

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, April 6, 2015

6:30 PM

City Hall, Committee Room, 2nd Floor

Members Present:

Louise Zerba, Chair
Jeffrey Stevens, Vice Chair
Nathaniel Stout
Joseph Hoppock
David Curran

Staff Present:

Gary Schneider, Plans Examiner

Members Absent:

Others Present:

I. Introduction of Board Members:

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

II. Minutes of Previous Meeting - March 2, 2015

Mr. Curran made a motion to accept the minutes from March 2, 2015 with the following changes; Mr. Hoppock seconded the motion which carried unanimously.

Mr. Stout stated that on pg. 5 paragraph 5; Chair Stout should be replaced with Mr. Stout. Chair Zerba stated that on pg. 5 it states, "Mr. Stout stated that a large amount of evidence was presented the night of this application which is one reason to reconsider." This should instead read, "Mr. Stout stated that a large amount of evidence was presented the night this application was heard, which is one reason to reconsider."

Chair Zerba stated that on pg. 5 it states, "Mr. Hoppock agreed, stating that it is difficult to digest that much information." It should instead read, "Mr. Hoppock agreed, stating that it is difficult to digest that much information when received at the time of the hearing." Chair Zerba stated that on pg. 5 it states, "Chair Zerba stated that she is in opposition of material over two pages being presented the evening of a meeting. She continued, suggesting that if a large amount of information is presented the evening of an application" This should instead read, "Chair Zerba stated that she is in opposition to material over two pages being presented to the Board the evening of the application.

Chair Zerba stated that on pg. 5 it reads, “Mr. Schneider stated that it will be presented for the April meeting.” This should instead read, “Mr. Schneider stated that it will be presented at the April meeting.” Chair Zerba stated that on pg. 6 it reads “Mr. Schneider stated that there is a private driveway that goes passed the facility to where Fit Nation once was.” This should instead read, “Mr. Schneider stated that there is a private driveway that goes pass the facility to where Fit Nation once was.”

Chair Zerba stated that on pg. 7 it reads, “On a unanimous vote, The Zoning Board of Adjustment approved **ZBA 15-01:**/ Petitioner, Ranger Curran, of 117 West St., Keene, represented by Ralph Randall of NEOPA Signs, Keene, request a Variance for property located at 428 Winchester St., Keene, which is in the Commercial Zone. The Petitioner is requesting to permit signage on a building wall that has no entry to the premises per Section 102-1282 Definition of Building Frontage of the Zoning Code.” Chair Zerba stated that the first sentence, “On a unanimous vote, The Zoning Board of Adjustment approved” should be moved to pg. 8 where the paragraph appears again and this paragraph on pg. 7 be deleted.

III. Unfinished business

None at this time.

IV. Hearings:

ZBA 14-33/: Petitioner, Tasoulas Realty, LTD Partnership of Keene, a Rehearing of Administrative Decision ruling that only three residential units can occupy a site in the Medium Density Zone.

Attorney Gary Kinyon of Bradley & Faulkner, PC at 50 Washington Street, Keene approached the Board and stated that he represents Tasoulas Realty, LTD. He stated that to follow protocols, he will be resubmitting the case from the December meeting when the petition was first reviewed by the Board. Mr. Kinyon stated that on September 4, 2014, Jim Phippard submitted a Voluntary Merger Application for approval. He continued, stating that on September 23, 2014 this application was denied. Mr. Kinyon stated that on October 31, 2014, an Appeal to the Administrative Decision was submitted and on December 1, 2014 the petition was before the Zoning Board of Adjustment. He continued, stating that the petition was denied at the December Zoning Board of Adjustment’s meeting. Mr. Kinyon stated that on December 30, 2014, he submitted a Motion for Rehearing with the Zoning Board of Adjustment which was granted.

Mr. Stevens stated that he lived in the building approximately five years ago. The Board did not see a conflict of interest.

Jim Phippard, of Brickstone Land Use Consultants LLC, representing Tasoulas Realty, LTD, located at 185 Winchester Street, Keene approached the Board and pointed to a map showcasing the property of the Petitioner. Mr. Phippard stated that the property is along Carpenter Street and Kingsbury Street. He continued, stating that there are three lots and each is a third of an acre with duplexes residing on each. Mr. Phippard stated that the driveway is currently shared by all structures along with drainage. He continued, stating that all lots are legally conforming. Mr.

Phippard stated that all lots are owned by the same entity and the merger made sense for financial reasons. He continued, stating that when the request was denied, the ruling from City staff was that a lot in the Medium Density District cannot have more than three dwelling units.

Mr. Phippard disagreed with the decision and stated that he has been a consultant in Keene for 39 year where variance changes have occurred to the Ordinance. He continued, stating that 1992 was the first time language referring to a maximum of three units was discussed. Mr. Phippard stated that definitions were also modified. He stated that Multi-Family Dwelling Unit definition was changed to three or more dwelling units from two or more dwelling units. Mr. Phippard stated that there were special exceptions however. He continued, stating that the Intent Statement was changed in 1994 and read, "Three units per structure." Mr. Phippard stated that in 1996, he submitted a Zoning variance application for 888 Marlboro Street. He continued, stating that it is a Medium-Density Zone and the request was for ten dwelling units per structure. Mr. Phippard stated that The Basic Zone Dimensional Requirements Table is used in order to determine how many units are allowed on a lot. Mr. Phippard stated that he advised his client that a variance was needed for the number of units in a building. He stated that the size requirement for the first dwelling unit is 8,000 square feet and 5,400 for each dwelling unit thereafter. Mr. Phippard stated that he believed the intent of the Medium-Density Zone was to limit the units per structure and not limit the units per lot which would ultimately be determined by the lot size.

Mr. Kinyon, stated that Tasoulas Realty is asking the Board to interpret the Ordinance. He continued, stating that when the Zoning Board of Adjustment acts in a Judiciary capacity, its role is to apply the rules of Statutory Construction. Mr. Kinyon stated that the minutes from March recognized that the Board was not able to read all of the material at the time it was presented by the Petitioner. Mr. Kinyon resubmitted all three documents to the Board from the previous hearing. Mr. Stout stated that it is difficult to keep order without numbered pages.

Mr. Kinyon stated that the Principles of Statutory Construction is the first document to review. He stated that there is no fact finding in a case like the one presented, it is a matter of law. Mr. Kinyon stated that the petitioner would like to argue that a fair, reasonable, and lawful interpretation of the Ordinance, as it is written, is that the Ordinance should be construed to allow three units per structure. Mr. Kinyon stated that if both parties are not in agreement then it is for a court to decide the proper interpretation.

Mr. Kinyon stated that Ordinance and State Laws are often written and the definition is then challenged. He continued, stating that it is not for the Board or Judge to determine what the original framer's thoughts were when making the Ordinance. Mr. Kinyon stated that if the Board is in disagreement with City staff on the interpretation of the Ordinance, then it should be amended. Mr. Kinyon stated that the Ordinance should be reviewed and determined if it is reasonable, logical, and consistent. He continued, stating that the Statutory Construction Principles should be kept in mind when reviewing the Ordinance.

Mr. Kinyon refers to the packet and Section 102-391, Permitted Uses, where it states the intention of the Medium-Density Zone is to provide Medium Density/Medium Intensity Residential area for housing units up to a maximum of three units per structure. Mr. Kinyon refers to Section 102-2 for the definition of structure. He continued, stating that it is defined as

one building. Mr. Kinyon stated that a lot is also defined as a parcel of land occupied or capable of being occupied under the structures, buildings, or uses.

Mr. Kinyon referred to Section 102-392, Permitted Uses, and stated that a dwelling duplex is allowed in this zone. Mr. Kinyon stated that because the Ordinance does not say per lot or per structure, the City is determining that the reasonable explanation would be three dwelling units per lot. He continued, stating that he would not interpret the Ordinance in this way because this contradicts the language in the Intent Section. He continued, stating that one cannot assume three dwelling units per lot and not per structure. Mr. Kinyon stated that the condition is modifying a Multi-Family Dwelling which is also a defined term in the Ordinance. This is defined as a structure or a building that contains three or more dwelling units.

Mr. Kinyon refers to Section 102-822. He stated that here, minimum lot size is specified in the Zone Dimensional Requirements. Mr. Kinyon stated that the table shows that the first lot is 8,000 square feet and each additional lot is 5,400 square feet. He continued, stating that this is a consistent table with the idea that three units per structure are discussed and not per lot. Mr. Kinyon refers to pg. 4 in the packet where it explains that there are some provisions in the Ordinance where per lot does apply and where per structure applies. He stated that the drafter's noted this distinction and knew there was a difference between per structure and per lot. Mr. Kinyon stated that in terms of interpreting this Ordinance, the Board should look at what the drafters said and not what they intended.

He continued, stating that in New Hampshire, when the Board is interpreting an Ordinance, if the Ordinance is clear and unambiguous then there is no need to consider the intent of the Ordinance. Mr. Kinyon stated that if the Ordinance is unambiguous then it would be fair the interpretation should be as it's written. He continued, stating that the only argument from the City is that the intention of the Ordinance is different than stated. Mr. Kinyon stated that intention does not matter because there is no ambiguity in the Ordinance. He continued, stating that ambiguity would also be determined by inconsistent interpretation of the Ordinance. Mr. Kinyon referred to the 1996 decision of the variance which was denied due to three units per building being the maximum number of Multiple-Dwelling Units in the Medium-Density Zone. He continued, stating that even if there was ambiguity, the City has not applied the Ordinance in a consistent way as seen from the 1996 decision.

Mr. Stout asked if the 1996 decision citing three units per structure makes three units per lot irrelevant. Mr. Kinyon stated that the Ordinance is clear and the only way to lawfully interpret is to determine that it is three units per structure. He continued stating that the Code Enforcement's letter of denial from the City discussed intent and the Board should only discuss intent if there is ambiguity and once there is ambiguity it must be determined that it is interpreted consistently. Mr. Stout asked if the ambiguity ends with the 1996 decision. Mr. Kinyon stated no other rulings are apparent. Mr. Stout disagreed and stated that the Ordinance is ambiguous.

Mr. Schneider stated that he will be delivering the City's response. He stated that he has worked for Code Enforcement since 1979 and never in his 36 years has the depiction of the Medium Density Zone been any different. Mr. Schneider stated that the 1996 Variance was denied because the Petitioner wanted to put ten units in an existing building and could not have more

than three units on his property. Mr. Schneider stated that City staff does not see any ambiguity. He continued, stating that the Medium-Density Zone is in between High Density and Low Density communities and based on land size. Mr. Schneider stated that the language changed in 1992 and 1994. This is where per structure came up. Mr. Schneider stated that based on land size of the 1996 petitioner, he could have 22 units on that piece of property.

Mr. Schneider stated that the Ordinance has always been consistent. He continued, stating that prior to 1998 an individual would never be approved for more than three units in the Medium-Density Zone. Mr. Schneider stated that he went through the minutes from 1992-1994 and he did not recover any discussion on number of units per structure.

Mr. Hoppock stated that the position has not changed from the City but the staff did not go into the wording of the Ordinance. He continued, stating that he agrees that there is no ambiguity in the Ordinance and that the Board does not need to determine the intent when the Ordinance was created. Mr. Schneider disagreed and stated that it is important to go back and determine the intent. Mr. Hoppock stated that the Ordinance states three units per structure. Mr. Schneider stated that this is because there are very few structures in the Medium-Density Zone that have not been developed. Mr. Stout asked how many times the question of this Ordinance has come up about three units per structure. Mr. Schneider stated that many people call about this Ordinance and if they ask how many units per lot, based on the land size the Planning Department would not allow for more than three units. Mr. Stout asked if a large lot was subdivided what would be the protocol. Mr. Schneider stated that he can only speak to this property. Mr. Stout asked if units were always discussed and not structures. Mr. Schneider stated it has always been three units per lot.

Chair Zerba opened the Public Hearing.

Mr. Kinyon stated that there is no doubt about the history but the City has not determined that the statute is interpreted properly over the years. He continued, stating that it is the Board's role to determine that the Ordinance is not ambiguous and is properly interpreted. Mr. Kinyon stated that the Ordinance can be amended if it is ambiguous but it must be seen as written for the public. Mr. Phippard stated that the Ordinance was very different before 1986. Mr. Phippard stated that prior to 1986 the dimensions and requirements were different. He continued, stating that in 1998, he came before the Board for West Court Apartments on Lindon Street and 39 units were allowed. He continued, stating that in 1992, the City Council changed multi-family dwelling from two units to three units. Mr. Phippard stated that the language of per structure was added after the decision of changing two units to three units.

Mr. Schneider stated that there are multiple dwelling units in Medium-Density Zone. He continued, stating that questions arose as to how they came into existence. Mr. Schneider stated that many were created before the Ordinance including 109 Ashuelot Street which was created in 1968. He continued stating that Court Street has ten units and existed before the Ordinance. He continued, stating that 28-30 North Street was also built in 1970. Mr. Schneider stated that there are many examples of structures that currently do not adhere to the Ordinance.

Chair Zerba closed the Public Hearing.

Mr. Stout asked exactly what the Board is voting on. Mr. Hoppock stated that it is an Appeal of an Administrative Decision. He stated that the original petition was appealing the City's interpretation of the Ordinance. Mr. Stevens stated that the Board is determining if the City made the right decision on the interpretation. Mr. Hoppock stated that there is nothing ambiguous about the language of the Ordinance.

Mr. Hoppock made a motion to grant ZBA 14-33 such that "a lot" can have three units per "structure" in accordance with Section 102-391. He continued stating that this allows for three units per structure. Mr. Stout stated that this motion does not address three units per structure.

The Board discusses the wording of the motion.

Chair Zerba opened the Public Hearing.

Mr. Kinyon stated that there are two units per structure on three lots. He continued, stating that an additional structure would require additional space. Mr. Kinyon stated that Zoning and Dimensional Requirements are being complied. Mr. Hoppock asked how to change the motion. Mr. Kinyon stated that the motion sounded correct but confusion comes from using structure and lot in the same motion. Mr. Schneider stated that the motion is ambiguous and the decision of the Board cannot override the Table of Zone Dimensional Requirements. Chair Zerba suggested adding the Table of Zone Dimensional Requirements to the motion.

Mr. Stevens suggested that the motion agree or disagree with the City's decision. Chair Zerba stated that a motion of that kind can have other implications for future cases. Mr. Hoppock stated that the Board should not anticipate a future case. Mr. Hoppock retracted his previous motion. Chair Zerba stated her concern about the motion in the future and that dimensions should apply. Mr. Schneider stated that this decision will impact other decisions.

Mr. Curran suggested that the City Attorney review this application. Mr. Stevens stated that the City Attorney should not be present and this application is now complicated. He continued, stating that there is no sentence in the Medium-Density Zone section of the Ordinance that limits the number of structures. Mr. Stout stated that he would like to learn more about Principles of Statutory Construction trumping Legislative Intent. He continued, stating that the Board has a right to ask for advice from the City Attorney. He continued, stating that to assume Legislative Intent is trumped is a dangerous assumption.

Mr. Hoppock stated that the concepts of the principles are important. He continued stating that if there is no ambiguity then the Board should look at exactly what the words alone mean. Mr. Hoppock stated that to put this off any further is an injustice to the Petitioner. Mr. Stevens stated that this is the State's Directive. He continued, stating that the Ordinance does not list every possibility but the restrictions.

Chair Zerba stated that this application should be put off another month in order to create a motion that is appropriate. She continued, stating that it has been a difficult case and the petitioner will be the first item for the following May meeting. Mr. Stout asked if the Public

Hearing would be opened again. Mr. Hoppock stated that there does not need to be a Public Hearing for legal advice. Mr. Kinyon stated it would be unfair to reopen the Public Hearing. He continued, stating that the Board has the right to obtain information from the City Attorney and strenuously objects to opening the Public Hearing.

Mr. Hoppock made the following motion which was seconded by Mr. Stout.

On a unanimous vote the Zoning Board of Adjustment made the motion to make a decision at the following meeting after legal consultation is obtained for ZBA 14-33.

ZBA 15-03: Petitioner, Montessori Schoolhouse, of 69 Taylor Street, Keene, requests a variance for property located at 28 Hurricane Road which is in the Low Density Zone. The Petitioner is requesting to be permitted to have a sign located at the corner of Arch Street and Hurricane Road per Section 102-1283 of the Zoning Code.

Mr. Schneider discussed the location of the Montessori School. He continued, stating that this property has been in front of the Board in previous years. Mr. Schneider stated that a site plan has been submitted along with pictures of the sign which are in the packet for the Board to review.

Kate Bosley of 111 Gunn Road, Keene approached the Board. She stated that the school is almost complete and they hope to open for summer. Ms. Bosley stated that a sign on the corner of Arch Street and Hurricane Road would help parents locate the school.

Mr. Stout asked if people will know what angle to take for parking. Ms. Bosley stated that she spoke with Mr. Schneider where he advised that generic signs can be added without variances. Mr. Stout asked if they would be visible from the corner. Ms. Bosley replied, yes but not from Hurricane Road. Mr. Schneider stated that the site plan will have to be tweaked because there are distance lines required for the property. Ms. Bosley stated that she was unaware of the requirements. Mr. Hoppock asked what other signs are on the road other than the high school. Ms. Bosley stated that there is a sign for Langdon Place and Little Brook.

Chair Zerba opened the Public Hearing.

Priya Allarie of 38 Sweeney Road, Keene approached the Board. Ms. Allarie is the Board President at the Montessori School and stated that parking will be off of Arch Street.

Richard Lund of 11 Hurricane Road, Keene approached the Board. He asked where the sign would go and if it will go on his property. Mr. Schneider stated that the sign must be on the applicant's property.

Chair Zerba closed the Public Hearing.

Mr. Stevens made the following motion which was seconded by Mr. Curran.

Chair Zerba went over the Findings of Fact:

1. *Granting the variance would not be contrary to the public interest. Granted unanimously.*
2. *If the variance were granted, the spirit of the Ordinance would be observed. Granted unanimously.*
3. *Granting the variance would do substantial justice. Granted unanimously.*
4. *If the variance were granted, the values of the surrounding properties would not be diminished. Granted unanimously.*
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 purpose of the ordinance provision and the specific application of that provision to the property. Granted unanimously.*
 - ii. *The proposed use is a reasonable one. Granted unanimously.*

On a unanimous vote the Zoning Board of Adjustment approved application ZBA 15-03.

ZBA 15-04/ Petitioner, 815 Court St, LLC, of 117 West Street, Keene, represented by Brickstone Land Use Consultants, LLC of 185 Winchester Street, Keene, requests a variance for property located at 815 Court Street which is in the Commerce Zone. The Petitioner is requesting to be permitted storage, distribution and sales of bakery products on a property in the Commerce District where an existing health and fitness facility, and convenience store already exist. Storage and distribution of products is not a permitted use in the district per Section 102-542 of the Zoning Code.

Mr. Schnedier refers to the map. He stated that the building is located on upper Court Street and Paul's Choice is in the area along with housing units and an old bank.

Jim Phippard of Brickstone Land Use Consultants, LLC, approached the Board. He stated that the existing building is 100 ft. by 100 ft. and Paul's Choice is an existing tenant. Mr. Phippard stated that there is an empty space that is 30 ft. by 100 ft. Mr. Phippard stated that he was before the Board last year in reference to storage units and if this application is approved, those storage units would be altered.

Mr. Phippard stated that the request tonight is to allow storage and distribution of bakery products along with a retail outlet. He continued, stating that the retail outlet would be in the front portion of the building and the back area of the building would be storage for bakery products. Mr. Phippard stated that the variance request is to use all space for storage and distribution. He continued, stating that Freihofer's Bakery currently receives bakery products and distributes out of the warehouse. Mr. Phippard stated that the property has access for a large tractor trailer and smaller delivery vans. Mr. Phippard stated that a shared driveway services the property. He continues, stating that the existing building is mixed use. Chair Zerba asked if the extension is included in this application. Mr. Phippard stated that the variance is to allow another

mixed use that is not allowed in a Commerce Zone. Mr. Phippard stated that the space which would be occupied by Friehofer's Bakery is 5,000 square feet. The storage and distribution will take up 4,250 square feet of this with the remaining area as retail.

Mr. Phippard stated that the variance is not contrary to public interest. He continues, stating that the property is a difficult space for the permitted usage and finding a tenant for that area has been difficult. Friehofer's Bakery is the only legitimate interested party. He continued, stating that it is in the public's interest to use this space because the sidewalk would be redone and landscape would be cleaned up. Mr. Phippard stated that The Spirit of the Ordinance is observed. He stated that this Ordinance is to protect individual's safety and welfare. Mr. Phippard stated that the use of delivery trucks is thought to be high intensity but this user comes between midnight and 2 am. He continued, stating that there are no residents in the area that would be affected. Mr. Phippard stated that the act of loading delivery trucks is an indoor activity and a benign use. Mr. Phippard handed out letters in support of the application from the abutting property owners including Michael J. Ledoux, Joshua Meehan, and Robert Clarkson.

Mr. Phippard stated that the criteria stated as The Value of the Surrounding Properties would not be diminished are upheld. He continued, stating that by allowing this space to be developed, the property value to the area would increase. Mr. Phippard stated that the final criteria of Unnecessary Hardship pertains to the building itself. He stated that the structure was built around 1970 and the appropriate depth was 80 feet deep however commercial use has evolved. He stated that retail use is now smaller. Mr. Phippard stated that creating a space of 40 feet by 50 feet will create a more appealing retail area. He stated that the property has been shown to dozens of individuals who cannot use the space. He stated that this application would have to go in front of the Planning Board as well.

Mr. Stevens asked how many trucks will be used and if the layout of the five trucks bays will remain. Mr. Phippard stated that there will be five. Mr. Stevens asked if these trucks will continue to park at these bays. Mr. Phippard stated that once the delivery is done they would be parked in the area. He continued, stating that there is a separate entrance for the trucks away from the customer area. Chair Zerba asked about the abutting property owner's driveway and intent to create a separation. Mr. Phippard stated that there is a fence to the north of the area but the owner of the property has no objection to the applicant.

Mr. Stout stated that this is a depot and asked if the store in the front will be selling the products delivered. Mr. Phippard replied, yes. Mr. Curran asked if the current retail store has a large amount of traffic. Mr. Phippard stated that there is some traffic but hope that this new location will help with sales.

Chair Zerba opened the Public Hearing.

Mr. Ranger Curran of 815 Court Street, Keene approached the Board. He stated that this space has been a difficult area to lease from the bar that was once there. Mr. Curran stated that many neighbors will be able to walk to the area and have discounted foods. Mr. Curran stated that the area is still disheveled from the previous tenant and the development of this location will clean up the area. Mr. Stout asked if the awning will be extended. Mr. Phippard replied yes.

Chair Zerba closed the Public Hearing.

Mr. Stout made the following motion which was seconded by Mr. Stevens.

On a vote of 4:1 The Zoning Board of Adjustment approves ZBA 15-04. Mr. Hoppock voted in opposition.

Mr. Hoppock stated that he is concerned about the truck traffic changing over the years and does not believe the hardship is established. Mr. Stout stated that this property is suitable. He continued, stating that for a proposal like this, the truck traffic is a single tractor trailer and the size would not allow extra truck traffic. Mr. Curran stated that the request is very close to the permitted usage.

Chair Zerba went over the Findings of Fact:

1. *Granting the variance would not be contrary to the public interest. Granted unanimously.*
2. *If the variance were granted, the Spirit of the Ordinance would be observed. Granted 4:1; Mr. Hoppock voted in opposition.*
3. *Granting the variance would do substantial justice. Granted 4:1; Mr. Hoppock voted in opposition.*
4. *If the variance were granted, the values of the surrounding properties would not be diminished. Granted 4:1; Mr. Hoppock voted in opposition.*
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 purpose of the ordinance provision and the specific application of that provision to the property. Granted 4:1; Mr. Hoppock voted in opposition.*
 - ii. *The proposed use is a reasonable one. Granted 4:1; Mr. Hoppock voted in opposition.*

ZBA 15-05/ Petitioner, Sarah J. Cobb of 29 Ellis Court, Keene requests a variance for property located at 29 Ellis Court, Keene, which is in the Medium Density Zone. The Petitioner requests a continuation of a porch and stairway located within the setback limits per Section 102-791 of the Zoning Code.

Mr. Schneider discussed the property on the map. He stated that the property is five houses down on the east side of Ellis Court. Mr. Schneider stated that there was a structure there at one time. He continued, stating that he was under the impression that the structure was being rehabilitated. Mr. Schneider stated that the permit was issued but when a Code Enforcement Officer visited the property he did not see an older structure.

Mr. Schneider delivered a photograph from November 2007 of the property. He stated that there was a structure at one time but having been removed in 2007, the old structure would be considered abandoned. Mr. Hoppock asked if measurements were taken. Mr. Schneider stated that he did not need to do this because it would be a non-conforming structure. Mr. Stevens asked if the footprint would be the same. Mr. Schneider stated that he is unsure of the new measurement at this point.

Ms. Sarah Cobb of 29 Ellis Court approached the Board. She stated that the new structure will be smaller than the original. She stated that the previous foundation was almost three feet wider. Mr. Hoppock stated that it will be a smaller footprint. Chair Zerba asked if Ms. Cobb was under the impression that she did not need to do a variance because it was smaller. Mr. Stevens asked what the structure previously was. Ms. Cobb stated that it was a shed attached to the barn. Mr. Hoppock asked what year the shed was taken down. Ms. Cobb could not recall. Mr. Hoppock asked if she intended to rebuild the structure and not to abandon the property. Ms. Cobb replied, yes.

Mr. Wes Cobb of 39 Ellis Court, Keene approached the Board. He stated that there was a shed at one point and over the years it started to rot. He continued, stating that the improvement will make the area look much better.

Mr. Morgan Ellison approached the Board. He stated that he is the builder for Ms. Cobb and took simple measurements from the plan. He continued, stating that there was a preexisting structure and a portion of the foundation was left. He continued, stating that that is a great place to have a covered porch. Mr. Ellison stated that the stairs will be used as a fire escape. He continued, stating that they have been trying to adhere to City regulations. Mr. Ellison stated that the shed that was there was rotting the whole building and was taken down due to safety. He continued, stating that all safety protocols are being adhered to and is looking forward to finishing it.

Andrew Macky of 22 Ellis Court, Keene approached the Board. Mr. Macky stated that the houses are all very close together. He continued, stating that there was an exterior door going out to her garage and he is not opposed to this development.

Chair Zerba closed the Public hearing.

Mr. Hoppock made the following motion which was seconded by Mr. Curran.

By unanimous vote The Zoning Board of Adjustment approved ZBA 15-05.

Chair Zerba went over the Findings of Fact:

1. *Granting the variance would not be contrary to the public interest. Granted unanimously.*
2. *If the variance were granted, the Spirit of the Ordinance would be observed. Granted unanimously.*
3. *Granting the variance would do substantial justice. Granted unanimously.*

4. *If the variance were granted, the values of the surrounding properties would not be diminished. Granted Unanimously.*
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 purpose of the ordinance provision and the specific application of that provision to the property. Granted unanimously.*
 - ii. *The proposed use is a reasonable one. Granted Unanimously*

V. New Business

None at this time

VI. Communications and Miscellaneous

Mr. Schneider asked that the Board review the Cities for Climate Protection - Climate Adaptation Plan presentation from City Staff Karen Purinton, of the Planning Department. Chair Zerba asked how it applies to the Zoning Board of Adjustment. Mr. Schneider stated that all questions should be addressed to Ms. Purinton.

VII. Non Public Session (if required)

VIII. Adjournment

Chair Zerba adjourned the meeting at 8:52 PM.

Respectfully submitted by:
Lana Bluege, Minute-taker
April 6, 2015