

**Zoning Board of Adjustment
Monday, April 4, 2022 6:30 p.m.
City Hall Council Chambers
3 Washington Street, 2nd Floor**

AGENDA

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: March 7, 2022
- III. Unfinished Business:
- IV. Hearings:

ZBA 22-05: Petitioner, Aaron Wiswell, of 9 White Pine Way, Berwick, ME, requests a Variance for property located at 0 West Street, Tax Map #577-025-000-000-000 that is in the Commerce District, owned by Judy L. Williams, Keene. The Petitioner requests a Variance to permit a building lot consisting of 9,738 square feet in the Commerce District where 15,000 square feet is required, per Chapter 100, Article 5.1.2 of the Zoning Regulations.

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

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

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

8 **Monday, March 7, 2022**

6:30 PM

Council Chambers
City Hall

Members Present:

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

Staff Present:

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

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

13 Chair Gorman called the meeting to order at 6:00 PM and explained the procedures of the
14 meeting. Roll call was conducted.
15

16 **II) Minutes of the Previous Meeting – February 7, 2022**
17

18 Mr. Hoppock made a motion to approve the minutes of February 7, 2022. Mr. Welsh seconded
19 the motion, which passed by unanimous vote.
20

21 **III) Unfinished Business**
22

23 Chair Gorman asked City staff if there is any unfinished business. Zoning Administrator John
24 Rogers replied no.
25

26 **IV) Hearings**
27

28 **A) ZBA 22-03: Petitioner, Norman Miller, Jr. & Rebecca Miller, requests a**
29 **Variance for property located at 1 Tanner Road, Tax Map #558-055-000-000-000**
30 **that is in the Low Density District. The Petitioner requests a Variance to install the**
31 **in-ground pool/patio and utility pad five feet from the rear and five feet from the**
32 **side of the property, per Chapter 100, Article 3.3.2 of the Zoning Regulations.**
33

34 Chair Gorman introduced ZBA 22-03 and asked to hear from City staff.

35 Mr. Rogers stated that his recommendation, as the Zoning Administrator, is that this Applicant
36 does not need to be before the Board for this Variance. He continued that the agenda packet has
37 the proposed diagram of the pool, which staff, Mr. Hagan, noted something that was missed
38 earlier, that this property is on a corner lot. In reviewing the proposed pool diagram, the initial
39 thought is that the “front” of the house is on Tanner Rd., and that that is where the front setback
40 would be measured from, but as a corner lot, the frontage is actually on Arch St. The 90.96 feet
41 is the shortest distance of the property, and by zoning definition, that becomes the front of the
42 property, hence this is the front setback. With this clarification, this changes the measurements
43 on the diagram. Staff thought that in the back where the proposed pool was going it would need
44 a 20-foot setback, but the pool actually will only need a 10-foot setback, which you can see on
45 the diagram that they are meeting. Eleven feet is the closest point and that is just where the
46 wraparound concrete pad is going; that is not even to the pool. The pump house is only 7’x7’,
47 which the Zoning Code allows one accessory structure within the rear or side setback as long as
48 it is under 120 square feet. Section 1.3.3, Structural Setback Exceptions, covers that.

49
50 Mr. Rogers stated that he would put forth to the Board that they ask the Applicant if they are
51 willing to withdraw this application without prejudice, allowing the Applicant to return to the
52 Board if need be as they move forward with this project. He continued that it is the opinion of
53 the Zoning Administrator that the Applicant does not need a Variance for the proposal they are
54 demonstrating.

55
56 Ms. Taylor stated that she gets confused with the corner lots. She asked Mr. Rogers if that
57 means that it has two sides, or two rears. Mr. Rogers replied that Arch St. is on the side of the
58 right-hand side of the diagram, and that would be the front. The direction the house, which is on
59 Tanner Road, is facing becomes the side setback. In addition, because it is a corner lot, that
60 setback adjusts from 10 feet to 20 feet, but that is not the area they propose to work in at all. To
61 the left of the house, as you are looking at it, is the rear of the lot. On the other side of the
62 proposed pool is the second side setback, where they only need 10 feet. As proposed, they have
63 a minimum of 11 feet, and that is to a 4-foot skirt around the pool. If you actually took the
64 measurement to the pool, it would probably be closer to 15 feet. The Applicants are meeting the
65 setback requirements, and they have that exception for the small accessory structure.

66
67 Ms. Taylor asked if this is another change, the Board has to absorb from the old Code. Mr.
68 Rogers replied no, this is not a change. It was not realized this was a corner lot, and thankfully,
69 Mr. Hagan noticed that just before the meeting. Recognizing that it is a corner lot changed the
70 direction that they looked at the setbacks from, negating the need for this Variance.

71
72 Chair Gorman asked to hear from the Applicants. Norman Miller of 1 Tanner Rd. introduced
73 himself. Chair Gorman apologized for the confusion and thanked Mr. Miller for coming. He
74 asked if Mr. Miller would like to withdraw the application without prejudice, so that if
75 something arises, he can reapply with the same application. Mr. Miller replied yes.

76

77 Mr. Hoppock made a motion to accept Mr. Miller's request to withdraw ZBA 22-03 without
78 prejudice, to his right to bring it forward if necessary. Ms. Taylor seconded the motion, which
79 passed by unanimous vote.

80
81 **B) ZBA 22-04: Petitioner, G2 Holdings, of 250 North Street, Jaffrey, NH,**
82 **requests a Special Exception for property located at 0 Route 9, Keene, Tax Map**
83 **#21-007-000- 000-000 that is in the Rural District. The Petitioner requests a Special**
84 **Exception to permit a gravel pit use as defined in Chapter 100, Article 8.3.6.F, per**
85 **Article 3.1.5, Permitted Uses in the Rural District of the Zoning Regulations.**

86
87 Chair Gorman introduced ZBA 22-04 and asked to hear from staff.

88
89 Mr. Rogers stated that this is in the Rural District and the Applicant seeks a Special Exception
90 for a gravel pit, an allowed use in that district with a Special Exception from the Board. He
91 continued that the Board should note; this is changed in the new Land Development Code
92 (LDC). Previously there were four criteria/questions for Special Exceptions. The new Code
93 addresses many of the same questions but it is just broken apart more, into seven criteria.

94
95 Mr. Rogers continued that if the Board grants this Special Exception, this project would proceed
96 to the Planning Board, which will review the new LDC section attributed to earth excavation.
97 The Planning Board would look at additional criteria beyond the normal site plan criteria. That
98 application would specifically review setbacks. Expanded setbacks are required both from the
99 right-of-way and from any abutters and is more than normally be required in a Rural District, for
100 obvious reasons. Driveway setbacks that are not necessarily under a normal development apply
101 to this use, considering the type of traffic that a gravel pit can expect. There are additional
102 surface water setbacks over and above what the Surface Water Ordinance requires, and
103 vegetative buffers are required to be maintained, to address both sound and aesthetics. In
104 addition, ground water quality benchmarks need to be met. The Applicant is testing any
105 domestic wells within certain distances to determine specific baselines, to ensure that if a well is
106 producing ten gallons per minute today, it will continue producing ten gallons per minute when
107 the digging or blasting starts. Storm water management also needs to be addressed. Again, these
108 are all items the Planning Board will be looking at, over and above a normal site plan.

109
110 Mr. Rogers continued that the LDC earth excavation section also has information about
111 reclamation processes, so that when the Applicants are done with their work in the area they
112 cannot just leave it with walls that pose a danger to people or other safety issues. There are best
113 practice-type management steps that will need to be adhered too. Mr. Rogers continued that this
114 Ordinance was adopted a while ago, when there was conversation about gravel pits or quarries
115 starting, but as far as he is aware, this might be the first time someone has actually applied to the
116 Board for this Special Exception.

117
118 Mr. Welsh stated that the list of items that the Planning Board review would consider was long,
119 but he noticed in the narrative a discussion of a wetlands buffer and a desire to reduce it. He

120 asked if that is something the Zoning Board would need to consider and approve the technical
121 features of, or if the Planning Board or another Board would address that.

122
123 Mr. Rogers replied that he would have to review this once more, though the Surface Water
124 Ordinance falls under this Board's authority, and in the Rural District, he believes that is 75 feet.
125 If the Applicants were going to encroach on that, they would have to come before the Zoning
126 Board. The surface water setbacks within the Planning Board criteria actually expands this to
127 almost 250 feet.

128
129 Ms. Taylor stated that she has the same question. She continued that her concern is that this
130 Board could approve a Special Exception, but they cannot approve a Variance from the Code as
131 part of this application. She found it in Section 24.3.1, subsection D. She does not think the
132 Planning Board has the ability to waive a Code provision, unless it says they can waive the Code
133 provision. She would be concerned just to know, at this stage, if this will come back to this
134 Board because the Applicant cannot meet a setback requirement.

135
136 Mr. Rogers replied that the earth excavation regulations are not actually in the Zoning Code. He
137 continued that the Applicant is required to meet the Surface Water Ordinance, which is within
138 the Zoning Code. This requirement is in the LDC but is outside the Zoning portion of it. Ms.
139 Taylor might be correct that there is not the possibility of a waiver from this; though he would
140 need to review once again for clarity. If there were not an exception for a waiver, then the 250
141 feet would need to be met, is his initial understanding.

142
143 Ms. Taylor stated that it is hard to tell, with this new LDC, where the Zoning Code ends and
144 other items begin. In the table of contents, Definitions is the last section, and those definitions
145 apply to the Zoning Ordinance. Mr. Rogers replied that he understands Ms. Taylor's frustration.
146 He continued that the whole LDC includes many City Ordinances so everything relating to
147 development is in one place, so people do not have to go back and forth between City
148 Ordinances, the Zoning Ordinance, and the Planning Board Standards. He understands that the
149 table of contents probably should be clearer, regarding where things end. The title on the table
150 of contents right after Article 1 reads "Zoning Regulations" and then starts with Article 2, all the
151 way to Article 18, and then the next one is Subdivision Regulations. That bolded title is the
152 point at which it divides. Staff could create a better table of contents to make it more user-
153 friendly.

154
155 Ms. Taylor replied that there are many sections, such as Subdivision Regulations, Site
156 Development Standards, and Zoning Regulations, but there are other things, such as Application
157 Procedures (Article 25) and Defined Terms (Article 28), that do apply to the Zoning Regulations.
158 That is why she is confused. She would hate to think that Defined Terms do not apply to the
159 Zoning Ordinance.

160
161 Mr. Rogers replied that he agrees, but an Applicant would probably be appealing an
162 administrative decision if he (Mr. Rogers) interpreted the definition of a term differently. They

163 would not be seeking a Variance from the Board. He continued that he understands what Ms.
164 Taylor is saying, but he is not sure it matters if the definitions or the application process are in
165 the Zoning Code or not, because he does not think that is something an Applicant would be
166 seeking relief from a Variance or Special Exception.

167
168 Ms. Taylor asked if Mr. Rogers could get clarification for the Board and report back at a
169 subsequent meeting. She asked, when there is a setback requirement in another section, such as
170 the excavation, and if there is no waiver process, does that setback requirement then come back
171 to the Zoning Board? Mr. Rogers replied that he would check and see what process is available,
172 if there is one, and let the Board know. The Applicant will have the same question.

173
174 Hearing no further questions for staff, Chair Gorman invited the Applicant to present.

175
176 Jeff Kevan from TF Moran, 48 Constitution Ave., Bedford, NH, stated that he is representing the
177 Applicant, G2 Holdings, LLC. He continued that TF Moran did the survey of the plans in front
178 of the Board. G2 Holdings purchased the 84-acre lot that is in map 215, lot 7. It is off Rt. 9,
179 almost at the Keene/Sullivan town line. This is a very rural section, and for the most part
180 surrounded by undeveloped land within four tenths of a mile of the site. G2 Holdings owns the
181 property just to the east of this as well. There are no direct or adjacent abutters and no one very
182 close to the site the gravel pit will be located. An existing driveway comes into the site from Rt.
183 9 as a previous owner had done some minor work on the property; there is a little platform about
184 15 to 20 feet from Rt. 9. In reviewing the general topography, there is a platform in the area in
185 which the gravel pit is proposed, and then it climbs. It is probably a 3:1 slope all the way to the
186 top of the hill. A ravine on the property is to the west, creating a small drainage way/wetlands.
187 A ditch line runs along Rt. 9, so there is a small pocket of wetlands directly adjacent to Rt. 9 and
188 there is a wetlands line on the west side. Mr. Kevan continued that there is about 2,200 linear
189 feet of frontage on Rt. 9. The Applicant proposes an initial excavation of about five acres, to
190 work within the initial gravel pit. Once that is complete, they would provide stabilization to that
191 site then move to the next five acres. The total proposal is to open up ten acres.

192
193 Mr. Kevan continued that the Applicant's intention right now is to load potentially 30 to 40
194 trucks per day. They would operate from 7:00 AM to 5:00 PM, Monday through Friday, and
195 might have some periodic, short hours on a Saturday. The gravel pit area proposed is about
196 1,950 ft. to the north of the nearest property line, and 1,600 ft. to the east, not counting the
197 property that the Applicant owns. It is 590 ft. to the west, and 176 ft. to the south where the road
198 is with the idea to use the existing driveway. The driveway is about 12 feet wide and comes
199 down relatively steep, toward that pocket of wetlands in the front. They would maintain that
200 lower edge of the road and expand it to 18 feet wide so that two trucks could get past each other.
201 This would be a gated site and secured at night, with some type of secured container on site, to
202 store fuel or blasting materials at the end of day.

203
204 Mr. Kevan continued that the Applicant proposes to capture runoff and bring it around to the
205 lower part of the gravel pit where it would be detained and treated and released headed toward

206 Rt. 9 and across to the river. They would maintain and treat everything on site. The initial
207 approach, per Keene's regulations, is to stay above the seasonal high water table. Most gravel
208 pits do some blasting and they crush the rock and mix it with the over-burden. Any type of
209 blasting would be smaller blasts, and controlled from a noise standpoint.
210

211 Mr. Kevan asked if there were any questions before he went into the standards.
212

213 Ms. Taylor stated that she does not think the map shown on the screen was in the agenda packet.
214 Mr. Kevan replied that they provided it sometime last week. He continued that it is the same
215 drawing, just with color. They wanted to illustrate that it is a wooded site and there are
216 significant buffers. On the west side of the property is a natural berm between this site and the
217 little stream that runs down. G2 Holdings would maintain that berm or hillside and work away
218 from that, so the berm would help reduce sound and buffer any type of abutter might have. G2
219 Holdings owns the property to the east and proposes a small berm on that side as well. To the
220 north is a mountain that protects that side. Driving by the site, the driveway isn't very visible,
221 other than where you come in off Rt. 9. They would leave all that tree cover between them and
222 the roadway just as is. Reasons why this is a good site for this type of use are A) the Rural
223 District is the only district where it is permitted by Special Exception, and B) it is in the middle
224 of an undeveloped piece of property with a natural buffer and land configuration around it that
225 would protect it and provide buffering to abutters.
226

227 Mr. Hoppock asked if it is correct that there is no City water or sewer out there. Mr. Kevan
228 replied that is correct. Mr. Hoppock asked what facilities they would provide for employees.
229 Mr. Kevan replied there will probably be two or three employees and there would be port-a-potty
230 facilities and eye wash facilities, and those type of safety features.
231

232 Mr. Kevan went through the criteria.
233

234 *A. The nature of the proposed application is consistent with the spirit and intent of the*
235 *Zoning Regulations, the LDC and the City's Comprehensive Master Plan, and complies*
236 *with all applicable standards in the LDC for the particular use.*
237

238 Mr. Kevan stated that his understanding is that the Rural District is the only district a gravel pit is
239 permitted in, by Special Exception. He continued that there is no City water or sewer. The
240 Applicant's thought is that this would be a good spot for a solar field as a reclamation; that is
241 years down the road. There are substantial setbacks and buffers for many of the adjacent
242 properties. He gave the Board the dimensions to property lines, and they provided a second
243 exhibit that showed the buildings they could find. It is about six tenths of a mile to the nearest
244 building or house to the north; 2,000 feet to the east; 2,800 feet to the west, which is about half a
245 mile; and 2,100 feet, about four tenths of a mile, across the roadway. Thus, they are well away
246 from any adjacent structures and provide substantial distances to abutting properties. The intent
247 of the Master Plan is to provide a long-term guide and resource for the community in making
248 regulatory, zoning, and planning decisions and align with the community vision. The proposed
249 use supports the Master Plan vision by siting this in a rural area well away from everything, with

250 the natural features and environment that support the use very well, in terms of buffering and
251 keeping it away from other surrounding development. They feel that it fits within the Master
252 Plan and the LDC regulations and meets the spirit and intent.

253
254 *B. The proposed use will be established, maintained and operated so as not to endanger the*
255 *public health, safety or welfare.*

256
257 Mr. Kevan stated that they are addressing this, and will address this through the Planning Board
258 processes and the NHDES RSA 155-E and Alteration of Terrain application, as those are
259 required permits. He continued that the proposed use would not endanger public health, safety,
260 or welfare. They are dealing with storm water, protecting that natural resource; they are
261 providing vegetative buffers and berms that will buffer and screen any adjacent properties; and
262 they will protect the natural features surrounding the site with these various design components.
263 A geotechnical engineer is working on the geo-hydrologic study, and they are putting in the
264 wells as required by the Code.

265
266 He continued that from a traffic standpoint, he understands that TF Moran missed that, but did
267 provide the information. Their findings were that traffic is very insignificant. If you have 30 or
268 40 trips and two to three employees, you are looking at about eight new trips during the morning
269 peak hour. They looked at, over the course of each hour during the day, roughly eight new trips.
270 Right now, there are 3,700 trips per day on Rt. 9. This would be a less than 1% change. They
271 would anticipate about 15 minutes between any new trip coming or going from the site, so it is a
272 relatively minor impact. There is adequate sight line in both directions. They have spoken with
273 the NH Department of Transportation (NHDOT), letting them know that they would be filing an
274 application. Even though there is a driveway, you have to file for any type of change, so they
275 will be going through NHDOT. The last component of that is traffic impacts or safety. They do
276 not believe traffic will have any negative impact on the public health, safety, or welfare.

277
278 *C. The proposed use will be established, maintained and operates so as to be harmonious*
279 *with the surrounding area and will not impede the development, use, and enjoyment of*
280 *adjacent property.*

281
282 Mr. Kevan stated that where they have provided such significant buffers and distances from
283 adjacent properties, they do not believe this will have any negative impact on the abutting
284 properties. As they navigate the Planning Board process, sound features could be implemented.
285 They feel that the forested buffers and the proposed berms will probably be adequate, but there
286 are sound walls they can put up adjacent to the crusher to break the sound down. They will work
287 with the Planning Board on any additional features that might be necessary.

288
289 *D. The proposed use will be of a character that does not produce noise, odors, glare and/or*
290 *vibration that adversely affects the surrounding area.*

291
292 Mr. Kevan stated that with any type of blasting there are regulations that the blaster has to
293 follow. He continued that there are certain areas and certain distances that they have to go in, to
294 check wells, and do a pre-blast survey if there are people relatively close. They would take
295 photos of the people's foundations and so on and so forth, for both parties' protection. They

296 would want to know what it looks like before they do blasting, so if someone says, “I got a crack
297 in my foundation,” the blaster would know what it looked like before. They will do any pre-
298 blasting surveys that are necessary, but that is based on distance and what have you. They do not
299 believe they will have any negative effect. He continued that they can control noise and odors
300 and that there is no glare associated with this use. This will all be dealt with through the process
301 and with the proposed geotechnical work.

302
303 Mr. Hoppock asked about dust, while they are on the subject of noise and odor. Mr. Kevan
304 replied that they would spray it down with water to control dust, and that is all part of the
305 Alteration of Terrain requirement. A water truck would be on site and they would make sure to
306 keep dust to a minimum. In addition, they would put down a stone driveway apron to clear the
307 tires of the trucks that are coming and going, so they are not tracking dirt out onto the highway
308 and having it wash off into adjacent ditch lines or wetlands. Mr. Rogers stated that the Planning
309 Board would also be looking at dust.

310
311 *E. The proposed use will not place an excessive burden on public improvements, facilities,*
312 *services, or utilities.*

313
314 Mr. Kevan stated that the only item the Applicant will have is traffic, and that is a minimal
315 increase in traffic on Rt. 9. Again, they will go through the NHDOT for a permit.

316
317 *F. The proposed use will not result in the destruction, loss or damage of any feature*
318 *determined to be of significant natural, scenic or historic importance.*

319
320 Mr. Kevan stated that nothing on the site is historic. He continued that they contacted the NH
321 Historic Commission and they did a wildlife assessment on the property. Where they are leaving
322 the tree coverage across the front of the property, it will not be an eyesore from Rt. 9 as you are
323 driving in front of the site. They believe they will not result in any destruction, loss, or damage
324 to any natural, scenic, or historic resources.

325
326 *G. The proposed use will not create a traffic safety hazard or a substantial increase in the*
327 *level of traffic congestion in the vicinity of the use.*

328
329 Mr. Kevan stated that he touched base on this already.

330
331 Mr. Hoppock asked Mr. Kevan to elaborate on a remark he made regarding a 155-E application
332 to the NHDES. Mr. Kevan replied that it will be in regards to very similar issues. He continued
333 that the NHDES’s focus is largely on dust control, erosion, storm water treatment, and so on and
334 so forth, and they will be concerned with the natural resources that are on three sides of this site.
335 Mr. Hoppock asked if it is correct that it is also about protecting the water. Mr. Kevan replied
336 yes.

337
338 Ms. Taylor stated that one of the maps had, in the notes, has a reference to the size and location
339 of building services. She asked if there would be a building on this site. Mr. Kevan replied no,
340 they are not proposing any building. He continued that they would have a storage unit to lock

341 any type of blasting materials and/or fuels; they would all have to be contained and secured at
342 night.

343
344 Ms. Taylor asked how long the Applicant thinks this gravel pit, if approved, will operate. Mr.
345 Kevan replied that he guesses five to ten years. The Applicant does not currently know as it
346 depends on business, what development is happening in the area, and the need for material.

347
348 Ms. Taylor stated that she does not pretend to understand the soil information they sent the
349 Zoning Board, but her question is whether they know how deep they will be going from the
350 existing surface level. Mr. Kevan replied that G2 Holdings would like to do approximately a 20-
351 foot cut, but that may be reduced based on the geotechnical information. They did borings and
352 know where ledge is, but they need to determine the exact depth of the seasonal high water table,
353 which they are installing wells to determine. Right now, the plan shows about a 20-foot cut but
354 that may shrink because they have to maintain separation between seasonal high water table and
355 where they are excavating to. That is to protect the groundwater and to address concerns about
356 the possibility of something from the blasting material going across the road to the river.

357
358 Chair Gorman asked if it is safe to say that it would not be more than 20 feet. Mr. Kevan replied
359 that is correct; it would not be more than what they have shown. He continued that the depths
360 vary slightly.

361
362 Ms. Taylor asked who checks up on the company, after the start blasting and removing material.
363 Mr. Kevan replied that he does not know that they have “policing” procedures set up, but his
364 guess is that something through the Planning Board process would identify that. He guesses that
365 annually or every other year they would have to produce some information showing their
366 progress.

367
368 Ms. Taylor replied that she was wondering how the people on site know that they have gone
369 where they are supposed to. Mr. Kevan replied that a plan would be provided, and as is typical
370 for contractors, they would use GPS equipment that tells them where they are horizontally and
371 vertically. His guess is that the Planning Board may ask for some type of plan that indicates
372 where they are at every year or two.

373
374 Ms. Taylor stated that one of her concerns - and again, the Board only got the traffic information
375 that day - is one of those big trucks, which she know vary in size, going in or out every 15
376 minutes. She continued that this is a busy stretch of highway and trying to get in or out of the
377 Otter Brook entrance on a summer day, is tough to make a turn coming in toward Keene. Which
378 direction will these stone-hauling trucks be going? Mr. Kevan replied that it could be either
379 direction. He continued that a passing zone begins about 350 feet to the west of this site and
380 extends about 600 feet east of the driveway. This passing lane gives extra room for vehicles to
381 turn and maneuver. Ms. Taylor replied that commenting from personal experience, one is not
382 often able to use that passing lane, due to the volume of traffic.

383
384 Mr. Hoppock stated that Mr. Kevan had stated that the total will be ten acres but they will
385 approach five acres first and then a second five acres when they are done with the first. He asked
386 if the five to ten year estimate of how long the pit would last covers the entire ten acres. Mr.

387 Kevan replied that it is just a guess, but yes, he was guessing that it would be within that range.
388 He continued that he guesses there will be some timeline for updating any approvals they have.
389 For example, the Alteration of Terrain permit lasts five years, needing to renew with the
390 NHDES. If you have over 100,000 square feet open, you have to file a storm water management
391 report, which goes to the State, with the contractor keeping a copy, and he guesses that the City
392 would want a copy, too. Each rainfall event, or once a week, they walk around and verify that
393 erosion control measures are in place and functioning properly, and report that to the State and
394 City and maintain records onsite.

395
396 Mr. Rogers stated that there is a requirement, under the standards the Planning Board will be
397 reviewing, for the Community Development Department or their designee to conduct an annual
398 inspection. There will be annual inspections to make sure the company is following the
399 approved plan. Regarding Ms. Taylor's question about waivers, Article 24 speaks to the waiver
400 authority of the Planning Board to grant waivers to the Article that covers earth excavation. The
401 earth excavation permit starts at Article 25.19 and he will find where it speaks to the waiver
402 process and get back to her with that number.

403
404 Ms. Taylor stated that Mr. Kevan talked about the berm on the east side and west side of the site.
405 She continued that he acknowledged that it was steep, on the north side going uphill. She asked
406 what they would do to prevent that from falling in. Mr. Kevan replied that there are about 10 to
407 12 feet of over-burden and then rock. He continued that they would have the rock face and then
408 taper the over-burden, or the soil, back at 2:1 or 3:1, and they would have a cut-off ditch at the
409 top. Any water coming off the top of that hill would be intercepted and brought around the
410 excavation area, so it is not washing over the top and potentially washing out the soil slope. In
411 addition, that soil slope would be stabilized with some type of matting and seeded periodically.

412
413 Ms. Taylor replied that she was just curious, because when they were widening that section of
414 Rt. 9 in Roxbury, they were trying to do it and it kept falling down. She was wondering how that
415 was handled so that kind of situation does not arise. Mr. Kevan replied that they are looking at
416 intercepting water from the large hill/mountain and bringing it around that excavation open area
417 and bringing it to the company's drainage system, where they can control and treat that runoff.
418 In addition, primarily, the cut-off swale is to intercept run-off so it is not washing out the slope.
419 The drainage system is just above the driveway at the base of the gravel pit, so it would intercept
420 anything before it went to that driveway or to Rt. 9 or the wetlands below.

421
422 Chair Gorman stated that he does not know a lot about blasting, but Mr. Kevan mentioned that
423 the nature of the blasting would be small in scale. He asked if that is for regulatory reasons or
424 just preference. If it is preference, Chair Gorman questioned how could the Zoning Board be
425 sure that preference would not change. Mr. Kevan replied that it would be part of the company's
426 plan, part of the approval through the Planning Board. He continued that having the blasting be
427 small in scale is for a couple different reasons – one, it controls the amount of vibration, because
428 the deeper you go, the bigger the blast. They are also trying to control the noise and that smaller
429 scale blasting is typically, what is proposed in this type of situation.

430
431 Chair Gorman asked if it is sort of an industry standard. Mr. Kevan replied that he is sure there
432 are companies that drill and make bigger blasts, but this proposal is for smaller blasts. They are

433 taking off sections of earth. Chair Gorman replied that those blast proposals would be part of the
434 plan. Mr. Kevan replied yes, and the idea is that when they approach the design grade, they
435 would have a fractured or over-blasted section of approximately two feet, and then they would
436 loam and seed over the top of it. That stabilizes. The reason for over-blast is to allow some
437 water to work its way back into the soil and in through the ledge.
438

439 Mr. Hoppock stated that Mr. Kevan made a remark about the reclamation program perhaps
440 involving solar power. Mr. Kevan replied yes, that is one thought, continuing that they have
441 discussed it. At the end of this project, the land would be a nice, open area and they could look
442 at some type of solar field.
443

444 Mr. Hoppock asked what the zoning impact of that kind of thing is, not that they can worry about
445 it ten years from now. He asked if there is something in Article 8 referencing this. Mr. Rogers
446 replied that a small-scale solar field would be allowed as a permitted use. He continued that a
447 medium- or large-scale solar field would have to go before the Planning Board for a Conditional
448 Use Permit.
449

450 Mr. Rogers stated that, in regards to Ms. Taylor's earlier question, the section for the waivers and
451 exceptions is Article 25.9.13. Chair Gorman asked if Ms. Taylor had a follow-up question. Ms.
452 Taylor replied no, she is not going to ask a question now, because she has not read that section
453 and it would take her a while to do so.
454

455 Chair Gorman stated that since no one from the public is present, there is thus no public input,
456 and he is closing the public hearing. He asked the Board to deliberate.
457

458 *A. The nature of the proposed application is consistent with the spirit and intent of the*
459 *Zoning Regulations, the LDC and the City's Comprehensive Master Plan, and complies*
460 *with all applicable standards in the LDC for the particular use.*
461

462 Mr. Hoppock stated that in terms of spirit and intent, it is permitted by way of Special Exception
463 in the zone, which is something to be recognized. He continued that the other applicable
464 regulations would be significant. These are RSA 155-E, Planning Board regulations, and the
465 NHDES. He believes it would meet those criteria as well, not just today, but as the project
466 progresses. It is also nice to hear the annual inspection that Mr. Rogers mentioned.
467

468 Mr. Hoppock continued that he had a chance to read the traffic information, belatedly but before
469 he arrived at tonight's meeting, and he agrees that it is probably a minimal impact. His
470 experience on the road, before and after the Rt. 9 renovations, has not been like Ms. Taylor's,
471 although it still can be well traveled. He does not see this as a significant burden on that traffic
472 flow. He is not convinced that will be an issue.
473

474 Ms. Taylor asked, for clarification, if they are looking at the criteria in Article 25.6.6. Chair
475 Gorman replied that his understanding is that they are following A through G. Ms. Taylor stated
476 that Article 25.6.6 is not in the Zoning Ordinance. Chair Gorman asked Mr. Rogers if it is
477 correct that Article 25.6.6 is what they are following. Mr. Rogers replied yes, this is the
478 Approval Standards for a Special Exception. Ms. Taylor asked what Chair Gorman was reading

479 from, if it was not Article 25.6.6. Chair Gorman replied that he was reading from the
480 Applicant's list, but he believes it is the same criteria. He asked for further comment on A.

481
482 Ms. Taylor stated that she agrees with Mr. Hoppock that this appears to be consistent with the
483 spirit and intent of the Zoning regulations.

484
485 *B. The proposed use will be established, maintained and operated so as not to endanger the*
486 *public health, safety or welfare.*

487
488 Mr. Welsh stated that he thinks he has heard testimony, and a description of the proposed
489 operating procedures, enough to convince him that they have fully considered the risk to the
490 public health, safety, and welfare, and that they will take care of that.

491
492 Ms. Taylor stated this is one of the two criteria that concerns her. She continued that that is
493 because the Board has seen some statements made, but she is not sure that they have seen the
494 actual evidence. She realizes that the Planning Board will review it, but based on the
495 information the Board has tonight, and her personal information, she does not know that the
496 blasting will be appropriate for this location. She does not know all of those details on health
497 and safety, not that she would need to know the final plan, but she thinks she would need to
498 know more than she has heard tonight.

499
500 Mr. Hoppock stated that his view is that the Planning Board is the RSA 155-E regulator for the
501 City. He continued that from what he can tell, it has detailed operational standards that the
502 Applicant would have to meet, and they are subject to the annual inspection that Mr. Rogers
503 mentioned. He thinks that regulations with respect to blasting, dust, and noise would be
504 addressed as they went along, in terms of not just the operational plans when they are proposed
505 and approved, but as it is operating as well, by virtue of those inspections. Once the operation is
506 over, there is the significant reclamation issues that they would have to propose and have
507 approved in advance of the expiration of the permit, under RSA 155-E. Thus, he thinks the
508 criterion is satisfied, based on all the steps that are in place to ensure public health, safety, and
509 welfare. The information they have tonight is probably the best available, in terms of what the
510 Applicants know about what the project will entail. He agrees with Ms. Taylor that the "test
511 boring" information was foreign to him and did not mean a thing, in terms of the application, but
512 that is what they found and that is what they gave the Board. In terms of health and safety, he
513 thinks the provisions in place to ensure that in an ongoing way satisfy him to a great degree that
514 this criterion will be satisfied and is satisfied today.

515
516 Chair Gorman stated that he echoes Mr. Hoppock. There are regulatory restrictions through City
517 Planning and NHDES. He agrees that some of the information the Board is being given is
518 speculative, and as Ms. Taylor alluded to, that can be nice to hear but there are no guarantees. He
519 continued that he does feel that there is enough regulation in place where it does become a
520 guarantee at some point. That is probably the point where it goes through the Planning Board.
521 He also thinks his concerns about blasting, noise, and so on and so forth are dimmed by the
522 location, because there is so much area around this proposed use. There is not a lot of human
523 activity near it. He does not think the noise will be disruptive to people, because they are not

524 going to be there for the most part. There are not houses or much of anything other than forest.
525 That certainly helps.

526
527 *C. The proposed use will be established, maintained and operates so as to be harmonious*
528 *with the surrounding area and will not impede the development, use, and enjoyment of*
529 *adjacent property.*

530
531 Ms. Taylor stated that it is not specifically adjacent, but the nearest area that would have any
532 impact is Otter Brook Center, and she is not sure how occupied that is, how often, or what its
533 current operations are. She continued that she thinks that unless they are doing blasting every
534 half hour, it will not be a huge impact on the adjacent area.

535
536 Mr. Hoppock stated that he agrees with that, given the distances and the area that was mentioned.

537
538 *D. The proposed use will be of a character that does not produce noise, odors, glare and/or*
539 *vibration that adversely affects the surrounding area.*

540
541 Chair Gorman stated that he feels that some of these criteria are tied together and redundant. Mr.
542 Welsh agreed, and stated that the only thing he would add is that people might hear some
543 blasting from the Otter Brook beach. He continued that however, from that location you often
544 hear guns firing at the adjacent rifle range, too, so they will be competing with percussive
545 sounds. It will not necessarily be inconsistent with what you would otherwise hear.

546
547 *E. The proposed use will not place an excessive burden on public improvements, facilities,*
548 *services, or utilities.*

549
550 Mr. Hoppock stated that his first observation is that there are very few public utilities or services
551 out there. He continued that there is a road, as they talked about. He does not think there will be
552 a significant impact on that. He thinks this criterion will be met as well.

553
554 *F. The proposed use will not result in the destruction, loss or damage of any feature*
555 *determined to be of significant natural, scenic or historic importance.*

556
557 Ms. Taylor stated that she thinks the Board has heard testimony that they have already had
558 historic review and environmental studies of the area. She continued that from what she has
559 heard, they have met this criterion.

560
561 *G. The proposed use will not create a traffic safety hazard or a substantial increase in the*
562 *level of traffic congestion in the vicinity of the use.*

563
564 Chair Gorman stated that he thinks they covered this when reviewing criterion A., but invited
565 anyone to contribute anything further.

566
567 Ms. Taylor stated that this is the other criterion that creates a problem for her. She continued that
568 there is indication that it will not necessarily be a substantial increase in level of traffic. She
569 does not know about the safety hazard or congestion. She is concerned about the number of

570 trucks turning in and out of that road. The posted speed limit is 55 mph but she has not seen
571 many drivers who go 55 mph on that stretch. It is usually 65 mph or higher.

572
573 Mr. Hoppock stated that the trip generation table, on the second page of the memorandum, seems
574 to indicate that there will be three employees coming in the morning and leaving after 4:00 PM,
575 and a host of traffic coming in and out hour by hour, roughly four vehicles per hour and two at
576 the end of the day. He continued that during the course of the day, other than peak hours in the
577 morning and evening, which can be significant, most of this traffic, will be during the day when
578 the people who come into Keene in the morning and leave Keene in the evening will not even be
579 using the road. That is usually after 5:00 PM, after these employees have already left. The
580 report used the word “negligible” to describe the level of congestion, and he thinks that is true,
581 based on the study. He regards it as a low impact, and not a source of any traffic congestion.

582
583 Chair Gorman stated that he would be inclined to agree. Ms. Taylor stated that they could agree
584 to disagree, but her concern is not necessarily congestion; it is a safety hazard issue for her.

585
586 Chair Gorman stated that he does not know what the traffic count per diem is, but it is certainly
587 high. He continued that when he looks at the percentage increase that this use may cause – an
588 estimated four vehicles per hour on a road with a high traffic volume – he leans more towards
589 what Mr. Hoppock is saying. He understands Ms. Taylor’s safety concerns, but thinks the
590 passing lane helps. Traffic may move at 65 mph, but he does not think tri-axles do when they
591 are entering and exiting a pit. That will force the speed of the average driver to adapt to what is
592 going on, and he thinks it will all be adequate.

593
594 Mr. Hoppock asked, given the questions about regulatory oversight this project will experience
595 moving forward, and whatever phases it will go through, such as the Planning Board and the
596 NHDES, is it necessary to make this Special Exception, which is a use change, contingent on
597 approval of all applicable regulatory authorities or is that just a given?

598
599 Mr. Rogers replied that it is up to the Board, but the very start of Article 24, which deals with the
600 excavation permit, states that no one shall operate without obtaining that permit from the
601 Planning Board. He continued that he does not see the need to condition that, because again,
602 with all the criteria the Planning Board will be reviewing, many of the questions that arose
603 tonight are ones that the Planning Board will address. That would be conditional of their permit.
604 Mr. Hoppock replied that that is what RSA 155-E requires as well.

605
606 Ms. Taylor stated that she thinks it would not hurt, because they have RSA 155-E, the Planning
607 Board, the NHDOT, and maybe NHDES, so the Zoning Board probably does not even know all
608 of the permits that are involved in this. She would say that it is probably a good idea to
609 condition it upon approval of all applicable permitting. Mr. Hoppock replied that he does not
610 think it hurts, either.

611

612 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 22-04, subject
613 to the approval of all applicable regulatory authorities, to include but not be limited to the
614 Planning Board and the New Hampshire Department of Environmental Services. Mr. Welsh
615 seconded the motion.

616

617 *A. The nature of the proposed application is consistent with the spirit and intent of the*
618 *Zoning Regulations, the LDC, and the City's Comprehensive Master Plan, and complies*
619 *with all applicable standards in the LDC for the particular use.*

620

621 Met with a vote of 5-0.

622

623 *B. The proposed use will be established, maintained and operated so as not to endanger the*
624 *public health, safety or welfare.*

625

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

627

628 *C. The proposed use will be established, maintained and operates so as to be harmonious*
629 *with the surrounding area and will not impede the development, use, and enjoyment of*
630 *adjacent property.*

631

632 Met with a vote of 5-0.

633

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

636

637 Met with a vote of 5-0.

638

639 *E. The proposed use will not place an excessive burden on public improvements, facilities,*
640 *services, or utilities.*

641

642 Met with a vote of 5-0.

643

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

646

647 Met with a vote of 5-0.

648

649 *G. The proposed use will not create a traffic safety hazard or a substantial increase in the*
650 *level of traffic congestion in the vicinity of the use.*

651

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

653

654 The motion to approve ZBA-22-04 passed with a vote of 4-1. Ms. Taylor was opposed.

655

656

657 **V) New Business**

658

659 Chair Gorman asked if there was any new business. Mr. Rogers replied that there is no new
660 business, but Ms. Marcou held a training about the changes in the LDC, and if any Board
661 members want to sit down with her, him, and/or Mr. Hagan they are welcome too. He continued
662 that he appreciates the comments coming forth regarding the LDC, because this is a new format
663 for everyone and they are still coming across items to address on a daily basis. He knows
664 information can sometimes be hard to find in the document. He encourages anyone to reach out
665 for a one-on-one or one-on-two type training.

666

667 Mr. Hoppock stated that tonight's case is a perfect example. He continued that he was unable to
668 find the approval standards that G2 Holdings submitted, the new Special Exception criteria,
669 anywhere in the LDC. His comment to Ms. Marcou today when he went for training was that the
670 Code should have an index. She explained about elaborating on the table of contents, which
671 might not hurt, either. An index would be a time-consuming task, because there is a lot to index.
672 Mr. Rogers replied that he appreciates that feedback, because they want this to be user-friendly.

673

674 Ms. Taylor stated that it was helpful to sit with Ms. Marcou and go through the document. She
675 continued that there were a few things she could not find, and that helped clarify it. She has
676 concerns, as she pointed out earlier, about the fact that if a certain section is called the "Zoning
677 Ordinance," they should not have definitions that apply to it considered not in the Zoning
678 Ordinance. She continued that they should not have "Application Procedures," where the criteria
679 for a Variance or Special Exception are found; they should be part of the Zoning Ordinance. She
680 now understands much better what they were trying to do with this document, but it is
681 inconsistent that the first 18 Articles are the Zoning Ordinance, when there is material in the rest
682 of the Code that applies to the Zoning Ordinance.

683

684 Mr. Rogers replied that he understands what Ms. Taylor is saying, but they have to look at this as
685 an overall document, a land development document, not just a zoning one. He continued that
686 most applications before the Zoning Board would go before other boards as well. The
687 application for ZBA 22-04, for example, will go in front of the Planning Board and then possibly
688 to Mr. Hagan for building permits. The intent of this document was to answer the question
689 "How do I apply for something?", so a person would not have to go to three different locations
690 within the document to find an application for the Zoning Board then an application for the
691 Planning Board. They were trying to put it all in one area. He understands Ms. Taylor's
692 frustration that if they are talking about Zoning, then it should be in that area. Under
693 "Definitions," all the uses are covered in the Zoning Code. Some of these things are areas that
694 people will be looking for. Again, whether it is a Variance or Special Exception that is all within
695 the Zoning Code. Someone is not necessarily going to seek a Variance from an application
696 process or a definition. The use definition is absolutely part of the Zoning Code and already in
697 the Zoning Code for that reason.

698

699 Chair Gorman stated that he sees the logic behind having a definition table that is applicable to
700 everything, and then having a use definition that is specific to zoning. He continued that he sees
701 the logic behind that so if someone is doing something with Planning (or Zoning or Historic),
702 they know where to go for the definitions. He does not take exception to those definitions being
703 outside of the zoning body, nor does he take exception to the applications being outside of it,
704 because if he was applying for something, his preference would be to be able to find all of the
705 applications in one location, which is how the new document is designed. He thinks that these
706 things have merit, but his question for Ms. Taylor is whether there is a specific reason she does
707 not like it this way. Is it just because it is different? Or does she see possible legal issues
708 regarding not having the zoning pieces inclusive in the zoning section?
709

710 Ms. Taylor replied that it is just that it is inconsistent to say the entire Zoning Ordinance is only
711 the first 18 Articles of the document, and yet, it has to be read together with the rest of the
712 document. She continued that she does not know if it will create legal issues, but it is a word of
713 caution that they should not have blinders on and say that the Zoning Ordinance is the first 18
714 Articles and 19 through 28 are not relevant. She thinks they will find that they *are* relevant, as
715 they found tonight when they had to look at the excavation section to really know what was
716 going on. The criteria for the Special Exception are in Article 25. They need to look at it as a
717 whole document, not just as narrowly as the Zoning Ordinance. That is what she is getting at.
718

719 Mr. Hoppock replied that the other side of that coin is that the more familiar they get with the
720 document, the easier it is going to be. He continued that the learning curve is painful sometimes.
721

722 **VI) Communications and Miscellaneous**

723

724 **VII) Non-public Session (if required)**

725

726 **VIII) Adjournment**

727

728 There being no further business, Chair Gorman adjourned the meeting at 8:00 PM.

729

730 Respectfully submitted by,

731 Britta Reida, Minute Taker

732

733 Reviewed and edited by,

734 Corinne Marcou, Zoning Clerk

735

736 Proofread by

737 Jane Taylor, Board Member

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0 WEST ST.
ZBA 22-05



Petitioner requests a Variance to permit a building lot of 9,738 sq. ft. where 15,000 sq. ft. are required in the Commerce District per Article 5.1.2 of the Zoning Regulations.



City of Keene

New Hampshire

NOTICE OF HEARING

ZBA 22-05

A meeting of the Zoning Board of Adjustment will be held on Monday, April 4, 2022, at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition. Petitioner, Petitioner, Aaron Wiswell, of 9 White Pine Way, Berwick, ME, requests a Variance for property located at 0 West Street, Tax Map #577-025-000-000-000 that is in the Commerce District, owned by Judy L. Williams, of Keene. The Petitioner requests a Variance to permit a building lot consisting of 9,738 square feet in the Commerce District where 15,000 square feet is required, per Chapter 100, Article 5.1.2 of the Zoning Regulations.

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

Corinne Marcou, Zoning Clerk

Notice issuance date March 24, 2022

APPLICATION FOR APPEAL

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

For Office Use Only:	
Case No.	<u>ZBA 22-05</u>
Date Filed	<u>2/23/2022</u>
Received By	<u>[Signature]</u>
Page	<u>1</u> of <u>12</u>
Reviewed By	_____

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Aaron Wiswell Phone: c/o 603-357-0116
Address 9 White Pine Way Berwick ME 03906
Name(s) of Owner(s) Judy L Williams
Address PO Box 472 Keene NH 03431
Location of Property 0 West Street (Formerly 344-346 West Street)

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 577-025-000-000-000 Zoning District Commerce
Lot Dimensions: Front 74.62 Rear 73.71 Side 131.3 Side 131.3
Lot Area: Acres 0.224 Square Feet 9738
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0% Proposed 11.4%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 13.7% Proposed 68.9%
Present Use Vacant Lot
Proposed Use Aroma Joes w/drive thru

SECTION III - AFFIDAVIT

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

[Signature] Date 02-23-2022
(Signature of Owner or Authorized Agent)

Please Print Name James P Phippard , Agent Brickstone Land Use Consultants LLC

PROPERTY ADDRESS 0 West Street (Formerly 344-346 West ST)

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 5.1.2 of the Zoning Ordinance to permit:
a building lot consisting of 9,738 sf in the Commerce Zone where 15,000 sf is required.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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:

3. Granting the variance would do substantial justice because:

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

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one because:

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

PROPERTY ADDRESS 0 West Street (formerly 344-346 West Street)

APPLICATION FOR A VARIANCE

- A variance is requested from Section (s) 5.1.2 of the Land Development Code of the Keene Zoning Ordinance to permit: A building lot containing 9738 sf in the Commerce District where 15,000 sf is required.

Background: This is a legal nonconforming lot that has been in the Williams family since 1956. It became nonconforming due to changes in the zoning ordinance which increased the minimum lot size in the Commerce District to 15,000 sf. The lot was previously occupied by a two-family dwelling which was demolished in 2021. As a vacant lot, a variance is required to build on it due to the nonconforming lot size.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

The entire neighborhood on the south side of West Street between Pearl Street and the Ashuelot River and north of the Rail Trail is zoned Commerce. There are 33 existing lots with 27 of the lots nonconforming due to lot size. The lots vary in size from 0.03 acres to 0.63 acres. It is in the public interest to allow construction on a vacant lot which is similar in size to the other lots in the neighborhood. The applicant is proposing to construct a small commercial building which will conform to all other zone dimensional requirements (road frontage, building setbacks, pavement setbacks and lot coverage). A new commercial building will enhance the appearance of this property and enhance the property value, increasing property taxes.

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

The spirit of the ordinance in this case is to allow commercial development along West Street that is accessed predominantly by vehicles. The proposed commercial building will house an Aroma Joe's, a take-out coffee shop with a drive thru. There are no inside seats proposed. This is a high traffic location, and it is serviced by city water and city sewer. The proposed new development will meet all other zone dimensional requirements other than lot size. This is a perfect site for this small commercial use. This meets the spirit of the ordinance and is consistent with one of the community goals to promote commercial growth within the bypass system.

3. **Granting the variance would do substantial justice because:** This is an existing vacant lot, legally nonconforming due to zone changes over the years. The applicant is proposing a small commercial building which will meet all other zone dimensional requirements other than lot size. The existing lot is consistent with other lots in the neighborhood and will maintain the character of the neighborhood. There is no public benefit to denying a variance to allow the lot to be developed. It will do substantial justice for the property owner.

4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** Construction of a new building on this lot will enhance the appearance of the property, improve its property value and help to improve the value of nearby properties. The vacant property is currently unkempt and over time will hurt the values of adjacent properties. By cleaning up the lot and constructing a new building, the surrounding property values will not be diminished.

5. **Unnecessary Hardship**

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

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

The lots in this area were created well over 100 years ago, prior to the zoning ordinances which exist today. Many of the lots became legally nonconforming when the zoning regulations were updated in 1970, the 1980's and 1990's changing the minimum lot sizes. This resulted in a special condition which makes it necessary to obtain a variance to allow any development on this lot. The proposed new building will meet all current zone dimensional requirements (frontage, setbacks, lot coverage) except for the minimum lot size; and it is served by city water and city sewer. It serves no public purpose to deny the variance when all of the other dimensional requirements can be met.

And

ii. **The proposed use is a reasonable one because:** This is an area of small commercial lots which are served by city water and city sewer. A new commercial building on this lot is consistent with the character of the neighborhood and consistent with the purpose of the ordinance. This is a reasonable use because it will meet all the zone dimensional requirements other than lot size.

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

This was a legal, conforming lot when it was created in the late 1800's. It became nonconforming due to changes in zoning over the last 120 years. This results in a special condition of this property which results in a variance being necessary to construct a single family home on it. The lot is served by city water and city sewer and can meet all zone dimensional requirements except for the minimum lot size. This proposal matches the character of the neighborhood and is a reasonable use. A variance is required for any use to be added to this lot. To deny the variance results in a hardship for the owner.

ABUTTERS TO TMP 577-025-000-000-000

577-036-000-000-000
BEAUDIN, PAULINE E.
PO BOX 842
KEENE, NH 03431

577-008-000-000-000
KELLNER BERNWART
11 BRIDGE CT.
KEENE, NH 03431

577-026-000-000-000,etc
SANDRI REALTY INC.
400 CHAPMAN ST.
GREENFIELD, MA 01301-1736

577-013-000-000-000
BEMIS, JOYCE LEE
24 RICHARDSON CT.
KEENE, NH 03431

577-009-000-000-000
KINGSBURY EDWARD A. JR. T
322 WEST ST.
KEENE, NH 03431-2452

577-023-000-000-000
SOUZA, LEVI D.
9 RICHARDSON CT. APT. 2
KEENE, NH 03431

577-019-000-000-000
BURBANK JOHN L.
37 RICHARDSON CT.
KEENE, NH 03431

577-020-000-000-000
MAY CHRISTINA
29 RICHARDSON CT.
KEENE, NH 03431

577-010-000-000-000
STARBUCK JONATHAN & VALER
PO BOX 147
SPOFFORD, NH 03462

577-046-000-000-000
BURLEIGH REAL ESTATE OF K
117 WEST ST.
KEENE, NH 03431

577-011-000-000-000
MUSET, ROBERT
10 RICHARDSON CT.
KEENE, NH 03431

577-037-000-000-000
SUNSPACE REALTY INC.
45 HILLTOP DR.
KEENE, NH 03431

577-006-000-000-000
BZDAK JAMES S. & BZDAK PE
JAMES S. BZDAK & PENNY J.
BZDAK TRUSTEES
25 BRIDGE CT.
KEENE, NH 03431

577-030-000-000-000
O'BRIEN SANDRA L.
32 PEARL ST.
KEENE, NH 03431

577-029-000-000-000
TASOULAS JOHN C.
36 SOUTH LINCOLN ST.
KEENE, NH 03431

577-022-000-000-000
CADY STEVEN R.
15 RICHARDSON CT.
KEENE, NH 03431

577-047-000-000-000
PSNH
PO BOX 270
HARTFORD, CT 06141-0270

577-007-000-000-000
VAN ALSTYNE, PENNY L.
17 BRIDGE CT.
KEENE, NH 03431

577-014-000-000-000
CITY OF KEENE
3 WASHINGTON ST.
KEENE, NH 03431

577-045-000-000-000
R & M REALTY INC
PO BOX 523
KEENE, NH 03431

577-044-000-000-000
WEST STREET KEENE LLC
47 CONSTITUTION DR. SUITE 101
BEDFORD, NH 03110-6003

577-031-000-000-000
FOERSTER ANN E.
44 PEARL ST. #1
KEENE, NH 03431

577-015-000-000-000
RODERICK WILLIAM L.
38 RICHARDSON CT.
KEENE, NH 03431

577-025-000-000-000
WILLIAMS JUDY L.
PO BOX 472
KEENE, NH 03431

577-024-000-000-000
HEALTHY LIFESTYLE HOLDING
119 ROSE APPLE LANE
EAST ALSTEAD, NH 03602

Aaron Wiswell
9 White Pine Way
Berwick, ME 03906

577-021-000-000-000
WILLIAMS, SUTHASINEE
21 RICHARDSON CT.
KEENE, NH 03431

577-012-000-000-000
HUMMERS, ANDREW KENNEDY
16 RICHARDSON CT.
KEENE, NH 03431

Brickstone Land Use Consultants
185 Winchester Street
Keene, NH 03431

Huntley Survey & Design
659 West Street
Temple NH 03084



Keene, NH

1 inch = 70 Feet



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