

**Zoning Board of Adjustment
Tuesday, October 4, 2021 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 – September 7, 2021
- III. Unfinished Business:
- IV. Hearings:

ZBA 21-20: Petitioner, Joshua Gorman of 85 Park Ave., Keene, requests a Variance for property located at 112 Washington St., Tax Map #554-085-000-000-000 that is in the Downtown Transition District. The Petitioner requests a variance for eleven guest rooms where no more than nine guest rooms are permitted per Chapter 100, Article 8.3.2.G.2 of the Zoning Regulations.

- V. New Business: New Land Development Code review
- 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, September 7, 2021**

6:30 PM

Council Chambers

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

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

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

16 **II) Minutes of the Previous Meeting – August 2, 2021**
17

18 Ms. Taylor made a motion to approve the meeting minutes of August 2, 2021. Mr. Hoppock
19 seconded the motion, which passed by unanimous vote.
20

21 **III) Unfinished Business – Revisions to the Zoning Board of Adjustment Regulations,**
22 **Section II, I – Supplemental Information**
23

24 Mr. Rogers stated that based on the last meeting's discussion and the wording Mr. Gaudio sent to
25 staff; staff recommends the Board adopt the change to the Rules of Procedure using the language
26 they have before them in the agenda packet.
27

28 Ms. Taylor stated that when she brought up the topic originally, she wanted a time limit for
29 submission and consequences for not submitting within the time limit. She continued that she
30 thinks this does both. Regarding "within 10 days," the use of the word "within" is not precise
31 enough for her, but she can live with it so they can get going with this.
32

33 Chair Gorman asked if she had a different word. Ms. Taylor replied something like "not less than
34 10 days," but if everyone else agrees with this language, she will go along.
35

Chair Gorman asked if anyone else had feedback. Hearing none, he made the following motion, which was seconded by Mr. Hoppock.

By a vote of 5-0, the Zoning Board of Adjustment approves the new language:

“If an applicant or an applicant’s agent submits supplemental information pertaining to an application within 10 days prior to the public hearing at which the application is to be heard, the Board will consider during the meeting and decide by majority vote whether to accept the supplemental information for consideration at the meeting or to continue the application until the next scheduled meeting to allow adequate time to review the supplemental information.”

IV) Hearings

A) ZBA 21-14: Petitioner, Ells Electric, LLC, of Spofford, NH, owned by James L. and Beverly A. Ells of Spofford, NH, requests a Variance for property located at 90-92 Victoria St., Tax Map #589-022- 000-000-000 that is in the Business Growth and Re-Use District. The Petitioner requests a Variance to permit a single-family resident where it is not a permitted use per Section 102-771 of the Zoning Ordinance.

B) ZBA 21-19: Petitioner, Ells Electric, LLC, of Spofford, NH, owned by James L. and Beverly A. Ells of Spofford, NH, requests a Variance for property located at 90-92 Victoria St., Tax Map #589-022- 000-000-000 that is in the Business Growth and Re-Use District. The Petitioner requests a Variance to permit a 19 foot frontage where 50 feet is required per Section 102-821 of the Zoning Ordinance.

Chair Gorman stated that he suggests the Board hear the facts on both applications from the applicant and then they can deliberate on each separately.

Chair Gorman asked to hear from City staff regarding ZBA 21-14. Mr. Rogers stated that this piece of property is currently in the Business Growth and Re-Use District (BGR). He continued that a nonconforming mixed use is occurring on the lot that is at the very end of Victoria St. The first building on the lot is a warehouse and office space, which Ells Electric uses, and the building further in the back is a single-family home. These uses have been occurring on the property for as long as the City’s records indicate. The Applicant wants to sub-divide the lot and is applying to the Board for two reasons. First, the single-family home is not an allowed use in the BGR District, so by separating this, it will become the primary use on its own lot, hence the first Variance. Second, even though the BGR District does not have a frontage requirement, the current City Code requires a residential use to have a 50-foot frontage, hence the second application before the Board for this property. The Chair has asked to hear both of these at the same time because they go hand in hand.

Ms. Taylor asked if both applications are approved, and are subdivide, would both lots and the current structures all conform to the Zoning requirements. Mr. Rogers replied not necessarily,

80 because there are some already-existing nonconformities. There are obviously some setback
81 issues with the single-family home. The only concern with the subdivision, is the 50-foot
82 frontage. The rest would either be conforming or be an existing nonconformity.

83
84 Ms. Taylor replied that per her calculations, there would be two conforming lots, regarding the
85 sizes. Mr. Rogers replied that is correct. He continued that the other lot dimensional
86 requirements for size would be met.

87
88 Ms. Taylor stated that she is not sure this is a question for Mr. Rogers or the Applicant, but
89 regarding the materials submitted, even though Google calls it "Victoria St. Extension," it does
90 not appear to be a public road to the front of the warehouse and the single-family home. The
91 proposed driveway, the 19-foot wide area, provides frontage but does not provide a driveway,
92 because of the wetlands. She asked if that creates an access problem under any of the Zoning
93 Codes.

94
95 Mr. Rogers replied that he does not see it raising an issue, but if the Board approves the
96 application, there might condition some sort of easement. He continued that currently, since this
97 is all one lot, it is a common driveway for the two uses. He stated that with the subdivision, the
98 driveway will mostly be on one property, with the second lot in need of an easement, if the lots
99 change ownership.

100
101 Mr. Welsh asked for clarification as to where the 19-foot and 38-foot frontages. Mr. Rogers
102 replied that the end of Victoria St. runs into the property. He continued that the property line
103 would be more evident for the Board when the Applicant does their presentation.

104
105 Mr. Gaudio asked for clarification as to the lower section of the lot, and if that would be
106 subdivided with the house. Mr. Rogers replied that he believes the Applicant submitted the
107 subdivision plans showing the new, proposed property lines for the Board to consider and could
108 clarify more during their presentation.

109
110 Chair Gorman asked if anyone had more questions for Mr. Rogers. Hearing none, he asked to
111 hear from the Applicant.

112
113 John Noonan of 35 Church St., Fitzwilliam, NH, stated that he is here from Fieldstone Land
114 Consultants on behalf of Ells Electric. He continued that Ells Electric is looking to do a boundary
115 line adjustment, not so much a subdivision, of the two lots they currently own. Lot #23 is
116 currently half an acre in size and has no road frontage, making a nonconforming landlocked lot.
117 Ells Electric would do a boundary line adjustment, separating the residential use from the
118 commercial use, proposing 1.3 acres for the residential lot, #589-023. Access to that residential
119 lot would continue on the existing driveway, which crosses the front of the commercial Ells
120 Electric building. He continue that an easement for future use can be created in case it was not
121 the same owner. The commercial lot would share the frontage that currently exists, which is only
122 39 feet. The plan would roughly split that frontage in half with 19 feet to the residential lot and
123 20 feet to the commercial lot. However, the long piece along the western side of the lot that goes

124 across the wetlands would not be used. They would use the current, existing, shared driveway. It
125 would end up being proposed as 0.7 acres for lot #589-022.

126
127 Mr. Noonan stated that he will address the Variance criteria.

128
129 1. *Granting the Variance would not be contrary to the public interest because:*

130
131 Mr. Noonan stated that granting the Variance would not change the uses of the two existing
132 buildings, but would allow the uses to exist on separate properties. He continued that the
133 granting of this Variance would also eliminate an existing, nonconforming lot with no road
134 frontage and allow for the productive use of both properties. This proposal will not require any
135 site work or major site improvements, as all infrastructure already exists. There is no proposed
136 change to the business, the impervious services, or the existing house. Existing vegetation will
137 remain, providing the same visual appearance of the neighborhood. Granting this Variance will
138 not be contrary to the public interest, as this project will not alter the essential character of the
139 neighborhood or threaten the public health, safety, or welfare.

140
141 2. *If the Variance were granted, the spirit of the Ordinance would be observed because:*

142
143 Mr. Noonan stated that the intent of this section is to create an additional downtown zoning
144 district to enhance the economic vitality of the area by redeveloping new technology companies
145 as well as clean manufacturing, processing, assembling, and wholesale businesses within a
146 walkable, human-scaled place. This proposal for the site will continue to provide the
147 neighborhood with a business with economic vitality. The proposed lot with residential use will
148 be out of the main area of the additional area adjacent to Marlboro St. The lots will meet all the
149 dimensional standards and will be in harmony with the neighborhood. This proposal will not
150 alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

151
152 3. *Granting the Variance would do substantial justice because:*

153
154 Mr. Noonan stated that granting the Variance would allow the landowner to reasonably utilize lot
155 #589-023, which currently has no frontage on a public road and lies vacant, and would allow the
156 separation of the commercial and residential areas. Granting this Variance would do substantial
157 justice by utilizing the undeveloped land for the residential use. The location of the existing lot
158 with no frontage and proposed residential lot is currently not viable for additional commercial or
159 industrial use. They are also out of the main downtown area near the highest traffic volumes.
160 This makes the location best suited for a residential dwelling, particularly for owners of
161 businesses nearby. In other words, a denial of this Variance request would be an injustice to his
162 client, as there would be no apparent gain to the public for denying the application.

163
164 4. *If the Variance were granted, the values of the surrounding properties would not be*
165 *diminished because:*

166
167 Mr. Noonan stated that the proposed lot line revision does not include any additional structures
168 to be built or impact to the streetscape. There will be no clearing of trees. For all these reasons,

they do not believe that the proposed lot line adjustment, separation of the uses, would have any negative impacts on the value of the surrounding properties.

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:

Mr. Noonan stated that this application proposes to address special conditions of the two properties that distinguish it from other properties in the area. He continued that one property currently exists with a commercial and residential use, which hinders the growth of the commercial business, as financing and insuring properties with the mixed-use is more difficult. The other property is a landlocked, isolated property, which will be made conforming as part of this proposal. The general public purpose of the Ordinance intends to create conditions suitable to co-exist to adjacent residential neighborhoods as well as to provide location-sensitive transitions between neighborhoods and uses along Marlboro St. The proposed lot line adjustment is on the outskirts of the BGR District and will provide a transition toward the residential neighborhoods nearby. Lot #589-023 is unique in that it has no frontage on the public road. The lot line adjustment will provide frontage to the lot and it will become a residential lot. This proposal does not introduce any new uses to the neighborhood; it simply proposes to rework the lot lines to allow for separation of the uses. Separation of the uses will allow the commercial property to be improved and will simplify the financing and insurance requirements. Improvements to these properties will improve the neighborhood and tax base for the City. For these reasons, he and his client do not believe that a fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property.

and

ii. The proposed use is a reasonable one because:

Mr. Noonan stated that he and his client believe that the proposed use is a reasonable one, for all the reasons previously stated, and as outlined below. He continued that granting this Variance would allow for productive use of the existing properties. The existing properties' improvements already exist, so there would be no changes to the neighborhood. Separating the uses onto two properties would be in harmony with the neighborhood and surrounding areas, as the neighborhood consists of a mixture of uses. The residential use would not be contrary to the public interest, as this project would not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. This proposal would, in their opinion, observe the spirit of the Ordinance and its intent. This project would have no measurable negative impacts on the surroundings or subject property values. The separation of the uses would allow an existing business to obtain financing and to make improvements to the commercial building.

213
214 *B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
215 *hardship will be deemed to exist if, and only if, owing to special conditions of the property that*
216 *distinguish it from other properties in the area, the property cannot be reasonably used in strict*
217 *conformance with the ordinance, and a variance is therefore necessary to enable a reasonable*
218 *use of it.*
219

220 Mr. Noonan stated that the lot is approximately half an acre and has no frontage on a public road
221 and lot #589-022 is 1.5 acres with a mixed-use of commercial and residential. Lot #589-023
222 could not be reasonably accessed from Victoria St., since there is wetlands per the Keene GIS. It
223 has no frontage. In order to make a reasonable use the property lot line adjustment is proposed to
224 include the residential dwelling from lot #589-022 as part of this lot. In addition to the frontage
225 on Victoria St., lot #589-023 will be accessible along the front of lot #589-022. These are special
226 conditions that distinguish it from other properties in the area. Due to these conditions, they
227 believe the property is reasonably suited to the proposed use and is an existing use. They are
228 thereby requesting a Variance from Section 102-771.1 to enable residential use on a subject
229 property.
230

231 Mr. Rogers asked if the Board agrees to hear Mr. Noonan's narratives on both applications. The
232 Board agreed. Chair Gorman asked if Mr. Noonan could point out any narrative that changed in
233 Mr. Noonan's second application, though they seem both very similar. Mr. Noonan replied that
234 most of it is the same as the other application.
235

236 Chair Gorman asked if there are any specific points that Mr. Noonan would make relative to the
237 second application. He continued that Mr. Noonan said they want split the frontage. Mr. Noonan
238 replied yes, they split the frontage as close as they could to half. He continued that the
239 commercial use does not require frontage; however, they figured that having that frontage and
240 splitting it in half, the current frontage that is there for the lot does not meet the 50-foot for
241 residential anyway.
242

243 Mr. Gaudio stated that regarding the portion of the lot that is just a strip, to the west of #22, it
244 appears that #23 comes up around it. He asked if that is correct. Mr. Noonan replied yes, the
245 rectangular area is the commercial lot, and that small strip that Mr. Gaudio mentioned would be
246 straight down Victoria St. He continued that that has wetlands going across it so there will not
247 be any use across that. That is to provide the frontage to the residential lot. On the other side is
248 the small piece of frontage to the commercial lot.
249

250 Mr. Gaudio asked if that is the 19-foot frontage, not the driveway. Mr. Noonan replied no, the
251 half of the driveway would be the 20 feet to the commercial lot, and then an easement would
252 need to be granted for the residential lot to cross the commercial lot. Mr. Noonan replied that the
253 start of the driveway at Victoria St. is split on the frontage between the two lots, 19 feet and 20
254 feet.
255

256 Mr. Gaudio asked, if the driveway were split, wouldn't the end of the driveway also be part of
257 the frontage. Mr. Noonan replied that the frontage is 19 feet to the residential lot, with the 20 feet
258 of frontage at the end. The easement would end up being across the commercial lot, for the
259 residential lot.

260
261 Mr. Hoppock asked Mr. Noonan to show the driveway on the diagram. Mr. Noonan did so and
262 stated that the current driveway to the residential lot will remain there; the easement will be
263 across where the driveway crosses in front of the parking lot in front of Ells Electric.

264
265 Mr. Gaudio stated that the part of #23 that is below the wetlands is inaccessible because of the
266 wetlands. He continued that it couldn't be developed or used. Mr. Noonan replied that is correct.
267 He continued that the back lot, which is nonconforming, landlocked with no frontage, becomes a
268 portion of the residential lot. There is no proposed development and the house gets a larger lot.

269
270 Ms. Taylor stated that the southeast portion of the property, has an indentation/notch. She asked
271 if that was part of the original lot or where that belongs in relation to the application. Mr. Noonan
272 replied that it is not part of either of these subdivided parcels. Ms. Taylor asked if it belongs to a
273 completely different parcel. Mr. Noonan replied yes.

274
275 Ms. Taylor stated that the wetlands are obvious on this map. She asked if the blue indicates
276 floodplain. Mr. Noonan replied yes.

277
278 Ms. Taylor stated a question for Mr. Rogers – she is not as familiar with the Planning rules and
279 regulations for lot line adjustments and asked if this would be a minor subdivision. Mr. Rogers
280 replied for clarity, there are three lots currently and what the Applicant is proposing would create
281 two lots. He continued that as the Applicant stated, it would be more of a boundary line
282 adjustment, which would still need to go to the Planning Board, but it is a very basic application.

283
284 Mr. Welsh stated that the answer has been alluded to in the narrative in the materials provided,
285 but his question is “Why?”, why go to the effort of making these changes. The narrative suggests
286 that separating the uses can allow the commercial property to be improved, which would
287 simplify the financing and insurance requirements. He asked if Mr. Noonan could elucidate.

288
289 Mr. Noonan replied that in looking to do improvements to the Ells Electric building, they have
290 found it more difficult and more expensive to get insurance because of the mixed use of
291 residential with the commercial. It is more cost prohibitive to get a loan for upgrades with the
292 mixed use. Separating the use makes it cleaner and more affordable.

293
294 Mr. Hoppock asked Mr. Rogers if there is a statutory requirement that dictates that markers or
295 identifiers on the ground in the property description have to be obliterated or lost and the lot line
296 adjustment would have to clarify that. Mr. Rogers replied that he is not aware of anything like
297 that.

Chair Gorman asked if there were any further questions. Hearing none, he asked for public comment and explained the procedures for participation. Hearing no public comment, he closed the public hearing.

Chair Gorman asked the Board to deliberate. He stated that they could deliberate on both applications together but need to vote on each separately.

Ms. Taylor replied that her concern is that if both applications are approved, there will be the residential lot with no access if the residential lot is sold. If the Board moves forward with a motion to approve, she would recommend a condition requiring an easement across the driveway that extends from Victoria St. to the residential property, to ensure access. Chair Gorman replied in agreement.

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

Mr. Welsh stated that he thinks the Applicant has made a good argument that the public would not really even notice the difference, and this is a reasonable request from the Applicant.

Mr. Gaudio stated that he looked through the section of the Ordinance to try to figure out why a single-family home was not included, to see if it was intended to be eliminated, and he does not think it was. He continued that he thinks they simply just did not put it in. The permitted uses lists a “home occupation” which would need a home. He continued that multiple dwellings are also a permitted use. Thus, he thinks this fits in with the general purpose of the Ordinance.

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

Mr. Gaudio stated that his comments regarding the first criterion are applicable to this as well.

Mr. Hoppock stated that he agrees that the proposal does not change or affect the essential character of the neighborhood or threaten public health, safety, or welfare. He continued that he agrees that the second criterion are met.

3. Granting the Variance would do substantial justice.

Mr. Hoppock stated that the injustice to the owner is the problem they heard about, the difficulties with property insurance and financing. He continued that would be an injustice without any corresponding gain to the public; thus, he thinks it is an injustice to deny this Variance.

Chair Gorman stated in agreement. He continued that he thinks this application may clean things up a bit for the property, given that the situation already exists. This just makes it more of what it already is.

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

Chair Gorman stated that Mr. Noonan made a good case for the fact that exterior aesthetics are not really changing.

Ms. Taylor stated that even though they do not have any direct evidence on this, it might actually increase the values of the surrounding property by having these distinguished as separate uses.

Chair Gorman replied in agreement.

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*

Mr. Gaudio stated that there are unique special conditions of the property; it is a house behind a commercial building, without a street going in front of it. He continued that going back to the previous point that he made, no fair and substantial relationship exists between the general purpose of the Ordinance, “home occupation” and “home office,” are permitted uses, so there is no necessary reason to be strict on the application of it.

and

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

Mr. Gaudio stated that the use has been there and it seems reasonable to continue it.

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.*

Chair Gorman stated that they do not need to cover (B), given that they have agreed that the criteria in subparagraph (A) are established. He asked for a motion.

Ms. Taylor stated that she would like to add a condition, regarding access, to motions for both applications, so it is clear that they run in parallel.

Ms. Taylor made a motion to approve ZBA 21-14, 90-92 Victoria St., for Ells Electric, LLC of Spofford, NH, for a Variance for property at 90-92 Victoria St., Tax Map #589-022- 000-000-000 that is in the Business Growth and Re-Use District to permit a single-family residence where it is not a permitted use per Section 102-771 of the Zoning Ordinance, with the condition that should the properties change hands, there be an easement along the northern boundary of the

properties to ensure that there is access to what is proposed to be #589-023. Mr. Hoppock seconded the motion.

Ms. Taylor stated that she conditioned it on if and when the properties change hands for the basic reason that legally you cannot give an easement to yourself, and both properties are currently owned by the same party.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

The motion to approve ZBA 21-14 with the condition passed by a unanimous vote of 5-0.

Ms. Taylor made a motion to approve ZBA 21-19 for property at 90-92 Victoria St., petitioned by Ells Electric, LLC, for a Variance for property Tax Map #589-022-000-000-000 that is in the Business Growth and Re-Use District to permit 19-foot frontage where 50 feet is required per Section 102-821 of the Zoning Ordinance, with a condition that should the property ever be transferred subsequent to the subdivision that there be an easement to ensure access to what will be parcel #589-023. Mr. Hoppock seconded the motion.

Mr. Hoppock asked if Ms. Taylor wants the correction, “subsequent to the lot line adjustment” instead of “subdivision.” Ms. Taylor replied that she thinks a lot line adjustment is a subdivision.

Mr. Hoppock replied that he is fine with it either way. Ms. Taylor replied that she is fine with it saying “subdivision” or “lot line adjustment.”

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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 and*

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

Met with a vote of 5-0.

The motion to approve ZBA 21-19 with the condition passed with a unanimous vote of 5-0.

A) ZBA 21-15: Petitioner, Amerco Real Estate Company, of 2727 North Central Ave, Phoenix, AZ, requests a Variance for property located at 0 Krif Rd. and 472 Winchester St., Tax Map #115-019- 000-000-000 and 115-020-000-000-000 that is in the Commerce Limited District. The Petitioner requests a Variance to permit the construction of a roof to provide cover to vehicles, encroaching the building setback per Section 102-791 of the Zoning Ordinance.

Chair Gorman asked to hear from City staff. Mr. Rogers stated that this property is on the corner of Winchester St. and Krif Rd. He continued that it was previously the Clark Distributors building. There is a proposal for U-Haul to utilize this space and part of that proposal is to create a roof area for when vehicles, U-Hauls and tractor-trailer trucks and more, return to the property, so employees can have an area in which to clean the vehicles to get them ready to be back on the rental line. The area they are proposing is within the side setback on Krif Rd. The Applicant will

477 have elevations to show the Board where they are proposing this. There is a 20-foot requirement
478 for the side setback in this district, Commerce Limited.

479
480 Ms. Taylor asked with the 20-foot side setback, if they are encroaching by 16 feet, which means
481 they are going to be within 4 feet of the lot line. She asked if that is correct. Mr. Rogers replied
482 in the affirmative.

483
484 Ms. Taylor asked if Mr. Rogers knows if there are plans to change the curb cuts, driveway
485 entrances or exits. Mr. Rogers replied that the Applicant would have to speak to that. Ms. Taylor
486 replied that her only reason for asking is that if this application is approved, and there is a curb,
487 whether or not there are sightline issues.

488
489 Chair Gorman asked if there were any further questions. Hearing none, he asked to hear from the
490 applicant.

491
492 John Noonan of Fieldstone Land Consultants stated that he is here on behalf of Amerco Real
493 Estate Company to seek a Variance from Section 102-791 for building a proposed marquee-type
494 roof that would encroach on the building setback. He continued that it would encroach 16 feet,
495 and it is correct that it would be 4 feet from the property line along Krif Rd. and there will be no
496 change to any curb cuts. They submitted the overall concept/site plan of what would go before
497 the Planning Board. They will build some other parking lots, and storage to the south side.
498 Highlighted on the drawing is the 20'x40' marquee-style roof. Initially, the Applicant wanted an
499 awning or canopy style, and a canopy or awning is allowed to be within the setback. However,
500 with the snow load and the size 20' off of the building wall, it will have to be a supported,
501 structural roof. There is existing pavement under this location, so they are utilizing the existing
502 driveway. Trucks would be returned here, and this location also is where they would be doing
503 installations on customers' vehicles, such as towing bars or hitches. Customers would be able to
504 drop off their vehicles and not have to go out in inclement weather. Also, when customers come
505 to drop off a rented vehicle, the employees can go out and clean it to get it ready for the next
506 person or to be put back in the display area. This Variance is for encroaching on that setback
507 along Krif Rd.

508
509 Mr. Gaudio asked if the north side would have a wall or just a couple of posts. Mr. Noonan
510 replied just posts; there will not be a wall or enclosure.

511
512 Ms. Taylor asked about "work" or "installations" done underneath the canopy, if it is only within
513 four feet of the lot line and there is nothing there. Mr. Noonan replied that the installations would
514 be done inside of the existing building. He continued that they would then drive it around for the
515 customer to pick it up.

516
517 Ms. Taylor replied that her concern, based on the safety issues, is that between the north side of
518 where the end of the covered area would be and the street there is not much room. She continued
519 that if someone gets out of a vehicle and opens the door and steps out, they are right in the road.
520

521 Mr. Noonan replied that they are four feet from the edge of the property line, not the edge of the
522 pavement. Ms. Taylor replied that there is not a sidewalk there. Mr. Noonan replied no. Ms.
523 Taylor replied that then they are basically on the road.
524

525 Mr. Rogers stated that he believes there is a grass median between the edge of their current
526 pavement and the road pavement. Ms. Taylor asked if the edge of the pavement is the lot line.
527 Mr. Rogers replied no. Ms. Taylor asked if the grass area is within their lot. Mr. Rogers replied
528 that he believes some of the grass area may be within their lot, but some of it is in the right-of-
529 way.
530

531 Mr. Noonan replied that there is a small portion within the property. He continued that the edge
532 of the pavement on their property, the subject parcel, is very close to the lot line. The grass strip
533 is mostly in the right-of-way.
534

535 Chair Gorman asked approximately how wide the grass strip is. Mr. Noonan replied
536 approximately 10 feet wide.
537

538 Mr. Hoppock asked what the distance is from the end of the roof to the where the edge of the
539 pavement on Krif Rd. begins. Mr. Noonan replied that they are four feet from the property line,
540 from the edge of the roof to the property line there is probably about eight feet, so it is about 12
541 feet or so. Mr. Hoppock asked if he means the road edge. Mr. Noonan replied yes.
542

543 Mr. Hoppock stated that Mr. Gaudio asked about the posts supporting the roof. He continued that
544 there would not be any sight issues if they were to use the access on the far right-hand side of the
545 lot, the northeast side. They would not have any sight issues with those posts or the roof, if
546 someone was trying to make a left-hand turn. He asked if that is correct. Mr. Noonan replied that
547 it would be far enough back. He continued that for a sight distance it is typically 10 feet from the
548 intersection. That roof and the posts supporting the roof would be further back than 10 feet.
549

550 Mr. Noonan went through the Variance criteria.
551

552 1. *Granting the Variance would not be contrary to the public interest because:*
553

554 Mr. Noonan stated that if the Variance were granted it would not be contrary to the public
555 interest, as it is a feature of the building that will provide cover for customers picking up vehicles
556 from the business. He continued that the roof will not hinder public access by blocking travel
557 ways or sidewalks. The roof will be constructed within the subject property and only encroach
558 the building setback line by 16 feet. The roof will fit in with the surrounding commercial and
559 industrial businesses and not be viewed as a hindrance to the public. The general public health,
560 safety, or welfare will not be impacted by the structure.
561

562 2. *If the Variance were granted, the spirit of the Ordinance would be observed because:*
563

564 Mr. Noonan stated that this roof structure would be a permanent, 20'x40', supported roof
565 attached to an existing building, considered a covered parking space. If the Variance were

granted, the spirit and intent of the Ordinance would be observed, as the roof is not a building and will enhance the safety and convenient access to the site. The design of the structure will match surrounding commercial buildings and improve the aesthetics of the existing building, in observation of the spirit of the Ordinance.

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

Mr. Noonan stated that it will allow the business owner to provide customers a covered area to pick up or drop off vehicles. He continued that in the northeast, this, the ability to remain out of the inclement weather is a nice customer benefit, and it will attract more customers to the business. The public will not lose anything as a result of the Variance being granted. In fact, the public will gain and have an economically viable business in this existing building, and the roof will provide increased safety for those utilizing the site.

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

Mr. Noonan stated that the construction of the roof will be fitting in design with the existing building and aesthetically pleasing. The covered parking space will not diminish the value of the surrounding properties and will add a point of interest to the existing building. The proposed use in the section of the building will bring a thriving business to the surrounding commercial and industrial area, and potentially increase values to the surrounding properties. The site will be used by an economically viable business, as it was in the past, and ensure a future tax base that will benefit the City and surrounding properties.

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:*

Mr. Noonan stated that the proposal to construct a roof on the existing building wall will be an attractive feature to customers of U-Haul. He continued that this feature will help to increase and maintain customers to the business, and if denied, could hinder business potential. The proposed use is compatible with the surrounding businesses, such as car dealerships, and the roof is consistent with the intended commercial use by the Zoning regulations. The applicant has a special condition in redevelopment of the site, which will use the existing buildings, paved travel aisles, and parking lots. This feature will enhance the safety of those using it and will be perceived as an enhancement to the building by the public.

and

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

611
612 Mr. Noonan stated that there are special conditions on the property that limit the ability to
613 comply with all Zoning setbacks. In order to utilize the existing buildings, paved travel ways,
614 and install a marquee roof, the setback cannot be met. Canopies and awnings are excluded from
615 building setbacks; however, this marquee will be part of the building structure. Although this is a
616 roof for vehicles, it provides the same use as a canopy or awning. The roof will lie within the
617 subject property and will not impact City or abutters' properties. Based on the Commerce
618 Limited zoning, and location of the property, they believe this to be a reasonable proposal that is
619 consistent with the Zoning intent. It is in the interest of the public that commercial sites are able
620 to be redeveloped and secure a future tax base.

621
622 *B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
623 *hardship will be deemed to exist if, and only if, owing to special conditions of the property that*
624 *distinguish it from other properties in the area, the property cannot be reasonably used in strict*
625 *conformance with the ordinance, and a variance is therefore necessary to enable a reasonable*
626 *use of it.*

627
628 Mr. Noonan stated that if a Variance is not established, there is not enough space between the
629 existing building wall and setback line to construct a roof for a covered parking area. Utilizing
630 existing buildings does not provide the flexibility to relocate it to meet the setbacks. This is a
631 special condition of the property. The intent of the roof was to provide customers a driveway to
632 pick up vehicles from the business and it will be an attraction to the business. It will also help the
633 showroom stand out from the other sections of the building, visually directing customers on
634 where to enter the business. If the roof overhang is not installed there is potential to not attract or
635 retain as many customers. This would be an unnecessary hardship on the operations of the
636 business. The feature will provide many benefits to the business owner and their customers,
637 without having any negative or detrimental impact on the public or the surrounding properties.

638
639 Mr. Welsh stated that he is struggling with whether the question he is about to ask is within the
640 purview of this Board or the Planning Board, but he knows that features like aesthetics, such as
641 the marquee design that Mr. Noonan mentioned, are typically items the Planning Board would
642 look at as part of their site plan. He continued that he wonders if the elevations that go along with
643 the drawings are under production, or if the Planning Board is slated to consider those things.
644 Mr. Noonan replied that they have not designed any architectural elevations on this. He
645 continued that he knows they are working on all the architectural elevations for the entire
646 proposal to go to the Planning Board.

647
648 Mr. Welsh stated that a concern he is hearing from this Board is that one small design feature
649 along those lines, which is that it not be a wall that supports the overhang, but that it be posts or
650 columns, to allow more visibility around the structure. He continued that he does not know if he
651 would make a condition of his approval, but that is something he is interested in seeing. Mr.
652 Noonan replied that he could bring that back to the Applicant and have them bring that up with
653 the architect and see if there is a way to have it supported from above and not have posts.

654 However, 20' is a fairly large structure to not have posts. Mr. Welsh replied that if posts make is
655 safer, that is better than walls.

656
657 Ms. Taylor stated that she is having a hard time reading the diagram. She asked Mr. Noonan to
658 walk them through it. She continued that she understands where they want to put the canopy, and
659 can see "climate control and display parking," but she cannot tell what is where with the rest of
660 it. She recalls that the portion shaded in charcoal was loading docks when this was Clark
661 Distributers.

662
663 Mr. Noonan showed the portion of the parking lot that remains parking lot, and stated that it
664 would be restriped. He continued that the entry points will remain the same, and pointed them
665 out on the diagram, along Winchester St. and Krif Rd. He continued that that the existing Clark
666 Distributers building becomes a climate-controlled building with storage units. Another existing
667 building is proposed where they do installation of hitches and where customers would go in to
668 rent a U-Haul vehicle. The canopy is proposed to be off that building. Another building is
669 proposed for storage, the larger U-Haul-type boxes that would be rented out. A loading dock
670 would be off the side of that building. The gray area in the back that Ms. Taylor mentioned has a
671 parking lot along the Winchester St. frontage. That would be for display of vehicles. The U-Haul
672 box trucks would be along that frontage. That would not be any customer or employee parking.
673 In the back, the area would be used for parking, to meet the parking requirements, and if anyone
674 was trying to access toward the south, that is where all the storage units are. They are typical
675 self-storage units, not climate-controlled.

676
677 Ms. Taylor replied that the loading docks, in other words, are going away. Mr. Noonan replied
678 that the loading docks on the Krif Rd. side of the building remain. He continued that that parking
679 is not changing; they will restripe it. The loading docks will stay. Ms. Taylor asked if they would
680 still be backing in big trucks the way that Clarks Distributers used to. Mr. Noonan replied no. He
681 continued that the trucks they are proposing are larger trucks, tractor-trailer WE50 or 65 size,
682 and would be coming to the proposed dock, going down around the storage units, looping back
683 to back up to the docks.

684
685 Mr. Gaudio asked if the green-striped area is a proposed building or parking lot. Mr. Noonan
686 replied proposed building.

687
688 Mr. Gaudio stated that Mr. Noonan said it would be "impossible" to put the area that they are
689 suggesting for the overhang anywhere else. He asked to him explain why that is, and why it
690 could not go at the end of the addition on the right side.

691
692 Mr. Noonan replied that that would just be warehouse. He continued that the existing building is
693 where the main display area is, where a customer would go in to rent something. He showed the
694 location that is for just bringing the containers in and out, the larger boxes that they drop at
695 homes or commercial sites. Thus, they would not have customers going to the proposed building.
696 They are coming to use either the existing building shown in red, or a different area. The most
697 traffic in and out would be to the existing building.

698
699 Mr. Gaudio replied that is by choice and asked why they could not move it and put it over to be
700 the front part setback of the new construction. He continued that what he is getting at is that there
701 is a choice. The Applicant has made one choice but Mr. Noonan has not explained the other
702 choice.
703
704 Mr. Noonan replied that the higher building is going to be stacked units. He continued that this
705 building does not have the roof height to allow them to do what they want to do for storage
706 inside with racking. This portion of the building is all that is conducive to doing the customer-
707 facing side. They also want it facing Krif Rd. and toward Winchester St.
708
709 Mr. Gaudio stated that he is not sure he understands why they could not put things in other
710 places. He continued that they are making choices. He is not sure why the choices are being
711 made that way.
712
713 Mr. Noonan showed on the drawing where most of the people going into this building are going
714 to be parking. He stated that the Applicant wants people to either drop off or pick up in the
715 location along the face of the building. The proposed building is going to have a higher roof,
716 whereas the other does not have a roof high enough to give up the space.
717 Chair Gorman asked if it is safe to say that one of the reasons for their choice of location for this
718 overhang is to create a façade for the customer base that has visibility on the primary streets. Mr.
719 Noonan replied yes, it would be visible from Winchester St. or as you turn onto Krif Rd. or into
720 the parking lot. Customers would know, visually, where to go. Chair Gorman asked if it is safe to
721 say that they probably could put the overhang somewhere else as Mr. Gaudio is suggesting, but
722 that it would not accommodate their total wish list of having visibility and a customer entrance at
723 that visibility. Mr. Noonan replied that is correct. He continued that it is hard to see in the
724 drawing, but there is ADA parking right in front.
725
726 Mr. Hoppock stated that to go back to Mr. Gaudio's point, he is looking at the "proposed loading
727 area" on the drawing, which has a thatched rectangle. He asked why that could not be the
728 canopy. Mr. Noonan replied that is an area where someone would bring their own personal truck
729 or rented truck to load or unload items to or from the climate-controlled storage spaces. Mr.
730 Hoppock asked if he means the customers can haul their own items into their units inside the
731 building. Mr. Noonan replied that customers would unload their trucks there, to bring items into
732 the climate-controlled building. Mr. Hoppock asked if Mr. Noonan is saying his client does not
733 want to use any space in the climate-controlled facility for U-Haul conversions or services. Mr.
734 Noonan replied that is correct.
735
736 Ms. Taylor stated that earlier, Mr. Noonan mentioned that conversions or tow-bar installations
737 would be done inside. She asked where that is. Mr. Noonan showed the building on the drawing.
738 Ms. Taylor asked if that is an existing portion of building. Mr. Noonan replied yes.
739
740 Ms. Taylor stated that the front of the building is the only portion she had ever been in, along
741 Winchester St. She continued that those were offices and a reception area. She asked if that will

742 be turned into a climate-controlled storage area, or if there is a reason why they cannot use that
743 for customers. What she thinks the Board members are all getting at is that this seems like a
744 design *choice*. One of the things the Board has to decide is whether there is something special
745 about the property that it cannot use it in the way intended. She is struggling with that issue and
746 is looking for an explanation.

747
748 Mr. Noonan replied that given the height of the building, the set-up of this existing building was
749 more conducive to doing the U-Haul-type front. He continued that the entire building in the front
750 is all climate-controlled. They are converting that entire building and will be putting elevators on
751 the inside and the back of the building to access the height of the building. They will install two
752 levels of climate-controlled space. The main driveway that everyone will drive down was the
753 best place and the most high-used place where all the vehicles driving to and from the
754 showroom.

755
756 Chair Gorman asked if there were any further questions for Mr. Noonan. Hearing none, he asked
757 for public comment. Hearing none, he closed the public hearing and asked the Board to
758 deliberate.

759
760 1. *Granting the Variance would not be contrary to the public interest.*
761

762 Mr. Welsh stated that when he thinks of the public interest, he thinks of public health, safety, and
763 welfare. He continued that since there is not a sidewalk to encroach or any likelihood that the
764 public is going to be on the site except for to rent something and use the business, safety is just a
765 visual sightline on turns and driving. He is convinced that feature of safety is not at risk and that
766 the general welfare of the public is not at risk from the proposal as he sees it.

767
768 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
769

770 Mr. Gaudio stated that he has concerns about whether the spirit of the Ordinance would be
771 observed. He continued that the spirit of the Ordinance is to have the 20-foot side setback. The
772 point he is making would also go to uniqueness of the property/the fifth criterion. He is not sure
773 that the spirit of the Ordinance is going to be observed, because they are putting the roof in the
774 setback and he is struggling to find the reason for that.

775
776 Ms. Taylor stated that she agrees and is not sure this is within the spirit of the Ordinance, either.
777 Part of that is because when that area was developed, with the 20-foot setback and the grassy
778 verge, it was supposed to be somewhat aesthetically pleasing and make sure that
779 commercial/industrial facilities were not right on top of the street. Thus, she has some concerns
780 here. She drove to this area, and the grassy area did not look that wide.

781
782 Chair Gorman stated that the fact that this structure is going to be completely open impacts the
783 second criterion for him. He continued that if they could have a canopy or an awning, he is not
784 sure there is a stark difference between that and a roof system with two posts. If it was an
785 enclosed structure, he could see the point Ms. Taylor raised. The openness, though, discontinues

some of the aesthetics concern and the encroachment concern, to a degree. He can come to grips with the second criterion being met, but it gets murky for him in the fifth criterion, when they talk about this “being the only choice.” He will argue that it might be the *best* choice for the Applicant, but as the Board members have all said, it is not the *only* one. It is not the best for compliance with the Zoning Ordinance.

Mr. Hoppock stated that he could live with the second criterion being met for the reasons Chair Gorman stated. He continued that he does not see this proposed alteration impacting the essential character of the neighborhood, and like Mr. Welsh, he does not see a significant safety issue, but he agrees that the fifth criterion is problematic.

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

Ms. Taylor stated that to her this is a “break even” situation. Yes, it is nice to be under cover and not have to put your hood up, but it is not that big of a deal one way or the other.

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

Chair Gorman stated that he does not see any negative impact to surrounding properties, based on the proposal and what he anticipates this would look like, and especially with the Planning Board’s involvement in the aesthetics, if the Variance were granted.

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:*

Mr. Hoppock stated that without getting into the relationship between the general public purpose of the Ordinance and its application to this property, he is having a hard time seeing or understanding what the special condition of the property is in the first place, and, if there is one, how it is distinguished from other properties in the area. He does not think that was adequately developed. He does not think this criterion is met at all.

Mr. Gaudio stated that he agrees with Mr. Hoppock. He continued that there are still choices that could be made, and he does not understand why other choices were not selected in order to comply with the Ordinance rather than to need a Variance.

Ms. Taylor stated that she agrees with what has been said so far. She continued that it seems this is a matter of business convenience, and not necessarily meeting the standard that they have to meet, under the Variance criteria.

and

831 ii. *The proposed use is a reasonable one because:*
832

833 Ms. Taylor stated that given what was presented to the Board, it is not necessarily a reasonable
834 proposal.
835

836 Mr. Hoppock stated that he would add that given the other choices that are available, it is not a
837 reasonable choice to propose.
838

839 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
840 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
841 *property that distinguish it from other properties in the area, the property cannot be*
842 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
843 *necessary to enable a reasonable use of it.*
844

845 Chair Gorman stated that he thinks the Board has adequately covered this. He continued that they
846 do think the property can have its overhang built, just not in that specific location.
847

848 Mr. Hoppock made a motion to approve ZBA 21-15 to permit a Variance to allow the
849 construction of a roof to provide cover to vehicles, encroaching the building setback per Section
850 102-791 of the Zoning Ordinance. This is on Tax Map #115-019-000-000-000 and #115-020-
851 000-000-000 which is in the Commerce Limited District. Mr. Welsh seconded the motion.
852

853 1. *Granting the Variance would not be contrary to the public interest.*
854

855 Met with a vote of 5-0.
856

857 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
858

859 Met with a vote of 3-2.
860

861 3. *Granting the Variance would do substantial justice.*
862

863 Met with a vote of 4-1.
864

865 4. *If the Variance were granted, the values of the surrounding properties would not be*
866 *diminished.*
867

868 Met with a vote of 5-0.
869

870 5. *Unnecessary Hardship*

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

874 i. *No fair and substantial relationship exists between the general public*
875 *purposes of the ordinance provision and the specific application of that provision to the*
876 *property*
877 and

878 ii. *The proposed use is a reasonable one*
879

880 Not met with a vote of 0-5.
881

882 B. *Explain how, if the criteria in subparagraph (A) are not established, an*
883 *unnecessary hardship will be deemed to exist if, and only if, owing to special*
884 *conditions of the property that distinguish it from other properties in the area, the*
885 *property cannot be reasonably used in strict conformance with the ordinance, and*
886 *a variance is therefore necessary to enable a reasonable use of it.*
887

888 Not met with a vote of 5-0.
889

890 The motion to approve ZBA 21-15 failed with a vote of 0-5.
891

892 Chair Gorman made a motion to deny ZBA 21-15. Mr. Hoppock seconded the motion, which
893 passed by a vote of 5-0.
894

895 **B) ZBA 21-16: Petitioner, Enterprise Rent-A-Car Company of Boston, LLC, of**
896 **10 Navigator Rd., Londonderry, NH, requests a Variance for property located at**
897 **453 Winchester St., Keene, owned by 449 and 453 Winchester Street, LLC, of 549**
898 **US Highway 1 Bypass, Portsmouth, NH, Tax Map #115- 026-001-000-000 that is in**
899 **the Industrial District. The Petitioner requests a Variance to permit a motor vehicle**
900 **rental business where it is not a permitted use per Section 102-632 of the Zoning**
901 **Ordinance.**
902

903 Chair Gorman asked to hear from City staff. Mr. Rogers stated that this property is just a little
904 further north of the Krif Rd. intersection, in the Industrial Zone, which does not allow a motor
905 vehicle rental business. Regarding the visuals, staff may have taken a photo of the wrong
906 building. There are two buildings on this property. He will let the Applicant explain, but he
907 thinks where they are seeking to have the rental business is in the building shown in front, closest
908 to Winchester St.
909

910 Mr. Welsh stated that he thinks the Applicant and others know, there is a car rental business on
911 Winchester St., fairly close to this. He asked if that is in the same district, and if that business
912 applied for a Variance. Mr. Rogers replied yes, there is a U-Save Car Rental just south of this
913 property. He continued that he does not know the history of the property and that it has been
914 there quite a while.
915

916 Ms. Taylor stated that she went to look at the property, which is listed as “453 Winchester St.”
917 on the application, but apparently, 453 is the back building, and the frontage on Winchester St. is

449, so she got confused as to which property the application is for. She continued that on the “Zoning Exhibit Plan,” it looks like this is going to be the subject of a subdivision. She asked, going back to what the Board heard earlier, does that create a lot with no frontage on a public road.

Mr. Rogers replied that the Applicant could clearly answer this question. He continued that he believes there was a subdivision at one point in time that subdivided the property from the collision repair business that is behind these buildings. He thinks that is the picture in the agenda packet, hence the confusion from staff. He does not know if there is another proposed subdivision.

Ms. Taylor stated that her question, regarding the picture in the agenda packet, it that also lists the commercial building that fronts on Winchester St. as “449.” She continued that she was confused about which property the application is referencing. Mr. Rogers replied that he shares that confusion and he would ask the Applicant to speak to that.

Ms. Taylor stated that the reason she was asking about whether there will be a subdivision and whether this will create a property that does not have frontage on a city street was because the Zoning Exhibit Plan is dated August 18, 2021. She thought it was current.

Mr. Rogers stated that the plan on the screen right now must have been the subdivision he was speaking of, which occurred when they subdivided off the repair business out back, because they are showing “proposed boundary lines,” which are now there as current, actual boundary lines. There are two buildings on that one piece of property. Ms. Taylor replied that she would reserve her questions for the applicant, because that only confused her more.

John Noonan of Fieldstone Land Consultants, 35 Church St., Fitzwilliam, NH, stated that he is here on behalf of Enterprise Rent-A-Car Company of Boston, LLC. He continued that the base plan that they used for their exhibit was the proposed subdivision that was already done. They are not proposing any new lot lines; this is what was given to them as a base plan. The “proposed boundary lines” are now existing boundary lines. The commercial building that has 4,000 square feet is #453 Winchester St., which is the rear building and is the building Enterprise is looking to rent and use as a rental car business. The building that is on the frontage of Winchester St., #449, is not in play in the application.

Ms. Taylor stated that not being an engineer or a surveyor, she would like to know what the line is that goes through. Mr. Noonan replied that those are on the base plan; the lines that she sees crossing are overhead wires, preexisting electric.

Ms. Taylor asked if it is correct that the parcel that includes #453 and #449 is a single parcel with two separate buildings. Mr. Noonan replied yes. Ms. Taylor asked if it is correct that this application only concerns #453, the rear building. Mr. Noonan replied yes. He continued that Enterprise is looking to rent one of the buildings for a rental car business. He continued that #449

is separate. What the landowner does with that is separate from this application entirely. It is two commercial buildings on one lot.

Mr. Hoppock asked how one gets to #453 from Winchester St. Mr. Noonan replied that they have an easement on the northern drive where they can cross and get to the building. He continued that he is sure some traffic goes up the other right-of-way that goes to the back business as well.

Mr. Hoppock stated that where it says "Proposed Boundary Line," there is a course of distance north 71, 5 minutes and 42 seconds west. He asked, if the area between those two lines a paved area. Mr. Noonan replied yes. Mr. Hoppock stated that then there is a right turn to the rear side of the property, the western boundary. Mr. Noonan replied yes, and that is a separate property and business behind there.

Mr. Gaudio asked if those buildings have an easement across that area. Mr. Noonan replied that he does not know if they have an easement crossing the southern side, but they have an easement crossing through the north.

Ms. Taylor stated that there appears to be a 10-foot wide easement on the subject property, but the property that is not in play, to the north, has a 20-foot wide easement. Mr. Noonan replied yes. Ms. Taylor replied that 10 feet is rather narrow, and she hopes no one puts up a fence in the middle between the two easements, as she is concerned about access. Mr. Noonan replied that Fieldstone did not do the survey on this; this is the subdivision plan that was provided to them as the base plan. Thus, he does not know if there is an existing easement on that south boundary where it goes to the rear lot. It appears that most of the traffic uses that way.

Mr. Noonan stated that he will go through the criteria.

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

Mr. Noonan stated that granting this Variance would allow for the productive use of the existing property. He continued that it requires similar site improvements as the existing automotive repair shop. This will not be contrary to the public interest, as it will provide a service to the public, who may be having repairs done to their vehicle at the nearby repair shop. Granting this Variance would not be contrary to the public interest as this project will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

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

Mr. Noonan stated that the intent of the Industrial District is to provide for manufacturing, processing, assembling, wholesaling, transportation-oriented activities and related services, such as trucking, warehousing, refueling depots. Retail sales and offices are intended to only be accessory to the main uses in the district. The proposal for the site is consistent with the surrounding areas, as another car and truck rental business was approved two sites south of the subject parcel. This project will meet all of the dimensional standards and will be in harmony

with the neighborhood. A motor vehicle rental business is a key component to transportation-oriented businesses, providing transportation for those with vehicles being repaired by nearby mechanic shops or automobile dealerships. This proposal will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare.

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

Mr. Noonan stated that granting this Variance would allow the landowner to reasonably utilize the property with a use that is compatible with the surrounding uses. He continued that granting the Variance would do substantial justice, as there will be a clear benefit and gain to the project and his client, with no loss to the public. In other words, a denial of the Variance request would be an injustice to his client, as there would be no apparent gain to the public by denying the application.

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

Mr. Noonan stated that the subject parcel has fallen into disrepair, as it has been vacant for an extended period. He continued that as the property is already suited for vehicle storage and no major improvements are required, effort can be focused into repairing the buildings on site and returning them to a proper function. A rental business also produces less noise pollution than an auto repair shop. For all of these reasons, they do not believe that the conversion of the property to a motor vehicle rental service use would have any negative impacts on the values of surrounding properties.

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:*

Mr. Noonan stated that the subject property is a 1.41-acre site with existing improvements. The size of the property, along with the size and location of the existing improvements, are ideal for his client's proposed business. The structure in the rear has bay doors that can easily be used for preparation of vehicles for future renters and the front building is conducive to the administrative needs. The subject site will allow his client to get the business up and running much quicker than if major construction was needed. The proposed Enterprise rental company also does lots of work with companies in the area. A closer rental location would reduce traffic congestion throughout the city. For the reasons outlined above, they do not believe that a fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property.

1049 ii. *The proposed use is a reasonable one because:*
1050

1051 Mr. Noonan stated that they believe the proposed use is a reasonable one for all the reasons
1052 previously stated. The following is an outline of why they believe the proposed use is reasonable:
1053 granting the Variance would allow for the productive use of the existing property. The existing
1054 buildings and improvements are conducive to a vehicle rental property, without major
1055 improvements needed. The proposed use as a motor vehicle rental space would be in harmony
1056 with the neighborhood. The motor vehicle rental use would not be contrary to the public interest,
1057 as this project will not alter the essential character of the neighborhood or threaten the public
1058 health, safety, or welfare. This proposal, in their opinion, would observe the spirit of the
1059 Ordinance and its intent. This project would have no measurable negative impacts on the
1060 surroundings or the property values.
1061

1062 B. *Explain how, if the criteria in subparagraph (A) are not established, an*
1063 *unnecessary hardship will be deemed to exist if, and only if, owing to special*
1064 *conditions of the property that distinguish it from other properties in the area, the*
1065 *property cannot be reasonably used in strict conformance with the ordinance, and*
1066 *a variance is therefore necessary to enable a reasonable use of it.*
1067

1068 Mr. Noonan stated that the subject property is 1.4 acres per the reference plan and is developed
1069 with two structures and plenty of paved parking areas for rental vehicle storage. This is a unique
1070 lot, as it has two main structures. One structure has bay doors that could accommodate vehicles
1071 and the other is an office and administrative area. It is uncommon to find a parcel with these
1072 conditions that so adequately suit the needs for a rental development. These are all special
1073 conditions of the property that distinguish it from other properties in the area. Due to the
1074 conditions, they believe the property is reasonably suited for the proposed use. They are thereby
1075 requesting a Variance from Section 102-632 to enable a motor vehicle rental use on the subject
1076 property.
1077

1078 Mr. Rogers stated that to answer the Board's question regarding the original subdivision plan,
1079 one of the notes on the plan says the common driveway and all the easements will be recorded as
1080 a deeded easement. He believes that the driveway seen on the southern side that was created is a
1081 deeded easement for this property. It is part of the subdivision plan.
1082

1083 Mr. Hoppock asked if Mr. Noonan is saying that the size of the property and the existing
1084 improvements on the property being conducive to his client's needs is the special condition. Mr.
1085 Noonan replied yes.
1086

1087 Ms. Taylor asked, based on Section 102-631, if this is being viewed as a retail sales undertaking.
1088 She continued that to her, vehicle rental is the "transportation-related activity." Mr. Rogers
1089 replied that the Community Development Department and previous Zoning Administrators have
1090 always viewed car rental as a "retail service."
1091

Mr. Hoppock asked when the car rental business two sites down was approved. Mr. Rogers replied that he does not know what the approval process was; he did not do the research on that. He did not pull the history on that property to see how or when that came into play.

Chair Gorman asked if there were any further questions. Hearing none, he opened the public hearing and explained the procedures for public comment.

Becky Marcinkevich, of 10 Navigator Rd., Londonderry, NH, stated that she is the Properties and Facilities Manager for Enterprise Rent-A-Car. She continued that since there was some discussion about access she wanted to clarify that that southern road is a driveway and is shared by all three properties. There is a multi-tenant sign on the corner of that street, used for all three of the buildings, which Enterprise would be using. She has some renderings but does not know if the Board wants to see them now. The renderings were not submitted previously, but they show what the site looks like and what the Enterprise sign would look like. Chair Gorman replied that if she distributed those renderings he would be happy to take a look.

Ms. Marcinkevich continued that to clarify, this is rental only. The use would not include sales at this property. She is happy to answer questions. Enterprise is in favor of this and looks forward to operating from a larger location than the one where they are currently located.

Chair Gorman asked if there was any further comment. Hearing none, he closed the public hearing and asked for Board deliberation.

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

Ms. Taylor stated that she does not see anything that would make it contrary to the public interest. She continued that it is similar to a use that is a couple hundred yards away. That area has significant use of motor vehicle related activities.

Mr. Welsh stated that he agrees, and he would extend his agreement to his reasons for thinking it is not in violation of the spirit of the Ordinance, either.

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

Chair Gorman stated that he agrees with Mr. Welsh. He continued that he thinks this use is in line with many uses in the area, which are similar to what is being asked for here, such as collision repair facilities, auto dealerships, repair facilities, and so on and so forth. He thinks this use compliments many of those activities for 'one stop shopping.' As the applicant indicated, when you are getting your car fixed it is great to have a place to rent one nearby.

3. Granting the Variance would do substantial justice.

Ms. Taylor stated that for the reasons they have previously stated, with so many motor vehicle related businesses in the area, it is hard to find any argument that there would be a loss to the public.

Mr. Gaudio stated that a reasonable use of the property gives the owner a chance to use the property and he does not see any real downside to the public.

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

Chair Gorman stated that he cannot see how they would be. He continued that it is a use that is aligned with a lot of activity in that area. It is a building that already exists, and the Applicant's proposed use arguably is going to, as Mr. Noonan stated, allow for the upkeep and improvement of the existing structure. Thus, if anything, it may add to surrounding property values.

Mr. Hoppock replied that is very possible.

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.*

Mr. Hoppock stated that the problem he is having with this one is that he does not think a special condition of the property amounts to the conduciveness of the features to the owner's intended application.

Ms. Taylor stated that she sees the nature of the property itself as creating the special condition, not necessarily related to the use, but just with the layout of the properties and the two commercial buildings. That, in and of itself, creates a special condition.

Chair Gorman stated that he agrees with Ms. Taylor. He continued that he thinks this property is undeniably unique, for the reasons she just set forth.

Ms. Taylor stated that she would add to that unique in its setting. She is sure there are other properties within the city that have similar issues.

and

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

Mr. Gaudio stated that he thinks the proposed use is reasonable, and he thinks the third criterion says that a motor vehicle facility will be in harmony with the neighborhood. They have been saying that throughout the rest of their discussion. Chair Gorman agreed.

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*

1182 *conditions of the property that distinguish it from other properties in the area, the*
1183 *property cannot be reasonably used in strict conformance with the ordinance, and*
1184 *a variance is therefore necessary to enable a reasonable use of it.*
1185

1186 Chair Gorman stated that he thinks they already covered (A) meeting the criteria. They spoke to
1187 some special conditions of the property and its uniqueness, so that could fit into (B), too.

1188 Mr. Gaudio stated that regarding (B), he is not sure the conditions are so severe that it cannot be
1189 used for anything else.
1190

1191 Mr. Hoppock made a motion to approve ZBA 21-16 for a Variance to permit a motor vehicle
1192 rental business where it is not a permitted use per Section 102-632 of the Zoning Ordinance on
1193 Tax Map #115-026-001-000-000 in the Industrial Zone.
1194

1195 Mr. Rogers stated that for the Board's consideration, they might want to condition this to that
1196 specific building that the applicant is referencing. He continued that the motion just stated would
1197 be for the whole lot, and both buildings could have that use.
1198

1199 Mr. Hoppock added to his motion conditioned upon the Variance being applicable only to
1200 building #453. Mr. Welsh seconded the motion.
1201

1202 1. *Granting the Variance would not be contrary to the public interest.*
1203

1204 Met with a vote of 5-0.
1205

1206 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
1207

1208 Met with a vote of 5-0.
1209

1210 3. *Granting the Variance would do substantial justice.*
1211

1212 Met with a vote of 5-0.
1213

1214 4. *If the Variance were granted, the values of the surrounding properties would not be*
1215 *diminished.*
1216

1217 Met with a vote of 5-0.
1218

1219 5. *Unnecessary Hardship*

1220 A. *Owing to special conditions of the property that distinguish it from other*
1221 *properties in the area, denial of the variance would result in unnecessary hardship because:*

1222 i. *No fair and substantial relationship exists between the general public*
1223 *purposes of the ordinance provision and the specific application of that provision to the*
1224 *property because:*

1225 and

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

1226 *B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
1227 *hardship will be deemed to exist if, and only if, owing to special conditions of the property that*
1228 *distinguish it from other properties in the area, the property cannot be reasonably used in strict*
1229 *conformance with the ordinance, and a variance is therefore necessary to enable a reasonable*
1230 *use of it.*

1231 Met with a vote of 5-0.

1232
1233 The motion to approve ZBA 21-16 passed with a unanimous vote of 5-0.

1234
1235 Chair Gorman recessed the meeting from approximately 8:35 to 8:40 PM.

1236
1237 **C) ZBA 21-17: Petitioner, Brian and Amalia Harmon of 184 Colby Rd.,**
1238 **Danville, NH, request a Variance for property located at 27-29 Center St., Tax Map**
1239 **#568-016-000-000-000 that is in the Office District. The Petitioner requests a**
1240 **Variance for a residential use of this property with only 3,049.2 sq. ft. rather than**
1241 **the required 13,400 sq. ft. per Section 102-791 of the Zoning Code.**

1242
1243 **D) ZBA 21-18: Petitioner, Brian and Amalia Harmon of 184 Colby Rd.,**
1244 **Danville, NH, request a Variance for property located at 27-29 Center St., Tax Map**
1245 **#568-016-000-000-000 that is in the Office District. The Petitioner requests a**
1246 **variance for residential housing with three and a third parking spaces rather than**
1247 **the required four per Section 102-793 of the Zoning Code.**

1248
1249 Chair Gorman stated that with the Board's permission, they would hear applications ZBA 21-17
1250 and ZBA 21-18 together, provided the Applicant agree. The Board and the Applicant agreed.

1251
1252 Chair Gorman asked to hear from City staff. Mr. Rogers stated that this property at Center St. is
1253 just off the downtown area. Center St. runs on the other side of the courthouse. The whole
1254 structure is currently an Office Use. He continued that the Board will see that this property is on
1255 a relatively small lot of just over 3,000 square feet. The drawing shows the structure in blue and
1256 the yellow is the driveway and three parking spaces. Currently it is non-conforming for parking,
1257 for the office, under current parking standards. It is an existing non-conformity happening on this
1258 site. The Office Use is an allowed use, as is one- or two-family dwelling. He does not know the
1259 exact square footage of the building itself, but it is probably even more non-compliant than what
1260 the Applicant is asking for today, since it would only be four spaces needed. The Office Use
1261 requires one parking space per 200 square feet. What the Applicant is requesting could make this
1262 more conforming to Code. However, since there is a change of use occurring they are to meet the
1263 off-site parking requirements. In the Office District, 8,000 square feet of lot size is needed for the
1264 first dwelling unit, and an additional 5,400 square feet for an additional unit, hence the
1265 requirement of 13,400 square feet in order to convert into a two-family dwelling as the Applicant
1266 is proposing.

1268 Ms. Taylor stated that as she read the Ordinance, single, duplex, and multi-family are all
1269 permitted in this zone. She continued that thus, there is not an issue of whether it is a conforming
1270 use, it is just as size issue. She asked if that is correct. Mr. Rogers replied yes.

1271
1272 Ms. Taylor stated that her question, not being familiar with Planning Board site plan regulations,
1273 is if there is a change of use, is a site plan required. Mr. Rogers replied that a change of use could
1274 be an initial trigger. He continued that the Community Development Director does have the
1275 ability at times to do provide an approval administratively. In regards to a project like this,
1276 another item to consider, which he thinks the Applicant speaks to, is traffic. For example, if there
1277 is an additional number of car trips happening, that would be another trigger to involve the
1278 Planning Board. He cannot speak to whether this would have to go to the Planning Board or if it
1279 would be handled administratively.

1280
1281 Ms. Taylor stated that since they are looking at both of these applications at the same time, is it
1282 correct that four parking spaces are needed for a two-family dwelling. Mr. Rogers replied that is
1283 correct.

1284
1285 Mr. Gaudio asked what the square footage of the units would be, asking details to each unit. Mr.
1286 Rogers replied that he does not know what the proposed layout of the building would be. The
1287 Building Code and Zoning Code do not have specifics about the square footage per occupant in a
1288 residential dwelling. Obviously, bedroom counts can be reviewed, but it is unknown the number
1289 of people per bedroom. They do not have a specific number to attach to this.

1290
1291 Mr. Welsh asked if this were a vacant lot and they were looking to adhere to existing setbacks
1292 for this zone, what are those setbacks. Mr. Rogers replied that this property is non-conforming in
1293 many ways, including the front setback, side setback, and rear setback. All of the setbacks would
1294 probably be non-conforming. The minimum lot size in the Office District is 8,000 square feet.
1295 Thus, if this were vacant, in order to construct anything at all, the applicant would have to come
1296 before the Board and would be seeking multiple Variances. The Office District has a 15 foot
1297 front setback, 15 foot rear setback, and 10 foot side setback. The Applicant might be compliant
1298 on the west side of the property, but they do not conform to the rest of the setbacks at this point.

1299
1300 Mr. Welsh stated that it is hard to imagine a practical, functional building that would actually be
1301 in compliance with all of those setbacks, on this particular property. Mr. Rogers replied that he
1302 thinks that is true to many of the buildings that are in this neighborhood. He continued that you
1303 could see in the drawing that many of the buildings are pretty close to the property lines. That is
1304 allowed once you get to the Central Business District, but this is just off that, in the Office
1305 District, and that is where those setbacks come into play.

1306
1307 Amalia Harmon and Brian Harmon of 184 Colby Rd., Danville, NH, introduced themselves. Ms.
1308 Harmon stated that they are requesting to have a residential use because it is currently office
1309 space, and nobody needs or is looking for office space right now. She continued that the tenants
1310 who were there left on their own accord because they could work from home. Thus, she and Mr.
1311 Harmon need to pivot into another direction. For the past year, the newspapers have been full of

news that ‘Keene has a housing shortage’ and ‘NH has a housing shortage,’ especially two- and three-bedroom units for families. She and Mr. Harmon would like to provide that for this area.

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

Ms. Harmon stated that Keene is currently experiencing a housing shortage crisis. She continued that this Variance to change the use to residential is needed by this community. The essential character of the neighborhood would not be altered. There are several residential buildings on that street on the same side. There are five buildings in total and three are multi-family.

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

Ms. Harmon stated that the proposed construction change of use of the property is necessary and reasonable use for this property. There are several articles analyzing housing in Keene, including *There’s no Place Like Home*, which someone in the Community Development Department worked on. Their concern was that it is not going to get better.

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

Ms. Harmon stated that it gives housing that is much needed, and assists the revitalization of the area by providing more housing for young professionals. In an article from June 3, 2021, Casey McDermott of New Hampshire Public Radio (NHPR) reported,

“Apartment vacancy rates are low. Local businesses are struggling to find places for their employees to live, including the hospital, which is struggling for more specialists to meet the community needs.”

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

Ms. Harmon stated that it is a gorgeous brick building. Well-maintained and restored to its beauty, it will be amazing. Page 7 of *There’s No Place Like Home* says, “*Cities that attract and maintain young professionals thrive,*” and that is self-evident. This property, as a residential property, will only increase the surrounding property [values] and improve the security and longevity of Keene’s economy.

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:*

Ms. Harmon stated that as an office space, it is antiquated. It is not necessary in this area at this time. Many professionals are able to work from home. Keene needs more housing. Being so close to downtown, regarding the second Variance they are requesting, it have “three and a third” parking spaces. This works for people who have small cars or do not need cars because they can walk. Even the Hannaford grocery store is less than a 20-minute walk. Everything else is much closer, which is a benefit.

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.

Ms. Harmon stated that because it is not needed as office space, she and Mr. Harmon do not know what they could do with the building and do not want to have an empty building. They want to conform to the community’s need for more housing and attract young professionals to help the economy of Keene thrive.

Mr. Gaudio asked how many bedrooms would be in the apartments. He continued that he is trying to get an idea of the size of the apartments. Ms. Harmon replied that it could be two to three bedrooms in each unit. She continued that they are thinking of families, such as two parents in one room, a kids’ room, and an office. Mr. Gaudio asked what it would be as if they were renting the apartments to students, which is one of the things they are making a big point of in their materials. If there are three bedrooms, they could have three students, and at least one of them is likely to have a car. Mr. Harmon replied that students are not their target. Mr. Gaudio replied that the materials they sent in were really aimed at students’ needs. They should think about how many cars are actually going to be there, at night when people want to park. If there are two apartments with two to three bedrooms, there could be many cars.

Ms. Harmon replied that they hope the tenants will be families and that they would be sharing cars. She continued that the location is rather far from the KSC campus and students were not their target. They were thinking of young professionals, such as people who have already graduated and are working in the area.

Mr. Gaudio replied that spouses or domestic partners would be more likely to share, but single individuals are not likely to share a car, he assumes. Therefore, there would be more cars.

Mr. Harmon stated that he has a three-bedroom home and the third bedroom is an office. He continued that they are just in the beginning stages of their plans, but going through the process as necessary. They want to follow through with this meeting with the Zoning Board and then they can make final decisions. They want to be available for people in need of housing. Students are not their target.

1399 Mr. Hoppock asked, if they were going to have two or three bedrooms in each dwelling unit,
1400 how many square feet would each dwelling unit be. Mr. Harmon replied approximately 1,500
1401 square feet. Mr. Hoppock asked if that is just fitting it into the footprint of the building. Mr.
1402 Harmon replied yes, no additions or modifications, because it is also in the Historic District.
1403 They talked with Mari Brunner and Tara Kessler from the Community Development
1404 Department, so they know they have to conform to the Historic District regulations. That is what
1405 drew them to this building; it stands out among others in the neighborhood. This is what he does
1406 for a living; he is a mason by trade.

1407
1408 Ms. Taylor stated that she understands that this was offices. She asked how many rooms there
1409 were, approximately. Ms. Harmon replied six upstairs and six downstairs. Ms. Taylor asked if
1410 they would gut it and reconfigure it into apartments. She continued that she has never been in the
1411 building, so she is trying to get a sense of it. Mr. Harmon replied that with the two floors, the
1412 intention is to do an upper- and lower-level unit, up to Code, with fire separation, egress, etc.
1413 They are working on the design and he thinks it is coming along really well. There would be a
1414 kitchen and living room, and regarding the rooms, no bearing walls will be touched. The work
1415 needed is to add closets and storage space. There is a full basement as well.

1416
1417 Ms. Taylor stated that regarding parking, she is trying to match up the picture with what they are
1418 seeing on the screen. She continued that the picture in the agenda packet has a rutted,
1419 grassy/gravel space. She asked if that is where the parking is. Mr. Harmon replied yes. Ms.
1420 Taylor asked if that is a walkway next to it and then the parking. Ms. Harmon replied that it is a
1421 handicapped ramp that will be removed. Ms. Taylor asked if it is three stacked spaces. Ms.
1422 Harmon replied yes. Ms. Taylor stated that if they were given a Variance for the building and the
1423 parking, obviously they could have their target audience for tenants, but reasons, they cannot
1424 deny someone who wants to rent it. She asked how the Harmons would handle it if people had
1425 four cars instead of three. Mr. Harmon replied that there is a lot behind the park across the street
1426 from the Fire Station, and they are still in talks with Mike Hagen, Plans Examiner for the
1427 Community Development Department. They are hoping for the Variance here for the three, to
1428 get started. Ms. Taylor replied that is beyond the Harmons' control. She continued that she asks
1429 these questions because she knows winter parking is well enforced in the city.

1430
1431 Chair Gorman stated that regarding Ms. Taylor's parking questions, it is not atypical for a
1432 landlord to have parking restrictions in a lease agreement. He continued that they may or may
1433 not know the legality of such, but he does know it is common practice. They could feasibly rent
1434 to someone who has 18 cars, but they may only permit the tenant to have two on the property. It
1435 would be grounds for not accepting someone as a tenant, if they had 18 cars, because the
1436 Harmons cannot accommodate 18 cars. There is the ability for the property owner to have a
1437 finite target where they just cannot have tenants with several cars, because they cannot
1438 accommodate those needs.

1439
1440 Chair Gorman stated that he guesses this building is roughly 3,000 square feet. He continued that
1441 for 2,000 square feet of office space, you need one parking space. Even if you had common areas
1442 of 1,000 feet, you would have 2,000 square feet of office space and thus need 10 parking spaces.

From his vantage point, this property is a quagmire that existed long before any of these rules, and it is not going to be in compliance to be anything, meeting the current Zoning Ordinance. He thinks for a two-family apartment building, four cars would be normal. If it were a 3,000 square foot office building, they would have several more cars, and people coming and going, or unsuccessful tenants. He sees the argument for this parking Variance actually being less invasive than what currently exists, which is an office building. He also thinks the building is laid out nicely to be a duplex. He has not been inside, but given his knowledge of buildings and the way the exterior is set up, it looks like it would accommodate one unit on each floor quite nicely. He asked if that is accurate.

Ms. Harmon replied that she thinks in the past it was split into two residential units, side by side. She and Mr. Harmon plan on the two units being top and bottom.

Chair Gorman stated that the Harmons talked a lot about the need for housing in Keene, but he was curious whether they have more specific information to this property and the hardships it presents, not necessarily the needs of the entire city. Ms. Harmon asked if he means the hardship if the Variance is not approved. Chair Gorman replied yes, just the general state of this property and how difficult it would be for them to overcome finding an adequate use for it. Ms. Harmon replied that as Chair Gorman said, if it is office space, they need seven more parking spaces. They are not going to find that. Also, no one is looking for office space.

Mr. Welsh stated that is excellent movement toward the point he is interested in. He asked as the Harmons lost the tenants, who were able to work from home, were others clamoring to get into the office space. Ms. Harmon replied that they did talk with people and used word of mouth, and found that no one really needs office space because they can work from home. Mr. Harmon replied that even their insurance agent, who is insuring that vacant building, is permanently working from home and said that the rest of the office is to follow. That office is two doors down, across the street from the subject property.

Ms. Harmon asked if the Board saw the article by Mayor George Hansel, which she and Mr. Harmon added to their submitted materials. Mr. Harmon added that the Mayor's quote in the Keene Sentinel rang a bell: *"I have a lot of confidence in Keene and the surrounding areas being an attractive place to live, for a lot of people. We have great schools, excellent job opportunities, and amazing recreational opportunities. But we need to create paths forward for people and involving building new housing."* She continued that she and Mr. Harmon requested that he be here tonight, but he was unable to attend.

Chair Gorman asked if there were any further questions for the applicants. Hearing none, he asked for public input.

Peter Espieffs, of 29 Middle St., stated that his backyard adjoins the rear of the property. The rear of their property is his property line. He does not have any objection to apartments, as long as they are kept under control. He does not want many disruptive people there. The Harmons are in that business and know what they are doing, and have been doing it for quite a few years. They

1487 have spoken with him about this and he does not have any objection to the building becoming
1488 apartments.
1489
1490 Hearing no further comments, Chair Gorman closed the public hearing. The Board deliberated
1491 on the criteria.
1492
1493 Ms. Taylor asked if they are discussing both applications together and then voting separately.
1494 Chair Gorman replied yes. He continued that if the first is denied it will negate the need for a
1495 vote on the second, because the parking would become not relevant if the use were not approved.
1496
1497 *1. Granting the Variance would not be contrary to the public interest.*
1498
1499 Ms. Taylor stated that it seems that it would not be contrary to the public interest because, first, it
1500 is better to have an occupied building than a vacant building. She continued that second, as has
1501 been mentioned, there is certainly a need for residential housing, and the Board has heard a great
1502 deal of discussion about trying to bring residential housing back toward the city center, as
1503 opposed to building on vacant land.
1504
1505 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*
1506
1507 Mr. Hoppock stated that they are looking at two questions: public health, safety, and welfare; and
1508 whether the proposed use would alter the essential character of the neighborhood. He continued
1509 that his view is that this is a very small lot on which the Applicants want to place potentially a
1510 great number of people. He thinks there is a density problem, and Mr. Gaudio brought up the
1511 car/parking problem, which could exacerbate it. There is a risk that if this application were
1512 approved it *would* alter the essential character of the neighborhood, in that it would increase
1513 population density and motor vehicle density, and that would impact public health, safety, and
1514 welfare. The biggest problem here is the size. These houses are all right up to each other. None
1515 of them meets the setback requirements. That is a potential fire hazard and there are other
1516 hazards there as well.
1517
1518 Chair Gorman asked Mr. Hoppock if he think that those problems exist no matter what the use is.
1519 He continued that he is hard-pressed to know what use, if not this one, would not create similar
1520 problems. Mr. Hoppock replied that he cannot think of any, but it was an office use for years. He
1521 continued that the lack of interest in an office use is a market-driven condition, which he
1522 sympathizes with, but he is not sure that is applicable to what the Board has to look at, in terms
1523 of public health, safety, and welfare. He is concerned about the density of people and cars.
1524 However, he sees Chair Gorman's point.
1525
1526 Mr. Welsh stated that regarding the parking and the density, he is convinced by the argument that
1527 there are parking issues regardless of the use, and this use may be the one that presents the least.
1528 The density issue strikes him as potentially real, but potentially not negative. It could be add to
1529 the liveliness, viability, and nature of the downtown area in a positive way. While it is possible

that it could flip, he tends to think that the target audience of renters and the possibility of them being the kind of people who like the downtown area, inclines it toward a positive outcome.

Mr. Gaudio stated that he is not particularly concerned about the density of the population. He continued that he is concerned about the density of the cars and the narrowness of the streets.

Ms. Taylor stated that she thinks it does not change the essential character of the neighborhood, in large part because there is already a great deal of residential use in that area, including several multi-family and single-family dwellings. She does not think it impacts in that area. It is a good point that if these were rented offices, there would be a greater need for parking than there would be with two residential units. There may be an issue, but she does not think it is up to the Board to judge what type of tenants and how many cars each tenant has etc.

Chair Gorman stated that from his personal perspective and some of his personal experiences, he thinks they could have a bad tenant in a good situation, and a good tenant in a bad situation and it is completely unpredictable. However, it can be mitigated by the property owner or the landlord in whatever diligence they are willing to do. He thinks this is a case where the property owners need to be vigilant and diligent no matter what use the building has, just because it is an anomaly to have a building that takes most of its lot size just with its footprint. That may exist in bigger cities, but they do not see it a lot in Keene. He does think a property owner for this building is going to have to be finicky to succeed. He thinks that will be the case no matter what the use is.

3. Granting the Variance would do substantial justice.

Mr. Hoppock stated that putting the property back to some reasonable use would be a gain to the public. He continued that he could see the injustice to the owner, in terms of not being able to find office use. He thinks denying it would be an injustice to the owners.

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

Ms. Taylor stated that it appears from what has been presented to the Board that renovation and restoration of this property to a useful purpose would increase the value, not just of this property, but also of the neighborhood. Chair Gorman stated that he agrees.

Mr. Welsh stated that that they heard from a surrounding property owner, who does not seem concerned with diminishing value.

Chair Gorman stated that he drove by this building and thinks it has a lot of historic charm. He continued that he is glad to hear it is protected by the Historic District. With a little work, it will be beautiful, which would raise values in the neighborhood.

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:*

Ms. Taylor stated that it is definitely a reasonable use of the property. She continued that there are many small properties in this area, but this, perhaps, is the smallest, which creates a special condition in and of itself. Anyone would be hard pressed to use this particular building on this particular piece of property without obtaining some form of Variance.

Mr. Gaudio asked if that is Ms. Taylor's argument for the residential use with only 3,049.2 square feet, or the three and a third parking spaces. He continued that in other words, the three cars problem is caused by the smallness of the lot and the special condition of this property.

Ms. Taylor replied that she is saying both, because of the requirement of a minimum of 8,000 square feet, without that, you have to seek a Variance, which is one issue. She continued that the other is with parking. If the property is kept to office space, many more parking spaces are needed, thus it applies to both.

Mr. Hoppock stated that except for the fact that the special condition of this property is its building size in relation to the size of the lot, that does create the parking problem, but he thinks that special condition renders the relationship between the general public purpose of the Ordinance and its application to this property less tight. He continued that he does not see a fair and substantial relationship between the two in a hard and fast way. He also thinks that the same special condition can preclude any reasonable use if you rule out office use. The problem with the office use is it is non-conforming office use. They do not need those parking spaces for this property. He asked Mr. Rogers if that is correct.

Mr. Rogers replied that is correct, because it is already a current use. He continued that the parking comes about whenever there is a change of use. Thus, if it were to change to any other use, even an allowed use within that district, the parking comes into play. Without the change of use, the parking does not.

Chair Gorman replied that it does not come into play from a Variance standpoint, but it comes into play in reality. He continued that people still would need to park there. Thus, it may not require a Variance, and the use could continue, but it may provide for the creation of a problem.

Mr. Hoppock replied yes, and he sees how this application could ameliorate that problem to a high degree.

Mr. Welsh stated that they have heard testimony and a bit of evidence that its continuation of use as an office would not necessarily be successful.

Chair Gorman replied that he agrees with Mr. Hoppock a bit, in that prevailing market conditions are not really something the Board should ultimately consider, as they could change.

Ms. Taylor replied that economic factors cannot be the sole determining factor in whether a Variance is granted, but they can certainly be a consideration. She continued that she also sees this as, in some ways, being a less intense use than office, not because a Variance may not be needed for parking issues, but also because it is likely to have fewer people, fewer traffic, fewer car trips, etc.

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.

Mr. Gaudio stated that regarding (B) this may be a case, an unusual one, where such a special condition does not permit a use, unless they just razed the building and turned it into parking. Chair Gorman replied that he does not even know if parking would be a permitted use. Mr. Hoppock replied that the point on (B) is that it cannot be *reasonably* used. He continued that the Applicants have made a case that they cannot reasonably use it as an office space because nobody wants to use it which is reasonable to him. In addition, a Variance is therefore necessary to enable a reasonable use, such as residential. He thinks Mr. Gaudio has a good point.

Mr. Gaudio stated that they may have a circumstance of (B) being applicable. Chair Gorman replied that he agrees.

Mr. Hoppock asked if the Board wants to impose a parking condition on this, or limitation. He continued that he is not sure if he has an answer. Chair Gorman replied that they could, but he does not know about the scope of enforcement.

Mr. Rogers stated that many times when they see an issue with parking, people park on their lawns due to not having enough spaces. That will not occur here. They would have to be parked on the neighbors' lawns. It is up to the Board, but he does not think a condition about parking would be required, because it would almost be self-regulating, between the tenants and the property owners. Mr. Hoppock replied that he is happy with that.

Ms. Taylor stated that she would hesitate to put that kind of condition on because she does not think it is within the Board's charge to tell a property owner how to resolve a parking issue. She continued that they would know that if this were granted, they would have to find a parking space. How they do that is not up to the Board.

Mr. Gaudio stated that he does not think a parking condition is a good idea. He continued that it would be difficult to enforce.

Chair Gorman stated that he, too, would see problems in the ability to police it. He continued that he also thinks there is merit to what Mr. Rogers is saying. If they park anywhere, it would have to be in their living room, because there is really nowhere else. The property regulates itself in that sense. He also thinks the Master Plan alludes repeatedly to bikeable and walkable downtown

1663 living. Hopefully, the Harmons can find some young professionals, if this gets approved, who
1664 have one car per unit.
1665

1666 Mr. Gaudio asked if on-street parking is permissible here. Mr. Rogers replied that it is not
1667 allowed during certain periods, like the winter parking ban, and a maintenance period during the
1668 warmer months when you cannot park on the street overnight. He continued that there are
1669 changes coming to parking, which might change some of those things.
1670

1671 Mr. Hoppock made a motion to approve ZBA 21-17 to permit a residential use with only 3,049.2
1672 square feet where 13,400 square feet is required per Section 102-791 of the Zoning Ordinance
1673 for the property at 27-29 Center St, Tax Map #568-016-000-000-000. Mr. Gaudio seconded the
1674 motion.
1675

1676 1. *Granting the Variance would not be contrary to the public interest.*
1677

1678 Met with a vote of 5-0.
1679

1680 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
1681

1682 Met with a vote of 5-0.
1683

1684 3. *Granting the Variance would do substantial justice.*
1685

1686 Met with a vote of 5-0.
1687

1688 4. *If the Variance were granted, the values of the surrounding properties would not be*
1689 *diminished.*
1690

1691 Met with a vote of 5-0.
1692

1693 5. *Unnecessary Hardship*

1694 A. *Owing to special conditions of the property that distinguish it from other properties in the*
1695 *area, denial of the variance would result in unnecessary hardship because:*

1696 i. *No fair and substantial relationship exists between the general public purposes of*
1697 *the ordinance provision and the specific application of that provision to the property because:*
1698 *and*

1699 ii. *The proposed use is a reasonable one because:*
1700

1701 Met with a vote of 5-0.

1702 The motion to approve ZBA 21-17 passed with a unanimous vote of 5-0.
1703

1704 Chair Gorman made a motion to approve ZBA 21-18 where the petitioner requests a Variance to
1705 permit three parking spaces rather than four; this is required for residential housing per Section
1706 102-793 of the Zoning Ordinance. Mr. Hoppock seconded the motion.
1707

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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 because:*

Met with a vote of 5-0.

The motion to approve ZBA 21-18 passed with a unanimous vote of 5-0.

II) New Business

III) Communications and Miscellaneous

IV) Non-public Session (if required)

V) Adjournment

There being no further business, Chair Gorman adjourned the meeting at 9:41 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk

112 WASHINGTON ST. ZBA 21-20



Petitioner requests a Variance to permit eleven guest rooms where nine are permitted per Chapter 100, Article 8.3.2.G.2 of the Zoning Regulations.



City of Keene
New Hampshire

NOTICE OF HEARING

ZBA 21-20

A meeting of the Zoning Board of Adjustment will be held on Monday, October 4, 2021 at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition. Petitioner, Joshua Gorman of 85 Park Ave., Keene, NH, requests a Variance for property located at 112 Washington St., Tax Map #554-085-000-000-000 that is in the Downtown Transition District. The Petitioner requests a Variance to permit eleven guest rooms where no more than nine guest rooms are permitted per Chapter 100, Article 8.3.2.G.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://ci.keene.nh.us/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk

Notice issuance date September 23, 2021

8.3.2 Commercial Uses

A. Agricultural-Related Educational and Recreational Activity as a Business.

1. **Defined.** A commercial activity that is appropriate to a farm or rural setting and/or relates to agricultural uses or customs. Activities may include programs, functions, and other demonstrations that are either recreational or educational in nature (e.g. sleigh rides, hay rides, petting farms) and other demonstrations of rural, agricultural and natural resource activities and customs.
2. **Use Standards**
 - a. There shall be no outdoor display of equipment for sale.
 - b. Adequate road access to the site shall be available.
 - c. All parking, including special event parking, shall be on-site with screening from roads and adjacent properties.
 - d. Roadside spectator parking is prohibited and shall be controlled by directional/informational signage, fencing, and/or providing traffic control personnel.
 - e. On-site water storage may be required to ensure adequate fire protection if city water service of adequate volume and pressure is not available at the site.
 - f. Toilet facilities for employees and visitors, which are deemed satisfactory by the City's Building and Health Official, shall be provided within 300-ft of the primary activity area.
 - g. Adequate solid waste disposal and recycling facilities shall be provided, which are screened from the road and adjacent properties.

- h. Areas of special environmental sensitivity (e.g. surface waters, floodplains, wellfields, or steep slopes) shall be adequately protected.
- i. No outdoor activities requiring artificial lighting shall be held after 10:00 pm.
- j. No more than 100 visitors shall be allowed for outdoor functions after 10:00 pm.
- k. There shall be no more than 400 persons on the property at any one time, nor shall the site be visited by more than 250 vehicles within any 24-hour period, unless an Outdoor Event License has been obtained from the City Clerk in accordance with Chapter 46 of the City Code of Ordinances.

B. Animal Care Facility

1. **Defined.** An establishment that provides care for domestic animals, including veterinary offices for the treatment of animals where such animals may be boarded indoors during their convalescence and pet grooming facilities. An animal care facility does not include kennels or animal training centers.

C. Art Gallery

1. **Defined.** An establishment that sells, loans, or displays works of art (e.g. paintings, sculpture, photographs, video art, etc.). Art gallery does not include a cultural facility.

D. Art or Fitness Studio

1. **Defined.** An establishment where an art or activity is taught, studied, or practiced in a classroom or studio setting (e.g. dance, martial arts, photography, pottery, music, painting, gymnastics, pilates, yoga, etc.).

E. Banking or Lending Institution

1. **Defined.** An establishment that is engaged in the business of a bank, savings and loan association, or credit union that is regulated by state or federal authority.

F. Bar

1. **Defined.** An establishment where the primary purpose is the sale of alcoholic beverages for consumption on the premises. Snack foods or other prepared food may be available for consumption on the premises.

G. Bed and Breakfast

1. **Defined.** An owner- or operator-occupied single-family dwelling that provides lodging for a daily fee in guest rooms with no in-room cooking facilities (excluding microwaves and mini-refrigerators), and prepares meals for guests.

2. Use Standards

- a. No more than 9 guest rooms are permitted.
- b. Meals shall be served to registered guests only.

H. Car Wash

1. **Defined.** An establishment for the washing and cleaning of motor vehicles or other light duty equipment, whether automatic, by hand, or self-service. The car wash facility may be within an enclosed structure, an open bay structure, or other configuration.

I. Clinic

1. **Defined.** A facility with more than 5 employees where medical, dental, mental health, alternative medical practitioners, or other licensed healthcare practitioners examine and treat natural persons on an outpatient basis.

J. Day Care Center

1. **Defined.** A facility where, for a portion of a 24-hour day, licensed care and supervision is provided in a protective setting outside of a residential dwelling for children or elderly and/or natural persons with functional impairments that are not related to the owner or operator.

K. Event Venue

1. **Defined.** A facility that provides hosting and rental services of a banquet hall or similar facility for private events (e.g. wedding receptions, holiday parties, fundraisers, etc.) with on-site or catered food service to invited guests during intermittent dates and hours of operation. Live entertainment may occur as part of an event. An event venue is not operated as a restaurant with regular hours of operation.

L. Funeral Home

1. **Defined.** A facility where the deceased are prepared for burial display and for rituals before burial or cremation. A funeral home may include chapels, crematoriums, and showrooms for the display and sale of caskets, vaults, urns, and other items related to burial services.

M. Greenhouse / Nursery

1. **Defined.** An establishment where flowers, shrubbery, vegetables, trees, and other horticultural and floricultural products are propagated and sold, and may include the sale of items directly related to their care and maintenance.

N. Health Center / Gym

1. **Defined.** An establishment that provides indoor and/or outdoor activities for members related to health, physical fitness or exercise (e.g. weight training, aerobics, swimming, court sports, climbing, etc.).

O. Heavy Rental and Service Establishment

1. **Defined.** Rental or service establishments of a heavier- and larger-scale commercial character, typically requiring permanent outdoor service or storage areas or partially enclosed structures. Examples of heavy rental and service establishments include truck rental establishments, and rental and repair of heavy equipment.



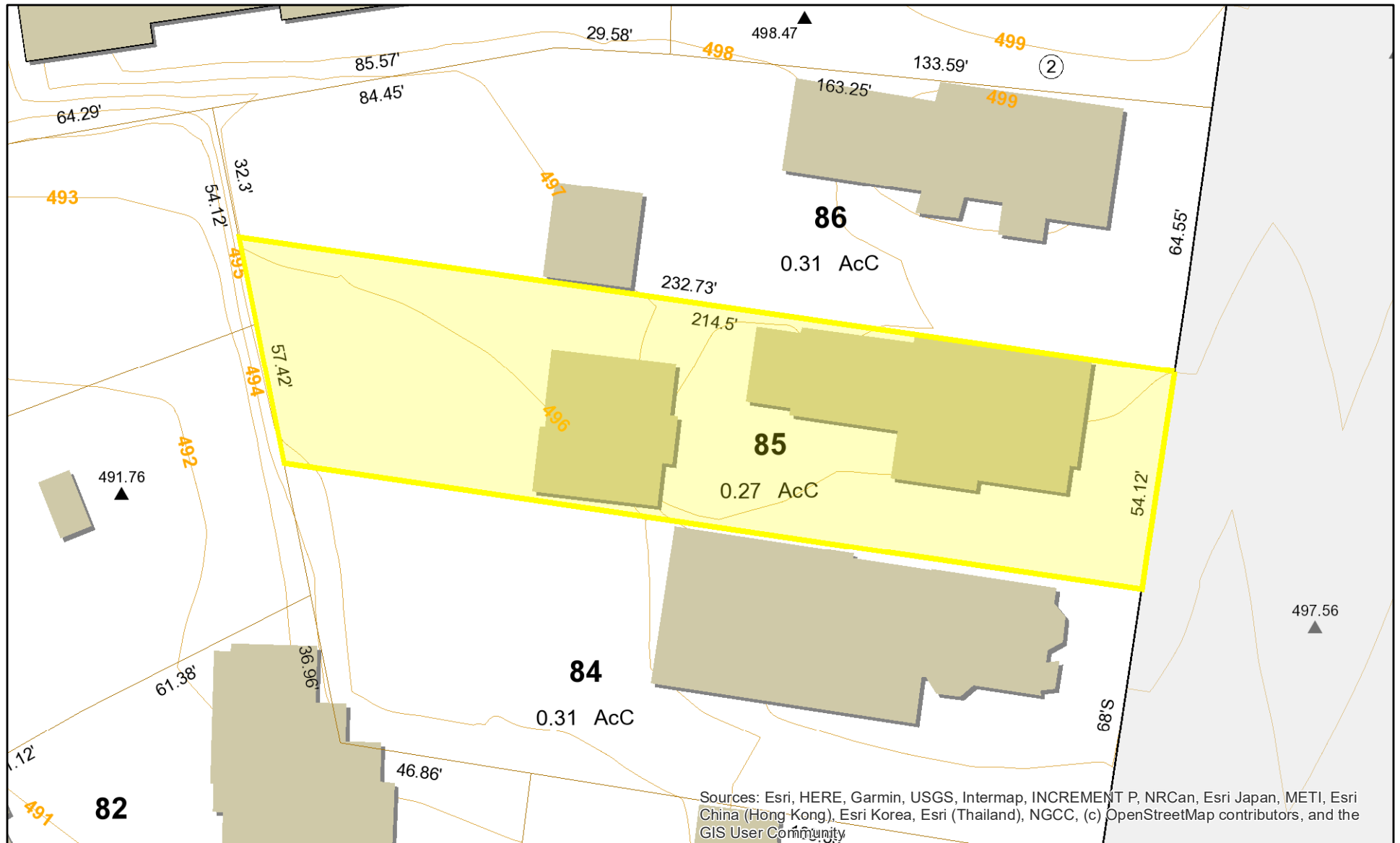
Keene, NH



September 22, 2021

1 inch = 34 Feet

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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. ZBA21-20
Date Filed 9/7/2021
Received By CSM
Page 1 of 22
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) Joshua Gorman Phone: 603.209.1588
Address 85 Park Avenue Keene NH 03431
Name(s) of Owner(s) 112 Washington LLC
Address 85 Park Avenue Keene NH 03431
Location of Property 112 Washington St. Keene

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 5540850000000000 Zoning District DT-T
Lot Dimensions: Front 54 Rear 59 Side 233 Side 214
Lot Area: Acres .27 Square Feet 12,300
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 21% Proposed 21%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 63% Proposed 63%
Present Use bed and breakfast
Proposed Use bed and breakfast

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] manager Date 9-6-21
(Signature of Owner or Authorized Agent)

Please Print Name Josh Gorman - manager 112 Washington LLC

The applicant seeks relief from section 8.3.2.G.2 of the City of Keene Land Development Code- “use standards, where no more than 9 Guest rooms are permitted” where the applicant is requesting a total of 11 guest rooms

PROPERTY ADDRESS _____

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) _____ of the Zoning Ordinance to permit:

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

Background:

112 Washington Street was purchased by its current owner in September of 2017. At the time of purchase it had been vacant for 2 years. Prior to that; it had been an office building, a mixed use office and residence, a tourist lodging home, and originally a residence.

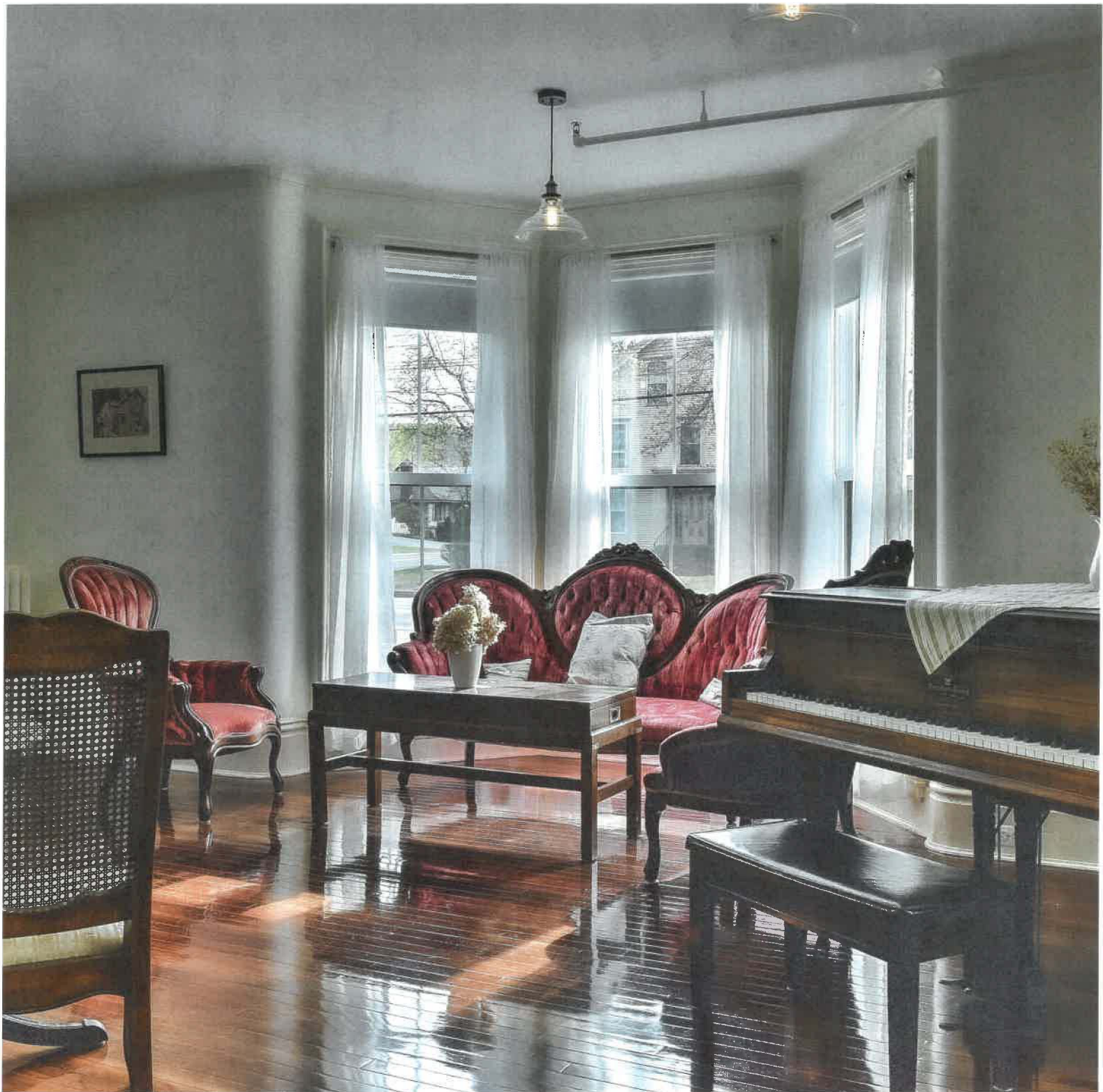
At the time of purchase the carriage house was compromised and on the brink of being torn down; and the brick building was suffering from decades of deferred maintenance. This left the property in such disrepair that it was purchased for just half of its city assessed value at the time.

Without a repurposed use and extensive repairs, the downward spiral of the property had little or no end in sight. After two and a half years of renovation and repair the property is now a restored historic bed and breakfast consisting of 8 private guest rooms, each with a private full bath; an operator's quarters, a common parlor, and an operator's kitchen. The proposal before the board asks for consideration in allowing the expansion of its current use to cumulatively accommodate 11 guest rooms and an operator's apartment. This would be achieved by adding 2 guest rooms on the first floor of the carriage house and an apartment on the second floor. The ordinance allows for up to nine guest rooms in a bed and breakfast, so the applicant is seeking expansion of the use to allow 11 guest rooms where 9 are permitted.

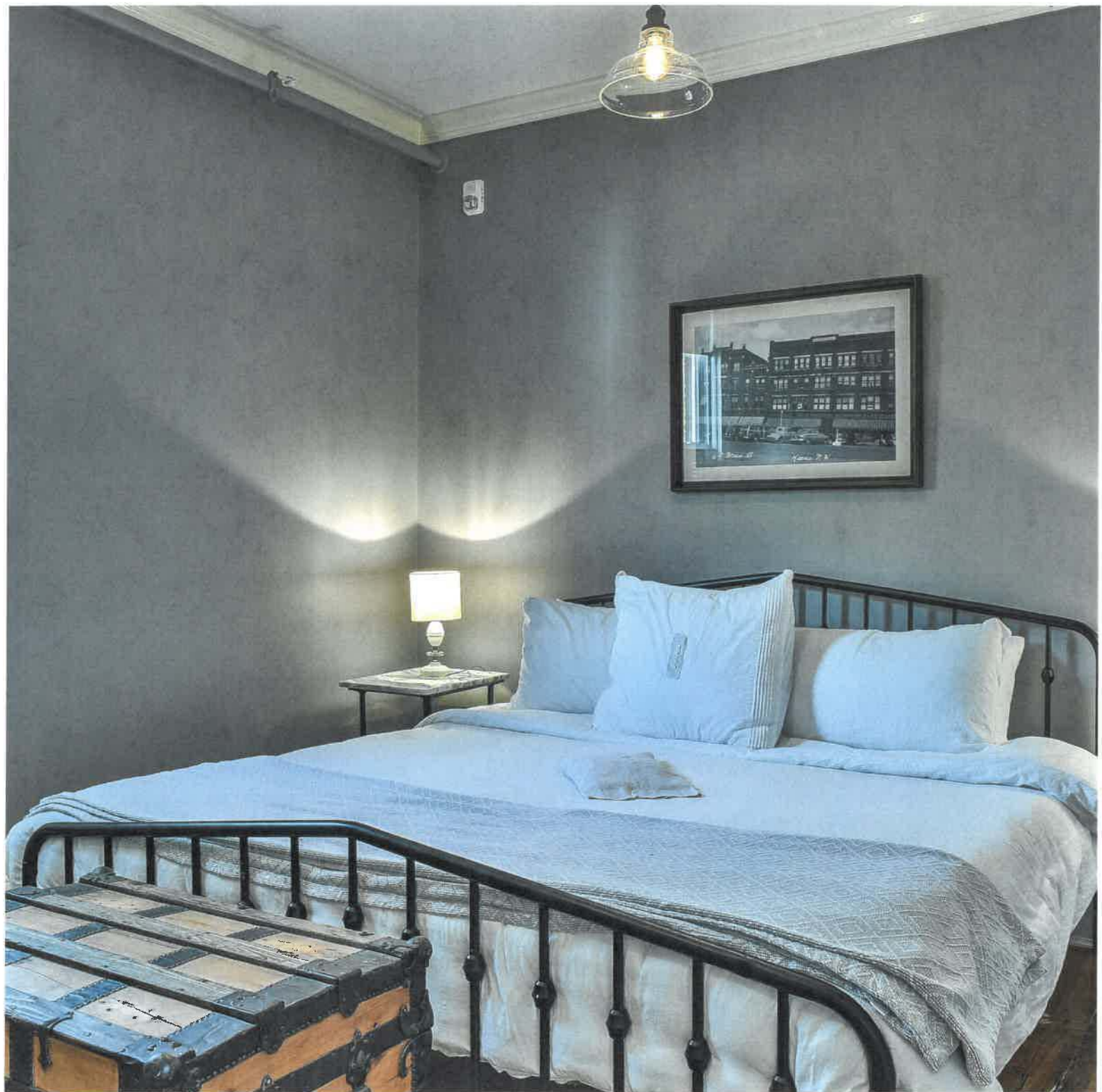














1. Granting the variance would not be contrary to the public interest because:

The property and its existing carriage house has adequate off street parking, separate city water and sewer lines, and separate 200 amp electrical service and traffic will not be materially impacted by this proposal. Therefore, there is no foreseeable threat to the general health, safety, or welfare of the general public. Furthermore, this proposal will not alter the essential character of the neighborhood. The existing structure will not be physically altered from its current exterior appearance, and in traveling up and down Washington street, one can see that many of the existing historic carriage houses have been converted to various uses in order to support their preservation and viability.

In actuality this proposal will likely support and benefit the public interest by providing the repurpose, and subsequent rehab and maintenance of this once dilapidated vacant carriage house, which is a local historic landmark. The use will also support downtown vitality by bringing guests to enjoy everything Keene has to offer. Both of these end results are in line with the objectives set forth in the city's comprehensive master plan.

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

Per the current Land Development Code, the spirit of the ordinance is as follows: "The DT-T District is intended to accommodate a variety of residential, open space, and other low intensity uses in a mixed-use environment of attached and detached structures. Development within the DT-T District is intended to complement and transition into existing residential neighborhoods adjacent to downtown Keene." A bed and Breakfast is an allowed use in the district, however it caps out at 9 guest rooms. This affirms that a bed and breakfast use is within the spirit of the ordinance, given that it's allowed. The addition of the carriage house guest rooms and operators quarters certainly supports the "use of attached and detached structures" as well as "complement (ing) the transition into existing residential neighborhoods adjacent to downtown Keene" The other permitted uses in the district are as follows: offices, multi and single family dwelling units, duplexes, funeral home, and telecommunication facility. Upon examination of those uses, it is clear that the use which is being proposed has the least impact and is more aligned with the spirit of the ordinance; as it simply adds to the same purposeful and allowed use that already exists on the property.

3. Granting the variance would do substantial justice because:

The general question here is whether or not the proposed use enables the just and reasonable use of the property without causing undue or unjust strain on abutters and the entire community. In other words, does denial of the application create a loss to the individual greater than the gain to the general public? This proposal certainly supports the needs and reasonable use of the property

and its existing structures. It's worth noting that when applying the current Land Development Code, there are not any conforming uses for the existing carriage house. The applicant believes that denial of the proposal has no foreseeable gain to the public. To the contrary, the small expansion of this allowed use, supports both the intent of the Land Development Code as well as the intent of the current City of Keene comprehensive master plan. As stated previously, guests will likely benefit the public by supporting downtown merchants while discovering our wonderful community; while having no evident adverse impact on the community or surrounding properties.

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

Granting the variance will not diminish surrounding property values. The carriage house on this property is truly one of a kind. Just a few years ago this entire property was vacant and in disrepair. The Carriage house was on the brink of being demolished, as the previous potential buyers had contemplated tearing it down. The purposeful reuse of the historic property has allowed for extensive renovation and restoration. The use of the carriage house will ensure its remaining renovations and future maintenance are sustainable. This preservation and use will likely add value to abutters and ultimately the entire downtown community.

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 conditions and structures of this property are unique in that they have existed for 170 +/- years, and therefore were not constructed with today's ordinances in mind. The property has a main building circa 1853, consisting of 3800 +/- square feet. There is also a circa 1853 two story carriage house consisting of 1400 +/- square feet and a full basement. Denial of this variance would effectively disallow reasonable use of the carriage house, thus creating a hardship. The ordinance provision allows for the use, but only up to nine guest rooms. The main building currently has 9 sleeping rooms (8 guest and an operators quarters) and an operators kitchen and a common parlor. That is the same number of rooms the main building had prior to its extensive renovations, and its likely the number of rooms the building had in its original form. I interpret the 9 guest room limit set forth in the code as a means of preventing overcrowding within a building. This is not applicable to this specific property given the existing size and layout of the structures, along with the adequate parking on site.

ii. The proposed use is a reasonable one because:

The proposed use is a reasonable expansion of an already existing and allowed use, in which said

expansion is comfortably supported by the property and its existing infrastructure. As previously stated, the use also is supported by intent of the Land Use Code, as well as the current City of Keene Master Plan.

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:

If this variance is not granted, the historic carriage house cannot be reasonably used for any purpose, which creates an unfair and unnecessary hardship. The following uses are permitted:

office, multi and single family dwelling units, duplexes, funeral home, and telecommunications facility. All of those permitted uses would not only interfere with the current use of the property, they would also each require a variance for issues such as parking, lot size, etc. Given that there is no single use that would be allowed for this existing structure within its zone, this application seeks a use which seemingly has the least impact on the property, its abutters, and the community.



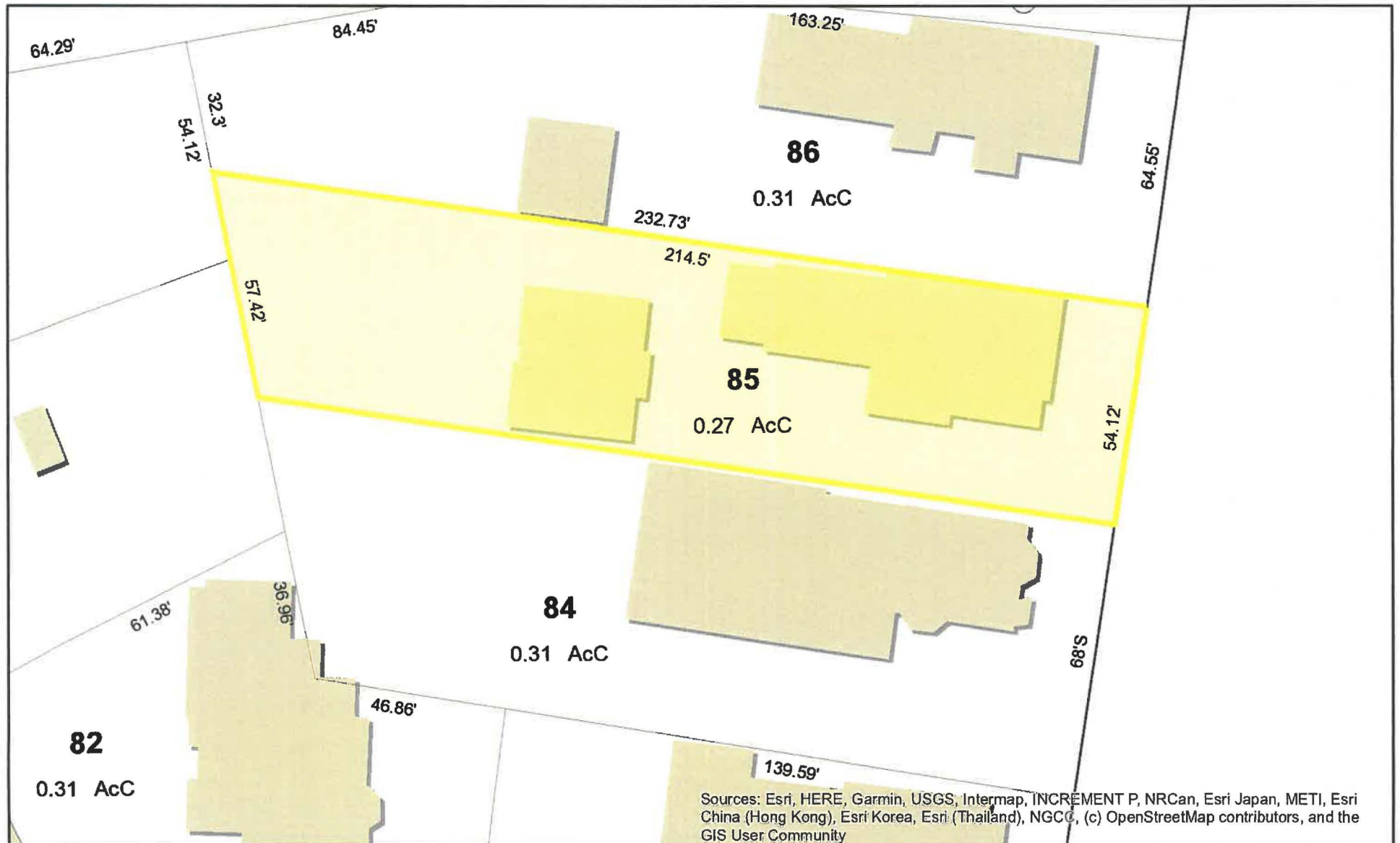
Keene, NH



September 7, 2021

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200 foot Abutters List Report

Keene, NH
September 22, 2021

Subject Property:

Parcel Number: 554-085-000
CAMA Number: 554-085-000-000-000
Property Address: 112 WASHINGTON ST.

Mailing Address: 112 WASHINGTON LLC
85 PARK AVE.
KEENE, NH 03431

Abutters:

Parcel Number: 553-001-000
CAMA Number: 553-001-000-000-000
Property Address: 124 WASHINGTON ST.

Mailing Address: EIGHTY-EIGHT LAMBERT AVENUE
NOMINEE TRUST
17 ROXBURY ST.
KEENE, NH 03431

Parcel Number: 553-002-000
CAMA Number: 553-002-000-000-000
Property Address: 132-134 WASHINGTON ST.

Mailing Address: EIGHTY-EIGHT LAMBERT AVENUE
NOMINEE TRUST
17 ROXBURY ST.
KEENE, NH 03431

Parcel Number: 553-014-000
CAMA Number: 553-014-000-000-000
Property Address: 127 WASHINGTON ST.

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

Parcel Number: 553-093-000
CAMA Number: 553-093-000-000-000
Property Address: 117 WASHINGTON ST.

Mailing Address: TD PROPERTIES OF KEENE LLC
PO BOX 768
KEENE, NH 03431

Parcel Number: 553-094-000
CAMA Number: 553-094-000-000-000
Property Address: 109 WASHINGTON ST.

Mailing Address: MJMC PROPERTIES LLC
109 WASHINGTON ST. APT 3
KEENE, NH 03431-3141

Parcel Number: 553-095-000
CAMA Number: 553-095-000-000-000
Property Address: 0 WASHINGTON ST.

Mailing Address: CITY OF KEENE
3 WASHINGTON ST.
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-000-000
Property Address: 24-38 UNION ST.

Mailing Address: UNION SQUARE REALTY ASSOCIATES
PO BOX 311
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-001
Property Address: 24 UNION ST. #2-24A

Mailing Address: WING CONDOS LLC
PO BOX 34
GILSUM, NH 03448-0034

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-002
Property Address: 26 UNION ST. #1-26A

Mailing Address: FOLSOM JENNIFER W.
26 UNION ST. 1-26A
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-003
Property Address: 28 UNION ST. #1-28A

Mailing Address: CUSHING, KATHERINE RUTH
28 UNION ST. #1-28A
KEENE, NH 03431



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Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-004
Property Address: 30 UNION ST. #1-30A

Mailing Address: DEVINE, THOMAS F. TAMARELLE, LILA M.
49 BENNETT RD.
ALSTEAD, NH 03602

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-005
Property Address: 32 UNION ST. #1-32A

Mailing Address: STEVENS, TINA L.
32 UNION ST. #1-32A
KEENE, NH 03431-3043

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-006
Property Address: 34 UNION ST. #1-34A

Mailing Address: VIEL, JACOB A.
34 UNION ST. #1-34A
KEENE, NH 03431-3043

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-007
Property Address: 36 UNION ST. #1-36A

Mailing Address: KETCHAM PETER H.
36 UNION ST. 1-36A
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00A-008
Property Address: 38 UNION ST. #1-38A

Mailing Address: WALLER, SANDRA B.
38 UNION ST. 1-38A
KEENE, NH 03431-3043

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00B-009
Property Address: 24 UNION ST. #1-24B

Mailing Address: POWLEY, SHEILA M.
24 UNION ST. #1-24B
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00B-010
Property Address: 26 UNION ST. #2-26B

Mailing Address: KNOWLES, CRYSTAL F.
26 UNION ST. #2-26B
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00B-011
Property Address: 28 UNION ST. #2-28B

Mailing Address: EARL, AMANDA ASHLEY
28 UNION ST. #2-28B
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00B-012
Property Address: 30 UNION ST. #2-30B

Mailing Address: FOLSOM CORINNE R.
30 UNION ST. 2-30B
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00B-013
Property Address: 32 UNION ST. #2-32B

Mailing Address: TORSKA, MICHAEL E.
32 UNION ST. #2-32B
KEENE, NH 03431

Parcel Number: 554-075-000
CAMA Number: 554-075-000-00B-014
Property Address: 34 UNION ST. #2-34B

Mailing Address: SILK TONI S.
34 UNION ST. #2-34B
KEENE, NH 03431-3043

Parcel Number: 554-076-000
CAMA Number: 554-076-000-000-000
Property Address: 44 UNION ST.

Mailing Address: LEE, BRIAN
44 UNION ST.
KEENE, NH 03431



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Parcel Number: 554-077-000
CAMA Number: 554-077-000-000-000
Property Address: 41 PLEASANT ST.

Mailing Address: MCGUIRK, DAVID MICHAEL
41 PLEASANT ST.
KEENE, NH 03431

Parcel Number: 554-078-000
CAMA Number: 554-078-000-000-000
Property Address: 33 PLEASANT ST.

Mailing Address: LCW INVESTMENTS LLC
PO BOX 466
GREENVILLE, NH 03048

Parcel Number: 554-079-000
CAMA Number: 554-079-000-000-000
Property Address: 23 PLEASANT ST.

Mailing Address: JOHNSON, CRAIG N. JOHNSON,
TIFFANY D.
23 PLEASANT ST.
KEENE, NH 03431

Parcel Number: 554-080-000
CAMA Number: 554-080-000-000-000
Property Address: 15 PLEASANT ST.

Mailing Address: WILLIAMS BRIAN E.
PO BOX 1293
KEENE, NH 03431

Parcel Number: 554-081-000
CAMA Number: 554-081-000-000-000
Property Address: 27 MECHANIC ST.

Mailing Address: ACOUSTIC STRINGS OF NEW ENGLAND
LLC
27 MECHANIC ST.
KEENE, NH 03431-3446

Parcel Number: 554-082-000
CAMA Number: 554-082-000-000-000
Property Address: 17-23 MECHANIC ST.

Mailing Address: GREENWALD 2 LLC
PO BOX 361
KEENE, NH 03431

Parcel Number: 554-083-000
CAMA Number: 554-083-000-000-000
Property Address: 100 WASHINGTON ST.

Mailing Address: BRAYSHAW ASSET MANAGEMENT LLC
4 APPALOOSA RUN
CONCORD, NH 03301

Parcel Number: 554-084-000
CAMA Number: 554-084-000-000-000
Property Address: 106 WASHINGTON ST.

Mailing Address: LLB ASSOCIATES OF KEENE
PO BOX 472
KEENE, NH 03431

Parcel Number: 554-086-000
CAMA Number: 554-086-000-000-000
Property Address: 118 WASHINGTON ST.

Mailing Address: KUMOREK STEPHEN P. KUMOREK
DONNA L.
16 HOMESTEAD AVE.
SWANZEY, NH 03446

Parcel Number: 554-087-000
CAMA Number: 554-087-000-000-000
Property Address: 37 MECHANIC ST.

Mailing Address: COMMUNITY KITCHEN INC THE
PO BOX 1315
KEENE, NH 03431

Parcel Number: 554-088-000
CAMA Number: 554-088-000-000-000
Property Address: 20 PLEASANT ST.

Mailing Address: VANLAARHOVEN, JEFFREY
20 PLEASANT ST.
KEENE, NH 03431

Parcel Number: 568-072-000
CAMA Number: 568-072-000-000-000
Property Address: 82 WASHINGTON ST.

Mailing Address: ZURMUHLEN DEBORAH A. REV. TRUST
82 WASHINGTON ST.
KEENE, NH 03431



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