

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 6, 2019

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Jane Taylor, Vice Chair
Joshua Greenwald
Joseph Hoppock
Michael Remy, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Michael Welsh
Louise Zerba, Alternate

I. Introduction

Chair Gorman called the meeting to order at 6:30 PM, welcomed the public, explained the rules of procedure, and introduced the Board members.

II. Minutes of the Previous Meeting – April 1, 2019

Mr. Hoppock noted a correction to the minutes. On page seven, the word *reached* should be eliminated from the following sentence: “Mr. Hoppock stated by looking at the purpose of the Ordinance, which he thinks is to prevent visual clutter and manage safety of signs so that people are not inundated with too much information too fast while driving down the road, he does not see how that overall purpose is at all impaired by this specific *reached* application of that Ordinance to this property.”

Vice Chair Taylor moved to approve the minutes of April 1, 2019 as amended, which Mr. Hoppock seconded and the Zoning Board of Adjustment carried unanimously.

III. Unfinished Business

IV. Hearings

ZBA 19-06:/ Petitioner, Island Bay, LLC of 674 West St., Keene, owned by John Baybutt and Fred Baybutt of 674 West St., Keene, requests a Variance for property located at 41 Avon St., Keene, Tax Map Parcel #578-001-000-000, which is in the Commerce District. The Petitioner requests a Variance to allow a residential single-family use within the Commerce District where it is not a permitted use per Section 102-542, Permitted Uses, of the Zoning Ordinance.

Chair Gorman introduced the application and requested staff comments. Mr. Rogers used maps to demonstrate the location of this property at 41 Avon Street, off West Street just before the Kohls plaza; the property is adjacent to Antioch University New England (AUNE). This small brick home is located in the Commerce District. The applicant seeks a Variance to allow a single family use within the Commerce District where it is not a permitted use. This building was originally a small brick home, but the current use is as an office, with parking at the rear. The property was once a larger parcel that was subdivided in 1978, leaving the lot currently just under 9,000 sf, which today is considered a substandard lot in this district (15,000 sf minimum required).

Vice Chair Taylor recalled that before the adjacent building was taken over by AUNE, it was the Sprague & Carlton furniture factory. Mr. Rogers replied in the affirmative stating the application demonstrates the adjacent home was once used as a furniture showroom. Otherwise, since 1978, it has been used as an office space according to City records.

Chair Gorman recognized the applicant, Fred Baybutt of 674 West Street, Keene. Mr. Baybutt commended the Board's work; he was once a Zoning Board member. To demonstrate that this was always a house, Mr. Baybutt quoted the historian Phil Faulkner from a Keene Sentinel article on November 14, 2006:

Avon Street Building Began as West Street Home.

In February 1928, John Binney of New Ipswich bought 15 acres of lowland on the road leading from Main Street in Keene to Ash Swamp. Later that year he built a small brick house on the same road, which is now called West Street. Binney was appointed the 11th deacon of the Congregational Church in 1832. Henceforth, this house was commonly called the Deacon Binney Place. The Binney's lived there until 1872. In 1910 the house was moved to Norton Street at the south end of Avon Street near the railroad tracks. Sprague & Carlton bought the house in 1940 and 11 years later moved it to its present location at 41 Avon Street. The house was restored and used as a public display area for furniture designed and manufactured in the factory across the street now owned by Antioch University New England. In 1963, the house was converted to sales executive offices.

Mr. Baybutt addressed the Variance criteria.

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

Mr. Baybutt said granting the Variance is not contrary to public interest because every historical reference to the building calls it a *house*. He cited the floorplans, which demonstrate it was designed and built as a house. He also cited the Historic Homes of Keene list (refer to the meeting packet), which lists the Binney House. The house was designed and built as a residence in 1828 and has been residential for well over a century. The house was moved to 41 Avon Street and in the 1980s was outfitted by Sprague & Carlton as a show home for furniture. A review of the City of Keene "Street Files" shows no evidence the property was ever rezoned as commerce. The house was moved into the Commerce District as a house.

Upon Mr. Hoppock's request, Mr. Rogers confirmed the house was moved in 1951 to its current location at 41 Avon Street.

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

Mr. Baybutt said granting this Variance would observe the spirit of the ordinance because the structure was designed and constructed as a residence and it is located within 500' of residential neighborhoods and the bike path to the east and south, respectively.

3) *Granting the variance would do substantial justice because:*

Mr. Baybutt said the Board should refer to his response to the first criteria.

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

Mr. Baybutt said granting the Variance would not diminish the surrounding properties because the building is located within 500' of a high density residential neighborhood. AUNE abuts the home directly and could potentially use the property to house visitors.

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. Baybutt reiterated that the house was designed and built as a residence. The property is unsuitable for the Commerce Zone due to its residential design and construction. It has been very difficult to lease or sell as commercial given the residential quality of the building. Furthermore, with it being on the Historic Registry, there were no plans to demolish the interior to better suit a commercial use. Unfortunately, the house-like layout of the building, while charming to some, does not appeal to the mass small businesses. The owners have been approached to demolish the house for warehouse space, which would not be ideal for the City.

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

Mr. Baybutt said this proposed use reflects more than a century's precedence of the property with a residential use (refer to the meeting packet for a photo of when the home looked like a boarding house).

- 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. Baybutt said the property cannot conform strictly to the ordinance because it was designed and built and was designated as part of the National Historic Registry as a residence. As is, the property does not reasonably fit a commercial use and should be allowed the residential use it was originally built for. Mr. Baybutt continued saying he knows financial hardship is not an acceptable reason to grant a Variance, but he has spoken with many realtors who say the building would be great as a house, but not as a commercial building. He thanked the Board for their time and welcomed questions.

Vice Chair Taylor asked if Mr. Baybutt and his company ever used the building as an office. Mr. Baybutt confirmed that many years ago Fairbanks Lock & Key owned it. More specifically, Vice Chair Taylor asked the most recent use of the building. Mr. Baybutt said it was most recently leased to The Simple Nest but there was insufficient foot traffic and they moved to Main Street. Vice Chair Taylor asked if the interior is configured as a single family residence; Mr. Baybutt confirmed there is a functioning kitchen and bathroom. Mr. Baybutt then confirmed there is space for approximately 15 cars behind the building and he believes four cars are allowed on the abutting sidewalk frontage; the Board was unaware street parking is allowed.

Mr. Hoppock asked what the building was used for between 1952-1971. Mr. Baybutt said that is when Sprague & Carlton used it as a display room; they set it up as a nice house to demonstrate to customers. Mr. Hoppock asked if there are Historic Registry restrictions that preclude changing the interior or exterior of the structure. Mr. Baybutt was unaware of any restrictions but said it is an old building and it would probably be more cost effective to demolish than renovate it. At its previous location on West Street, the house had a sister building, which was moved to Keene Housing on Harpers Lane.

Mr. Greenwald asked how long the building has been vacant. Mr. Baybutt replied six years, though not for lack of trying. Mr. Greenwald asked if the applicant plans to continue marketing the building for sale if the Variance is granted and Mr. Baybutt replied in the affirmative. Mr. Rogers confirmed if the Variance is granted and the property is sold under its current use as an office, the new owner would have two years to apply for a building permit to request a change of use back to a single-family residence. If the Variance is granted, Mr. Baybutt can market the building as office and/or single-family residence. Mr. Greenwald asked Mr. Rogers a follow up question: if a building permit was then granted to revert to single family residence, would the home be subject to the Community Development Department ensuring it meets today's residential standards. Mr. Rogers confirmed that the home would have to meet the current building code to be granted a building permit for change of use.

Mr. Hoppock asked what happens if the new owner does not think they need a building permit. What if they move in and use each room as a typical home; why would they need a building permit. Mr. Rogers said he has not been inside the home and is unsure how accurate the floor plan is or if there are adequate living facilities, such as a full kitchen and bathroom. The building might require work for it to be a livable single family home and that work would require a building permit. If they just moved in they would be in violation of the Zoning Code that would require a permit to change the use of the property.

Chair Gorman asked the applicant if there is a functioning kitchen and bathroom. Mr. Baybutt said there is a kitchen and two water closets; there are no showers, so bathroom expansion would be a likely renovation. Mr. Remy asked if there has ever been a Variance application for this property before this one. Mr. Rogers did not find any previous applications for this property. Mr. Baybutt said he does not understand why it was never rezoned because it was always a residence that was just moved to the Commerce Zone.

Mr. Hoppock asked if all abutters were notified of this hearing and Mr. Rogers replied in the affirmative. Mr. Hoppock stated for the record that no abutters came to this hearing to speak for or against the application.

With no public comments, Chair Gorman closed the public hearing and the Board deliberated.

Mr. Greenwald stated he has been inside the building in question to market it for small business use and there was no interest because it did not feel suitable; it looks like a house and would need to be reconfigured to function as an office space, which is not cost effective. He agreed that although the property is surrounded by commerce, it is still a house with historical value, which would make tearing it down a hardship. While finances do not count as a hardship, Mr. Greenwald has shown the home to two clients with the same response that there is no use for this building as an office. He felt it made sense that it be used as a residential home despite being in the Commerce Zone.

Mr. Hoppock read from Sec. 102-541 of the Keene Zoning Ordinance: *“The intent of the commerce (COM) district is to provide an area for intense commercial development. The sites are typically accessed by vehicles, and more than one business in a building would be typical, as would shopping plazas.”* He said the list of permitted uses demonstrates intense commercial development. With that in mind, he did not see how the requested change of use from office to residential would alter the essential character of the neighborhood; this use should actually reduce congestion in the area. He did not see any public health, safety, or welfare concerns and he did not believe the change in use would devalue surrounding properties. The loss to the Baybutt’s if the Variance is denied would not be outweighed by any gain to the public. He agreed there are special conditions with the historical significance of the building and while there do not appear to be any precluding regulations, changes to the building would be unfortunate to see. It is a substandard lot today, it is near residences, and the new use would reduce traffic in the

area. He agreed with Mr. Baybutt that it was built and constructed as a home and it could be destructive to change it. For these reasons listed, Mr. Hoppock believed the application met the five criteria for Variance.

Vice Chair Taylor stated she thinks the application meets many of the criteria regarding public interest and substantial justice; she believes there is a hardship. She expressed concern about the level of conflict between this application and the intent of the Zoning Ordinance. In 1970, the Commerce District was clearly written with an intent to ensure there was no “new” residential development. This building had a residential use but lost its residential character for a while. With that said, although there is a stark conflict with the ordinance, granting this Variance does not seem to be contrary to the public interest or injurious to public rights or welfare. She said it is a balancing act and she would have no hesitation if the intent of that particular zone were not so clear that it does not want residential use.

Mr. Remy agreed with Vice Chair Taylor and said that while building this house at its location today would not be allowed; because it already exists, he has no issue granting this Variance.

Mr. Greenwald said he feels sorry for this house because it is as though the Commerce District descended on it; the building is expected to adapt but it is still a historic home. This is not like converting a commercial property to a residential use. He said the home should stay as it was and he agreed with Mr. Hoppock that granting this Variance will not decrease the neighborhood’s value; it could enhance the neighborhood if AUNE wanted to use it as an auxiliary building. He was in favor of granting the Variance.

Chair Gorman said he agreed with most of the Board’s comments. Short of moving the home back to its original location, there are few solutions other than residential use, especially as the property has been vacant for some time.

Mr. Hoppock moved to approve ZBA 19-06, which Mr. Remy seconded. The Board reviewed the findings of fact:

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

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

Granting the Variance would do substantial justice: 5-0.

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

Unnecessary Hardship:

Ms. Taylor said she wanted to clarify the record relative to the hardship criterion that the proposed use is reasonable.

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: **5-0.***

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

With a unanimous vote of 5-0, the Zoning Board of Adjustment approved ZBA 19-06.

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

Hearing no further business, Chair Gorman adjourned the meeting at 7:08 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker

Reviewed and edited by Corinne Marcou, Zoning Clerk