

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, June 3, 2019

6:30 PM

Council Chambers

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Louise Zerba, Alternate

I. Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM, welcomed the public, explained the rules of procedure, and introduced the Board members. The Chairman noted that Mr. Remy would participate but would not be a voting member at this meeting.

II. Minutes of the Previous Meeting – May 6, 2019

Mr. Hoppock moved to approve the minutes of May 6, 2019. He questioned if the acronym AUNE on page five should be written out. Mr. Hoppock moved to request that the minutes be amended to spell out Antioch University New England before the abbreviation on page five. Mr. Remy noted the acronym was defined on page four. Mr. Hoppock withdrew his motion to amend the minutes.

Mr. Hoppock moved to approve the minutes of May 6, 2019 as presented, which Vice Chair Taylor seconded and the Zoning Board of Adjustment carried unanimously.

III. Unfinished Business

Mr. Rogers reported no unfinished business.

IV. Hearings:

**ZBA 19-07:/ Petitioner, Brady Sullivan Keene Properties, LLC of
670 North Commercial Street, Suite 303, Manchester, NH, requests**

a Variance for property located at 0 Island Street, Keene, Tax Map Parcel #583-014-000-000, which is in the Commerce District. The Petitioner requests a Variance to allow a self-storage facility within the Commerce District where it is not a permitted use per Section 102-542, Permitted Uses, of the Zoning Ordinance.

The Chairman opened the public hearing, introduced the application, and requested staff comments.

Mr. Rogers recalled that the applicant withdrew this application earlier this year and thus the application before the Board at this meeting was essentially the same. He used an aerial map to remind the Board of this property's location in proximity to West and Island Streets, as well as the Colony Mill. He noted the proposed new building would actually cover multiple lots that would have to merge for this to occur. He also noted that the Commerce District continues down Island Street, past the proposed building location, where self-storage facilities are not a permitted use. The Zoning Ordinance book demonstrates permitted uses in the Commerce Zone on page 65. Mr. Rogers continued showing a satellite view of the same map, which highlighted the abutting (across the street) Mills of Keene rental complex of mixed-use spaces. Mr. Rogers displayed the Google Map street view of the property at 0 Island Street, where there is a visible "For Sale" sign for the lot. Mr. Rogers then referred to a proposed site location plan, which displayed the proposed building with respect to the Colony Mill and Poker Room. This site plan refers to a proposed three-story building. Mr. Rogers said that if the Board granted this Variance, the applicant would have to return to the Board requesting a Special Exemption for a three-story building, which the Board can grant in the Commerce District.

Vice Chair Taylor referred to the aerial map, which displayed a yellow highlighted area. The Vice Chair asked if the yellow highlight represented the entire area proposed. Mr. Rogers said no, there are five lots in the area and the yellow highlighted lot would be part of the merge. Vice Chair Taylor asked if Tax Map Parcel #583-014-000-000 encompasses more than the lot highlighted yellow on the aerial map. Mr. Rogers said the applicant chose that Tax Map Parcel number with the understanding that they would have to merge at least five lots. The Vice Chair asked if the other five lots would have different Tax Map Parcel numbers. Mr. Rogers replied in the affirmative and said up to six Tax Map Parcels could be involved in merging the lots.

Chair Gorman noted that the applicant was not present at the meeting. Mr. Rogers said he notified the applicant of this hearing, with no response. Mr. Greenwald said he was under the impression the applicant withdrew the application at the last minute; the Chair and Vice Chair replied that was not to their knowledge. Mr. Hoppock said the application was to withdraw without prejudice at the last hearing; the Chair agreed because the applicant had insufficient details for the five criteria and the Board requested they prepare themselves better. Mr. Greenwald asked if the applicant had prepared better. The Chair was unsure and said the exact same application was submitted this time but with an added

drawing. He could not say if their application resubmission changes their statement before the Board.

Chair Gorman asked staff to provide guidance on protocol in this situation. This was the first time Mr. Rogers experienced an applicant absent from their hearing. Vice Chair Taylor said she has unfortunately experienced an applicant not present for their hearing. She shared two options for the Board: 1) hold the public hearing, close the public hearing, and deliberate, or 2) move to continue the hearing until next month.

Mr. Greenwald asked if the application is the applicant's statement; the Chair said in theory, yes. The Vice Chair said there is no requirement for an applicant to appear, it is their option. The Chair clarified and the Board agreed they could deliberate based on the written application because there is no mandate for the applicant to appear.

Before deliberating, the Vice Chair suggested the Board should still hear from members of the public who appeared, which the Chair welcomed.

With no comments in favor of this Variance, the Chair heard comments in opposition. The Chair recognized Louise Zerba of 340 Pako Avenue, Keene, who was also speaking on behalf of Patricia Hurt of 108 Island Street, Keene. Ms. Hurt was not notified of the hearing despite having a residential property four houses down from this proposed building. Ms. Zerba shared Ms. Hurt's concerns:

1. Her home's foundation has been damaged and she has been forced to make several repairs already because of pile driving.
2. Traffic flow already makes it difficult to exit her driveway.
3. She maintains her home very well and she is concerned this project will reduce her property value.

Ms. Zerba continued sharing her own concerns about granting this Variance. She believes granting this Variance is contrary to the public interest because it is too close to residential properties on Island Street. She said homes on Island Street are being refurbished or are well maintained and she is concerned property values will decrease because of this project. She also thinks granting this Variance will alter the character of the neighborhood. While unrelated to the Zoning Board, she expressed concerns about the appearance of this proposed building adjacent to the Colony Mill, which is a historic property; she is concerned that this big, block building three stories high will dwarf the adjacent buildings on that street.

Vice Chair Taylor requested that Ms. Zerba repeat Patricia Hurt's name. Ms. Zebra said that Ms. Hurt's neighbor was also not notified.

Chair Gorman recognized Anthony Mastronardi of 100 Darling Road, Keene, who owns the building at 70 Island Street, which directly abuts the proposed project. His building at 70 Island Street has 10-12 windows facing north toward the Colony Mill and overlooking a field currently. As Mr. Mastronardi understood, the new building would place three

stories of brick within 20' of his building. He expressed concern about his property value and the negative impact for his tenants of looking out their windows at a brick wall. He suggested the applicant has sufficient property to move the building north or east, which would please Mr. Mastronardi. He is less concerned with what the applicants are doing or potential traffic impacts, but he believes the appearance will be detrimental. He thanked the Board for their work on this matter and the Chair thanked Mr. Mastronardi for coming to speak before the Board a second time.

The Chair provided Mr. Remy a chance to speak, as he is not allowed to after the public hearing under Board rules. Mr. Remy said he shared the public speakers' concerns about diminished property values. He was also unsure what about this property presents a hardship for the applicant to require this type of building. He said there are a number of other storage units in Keene, in other zones, that have found a way to make it work. He was unsure if this application presented a necessary usage or a hardship.

Chair Gorman closed the public hearing.

Mr. Hoppock referred to when the applicant was before the Board in February 2019, when the Board agreed the application did not demonstrate a special condition of the property that distinguishes it from other properties in the area. He continued referring to the application submitted for this meeting, which is nearly the same as what was submitted to the Board in February 2019. He said that at minimum, the application does not meet the requirement of demonstrating a special condition of the property. Mr. Hoppock said the applicant has the burden of proof on every requirement. He does not believe the applicant met the beginning of the Unnecessary Hardship requirement. Additionally, he heard concerns from the public about altering the essential character of the neighborhood due to the proposed size of the building; he heard concern about the size of the building affecting property values and safety issues with respect to increased traffic on an already heavily trafficked road. Based on those observations and the fact that the applicant was not present to defend the application, Mr. Hoppock said he was not prepared to support the application.

Vice Chair Taylor pointed out that the only differences she could find from what was submitted earlier were the elevation pictures and the cover sheet. She also pointed out on the cover sheet that the applicant proposes a 30,000 sf area, not just the footprint. She said the picture in February 2019 indicated 90,000 sf. Therefore, the Vice Chair said there are some inconsistencies in the application. Otherwise, the Vice Chair agreed with Mr. Hoppock that the application does not demonstrate special conditions of the property that would create a hardship. She said she was beginning to be more convinced, as well, that the application does not meet the second criteria; she was beginning to be convinced that the proposed use is not reasonable given the neighborhood, the type of street it is on, and nearby residential areas. The Vice Chair did not believe the proposed use was a reasonable one for that location.

Mr. Welsh agreed with the Vice Chair's, Mr. Hoppock's, and Mr. Remy's comments. He said the Board is obliged to take Use Variances more seriously than Dimensional

Variations; therefore, the Board must adhere rigorously to the Variance criteria. Mr. Welsh said the basis of the hardship in Criteria Five is something about the property that renders it unavailable or unusable for the other permitted use. He does not believe the applicant demonstrated that the property is unusable for the permitted use so he was inclined to vote negatively.

Mr. Greenwald agreed with Mr. Welsh and said his concern is Criteria Four; he thinks the surrounding properties would be diminished, contrary to the applicant's claim. He said 70 Island Street's property value and enjoyment of its current use would be diminished. For those reasons, Mr. Greenwald did not support the Variance.

The Chair agreed with the comments from the Board and heard a motion.

Vice Chair Taylor moved to approve ZBA 19-07:/ Petitioner, Brady Sullivan Keene Properties, LLC of 670 North Commercial Street, Suite 303, Manchester, NH, requests a Variance for property located at 0 Island Street, Keene, Tax Map Parcel #583-014-000-000, which is in the Commerce District. The Petitioner requests a Variance to allow a self-storage facility within the Commerce District where it is not a permitted use per Section 102-542, Permitted Uses, of the Keene Zoning Ordinance. Mr. Hoppock seconded the motion.

The Board reviewed the Findings of Fact:

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

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

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

*If the Variance were granted, the values of the surrounding properties would not be diminished: **denied 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:*
 - 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: **denied 0-5.***
 - x. *The proposed use is a reasonable one: **denied 0-5.***
- 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: **denied 0-5.***

On a vote of 0-5, the Zoning Board of Adjustment motion to approve ZBA 19-07 did not pass.

Chair Gorman moved to deny ZBA 19-07, which Mr. Hoppock seconded.

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 19-07.

V. New Business

The Vice Chair introduced new business to discuss and possibly refer to staff. She referred to the Zoning Board of Adjustment Rules of Procedure, rule D.a. as follows, *“Once the Board moves into deliberations, alternates shall remove themselves from the table and no longer participate with the Board.”* She said she thought the Board knew that alternates do not vote unless they are called to replace a regular member. The Vice Chair referred to NH state statute RSA 673:6, V, *“An alternate member of a local land use board may participate in meetings of the board as a nonvoting member pursuant to rules adopted under RSA 676:1,”* which she said are the Board’s Rules of Procedure. She thinks the Board has found discussion with alternate members to be valuable and she questioned why that line was in the Rules of Procedure, what its purpose was, or how it developed. She wanted to ask staff, in consultation with the City Attorney, to review amending the ZBA rules to allow alternate members to participate in deliberations. Mr. Rogers said staff could certainly research that rule and perhaps return to the Board with possible alternate versions of that part of the Rules of Procedure. The Vice Chair said she is aware of many other communities that allow alternates to participate in deliberations and then not vote. Her personal view is that it has value, but she would like to know if there was some underlying value to why it was written that way in Keene’s Rules of Procedure. Mr. Rogers will research and report to the Board in July.

Mr. Welsh posed a question related to the application ZBA 19-07 heard at this meeting, regarding the use of a particular parcel. Regarding hardship and the potential for other uses, he said the Zoning Board’s role is somewhat constrained to interpreting the rules with little judgement. He said the Planning Board has more latitude to make subjective judgements about the application of rules. He asked if the Planning Board has the power to look at a parcel and say it can be zoned differently. Mr. Rogers said there is a set procedure to rezone a piece of property; the Planning Board could not rezone a piece of property themselves. Mr. Welsh asked if the applicant in ZBA 19-07 made the right decision coming to the ZBA. Mr. Rogers said the applicant had many options before them and he can produce further materials for the Board on procedure.

Chair Gorman asked if it is correct that an applicant must go before City Council to rezone a piece of property. Mr. Rogers said yes, it would first go before the joint Planning Board-Planning, Licenses & Development Committee and then ultimately to City Council.

- VI. Communications and Miscellaneous:**
- VII. Non Public Session: (if required)**
- VIII. Adjournment:**

Hearing no further business, Chair Gorman adjourned the meeting at 7:01 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Clerk