

**City of Keene
New Hampshire**

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES**

Monday, April 3, 2017

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Jeffrey Stevens, Vice Chair
Elena Brander
Josh Gorman
Louise Zerba, Alternate

Staff Present:

Gary Schneider, Plan Examiner
John Rogers, Acting Health Director
Thomas Mullins, City Attorney

Members Not Present:

John Rab, Alternate

I. Introduction of Board Members

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

II. Minutes of the Previous Meeting

Mr. Stevens made a motion to accept the minutes from March 6, 2017. The motion was seconded by Mr. Gorman, which carried unanimously. Mrs. Zerba stated that she would abstain from voting since she was not present at the last meeting.

III. Unfinished Business: None

IV. Hearings

ZBA 17-08/ Petitioner, Hundred Nights Inc. of 17 Lamson Street, Keene, NH, requests a Variance for property located at 32-34 Washington Street, Keene, Tax Map Parcel #003-01-012, which is in the Central Business District and owned by Monadnock Community Service Center, Inc. of 17 Ninety-Third Street, Keene. The Petitioner requests a Variance to permit a lodging house in the Central Business District where lodging house is not listed as a permitted use per Section 102-482 of the Zoning Ordinance.

Ms. Brander recused herself from the hearing. Mrs. Zerba stated that she needed to recuse herself as well since she sits on the Monadnock Family Services (MFS) Board. She explained that the owner of the building, Monadnock Community Service Center, is part of the MFS umbrella. Mrs. Zerba said that she felt that she could be impartial. Chair Stout asked Mrs. Zerba if she was leaving that decision up to the Board. Mrs. Zerba replied in the affirmative.

Chair Stout stated that he too may have a conflict of interest as his wife is also a member of the MFS Board. Chair Stout asked the City Attorney, should there be no objection from the floor; his understanding was that he and Mrs. Zerba would not need to recuse themselves. The City Attorney replied that Chair Stout should state the conflict and see if there was an objection from either of the abutters or anyone that had an interest in the matter. He explained that the Board needed to keep in mind that the statute applied to the ZBA and that it was the individual that ultimately made the determination of a conflict. The City Attorney suggested since the conflicts have been stated Chair Stout and Mrs. Zerba should step down. Chair Stout asked if he had to open a public hearing. The City Attorney replied that the conflict could be stated, followed by recognizing the public to see if there was an objective to Mrs. Zerba or Chair Stout residing on the application. He explained that if Ms. Brander, Mrs. Zerba and Chair Stout were to step down at that point there would only be a two member Board and the hearing would be unable to proceed as, under the statute, there needs to be at least three members residing. He explained that even if the Chair was stepping down from the case, it was purely ministerial for the Chair to continue the application to the next monthly meeting.

Chair Stout reiterated the possible conflicts concerning Mrs. Zerba and himself. He asked the public if there were comments relative to the both of them staying on the case. Chair Stout explained that the public would need to make their statements at this time and that he, as well as Mrs. Zerba, would be allowed to continue with the case should no one speak.

Attorney Gary Kinyon, of Bradley and Faulkner, 50 Washington Street, Keene, stated that under NH law, the juror standard applied to this issue. He said, from the juror standard, a mere relationship sited would tend to disqualify a person from sitting on an action because of the appearance of bias. He said that what he had not heard from Chair Stout and Mrs. Zerba was whether they felt they could be unbiased and hear it in an impartial way.

The City Attorney thanked Attorney Kinyon for raising this concern. He said that the juror standard did apply and that generally, under the law, if no one objects at one of the meetings he would suggest proceeding. The City Attorney stated that Attorney Kinyon has directly raised the juror standard in this particular situation and that his suggestion to Chair Stout and Mrs. Zerba would be to recuse.

Chair Stout stated that there was no public request for recusal but under the advice from the City Attorney that it was best for him to recuse himself. Mrs. Zerba stated that she felt that she could be impartial and that her vote would be based on her position on the Board. Mrs. Zerba made the decision to recuse herself.

Chair Stout stated that due to only two Board members remaining on the Board, the hearing would need to be postponed. He apologized to the applicant and all of those who attended the meeting. Chair Stout asked Mr. Schneider if the meeting would automatically be noticed again. Mr. Schneider replied that, since the meeting was postponed to a certain date, ample notification had been made

The City Attorney clarified that the Chair should announce the postponement to a certain date and time. Chair Stout stated the next meeting would be held on Monday, May 1st at 6:30 PM in the Council Chambers and that the members of the Board that recused themselves would continue to be recused.

Mr. Gorman asked if he would be in conflict of interest if he retained Mr. Kinyon as a lawyer in the past. The City Attorney asked Attorney Kinyon if he was representing the applicant. Attorney Kinyon replied that he would be representing the folks in opposition of the application. The City Attorney asked if he had an existing relationship with Mr. Gorman. Attorney Kinyon replied that he was not presently representing Mr. Gorman but had done so in the past. The City Attorney stated that a further discussion needed to take place and suggested that the Chair continue with announcing the postponement.

Chair Stout announced that the next meeting would be held on Monday, May 1st at 6:30 PM in the Council Chambers.

ZBA 17-09:/ Petitioner, Suhail Bhatti of 122 Overview Drive, Jaffrey, NH, requests a Variance for property located at 109 Key Road, Keene, Tax Map Parcel #164-02-001, which is in the Commerce District and owned by Robert Raymond, business address of 109 Key Road, Keene. The Petitioner requests a Variance to permit a sign on a wall with no entrance per Section 102-1311 and 102-1282 (Building Frontage).

Mr. Schneider indicated that the property was a large piece of property and was located next to Keene Cinemas and Sherwin Williams. He stated that a few years ago this location held the Unemployment Offices for the State of New Hampshire. Mr. Schneider explained that where the Unemployment Offices used to be was now divided into two spaces with separate tenants. He said that the applicant's location was on the far right-hand side of the building. Mr. Schneider explained that the reason the applicant was before the ZBA was because he wanted to have signage for his Oriental rug business. He explained that not only is the applicant requesting to have signage on the front of the building, he would also like signage on the side of the building. Mr. Schneider described the Sign Code's reference to primary frontage, parking lot frontage and secondary frontage. He said that all three described the side of a building that had an entrance and an exit to the building. Mr. Schneider explained that on this particular side of the building, there was no exit or entrance, and thus the need for a Variance.

Chair Stout asked if the applicant would qualify for the signage if there was an entrance on that side of the building. Mr. Schneider replied in the affirmative as there is parking on that side of the building and if there was an entrance, it would be considered parking lot front.

Chair Stout recognized the applicant, Mr. Bhatti of 121 Overview Drive, Jaffrey, NH. Mr. Bhatti stated that he had been doing business in Keene for twenty years. He explained that he was located in the Colony Mill and had to move due to the construction of condominiums.

Mr. Bhatti stated at his new location, the sign in the front of the building had a view towards the KFC building. He said that the road curves facing the Staples building and there is no visibility for his business from that angle. Mr. Bhatti stated that he was asking for a sign to be placed on that side of the building so people could see his business.

Vice Chair Stevens asked Mr. Bhatti if he was planning on putting a sign on the front of the building. Mr. Bhatti replied that what he was proposing a sign 4 feet high by 8 feet long on the right side of the building and another sign with the same dimensions on the roof. He explained that both signs would have visibility on both sides of the buildings. Chair Stout asked Mr. Bhatti to state the nature of his business. Mr. Bhatti replied that it was Oriental rugs.

Mrs. Zerba asked where the sign would be located in the front of the building. Mr. Bhatti replied that entry of the building was located in the front and he would be placing a sign as permitted by the Sign Code. Mr. Bhatti stated that the photo presented to the Board indicated the lack of visibility from the other side of the road.

Chair Stout asked if the sign would sit on the wall or on the side of the roof. Mr. Bhatti replied that there were two parts to the sign and that one part would be attached to the wall and the other part would be attached to the roof on a 4 foot x 8 foot sheet plate on the side of the building. Chair Stout asked if the sign would be flush to the roof. Mr. Bhatti replied that it would not be flush and would be slanted at a 40-45 degree angle. He said the sign would be straight but there would be brackets on the back side of the sign. Chair Stout asked what the requested sign would look like from the front side of the building. Mr. Bhatti replied that the side sign would not be visible from that side of the building. He explained that the roof was on an angle and that the sign would be straight and not tilted toward the front of the building. Chair Stout asked if the sign could be designed to shield the view of the sign structure. Mr. Bhatti replied that the sign structure was not in 100% view if looking from the point of the front of the building and that the visibility of the requested sign was on the opposite side of the building facing the south. He said his idea was to ask for a Variance because the sign in the front was only visible from KFC and onward and that there was no visibility of his business coming from the direction of Key Road.

Mrs. Zerba asked Mr. Bhatti if he anticipated lighting the sign. Mr. Bhatti replied that he would if it was allowed. Mrs. Zerba asked if that request was included in his application. Mr. Bhatti replied that he only applied for the signage. He noted that other signs in the area were lighted signs and that if that was permitted he would like to have a lighted sign.

Ms. Brander asked why there was not an entrance on that side of the building. Mr. Bhatti replied he asked the landlord and cost was a factor. He stated that the landlord was told that it would cost \$10,000 to add an entrance.

Vice Chair Stevens asked Mr. Bhatti for clarification on the size of the signs stated on an email submitted to the Board. The email states the sign would be 4 feet x 10 feet. Mr. Bhatti replied that the sign would be 4 feet x 8 feet.

Chair Stout stated that the way the application was worded, the applicant would not be able to have lighting. Mr. Bhatti replied that he was aware.

Mr. Schneider stated that the signage on the front of building was not a question before the Board at this time.

Chair Stout discussed the criteria.

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

Mr. Gorman stated that given the location of the building he would see little impact to anyone else and that if it helped the applicant run a successful business, he saw no problem. He stated that the request was reasonable.

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

Vice Chair Stevens stated that the Spirit of the Ordinance would be to prevent too much clutter with signage and this situation was not applicable. Mrs. Zerba stated that the store was tucked in the corner and that the two businesses located in the front of the building made for limited visibility.

Granting the Variance would do substantial justice:

Mrs. Zerba stated that granting the Variance would do substantial justice. Vice Chair Stevens stated that a business wanting to advertise their space with signage to do it was more than appropriate. Chair Stout stated that the applicant was a businessman and believed a Variance could help his business and do substantial justice in that way.

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

Vice Chair Stevens stated that he could not see any change in any property values one way or the other.

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:

Vice Chair Stevens stated that the property was situated in a unique way and that the front of the building was not as visible for a standard front. Mrs. Zerba stated that she looked at the new 7-Eleven building and the new Savings Bank of Walpole building and noticed that both buildings had a sign on more than one location without entrances. She stated that this was a reasonable request in the case.

The proposed use is a reasonable one:

Mrs. Zerba replied that it was definitely a reasonable request.

Mr. Schneider asked before the Board voted to clarify if the request went forward, that it was only for the signage that was submitted in the application. Chair Stout replied in the affirmative.

Chair Stout asked the applicant to explain his intentions for the side wall. Mr. Bhatti replied that the proposed application was for two signs. He stated that according to the Sign Code he was allowed to have 80 square footage of signage. He said instead of one large sign he wanted to have two different signs. Mr. Bhatti explained that one sign would be against the wall and the other sign would be on top of the building.

Chair Stout asked if there was any public comment. With no comment, Chair Stout closed the public meeting.

Chair Stout asked the Board if there was any comment based on the new remarks from the applicant.

Mr. Gorman stated that he had a concern of three signs for one business and that it would start to get closer to sign pollution. He explained that one sign for visibility was far more reasonable and that there were not many businesses permitted to have three signs. Mr. Gorman suggested permitting a larger sign on that side of the building. Mrs. Zerba stated that she would go back to supporting the size of the sign to be 4 foot x 10 foot but would support only one sign. Chair Stout asked where the sign should be placed. Mrs. Zerba replied that it was up to the discretion of the business owner. Vice Chair Stevens stated that he would agree with Mrs. Zerba.

Vice Chair Stevens made a motion to approve ZBA 17-09 for a single sign of 4 feet high and up to 10 feet long to be located on the east elevation of the building either on the roof or the wall. Mrs. Zerba seconded the motion.

Chair Stout reviewed the Findings of Fact:

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

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

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

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

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

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

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

With a vote of 5-0, The Zoning Board of Adjustment approved ZBA 17-09.

V. New Business

Chair Stout stated that this was the time for the Board to bring up any new business. He noted that new topics could be brought up to be agenzized for the next meeting following proper notice. He asked the Board if there were any new notices.

Chair Stout announced the Office of Energy Planning Spring Conference that would be held on April 29th at the Grappone Center in Concord, New Hampshire.

With no further comment, Chair Stout moved the meeting to the Rules of Procedure.

John Rogers, Acting Health Director and Zoning Administrator, stated that at the last meeting the Board was presented with a draft copy of the Rules of Procedure. He said at this time, they were looking for feedback from the Board. Mr. Rogers stated that the last time this was updated was in 2011. He noted one of the changes was dealing with application fees.

Mrs. Zerba asked Mr. Rogers if these fees were relatively close to other communities. Mr. Rogers replied that the department did a fee study and looked at the numbers that were in place the last five years. He stated that the department conducted comparisons with towns such as Salem, Londonderry, Nashua, Concord, Bedford, Portsmouth and Merrimack. He explained that the fees the department was recommending fall in line with these towns. Mr. Rogers stated that the City of Keene is by far the least expensive in terms of application fees for Variances, and was by a significant amount.

Chair Stout asked what the fees specifically covered. Mr. Rogers replied that currently, the fee is set at \$25, which doesn't cover the cost of staff time. There is a separate fee collected for the individual abutters per application. He further explained that the fee schedule currently being considered by staff has the actual recovery cost closer to \$320 and that included staff time processing applications, the time it took for the Zoning Clerk to take the application and Mr. Schneider's time.

Mr. Schneider stated that the \$25 application fee, as they have discovered, does not even cover the cost of placing the legal notice in The Keene Sentinel.

Mrs. Zerba asked Mr. Schneider if the \$100 application fee would cover an appeal or if an applicant would have to pay another \$100 to come back to appeal. Mr. Schneider replied that the \$100 was for the application fees themselves. Mr. Schneider did note there was a cost to place the legal notice in the local paper that will be additional to the \$100 application fee. He stated that there are also fees to cover the cost of certified mail. Mr. Schneider explained that the certified mailings depended on the location of the particular application and that, if as an example, the application property was located in downtown area, there would be a lot of properties in close proximity needing notification. He stated that notice must include all abutters that are within 200 feet of the subject property.

Chair Stout stated that, in consideration of the alteration of fees, the Zoning Board staff should provide a written proposal and that the City should also provide a chance for the

public to comment. He asked the Board how they felt about this recommendation. Mrs. Zerba stated that she was fine with that option. Mr. Gorman stated in his opinion, given the nature of the current fees he did not consider this as a disservice for anyone to have to pay an increase in fees.

Mr. Rogers stated that the City of Lebanon charged \$150 for an application fee, an advertising fee in the amount of \$35, and a mailing fee. He noted that the proposed fees were still lower than Lebanon. He stated that Nashua charged an application fee of \$900 for Variance application and a fee in the amount of \$440 for a Special Exception. Mr. Rogers stated that a scaled fee structure was also an option for the Board to consider. Mr. Rogers stated that Concord had an application fee in the amount of \$455, which is handled by district. He stated the application fees in Portsmouth are between \$150 and \$250 and could go as high as \$3,000 if the application was for a large, residential-unit-type building, being charged by number of units.

Mrs. Zerba stated that she had no problem with increasing the application fee to \$100 and that it was a minimal.

Chair Stout stated that he wanted to know more about the fees and agreed that the City needed to sustain itself. He explained that he was not comfortable with giving a blanket number at this time. Chair Stout stated that he did not want to create extra work for staff but requested that the City staff provide a written proposal for the increase of application fees. He stated that he wanted to know if a Special Exception should cost differently than an Equitable Waiver of Dimensional Requirements.

Mrs. Zerba recommended that the written proposal include comparable fees from other communities. Mr. Rogers replied that there was a report created by staff that will be made available for the Board.

Mr. Gorman stated that he felt it would not make sense to exhaust additional resources by preparing a report and that it made sense to vote on the increase of the application fee.

Chair Stout stated that Board members will be asked to account for any increases and reasons why the increase was approved. Chair Stout stated that if asked about the cost increase, he wanted to respond in an intelligent way. Chair Stout asked Mr. Rogers if the current proposed fee increase could bring a full recovery cost to the City department. Mr. Rogers replied it would not because the recovery costs are actually over \$300. He said that staff was more than willing to provide the Board with additional information as requested by Chair Stout.

Mrs. Zerba stated that she was prepare to vote but could understand how the public may ask why the application fee was increased. She stated that having this additional information would legitimize the decision.

Mr. Rogers stated that the intent of staff was to begin reviewing these fees and Rules of Procedure on a much more frequent basis they have been in the past.

Mrs. Zerba suggested that the Fees section be reworded to include a \$125 filing fee and the legal notice of advertisement. She stated people may question that statement and may be confused with its current wording.

She stated there was a typo under Decisions, “business days as required by RSA 676:3, and will be sent to regular mail” should be changed to “.....sent by regular mail”.

Mr. Schneider stated that Zoning Clerk, Corinne Marcou, suggested under the Fees section to strike the words *The Keene Sentinel* and change the wording to: “to publish a legal notice advertisement in the local newspaper”. The Board agreed with the correction.

The City Attorney stated that the draft would require some reformatting and that staff would bring back a much cleaner copy.

He stated that a couple of changes were under the Rules, Members and Alternate Section. The City Attorney stated that there was a conflict of language on paragraph four of Members and Alternates and subparagraph A. He stated that paragraph four of this section stated “Alternate members may not participate in meetings of the Board, unless designated by the Chair to serve in place of a regular member” and that under Section B it stated that alternates could sit at the table and so on. He stated that alternate members should be allowed to participate up until the point where there was a decision making process. The City Attorney suggested eliminating the sentence, “Alternate members may not participate in meetings of the Board, unless designated by the Chair to serve in place of a regular member”.

He stated under Assistance by City Staff under Fees, “If necessary, clarification of the Zoning Ordinance can be obtained from the Zoning Administrator. Legal advice, however, must be obtained from applicant’s personal attorney”. The City Attorney explained that some people may not want a personal attorney. He stated that they would clarify this statement by stating that the City Attorney to the Board would not be providing legal advice to people.

VI. Adjournment

Hearing no further business, Chair Stout adjourned the meeting at 7:34 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker