

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, December 2, 2024

6:30 PM

**Council Chamber,
City Hall**

Members Present:

Richard Clough, Chair Pro Tem
Edward Guyot
Zach LeRoy

Staff Present:

Evan Clements, Planner

Members Not Present:

Joseph Hoppock, Chair
Jane Taylor, Vice Chair

I) Introduction of Board Members

Mr. Clough called the meeting to order at 6:30 PM and explained the procedures of the meeting.

Evan Clements, Planner, stated that in the absence of Chair Joe Hoppock and Vice Chair Jane Taylor, the ZBA needs to elect a Chair Pro Tem for the meeting. Mr. Guyot nominated Mr. Clough. Mr. LeRoy seconded the nomination, which passed by unanimous vote.

Roll call was conducted. Mr. Clough designated alternate member Zach LeRoy as a voting member.

II) Minutes of the Previous Meeting: November 4, 2024

Mr. Guyot made a motion to approve the meeting minutes of November 4, 2024. Mr. LeRoy seconded the motion, which passed by unanimous vote.

III) Unfinished Business

Mr. Clough asked if there was any unfinished business. Mr. Clements replied no.

IV) Hearings

- A) **Continued 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.

Mr. Clough introduced ZBA-2024-27 and asked to hear from staff.

Mr. Clements stated that as the Board is aware, this project received Zoning relief at the August 19, 2024 ZBA meeting for the built-to zone, a Special Exception for a parking reduction, and relief from the side setback. He continued that as the project has progressed, due to circumstances, the applicant is before the Board again to amend the condition of approval that was placed on the Variance for the side yard setback. In reviewing the nature of the project and where it stands currently, staff believe that an amendment to that condition is more appropriate than the equitable waiver process that was mentioned at the last hearing.

Mr. Clements continued that in preparation for tonight's meeting, he went through the minutes of the August 19 meeting and tried to better ascertain the Board's rationale for setting the setback requirement at five feet as opposed to what is normally 20 feet. Surprisingly, the minutes were vague on that particular point. The majority of the discussion was about the lot in general and the fact that there was a parking lot abutting where this project would be located, and there was not a lot of discussion on how close to the property line this project should be. It seemed to him that there was an ad hoc acknowledgement of some building and life safety codes and practices related to, for example, fire separation between buildings that are closer than five feet. The Building Code requires additional separation for any building that is within five feet of a property line because the Building Code assumes that the abutter might also choose to build at some point in the future. That said, a significant number of properties and buildings in the city are closer than five feet from another building or the property line. This project itself, by the Zoning Ordinance, was required to be between 0 and 20 feet from the front property line.

Mr. Clements continued that the project has not changed. The hardship that the Board found when this project first came in, in the staff's opinion, is just as applicable as it was before. The concern related to life safety and fire codes is that staff believe necessitated that conditions can be (remedied) through mechanisms other than the Zoning Ordinance. He asked if the Board wanted him to read the five criteria from that notice of decision in the August meeting, to refresh the Board's memory of the decisions they made when they first approved this Variance. Mr. Clough replied yes.

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

Mr. Clements stated that the Board voted 3 to 0 and found that the proposed use would not be contrary to the public since the abutting lot affected by the setback reduction is a parking lot.

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

Mr. Clements stated that the Board voted 3 to 0 and found that the proposed use would not violate the spirit of the Ordinance.

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

Mr. Clements stated that the Board voted 3 to 0 and found that the proposed use would not harm the general public, as the new building location would be far from the public right-of-way.

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

Mr. Clements stated that the Board voted 3 to 0 and found that the surrounding properties' values would not be diminished with the investment of the lot and removal of some of the pavement, and noted that it would increase green space, and activity within the lot will increase safety.

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.*

Mr. Clements stated that the Board voted 3 to 0 and found the project not viable if conforming due to the irregular shape of the lot, and that conforming to the Ordinance would limit the number of residential units in a downtown district.

Mr. Clements continued that the Board mentioned the five-foot setback at the beginning of the discussion on this case and it was not talked about again to the very end when the Board put forth the motion to approve.

Mr. LeRoy asked if Mr. Clements has any feedback from the Building Department about what they need or require for fire protection. Mr. Clements replied that he will not go into specifics, because he is not very well-versed, but he will say that due to the location of the existing structures, the required fire separation will have to be done regardless. He continued that it would be the same as if there was not a setback concern and it was two buildings within five feet of each other. From a building science perspective, the reduction in penetrations, the additional rating for separation would still be required from the building side.

Mr. LeRoy asked if that is speaking specifically to the 5-foot to 3.5-foot difference they are discussing tonight. Mr. Clements replied yes, all of those measures would have to happen.

Mr. Clough asked to hear from the Petitioner.

George Hansel of Tailfeather Strategies thanked the Board for coming together on this project again, and thanked Mr. Clements for giving a good summary. He continued that he could go through all the criteria again, but the bottom line is that the project has not changed substantially since they were granted this relief. As he explained before, there is a difference of a couple of feet here, but they (he and Mr. Goodell) do not feel that will materially, on the ground, make any difference. The appropriate upgrades to the fire protection of the walls that would be impacted will be made, so he does not think there are any life safety concerns as a result of this reduction from five feet to two or three feet. They are asking the Board to approve the Variance again. They feel strongly that the criteria have been met.

Mr. Hansel continued that in addition, the extra time they have had to look at this has prompted them to look at this side interior setback in general. An additional hardship came to light, which they had not thought of before – this is one of only four properties in the city that would have this side interior setback as a result of being next to a downtown transition area. This property owner owns two of the properties, which all about this parking lot. The other two properties Mr. Goodell does not own are already within the setback. Thus, this is a unique situation in the city, which really adds to the hardship criterion. It has compelled (him and Mr. Goodell) to approach the City about looking at this as a zoning change for the future. They will be arguing that case next week.

Mr. Hansel continued that in the meantime, they want to move forward and get this resolved. They appreciate the time the Board put in and that (Vice Chair Taylor) put in to give them the suggestion of looking at the equitable waiver path forward. Between the last ZBA meeting and now, they (he and Mr. Goodell) talked to their legal counsel and City staff and concluded that this was their best path forward. They concluded that the Variance criteria they put forward in this application stand on their own and this was the best option for the property owner.

Mr. Hansel asked if he should go through the criteria. Mr. Clough replied that he and Mr. Guyot do not need that, but Mr. LeRoy, although he was at the November meeting, did not hear it at (the August meeting). Mr. LeRoy replied that he is comfortable with the information and does not need it repeated.

Mr. Guyot asked if there would be opportunity in the future to add additional structures to the parcel that the Variance is being granted on. Mr. Hansel replied, not really. He continued that based on current zoning and what it looks like, this will essentially build out the parcel, adding six new units.

Mr. LeRoy stated that he did not see elevation drawings in the packet. He asked Mr. Hansel to describe the orientation of the building and which way the roof pitches. Mr. Hansel showed Marlboro St. and the parcel that does not have any frontage, stating that that is what brought him and Mr. Goodell here in the first place. He continued that the three new duplexes will be added and look very similar to the other homes and structures in the area. They worked hard to make

sure the siding was a similar color and that overall, they are not doing anything that is way outside of what a traditional, single-family or two-family home looks like in this part of the city. Each unit has two exits. He showed the centralized parking area.

Mr. LeRoy stated that he was trying to get information about which way the roof pitches, to (know) that it does not impact on the neighbors. Mr. Hansel replied that it will not be an issue. It is the gable end.

Mr. Clough asked if any members of the public wished to speak in opposition. Hearing none, he asked if anyone wished to speak in support. Hearing none, he closed the public hearing and asked the Board to deliberate.

Mr. Guyot, having a question for staff, asked if (the Board is deliberating on) a Variance on top of a Variance they have already granted, or if this Variance will, if approved, replace the one the Board already granted. Mr. Clements replied that, fundamentally, it will replace the previous Variance. He continued that it is the same relief, a modification to the condition on the previous Variance. Administratively, they will probably just put it on top, but it is, in effect, a modification.

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

Mr. Guyot stated that he is fine with that (criterion). Mr. Clough replied that he agrees with that, too. He continued that as had been stated before, nothing about the location (is such) that denying this Variance would be in any change to any sort of public interest, because where the setback is, the public does not have access to it, except in a parking lot.

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

Mr. Guyot stated that it seems to him that they are still in line with the original discussion the Board had when the first Variance was granted. Mr. LeRoy stated that he agrees. Mr. Clough stated that he also agrees, and continued that as Mr. LeRoy mentioned, it might have made a little bit of a difference if the roof were pitched and there would be snow falling off. The Board has denied Variances when snowfall would have gone on a neighbor's lot, regardless of what the neighbor's lot is. However, since this is the gable end where the snow would be falling, he does not think they have any issue there.

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

Mr. Guyot stated that given the current status of the property where construction has begun, foundations are in place, and buildings are up, as he understands it, the justice is there if they continue with the Variance here. Mr. LeRoy replied that he agrees. Mr. Clough stated that it would be a very odd choice to tell someone they have to take it all down and move it a foot and a half, then move the other building a foot and a half, and then change all of the parking. He

continued that that would be completely unrealistic, so he agrees (with Mr. Guyot and Mr. LeRoy).

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

Mr. Guyot stated that he agrees, same as before. Mr. Clough stated that the surrounding properties are essentially a parking lot, and again, as had been stated in earlier hearings, that is unlikely to change soon. He continued that it is not as if that property will be sold and someone else will try to develop it; it is a long-term situation.

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*

Mr. Guyot stated that he absolutely agrees that denial would result in excessive hardship. Mr. LeRoy replied yes, excessive and unnecessary.

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*

Mr. Clough stated that it would not serve anyone very well.

and

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

Mr. Guyot stated that this still stands.

Mr. Guyot made a motion to approve ZBA-2024-27, submitted by Tailfeather Strategies on behalf of Jared Goodell, relative to the property located at 7 Aliber Place, Tax Map #590-093-000, to request a Variance for new construction within the 20-foot minimum interior setback that is required when a parcel in the Downtown Edge District is abutting a parcel in the Downtown Transition District.

Mr. Clough asked if the motion needs to say something specifically about the 3.5-foot setback. Mr. Clements replied that it is up to the Board whether they want to add a new condition or just remove the 5-foot condition.

Mr. Guyot stated that he will add to the motion that the Board grants a 3.5-foot setback versus the previous 5-foot setback.

Mr. Clough asked if that is okay with the Petitioner. Mr. Hansel replied that they would like two feet. Mr. Clough asked if they need two feet on every line, or if they can make it specific to that one interior line. Mr. Hansel replied that it is the only interior line. Mr. Clements replied that it is the only one subject to this.

Mr. Guyot stated that he will adjust his modification to the motion to say the Board would allow a two-foot setback. Mr. LeRoy seconded the motion.

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

Met with a vote of 3-0.

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

Met with a vote of 3-0.

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

Met with a vote of 3-0.

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

Met with a vote of 3-0.

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.*

Met with a vote of 3-0.

The motion passed with a vote of 3-0.

V) **New Business**

Mr. Clough asked if there was any new business. Mr. Clements replied that staff does not have any. He asked if Board members had anything to bring up for discussion at the next meeting. (No).

VI) Communications and Miscellaneous

VII) Non-Public Session (if required)

VIII) Adjournment

There being no further business, Mr. Clough adjourned the meeting at 6:59 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk