

City of Keene  
New Hampshire

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

Monday, February 1, 2016

6:30 PM

City Hall, Second Floor Council Chambers

**Members Present:**

Louise Zerba, Chair  
Jeffrey Stevens, Vice Chair  
David Curran  
Joseph Hoppock  
Nathaniel Stout  
Steve Bragdon, Alternate  
Josh Gorman, Alternate

**Staff Present:**

Gary Schneider, Plans Examiner

**Others Present:**

**Members Absent:**

**I. Introduction of Board Members:**

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

**II. Minutes of the Previous Meetings: January 4, 2016**

Mr. Hoppock made a motion to accept the minutes of January 4, 2016 with the following changes. Mr. Curran seconded which carried unanimously.

Mr. Stout stated that the minutes read that he was absent but was in fact present. Mr. Curran was in fact absent but it stated he was present. Chair Zerba stated that the minutes refer to agenda in two locations and should instead read packet. She continued, stating that on pg. 7, 1<sup>st</sup> paragraph it reads, "Historical Committee" and should instead read, "Historic District Commission." Chair Zerba stated that on pg. 7 in the last paragraph it reads "located by buildings" and should instead read "surrounded by buildings." Chair Zerba stated that on pg. 8, 3<sup>rd</sup> paragraph it reads "Roxbury Road" and should instead read "Roxbury Street." She continued, stating that on pg. 8 it reads "Chair Zerba went of Findings of Facts" and should instead read, "Chair Zerba went over Findings of Facts." Chair Zerba stated that on pg. 10, last Paragraph it reads, "Mr. Stevens asked if the overhand of the roof..." and should instead read, "Mr. Stevens asked of the overhang of the roof..."

**III. Unfinished Business:**

None at this time.

**IV. Hearings:**

**Continued from December 2015 ZBA 15-27/:** Petitioner, Dorene K. Adams of 277 Old Walpole Rd., Keene, requests a Variance for property located at 277 Old Walpole Rd., Keene, which is located in the Rural District. The Petitioner requests a Variance to allow two lot subdivision of a lot in the Rural Zone. One lot will have 51 feet of frontage where 50 feet is required and one lot will have 28 feet of frontage where 50 feet is required per Section 102-791 Basic Zone Dimensional Requirements of the Zoning Code.

A motion was made by Mr. Hoppock to postpone ZBA15-27. Mr. Curran seconded which carried unanimously.

Chair Zerba stated this petition will continue until the following ZBA meeting in March.

**Continued from December 2015 ZBA 15-28/:** Petitioner, Dorene K. Adams of 277 Old Walpole Rd., Keene, requests a Variance for property located at 277 Old Walpole Rd., Keene, which is located in the Rural District. The Petitioner requests a Variance to allow the removal of vegetation and grading of slopes within prohibitive slope areas totaling 7,700 square feet where removal of vegetation and grading is prohibited per Section 102-1404 of the Zoning Code.

A motion was made by Mr. Hoppock to postpone ZBA15-28. Mr. Curran seconded which carried unanimously.

Chair Zerba stated this petition will continue until the following ZBA meeting in March.

**ZBA 16-04/:** Petitioners, The Pub Restaurant and Caterers of 131 Winchester St, Keene; David F. & Marcia A. Parody, owners of Home of New England Fabrics of 51-55 Ralston St, Keene; Chris J. Tasoulas Trust, owners of Chris J. Tasoulas Realty of 103-109 Winchester St., Keene and Northbrook Properties, Inc. of 66 Ralston St., Keene, all represented by Attorney Thomas R. Hanna, 41 Church St., Keene, for property located at 141 Winchester St., Keene, which is in the Commerce District. The Petitioners are appealing the Administrative Decision, signed and dated October 22, 2015, released October 25, 2015 by the Zoning Administrator regarding the required number of parking spaces under the Zoning Ordinance.

Mr. Stevens recused himself for this petition due to a conflict. Mr. Gorman sat in place of Mr. Stevens.

Chair Zerba stated that the Board will be reviewing the information presented but due to a large amount of documentation recently received no decisions will be made until the following meeting in March.

Mr. Schneider presented the map of the area in discussion and noted that the lot is in the Commerce District.

Attorney Thomas Hanna of 41 School Street approached the Board and noted that the petition stated 14 Church Street which is incorrect. Attorney Hanna stated that the release of the decision was actually on the 26<sup>th</sup> not the 25<sup>th</sup> as to clear up confusion as to what is already in the record. Attorney Hanna noted that letters were sent to the Board but not all letters were received including one from Keene State College President, Dr. Anne Huot, dated on December 7, 2015, Brian Carol Dodge, Manager of CED and Ron and Scott Parody of New England Fabrics. Attorney Hanna gave the letters to the Board Members and Mr. Schneider.

Attorney Hanna stated that Zoning Administrator, Gary Schneider, issued a decision ruling that an 80 seat restaurant/bar may occupy 4,000 square feet without any onsite parking spaces with the nine spots in existence being allocated to Aroma Joes. Attorney Hanna stated that Mr. Schneider did not use correct standards when determining the required parking spaces by comparing the number of parking spaces for the proposed use to the number of spaces required by the existing retail use. Attorney Hanna noted that this is a legally incorrect comparison. He continued, stating that to determine if there is a prior non-conforming use, the Zoning Administrator would need to determine the amount of parking spaces when the Parking Ordinance was adopted in 1970 and then take this figure and compare it to the actual parking spaces that existed at that time.

Attorney Hanna stated that this can be observed in Keene's Zoning Ordinance 102-3b. He continued, stating that if there were 18 spaces in 1970 and the Ordinance only required 14 for the use then there is no lawful non-conformity but if there were 12 spaces on the property and the use required 14 then there is a legally non-conforming right that the owner can use the 12 spaces for uses that require more. Attorney Hanna stated that there were at least 18 parking spots on the property in 1970 and the uses during that time only required 16 spaces under the Zoning Ordinance. He continued, stating that the 1970's Ordinance is the exact same today which means there is no lawful non-conforming parking on the property then and now. Attorney Hanna noted that the burden is on the applicant to prove that there was a non-conforming use in existence at the time of the ordinance.

Attorney Hanna stated that there are no grandfathered parking spaces at the location as well. He continued, stating that in 1970 Stroshine Auto Parts and Bill Schnyer were tenants of 141 Winchester Street when the off-street parking requirements were adopted. Attorney Hanna displayed a Keene tax card going back to 1952 and proof of site plan. He continued, stating that the outline of the building is visible and to the left it has garage and unfinished interior written as well as other construction details dated 1948. Attorney Hanna stated that the section to the rear was described as unopen and unfinished and the front was a retail section for Schnyer Construction. This business had 2,713 square feet. Attorney Hanna noted that the uses are described on the document as well. Attorney Hanna stated that the remaining 3,605 square feet was wholesale. He continued, stating that there were two uses of this property with the majority not requiring parking for every 200 square feet. Attorney Hanna gave the Board the Keene City Directory from 1970 and 1971.

Attorney Hanna displayed an approved site plan which was dated December 23, 1987 showing seven spaces on the east of the building and noted on the plan that spaces one and nine be moved to Ralston Street. He continued, noting that there are also eight spaces to the north providing a

total of 18 spaces. Attorney Hanna stated that when looking at the tax card provided, the wholesale section is slightly more than 3,600 square feet allowing one space per 3,000 square feet for the wholesale section. He noted that the wholesale would have required two spaces and the remaining retail area would have required 14. Attorney Hanna stated that 16 spaces were needed and 18 were available and so there was no non-conformity. He stated for this reason the decision made in October of 2015 was in error and needs to be reversed.

Attorney Hanna stated that an updated parking analysis must be done every time a change of use occurs and it does not matter what the prior use was. This change of use may also have a parking requirement change. Attorney Hanna brought up the issue of administrative gloss being addressed by the business owner in reference to administrative decision making on this issue. He continued, stating that administrative gloss is not justified simply because the administration has handled parking requirement in certain ways over the years; it is only applicable when the language of the ordinance is ambiguous. Attorney Hanna noted multiple sections that state parking must be brought into compliance if there is a use change or an expansion of use on a non-conforming property.

Attorney Hanna stated that the applicant is asking the Board to take the Administrative Decision back. He continued, stating that several Variances are required for this change of use. Attorney Hanna stated that the parking was not non-conforming and the Ordinance has multiple sections stating that the change of use can occur but if the parking or building is non-conforming then the offsite parking requirements must be complied with.

Attorney Hanna stated that a Variance per Section 102-208 and 102-976 is required

Attorney Hanna stated that these provisions are there to protect the City and the abutters from an increased use. He continued, stating that Talon's Watering Hole will have a completely different effect on the neighborhood than the prior businesses. Attorney Hanna noted that there are only nine onsite parking spots committed to Aroma Joes and so the parking is non-conforming. Attorney Hanna noted that the right to such previous existing non-conforming use has been voluntarily relinquished. He continued, stating that in 1987 there were 18 spaces and once a non-conforming use has been relinquished it cannot be reclaimed at a later time. Attorney Hanna noted that the owner of Aroma Joe's relinquished three spots for an outdoor patio making these parking spots an abandonment of use. He continued, stating that there was no comparison of the 1970's Parking Ordinance when making a decision on this change of use.

Attorney Hanna stated that the new use will intensify parking and traffic problems which already exist in the area. He continued, stating that the proposed use is a restaurant but there is no doubt that the bar will be used and it is for the Board to determine if the establishment is an appropriate change of use for the area. Attorney Hanna noted that the Planning Department has cited the intersection in discussion as having extensive congestion and concern with pedestrians and traffic. Attorney Hanna noted that the business owner has stated that this establishment will attract pedestrians but the letter from Dr. Huot notes that most students will drive. He continued, stating that it is the applicant's burden to prove that the non-conforming parking existed from 1970.

Mr. Hoppock asked if the nine parking sites for Aroma Joe's were factored into the Administration's Decision. Attorney Hanna stated that these nine spaces were counted and deemed insufficient for Aroma Joe's and three more were needed. These three spots are off-street parking and Attorney Hanna noted that there may be four spaces available at this time. Mr. Hoppock asked about the argument that the client does not have a right to the appeal because they are all abutters. Attorney Hanna stated that this is a desperate argument and stated that The Pub is concerned with the new occupants of the building trying to use their parking. Mr. Hoppock asked about the Ordinance and noted that the restaurant and the retail shop are both permitted uses. Attorney Hanna read aloud Section 102-208 of the Ordinance. Attorney Hanna stated that the building does not meet several requirements including setbacks for both the building and parking. Mr. Gorman asked about the old building and parking spaces one and nine. Attorney Hanna stated that those are conditioned and were simply relocated.

Mr. Schneider approached the Board. Mr. Schneider stated that about a year ago Aroma Joe's approached the City for development. He continued, stating that the lot is non-conforming including parking and setbacks. Mr. Schneider stated that parking problems were a concern and in order to create Aroma Joe's architects were asked to give square footage of tenants in the building. He continued, stating that Aroma Joe's is little more than 2,000 square feet and if this is divided by 200 square feet there would be ten parking spots available. Mr. Schneider stated that this was then used to determine that if four seats are allotted for every one parking space then Aroma Joe's was allowed 40 seats.

Mr. Schneider stated that all of the previous tenants in this building as a whole would require 32 parking spots. Mr. Schneider stated that Aroma Joe's only required ten spots. He continued, stating that there were five spots in the front and seven out back for a total of 12. Mr. Schneider stated that the Planning Board eliminated five spaces and allowed two spaces out front. He continued, stating that the ZBA approved three parking spots behind New England Fabrics. Mr. Schneider stated that the owner of the property found three additional spaces within the 300 feet and did not use the Variance approved by the ZBA. Mr. Schneider stated that there are nine parking spots physically on the site and no more room for any other parking.

Mr. Schneider stated that when Talon's Watering Hole approached the City, the same logic was used when it came to parking. He continued, stating that the remaining space of the building is about 4,100 square feet and allotted 22 parking spaces with a maximum of 80 seats. Mr. Schneider noted that Talon's Watering Hole is a restaurant. He continued, reading aloud the Zoning Code for a restaurant and noted that the City does not have a definition in the City's Zoning Code for a bar. Mr. Schneider stated that he found the site plan for this lot dated December of 1987. He continued, noting that he gave the Board a letter from Kenneth Bland, who was the Superintendent of the Inspections. Mr. Schneider noted that the letter discussed zoning and reorientation of space from the previous use. He continued, stating that this letter uses the same philosophy that was applied to the current situation. Mr. Schneider stated that if this Board does not agree with this decision then there are only two parking spots left and a business cannot have any more than eight seats or exceed more than 400 square feet.

Mr. Stout questioned the demands of a retail store instead of a restaurant. Mr. Schneider stated that the retail store would only be allowed 400 square feet. Mr. Stout noted that restaurant usage

is very intensive and other uses may be more applicable. Mr. Schneider stated that the parking requirements would be the same for any restaurant. Mr. Schneider brought up the issue of non-conformity and stated that the site has much non-conformity because of the change of use. Mr. Schneider noted that the site cannot be changed or torn down. He continued, stating that one must consider the grandfathered space or the building will be empty. Mr. Schneider noted that other buildings will then run into this problem if they become empty. He continued, stating that this will be a large burden to people if the City refers to 1970's regulations for each site.

Chair Zerba noted that there is the option of applying for a Variance as well. Mr. Hoppock noted the Wixon Case stating that the change of the non-conforming use depends upon the time the change in the Zoning Ordinance was created and suggested that the City has to go back to the 1970's decision to make that comparison. Mr. Schneider could not answer at this time. Mr. Hoppock stated that there is a contradiction and asked Mr. Schneider to discuss Section 102-208, sub-section 2 in the Ordinance. Mr. Schneider suggested that the use is staying the same. Mr. Hoppock asked how a comparison can be made without going back to the 1970's Ordinance. Mr. Schneider restated his methods for parking spaces.

Chair Zerba opened the public hearing.

The following individuals spoke in support of the Appeal:

Peter Bradshaw of Greebrier Road in Keene approached the Board. Mr. Bradshaw stated concern regardless of what goes in because there is already a parking problem. He continued, stating that he is not sure where these additional parking spaces will go. Mr. Bradshaw stated that property owners should not feel this burden and it will create a hardship. He continued, stating that no one wants to see vacant space but parking must fit the use.

Dr. Anne Huot, President of Keene State College (KSC) approached the Board. Dr. Huot stated that this development would be troubling for the college. She stated that due to limited space individuals will try to use KSC lots and there is not enough security for the lots to ensure safety for the students. Dr. Huot stated that it will cost the college almost \$16,000 for additional coverage which does not include maintenance. Dr. Huot stated that students who live close to Talon's Water Hole will walk and increase pedestrian traffic and driving traffic in an already dangerous intersection. Dr. Huot noted the large amount of bars already in the downtown area and an additional bar is not necessary.

Tim Zinn of 43 Grove Street approached the Board. Mr. Zinn stated that this is not the right location for this business. He continued, stating that he is working with other groups to change the culture of Keene and there are only fragile improvements. Mr. Zinn stated concern with more alcohol with the students. He also stated concerns about parking and noted that if there is not sufficient parking it is a major issue. Mr. Zinn stated that Keene State College is just starting to maintain their reputation.

Susan Thielen of 45 Kelleher Street approached the Board. Mrs. Thielen stated concern with safety issues and that the area is already very congested and the street in discussion is too narrow. Mrs. Thielen stated that she avoids driving there because of the foot and car traffic.



Ron Butcher of 14 Melody Lane approached the Board. Mr. Butcher stated concern with this establishment in the neighborhood and agreed that the street is too narrow. Mr. Butcher stated that customers will start lining the street as well. Mr. Butcher stated concern with parking in the College parking lots as well as the Mills Apartment. Mr. Butcher stated that he was a coach for the Keene State College and many are working to build the reputation back. He noted that the police will have to worry because someone will get hit. Mr. Butcher suggested the establishment move to another location down the street with 70 or 80 parking spots.

Bobby Grant, Student Body President of Keene State College of 51 Main St., approached the Board. Mr. Grant stated that the walk to this establishment will be extremely dangerous. He noted that with the Mills Apartment the traffic will be doubled. Mr. Grant noted that this will catalyze college drinking. He continued, stating that this is not be an appropriate place for this institution and would be more appropriate for Main Street.

The following individuals spoke in opposition to the Appeal:

Attorney Kelly Dowd approached the Board and represents the tenant of 141 Winchester Street. Attorney Dowd presented the 1987 site plan and stated that the building is slightly over 6,000 square feet. He noted that the footprint of the building has not changed significantly and Aroma Joe's takes up about 2,000 square feet. Attorney Dowd stated that the main change to the building will be taking out the interior walls, an added dumpster and the change of one handicap parking spot to a standard parking spot.

Attorney Dowd noted that the power to zone is expressed from the state. Attorney Dowd gave the Board documents concerning the state law provision addressing grandfathering and the Keene City Ordinance. Attorney Dowd read aloud RSA 674:19. Attorney Dowd stated that this creates an expressed restriction on zoning. He noted that stated law supersedes Keene decisions. Attorney Dowd noted a similar provision in the Keene Zoning Ordinance. Attorney Dowd stated that it is in Keene's power to extend Ralston Street or destroy the building but the owner would have to be compensated. Attorney Dowd stated that Aroma Joe's has 40 seats which allocate ten spots. He noted that the majority of the building would be unusable if only two additional parking spots were allowed. Attorney Dowd stated that this should raise red flags and zoning is set up to avoid these situations and protect grandfathered uses.

Attorney Dowd noted the distinction in dimensional requirements and use restrictions. Zoning is based on separate districts and to protect these uses. Attorney Dowd stated that non-conforming use means that the property is being used in a particular way for the zone and the owners have a right to continue the use if the zone changes and it is non-conforming. Attorney Dowd stated that parking can be a non-conforming use but is the primary use of the structure. Attorney Dowd stated that a parking lot is considered a main use. He continued, stating that parking is an accessory use to the primary use with exception of a parking lot and there is no non-conforming accessory use only a non-conforming primary use. Attorney Dowd discussed the Wixon Case and that it is a non-conforming use case. He noted that Attorney Hanna did not provide cases that are not non-conforming. Attorney Dowd stated that his client is proposing a permitted use.

Attorney Dowd referred to Section 102-3 which discusses Keene's grandfathering. Attorney Dowd stated that if there is a non-conforming use it can continue but if there is a proposal to expand or change the non-conforming use, the ZBA is notified. Attorney Dowd gave an example of an additional story being added. Attorney Dowd noted that his client is not expanding anything and the use is permitted. Attorney Dowd stated that his memorandum argued that this Ordinance presupposed non-conforming use and structures. Attorney Dowd stated that one issue is according to the applicant's defense is if there is a non-conforming changed to a conforming four variances would then be needed. Attorney Dowd stated that this does not make sense and it would discriminate against the person trying to put in something that is conforming to the character. He continued, stating that this would create constitutional issue of the City of Keene confiscating two-thirds of the building and this would not hold up in court. Attorney Dowd stated that the proposed use is permitted and nothing is being altered. He continued, stating that under Section 102-3, his client is exempt from the parking requirements.

Attorney Dowd noted that a traffic study was submitted to the Board. He continued, stating that there were three uses to the property which included a hotdog restaurant, a beauty salon and a tanning salon. Attorney Dowd stated that trip count was determined for the previous uses and the proposed use. He stated that the proposed use has a lower trip count and the traffic engineer determined that the new use decreases traffic. Attorney Dowd reminded the Board that it is not the job of the Board to protect public morals.

Attorney Dowd noted that there is a misinterpretation of permitted and not permitted uses and use variances necessary. Attorney Dowd questioned what is actually permitted in this zone and the answer would be nothing with the needed variances. Attorney Dowd stated that the land use does not change if one restaurant is changed to another restaurant. Attorney Dowd stated that Section 102-976 of the Ordinance does not apply to this application. He continued, stating that Section 102-978 was discussed but in this case the Zoning Administer made the determination. Attorney Dowd stated that Mr. Schneider reviewed this plan as well and if the intensity of the use does not change then it is permitted. He continued, stating that 80 customers for the new use is the same intensity as the previous businesses and was reviewed this way in 1987. Attorney Dowd stated that with this application there is a contradiction with the Keene Zoning Ordinance and State Zoning. Attorney Dowd stated that it was non-conforming in 1987 and is the same today.

Mr. Hoppock brought up Section 102-208 and asked Attorney Dowd if he believed there was a change of use from retail to restaurant. Attorney Dowd stated that it is a change. Mr. Hoppock noted that there are zoning problems with setbacks and lot size which are zoning requirements. Mr. Hoppock stated that Section 102-208 states that all zoning dimensional requirements must be met including parking. Attorney Dowd referred to Section 102-3 and that his client is exempt from the parking requirements because it is grandfathered. Mr. Hoppock referred to Section 102-3 and that it applies to any change of use which was conceded previously. Attorney Dowd stated this refers to an extension of the non-conforming use and the plain language is also contrary to state and constitutional law. Mr. Hoppock stated that there are better uses for the lot. Attorney Dowd disagreed.



Greg Johnson of Swanzey New Hampshire approached the Board and stated that he is in charge of leasing one of the buildings. He stated that there is almost 200,000 square feet of empty space in downtown Keene and almost all is non-conforming. Mr. Johnson stated that Ralston Street has issues especially with four new dormitories. Mr. Johnson stated that there was substantial parking and when the dorms were built all of the parking disappeared. He continued, stating that the zoning should have changed when the dormitories were built but he and his tenants do not have problems with parking. Mr. Johnson stated that alcohol is available at any of the downtown locations in close proximity.

Attorney Hanna stated that he did not have time to review the traffic report submitted by Attorney Dowd but it does not make sense that previous uses would be less traffic than the new bar. Attorney Hanna referred to peak hours as opposed to trip count and stated that the hair salon had about 1.93 trips per unit and a bar has about 11.34 trips per unit. He noted that the Board should consider the wording of a quality restaurant as well which is defined as having a lengthy meal and fine dining. Attorney Hanna stated that the proposed restaurant will have a faster turn over. He continued, noting that the restaurant should a 932 and not a 931 as stated on page 2 of the trip generation sheet that was submitted by Attorney Hanna. Attorney Hanna noted that the hotdog stand was not represented correctly either. Attorney Hanna noted that a change of use does not mean a permitted use to a non-conforming use and if you are going to change the use, the city must approve it. Attorney Hanna noted that over time each establishment should become more conforming and there may be a use that is more appropriate for this space with a variance.

Mr. Bradshaw previously spoke and asked if the public will be able to speak at the March meeting and where the spaces are for the proposed restaurant. Chair Zerba stated that this is what is in discussion and public will be able to talk at the next meeting.

A motion was made by Mr. Hoppock to continue ZBA 16-04, ZBA 16-05, and ZBA 16-06 and the public meeting remains open until the March meeting. Mr. Stout seconded the motion which carried unanimously.

**ZBA 16-05/:** Petitioner, Attorney Kelly E. Dowd, PLLC of 29 Center St., Keene, representing 141 Winchester St., LLC, for property located at 141 Winchester St., Keene which is located in the Commerce District. The Petitioner is appealing the Planning Board's determination to not proceed on a proposed site plan for 141 Winchester Street. The Planning Board stayed the application on a determination by the Planning Board that a decision is required by the Zoning Board of Adjustment on the number of parking spaces required by the Zoning Ordinance for the premises prior to continuing with site plan review.

**ZBA 16-06/:** Petitioner, Talons, owned by 141 Winchester St., LLC, Keene represented by Kelly E. Dowd, PLLC of 29 Center St., Keene, for property located at 141 Winchester St., Keene, which is located in the Commerce District. The Petitioner is requesting a Variance to be permitted 20 off-site parking spaces located more than 300' from the structure to meet additional off-site parking requirements.

Chair Zerba stated that ZBA 16-05 and 16-06 will not be discussed until a decision is made on 16-04.

**ZBA 16-07/:** Petitioner, Keene Housing Kids Collaborative, owned by Keene Housing Authority, 831 Court St., Keene, for property located at 5 Harmony Lane, Keene, which is in the Medium Density District. The Petitioner is requesting a Variance to be permitted to erect a sign identifying Keene Housing Kids Collaborative office located in the Family Activity Center at Forest View Apartments on Harmony Lane per Division 7, District Regulations of the Sign Code.

Mr. Stevens returned to sit on the Board.

Mr. Schneider presented a map for the Board. Mr. Schneider stated that building #5 is used as a maintenance building and was converted to a daycare facility. Mr. Schneider stated that the development is in Medium Density Zone and signage is not allowed in the Medium Density Zone. Chair Zerba asked about sign dimensions. Mr. Schneider stated that it is up to the Board to decide dimensions and the Board can approve what is presented.

Carolyn Crane of Keene Housing Authority approached the Board and stated that she is representing the owner. Ms. Crane introduced Elizabeth Chipman.

Liz Chipman of 121 Broadcoke Drive in Concord, NH approached the Board. Ms. Chipman stated that they would like to erect a sign. She continued, stating that her offices are located in Forest View Apartments which provide services to the kids of Keene Housing. Ms. Chipman stated that people are coming from other areas for the services and they need signage. Ms. Chipman stated that it will not change the character of the area and there is already a sign to identify Forest View Apartments.

Chair Zerba asked if the request dimensions are exact in the application. Ms. Chipman stated this was determined by what is affordable. Mr. Stout asked about the colors and if the proposed image will be the same. Ms. Chipman replied, yes, the image is a little brighter on the page.

Chair Zerba opened the public hearing. No additional comments.

Mr. Hoppock stated that it is an important sign to identify the services and is not contrary to public and the spirit is observed.

A motion was made by Mr. Hoppock to approve ZBA 16-07 provided that they adhere to the dimensions in the petition. 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*

- 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 16-07.

**ZBA 16-08/:** Petitioner, Ketola Contracting, LLC, of 70 Butterfield Road, Rindge, NH, for property located at 0 Old Walpole Road, Keene, which is in the Low Density District. The Petitioner is requesting a Variance to be permitted to construct two attached single family dwelling units (duplex) on a 3.17 acre lot in the Low Density District where only one single family dwelling is permitted per lot per Section 102-362 of the Zoning Ordinance.

Mr. Schneider presented a map and pointed out the area in discussion. Mr. Stevens asked if there are any other duplexes in the area. Mr. Schneider stated that he is not aware of any other duplexes in the area but it is possible.

Mr. Phippard of Brickstone Land Use Consultants LLC approached the Board. Mr. Phippard put up a plan similar to Mr. Schneider's plan. Mr. Phippard stated that a duplex is being proposed on a 3.17 acre lot. He continued, stating that it is Low Density District and a lot of 3 acres is considered large. Mr. Phippard stated that other lots in the area are very small with Sesame Street having lots just above the requirement. He continued, stating that the property in discussion has 60 feet of frontage and does not widen out until you get to 200 feet and the lot extends 770 feet. Mr. Phippard stated that the back half of the lot has wetlands and is regulated restricting development without a wetland permit. He noted that it would be difficult to get a wetland permit in this area. Mr. Phippard stated that under the existing configuration only one structure can be put on this lot because of the frontage. He continued, stating that in order to build another structure, a road would have to be built but would be large expense at \$500 per linear feet this construction would be about \$100,000.

Mr. Phippard went over the criteria.

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

Mr. Phippard stated that the surrounding neighborhood is over two units per acre and the lot in discussion is .6 units per acre. He continued, stating that is a lower density district and the development would not put a burden on the neighborhood and is in fact less intense. Mr. Phippard stated that there is also City water and City sewer. Mr. Phippard stated that a single driveway and single curb cut would also be shared and the duplex would be set back from the road and would not be visible. Mr. Phippard noted that value would be added to the property as well.

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

Mr. Phippard noted that the Spirit of Ordinance would be observed because it is in the Low Density District. He continued, stating that he did a search and there are dozens of other duplexes in the area and in the Low Density District. He stated that Kennedy Drive has the closest duplex. Mr. Phippard stated that it meets setbacks and lot coverage and does not violate the spirit of the ordinance.

*Granting the Variance would do substantial justice:*

Mr. Phippard stated that it would do substantial justice because the lot would support more than one unit. He continued, stating that prohibiting this development would encourage sprawl.

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

Mr. Phippard stated that the value of neighboring properties would increase and presented an image of what the duplex would look like. He continued, stating that it will only increase property values. Mr. Phippard stated that there is 200 foot separation from the closest home which protects privacy. He continued, stating that this development also protects the surrounding single homes from a road being developed.

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

Mr. Phippard stated having a large lot with only 60 feet of frontage makes it a hardship in addition to the wetlands. He continued, noting the duplex will not overtax the resources of the area.

Mr. Hoppock asked about a vegetative barrier to protect Sesame Street. Mr. Phippard stated that all of the wetlands will remain wooded and there is plenty of room for a fence. Mr. Hoppock asked what is there now. Mr. Phippard stated that there are trees and shrubs.

Chair Zerba opened the public hearing.

Donald Bemis of 12 Old Walpole Road in Keene approached the Board. Mr. Bemis stated that he has lived in the area for many years and had concern about the area being landlocked. Mr. Bemis noted that he is in favor of developing a street or right of way and stated that everyone would benefit. Mr. Bemis stated that the application would cause hardship for everyone in the area and does not support the application.

Lucius Partial, 28 Old Walpole Road asked about the timing of the development. Chair Zerba stated that the applicant is looking for approval tonight. Mr. Partial stated concern with the lot sitting vacant like many others in Keene. Chair Zerba stated that the Board does not have the authority to comment on this. Mr. Partial asked about the wetlands proximity to the proposed house. Mr. Phippard stated that it will be about 120 feet from the house.

Ron Velet of 55 Sesame Street approached the Board. Mr. Velet stated that there is a lot of water on the southern side of the lot and questioned if this will be developed. Mr. Phippard stated that the 100 foot strip of land is not being purchased and it is City land. Mr. Velet asked if anyone is aware of how much water is there. Mr. Phippard stated that a wetland scientist went out to do delineation and not all of the area is wet and collects runoff from Walpole Road and Sesame Street. Mr. Phippard stated that there may be possible vernal pools as well. Mr. Velet stated concern about basements flooding. Mr. Hoppock noted that the plan does not show this land being disturbed. Chair Zerba stated that the only other space would be green space. Mr. Phippard stated that the City owns two pieces that are landlocked. Mr. Curran asked if this strip of land has been owned by the City for some time. Mr. Phippard replied, yes.

Christine Partial of 28 Old Walpole Road approached the Board. Ms. Partial stated that she was aware the lot would get developed at some point and is not concerned about two private homes. She continued, stating that she does not want to have another street developed. Chair Zerba stated that a request like that would go through the Planning Department.

Sarah Harpster of 32 Old Walpole Road approached the Board. Ms. Harpster asked if the wetlands will be filled. Mr. Phippard stated that he has inquired about basements and suggested against a fill because of the wetlands. He agreed that filling the wetlands would create problems for everyone including the owner.

Mr. Stout asked if it is alluvial soil. Mr. Phippard stated that it is sandy soil and collects runoff from all of the surrounding area and there can still be ground water close to the surface. Mr. Phippard stated that water tables were identified as well.

Mr. Velet stated concern about a Variance that detracts from the community and the single family feel. Mr. Beemus restated his opposition to the petition.

Chair Zerba read Charles Kingsbury's letter in favor of the petition.

Mr. Stevens stated that the character of the neighborhood is evident and there are no other examples like this duplex. Mr. Stevens stated that he does not see why a single family home

could not be put on this lot. Mr. Phippard discussed the density and the lot is just over three acres. He continued, stating that the homes won't be visible from this home and it will not change the characteristic of the neighborhood.

Mr. Hoppock stated that due the nature of the lot the proposal reduces density as opposed to the subdivision. He continued, stating that the purpose of zoning is to minimize density. Mr. Hoppock stated that there is a hardship and suggested adding a condition that the duplex is put on a slab. Mr. Phippard stated that he has no problem with a slab condition. Mr. Schneider stated that this application will not be going to the Planning Board.

A motion was made by Mr. Hoppock to approve ZBA 16-08 with a condition that the duplex structure is built on a slab on grade. Mr. Curran seconded the motion.

Chair Zerba stated that she is not in favor of this application and is concerned with the character the neighborhood. Mr. Stout stated that the nature makes a duplex appropriate and it is far enough from other houses to preserve green space. Mr. Stevens agreed with Chair Zerba and it would not be a hardship to have a single family home.

Chair Zerba went over the Findings of Fact:

*Granting the Variance would not be contrary to the public interest:* Granted 3-2. Chair Zerba and Mr. Stevens voted against.

*If the Variance were granted, the spirit of the Ordinance would be observed:* Granted 3-2 Chair Zerba and Mr. Stevens voted against.

*Granting the Variance would do substantial justice:* Granted 3-2 Chair Zerba and Mr. Stevens voted against.

*If the Variance were granted, the values of the surrounding properties would not be diminished:*  
Granted 3-2 Chair Zerba and Mr. Stevens voted against.

*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:*

*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 3-2 Chair Zerba and Mr. Stevens voted against.

*The proposed use is a reasonable one:*

Granted 3-2 Chair Zerba and Mr. Stevens voted against.



With a vote of 3-2 the Zoning Board of Adjustment approve ZBA 16-08 with the condition that the duplex structure is built on a slab on grade.

Chair Zerba and Mr. Stevens voted in opposition.

**ZBA 16-09/:** Petitioner, Monadnock Brewing Company, of 78 Cheshire Turnpike, Langdon, NH, for property located at 809 Court Street, Keene, which is in the Commercial District. The Petitioner is requesting a Variance to be permitted a manufacturing use on a property in the Commerce District where manufacturing is not listed as a permitted use per Section 102-542 of the Zoning Ordinance. Monadnock Brewing Company wishes to open a nanobrewery to manufacture beer and soft drinks within the existing premises. They would also have an accessory retail space to sell their products. The nanobrewery products would be bottled and/or canned on the premises and then sent to a distributor for delivery to stores and restaurants.

Mr. Schneider displayed a map for the Board. Mr. Schneider stated that this property is in the Commerce District. Mr. Stevens asked about Freihofers and what the classification is. Mr. Schneider stated that it is distributor. Mr. Phippard noted that he will be addressing this.

Mr. Phippard stated that the property is in the Commerce District and just under 20,000 square feet. Mr. Phippard stated that to the east is the American Legion and the softball fields are in the rear and Court Street Condos are across the street. He continued, stating that another proposal will be in the works. Mr. Phippard stated that it is a mixed use neighborhood. He continued, stating that the shape of the building is difficult and people talked about breaking it into pieces but no one wants to be in the back because you are not visible from the street.

Mr. Phippard stated that the Monadnock Brewing Company is the perfect use. He continued, stating that they are not going to alter anything outside of the building and are asking for permission for their use within the entire structure. Mr. Phippard stated that it is a nanobrewery meaning four barrels or less. He continued, stating that all of the business is inside the building. Mr. Phippard stated that the owners will also have van deliveries to distributors and a small retail area.

Mr. Phippard stated that the building has been vacant for almost two years. He continued, stating that there is some discussion of storage but this would also need a Variance and does not create jobs like the Monadnock Brewery Company. Mr. Phippard stated that they will only five full time employees and as the company grows it may reach ten. He continued, stating that the company will receive deliveries every now and then with minimal noise disturbance. Mr. Phippard stated that there will be about four or five deliveries a week and will occur during normal hours. Mr. Phippard stated that a trailer would have to back in to deliver.

Mr. Phippard went over the criteria:

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

Mr. Phippard stated that this development is in the public interest and will provide new jobs to the community.

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

Mr. Phippard stated that the spirit of the ordinance would be observed and all operations are inside the structure. He continued, stating that this is an appropriate location for the use with 82 existing parking spaces although only ten will be used.

*Granting the Variance would do substantial justice:*

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

Mr. Phippard stated that the surrounding properties will not be diminished because of the work hours and the work being done inside the building. Mr. Phippard stated that the use will not affect the softball fields.

*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. Phippard stated that there is unnecessary hardship if you look at the size of the building, it is out of character. He continued, stating that other commercial businesses will not be able to use space that is not visible from the road. Mr. Phippard stated that the retail area would be located on the east side of the building.

Chair Zerba asked what would happen if the use is changed to manufacturing and what other uses are permitted. Mr. Schneider stated that any other manufacturing uses would be permitted but something like Kingsbury would not be allowed. Mr. Phippard stated that it is appropriate to specify it with a nanobrewery. Mr. Hoppock suggested a nanobrewery with an accessory of retail. Chair Zerba asked about lighting. Mr. Phippard stated that nothing will change outside the building.

Chair Zerba opened the public hearing.

Emily Webber of 816 G in the Court Street Condos approached the Board. Ms. Webber stated concern with the driveway across the street because truck access is during regular working hours.

She wondered how much traffic will increase. Mr. Phippard stated that there will be hundreds less vehicles a day. Mr. Phippard stated there will only be four or five deliveries a week and initially it will only be one or two a week. He continued, stating that Court Street was widened in the area to accommodate and configured to make wide left turns.

Michael Piazone of 814 B in the Court Street Condos approached the Board. Mr. Piazone stated concern with an increase in traffic. He continued, stating concern with property value because of all the new developments in the area and increased traffic. Mr. Stevens asked what the traffic was like with the previous use. Mr. Piazone stated that it was not very bad during the early part of the day and believes that the new use will create more traffic.

Mr. Phippard stated that it will not increase traffic. He continued, stating that by changing the use to the brewery traffic will be reduced. Mr. Phippard stated that the retail part of the company is just their products.

Mary Henry of 70 Cheshire Turnpike and the co-owner of Monadnock Brewery approached the Board. Ms. Henry stated that you can only sell two cases per person and the brewery would not want to compete with their vendors. She continued, stating that they want to bring jobs to Keene and this is a time intensive job not labor intensive. Ms. Henry stated that the products are all local as well.

Mr. Phippard requested that the Board restrict the motion to brewery because in time the company may change to a micro-brewery as well.

Chair Zerba closed the public hearing.

Mr. Curran stated that the application fits all of the criteria.

A motion was made by Mr. Curran to approve ZBA 16-09 with the limitation to a brewery in the Commerce District. Mr. Stevens seconded the motion.

Mr. Stout stated that the Keene Master Plan favors mixed development it and these are areas that we want to develop. Mr. Stevens stated that it will decrease traffic. Mr. Hoppock stated that it does not violate the basic zoning objectives and he does not see a significant difference to manufacturing from commerce.

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  
*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:*

*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*

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

By unanimous vote the Zoning Board of Adjustment approve ZBA 16-09 with the limitation to a brewery in the Commerce District

**V. New Business**

**VI. Communications and Miscellaneous**

**VII. Non Public Session (if required)**

**VIII. Adjournment**

Chair Zerba adjourned the meeting at 10:35 PM.

Respectfully submitted by:  
Lana Bluege, Minute-Taker  
February 1, 2016