

City of Keene  
New Hampshire

ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES

Monday, February 06, 2017

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair  
Jeffrey Stevens, Vice Chair  
Elena Brander  
Josh Gorman  
John Rab, Alternate

Staff Present:

Gary Schneider, Plans Examiner

Members Not Present:

Louise Zerba, Alternate

**I. Introduction of Board Members**

Chair Pro-Tem Stout called the meeting to order at 6:30 PM and introduced members of the Board.

**II. Minutes of the Previous Meeting**

Vice Chair Stevens made a motion to accept the minutes from January 7, 2017 with the following changes; Mr. Rab seconded the motion, which carried unanimously.

Ms. Brander stated on page 15, first paragraph, line 2, "...considering the quasi institutional business" the words institutional business should be changed to "institutional neighbor".

Chair Stout stated the following corrections:

Page 5, paragraph 2, line 5, the ..."option move to" should be changed to option to move.

Page 4, paragraph 3, line 24, insert the words "to explain" so the sentence reads as follows: "He continued to explain the cottages were part of..."

Page 4, paragraph 3, line 30, insert the word "a" so the sentence reads as follows: "Mr. Phippard noted this caused a limitation..."

Page 4, paragraph 3, line 31, the word "was" should be changed to "were" so the sentence reads as follows: "He said on the east side of the road there were also some..."

Page 5, paragraph 2, line 9, the word "was" should be changed to "were" so the sentence reads as follows: "...precautionary slopes and limited disturbances that were permitted in those areas".

Page 5, paragraph 5, last sentence, “He continued showing the Board on the westerly side of the Health Care Building.....” should read, “He continued showing the Board the location of the retaining walls on the westerly side of the Health Care Building”.

Page 7, paragraph 3, last sentence; insert the word “the” so the sentence should read as follows: “Chair Pro-Tem Stout said the height above grade plane...”

Page 8, paragraph 2, line 7, “....Chair Pro-Tem Stout stated it seemed the three face power...” strike the word “face” so the sentence reads as follows: “Chair Pro-Tem Stout stated it seemed the three-phase power...”

Page 8, paragraph 2, line 8, change the words “three face power” to “three-phase power”.

Page 9, paragraph 3, first line, “Attorney Hanna said the unnecessary hardship special conditions was referred...” strike the word “was”.

Page 11, second paragraph, Chair Stout said there was no mention on the Chair asking if there were other members of the public that wanted to come forward to speak. The Board decided to add on page 11, second paragraph, “No members of the public chose to speak at this time”

Page 12, fifth paragraph, last sentence, strike the word “come” and add “some”.

Page 15, second paragraph, “Ms. Zerba made a motion to approve ZBA 17-01 to a permit.....” strike the word “a”.

### **III. Election of the new Chairperson and Vice-Chairperson**

A motion was made by Mr. Stevens to nominate Chair Pro-Tem Stout as Chair of the Zoning Board of Adjustment. The motion was seconded by Mr. Gorman and was unanimously approved.

A motion was made by Chair Stout to nominate Mr. Stevens as Vice Chair of the Zoning Board of Adjustment. The motion was seconded by Mr. Rab and was unanimously approved.

### **IV. Hearings**

**ZBA 17-05:/ Petitioner, Jazzlyn Hospitality II, LLC of 440 Bedford Street, Lexington, MA, represented by SVE Associates of 47 Marlboro Street, Keene, requests a Special Exception for property located at 126 Key Road, Keene, Tax Map Parcel #164-01-003, which is in the Commerce District and owned by Jazzlyn Hospitality II, LLC of 440 Bedford Street, Lexington, MA. The Petitioner requests a Special Exception to construct a hotel with a 50 foot height where 35 feet is permitted and with 3.5 stories where 2 stories are allowed per Section 102-791, Basic Zone Dimensional Requirements, footnote b of the Zoning Ordinance.**

Rob Hitchcock of SVE Associates of 47 Marlboro Street, Keene, approached the Board representing Jazzlyn Hospitality. Mr. Hitchcock began his presentation with a recap of the project. He stated in January of 2006, he presented an application to the Zoning Board of Adjustment on behalf of a different corporation. Mr. Hitchcock said that the previous corporation received an approval from the ZBA for a Special Exception and an Area Variance. He explained a Special Exception was needed then, just as it was now to

increase the building height to 50 feet of elevation. Mr. Hitchcock stated they also received a Variance of 3.5 stories to 4 stories with the previous project owner. He explained during that time they received approval of a site plan and construction had started. Mr. Hitchcock provided the Board with a copy of the site plan.

He continued to explain the current project owner at that time ran into some legal issues. Mr. Hitchcock explained the project was stalled and was basically abandoned. He stated Jazzlyn Hospitality was proposing to finish the building with the same footprint, location and size. Mr. Hitchcock noted the footings were already there as well as a foundation slab. He reiterated the proposal was to finish the project and if there was anything deficient from a construction standpoint it would be ripped up and replaced.

Mr. Hitchcock said Ashok Patel, whom represented the owners of Jazzlyn Hospitality and their architect Shirok Thacker were present to answer any questions. He continued stating they were asking for 3.5 floors and 50 feet for the Special Exception. Mr. Hitchcock said there was a question a few years ago about half floors. He continued stating that according to the definition a half floor building height did not include a basement or an attic. Mr. Hitchcock said there has never been an answer to his question and did not believe Mr. Schneider had found the answer either.

Mr. Hitchcock continued to explain the proposal was for a hotel with 99-100 rooms and was classified as a business class hotel. He went on to explain that the hotel would not include an eating facility and at most would offer a continental breakfast. Mr. Hitchcock noted the project site had municipal facilities. He continued to explain that they had a traffic study done and based on the information from the study the impact at the intersection of Key Road/Winchester Street was minimal. Mr. Hitchcock said there was a possible increase of 2-3% in traffic during the peak hours. He noted the worst case scenario reported from the traffic study was on a Saturday afternoon. Mr. Hitchcock continued to explain that during this time there was a projection of an increase of 54 additional vehicles, which was less than 1 car per minute. Mr. Hitchcock said he copied Mr. Schneider on any emails or letters received from the NH Department of Transportation, the City of Keene's Engineer and the Keene Police Department. He noted that no one had any issues with the information received from their traffic study.

Mr. Hitchcock continued stating a few days after their traffic study report was received he saw the article in The Keene Sentinel about the roundabouts at Key Road and Island Street. He stated based on the information from the article it almost rendered their traffic report as useless; explaining that it took any issue of traffic right out of the question. Mr. Hitchcock read a quote from the Donald Lussier, City of Keene's Engineer, "*The bottom line is that the proposed hotel will add a very slight delay to an already over-taxed intersection for the next couple of years until the Winchester Street project is completed (expected in 2019). The intersection improvements will more than handle the very slight increase in traffic*".

Mr. Hitchcock reviewed the four condition criteria.

- Mr. Hitchcock stated the hotel would be similar to other hotels already in the area such as the Holiday Inn Express on Key Road and the Best Western across the street on Winchester Street.
- He stated that completing the hotel would be a benefit to the tax base, employment and would look better than the partial construction site that currently existed.
- Mr. Hitchcock described that there would be no nuisance or serious hazard to vehicles or pedestrians. He explained there was parking on-site and Key Road was already established. He continued to explain that Key Road was already well traveled, and there were not a lot of pedestrians. Mr. Hitchcock said he did not see how the project would add a nuisance in any fashion.
- Mr. Hitchcock said there were adequate and appropriate facilities. He stated that they had all of the municipal services such as water, sewer, electric and parking on-site. Mr. Hitchcock stated that he thought it was a simple approval to be issued.

Chair Stout asked the Board if there were any questions for Mr. Hitchcock.

Vice Chair Stevens asked Mr. Hitchcock to clarify if the project was four levels above grade, would that meaning a four-story building. Mr. Hitchcock replied that was the ultimate proposal but was not a part of the Special Exception. Mr. Stevens asked what was granted with the previous application. Mr. Schneider replied that it was the same exact proposal that was before the Board today. Mr. Hitchcock stated the plans turned into the Planning Board for approval were the same thing except for the change in name.

Mr. Schneider explained that the project was abandoned and that after a few years of trying to negotiate with the previous owners, the City decided to revoke the building permit in accordance with the Code of Ordinances. He continued to explain that in accordance, if a building permit was revoked or expired, that in fact the Variance and the Special Exception also expire. Chair Stout asked how long ago the building permits were revoked. Mr. Schneider replied the previous applicant was before the ZBA roughly 10 years ago. Mr. Hitchcock said he believed the permits were revoked five years ago. Chair Stout asked if the Special Exception was approved was there a time frame attached. Mr. Schneider replied the applicant would need to go through the same exact procedures. He noted the applicant would need to go before the Planning Board and would also need to renew their floodplain permit since that had also expired.

Chair Stout welcomed public comment. George Kaplan, owner of the Taco-Bell building located at 85 Key Road, Keene, spoke in support of the application. Mr. Kaplan said completion of the project would look a lot better than what was currently at the site and both the Variance and Special Exception were certainly reasonable.

With no further comments, Chair Stout closed the public hearing for the Board to deliberate.

Vice Chair Stevens stated that nothing had changed since the Special Exception was last passed, that it met all of the criteria and that he was in full support of the petition. Chair Stout stated he was also in favor and had optimism the project would be a good development.

A motion was made by Mr. Rab to approve ZBA 17-05. Vice Chair Stevens seconded the motion, which carried unanimously.

**ZBA 17-06:/ Petitioner, Jazzlyn Hospitality II, LLC of 440 Bedford Street, Lexington, MA, represented by SVE Associates of 47 Marlboro Street, Keene, requests a Variance for property located at 126 Key Road, Keene, Tax Map Parcel #164-01-003, which is in the Commerce District and owned by Jazzlyn Hospitality II, LLC of 440 Bedford Street, Lexington, MA. The Petitioner requests to construct a four story hotel where 3.5 stories are allowed with a Special Exception per Section 102-791, Basic Zone Dimensional Requirements, footnote b of the Zoning Ordinance.**

Mr. Schneider explained that the notation of the “footnote b” only pertained to the Special Exception and not the Variance.

Rob Hitchcock, SVE Associates, in Keene, approached the Board on behalf of Jazzlyn Hospitality. Mr. Hitchcock explained they were seeking a Variance to go to 3.5 floors to 4 floors. He noted as he explained earlier no one knew what 3.5 floors were. Mr. Hitchcock said they got permission through a Special Exception to build to 50 feet. He asked if they were given permission to build a hotel with 3 or 3.5 floors would it make a difference to the public if they built to four floors. He explained he suggested it would not make a difference to the public.

Mr. Hitchcock reviewed the criteria.

- He said granting the Variance of a 4-story hotel makes the economics work and there would be a significant aesthetic improvement over the "eye sore" already on the site.
- Mr. Hitchcock defaulted to Attorney Neil Berkson’s letter from 10 years ago that stated the use cannot be contrary to the spirit of the Ordinance if the 4 stories are constructed within the 50 foot-height limitation.
- He said granting the variance would do substantial justice because the owners have an investment and would make the project work. He continued to explain it also cleaned the project up for everyone and would get rid of the “eye sore”. The hotel would result in additional employment for the community; generate additional tax revenue.
- Mr. Hitchcock said if the Variance was granted the value of the surrounding properties would not be diminished because as soon as the project was finished it

- would add to the tax base, help everyone in the area and was the right thing to do for everyone.
- He said the hotel cannot be built on the site without receiving a variance to go from 3.5 to 4 stories due to the square footage of the site. Therefore, the condition was met.
  - The proposed use is a reasonable one because it was approved before. Therefore, Mr. Hitchcock said it was a reasonable one.
  - Mr. Hitchcock said the project does not fly as nearly as well if it was three floors only because there was no such thing as 3.5 floors. He asked what the harm of 4 floors would be. He continued 3.5 floors would cause the owner unnecessary hardship because the owner could not build a cost effective project with a cost effective return.
  - Mr. Hitchcock said the denial of the Variance would harm the land owner whereas denial would not harm the public. Therefore, he said denial serves no benefit to anyone.

Mr. Rab asked if the stair towers were built for 4 stories. Mr. Hitchcock replied they were intended and designed for 4 stories.

Mr. Stout said if there was no such thing as 3.5 stories why was it written into the Zoning Code. Mr. Hitchcock said they asked the same questions 10 years ago and no one has answered since. Mr. Schneider replied he had no idea.

Mr. Schneider read the definition of a story from the Zoning Code of Ordinances, “portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Attic, habitable attic and basements are not counted as stories.

Mr. Stout said that definition did not answer the question of a ½ story. Mr. Schneider replied he had worked for the City for a number of years and has not figured that out. Mr. Stout said there was an effort to change the coding and that an important report was delivered to the Planning Board six weeks ago. He continued he was hopeful that the Board would have an opportunity to look at what the Code might do because it will have a direct effect on the ZBA. He noted it would be particularly relevant in this case before the Board today.

With no comment, Chair Stout closed the public hearing and asked the Board to discuss each criterion without a motion.

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

Mr. Gorman said not granting the Variance would be contrary to the public interest. He said the obvious answer would be to proceed with the project. Chair Stout said he would also agree.

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

Chair Stout said the spirit of the Ordinance was followed. Vice Chair Stevens said he fully agreed.

*Granting the Variance would do substantial justice:*

Chair Stout said he thought it would be a great benefit to the people of Keene to see the property in a developed state. He continued to explain the evidence offered during the meeting would indicate a vast improvement of what was currently at the location. He continued to explain what might be seen could be an incredible important justice for the people of Keene.

*If the Variance were granted, the values of the surrounding properties would not be diminished: as stated multiple times add to tax base and help everyone and do for everyone.*

Vice Chair Stevens said it would improve the value of the surrounding properties. He continued that it would be hard to see any diminished values because of the project.

*Unnecessary Hardship*

*E. 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:*

*ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property*

Mr. Gorman said he did not believe the ordinance was drafted to prevent hotels from going on Key Road. He explained that the request was in line with public purpose and the ordinance provision.

*x. The proposed use is a reasonable one:*

Vice Chair Stevens said a hotel asking for four floors was a reasonable request and was a standard expected from any hotel.

Ms. Brander said that 50 feet had been specified and that was not open to any interpretation where 3.5 stories could be ambiguous depending on how it was defined. She continued to explain based on this information it was a reasonable request from her perspective.

Vice Chair Stevens made a motion to approve ZBA 17-06, which was seconded by Mr. Gorman.

Chair Stout went over the Findings of Fact:

*Granting the Variance would not be contrary to the public interest:* Granted 5-0.

*If the Variance were granted, the spirit of the Ordinance would be observed:* Granted 5-0.

*Granting the Variance would do substantial justice:* Granted 5-0

*If the Variance were granted, the values of the surrounding properties would not be diminished:* Granted 5-0.

*Unnecessary Hardship*

*E. 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:*

*ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:* Granted 5-0.

*x. The proposed use is a reasonable one:* Granted 5-0.

On a vote of 5-0, The Zoning Board of Adjustment approved ZBA 17-06.

**V. Adjournment**

Hearing no further business, Chair Stout adjourned the meeting at 7:12 PM.  
Respectfully submitted by,

Jennifer Clark, Minute Taker