

**City of Keene**  
**New Hampshire**

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

**Monday, November 6, 2017**

**6:30 PM**

**Council Chambers**

**Members Present:**

Nathaniel Stout, Chair  
Jeffrey Stevens, Vice Chair  
John Rab, Alternate  
Josh Gorman  
Thomas Plenda

**Staff Present:**

Gary Schneider, Plans Examiner  
John Rogers, Zoning Administrator

**Members Not Present:**

Louise Zerba, Alternate

**I. Introduction of Board Members**

Chair Stout called the meeting to order at 6:30 PM, introduced members of the Board and welcomed everyone to the meeting.

**II. Minutes of the Previous Meeting**

Chair Stout noted the following corrections to the minutes of October 2, 2017:

- On page 10, fourth paragraph, the reference to Chair Stout should be changed to Chair Pro Tem Stevens.
- On page 12, fourth paragraph, the reference to Chair Stout should be changed to Chair Pro Tem Stevens.
- On page 13, second paragraph, the reference to Chair Stout should be changed to Chair Pro Tem Stevens.

Mr. Rab made a motion to accept the minutes from October 2, 2017 as amended. The motion was seconded by Vice Chair Stevens, which carried unanimously.

**IV. Hearings**

**Continued ZBA 14-12: Petitioner, Leah LaRock requests an extension to decision of approval with conditions dated July 6, 2015 for property located at 0 Daniels Hill Rd., which is in the Rural Zone. This approval was to permit the building of a single family dwelling on a lot with 1.76 acres where a five acre minimum lot size is required per Table 102-791, Basic Zone Dimensional Requirements of the Zoning Code.**

Mr. Schneider began the hearing by explaining that typically Variances are granted for two years and the approval for this application was granted by the ZBA a few years ago. He noted that the approval for this application did run out in July 2017 and the request of an extension application was postponed several times. Mr. Schneider explained that the hearing's postponement was due to the lack of a five member Board and there was one particular night where the weather was an issue for the applicant. Chair Stout asked if the Board would need to go through all of the criteria or if they could approve or deny application with a vote. Mr. Schneider replied that the Board has the opportunity to ask any questions of the applicant and then take a vote on the request for an extension. In addition, he suggested if the request is approved, that the Board put a time limit on the approval.

Chair Stout welcomed Leah LaRock, 1041 Route 63, Spofford, NH and Robert Hodgkins, 1041 Route 63, Spofford, NH. Ms. LaRock stated that they would like to develop a single family dwelling on the property this spring. Chair Stout asked the City staff for more detail on the requested Variance. Mr. Schneider stated that the Notice of Decision was dated July 16, 2015, was a request for 0 Daniels Hill Road on a lot with less than 5 acres and assigned three conditions. The first of which was prior to the granting of the building permit, the owner will install a 6-12 inch berm across the first Woods Road near Daniels Hill Road and also across the second Woods Road that is located easterly toward Route 9 over the existing open area. Mr. Schneider said in regards to the berm located easterly across the second Woods Road, this berm must extend to the existing berm on the lot. The second condition was that the owner maintains a vegetative buffer for approximately 20 feet along the road frontage westerly of the driveway. It was noted that the buffer does not have to be opaque but shall have a density similar to the existing vegetation. Mr. Schneider stated that the buffer may include new trees or the existing trees. The third condition was the Mr. Robert Hitchcock of SVE Associates, will verify that development of the property does not include an increase of the runoff onto the abutting property to the east.

Chair Stout asked the applicant if there was any reason why they would not be able to meet the conditions of the Variance. Ms. LaRock replied no. Chair Stout asked the applicant why there was a delay in developing the property. Mr. Hodgkins replied that it was due to finances. Mr. Rab asked the applicant if they have started any site work. Mr. Hodgkins replied that site work has yet to start because they wanted to have the approval of the ZBA before proceeding. He stated that they hoped to install a well at the property this fall.

Chair Stout asked the applicant what they thought was a reasonable time limit for a new extension. Mr. Hodgkins replied two years.

Chair Stout welcomed public comment.  
With no comment, Chair Stout closed the public hearing.

Chair Stout asked the Board if they had any questions or comments. Vice Chair Stevens stated that two years was a reasonable amount of time for an extension.

Mr. Rab made a motion to extend the approval to extend ZBA 14-12 for an additional two years. The motion was seconded by Mr. Gorman, which carried unanimously.

With a vote of 4-1, The Zoning Board of Adjustment approved ZBA 14-12. Mr. Plenda opposed.

**Motion for Rehearing 0 Grove Street Variance Requests for ZBA 17-17 and ZBA 17-15.**

Chair Stout explained that the Motion for Rehearing restricts any public comment or any comment from City staff. He stated that it was up to the Board members to discuss and to vote on a rehearing.

Mr. Stout stated that the application for a Rehearing was submitted by Medard and Dawn Kopczynski on October 25, 2017. He read the opening paragraph of the application as follows,

*“We are requesting that both ZBA 17-15 and ZBA 17-17 be reheard. This request is made due to what we believe to be mistakes in the decisions, errors in the application and notice and proper application of the standards used to test Variances and failure to require supporting information.”*

Chair Stout noted that there was much more information in the request for a Rehearing that consisted of four pages.

Mr. Rab made a Motion to Rehear ZBA 17-15 and ZBA 17-17. The motion was seconded by Vice Chair Stevens, which carried unanimously.

Vice Chair Stevens stated that if there is a defect in the notice that the applications should be reheard. Mr. Gorman asked if the Board was certain there was a defect in notice. He stated that he brought up this issue during the hearing and asked if the Board was looking at this application from a case of the High Density Zone or from the new zoning. Mr. Gorman stated that it was said to him that the Board was looking at it from the current zoning because the zoning had not yet changed. Mr. Rab stated that the fact that it was not noticed that way makes it defective and that it demands the applications be reheard.

Chair Stout said that this matter came before the Planning Board and the vote was taken to delay a decision until additional information was provided. He stated for that reason, he felt that he could vote on the matter and that when it comes before the Planning Board he will recuse himself.

With a vote of 5-0, The Zoning Board of Adjustment approved to rehear ZBA 17- 15 and ZBA 17-17.

**Continued ZBA 17-16/ Petitioners, Suzanne and David Boisvert of 35 Keene Rd., Winchester, requests a Variance for property located at 361 Court St., Tax Map Parcel #008-02-001, owned by Prospect Hill Home of 361 Court St. the Petitioners requests an Enlargement of a Nonconforming Use to allow double occupancy in rooms that meet state licensing requirements HeP807 Chapter, from 17 to 26 beds.**

Mr. Rab recused himself from the hearing.

Chair Stout explained that this case has been postponed until the December 4, 2017 meeting. Mr. Rogers clarified that the City received a request from the applicant because of the four member Board seated at tonight's meeting. He stated that the City does believe that they will be able to provide a five member Board for the December meeting.

**ZBA 17-18/ Petitioners, Henry and Carol Spindler of 64 Peg Shop Rd., represented by Wendy Pelletier, Cardinal Surveying and Land Planning of 463 Washington St., requests a Variance for property located at 64 Peg Shop Rd., which is in the Rural District and is owned by the Petitioners. The Petitioners request a Variance from the 50 foot front setback to 45 feet per Section 102-791 of the Zoning Ordinance.**

Mr. Schneider referred to a map indicating the location of the property. He indicated that the line running from the bottom of the page to the top of the page is Jordan Road and the bottom of the page is the intersection of Jordan Road and Peg Shop Road. Mr. Schneider noted that the far end of Peg Shop Road is a dead end road.

The property has two structures on the property with one located at 60 Peg Shop Road and the other located at 64 Peg Shop Road. Mr. Schneider noted that both properties sit close to the road. He stated that the proposed garage would be to the right side of 64 Peg Shop Road.

Mr. Rab asked Mr. Schneider to clarify the green area verses the yellow area displayed on the map. Mr. Schneider replied that the yellow demonstrated the location of the 200 foot abutters and green area on the map is the property.

Chair Stout recognized Wendy Pelletier of Cardinal Surveying and Land Planning, 463 Washington Street, Keene. She referred to a survey that was conducted by SVE Associates in the 2005. Ms. Pelletier explained that the property was a 26 acre parcel and the proposed garage would be located next to the small office building that was located on the property. Ms. Pelletier said the proposal is for a 45 foot setback due to the 50 foot setback being located in a wetland area. She explained that the owners would have to squish the garage in that area to meet the wetland buffer and could not meet all of the setback requirements.

She provided the Board with an aerial view of Peg Shop Road and indicated the location of the existing house where the proposed garage would be located. Ms. Pelletier stated that the aerial view showed how close the houses are along the road and how some of the other houses on Peg Shop Road are over the setback line. She stated that the request was for 5 feet and that it would not be a huge impact on the neighborhood. Ms. Pelletier stated that the home owner's intent is to keep the setting natural and to not be intrusive. She stated that the architect who drafted the design of the garage was present to answer additional questions. Mr. Rab asked if the current buildings on the property cross the setback line. Ms. Pelletier replied in the affirmative. Mr. Gorman stated that it was his impression that these buildings were old. Ms. Pelletier stated that these buildings date back to the 1800's. She noted that work has been done to preserve these buildings. Mr. Gorman asked if the former schoolhouse was used as an office. Ms. Pelletier replied in the affirmative.

Mr. Plenda asked if the need was to move the proposed building five feet toward the setback area in order to preserve to the wetlands area. Ms. Pelletier referred to the map indicating that is a no

disturbance zone. Mr. Plenda asked how this area Ms. Pelletier referred to as wetland was designated. Ms. Pelletier replied that is flagged by a wetland scientist. Mr. Schneider stated that the zoning code does have a specific section that if there is a preexisting building that is already violating setbacks that the owner may be allowed to add onto that preexisting building, provided that the structure does not come any closer to the property line than what the existing structure does. He said that the reason this application does not apply is because the proposal is for a detached building. Mr. Schneider said if the garage was attached to the building, the applicant could qualify for the 50% Rule. Mr. Schneider explained that according to the 50% Rule an applicant is allowed to extend onto a preexisting condition provided that the building does not come any closer to the property line but cannot exceed 50% of the square footage of what the existing structure violates. He stated that the reason why this application does not qualify is because this is a separate building and not adding onto an existing building. Mr. Gorman asked if the old school house was already in setback area almost in its entirety. Mr. Schneider replied in the affirmative. Mr. Gorman stated that if the Board denied the application for a 45 foot setback, the home owners could feasibly put the garage next to the school house that would be even closer to the road. Mr. Schneider replied in the affirmative.

Ms. Pelletier reviewed the criteria:

- Ms. Pelletier said that granting the Variance would not be contrary to the public interest because the proposed garage will be approximately 22 feet behind the existing accessory building that it will serve. She stated that the original structures on the lot date to 1778 and are situated very close to the road. The design and location of the garage will be in keeping with other structures on the lot and in the neighborhood. Chair Stout pointed out that by constructing the detached garage, the historic buildings will not be affected in any way. In addition, Mr. Rab stated that the applicant was also avoiding building another building within 10 feet of the road if it was attached to the schoolhouse. Ms. Pelletier noted that there is a lot of ledge and steep on the property and moving the location of the garage would be unsightly. Mr. Plenda asked how it was determined there would be no harm to the public interest if the Variance was granted. Ms. Pelletier replied that the public's interest is the character of the neighborhood and that zoning was protecting the wetland area.
- Ms. Pelletier stated that if the Variance were granted, the spirit of the ordinance would be observed because the rural character of the neighborhood will not be affected. There are several very old homes on this road that sit close to road. Chair Stout asked Ms. Pelletier how many other structures are located in the setback in the area. Ms. Pelletier replied that just within 200 feet there are three located in the setback area. She noted some of the new homes down the road are set way back but the homes located in the setback area are older homes.
- Ms. Pelletier stated that granting the Variance would do substantial justice because of the other structures and wetlands on the lot; there is no other suitable location for the garage. Every effort has been made to preserve the physical features of the site and to adhere as closely as possible to the zoning ordinance.
- Ms. Pelletier said that if the Variance were granted, the values of the surrounding properties would not be diminished because the position and design of the proposed garage will be in keeping with the architecture of the existing buildings and rural

character of the neighborhood. The garage will give extra storage for yard equipment and additional parking, therefore eliminating vehicles and equipment being stored outside. Mr. Plenda asked Ms. Pelletier to indicate the area where the wetlands are on the site. Ms. Pelletier indicated the area, emphasizing that there is 30 foot setback from the wetlands because it was an existing lot.

- Ms. Pelletier said that no fair and substantial relationship exists between the general public purposes of the ordinance provision because the garage will be setback as far as possible, leaving existing vegetation surrounding it to screen it from the road. The character of the neighborhood will not be impacted by the placement of the garage. Mr. Gorman stated that in his opinion, the location of the existing structure is site specific in terms of a hardship.
- Ms. Pelletier stated that the proposed use is a reasonable one because being that this is a rural area, detached out buildings to support the main dwelling are not unusual.
- Ms. Pelletier stated that the existing buildings on the lot date back to 1778 and are located very close to the road. The lot has a great deal of wetlands and ledge. Adhering to both the wetland buffer and the front setback leaves a very small area to place the garage which will house a vehicle and lawn equipment.

Katie Sutherland, an architect with Katie Cassidy Sutherland Architects PC, 310 Marlboro Street, introduced the owner of the property, Henry Spindler. Ms. Sutherland presented the Board with an architectural plan that would provide a view of the setbacks. In addition, she provided the Board with a copy of the elevation of the building and the building plan. She referred to the building plan to show the location of the existing old schoolhouse that is used as an office. Ms. Sutherland noted how close the schoolhouse was to the property line. She indicated the location of the existing paved driveway that the owners would like to extend up to the proposed garage location.

Ms. Sutherland indicated the location of the 30 foot buffer zone from the wetlands and noted that they were trying to respect that buffer zone. The next location she indicated was the 50 foot building setback area. She explained that they worked diligently to locate the garage in a place where it respects the setbacks and would also avoid the ledge. The elevations are very simple and will take the architectural hues from the buildings currently on site. She described the buildings on site as simple brick buildings with a pitched roof with sections of clapboard. Ms. Sutherland noted that they replicated the same roof pitch to be consistent with the current character. In addition, the same opaque stain colors will be used on the proposed garage. Ms. Sutherland noted that the proposed garage would not be in plain view because of the tree line they will keep. Mr. Plenda asked for the dimensions of the garage. Ms. Sutherland replied that the garage would be 22 feet wide by 24 feet deep and would fit two cars.

Chair Stout welcomed public comment.

With no comment, Chair Stout closed the public hearing.

Mr. Rab made a motion to approve ZBA 17-18. The motion was seconded by Mr. Gorman, which carried unanimously.

The Board reviewed the criteria.

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

Vice Chair Stevens stated that it would not be against the public's interest at all. He said that the building itself is reasonable and where it is situated is clearly about the only spot it could be constructed. He explained that by having the proposed garage encroach on the setback is a much better option than having it encroach on the wetlands. Mr. Rab stated that by putting the garage in the proposed location was a much better option than putting it 10 feet from the road.

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

Chair Stout stated that in passing this property, this neighborhood was a very attractive part of Keene and it seemed this particular property was a neat property. He stated that he did not see how this additional building, as small as it is, can detract in any way and that it was designed in a sensitive way. Mr. Gorman stated that in his opinion five feet would not make a significant difference.

*Granting the Variance would do substantial justice:*

Chair Stout stated without a Variance, the applicant would be forced to attach the garage and that seemed this was an obvious advantage to the City. He explained this was due to the fact that the setback would be violated more severely if other alternatives were pursued.

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

Vice Chair Stevens stated that he cannot see property values varying in any direction. Mr. Rab stated that the property values would be diminished if the garage was built next to the road. Chair Stout said that the credit was to the applicant for the route they are taking.

*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. Rab said that it was a unique property given the wetlands and the ledge situation on the property which makes it unique and there is no reasonable relationship between that provisions in what the applicant is trying to do.

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

Mr. Rab stated that in his opinion it was absolutely reasonable. Mr. Gorman stated that it was common to have a garage on a property. Chair Stout agreed with Mr. Gorman.

*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.

With a vote of 5-0, The Zoning Board of Adjustment approved ZBA 17-18.

**V. New Business:**

Mr. Rogers stated that at the next ZBA meeting the Board would be reviewing the Rules of Procedure. He explained that there was one area added to the Rules of Procedure that deals with drawing an application. Mr. Rogers explained that City staff is currently researching the appropriate language and how other municipalities handle drawing applications. In addition, there would also be a section added for a procedure of dealing with the withdrawal of an application. Chair Stout asked if the Rules of Procedure are voted on by the Board to become official. Mr. Rogers replied in the affirmative.

Chair Stout asked if there was any new information on new Board members for the ZBA. Mr. Rogers replied that he did not have any new information at this time. He suggested members of the ZBA actively recruit new members. Chair Stout reported that Vice Chair Stevens wrote a letter to Mayor Lane asking for the Mayor's help in recruiting new members. Mr. Schneider suggested ZBA members inform City staff in a timely manner if there is a conflict with a meeting. He stated that this would give City staff time to find an alternate.

**VI. Communications and Miscellaneous**

None

**VII. Adjournment**

Hearing no further business, Chair Stout adjourned the meeting at 7: 23 PM.

Respectfully submitted by,  
Jennifer Clark, Minute Taker