

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 2, 2015 **6:30 pm** **City Hall, Council Chambers**

Members Present:

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

Staff Present:

Gary Schneider, Plans Examiner
Tom Mullins, City Attorney

Others Present:

Members Absent:

Steve Bragdon, Alternate

I. Introduction of Board Members

Chair Zerba called the meeting to order at 6:32 PM and introduced the Board members.

II. Minutes of the Previous Meetings – September 28, 2015 and October 5, 2015

Mr. Hoppock made a motion to approve the minutes of September 28, 2015. Mr. Curran seconded the motion which was carried unanimously with the following changes:
Chair Zerba stated that on page 2, Dr. Kimbal Temple should instead read, Dr. Kimball Temple.
Chair Zerba stated that Kendal Lane should instead read, Kendall Lane. She continued, stating that on page 6, the first paragraph stated Laurie Property and should instead read, Lory. Chair Zerba stated that on page 6, the last paragraph stated Demadio and should instead read, De Matteo.

Mr. Hoppock made a motion to approve the minutes of October 5, 2015. Mr. Curran seconded the motion which carried unanimously with the following changes: Mr. Stout stated that on page 2, the fifth paragraph stated the prohibition of changing signs and should instead read the prohibition of “changeable” signs.

III. Unfinished Business – None at this time.

IV. Hearings:

ZBA 15-16/: Petitioner, Kathy A. Theiss of 6429 Abdella Lane, North Port, FL, represented by Homer S. Bradley of Bradley & Faulkner, P. C., of Keene, requests a Variance for property located at 708 Roxbury Rd., Keene, which is located in the Rural District. The

Petitioner requests a Variance to be permitted to build a structure on the premises to encroach 25 feet into the side setback per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

Chair Zerba read the notice after which Mr. Schneider pointed out the property on the plan elevation. Mr. Schneider stated that this petition came before the Board twice already. He continued, stating that the Board approved the two parcels becoming a building lot and now the petitioner will have a side setback issue. Mr. Schneider noted that Jordan Road then becomes the front of the property and the property line to the north becomes the side of the property. He continued, stating that the northern line is the area under discussion.

Attorney Sam Bradley of Bradley & Faulkner, P. C. in Keene approached the Board. Attorney Bradley displayed the design plan of the house to be built on the property. He continued, stating that if this Variance is granted, Ms. Theiss will sell the property. Attorney Bradley agreed with Mr. Schneider's assessment of the application but had confusion because the new house will face the south which is similar to the previous house on the lot. Attorney Bradley provided a clearer map for the Board to view. Attorney Bradley stated that the zone in discussion requires setbacks of 50 feet in every direction. He continued, stating that the proposed building encumbers the north setback by about 30 feet. Attorney Bradley stated that the petitioner is only asking for a waiver of the side setback.

Attorney Bradley reviewed the criteria for granting a Variance:

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

Attorney Bradley stated that the structure will not alter the character of the neighborhood because it will be a single family home.

If the Variance were granted, the spirit of the ordinance would be observed:

Attorney Bradley stated that this project will be consistent with the goals of the Ordinance which relate to public safety and overcrowding.

Granting the Variance would do substantial justice:

Attorney Bradley stated that this petition does not hurt the Board/City but there is a significant loss to the landowner if not approved. He reiterated that this was originally two lots and is now one legal lot.

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

Attorney Bradley stated that the original building was demolished and this new house will significantly enhance the neighborhood.

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*
- 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:*

Attorney Bradley stated that the 50 foot setback is for the entire Rural Zone and should not be applied to this particular lot.

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

Attorney Bradley stated that the Variance would not violate public welfare. He continued, stating that if there is no reasonable use of the lot if the Variance is not granted due to the shape of the lot.

Mr. Hoppock asked Attorney Bradley if the petitioner is asking to encroach 25 feet into the 50 foot setback. Attorney Bradley replied, yes on the north side only.

Chair Zerba opened the floor to public comment.

Sherry and Sean Herrick, of 15 Jordan Road in Keene approached the Board in opposition to the petition. Ms. Herrick stated that she is an abutter to the property in discussion. She continued, stating that she is highly opposed to this request and objected to first petition in reference to this lot. Ms. Herrick recapped that at the August 3rd meeting, the Board agreed for the lot to double in size. She continued, stating that the lot is now .66 acres which is nowhere near the lot sizes of the surrounding properties. Ms. Herrick stated that surrounding properties were discussed at the last meeting. Ms. Herrick approached the map and stated that her abutting property is 1.55 and provided the lot sizes of the eight surrounding properties all but one is over an acre of land. She continued, referencing Section 102-791 Basic Zone Dimensional Requirement for the Rural District Area and stated that this lot does not meet these minimum requirements. Ms. Herrick reiterated the requirements and gave the history of the lot. She continued stating that her parents purchased 15 Jordan Road and in 2006, the Zoning Board of Adjustment denied her parents request for a Variance to put a small home on the lot because of the Basic Zone Requirements.

Ms. Herrick stated that the applicant purchased 0 Roxbury Road but could not comply with the one year permit to rebuild after the demo of original building.

Ms. Herrick stated that she contacted her legislator, Senator Molly Kelly with her concerns. She continued, stating that Senator Kelly inquired about her water source so she researched her waterlines and regulations. Ms. Herrick stated that the old leach field nearby leaked onto her property for three years and warned that this is a health hazard. Ms. Herrick stated that she spoke to John Rogers of NHDES and was told that no application for a leach field has been submitted and a survey would be required for the encroachment request. Ms. Herrick stated that the City Assessor estimated a fair market value of \$4,300 for the two lots merged.

Ms. Herrick noted that existing houses in the area were all built in the 1950's and rules and regulations have changed since then. Ms. Herrick stated that this home would not fit into the neighborhood because surrounding lots of land and dense vegetation. She continued, stating that the proposed house will sit right on top of her and she does not want to live in such close proximity. Ms. Herrick stated that leach field is a major safety concern. She continued, stating that this is a hardship for Mrs. Theiss but that is something that came with the purchase. Ms. Herrick stated that she and her husband have discussed purchasing the property. She continued, warning about the large cellar hole and chimney from the vacant lot that could seriously injure someone.

Mr. Hoppock commented that if a single family home were built on the lot then the oil tank would be cleaned. Ms. Herrick agreed. Mr. Hoppock stated that the lot in discussion is the smallest in the neighborhood and would therefore indicate that it is a special condition. Ms. Herrick replied that all of the homes in the area are single story ranches and with the construction of a new house, her taxes will go up. Ms. Herrick then reiterated the assessed value of the lot at \$4,300 for Mr. Hoppock. Mr. Hoppock asked if an appraisal was done. Ms. Herrick replied, no stating that the land has never been surveyed. Chair Zerba stated that the property owner would have to get the lot surveyed and apply for all required permits before development.

Mr. Stevens asked Mr. Schneider to check the present map to see if there were leach field setbacks indicated. Ms. Herrick stated that a septic manager was on the property some time ago. She continued, stating concern with the septic system and if there is a problem in the future then there will be no room for improvement. Chair Zerba stated that a professional would assess the land to determine if the lot was suitable for development.

Ms. Herrick stated confusion about the ZBA overturning a Zoning rule and the grandfather expiration issue. Mr. Stevens explained that circumstances come up that may not fit a regulation and if Variances and discussions about the regulations were not allowed, the Board would not exist. Ms. Herrick stated concern with selling her house in the future because of this possible development.

Mr. Stout stated that he has a problem with Ms. Herrick stating concern with her property value because at one time the lot had a house. Ms. Herrick replied that she bought the property when the lot was empty knowing that there was a Grandfather Clause. Mr. Stout stated that it is the responsibility of the Board to consider hardships on both sides. Ms. Herrick agreed that there are hardships on both sides. She continued, stating that the petitioner has knowledge about regulations and did not comply with the Grandfather Clause.

Mr. Schneider stated that one statement needs correction. He continued, stating that John Rogers does not work for NHDES but for the Health and Code Enforcement Department on the 4th floor of City Hall. Ms. Herrick stated that she stands by her statement that she spoke to an individual in Concord. Mr. Schneider apologized for the confusion.

Leah and Jeff Giles of 672 Roxbury Road approached the Board. Ms. Giles stated that their property is located to the west of the lot. Ms. Herrick asked why there can't be a house built on that property that follows the rules and setbacks. Chair Zerba referred the question to Attorney

Bradley. Attorney Bradley provided a copy of the section of zoning map. Attorney Bradley pointed out the surrounding lots are smaller than an acre including Ms. Herrick's lot which is smaller than the applicant's. Attorney Bradley addressed that hardship for the applicant was noted. He continued, stating that the applicant will get necessary permits in reference to the septic system. Attorney Bradley stated that the applicant cannot build without a septic permit. Attorney Bradley stated that the two story home will be 1,800 square feet.

Attorney Bradley stated that the house would not affect the setbacks on Ms. Giles property. Chair Zerba restated Ms. Giles's question: why wasn't the house designed to fit within the property setbacks. Attorney Bradley stated that building a house smaller than the house intended would be unmarketable.

Mr. Stout asked that instead of encroaching on the north setback, the house encroach on the south setback which will make it closer to Roxbury Road. He continued, asking if this is defining a corner lot and wondered if there is more frontage on Roxbury Road instead of Jordan Road. Mr. Schneider explained requirements to the Board, stating that with a corner lot, the smaller dimension that fronts the right of way is considered to be the front. Mr. Schneider stated that Jordan Road is the smaller of the two.

Shane Lampinen, prospective buyer/contractor of the property, approached the Board. He stated that the previous house would have encroached also and the new house will be built in the same space. Mr. Stout asked Mr. Lampinen to compare the previous house with the proposed house. Mr. Lampinen stated that the proposed house will be larger in size because of the garage Mr. Stout asked if the house would be comparable with the previous house without the garage. Mr. Lampinen replied, yes.

Mr. Hoppock asked if Mr. Lampinen could put up a layer of trees to block the view. Attorney Bradley replied that the area is already wooded. Mr. Hoppock asked if the view is blocked. Chair Zerba stated that the deck of the property to the north is visible. She continued, asking if something could be done to block the view. Mr. Lampinen stated that he does not feel that is necessary but would consider it. Mr. Stout stated that the Board could make it a condition of approval. Mr. Hoppock suggested adding evergreens/pines to seal it off and create a natural buffer. Mr. Stevens asked if the existing vegetation is on this property. Mr. Lampinen replied, yes.

Attorney Bradley stated that the setback would not be a problem if the applicant did not put the deck on the back. Mr. Stout stated confusion about the structure existing on the property without encroachment, stating that it is a side setback and wondered if this is handled differently than a front or back setback. Mr. Schneider stated that a deck can be within 10 feet of the rear property line but not the side. He continued, reaffirming that it is a side setback because Jordan Road represents the frontage of the lot. Mr. Stout stated that the math should be reviewed again. He continued, stating that with the 25 foot encroachment with the side setback the depth of the deck could be subtract and the Variance would then constitute less footage. Mr. Hoppock stated that the application calls for a 25 foot Variance and the Board should not discuss the design of the structure. Chair Zerba explained that the Board is trying to accommodate both parties.

Mrs. Giles approached the Board again and asked if other houses in the area encroach on setbacks or are they within the required boundaries. Attorney Bradley stated that he cannot answer this with 100% certainty but suggested that none meet the 50 foot setback. Mrs. Giles stated that she would not see the proposed house at all due to the tree buffer.

Sean Herrick approached the Board again and asked about the 10 foot setback. He continued, stating that the north property line would be right by his shed. Chair Zerba stated that he also has a 50 foot set back and before any construction occurred a survey would be conducted.

Mr. Stevens asked if his house was close to the northern property line. Mr. Herrick replied, yes.

Mr. Stevens asked Mr. Schneider if the tax map provided is correct. Mr. Schneider stated that he did not research this map. Attorney Bradley assured the Board that it is credible.

Chair Zerba closed the public hearing for deliberation.

Mr. Curran stated that there is definitely an issue of compromise for both parties. Mr. Stout reiterated that the Board is here for the 25 foot encroachment and is not comfortable voting on the application as written. Chair Zerba suggested continuing this petition until the following month.

Mr. Stout made a motion to continue ZBA 15-16 until the following month. Mr. Hoppock seconded the motion which carried unanimously.

Mr. Hoppock stated that this petition meets the criteria but would like to see the barrier addressed. He continued, asking Attorney Bradley to come back with information regarding current vegetation in the area. Mr. Stout stated that he would also like confirmation of lot sizes.

On a unanimous vote the Zoning Board of Adjustment will continue ZBA 15-16 until the next meeting.

ZBA 15-17/: Petitioner, Jacob D. and Geraldine G. Liebert, 447 Hurricane Rd., Keene, represented by Brickstone Land Use Consultants, LLC, 185 Winchester St., Keene, requests a Variance for property located at 0 Hurricane Rd., Keene, which is located in the Rural District. The Petitioner requests a Variance to allow construction of a single family home on an existing 2 acre lot in the Rural District where 5 acres is required per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

Chair Zerba read the notice after which Mr. Schneider indicated where the property is located on the map displayed.

Chair Zerba read two letters into the record from abutters. She continued, stating that one is from James Romeyn Davis & Joy Davis of 446 Hurricane Road in favor of the proposal. This letter reads:

Please be advised that my wife and I are abutters of Jacob D. and Geraldine J. Liebert of 447 Hurricane Road here in Keene. We are familiar with the above identified proposal

by which Jacob and Geraldine seek a so called “area” Variance from the 5 acre minimum acreage requirement for the rural district, so that their existing 2 plus acre undeveloped lot (abutting their existing home place lot) may be a lawful building lot.

Joy is teaching tonight and I will be attending an All Soul’s Mass. As such, we are unable to be present at the Zoning Board of Adjustment (ZBA) meeting tonight.

We wanted to advice you and your fellow ZBA members that we favor the proposal. We believe that the two acres lot is well suited as a dwelling lot.

We understand the Jacob and Geraldine are only seeking the above-identified area Variance and are not seeking any other so –called “setback” and/or “use” Variances. Our support for the above described area Variance is based upon such understanding.

We are sending this as a PDF to Dave Bergeron of Brickstone Land Use Consultant, LLC to present to the ZBA.

Thank you and the other ZBA members for your attention to this matter.

The second letter is from Terence C. and Justine M. Mark of 460 Hurricane Road with concern for the surrounding wetlands. The letter reads:

Our concern is the “WET LAND” designation (per City of Keene environmental investigation performed 2013-14) and extreme seasonal additional soaking of that land by extreme seasonal storm runoff that floods and flows over the land adjacent to 460 Hurricane Road.

This land evaluation was noted and recorded during that same period of time by S. V. E. Associates (land surveyors) when it was surveyed by that company for Mr. and Mrs. Liebert and their front portion of that land deemed undevelopable for housing.

The City of Keene “City Engineers” are totally aware of this serious problem with repeated washout damage to Hurricane Road throughout this area and they were presented with photos by us showing the action and devastation of that flooding and runoff repeated conditions.

Chair Zerba stated that she spoke with Mr. Schneider in reference to this letter. She continued, stating that Mr. Schneider checked with the City Engineer who responded that in this area, there are no visible drainage concerns and engineering is aware of road condition issues along Hurricane Road

Dave Bergeron of Brickstone Land Use Consultants, LLC, approached the Board. Mr. Bergeron stated the SVE Associates did not conduct a survey of the land and is not sure where Mr. Mark obtained the information represented in the letter.

Mr. Bergeron stated that there is a culvert underneath Mr. Liebert's driveway which has not washed out in almost thirty years. He continued, stating that wetlands have been identified as seen in the document given to the Board. Mr. Bergeron stated that the two acre lot was created in 1976 and at this time it was an acceptable lot size adding that zoning was changed in the late 1980's which instituted a five acre requirement for this zone. Mr. Bergeron stated that a Variance is needed to move forward in selling the lot. Chair Zerba asked if there was a discussion about a boundary line adjustment. Mr. Bergeron replied, yes. He continued, stating that he will go through the criteria first and then address this question.

Mr. Bergeron reviewed the criteria for requesting a Variance:

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

Mr. Bergeron stated that this lot is not out of character and the neighborhood has other lots under five acres.

If the Variance were granted, the spirit of the ordinance would be observed:

Mr. Bergeron stated that the setback requirements can be met and this will not overburden the neighborhood. He continued, stating that there is room for a well and septic system. Mr. Stout asked how long the driveway will be. Mr. Bergeron replied, about 350 feet. Mr. Stout stated that a turnoff would be necessary. Mr. Bergeron stated that this is in the plan and pointed it out on the map.

Granting the Variance would do substantial justice:

Mr. Bergeron stated that this project meets all requirements of the ordinance except lot size. He continued stating that there is more justice in selling the lot than not. Mr. Bergeron stated that the lot has existed for over 40 years and will not affect abutters.

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

Mr. Bergeron stated that this will not affect property values and the lot has existed for 40 years.

Unnecessary Hardship:

B. 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

iii. 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:

iv. The proposed use is a reasonable one

Mr. Bergeron stated that there will be unnecessary hardship for the applicant without the Variance stating that it cannot be sold without the Variance. He continued, stating that the intent of the ordinance can be maintained and without the Variance there is no use of the property. Mr.

Bergeron stated that they looked at making it a five acre lot but wetlands cannot be counted. He continued, addressing the Hillside Protection Ordinance and Surface Water Protection Ordinance. Mr. Bergeron stated that due to the restrictions of these ordinances, 20 acres would have to be added to make this a permitted standard 5 acre lot. He continued, stating that because of these circumstances, it constitutes a hardship.

Chair Zerba closed the public hearing. No one spoke in reference to this application.

A motion was made by Mr. Hoppock that the Zoning Board of Adjustment approves ZBA 15-17. Mr. Curran seconded the motion.

Mr. Stout stated that the Grandfather Clause is particularly relevant in this case. Mr. Stevens stated that taking 20 extra acres is not reasonable.

Chair Zerba went over 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

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

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-17.

Chair Zerba discussed the following petitions with the Board. She requested that the building height petitions be put together, the carport, the paving setbacks be put together, and the prohibitive slopes be put together.

ZBA 15-18/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene requests a Variance for property located at 99 Wyman Rd. , Keene, which is in in the Rural District. The Petitioner requests a Variance for the construction of two buildings up to four stories and up to 62 feet in height above grade plane on lots in the Rural District where a maximum of 2 stories and 35 feet in height are

permitted per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

ZBA 15-19/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene requests a Variance for property located at 0 Wyman Rd. , Keene, which is in in the Rural District. The Petitioner requests a Variance to construct a building up to three stories and up to 45 feet in height above grade plane on a lot in the Rural District where a maximum of 2 stories and 35 feet in height are permitted per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

Attorney Tom Hanna of 41 School Street, Keene approached the Board. Attorney Hanna stated that he will truncate the presentation as best he can. He continued, stating that on September 28, 2015 the Planning Board approved the project (CCRC). Attorney Hanna gave a brief summary of the project. Attorney Hanna pointed out that the Planning Board minutes are included in the packet and requested that they be part of the official record which include the Special Exception approval. Attorney Hanna stated that the minutes are being submitted as evidence for this hearing. The Board accepted this. Attorney Hanna stated that exhibits were also submitted at the September 28th Planning Board meeting and are included in the packet for the Zoning Board as well.

Attorney Hanna stated that Prospect Place has had a long history with Keene and was founded in 1874. He continued, stating that it cannot keep up with modern expectations and the structure is no longer suitable for its purpose. Attorney Hanna stated that the endowment has been eroded in order to operate. He continued, stating that the Woodward Home is in the same situation and has chosen to merge with Prospect Place. Attorney Hanna stated that many focus groups occurred in 2014 and discovered that this facility was favored.

Attorney Hanna defined CCRC for the Board: A facility which provides a continuum of care for residents. The proximity of the health care facility on the same campus allows people to remain in their homes as long as possible. When the time comes, they have the ability to move on campus to a more intensive healthcare system and the price will not change.

Attorney Hanna stated that the independent living units will subsidize the healthcare. He continued, stating that it takes a certain number of independent living units to sustain the healthcare facility. Attorney Hanna stated that this site is ideal and a comprehensive site search was conducted in 2011. He continued, stating that a site that would accommodate a CCRC is hard to find.

Jim Phippard of Brickstone Land Use Consultants, LLC approached the Board. Mr. Phippard reminded the Board of the location of the lot and recapped the development plan. He continued, stating that City Council approved rezoning allowing Institutional Use in this location. Mr. Phippard stated that this location also has City utilities. He continued, stating that there are several companies surrounding the area as well. Mr. Phippard showed an existing conditions plan and stated that the property was surveyed by SVE Associates; restating that wetlands were viewed as well and explained that extensive research was done to this lot. Mr. Phippard stated

that the lot is almost 50 acres but contains steep slopes to the west and south, and contains wetlands (peat) allowing about 10 acres for development. This has created many challenges.

Mr. Phippard stated that Tsomides Associates will be the architects working on this project and are well known in the area. Mr. Phippard noted that several historical buildings are on the property and a request will be made to move these structures. He continued, stating that part of the review is working with architects and archeologists to preserve these structures. Mr. Phippard stated that these structures must be removed because of the land limitations with wetlands and the prohibitive slope. He continued, stating that because of these restrictions other alternatives like a multi-story building were discussed. Mr. Phippard showed the Board a recent photograph of the property from an aerial view. He continued, stating that a large portion of the wetlands consist of peat and is one of the most valuable natural resource on the property. Mr. Phippard compared this area to a giant sponge which creates a natural reservoir and helps to reduce flooding. Mr. Stout asked what the soil structure is under the peat. Mr. Phippard replied that it consists of silt and clay texture but there are small alluvial ribbons in between. He continued, explaining that remaining water from the peat runs into the stream.

Mr. Phippard stated that State law requires minimal wetland disturbance if the wetlands cannot be avoided. Mr. Phippard showed the plan elevation with the footprint of the proposed building, pointing out that the building size is not overly large and is in scale with the other organizations in the area. Mr. Phippard then showed a rendered view of the site plan pointing out that there are no large expanses of parking lots, instead they have incorporated an underground and covered parking area. Mr. Phippard stated that to reduce the footprint, a multi-story design was created, with the highest part being four stories. Mr. Phippard stated that when a building is developed on a sloping ground, determining the height is established from grade plane. He continued, stating that grade plane means to take the average ground elevation six feet away from the perimeter of the building on all sides of the building. He stated that 62 feet on a four story building is not incredibly high. Mr. Phippard showed an image of the community building and pointed out that from Wyman Road a two story building is all that is visible to the public. Mr. Phippard showed the same image from the south and east and pointed out that the view is still two stories and respects the rural character. He continued, stating that only from the rear of the building can you see the four stories. Mr. Curran asked what the canopy height of the surrounding woodlands. Mr. Phippard replied that this has not been established but has a mix of vegetation and canopy height.

Attorney Hanna asked Mr. Phippard which directions have visibility to the four story building. Mr. Phippard stated that it will only be visible from the rear view. He continued, stating that more than 80% of the site will be preserved. Mr. Phippard stated that all setback Variances being requested are in the front. He continued, stating that the pond is another valuable wetland area and will not be altered. Mr. Phippard stated that there is a partially man-made wetland on the lot and this is the area that is being proposed to be impacted. He continued, stating that of the 20 acres of wetlands on the property only $\frac{3}{4}$ of an acre will be impacted. Chair Zerba asked if mitigation is necessary. Mr. Phippard replied, yes anything over 10,000 feet requires mitigation. He continued, stating that the type of mitigation is unknown at the moment but will be addressed at the Planning Board.

Mr. Phippard pointed out where the building height Variance on 99 Wyman Road would be needed. Mr. Phippard addressed the second petition which requests a two story building being above 35 feet. He stated that this building will be the health center. Mr. Phippard displayed the two story elevation facing Wyman Road. Mr. Phippard stated that the community building across the street has similar aesthetics.

Attorney Hanna discussed the criteria:

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

Attorney Hanna stated that this type of facility is greatly needed in Keene and will improve the community. He continued, stating that this site is difficult to find. Attorney Hanna reiterated that adding a multi-story facility will limit the impact on the wetlands. Attorney Hanna referred to Barbara DeMatteo's testimony on page 10 of the packet. He continued, stating that Miracles in Motion, the nearby organization, is in support of this development. Attorney Hanna stated that public safety will increase with this project in reference to reconstructive of Wyman Road.

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

Attorney Hanna stated that in relation to height, it is important to maintain the character of the neighborhood. He continued, stating that there are no close abutters and will not adversely affect them. Attorney Hanna stated that the increased height will have a smaller building footprint.

Granting the Variance would do substantial justice:

Attorney Hanna stated that this is a balancing test between the owner and the general public. He continued, referring the Board to the exhibits in the packet. Attorney Hanna stated that surrounding property values will not be diminished. He continued, stating that this was reviewed carefully.

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

Unnecessary Hardship

- B. 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:*
- iii. 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:*

Attorney Hanna stated that this property has a variety of topographical issues. This is a special condition of the site, restating that the two story building will maintain the character of the Rural District and this regulation is not relative to this property.

- iv. The proposed use is a reasonable one:*

Attorney Hanna stated that the site is large enough to create this structure without being a nuisance to the neighborhood. He continued, stating that to find City utilities in a Rural District is favorable. Attorney Hanna noted that the natural slopes hide the multiple stories as well.

Attorney Hanna stated that the arguments for the height are similar to the opposite side of the road and it is not necessary to reinstate these comments. Mr. Stout asked if the elevation of the west side is known. Attorney Hanna stated that the elevation view would be almost identical to the three story barn currently in place.

A motion was made by Mr. Hoppock that the Zoning Board of Adjustment approve ZBA 15/18 and ZBA 15/19. Mr. Curran seconded the motion.

All Board members commented in favor of the petition. Mr. Hoppock stated that there is no diminished property value and the overall purpose of the Variance is not contrary to public interest. Mr. Stout stated that overall view of the development is very clever and looks to be a promising site. He continued, stating that the design is reminiscent to the architecture to the Hobbit. Mr. Stevens stated that the project is large and is almost impossible to fill all of the needs without running into a Variance and the petition is reasonable. Mr. Curran stated that there is an environmental theme through all of the Variances and this is favorable. Chair Zerba stated that the development took into many concerns and the aesthetics are very pleasing. She continued, stating that it is a huge aspect to the community.

Chair Zerba went over 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

C. 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:

- v. 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.*
- vi. The proposed use is a reasonable one. Granted 5-0.*

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-18.

On a unanimous vote the Zoning Board Adjustment approve ZBA 15-19

ZBA 15-20/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene requests a Variance for property located at 99 Wyman Rd. , Keene, which is in in the Rural District. The Petitioner requests a Variance to construct a porte-cochere within 20 feet of the front property line where a building setback of 50 feet is required in the Rural District per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code. (A porte-cochere is a roofed structure extending from the entrance of a building over an adjacent driveway and sheltering those getting in or out of vehicles.)

Jim Phippard pointed out the community building on the map. He continued, stating that a 75 foot wetland buffer is required. Mr. Phippard stated that they will be asking for a Conditional Use permit from the Planning Board in reference to this buffer for storm water treatment. Mr. Phippard stated that without encroaching too much into the buffer, the design then faces the problem of prohibitive slopes and the setbacks from the right-of-way. He continued, stating that the City does not own right-of-way on Wyman Road; it is an easement. Mr. Phippard stated that they are respecting the edge of the right-of-way as 33 feet wide. He continued, stating that they reviewed porte-cochere and its need and use for access to the building for the elderly population. Mr. Phippard stated that because of the site restrictions, there is no alternative but to encroach into the setback. Mr. Phippard displayed an image of the porte-cochere. He continued, stating that this structure will extend 20 feet from edge of right-of-way.

Attorney Hanna went over the criteria:

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

Attorney Hanna noted that the porte-cochere requires a Variance but under the Ordinance there are exclusions from setback requirements (canopies or awnings); this has the same features. He continued stating that this is essential for the facility. Attorney Hanna stated that it is because of the wetlands, that the porte-cochere is located in the front of the building. He continued, stating that this structure breaks of the building as well.

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

Attorney Hanna stated that the structure maintains the rural character. He continued, stating that it is a small structure.

Granting the Variance would do substantial justice:

Attorney Hanna stated that this is an essential feature.

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

Unnecessary Hardship

D. 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:

- vii. *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.*
- viii. *The proposed use is a reasonable one.*

Attorney Hanna stated that the relatively benign Variances are in discussion in order to protect the natural resources on the lot.

A motion was made by Mr. Hoppock that the Zoning Board of Adjustment approve ZBA 15-20 noting his reasons for safety. Mr. Curran seconded the motion.

Chair Zerba went over 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.

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-20.

ZBA 15-21/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene, requests a Variance for property located at 99 Wyman Rd., Keene, which is in in the Rural District. The Petitioner requests a Variance for the construction of two carports within the proposed relocated front building setback where a 50 foot building setback is required in the Rural District per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

Mr. Phippard stated that two carports are also being proposed. He continued, stating that one carport will cut into the setback slightly while the other will be completely in the setback. Mr. Phippard stated that the petition proposes to change the right-of-way in this area due to the sharp corner, steep drop and impaired line of sight. Mr. Phippard stated that they are proposing to rip up the road, regrade it and widen the right-of-way to 50 feet. This exacerbates the setback situations. Mr. Phippard displayed the rendering of two carport structures.

Mr. Hoppock asked about guardrails in the curve. Mr. Phippard stated that a guardrail was not proposed but will be adding vegetation. Mr. Phippard continued, stating that they are trying to provide each independent living unit with one covered parking spot which will be placed in the front of the building-the carports. He continued, stating that if the Board does not accept a carport, then they will be asking for a pavement setback instead. Mr. Hoppock asked about underground parking towards the longer buildings. Mr. Phippard replied that in the original design this was considered, but was ultimately too prohibitive. Mr. Curran asked if there is an elevation change where you straighten the road. Mr. Phippard replied, yes and stated that the carport will be above.

Attorney Hanna summarized the criteria:

Attorney Hanna stated that carports which face the side of the road can be covered with barn wood for aesthetics. He continued, stating that without these spaces residents would have to walk a great distance for covered parking. Attorney Hanna stated that each unit receives one covered parking space. He continued, stating that

A motion was made by Mr. Hoppock that the Zoning Board of Adjustment approve ZBA 15-21 subject to adding a barrier or vegetation that will abut the roadway. Mr. Stout seconded the motion.

Chair Zerba went over 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

F. 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:

xi. 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.

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

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-21.

ZBA 15-22/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene requests a Variance for property located at 99 Wyman

Rd., Keene, which is in in the Rural District. The Petitioner requests a Variance for the construction of up to 30 paved parking spaces within the front pavement setback on the east side of Wyman Road per Section 102-1226 Setbacks of paved and unpaved parking and travel surfaces of the Zoning Code.

ZBA 15-23/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St. , Keene requests a Variance for property located at 0 Wyman Rd., Keene, which is in in the Rural District. The Petitioner requests a Variance for the construction of 21 paved parking spaces and one paved turnaround within the front pavement setback on the west side of Wyman Road per Section 102-1226 Setbacks of paved and unpaved parking and travel surfaces of the Zoning Code.

Jim Phippard reviewed the proposal of 99 Wyman Road. Mr. Phippard stated that with site restraints, parking must be in front of the building as there is a 20 foot pavement setback. Mr. Phippard showed a rendering of the parking spaces that are within the 20 foot pavement setback. He continued, stating that the parking varies from 20 feet to 5 feet from the right-of-way. Mr. Phippard stated that the application requests 30 parking spots which include those in the carport.

Mr. Phippard reviewed the proposal of 0 Wyman Road. Mr. Phippard stated that the image of the 21 parking spaces is within the right-of-way area. He continued, stating that the parking area looks different because there is a turnaround area for deliveries and emergency vehicles. Mr. Phippard stated that they are respecting the stone walls and which is why the line is not parallel to the right-of-way. This parking varies from 20 feet to 1 foot from the right-of-way. Mr. Phippard noted that there is already 7 feet from the right-of-way. Mr. Stout asked if the road is widening when this occurs. Mr. Phippard replied, no the road will remain 20 feet. It will only be widened at the curve.

Mr. Phippard pointed out existing wetlands on the side of the road. He continued, stating that if parking is not accepted as described, it will have to be moved and further impact wetlands. Mr. Phippard stated that there will still be curb cuts. Mr. Stout asked if there will be a total of four curb cuts. Mr. Phippard replied, yes and stated the directly opposing curb cuts are the safest option.

Attorney Hanna summarized the criteria:

Attorney Hanna stated that there will be 30 parking spaces on the east side by the community building. He continued, stating that there will be 21 parking spaces on the west side. Attorney Hanna stated that there was effort in designing parking to stay away from slopes and wetlands. He continued, stating that parking however is necessary. Attorney Hanna stated that it is in the public interest to allow small encroachments into the setbacks because it will limit wetlands impacts. He continued, stating that these parking areas will be screened with vegetation and will not affect the character of the neighborhood. Attorney Hanna stated that it will be relatively minor encroachment as well.

A motion was made by Mr. Hoppock that the Zoning Board of Adjustment approve ZBA 15-22/15-23. Mr. Curran seconded the motion.

Chair Zerba went over 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

G. *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:*

xiii. *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.

xiv. *The proposed use is a reasonable one.* Granted 5-0.

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-22.

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-23.

ZBA 15-24/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene requests a Variance for property located at 99 Wyman Rd. , Keene, which is in in the Rural District. The Petitioner requests a Variance for the removal of vegetation and grading of slopes within prohibitive slope areas totaling 27,200 sf where removal of vegetation and grading of prohibitive slopes is not permitted per Section of 102-1404 Regulations applying to "prohibitive slope" areas of the Zoning Code.

ZBA 15-25/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene requests a Variance for property located at 0 Wyman Rd. , Keene, which is in in the Rural District. The Petitioner requests a Variance for the removal of vegetation and grading of slopes within a prohibitive slope area totaling 8,100 sf where removal of vegetation and grading of prohibitive slopes is not permitted per Section 102-1404 Regulations applying to "prohibitive slope" areas of the Zoning Code.

Jim Phippard reviewed the project and addressed the locations of prohibitive slopes in the image. Mr. Phippard addressed the Hillside Ordinance requirements. Mr. Phippard noted that this will have extensive Planning Board review. He continued, stating that an Alternate Terrain Permit will also be needed for the project. Mr. Phippard addressed 4,000 square feet of steep slope that will be eliminated. He continued, addressing another 8,000 square feet of steep slope that will be eliminated. Mr. Phippard pointed out the largest area of impact, about 15,000 square feet. This

will be re-graded as a 2:1 slope. He noted that SVE went further into the area in order to obtain this 2:1 slope.

Mr. Phippard discussed retaining walls as referenced in ZBA 15-25. He continued, stating that there will be 8,100 square feet of impact to prohibitive slopes. Encroachment into the setback will occur in the front. Mr. Phippard showed the areas where retaining walls would be constructed and noted that the retaining walls are an additional expense because the 2:1 slope could not be obtained in these areas. Mr. Phippard stated that there will not be additional runoff. He continued, stating that there are storm water collection areas along the areas with discharge into the existing pond. The pond was identified as the second most important natural resource. Mr. Phippard stated that this still has to go through Planning Board, the State, and the Army Corps of Engineers.

Attorney Hanna summarized the criteria:

Attorney Hanna stated that relatively small areas will be subsumed by the buildings. Mr. Phippard reiterated where the cutbacks and slope elimination will occur. Mr. Curran asked the distance from the cutting point to the road. Mr. Phippard replied, 150 feet. Attorney Hanna stated that design features were created to minimize the impact of wetlands and steep slopes. He continued, stating that it is in the public interest to have an impact on the slopes as opposed to other areas. Attorney Hanna stated that Spirit of the Ordinance will be observed due to the specific plan to minimize impacts. He continued, stating that this meets the substantial justice criteria as well. Attorney Hanna stated that the overall impacts of 8,000 square feet is minimal.

Chair Zerba opened the public hearing to which no comments were made.

A motion was made by Mr. Hoppock that the Zoning Board of Adjustment approve ZBA 15-24/ZBA15-25. Mr. Curran seconded the motion.

Chair Zerba went over 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

H. 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:

- xv. *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.*
- xvi. *The proposed use is a reasonable one. Granted 5-0.*

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-24.

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-25.

ZBA 15-26/: Petitioner, Prospect Place, 361 Court St., Keene, represented by Thomas R. Hanna, Esq., 41 School St., Keene requests a Variance for property located at 0 Wyman Rd. and 99 Wyman Rd., Keene, which is in in the Rural District. The Petitioner requests a Variance for the construction of an underground tunnel which would pass beneath Wyman Road and cross under the front building setback lines on 0 Wyman Road and 99 Wyman Road where a front setback of 50 feet is required for a structure in the Rural District per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

Mr. Phippard stated that the tunnel will not be visible from the road. He continued, stating that it will be 10 x 10. Mr. Phippard stated that this allows staff and residents access to each building without crossing the road. Mr. Phippard stated that the definition of a structure was discussed with the Planning Board. He continued, stating that the opening to the tunnel is within each building. Mr. Stout asked where the staff will park and how many staff will there be. Mr. Phippard pointed out the staff parking on the image, stating that the idea is to have the safest travel. Mr. Hoppock asked if the staff will be parking in the area between the buildings. Mr. Phippard stated that this is only for residents and staff will have to park across the road. This will have about 50 parking spots.

Attorney Hanna summarized the criteria:

Attorney Hanna stated that there is a distinction between underground and above ground structures, stating that there will be such minimal impact but a positive aspect for the facility. Mr. Hoppock asked why the Board has to act on this and wondered if the Board can decide that a Variance is not necessary. Attorney Hanna stated that he believed the Board can decide this. He continued, stating that this is a clear Variance winner.

Attorney Hanna stated that there is an overriding theme from these Variances, stating that the least amount of Variances have been requested and the main objective is to minimize the natural resources mainly the wetlands, steep slopes and flood plain.

A motion was made by Mr. Curran that the Zoning Board of Adjustment approve ZBA 15/26. Mr. Hoppock seconded the motion. Motion withdrawn by both parties.

Mr. Stout questioned if the Board just stepped in for administrative purposes given that a Variance may not be necessary.

A motion was made by Mr. Curran to approve ZBA 15-26 for the property located at 0 Wyman Road and 99 Wyman Road for construction of a tunnel under Wyman Road subject to and conditioned upon compliance with any further conditions of approvals and/or licenses required by the City for the project. Mr. Stout seconded the motion.

Attorney Mullins stated that this is fairly early in the project and the Public Works Department has interest in what happens on and under the road, stating that this will be discussed in further detail with the Planning Department. Mr. Stout questioned the administrative context of this Variance. Attorney Mullins stated that the Board should not be concerned with this at this point.

Chair Zerba went over 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

- I. 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:
 - xvii. 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.*
 - xviii. The proposed use is a reasonable one. Granted 5-0.**

On a unanimous vote the Zoning Board of Adjustment approve ZBA 15-26.

The Board discussed how to organize the petitions as efficiently as possible for voting efforts.

Mr. Stout asked if the Board would be approving 17 Variances. He continued, addressing the wording of each application and it sounds like 17 Variances all together. Attorney Hanna stated that there are nine applications. Chair Zerba stated that there are six motions. Mr. Stout was concerned with future discussion of the 17 Variances and stated that he wanted the Board to be aware of this.

There were no further questions for Attorney Hanna. Chair Zerba closed the public hearing at 10:01 PM.

V. New Business

None at this time.

VI. Communications and Miscellaneous

VII. Non Public Session (if required)

VIII. Adjournment

Chair Zerba adjourned the meeting at 10:33 PM.

Respectfully submitted by:

Lana Bluege, Minute-Taker

November 2, 2015