

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, January 6, 2020

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Joshua Greenwald
Michael Welsh
Arthur Gaudio, 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, and introduced the Board members.

II. Chair and Vice Chair Voting for 2020

Ms. Taylor moved to reelect Mr. Gorman as Chairman for the 2020 calendar year, which Mr. Hoppock seconded and the Zoning Board of Adjustment carried unanimously.

Mr. Greenwald moved to elect Mr. Hoppock as Vice Chair for the 2020 calendar year, which Ms. Taylor seconded and the Zoning Board of Adjustment carried unanimously.

III. Adoption of the 2020 Draft Calendar

Vice Chair Hoppock moved to adopt the 2020 Zoning Board of Adjustment draft calendar, which Mr. Welsh seconded and the Board carried unanimously.

IV. Minutes of the Previous Meeting – October 7, 2019

Ms. Taylor moved to adopt the minutes of October 7, 2019, which Mr. Hoppock seconded.

Mr. Hoppock noted a correction: on page seven, “Justice Suter,” should be replaced with, “Justice Souter.”

The Board unanimously adopted the October 7, 2019 minutes as amended.

V. Unfinished Business

VI. Hearings:

- a. ZBA 19-16:/ Petitioner, Elaine and John Carril of 1157 Roxbury Rd., represented by Wendy Pelletier of Cardinal Surveying and Land Planning, of 185 Winchester St., requests a Variance for property located at 1157 Roxbury Rd., Keene, Tax Map #239- 033-000, which is in the Rural District. The Petitioner requests a Variance to construct a single car attached garage with a mudroom setback 16.5 feet from the side lot line where 50 feet is required.**

Chair Gorman opened the public hearing and the Zoning Administrator, John Rogers, provided staff comments using maps provided in the meeting packet to demonstrate the location of the property in question. This property is at the intersection of Roxbury and Mill Roads, near the Robin Hood Park as well as Branch Road, and thus the Roxbury town line. The applicant sought a Variance for setback requirements. Mr. Rogers said that the property is already restricted, not meeting any setback requirements in the Rural District currently. Most developments near this property are also substandard for the Rural District. He referred to page 95 of the Zoning Ordinance, which lists setbacks for the Rural District. Chair Gorman asked if there are wetlands on the lot and Mr. Rogers was unaware.

Mr. Welsh asked when the two-acre minimum was applied to the Rural District and how old the property in question was at that time. Mr. Rogers was unsure when the lot size minimum was established, but said that an abutter has lived there for 60 years, who said the lot in question has existed that long. Mr. Rogers said these residences in the area of Mill Road began as sawmill cabins and now most are full-time residences. Chair Gorman asked the age of the home in question and Mr. Rogers said the applicant would speak to that, but he thought it was rebuilt in recent history due to fire.

Mr. Rogers noted that alternate Board members could be involved in application discussions but were not permitted to vote if five regular members were present. Chair Gorman agreed and said that the Board relies on Alternates’ input during hearings.

Chair Gorman welcomed the applicant’s representative, Wendy Pelletier of Cardinal Surveying and Land Planning of 185 Winchester Street, Keene. Ms. Pelletier agreed with Mr. Rogers that these lots were created for a sawmill on Mill Road and they later became residences. The original home was destroyed in a fire and the current home was rebuilt in 2010. Ms. Pelletier said that part of this 0.6-acre property is comprised of wetlands and therefore no other location on the property is suitable for a garage. She used site plans to demonstrate where the setbacks are

on the property. She used photos to show that a storage shed was moved recently to make space for the garage and mudroom. She reiterated that all of the abutting lots are substandard for the Rural Zone.

Ms. Taylor referred to a photo in the meeting packet and said it was difficult to discern where the shed is both in proportion to the lot lines and where the proposed garage would be. Chair Gorman recognized the applicant, John Carril of 1157 Roxbury Road, who said the shed was recently shifted back, parallel to the property line. Chair Gorman asked how large the shed is and Ms. Pelletier replied 241 square feet and upon re-measuring the site plan, confirmed the shed size is 12 by 20 feet. If that size of the shed was accurate, the Chairman noted that it should not be moved into setbacks and he asked for staff comments. Mr. Rogers said that there is an exception allowing accessory structures under 125 square feet to be within setbacks and anything over that limit must meet setbacks. The Board questioned if a permit would have been needed to move the shed in addition to this Variance. Mr. Rogers thought a valid question was whether a permit was obtained for the shed initially. If the shed was built with a permit and legally set, he said that the applicant could have then moved it further without violating setbacks; staff would need to research if the shed were a preexisting non-conforming use. Ms. Taylor asked about the rear setback and Ms. Pelletier said that all setbacks are 50 feet. Ms. Taylor also asked that the Community Development Department follow-up on the shed issue because it was not the matter before this Board and Mr. Rogers agreed. Chair Gorman agreed to focus on the matter at hand.

Ms. Taylor referred to the site photo in the meeting packet and asked about the apparent gravel pad. Ms. Pelletier said that is where the shed was previously located. The Chairman asked the size of the proposed garage. Ms. Pelletier and Mr. Carril confirmed it would be a standard 14-foot wide single car garage.

Ms. Pelletier reviewed the applicant's responses to the criteria for a Variance.

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

Ms. Pelletier said this is an existing non-conforming lot located in an area of other small, non-conforming lots that were originally part of a mill village. These lots are less than one acre in a five-acre zone and cannot support the 50-foot setback requirement.

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

Ms. Pelletier said the character of the neighborhood would not be affected, that the garage addition is a reasonable use, and that no area of the lot would meet the setback requirement.

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

Ms. Pelletier said that due to the configuration of the lot, as well as wetlands on this and the abutting lot, there is no other suitable location for the garage. There is no garage presently.

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

Ms. Pelletier said the addition of a garage and mudroom would add value to the property.

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:*
 - 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. Pelletier said that this lot is 0.6 acres and cannot meet the 50-foot setback requirement. There are wetlands on this and the adjacent lot, which further restrict the building area. She said the request to build a single car attached garage is reasonable because the garage would add value to the home. The proposed garage would be abutted by a wooded wetland and would not be near an abutting structure. She said the rural character of the neighborhood would not be affected by the addition.

The Chairman welcomed comments from the public in favor of this application. He recognized Bill Hooper of 1156 Roxbury Road, who confirmed that there was a fire at the property in question 10 years ago. Before the fire, he said there was a garage where the shed is now but it was destroyed, though he was unsure if the previous garage was attached. He said that the hurricane of 1938 brought down many trees that needed to be milled from local lakes and ponds. A sawmill on Mill Road brought many people from Maine in search of work, who lived in the cabins around the mill, some of whom bought the properties after the mill closed. During that time, he was sure Keene's Zoning Ordinance had changed along with the changing topography. Mr. Hooper said he was in favor of the Board approving this application because the garage would not interfere with neighbors, because he was unbothered by what he called an insignificant change, and because the property is better than it was before these owners.

With no public comments opposing this application, Chair Gorman closed the public hearing.

Ms. Taylor moved to approve ZBA 19-16 for the petitioners, Elaine and John Carril of 1157 Roxbury Rd., for a Variance for the property located at 1157 Roxbury Rd., Keene, Tax Map #239- 033-000, which is in the Rural District, to construct a single car attached garage with a mudroom setback 16.5 feet from the side lot line where 50 feet is required. Vice Chair Hoppock seconded the motion and the Board reviewed the findings of fact.

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

Ms. Taylor thought that granting the Variance complied with the public interest because the garage would improve the property and would not impede any abutting property owners or access to the surrounding area. Chair Gorman agreed and said he saw no safety issues or egregious neighbor issues, so he thought granting the Variance was in the public interest. The first criteria passed with a vote of 5-0.

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

Vice Chair Hoppock did not see anything in the application that would alter the spirit of the Ordinance or impact public health, safety, or welfare. He thought the garage addition would enhance the neighborhood. The second criteria passed with a vote of 5-0.

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

Mr. Greenwald thought that granting this Variance would do substantial justice because there is nowhere else on the property to place a garage within setbacks due to wetlands and property lines. Chair Gorman agreed. Vice Chair Hoppock added that the loss to the owners by not granting this Variance would not be outweighed by a public gain. The third criteria passed with a vote of 5-0.

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

Mr. Welsh thought that the applicant demonstrated how property values in the neighborhood would increase, which a neighbor supported. The fourth criteria passed 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.*

While the applicant responded to criteria 5.B., the Board agreed that the nature of the parcel itself creates the special condition because there is nowhere else on the property to build a garage. Ms. Taylor said she thought the configuration of the lot itself created a hardship and so this would be a reasonable use. The Chair and Vice Chair agreed. The fifth criteria passed with a vote of 5-0.

With a vote of 5-0, the Zoning Board of Adjustment unanimously approved ZBA 19-16.

- b. ZBA 20-01:/ Petitioner, Brand and Blade Brewing Company, Inc. of 17 Bradco St., owned by TreMac Development, LLC of 20 Central Square, requests a Variance for property located at 17 Bradco Street, Keene, Tax Map # 116-002-000, which is in the Industrial District. The Petitioner**

requests a Variance for the expansion of the existing restaurant use to allow for space outside the brewery to access the restaurant, including service of food. There would also be a stage for occasional music events and a small pavilion to allow cover for customers in case of rain or other inclement weather, with a limited enclosed area to allow for service to customers per Section 102-632 of the Zoning Ordinance.

Vice Chair Hoppock recused himself from this hearing. Mr. Gaudio acted as a voting member.

Chair Gorman opened the public hearing. The Zoning Administrator, Mr. Rogers, used maps to demonstrate the location of this mixed use building on Bradco Street, with respect to Winchester Street and Hamshaw Lumber. Branch & Blade Brewing Company has operated from this location since May 2018 as a brewery, which is an allowed use in the Industrial Zone, with an approved taproom as an accessory use. A production kitchen operates next to the brewery within the same building, serves the taproom and the Street & Savory Food Truck. Mr. Rogers said the applicant wanted to expand the accessory taproom use beyond the 25% of total floor space allowed in the Zoning Ordinance.

Mr. Welsh asked if the issue in this application was whether the restaurant is permitted or whether the restaurant can expand to occupy a certain amount of space. Mr. Rogers said the Board could consider either. Mr. Rogers thought the applicant sought a Variance from §102-632, which lists permitted uses in the Industrial Zone for an additional primary use on the property and not the expansion of an accessory use. Mr. Welsh said a restaurant is not a permitted use in the Industrial Zone, but he thought the current taproom with some food was allowed as an accessory use of 25% of the brewery floor space, as allowed by Zoning; Mr. Rogers agreed. Regarding the music space, Mr. Welsh asked how music venues are defined in the Zoning Ordinance and if there are similar venues permitted in the Industrial Zone. Mr. Rogers replied that a music venue is not a defined use in the Zoning Ordinance and therefore disallowed in the Industrial Zone; he believed the application narrative called the music venue an additional accessory use based on occasional frequency, and not a percentage of floor space. Mr. Welsh asked, if a music venue is undefined and therefore disallowed in any zone, if it needs to be permitted at all. Mr. Rogers replied that it would come down to the music venue being a part of the use Variance the applicant sought.

Ms. Taylor stated that the applicant sought permission for what is currently a taproom as an accessory use to become a restaurant use by Variance because restaurants are not permitted uses in the Industrial Zone; she asked Mr. Rogers to confirm her understanding and he replied in the affirmative. Ms. Taylor asked if music venues are addressed at all in the Zoning Ordinance. Mr. Rogers said the Board would look at the music venue as an accessory to the restaurant use, which is common elsewhere in the City. Beyond Zoning, Mr. Rogers added that any of these outdoor music events require a Periodic Outdoor Event License from the City Clerk and therefore this accessory use would be regulated. Ms. Taylor asked if there is a distinction between a music venue as a primary function of the use of a structure versus a band playing in the corner of a

restaurant on a given night. Mr. Rogers said that whether inside or outside, he would consider that an accessory use from a Zoning perspective. Mr. Greenwald asked if the current allowed accessory use is the taproom, where they can have music anytime; Mr. Rogers replied in the affirmative. Ms. Taylor asked when a license is required for music events. Mr. Rogers replied that when events move outside, a Periodic Outdoor Event License is required from the City Clerk, which is common for events throughout the City to ensure no pedestrian or traffic concerns.

Chair Gorman thought the Board should place less weight on the music venue itself in this application and more on the fact that occasional music events must be permitted by the City Clerk. Mr. Rogers added that the outdoor brewery and food section proposed in this application would also go before the Planning Board. Chair Gorman asked about the likelihood of administrative approval instead of Planning Board oversight in this instance. Mr. Rogers said the Community Development Director would decide to send this matter to the Planning Board if it passed a certain threshold of development.

Mr. Greenwald asked the extent of food service at the brewery currently. Mr. Rogers said there is a kitchen next door that produces diverse food, but there is no established kitchen in the brewery itself. Mr. Greenwald noted that the current accessory use is 25% of the whole brewery floor space and he asked if it would be more 50/50 brewery to restaurant if this Variance passed. Mr. Rogers had not seen the square feet of the proposed outside footprint and could not speak to that, but because they were nearing the 25% of allowed accessory use, they applied for the Variance.

Mr. Gaudio asked how this outdoor expansion could affect regular traffic, particularly with respect to the unregulated intersection at Bradco and Winchester Streets. Mr. Rogers imagined that the applicants would need to provide some traffic analysis to the Planning Board. Mr. Gaudio asked if the Board should consider traffic in granting a Variance. Mr. Rogers replied that considering traffic is at this Board's discretion but he knew that the Planning Board would ask as well. The Chairman anticipated the applicant would have input as well.

If this Variance were approved, Ms. Taylor asked if the food service aspect would then be an approved use, as opposed to the accessory use that it is currently. Mr. Rogers replied in the affirmative, adding that under the Zoning Ordinance, any establishment serving food and/or beverages is defines as a restaurant. Therefore, he said this would be another primary use on a lot with mixed uses already. Ms. Taylor said the brewery is there as a permitted use by Special Exception and the restaurant, if approved, would be there by Variance; Mr. Rogers confirmed.

The Chairman welcomed Steve Bonnette of 20 Central Square, Keene, who represented the applicant, Branch & Blade Brewing Company. Branch & Blade opened in May 2018 and Mr. Bonnette said that operations have gone well so far, including special outdoor events, which receive a one-day permit from the City Clerk and would continue to in the future. He said that customers have requested outdoor expansion because there are no similar outdoor venues in the City and he said that in part, this application is to give the public what they have been asking for.

Currently, Mr. Bonnette said that bands perform on a temporary outdoor stage or under cover of the loading dock during poor weather; thus, part of the application was to construct a small outdoor stage. The second part of the application was for a pavilion structure that patrons can use for cover during outdoor events with rain. Within the pavilion, there would be a temporary bar space with beer taps and an area to stage food coming from inside.

Mr. Bonnette continued explaining that Bradco Street is in the Industrial Zone and the 20,000 square foot building has always been multi use, including at various times a bakery, a gym, and Meals on Wheels. Surrounding industrial features include storage units, manufacturing, Cheshire Animal Hospital, and Hamshaw Lumber, among others. Regarding traffic, Mr. Bonnette continued saying that these periodic events are only on the weekends and therefore would not add any more traffic exiting Bradco Street onto Winchester Street than on weekdays. He agreed with Mr. Rogers that he anticipates this project going to the Planning Board, from which he also anticipates traffic questions.

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

Mr. Bonnette said that the applicant's use is already permitted by the City of Keene. As set forth in this application, he said the intended expansion of the permitted use would allow for a better use of the property and would not affect any neighboring properties. Many customers have asked the applicant to expand the restaurant service outside to allow for events.

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

Mr. Bonnette said that the applicant already operates a brewery with a restaurant on the property. The brewery is a permitted use and has a license to operate a restaurant on the property. He said that the applicant seeks only to expand the presently permitted uses to allow for outside restaurant service during occasional music events, brew fests, food truck festivals, and other outside activities. The applicant proposed two structures, which Mr. Bonnette said are minimal in size, especially considering they would be in the Industrial Zone and that the property contains approximately 6.78 acres. There would be a small stand for bands to set up their equipment and there would be a small pavilion to allow cover for the customers in case of inclement weather, with a small storage area inside the pavilion for the brewery service.

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

Mr. Bonnette said the brewery is a permitted use on the property and that the brewery operates a restaurant as well, as approved by the City of Keene. The property contains approximately 6.78 acres and currently there is only one approximately 20,000 square foot building on the property. He said that the present and intended uses of the property are at the far end of Bradco Street and there are no residences for a very long distance. Mr. Bonnette said that granting the Variance would allow the applicant to make better use of the property. He reiterated that customers have asked the applicant to expand the restaurant service outside and allow for outside events.

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

Given that the property is in the Industrial Zone, Mr. Bonnette said that all of the surrounding properties are businesses such as manufacturing, storage, and retail sales, including outside storage of lumber and building materials (Hamshaw Lumber Company). The applicant is at the far end of Bradco Street and he said there are no residences anywhere near the property and the closest residences would not be affected by granting the Variance. Mr. Bonnette said that the use requested by the applicant would not be injurious, obnoxious, or offensive to the neighborhood. The values of surrounding properties would not be diminished if the Variance were granted, because he said they would not be affected by the Variance.

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. Bonnette said that the applicant is only seeking an expansion of the current permitted accessory use of the property beyond the 25% allowed. The expansion is to allow for outside service of food from the restaurant to customers, to have a small music stage, to have a small pavilion to allow cover for customers in case of inclement weather, and a small, enclosed space inside of the pavilion to allow for the brewery service. He said the property contains approximately 6.78 acres of land and only one building of approximately 20,000 square feet is on the property. Mr. Bonnette said the property is truly unique in the City of Keene and is large for the Industrial Zone. He demonstrated where abutters are on a map and said vehicles are rarely there on weekends. The property's abutters are industrial in nature and he said that no residences would be affected by the expansion.

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

Mr. Bonnette said that the proposed use is reasonable because the applicant is merely seeking an expansion of the current, permitted use of the property. He said it would be reasonable to allow the applicant to make better use of the property for business purposes. Many customers have stated they would like more outdoor space for the restaurant use and occasional outside events. Mr. Bonnette said the property is uniquely situated, there are no residences anywhere near the property, there are trees serving as sound barriers, and there is a distance barrier to the residences.

- 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. Bonnette concluded that denying the Variance would create an unnecessary hardship on the applicant, as the expansion is necessary to satisfy the requests of its customers. As described in earlier responses, he said there are special conditions of the property that distinguish it from other properties in the area and said the property cannot be reasonably used in strict conformance with the Zoning Ordinance. The property currently has limited use because there is only one 20,000 square foot building on the 6.78-acre property at the end of Bradco Street. There are natural buffers to eliminate any sound issues, as a substantial portion of the property is surrounded by trees and has a great distance barrier to any residences. Mr. Bonnette said it is a tough business climate and granting the Variance would allow the applicant to serve its customers better, which he said in turn, makes the request a reasonable use.

Mr. Welsh asked about the degree of expansion the Board was considering and Mr. Bonnette confirmed that the newly proposed outdoor space would only be utilized on some weekends during the four warmest months of the year, May-September. Mr. Bonnette confirmed that no actual permanent expansion to the restaurant or building would occur, only platform and awning structures would be added to protect patrons, bands, and service already outside during events. Bad weather at past events deterred patronage significantly and if there had been a permanent pavilion (tents have flown away in storms), the events might have been more successful. Mr. Welsh asked if the taproom would continue operating most of the time as 25% of the floor space allowed as an accessory use. Mr. Bonnette replied in the affirmative.

Ms. Taylor asked if the brewery is a permitted use by Special Exception. Mr. Bonnette replied that the brewery is a permitted use in the Industrial Zone. Mr. Rogers confirmed that the brewery is a permitted use in the Industrial Zone by Special Exception, which the business received before opening. Ms. Taylor stated that, because the food service would now occupy more than 25% of the total floor space allowed for an accessory use by Special Exception, it would now count as a restaurant use itself, and therefore requires a Variance.

Ms. Taylor referred to several gas tanks visible in the site drawings and asked if they would remain on the property and if so, how far they would be from the proposed structures; she thought of public health and safety. Mr. Bonnette said that the tanks, which heat the building and provide propane for cooking, would remain where they are and he estimated that they were 50-60 feet from the back of the proposed pavilion.

Ms. Taylor asked if power would run to the enclosed storage area of the pavilion. Mr. Bonnette replied in the affirmative and added that the area would also have to have a three-bay sink to

utilize during the temporary services. He added that no glassware would be allowed for the outside service and that there are always temporary toilets onsite for events.

Ms. Taylor said she assumed the brewery has substantial trucks passing through the parking lot to the loading docks for deliveries. She was concerned with traffic conflicts and asked when deliveries are scheduled. Chair Gorman recognized Jesse O'Bryan of 45 Summer Street, Keene, who said that deliveries are only scheduled Monday-Friday. Ms. Taylor asked, regardless of events, if the applicants anticipate patrons using the new pavilion area to eat and drink regularly. Mr. O'Bryan said that there are currently two decks attached to the outside of the building for patron use and the proposed pavilion would be off-limits to patrons during day-to-day operations. Mr. Bonnette agreed and added that liquor laws require segregated areas for liquor consumption, which is why the current decks are bordered with railings to enclose the space; patrons cannot wander across the parking lot with alcohol during normal daily operations.

With no comments in support or opposition, Chair Gorman closed the public hearing.

Mr. Greenwald supported approving the Variance. He recalled weather inhibiting one outdoor event that he attended at Branch & Blade. He said the applicants were not asking for a massive expansion of the business, but rather trying to right some wrongs and help the business run more effectively, as needed. He thought that granting the Variance would be in the public interest because the establishment would be more usable than currently.

Chair Gorman thought it was clear on the aerial map that the lot is unique and he said that affording the business adequate use of the property should be considered. He thought these events are good for the community and saw no safety hazards because of industrial surroundings.

Mr. Welsh agreed with Mr. Greenwald and Chair Gorman's comments. He added his impression that the Variance under consideration in this case is rather minor because most often the facility would continue operating as it does today and at the same scale. He was reassured that outdoor events would still require one-day permits from the City Clerk, with public safety in mind. He thought the concern about traffic would be well addressed by City staff when granting a Periodic Outdoor Event License. He was inclined to support granting the Variance.

With the exception of unnecessary hardship, Ms. Taylor thought that the application met all other criteria for granting a Variance. She agreed that the owner's loss would not be outweighed by public benefit if the Variance were denied, that there were no threats to public safety, and that granting the Variance would do substantial justice. While she said that economic benefits or satisfying customer requests do not create a hardship, she said that the nature of the property and the building themselves presented a hardship. She said it is challenging to serve alcohol without serving food, and said that alone created enough hardship to satisfy the criteria for a Variance.

Mr. Gaudio asked if the Board was considering subparagraph 5.A. or 5.B., because the applicant replied to both. Ms. Taylor replied that she believed subparagraph 5.A. was most relevant in this

instance. Mr. Gaudio agreed and added that the primary possible safety issue, traffic, would be addressed by the Community Development Director and/or the Planning Board. He added that his calculations showed the nearest residence just over 1000 feet away from the brewery. Mr. Gaudio thought all criteria for granting the Variance were satisfied.

Mr. Greenwald moved to approve ZBA 20-01 to grant a Variance to expand the existing restaurant use to allow for space outside the brewery to access the restaurant, including service of food, as well as a stage for occasional music events, and a small pavilion to allow cover for customers in case of rain or other inclement weather, with a limited enclosed area to allow for service to customers, per §102-632 of the Zoning Ordinance. Mr. Welsh seconded the motion and the Board reviewed the findings of fact.

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

Mr. Gaudio said there were no apparent threats to public safety or interest. The first criteria passed with a vote of 5-0.

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

Ms. Taylor said it did not make sense to have a brewery without food service and therefore granting the Variance would uphold the spirit of the Ordinance. The second criteria passed with a vote of 5-0.

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

Ms. Taylor said the loss to the applicant by denying the Variance would not outweigh the public gain. Therefore, she said granting the Variance would do substantial justice. The third criteria passed with a vote of 5-0.

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

Mr. Welsh said it seemed that granting the Variance would enhance the property value and could enhance neighboring properties with increased traffic/exposure. The fourth criteria passed 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.*

Mr. Greenwald said the applicant cannot operate their business the way they should and provide great events for the city without cover from inclement weather for outdoor events. Ms. Taylor said the reasons Mr. Greenwald listed did not necessarily create a hardship legally. However, she

said the nature of the building, business, and type of property gave rise to a hardship because they cannot operate under state liquor regulations without adequate food service. The fifth criteria passed with a vote of 5-0.

With a vote of 5-0, the Zoning Board of Adjustment unanimously approved ZBA 20-01.

- c. ZBA 20-02:/ Petitioner, National Sign Corporation of 2 Phoebe Way, Worcester MA, representing 480 West Street, LLC of 177 Huntington Ave., Boston MA, requests a Variance for property located at 420-486 West St., Tax Map #578-004-000, which is in the Commerce District. The Petitioner requests to allow two menu boards/ordering units on site where one is allowed per Section 102-1311(3) of the Zoning Ordinance.**

Chair Gorman opened the public hearing and Vice Chair Hoppock returned to the Board as the fifth voting member. Mr. Rogers said that this application was for the new Burger King on West Street in the Kohl's plaza. During the Site Plan Review for the restaurant, two drive-thru lanes were approved. Currently, Keene's Sign Code only allows for one menu board per property and the applicant requested a Variance to allow a second menu board to serve the second lane.

Mr. Welsh recalled seeing a similar request recently for the Keene McDonald's location. While the request for a menu board to serve each lane seemed reasonable, he asked whether the Board should be seeing these requests before drive-thru restaurants are constructed. Mr. Rogers said that sign issues sometimes fall through the gaps in the Planning Board stage because they are so small on site plans, but added that other fast food restaurants in Keene have operated for many years with two lanes and only one menu board. Because two menu boards per restaurant are becoming more commonplace, Mr. Rogers said a revision to that part of the Sign Code is up for review in the forthcoming Unified Development Ordinance, dependent on Council approval.

Ms. Taylor asked where the second menu board would be located. Mr. Rogers left that for the applicant to confirm but he believed that it would be on the island between the two lanes.

Chair Gorman welcomed Heather Dudko of National Sign Corporation of Worcester, MA, on behalf of the owner, West Street, LLC of Boston, MA. Ms. Dudko was not involved with any aspect of Site Plan Review or construction of this Burger King establishment. As a representative of National Sign Corporation, she did apply for all of the permitted signage currently at the establishment. . This Variance application is to install identical units on the island between the two lanes. Ms. Dudko said the new and only Burger King in Keene opened on December 19, 2019. Based on the projected volume for the restaurant, drive-thru, and the building, the restaurants are typically built with two drive-thru lanes, ordering units, and presale menus to stagger customers, ease traffic, and speed service. With only one lane/menu board open there now, she said there is some competing traffic because there are two entrances to the parking lot, one from the Walgreens side and one from the Kohl's side. She said it is uncommon to have two competing entrances trying to access the one currently open lane, which means patrons must

yield to each other right now. She thought that was the particular reason two drive-thru lanes were constructed at this location, one to serve each entrance easily. Ms. Dudko responded to the criteria for granting a Variance.

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

Ms. Dudko said that approving two menu boards would allow better and quicker access to drive-thru ordering and faster service for customers.

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

Ms. Dudko said that the Zoning Ordinance allows for menu boards. This particular site has two drive-thru lanes and therefore two menu boards are required. She thought the site was built with two drive-thru lanes because of the two entrances into the restaurant parking lot.

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

Ms. Dudko said this restaurant was designed with two drive-thru lanes to expedite ordering. By allowing a menu board at each drive-thru lane, traffic would be kept to a minimum and customers could navigate the drive-thru easily and quickly. She added that during popular hours, there could be 15 cars waiting at the drive-thru, which she saw before this meeting.

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

Ms. Dudko said that this is a commercial area with many retail facilities and commercial buildings.

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:*

Ms. Dudko said that having two drive-thru lanes would help the public to navigate the drive-thru quickly and easily and to order take-out safely.

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

Ms. Dudko said the site was designed with two drive-thru lanes, each needing a menu board and an ordering unit.

- 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. Dudko said that allowing two drive-thru ordering units would alleviate traffic congestion and back-ups at the restaurant. She said that delays sometimes cause people to get angry, which can lead to poor treatment of employees.

Ms. Dudko noted that the property owner sent a letter of allowance, included in the packet, along with dimension and performance specifications.

Ms. Taylor asked if the current parking configuration at Burger King was approved by the Planning Board. Mr. Rogers said all Planning Board site plan requirements were met and no aspects of the parking configuration would change.

With no comments in support or opposition, Chair Gorman closed the public hearing.

Mr. Greenwald moved to approve ZBA 20-02 to grant a Variance for the property located at 420-486 West St., Tax Map #578-004-000, which is in the Commerce District, to allow two menu boards/ordering units on site where one is allowed per Section 102-1311(3) of the Zoning Ordinance. Mr. Welsh seconded the motion and the Board reviewed the findings of fact.

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

Mr. Welsh thought that granting this Variance would be in the public interest because of increased safety in the parking lot. The first criteria passed with a vote of 5-0.

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

Vice Chair Hoppock did not think there were threats to the essential character of the neighborhood. He said it is already a busy area and he thinks minimizing lines and traffic in the lot would increase public safety. The second criteria passed with a vote of 5-0.

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

Chair Gorman thought that two drive-thru lanes with two menus made sense, particularly because this Board has approved the same at other establishments. Ms. Taylor added that it is rare that an application is serving both the applicant's and the public's interests nearly equally. The third criteria passed with a vote of 5-0.

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

Mr. Welsh thought that surrounding properties would appreciate the improved flow of traffic and Chair Gorman agreed. The fourth criteria passed 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.*

Ms. Taylor cited the Harborside Associates v. Parade Residence Hotel case, which was also a sign case and an instance where the nature of the property and buildings themselves created a hardship, like in this case. She added that the request for the proposed use was a reasonable one. The fifth criteria, subparagraph A, passed with a vote of 5-0.

With a vote of 5-0, the Zoning Board of Adjustment unanimously approved ZBA 20-02.

VII. New Business:

Mr. Rogers notified the Board that they received an updated copy of the ZBA Handbook.

VIII. Communications and Miscellaneous:

IX. Non Public Session: (if required)

X. Adjournment

There being no further business, the meeting adjourned at 8:11 PM.

Respectfully submitted by,
Katelyna Kibler, Minute Taker
January 13, 2020

Reviewed & Edited by: Corinne Marcou & Jane Taylor

Respectfully revised by Katelyna Kibler on January 22, 2020