intensity commercial use, Dog Gone Beautiful Pet Styling is a low commercial use business. Our business has a designated number of appointments per day and we are only open from 8:30 am to 3:00 pm. We are not manufacturing anything, we do not have a drive through, we do not have walk in customers, and we are not open after hours.

Downtown Transition requires low traffic use.

We are not going to impact Court Street traffic because we are already on Court Street. Our customers only drop off their pet and return later in the day to pick up. We are already on Court Street now so traffic will not be adversely affected by us moving down the street.

Downtown transition also states a lower noise requirement.

We have done testing to quantify exactly how much noise a dog barking in this space would produce and who could hear it. Outside of the building, you could not hear the noise. It will not affect any abutter. Also, dogs barking is not a all day occurance. Only the occasioal dog barking happens.

Downtown transition also is concerned about traffic/parking. I have addressed the traffic situation above.

Parking: This location has multiple parking spots (20)and we will have spots for 10 min drop off/pick up right in the parking lot. Customers will not have to find parking on the street. There is overly adequate parking for our customers and employees at this location.

As a side note:

We will not have any outside kennels, no boarding overnight and no outdoor activities. All business is conducted inside.

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

The spirit of the ordinance would be observed for the following reasons:

My grooming salon at this location would be used for lower intensity commercial use as stated by the ordinance

My grooming salon at this location will not impact noise levels to anyone abutting.

My grooming salon at this location would not affect parking/traffic.

3. Granting the variance would do substantial justice because:

The variance would provide a home for a long standing business of Keene.

Our business would be able to operate and service the community as we always have.

Our business would not break any of the contingencies of the zone. In fact it meets the criteria for the downtown transition definition.

After most pet parents drop off their pet, they tell us they are going shopping. This brings business to the area. A lot of our customers come from outside Keene and instead of driving home, they just stay in Keene and shop.

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

Our business is not going to change the current status of the building. No outside work is going to be done. No changes to the grounds are going to be done. No added noise will be created. No work to the existing structure will be done. No added nuisance of parking, as the building has plenty of parking spaces for employees and customers. No added traffic to Court Street as we are already on Court Street and customers are already traveling on Court Street to get to us. No outside activities will be taking place to disrupt abutters. No added structures will be built. We will just be operating in the basement of 70 Court Street.

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:

This property with the basement location I am leasing is concrete and blocks. The noise escaping the basement is very low. After testing it, the management company concluded that the even within the building the noise wouldn't be of any nuisance to other tenants of the building.

Our business can not find other suitable spaces that can accommodate our specific business needs. This space was selected because of its size, noise restriction and compatibility to our specific needs.

The other options for rental clients of this space are limited by the zoning.

This building is a historic building and with that comes requirements to altering it. I would be using the space without having to alter anything, keeping the use of the building as built, keeping the historic nature of the space.

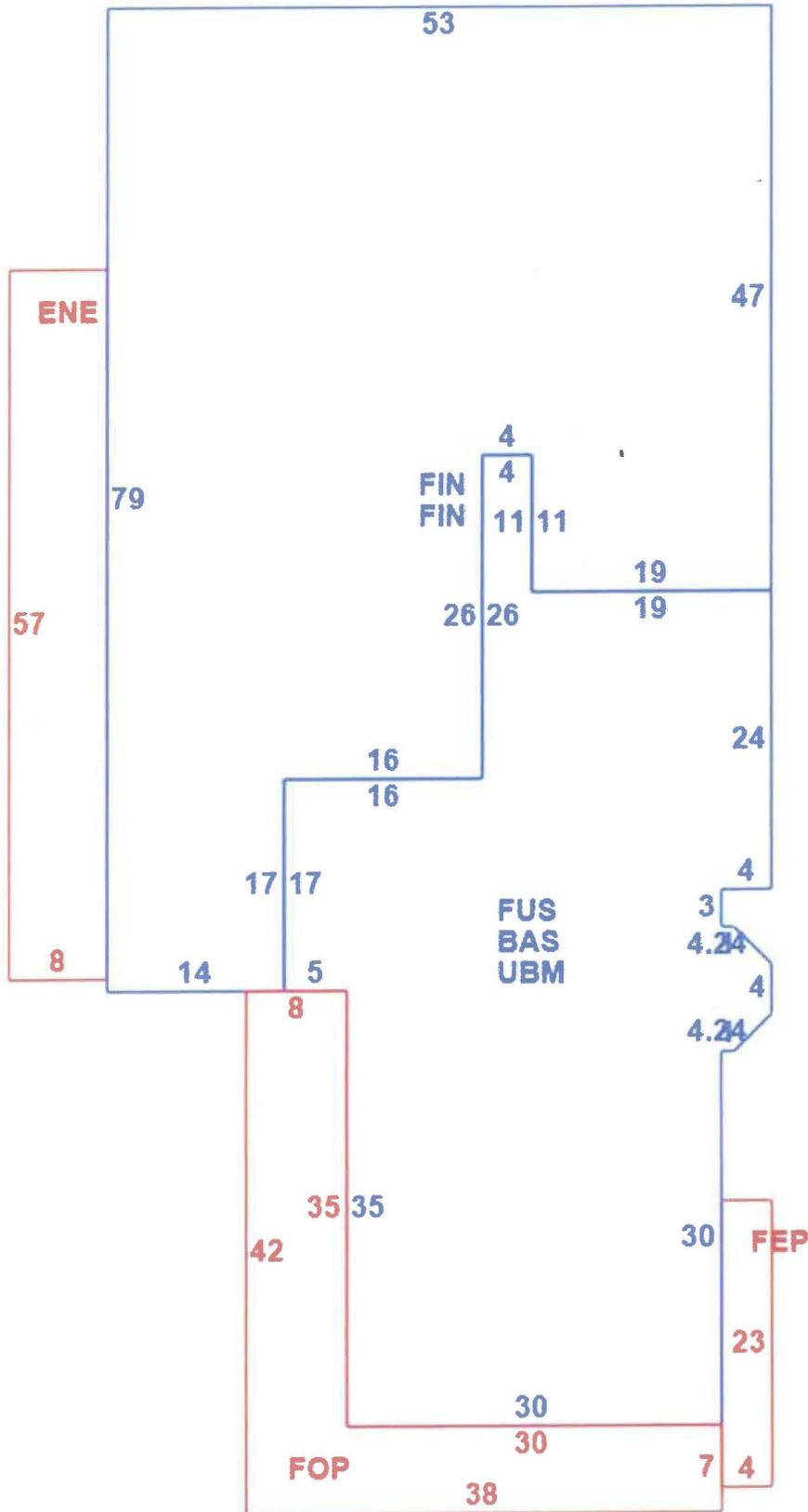
and

ii. The proposed use is a reasonable one because:

The proposed use is reasonable because scope of the intent of Downtown Transition can be upheld. Our use would not affect traffic or noise and we would not be a high intensity commercial business. I know our business can uphold the intent of downtown transition.

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

The basement space is just that, a basement. There is not a lot of appeal to a basement enviornment. There is not a lot of natural light and there are minimum windows and they are not full size. Finding a business that could use the space will be limited. The concrete walls and floors also diminish the kind of business that could use the space.





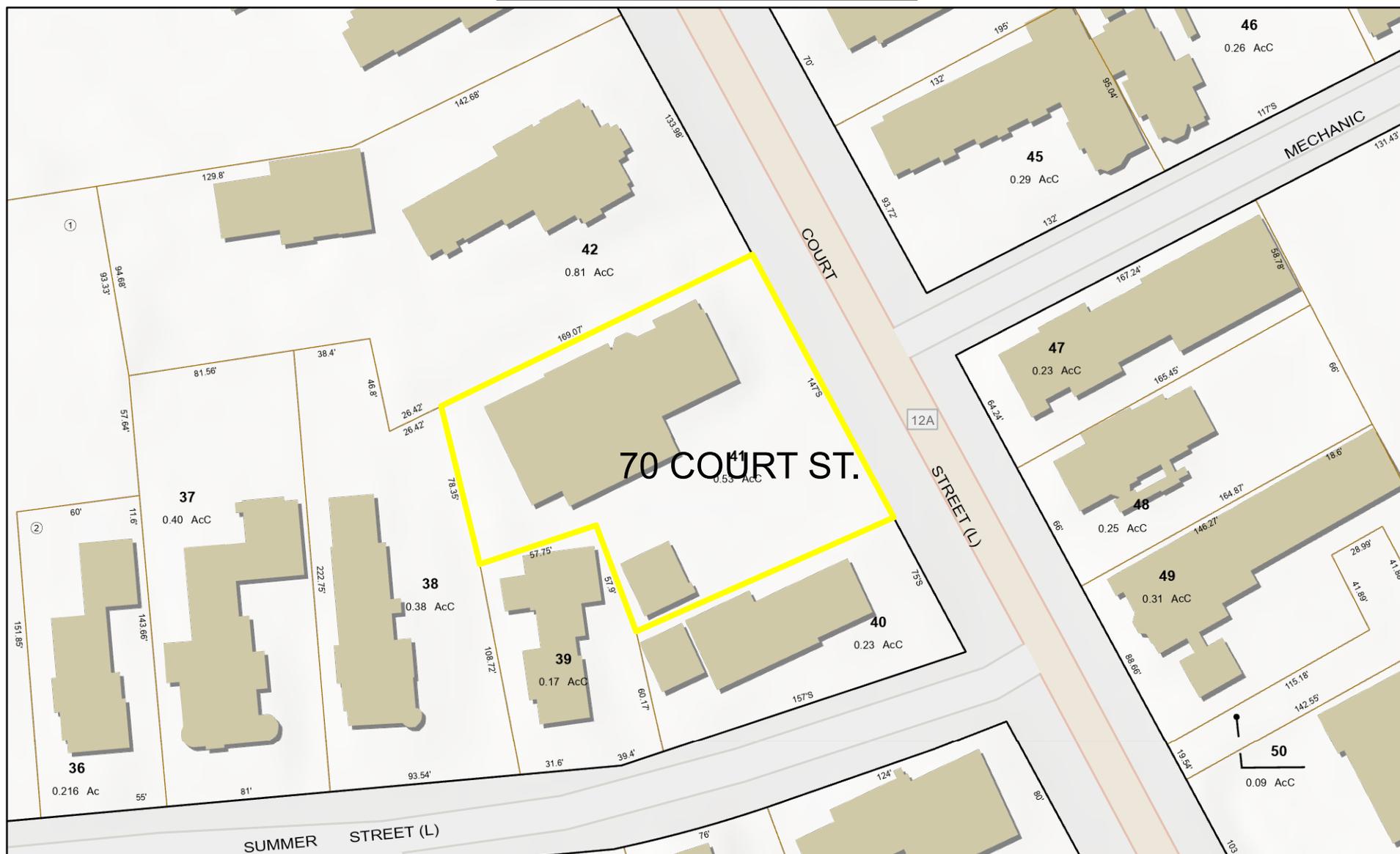
City of Keene, NH

1 inch = 69 Feet



October 24, 2024

www.cai-tech.com



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200 feet Abutters List Report

Keene, NH
October 11, 2024

Subject Property:

Parcel Number: 568-041-000
CAMA Number: 568-041-000-000-000
Property Address: 70 COURT ST.

Mailing Address: RANALDI GENO A
75 COURT ST #3A
EXETER, NH 03833-2743

Abutters:

Parcel Number: 554-106-000
CAMA Number: 554-106-000-000-000
Property Address: 91 COURT ST.

Mailing Address: HAYWARD-ELLIS HOUSE LLC
PO BOX 323
KEENE, NH 03431

Parcel Number: 554-107-000
CAMA Number: 554-107-000-000-000
Property Address: 83 COURT ST.

Mailing Address: 83 COURT STREET LLC
893 OLD WALPOLE RD.
SURRY, NH 03431

Parcel Number: 568-014-000
CAMA Number: 568-014-000-000-000
Property Address: 29 MIDDLE ST.

Mailing Address: ESPIEFS PETER S. REV. TRUST
29 MIDDLE ST.
KEENE, NH 03431

Parcel Number: 568-022-000
CAMA Number: 568-022-000-000-000
Property Address: 34 COURT ST.

Mailing Address: 34 COURT LLC
63 EMERALD ST. #468
KEENE, NH 03431-3626

Parcel Number: 568-023-000
CAMA Number: 568-023-000-000-000
Property Address: 42-44 COURT ST.

Mailing Address: RANALDI GENO
385 6TH ST
DOVER, NH 03820

Parcel Number: 568-024-000
CAMA Number: 568-024-000-000-000
Property Address: 18 SUMMER ST.

Mailing Address: ZOLL MICHAEL J. ZOLL JENNIFER L.
18 SUMMER ST.
KEENE, NH 03431

Parcel Number: 568-025-000
CAMA Number: 568-025-000-000-000
Property Address: 37 MIDDLE ST.

Mailing Address: LEACH JODY A. LEACH KRISTEN
37 MIDDLE ST.
KEENE, NH 03431

Parcel Number: 568-026-000
CAMA Number: 568-026-000-000-000
Property Address: 38 MIDDLE ST.

Mailing Address: BERGERON JOHN GROISS LINDA
38 MIDDLE ST.
KEENE, NH 03431

Parcel Number: 568-035-000
CAMA Number: 568-035-000-000-000
Property Address: 53 SUMMER ST.

Mailing Address: WATSON FREDERICK K TRUST
53 SUMMER ST
KEENE, NH 03431

Parcel Number: 568-036-000
CAMA Number: 568-036-000-000-000
Property Address: 45 SUMMER ST.

Mailing Address: WASSERBAUER DAMIAN GILMARY
45 SUMMER ST.
KEENE, NH 03431



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200 feet Abutters List Report

Keene, NH
October 11, 2024

Parcel Number: 568-037-000
CAMA Number: 568-037-000-000-000
Property Address: 39 SUMMER ST.

Mailing Address: THE HOME FOR LITTLE WANDERERS
INC
10 GUEST ST
BOSTON, MA 02135

Parcel Number: 568-038-000
CAMA Number: 568-038-000-000-000
Property Address: 31 SUMMER ST.

Mailing Address: ARRUDA MEGAN E ARRUDA JOHN G
98 MERRICON RD
NELSON, NH 03457-5506

Parcel Number: 568-039-000
CAMA Number: 568-039-000-000-000
Property Address: 21 SUMMER ST.

Mailing Address: CUNHA-VASCONCELOS SOFIA C.
21 SUMMER ST.
KEENE, NH 03431

Parcel Number: 568-040-000
CAMA Number: 568-040-000-000-000
Property Address: 56 COURT ST.

Mailing Address: BURK NANCY E REV TRUST
NANCY E BURK TTEE 290 CHAPMAN RD
KEENE, NH 03431

Parcel Number: 568-042-000
CAMA Number: 568-042-000-000-000
Property Address: 82 COURT ST.

Mailing Address: 82 COURT PROPERTIES LLC
82 COURT ST.
KEENE, NH 03431

Parcel Number: 568-043-000
CAMA Number: 568-043-000-000-000
Property Address: 92 COURT ST.

Mailing Address: TERHAR MICHAEL JOHN JOSEPH
TERHAR CERA BETHANY
92 COURT ST
KEENE, NH 03431

Parcel Number: 568-044-000
CAMA Number: 568-044-000-000-000
Property Address: 81 COURT ST.

Mailing Address: NBA 81 REALTY LLC
81 COURT ST.
KEENE, NH 03431

Parcel Number: 568-045-000
CAMA Number: 568-045-000-000-000
Property Address: 73 COURT ST.

Mailing Address: BASKETVILLE OF PARADISE INC
314 WILTON RD.
MASON, NH 03048

Parcel Number: 568-046-000
CAMA Number: 568-046-000-000-000
Property Address: 67 MECHANIC ST.

Mailing Address: ROSS ALAN L. REV. TRUST
361 SMITH POND RD.
WASHINGTON, NH 03280

Parcel Number: 568-047-000
CAMA Number: 568-047-000-000-000
Property Address: 61 COURT ST.

Mailing Address: BEAUREGARD FAMILY REV. TRUST
127 WASHINGTON ST.
KEENE, NH 03431-3106

Parcel Number: 568-048-000
CAMA Number: 568-048-000-000-000
Property Address: 55 COURT ST.

Mailing Address: E&I PROPERTIES LLC
67 HIGHLAND ST.
WORCESTER, MA 01609

Parcel Number: 568-049-000
CAMA Number: 568-049-000-000-000
Property Address: 49 COURT ST.

Mailing Address: FOLEY FUNERAL HOME INC.
PO BOX 130548
HOUSTON, TX 77219-0548



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200 feet Abutters List Report

Keene, NH
October 11, 2024

Parcel Number: 568-050-000
CAMA Number: 568-050-000-000-000
Property Address: 0 COURT ST.

Mailing Address: KEYSTONE AMERICA INC. D/B/A
DILUZIO FOLEY & FLETCHER FUNERAL
HOMES
PO BOX 130548 - PROP TAX
HOUSTON, TX 77219-0548

Parcel Number: 568-051-000
CAMA Number: 568-051-000-000-000
Property Address: 31 VERNON ST.

Mailing Address: CITY OF KEENE C/O CITY MANAGER
3 WASHINGTON ST.
KEENE, NH 03431



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Corinne Marcou

From: Helen Washer [REDACTED] >
Sent: Wednesday, October 16, 2024 10:45 AM
To: Community Development
Subject: ZBA 70 Court Street

To whom it may concern,

I am writing in support of the variance requested by Doggone Beautiful. I have been a customer of theirs since I moved to NH 6 years ago. I would have a hard time finding another groomer that I trust with my dog. They do amazing work. They are an important business in the community. When I drop my dog off to be groomed, I use the few hours to do some shopping in Keene, so they are also bringing business to other businesses. It's in Keene's best interest to keep them in Keene.

Thank you so much,

Helen Washer
[REDACTED]
[REDACTED]

Sent from my iPhone

Corinne Marcou

From: Nancy Flint-Budde <[REDACTED]>
Sent: Wednesday, October 16, 2024 9:58 AM
To: Community Development
Subject: ZBA 70 Court St

Re: DogGone Beautiful Pet Salon variance

I have used this business and found them to be professional and operating within strict daytime business hours. Please grant their request.

Nancy Flint Budde

[REDACTED]
[REDACTED]

Corinne Marcou

From: Amy [REDACTED]
Sent: Wednesday, October 16, 2024 6:04 PM
To: Community Development
Subject: ZBA 70 Court St

To whom it may concern:

I have known the business of DogGone Beautiful since the 1980's. They have serviced my dogs throughout those years.

I have found them to be very professional, clean and quiet.

I believe they would be a great asset to the space they are looking to occupy. Please give them the variance.

Sincerely, Amy Milne

Sent from my iPhone

Corinne Marcou

From: shiloh98 @sover.net <[REDACTED]>
Sent: Thursday, October 17, 2024 9:40 PM
To: Community Development
Subject: ZBA 70 Court Street

Dear Zoning Board of Adjustment,

My wife and I are writing in support of the request by the DogGone Beautiful Pet Styling salon for a zoning variance that would allow them to relocate their business from 690 Court Street to 70 Court Street in Keene. We regularly travel from Brattleboro, VT to avail ourselves of their professional services, which surpass that of any other pet grooming salon we've known from southern Vermont all the way down to Springfield, MA . When in Keene, we always shop at local stores, and I imagine many of their grateful customers directly and indirectly also contribute to the local commerce in that way. We hope you will enable them to continue to thrive in Keene.

Sincerely,
Benson Bobrick
Hilary Bloom Bobrick

Corinne Marcou

From: Tina Nelson <[REDACTED]>
Sent: Thursday, October 17, 2024 8:24 PM
To: Community Development
Subject: ZBA 70 Court St.

To whom it may concern,

I am writing in support of Dog Gone Beautiful relocating to 70 Court St. I have been a client of theirs for 20 years. Wonderful people and business.

Thank you,
Tina Nelson

Corinne Marcou

From: Peg Fitzpatrick <[REDACTED]>
Sent: Tuesday, October 22, 2024 11:38 AM
To: Community Development
Subject: ZBA 70 Court Street for Doggone Beautiful

Dear Members of the Keene City Council,

I hope this letter finds you well. I am writing in support of the variance request for Doggone Beautiful to relocate to 70 Court Street. Doggone Beautiful is a wonderful small business that has already become an asset to our community, providing valuable services and fostering a warm, welcoming atmosphere for pet owners in Keene.

Approving this variance would not only allow Doggone Beautiful to continue serving its loyal customers, but also enhance the vibrancy of Court Street by adding a business that cares deeply about the community. This move would help Doggone Beautiful expand its reach, benefiting more residents and contributing to the local economy. I believe this small business is exactly the kind of positive energy and service that aligns with our city's values.

Thank you for considering this request. I hope you will approve the variance and support this business that does so much for Keene.

Warm regards,

Peggy Fitzpatrick

Corinne Marcou

From: Kathy Conroy [REDACTED] >
Sent: Wednesday, October 23, 2024 12:21 PM
To: Community Development
Subject: ZBA 70 Court Street

Hello,

Please approve the variance request for Dog Gone Beautiful's new location.

I have been a customer of their's for several years.

They have been a terrific business to work with. Not to mention the compassionate and loving care they have given to my dogs.

Thanks you for your consideration.

Kathy Conroy
[REDACTED]

Corinne Marcou

From: Patricia Nichols [REDACTED] >
Sent: Wednesday, October 23, 2024 11:29 AM
To: Community Development
Subject: ZBA 70 Court St variance requested

Please allow Doggone Groomers to relocate to the old Senior Center on 70 Court St. They are a very valuable to the canine community!
Pat Nichols

Corinne Marcou

From: Corinne Marcou
Sent: Thursday, October 24, 2024 9:48 AM
To: Corinne Marcou
Subject: RE: ZBA-70 Court St, DogGone Beautiful

From: April Schilpp [REDACTED] >
Sent: Wednesday, October 23, 2024 5:07 PM
To: Community Development <communitydevelopment@keeneh.gov>
Subject: ZBA-70 Court St, DogGone Beautiful

Good evening,

I would like to support the request for variance of usage for DogGone Beautiful at 70 Court St.

I have been a customer of their salon for 10 years with six different dogs.

Their property is always clean and neatly maintained, there is never excessive noise and it would bring additional business to the downtown area. Hugely beneficial for the City of Keene!

Thank you for your consideration.

April Schilpp
[REDACTED]

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7 ALIBER PLACE ZBA-2024-27



Petitioner requests a Variance to permit construction within 20' of the minimum interior side setback per 4.4.1.E of the Zoning Regulations.



NOTICE OF HEARING

ZBA-2024-27

A meeting of the Zoning Board of Adjustment will be held on **Monday, November 4, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-27: Petitioner, George Hansel of Tailfeather Strategies, Keene, requests a variance for property located at 7 Aliber Place, Tax Map #590-093-000. This property is in the Downtown Edge District and is owned by Jared Goodell of Keene. The Petitioner requests a variance for new construction within 20' of the minimum interior setback that is required when a parcel in the Downtown Edge District is abutting a parcel in the Downtown Transition District per Article 4.4.1.E of the Zoning Regulations.

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

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

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

Corinne Marcou, Zoning Clerk
Notice issuance date October 25, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	ZBA-2021-27
Date Filled	10/18/2021
Rec'd By	CSM
Page	1 of 26
Rev'd by	

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

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: Jared Goodell

MAILING ADDRESS: PO Box 305, Keene NH 03431

PHONE: (603) 762-0202

EMAIL: jared@titonmarketing.com

SIGNATURE:

PRINTED NAME: Jared Goodell

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: George Hansel/Tailfeather Strategies

MAILING ADDRESS: PO Box 283, Keene, NH 03431

PHONE: (603) 903-3677

EMAIL: gsh@georgehansel.com

SIGNATURE:

PRINTED NAME: George Hansel

SECTION 2: PROPERTY INFORMATION

Property Address: **7 Aliber Pl., Keene, NH 03431**

Tax Map Parcel Number:

Zoning District **Downtown - Edge**

Lot Dimensions: Front: **76.3'** Rear: 111.2' Side: 197.96' Side: 106.21'

Lot Area: Acres: **.30** Square Feet: 13016

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **10.44%** Proposed: 25.19%

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 11,406 Proposed: **8,245**

Present Use: Residential

Proposed Use: Residential

SECTION 3: WRITTEN NARRATIVE

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

See attached.

SECTION 4: APPLICANTION CRITERIA

A Variance is requested from Article (s) 4.4.1.E of the Zoning Regulations to permit:

New construction within 20' of the Min Interior Side Setback that's required when a parcel in the Downtown Edge (DT-E) zoning district is abutting a parcel in the Downtown Transition (DT-T) zoning district.

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

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

See attached.

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

See attached.

3. Granting the variance would do substantial justice because:

See attached.

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

See attached.

5. Unnecessary Hardship

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

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

See attached.

and

ii. The proposed use is a reasonable one because:

See attached.

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

See attached.



10/14/2024

City of Keene, Community Development Department
3 Washington St., Keene, NH 03431

Attn: Jesse Rounds, Acting Zoning Administrator

Re: 7 Aliber Place development – Narrative for Variance Request No. 3: Relief from the 20’ minimum interior side setback requirements when a parcel in the Downtown-Edge zoning district is abutting a parcel in the Downtown-Transition zoning district

Administrator Rounds,

Tailfeather Strategies, on behalf of property owner Mr. Jared Goodell, submit the following information to aid in the decision to grant a variance for a proposed development on the lot located at 7 Aliber Place (TMP#: 590-093-000-000-000), which is in the Downtown-Edge zoning district. The site currently has a three-family residential structure and no commercial uses. The property has no street frontage and is sandwiched between a single-family home to the rear and a two-family building along Marlboro Street. All residences on these three parcels are accessed using Aliber Place, a private road that connects to Marlboro Street.

At the Keene Zoning Board of Adjustment (ZBA) meeting on August 19th, 2024, this project was granted a variance (ZBA-2024-22) allowing for two of the new duplexes to be placed 5’ from the side interior property line. After receiving a building permit, the project moved forward with construction. Foundations for the three buildings were poured based on the city’s GIS data that was confirmed by preliminary site survey information to comply with the variance requirements set by the ZBA. Shortly thereafter, it was discovered that the property line was approximately 1-2 feet from where the initial survey results predicted. This will result in the overhangs for the new buildings encroaching into the ZBA’s 5’ setback requirement. For construction to move forward, we are requesting that the ZBA once again approve this variance request with a stipulation allowing the new structures to be 3’ from the side interior property line instead of 5’ [See photo on page 2].



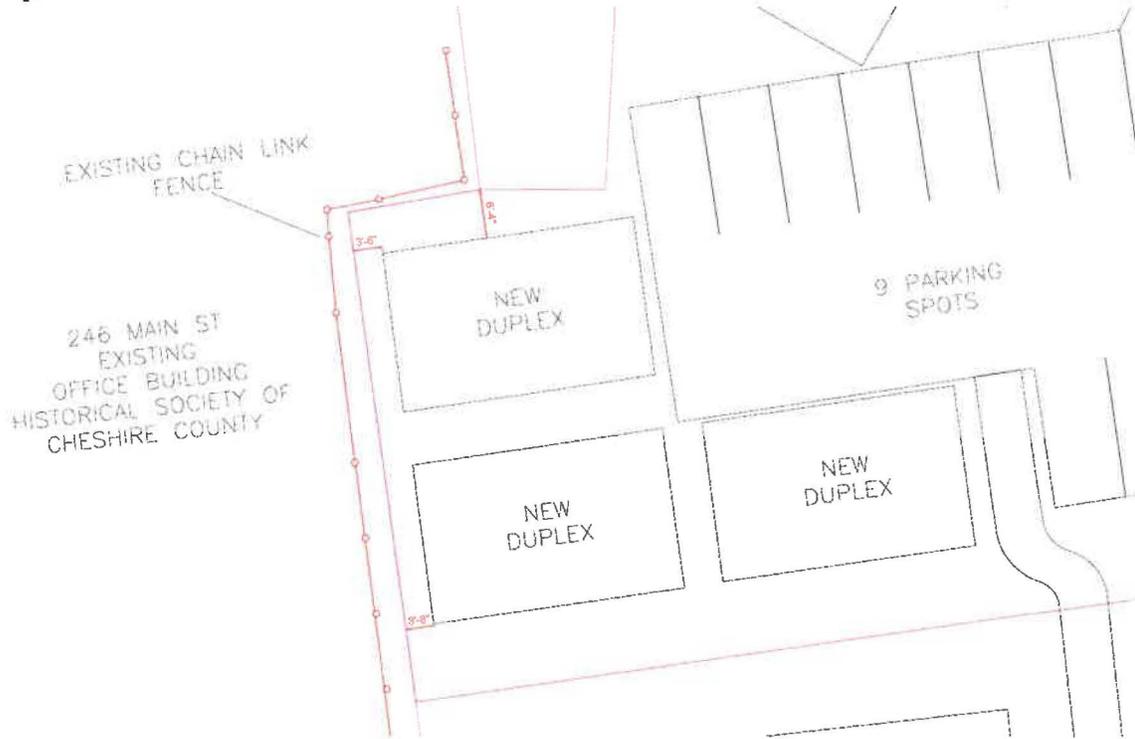
boundary line between 7 Aliber Place (owned by Mr. Jared Goodell) and 160 Main Street (owned by USNH) - photo taken 10/3/2024

- **Approx. location of property line from initial survey**
- **Approx. location of actual property line**

Despite this unfortunate error, we don't feel the difference between 5' and 3' represents a significant change to the development plan. Importantly, this change will not disadvantage the adjoining property that is owned by the University System of New Hampshire (USNH). The chainlink fence that has been in place for many years and separates the properties will remain and there will be adequate space between the edge of the foundation and the property lines for maintenance and access. Once the mistake was discovered, the developer of the 7 Aliber Place project immediately approached USNH and is working with them to execute a property line agreement that will clarify



the location of the boundary line and preserve USNH's rights to their property. [See plot detail on page 3].



Most of the information we are submitting with this application is the same as our previous request. One substantial difference is the plot plan (detailed above), which shows the new dimensions and current placement of the new building foundations.

We are thankful to the Board members for their patience and understanding with this project. We look forward to presenting this information to the Zoning Board of Adjustment for their consideration.

Thanks and best regards,

George Hansel, Tailfeather Strategies

Submitted with permission on behalf of property owner, Jared Goodell



Responses to the criteria outlined in Article 25.5.4.A of Keene’s LDC:

SECTION 3: *Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.*

Property Location: 7 Aliber Place (TMP#: 590-093-000-000-000)

Property Owner: Jared Goodell, PO Box 305, Keene NH 03431

The subject property currently has a three-family structure and no street frontage. It is accessed using a private road (Aliber Place) that connects to Marlboro Street and acts as a shared driveway for three residential properties: 59 Marlboro Street, 7 Aliber Place and 15 Aliber Place. All three parcels are served by city water and sewer. The subject parcel is sandwiched between a lot with a single-family residence to the rear and a lot with a two-family residential property with frontage on Marlboro Street. All three properties are owned by Mr. Jared Goodell.

The proposal will add (3) two-family structures to a vacant section of 7 Marlboro Street. In total, (6) new housing units will be created. These units will be marketed as workforce housing. While unusual, development without frontage is permissible under RSA 674.41 with approval by the City Council. Mr. Goodell sought and was granted this approval.

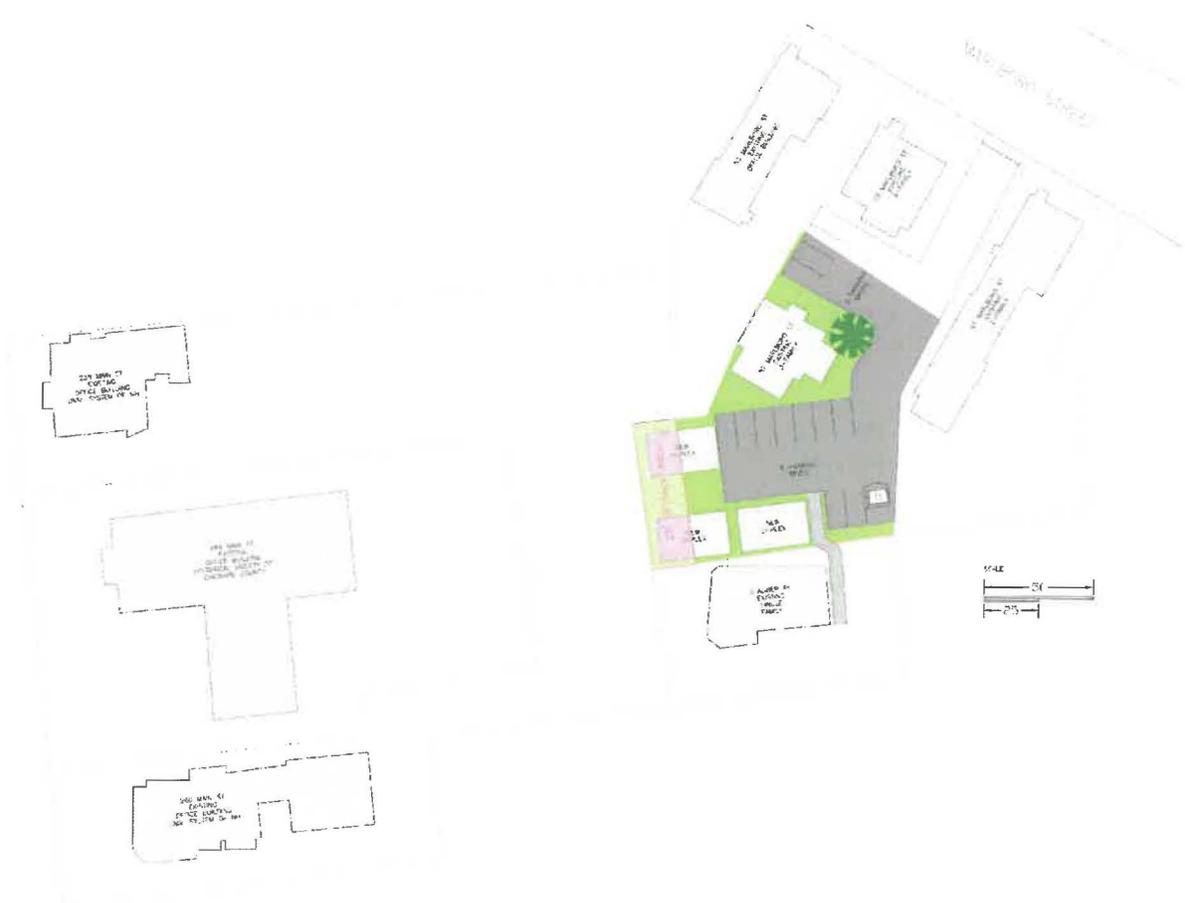
We are requesting a variance from compliance with the 20’ minimum interior side setback as described on page 4-10, Article 4.4.1.E “Dimensions and Siting” of Keene’s LDC. This will allow the new building to be 3’ from the western-most property line that abuts a parking lot owned by the University System of New Hampshire [see the illustration on page 3].

7 Aliber Place is in the Downton-Edge zoning district, but abutting properties have various zoning designations: Downtown-Edge, Downtown-Transition, and Residential Preservation. This is somewhat unusual because three distinct zoning districts come together around this property, which has no frontage. The proposed building site is 130’ from the public way on Proctor Court, 170’ from the public way along Marlboro Street, and 280’ from the public way along Main Street.

Keene’s Land Development Code requires a 20’ interior side setback when the Downtown-Edge zoning district abuts the Downtown-Transition district. We are requesting a variance to reduce the setback to 3’. This reduction will allow for the lowest impact and most economical design for this new development, adding new housing units while also creating green space. Without this variance, the plan would need to be reconfigured, negatively impacting the development in the following ways:

- Awkward and inconsistent building density
- Challenging maneuvers for vehicles accessing the site
- Increased paved area to accommodate the new development.
- Increased visibility of the new buildings from the public right of way

The abutting property most impacted by this request is owned by the University System of New Hampshire and identified as 238-260 Main Street (TMP#: 590-101-000-000-000). This area is currently used as accessory parking for their properties along Main Street. The border is currently heavily vegetated, which mostly blocks the view from nearby properties on Main Street [refer to illustration on page 5].



Siting the new buildings within 20' of the setback requirement will allow the new development to decrease impervious surface on the site by more than 3,000 SF, replacing areas that are currently paved with greenspace. The proposed building locations will also minimize the visual impact of the new development from the public rights of way on Marlboro Street and Main Street [See illustrations on Pages 4-6].



Illustration of public view of the new development from the sidewalk in front of 53 Marlboro Street.



Illustration of view of the new development from the interior parking lot of 246 Main Street (the rear entrance of the Historical Society of Cheshire County).



Illustration of public view of the new development from the sidewalk in front of 59 Marlboro Street.



SECTION 4-1: *Granting the variance would not be contrary to the public interest because:*

It will create new green space

The proposed configuration will create more than 3,000 SF of green space. Should the 20' setback need to be observed, it's likely the current amount of paved area would need to be increased.

It will facilitate the addition of (6) new workforce housing units

A recent Housing Needs Assessment and Strategy prepared by Camoin Associates and commissioned by the City found that there is a need for the creation of approximately 1,400 new housing units in Keene over the next ten years. The granting of this request will help address this housing shortage by creating new workforce housing units.

It will minimize the visual impact of the development from the public right of way

The public's view of the new buildings from Marlboro Street will be largely blocked by existing structures, mitigating the visual impact of the new development from the public right of way. If the 20' setback is observed, it would require a relocation of the proposed buildings to a more visible location, taking away privacy for the new residents and creating more visual impact for the public.

SECTION 4-2: *If the variance were granted, the spirit of the ordinance would be observed because:*

The intent of both the Downtown-Edge and Downtown-Transition districts is to facilitate a gradual transition from higher density in the downtown core, to lower density in the surrounding residential areas. Ironically, because of the unique features of this site, complying with the 20' setback requirement would do the opposite by clustering the building density to the east side of the parcel, away from the downtown and Main Street. Granting this variance request will allow for more balanced building density on the site that is more in line with the intent of both the Downtown Edge and Downtown-Transition districts. Therefore, the spirit of the ordinance will be observed.

SECTION 4-3: *Granting the variance would do substantial justice because:*

The granting of this variance will do substantial justice to the surrounding neighborhood. The placement of the new buildings will be largely out of public view, which will increase privacy for the new residents and protect the public from any visual impacts from the new development.

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

The granting of this variance and the addition of new housing units in this area will not diminish values of the surrounding properties for the following reasons:



Architectural consistency

The new buildings have been designed to be consistent with other buildings in the neighborhood. While these buildings will be the only structures in the surrounding area built in the last 30+ years, they have been designed to be visually consistent with existing residential structures.

On-site infrastructure improvements

This development presents an opportunity to replace aging water and sewer lines, asphalt, and landscaping. The new development will also add more than 3,000 SF of green space to the site. These improvements are sure to increase the surrounding property values.

Highest and best use

The addition of (6) new housing units on this site will more than double the current property value. The current lack of affordable workforce housing in Keene is limiting economic growth. The addition of new housing units creates housing opportunities for new and existing residents, which in turn supports community vitality.

Rather than diminish values of the surrounding properties, this project will likely increase values and may inspire other property owners to pursue similarly creative and low-impact solutions to add housing units to existing underutilized parcels throughout the City.

SECTION 4-5: *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:

This site is unique because it does not have frontage. Although the parcel is located in a moderately dense part of the city, it is 130' from the nearest public street. The part of the site proposed for new development is largely out of the public view, so any adverse visual impacts to the public will be muted. Denial of this variance request will serve no public purpose and will therefore represent an unnecessary hardship for the property owner.

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:

There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property because enforcing the 20' setback requirement would actually be contrary to the intent of the zoning districts being regulated. The Downtown-Edge zoning district is described in the LDC as "providing for a transition into lower intensity commercial or residential development outside of the delineated downtown area" [page 4-2, Article 4.1.1.C]. Similarly, the Downtown-Transition district is described in the LDC as, "intended to complement and transition into existing residential neighborhoods adjacent to downtown Keene" [page 4-2, Article 4.1.1.E]. Granting this proposed variance will allow the



buildings to be well-distributed on the lot and will serve as a better, less jarring, transition between uses to the west on Main Street, and the less dense mixed uses along Marlboro Street to the east.

ii. The proposed use is a reasonable one because:

The proposed use is reasonable because these additional housing units are consistent with other residential uses in the neighborhood. The addition of these units should have minimal impact on the existing conditions and represents a creative use of space to create more workforce housing within walking distance of downtown.



EXISTING CHAIN LINK FENCE

246 MAIN ST
EXISTING OFFICE BUILDING
HISTORICAL SOCIETY OF
CHESHIRE COUNTY

NEW DUPLEX

NEW DUPLEX

NEW DUPLEX

9 PARKING SPOTS

3 ALIBER PL
EXISTING SINGLE FAMILY

53 MARLBORO ST
EXISTING OFFICE BUILDING

59 MARLBORO ST
EXISTING 2-FAMILY

57 MARLBORO ST
EXISTING 3-FAMILY

67 MARLBORO ST
EXISTING 2-FAMILY

2 PARKING SPOTS

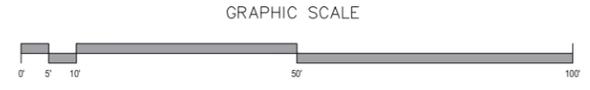
MARLBORO STREET

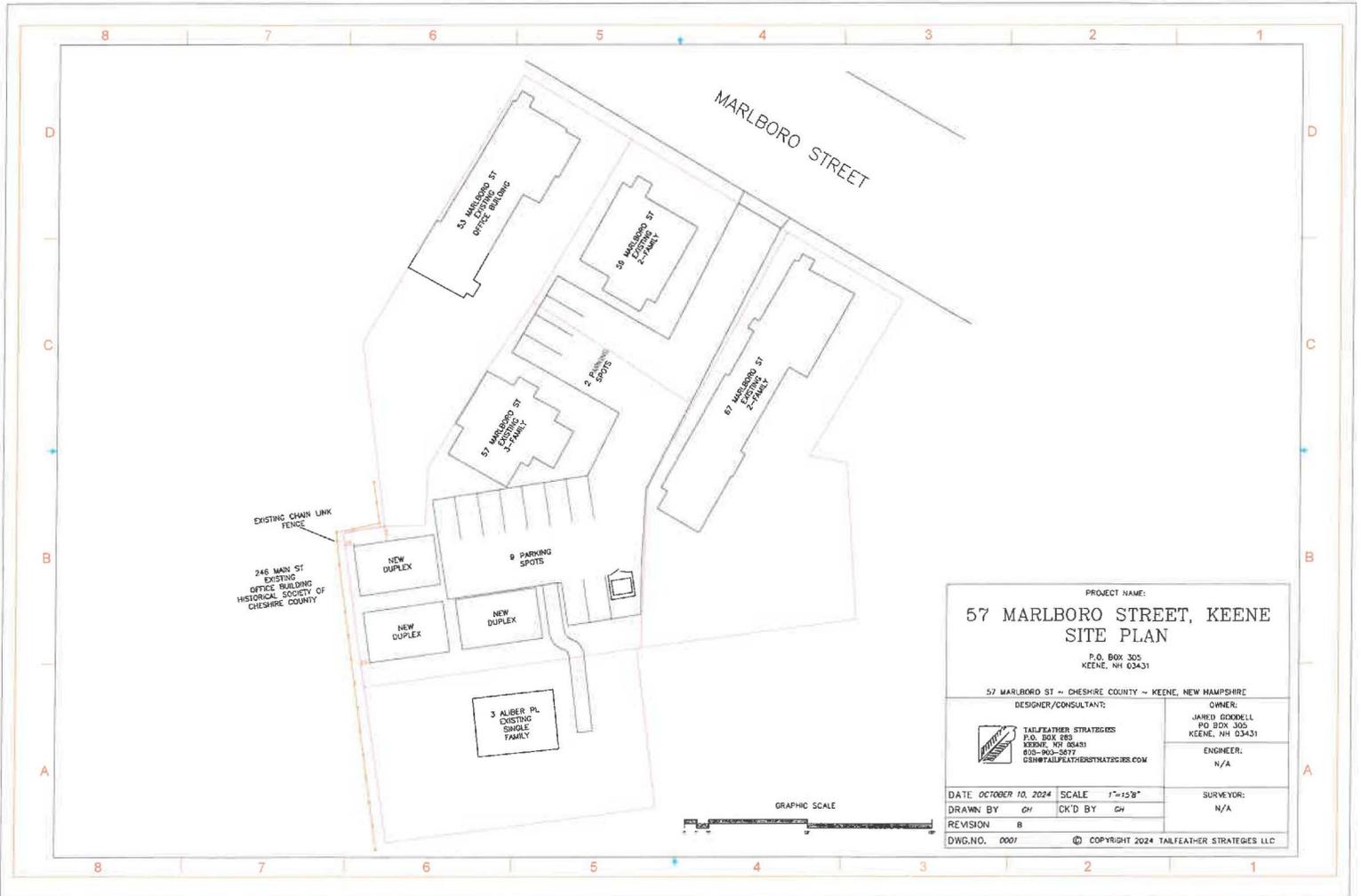
PROJECT NAME:
**57 MARLBORO STREET, KEENE
SITE PLAN**

P.O. BOX 305
KEENE, NH 03431

57 MARLBORO ST ~ CHESHIRE COUNTY ~ KEENE, NEW HAMPSHIRE

DESIGNER/CONSULTANT:  TAILFEATHER STRATEGIES P.O. BOX 283 KEENE, NH 03431 603-903-3677 GSH@TAILFEATHERSTRATEGIES.COM	OWNER: JARED GOODELL PO BOX 305 KEENE, NH 03431
	ENGINEER: N/A
DATE <i>OCTOBER 10, 2024</i>	SCALE <i>1"=15'8"</i>
DRAWN BY <i>GH</i>	CK'D BY <i>GH</i>
REVISION <i>B</i>	SURVEYOR: N/A
DWG.NO. <i>0001</i>	© COPYRIGHT 2024 TAILFEATHER STRATEGIES LLC





PROJECT NAME:		57 MARLBORO STREET, KEENE	
		SITE PLAN	
P.O. BOX 305 KEENE, NH 03431			
57 MARLBORO ST ~ CHESHIRE COUNTY ~ KEENE, NEW HAMPSHIRE			
DESIGNER/CONSULTANT:		OWNER:	
 TALFEATHER STRATEGIES P.O. BOX 283 KEENE, NH 03431 603-963-2677 GSH@TALFEATHERSTRATEGIES.COM		JAMES BOKKELL PO BOX 305 KEENE, NH 03431	
		ENGINEER: N/A	
DATE: OCTOBER 10, 2024	SCALE: 1"=15'8"	SURVEYOR:	
DRAWN BY: GH	CK'D BY: GH	N/A	
REVISION: B			
DWG.NO. 0007	© COPYRIGHT 2024 TALFEATHER STRATEGIES LLC		



200 feet Abutters List Report

Keene, NH
October 14, 2024

Subject Property:

Abutters:

Parcel Number: 585-045-000 CAMA Number: 585-045-000-000-000 Property Address: 84 MARLBORO ST.	Mailing Address: SAVINGS BANK OF WALPOLE PO BOX 517 WALPOLE, NH 03608
Parcel Number: 585-084-000 CAMA Number: 585-084-000-000-000 Property Address: 50-54 MARLBORO ST.	Mailing Address: TOUSLEY CHARLES D. REV. TRUST PO BOX 626 KEENE, NH 03431
Parcel Number: 585-085-000 CAMA Number: 585-085-000-000-000 Property Address: 56 MARLBORO ST.	Mailing Address: NORCROSS ARTHUR & JOAN LIVING TRUST PO BOX 10123 SWANZEY, NH 03446
Parcel Number: 585-086-000 CAMA Number: 585-086-000-000-000 Property Address: 33 MARLBORO ST.	Mailing Address: KEYSTONE AMERICA INC. 1929 ALLEN PKWY. HOUSTON, TX 77019
Parcel Number: 590-084-000 CAMA Number: 590-084-000-000-000 Property Address: 17 ADAMS ST.	Mailing Address: VALLANTE EUGENE C. PO BOX 2002 SEABROOK, NH 03874-2002
Parcel Number: 590-089-000 CAMA Number: 590-089-000-000-000 Property Address: 71-81 MARLBORO ST.	Mailing Address: ELLIOT & ISAAC PROPERTIES LLC 184 TALBOT HILL RD. SWANZEY, NH 03446
Parcel Number: 590-090-000 CAMA Number: 590-090-000-000-000 Property Address: 67 MARLBORO ST.	Mailing Address: TOUSLEY REALTY LLC PO BOX 626 KEENE, NH 03431-0626
Parcel Number: 590-091-000 CAMA Number: 590-091-000-000-000 Property Address: 00ff MARLBORO ST.	Mailing Address: FORTE DONNA J 134 DAVIS ST KEENE, NH 03431
Parcel Number: 590-092-000 CAMA Number: 590-092-000-000-000 Property Address: 15 ALIBER PL.	Mailing Address: GOODELL JARED PO BOX 305 KEENE, NH 03431
Parcel Number: 590-093-000 CAMA Number: 590-093-000-000-000 Property Address: 7 ALIBER PL.	Mailing Address: GOODELL JARED PO BOX 305 KEENE, NH 03431
Parcel Number: 590-094-000 CAMA Number: 590-094-000-000-000 Property Address: 59 MARLBORO ST.	Mailing Address: GOODELL JARED PO BOX 305 KEENE, NH 03431



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200 feet Abutters List Report

Keene, NH
October 14, 2024

Parcel Number: 590-095-000
CAMA Number: 590-095-000-000-000
Property Address: 53 MARLBORO ST.

Mailing Address: GOODELL JARED
PO BOX 305
KEENE, NH 03431

Parcel Number: 590-096-000
CAMA Number: 590-096-000-000-000
Property Address: 47 MARLBORO ST.

Mailing Address: WOODCOCK HOLDINGS LLC
13 MCKINLEY ST.
KEENE, NH 03431

Parcel Number: 590-099-000
CAMA Number: 590-099-000-000-000
Property Address: 232 MAIN ST.

Mailing Address: UNIVERSITY SYSTEM OF NH KEENE
STATE COLLEGE
5 CHENELL DR #301
CONCORD, NH 03301

Parcel Number: 590-100-000
CAMA Number: 590-100-000-000-000
Property Address: 246 MAIN ST.

Mailing Address: HISTORICAL SOCIETY OF CHESHIRE
COUNTY
246 MAIN ST.
KEENE, NH 03431

Parcel Number: 590-101-000
CAMA Number: 590-101-000-000-000
Property Address: 238-260 MAIN ST.

Mailing Address: UNIVERSITY SYSTEM OF NH KEENE
STATE COLLEGE
5 CHENELL DR #301
CONCORD, NH 03301

Parcel Number: 590-102-000
CAMA Number: 590-102-000-000-000
Property Address: 26 PROCTOR CT.

Mailing Address: KEMPF LYNN M
26 PROCTOR CT
KEENE, NH 03431-4172

Parcel Number: 590-103-000
CAMA Number: 590-103-000-000-000
Property Address: 28 PROCTOR CT.

Mailing Address: FORTE DONNA J
134 DAVIS ST
KEENE, NH 03431

Parcel Number: 590-104-000
CAMA Number: 590-104-000-000-000
Property Address: 46 PROCTOR CT.

Mailing Address: FORTE DONNA
134 DAVIS ST
KEENE, NH 03431

ADDITIONAL PARTIES TO BE NOTICED:

AUTHORIZED AGENT:
GEORGE HANSEL
TAILFEATHERSTRATEGIES
PO BOX 283
KEENE, NH 03431

PROJECT ARCHITECT:
TIM SAMPSON
SAMPSON ARCHITECTS
11 KING COURT, SUITE 1E
KEENE, NH 03431



www.cai-tech.com

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