

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 7, 2016

6:30 PM

Council Chambers

Members Present:

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

Staff Present:

Gary Schneider, Plans Examiner

Members Not Present:

Joshua Gorman, Alternate
John Rab, Alternate
Stephen Bragdon, Alternate

1) Introduction of Board Members

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

2) Minutes of the Previous Meeting

Mr. Hoppock made a motion to approve the minutes of September 9, 2016, which was seconded by Mr. Stevens and carried unanimously.

3) Unfinished Business

4) Hearings

Chair Zerba noted there would be a change in order of the hearings. ZBA 16-45 would be heard first.

ZBA 16-45:/ Petitioner, Roy and Karen Matheson of 143 Jordan Road, Keene, NH requests a Variance for property located at 165 Martell Court, Keene, NH, which is in the Industrial District and owned by Roy and Karen Matheson, dba: RM & KM Realty, LLC. The Petitioner requests a Variance to allow the use of the property as "Live/Work" per Section 102-632 of the Zoning Ordinance.

Chair Zerba introduced the application and Mr. Schneider noted the location of the property in question, in the Industrial Zone, and adjacent to the Ashuelot River.

Chair Zerba welcomed Roy Matheson, 143 Jordan Road, Keene. Mr. Matheson explained he has owned the building for eight to ten years and during that time it was used as an office building. Four years ago, when downsizing his business, Mr. Matheson put the building on the market and only had one interested party. He explained he is faced with the choice of selling his home to meet obligations on the building or if this Variance is granted, his family can move into the building and continue their business there. They are requesting Variance for a live/work situation on the property.

Chair Zerba asked what the Matheson's will do if they do not move their business into the building. Mr. Matheson replied if unable to sell the building, they will lose the building and their home. The building is still listed for sale with more than four brokers.

Mr. Stevens asked if the property is empty right now. Mr. Matheson replied it is technically empty and being used as storage for their business run out of their home. Mr. Stevens asked, if granted the Variance, if they will still try to sell the building. Mr. Matheson replied they have had interest in the building if it was live/work, but not if it is just an office. He said his resources have dwindled and they would have a better chance at selling with this Variance, but if unable to sell will move into the building.

Mr. Hoppock asked if there is any other current use of the property other than storage. Mr. Matheson replied no, he sometimes uses the video studio in the building for his business.

Chair Zerba noted her only concern is the residences across the street and not knowing what type of business might go in there. Mr. Matheson replied he cannot predict the future but the same business has been there for ten years.

Mr. Curran asked how live/work would be possible in the Industrial Zone. Mr. Schneider replied live/work space is defined differently in each zone. He read the definition of live/work in the Zoning Code: *live/work space means a combination of a permitted commercial use and a permitted residence within a structure when the permitted residence is secondary or accessory to the permitted commercial use.* Chair Zerba asked if it is in the Industrial Zone, if currently permitted uses in the Industrial Zone would be allowed. Mr. Schneider replied yes.

Mr. Curran asked if what is currently on the property is a permitted use. Chair Zerba read what is permitted in the Industrial Zone:

Asphalt, smelter, forge, tannery, brewery, rendering plant, explosives manufacturing, assembling, bulk storage and distribution of goods (including flammable materials, college training programs, garage business, health and fitness center, historic sites open to the public, home offices of insurance companies, publishing companies, and manufacturing firms, institutional use, manufacturing, motor vehicle repair garage, paint shop, noncommercial outdoor recreational activity, nursery or childcare facility, processing, research and development, recycling plant, storage facility, warehousing, and wholesaling.

Offices for corporate, business or professional purposes provided that an office building occupied by a single office entity must be a minimum of 10,000 square feet in size. A building that includes one or more occupants which is primarily office in nature must be a minimum of 20,000 square feet in size, and each other entity occupying space in the building must be a minimum of 5,000 square feet in size.

Mr. Stout asked how to define where the living space is in the building, and if the Board does not define that, does that mean the entire structure could become a residence. Mr. Schneider replied, according to the definition, the residence has to be secondary to commercial use and the commercial use, as stated, is not specifically defined. Mr. Stout asked how to judge if the residence is secondary. Mr. Schneider replied he is unsure; Mr. Hoppock said it is like an accessory use.

Mr. Schneider explained the history of the property. He said the structure of the property probably limits industrial use. In 1996, the previous owners came before the ZBA for a Variance to use the building in part or in entirety as office space; the Variance was granted. In 2003, another previous owner applied for Variance to open a day care in the building; the application was dismissed by a vote of 4-0 for failure to appear.

Mr. Hoppock noted the applicants did not complete the application section on unnecessary hardship. He said it is hard to grant this Variance without knowing why the owners think denial would create an unnecessary hardship for them. Mr. Matheson replied the nature of the economy and real estate in Keene makes this property an unnecessary hardship. He does not think it is just the property; the hardship is the loans the Matheson's have taken their loss of one house and their retirement to pay those loans. He said this Variance is a means to comply with those loans.

Chair Zerba welcomed public comment. Marilyn Stromm, 146 Martell Court, Keene spoke in support of the application. Ms. Stromm noted she owns the property across the street from the property in question. She has no reservations about this Variance being granted and thinks Mr. Matheson explained his hardship well. Her concern was the type of business there in terms of fumes, leaks, etc. After hearing his explanation, she is in full support. Mr. Stout noted he was happy to see an abutter come to show support for an application.

Mr. Stout asked if the Board does not find unnecessary hardship, can the Variance be approved. Mr. Hoppock replied no, the statute defines unnecessary hardship and based on what he heard, the criteria are not met.

Chair Zerba closed the public hearing.

Chair Zerba asked if devaluation of property is considered a hardship. Mr. Hoppock replied no and read the definition of unnecessary hardship: *Denial of the Variance would result in unnecessary hardship to the owner because of special circumstances of the property that distinguish it from other properties similarly zoned.* Mr. Hoppock said one way to help the applicant is to encourage him to withdraw the application and come back with a better case for the unnecessary hardship.

Chair Zerba said, in her opinion, a hardship exists. Having seen the property, she said it is surrounded by a parking lot and other businesses. She would think some of those things would cause a hardship in trying to sell. Mr. Hoppock said he does not think that is what the provision means by unnecessary hardship. Mr. Stevens said the location of the property is a character of the property too. Mr. Curran agreed and also suggested postponing a month. Chair Zerba asked if the application can be continued without re-noticing. Mr. Schneider replied he believes so. Mr. Stout noted he is uncomfortable without something in the application addressing unnecessary hardship.

Chair Zerba reopened the public hearing. She explained to Mr. Matheson that in continuing the hearing, he does not have to resend abutter notices. She urged him to fill in Section five of the application and to work with Mr. Schneider to improve the application. Mr. Matheson agreed.

Mr. Hoppock made a motion to continue ZBA 16-45 at the December 5, 2016 hearing, which was seconded by Mr. Curran and carried unanimously.

ZBA 16-44:/ Petitioner, Chasjam & Sons, I, LLC of 83 Timberland Drive, Keene, NH requests a Variance for property located at 91 Water St., Keene, NH, which is in the High Density District and owned by Charles Ferrando of 83 Timberland Drive, Keene, NH. The Petitioner requests a Variance to allow a lot size of 5,227 square feet for a three family unit where 16,000 square feet is required per Section 102-791, Basic Zone Dimensional Requirements of the Zoning Ordinance.

Chair Zerba introduced the application and Mr. Schneider indicated the location of the property adjacent to the Central Business Zone and adjacent to an empty parking lot the ZBA granted Variance on. There were two residential units in the building and a hair salon. The owner now wants to convert the hair salon into another apartment. The property is in the High Density Zone, where 16,000 square feet are required for a three family dwelling and the property is only 5,227 square feet. The salon was the last permitted use on the property; the salon has been used as an apartment for the last three years without the City's knowledge.

Chair Zerba read a letter from Dawn Kopczynski, 10 Willow Street, Keene, in response to this application.

We would like to raise some concerns about the proposed Variance request to add an additional unit, where the lot size is not sufficient for a duplex, let alone a triplex.

As we understand the property, in past years the duplex was converted into a duplex with a hair dressing shop. The present use of the property is a triplex and the shop was converted without approvals or permits. We assume that if the Board were to grant a Variance, then permits would be required to convert this building into the triplex and meet building and fire codes. In addition we assume that the property would be required

to obtain Planning Board approval and would have to construct a commercial parking lot. It is not clear how a commercial parking lot would be configured on this site.

In addition to the issues related to present Zoning Code non-conformance the proposal would seem to be contrary to the purposes and aims of the Marlboro Street rezoning effort. This proposal shows this property to be in the Residential Preservation District where the aim is:

Division 21 – Residential Preservation District – The intent of this Residential Preservation District (RP) is to provide and/or create a neighborhood of residential properties that prioritizes family units. The RP has a mix of small to large residential house types with almost entirely residential uses. There are shallow front setbacks and shallow to medium side setback; with variable, private landscaping, streets with curbs, sidewalks, and shade trees that define medium to large blocks.

Chair Zerba welcomed Charles Ferrando, 83 Timberland Drive, Keene. Mr. Ferrando provided photos of the property to the Board. He explained the hair salon had three hairdressers and when there was only one left, the salon was no longer financially advantageous. He thought he could convert the salon back into a residence and did not know he needed permits to do that. When reassessing the property, he found out he was in violation of the Code. He apologized for not following the appropriate procedure. He said he disagrees with the assessment in the letter and showed an overview photo of the property. He said Water Street, where the property is located, consists of mostly multifamily units many of which house college students. He showed another photo exhibiting other properties nearby with parking within three feet of the boundary and without commercial parking. He showed another photo of Crossfield Street where there are two units joined which was granted by Variance in 1982; the location has four families and less than two parking spaces per unit. The final photo he showed was of his property where he said there is ample parking within three feet of the boundary which could accommodate six or more vehicles. He continued that he is a long-time resident, an active landlord, keeps the building maintained, maintains the lawn and trash service himself, and has made many improvements to the building. He has long-term tenants who do not cause disturbances. If not granted this Variance, his hardship is that he will have to sell the property because it will not pay for itself as a two family building.

Chair Zerba clarified that the property has always been at least two units with a commercial unit; Mr. Ferrando replied yes.

Mr. Stout asked the rough square footage of each of the three units. Mr. Ferrando said he did not know and said the Crossfield Street property is similar size to his and was granted a Variance. Mr. Stout said he feels that 5,227 square feet is a severe departure from what the Code calls for, 16,000 square feet for three units. Mr. Ferrando questioned why a Variance was granted for the Crossfield property, which he said is at least half the size of his property. Mr. Schneider noted the Crossfield property is in a different zone, the Central Business Zone. Mr. Stevens added that Variance was granted in 1982 so it is outdated. Mr. Ferrando said he thought it was a good example because it was within the abutter zone.

Mr. Hoppock asked if there are any other Variances like this where the density restrictions are so far skewed; Chair Zerba added especially on Water Street where there are dense multifamily units. Mr. Schneider replied there is one on Roxbury Street across from Beech Street where a third unit was granted by the ZBA 20-25 years ago, but he does not remember the square footage difference.

Mr. Stevens asked if this is the only rental property Mr. Ferrando owns. Mr. Ferrando replied yes, it is used for fallback income.

Mr. Stout asked the setback requirement for parking. Mr. Schneider replied three feet from the property line. This parking lot would have to gain permission from the Planning Board because it is considered commercial property. Mr. Stout said the parking area is rather indistinct, unpaved, and he is unsure if the space will accommodate parking for three units. Mr. Schneider noted Mr. Ferrando will have to demonstrate that there are six parking spaces.

Mr. Curran asked if the commercial aspect is eliminated, will the property then just be considered a residence. Mr. Schneider replied that having three or more dwelling units in a structure is considered commercial property, so it will remain a commercial property.

Mr. Ferrando said he knows, from having tenants, that there is ample parking. He said there are many buildings with parking within three feet right now; he just wants to be granted common usage in the area. He wants to conform with the Code and for the building to be legal. He does not feel this Variance is out of character for the neighborhood.

Mr. Stout asked if the salon and two apartments were non-compliant. Mr. Schneider replied that it is a legally non-compliant property which is grandfathered. He said in order to have two units they would have needed 11,000 square feet, so even with two units it was non-compliant. The hair salon and commercial units do not trigger additional lot size, only the dwelling units do. Mr. Stout asked if this is approved, is it not effectively approving a Variance for two changes of use. Mr. Schneider replied that is what most people refer to as grandfathered. Mr. Stout stated the two apartments could be grandfathered and theoretically the salon could continue operating as well. Mr. Schneider replied that it could. Mr. Stout stated if the Board denies the Variance, Mr. Ferrando could continue in the previous use, but the Variance tonight is to convert the salon into a third dwelling. Mr. Schneider replied that was correct and by doing so and adding the third unit, there is the additional square footage need. Mr. Stout said he does not think the Board is taking anything away by not approving the third dwelling. Mr. Hoppock asked if they are precluded by Ordinance from approving a Variance request that expands a non-conforming use.

Mr. Stevens said the unit has been used as an apartment for the last few years, therefore it would be going back to a non-conforming use, and so would it still be grandfathered. Mr. Schneider replied if someone does something without City approval it is by default illegal so it reverts back to the last approved use. Mr. Stevens asked what happens to the current

lease there if this Variance is not approved. Mr. Schneider replied he does not know because zoning is not involved in that.

Mr. Ferrando apologized to the Board stating he did not know at the time it was a violation to convert the salon into an apartment but that he is trying to make it right, and continues to improve the property. He said he will do everything he can to make sure he is within the code in the future.

Chair Zerba opened the public hearing.

Mr. Schneider referred to section 102-208, 102-209, and 102-210 in the code to clarify Mr. Hoppock's previous question.

- **102-208. Change of permitted use** - *A use which is permitted in any zone and is a nonconforming building, structure, or lot solely because of zone dimensional requirements may be changed to another permitted use without zoning board of adjustment approval provided that:*
 - *The new use will not further violate dimensional requirements in any dimension;*
 - *The new use will meet all zoning requirements (e.g., parking, screening) other than dimensional; and*
 - *There will be no expansion of gross floor area.*
- **102-209: Alteration or expansion of non-conforming structures** - *Alteration or expansion of a structure which is nonconforming solely because of zone dimensional requirements is permitted without zoning board of adjustment approval provided that:*
 - *The present use, a changed use, or an additional use is permitted in the zone; and*
 - *The alteration or expansion will not further violate setback dimensional requirements. Any new encroachment cannot come closer to the property line than the encroachment into the normal setback area made by the existing structure. In addition, the area of such new encroachment cannot exceed 50 percent of the total square footage of the area of the portion of the existing structure which originally encroached on the minimum required setback.*
- **102-210: Enlargement of non-conforming uses** - *A nonconforming use may be expanded and enlarged, provided such enlargement and expansion does not violate any of the basic zone dimensional requirements set forth in this chapter. Such expansion must receive permission from the zoning board of adjustment, which must find that the expansion will meet the following conditions:*
 - *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.*
 - *There will be no nuisance or serious hazard to vehicles or pedestrians.*
 - *Adequate and appropriate facilities will be provided for the proper operation of the proposed use.*

Mr. Schneider said this property fails because of lot size and thinks asking for a Variance due to lot size is the appropriate measure.

With no comments, Chair Zerba closed the public hearing and asked the Board to discuss each criterion without a motion.

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

Mr. Curran said no, the building has always seen the same impact it is just changing the use. He said the testimony shows impacts were greater when it was a hair salon. Chair Zerba agreed and said it is not contrary to public interest because there is a need for non-student housing. Mr. Hoppock said he doubts the Variance would alter the essential character of the neighborhood, but he is concerned about the density.

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

Mr. Stout said he does not think the spirit of the Ordinance would be observed. He thinks the code calls for a certain square footage and the difference in this case is very stark. Chair Zerba asked if he would consider the neighborhood and other buildings around it similarly used. Mr. Stout replied he might agree if he knew that comparably sized houses have a comparable number of dwellings. He said after many years of discussing overcrowding and parking, especially in that part of town, he does not think this would alleviate those problems; he does not think it complies. Mr. Stevens agreed and stated he would have a different perspective if they were looking at this before it was done. He said the square footage is a major shortcoming and not knowing what it is like for three families inside is a problem. He added it cannot be assumed that it will never be student housing. Chair Zerba said she does not think granting this Variance would harm the essential character of the neighborhood or be a threat to the public. Mr. Hoppock agreed that the difference in square footage is hard to overcome. He added he does not see anything that is a threat to the public and agrees the essential character of the neighborhood would likely not be changed; but he still does not feel the size is in the spirit of the Ordinance.

Granting the Variance would do substantial justice:

Mr. Hoppock said this would mean a denser population on a smaller lot. He does not know if that is outweighed by the loss to individuals. He said the financial investment in this property does not affect the decision. Mr. Stout said it is not a question of harm but potential harm. He said in so many cases the Board may agree on a Variance based on the application, but the Board has to always remember they are not just granting a Variance for one situation but one that carries on with the property. He said an unreasonable use of this Variance could cause problems for the neighborhood. He thinks the potential is too high for that possibility; Mr. Curran agreed.

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

Mr. Stout said he does not think it would devalue surrounding properties unless an issue develops with vehicles. He is unsure he would vote in favor on this matter. Chair Zerba said that would be addresses by the Planning Department. Mr. Stout replied the Board still has to determine if it could be a problem.

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:

x. The proposed use is a reasonable one:

Chair Zerba stated she thinks the applicant explained the hardship. Mr. Hoppock said the Board does not have a lot of information about what distinguishes this property from other properties in the area. He said in his view the purpose of the Zoning Ordinance is to prevent overpopulation. He said the specific application of that rule to this property is rationally related and does have a substantial relationship to the property. For that reason he said he is not convinced unnecessary hardship is met.

Mr. Curran made a motion to approve ZBA 16-44, which was seconded by Chair Zerba.

Chair Zerba reviewed the Findings of Fact:

Granting the Variance would not be contrary to the public interest: Granted 4-1, Mr. Stevens opposed.

If the Variance were granted, the spirit of the Ordinance would be observed: Denied 4-1, Chair Zerba voted in favor.

Granting the Variance would do substantial justice: Denied 4-1, Chair Zerba voted in favor.

If the Variance were granted, the values of the surrounding properties would not be diminished: Denied 3-2, Mr. Curran and Mr. Stout voted in favor.

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: Denied 4-1, Chair Zerba voted in favor.

x. The proposed use is a reasonable one: Denied 4-1, Chair Zerba voted in favor.

With a vote of 4-1, the Zoning Board of Adjustment denied ZBA 16-44.

ZBA 16-46:/ Petitioner, Catherine Ruffle, of 58 Valley Park Drive, Spofford, NH, requests a Variance for property located at Chapman Road, Lot #13, Keene, NH,

which is in the Rural District. The Petitioner requests a Variance to construct a single family dwelling on a lot with two acres where five acres are required per Section 102-791, Basic Zone Dimensional Requirements of the Zoning Ordinance.

Chair Zerba introduced the application and Mr. Schneider indicated the location of the property on Chapman Road. He said the whole development was originally mostly two-acre parcels but the property now has to comply with the present requirement of five acres for a single family dwelling. This property has been before the Board four times with this applicant; the last extension ran out so she is back before the Board.

Mr. Stout asked if the property has approximately 199 feet of frontage on Chapman Road. Mr. Schneider replied yes. The applicant provided a map with measurements to the Board.

Mr. Hoppock asked the relevance of the fact that the applicant has been before the Board four times but has not acted upon the Variance. Mr. Schneider replied it is not relevant at this point. Mr. Hoppock stated the Board granted a Variance last year for a two-acre lot for the same reasons. He asked how many others have been approved. Mr. Schneider replied many, including one adjacent property, and this applicant has been granted a Variance each time.

Chair Zerba welcomed the applicant, Catherine Ruffle, 58 Valley Park Drive, Spofford. Ms. Ruffle provided copies of her past Variance requests to the Board. She said she bought the land when it was already granted a Variance. She previously owned an adjacent home and purchased the land for privacy and to eventually have land to downsize to. Each past Variance has been granted for five years. When she last applied for Variance in 2010, the condition stated no time limit so she thought the Variance was indefinite and did not build immediately. When the City sent new assessments she realized the Variance had expired. She added that the value of the property had depreciated from \$38,000 in 2015 to \$5,000 in 2016.

Chair Zerba asked if the applicant intends to build now and why not just wait for the Variance until ready to build. Ms. Ruffle replied she thought it would be a better practice and beneficial to her and the City is the Variance continued. The most recent Variance expired in September 2015. She said this is the last undeveloped lot in the subdivision and she is only asking for a conforming use.

Mr. Stout asked about the practice of putting time limits on Variances. Mr. Schneider replied he can recall a few that have had time limits, and Variances can be granted indefinitely. Mr. Stout said it seems arbitrary to have a time limit on one property and not another. Mr. Schneider said it could have been affected if the Zoning Ordinance changed in the past; but he added that granting a Variance indefinitely could trigger something later on.

Mr. Hoppock said the time limit could be a statutory provision that calls for Planning Board decision to be performed within four years of approval; he is unsure if it is similar for ZBA. Mr. Schneider said that is what the lot needs to comply with the five acres at this point. Mr. Hoppock said if the Variance is approved tonight, why have the applicant come back in five years. Mr. Schneider said in the Board's rules of procedure, any approval of Variance has a two-year time limit on it. Some applicants request extensions to five years, so he believes the Board can approve any number of years.

Ms. Ruffle said she did not know what her options would be. She has not yet built because she works and lives in Spofford and granting the Variance for 10 years would allow her to wait to build until she retires. She hopes to one day pass the land and home to her children. Chair Zerba stated 10 years seems like a long time.

Ms. Ruffle reviewed the criteria.

- She does not believe granting the Variance is contrary to public interest because it is a viable residential building lot which provides opportunities for Keene to grow and benefits the City's tax base. The devaluation has increased without the Variance.
- She believes the spirit of the Ordinance would be observed because she is asking for a conforming use.
- She thinks it would be a substantial injustice to not grant the Variance because the two acre lots existed before the five acre requirement.
- She does not believe surrounding property values would be threatened because it is a conforming use.
- Not granting the Variance would cause substantial hardship because there is no other reasonable use for the property.

Chair Zerba asked if the property is assessed a greater taxable amount when the Variance is granted. Mr. Ruffle replied yes, it is taxed as a building lot with the Variance. Mr. Stout said denying the Variance would be a hardship because taxes have been paid as a buildable lot for 24 years. Chair Zerba said she did not realize that. Ms. Ruffle said she is willing to pay the property taxes to continue the possibility of building on the property.

Chair Zerba opened the public hearing. With no public comment, Chari Zerba closed the public hearing.

Mr. Stout said he thinks there is a compelling argument to approve the Variance having seen the effect on taxes over the last 24 years. He said maybe in this case, a 10-year Variance is reasonable; Mr. Stevens agreed.

Mr. Hoppock made a motion to approve ZBA 16-46 for a period of 10 years, which was seconded by Mr. Stout.

Chair Zerba reviewed the Findings of Fact:

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

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

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

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

Unnecessary Hardship

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

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

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

By unanimous vote, the Zoning Board of Adjustment approved ZBA 16-46 for a period of 10 years.

ZBA 16-47:/ Petitioner, Christopher Lewis, NCARB, of 670 N. Commercial Street, Suite 303, Manchester, NH, requests a Variance for property located at 210 West Street, the Colony Mill Marketplace, Keene, NH, which is in the Commerce Zone and owned by Brady Sullivan Keene Properties, LLC, 210 West Street, Colony Mill Marketplace, Keene, NH. The Petitioner requests Variance that in addition to the existing uses, to allow multi-family residential apartment/condominiums up to 90 units in the existing historic mill buildings per Section 102-542 of the Zoning Ordinance.

Chair Zerba introduced the application. She welcomed Chris Lewis, 4 Wheatland, Hollis; Ben Kelly, 670 N Commercial, Manchester; and John Rokeh, 89 King Road, Chichester.

Mr. Lewis explained this application is for a use Variance to add residential units to the Colony Mill. In recent years, the Mill has struggled to attract and maintain long term commercial tenants. The applicants think apartments will make the Mill more prosperous. The preliminary architectural study supports up to 90 residential units in the Mill, including the main Mill and the two out buildings. The study showed there could be a mix of one, two, and three-bedroom units based on the size of the building, window locations, column spacing, and other architectural requirements. Apartment rental costs would range from \$700-\$1,100 per month. In addition to the apartments, several amenity spaces will also be included such as a leasing office, gym, game room, library, and community space. Mr. Lewis said they included photos of similar mill conversions done by their company; he said they strive to focus on the historical nature of the building.

Mr. Rokeh, an engineer, said he has worked with Brady Sullivan on mill conversions in Manchester and elsewhere. He said he would go through the mixed use of having residential and commercial in the same area; he said it can work out well with parking,

use, and traffic because the uses do not overlap much. He said a positive quality of the Colony Mill as opposed to others, is the abundance of parking.

Chair Zerba asked why they were requesting a use Variance. Mr. Rokeh replied because the residential use is not allowed in this zone so a use Variance is necessary for the residential component. Mr. Hoppock clarified that the City no longer distinguishes between use Variances and others; there is only one type of Variance.

Mr. Rokeh reviewed the criteria:

- Introduction of residential units will not diminish surrounding property values. He said this company has done this type of work frequently and it usually benefits the surrounding businesses. The uses within the Mill will not significantly overlap, commercial uses will have more activity in the day and residences will have more activity at night.
- The spirit of the Ordinance would be observed because the additional 90 units in a mixed use building will attract new businesses to the area. Traffic and parking will be offset by residents being gone during the day. Many towns, including Keene, promote mixed use.
- Granting the Variance would do substantial justice because the zoning where the Mill is located interferes with the applicant's reasonable use of the property. For a large Mill building, the best way to use it is with a balanced mixed use to utilize space and share upkeep of the building in the long term.
- The value of surrounding properties would not be diminished because the Mill is unique to this area and this Variance would enhance the viability of surrounding businesses by increasing nearby residents.
- The addition of a residential component will enhance the neighborhood by keeping the building well preserved and bringing in new customers.
- Granting the Variance would do substantial justice because the owner is trying to revitalize the building. It is historically difficult to maintain full commercial occupancy in the Mill and by adding residences the full potential of the building can be realized and the surrounding area will be enhanced.
- The businesses within the building will benefit from a large potential customer increase. Peak infrastructure demands, such as water and sewer, will be offset with residents away during the day.

Mr. Hoppock noted one of the criteria is whether this Variance would threaten public health, safety, and welfare. He asked if the applicants have any studies to support conclusions that commercial operations during the day and residential demands and night would balance the parking demands. Mr. Rokeh noted they have not yet conducted a traffic study on the Colony Mill. He said in Manchester the building was 200 spaces short of what was needed, they did extensive traffic studies into offsetting uses, and now that it

is built there is plenty of parking with day-night turnover. There are currently 370 parking spaces at the Colony Mill, so even if every single resident were there during the day with two cars, there will still be 180 spaces remaining for commercial use. Additional pros are the signaled intersections and multiple entrances. Chair Zerba said a traffic study would be necessary if the Variance is granted.

Mr. Stevens asked if the parking spaces are those only at the property or also those in the vacant lot. Mr. Kelly replied they do not own that vacant lot. Chair Zerba asked if a marketing study has been done for residential use. Mr. Kelly replied it is something they are aware of and looking at. He said they wanted to respect the first step in the process which was the ZBA. They had many meetings with businesses and community leaders, looked at other housing studies, and anecdotally looked at rates. He said from that they are confident in the product and will look more into marketing and feasibility. Chair Zerba said it is a wonderfully historical building and asked the attempts to maintain that. Mr. Kelly replied they are looking into historical tax credits, bound by state and federal regulations, to make sure the history is maintained.

Mr. Stevens asked if it is exactly 90 planned units or more. Mr. Lewis replied it depends on how it unfolds and respecting current tenants in the building. Current tenants are scattered throughout the building so it is an architectural challenge. 90 units would be the maximum to maintain 15-20% commercial use at the site. Mr. Stevens asked if the lower level will remain commercial. Mr. Lewis replied most likely as commerce will do better on the first floor. He said they would like to include some residential on the ground floor as well. Chair Zerba asked the plans for the two out buildings. Mr. Lewis replied they will likely be residential; one is currently in use so it is not being considered at this point. The vacant candy shop could hold two or three residential units.

Mr. Stout stated in theory the Board could stipulate the number of allowed dwellings in the Variance and added the Board has no basis for the number of units proposed. He said he would like to know more about how they arrived at 90, the average square footage for each unit, and what part of the housing market they plan to target. He said there is talk about the need for workforce housing in Keene, but little discussion on actual implementation. Mr. Kelly replied the marketing study is down the road, they wanted to be respectful of zoning and not be three steps ahead before getting deep into planning. They have met with City Planners to talk about projected next steps if approved, and they encouraged focusing on the Variance first. There is nothing to say it cannot be workforce housing, they have tried to not lock themselves into one domain. They would like to have price points that hit many different demographics in Keene. They arrived at 90 units thought preliminary block layouts, footprints of typical apartment sizes and with historic amenities and packages considered as well. He said the overlay of those footprints is how they arrived at 90.

Mr. Stout said it is appropriate to talk about the number of units because the Board is making the Variance decision. He asked what the proportion of housing to commercial will be, and what types of businesses they are considering. Mr. Kelly replied it is tough to say until they know what is granted. They envision a mix of retail and space for

commercially minded activities. They also envision quasi-retail uses such as a Pilate's studio. He said the market will dictate what is successful and they do not want to be boxed in if the market changes. He said the retail market in Keene has changed dramatically and he does not have foresight to know what retail will be successful. They would love to keep the existing restaurant. They expect 15-20% commercial use. He added they have approval to connect Mill parking to the Center at Keene. The Mill is approximately 120,000 square feet but he does not have exact unit square footage at this time. Mr. Stout said the applicants need to understand the Board is being asked to weigh in on a major Variance and have not been given a single substantial figure. He said he is not opposed but is nervous that not enough has been presented to make the right decision.

Mr. Hoppock asked Mr. Schneider if a mixed use was approved in the Commerce District on Main Street two years ago. Mr. Schneider replied he could only remember one that was denied. Mr. Hoppock said one thing the Board has to do is examine if there is a threat to public health, safety, and welfare. He suggested the applicants return with more information about how this will affect safety and parking. He is concerned about that criterion and thinks a traffic study would help.

Mr. Kelly said they respect that point of view but anticipated that step would be down the road. He said with 372 parking spaces, that is roughly four spaces per unit and the goal is 1.6 spaces per unit. Being so much higher than they normally strive for, they were confident. It is not something they are ignoring; they just did not want to get ahead in the process. Mr. Hoppock said he is not suggesting they are ignoring it, but is concerned about the traffic implications, for example on the weekends when the uses are not balanced and for children getting to school during the week.

Chair Zerba said conceptually the Board supports the application but needs more information before voting. Mr. Stevens said it is a big application that could have big impacts; he has seen more detail in smaller applications. He would like to see a layout instead of what the applicants hope will happen. Mr. Rokeh said they want to do everything possible to get approval, so they will work to address the concerns.

Chair Zerba outlined what more the Board would like to see from the applicants:

- A more definitive number of units
- A safety and traffic study
- Proposed building layout
- Targeted demographics

Mr. Schneider noted the Planning Department has old traffic study data conducted in that area for reference. Mr. Curran encouraged using as much of the old data as possible to build support before financing a new study. Mr. Hoppock disagreed noting they will have to do a new traffic study anyway. He does not see it as a burden to the company and will not approve the application as presented. Mr. Stout said it could be a preliminary traffic study that does not require as much effort as the Planning Board study; he said from that preliminary point of view, they can make compelling arguments that what is proposed is consistent with the Keene Comprehensive Master Plan.

Mr. Rokeh said a traffic study will not be a problem and he will work with the Planning Department to make sure work is not being duplicated.

Chair Zerba opened the public hearing. She welcomed Betsy Ballard, 20 Avon Meadow Drive, Avon, CT. Ms. Ballard said she owns the Arcadia Apartments at 120 Emerald Street. She said she is opposed because KSC enrollment is down 500-600 students and while this may not be designated as student housing, she thinks the diminished business patronage, staff, and jobs should be considered. She does not want to see overwhelming vacancies in the town.

Mr. Stevens asked how many other Mill revitalizations the applicants have done. Mr. Lewis replied two large mills in Manchester, one with 100 units and one with 300 units; others in Worcester, Rhode Island, and Clinton. All were historical buildings and most were mixed use.

Mr. Stout noted the district the Colony Mill is in will provide commerce and clarified the Variance is only for the residential aspect. Mr. Rokeh replied yes. Mr. Hoppock added he hopes there will not be data more than five years old used in the study.

Mr. Hoppock made a motion to continue ZBA 16-47 at the December 5, 2016 meeting. The motion was seconded by Mr. Curran and carried unanimously.

ZBA 16-48:/ Petitioner, Wendy Pelletier of 463 Washington St., Keene, requests a Variance for property located at 29 Richardson Court, Keene, NH, which is in the Commerce District and owned by Christina and Joshua May, 29 Richardson Court, Keene, NH. The Petitioner requests a Variance to permit a change from the side and rear setback requirements of 20 feet to five feet per Section 102-791, Basic Zone Dimensional Requirements of the Zoning Ordinance.

Chair Zerba introduced the application and Mr. Schneider displayed the location of the property in the Commerce Zone. He noted a clarification to what was advertised for this application which stated a need for a 20-foot rear setback. The actual required rear setback in the Commerce Zone is 10 feet which is what the applicant would need to comply with (Section 102-888a).

Chair Zerba welcomed Wendy Pelletier, 463 Washington Street, Keene. Ms. Pelletier said while the property is in the Commerce Zone, it is a residential lot in a residential area. She is proposing a two car garage for the back of the building. The existing one family dwelling has a small attached garage on the side of the house which they would like to tear down and replace with a two car garage at the back of the house. She said there is a similar garage on an adjacent property close to the property line, which is why she is seeking Variance.

Mr. Stout asked where the garage will actually go. Ms. Pelletier replied behind the house, the driveway will be extended to the rear of the lot and turn in to the garage.

Ms. Pelletier reviewed the criteria:

- The Variance would not be contrary to public interest because the lot will remain residential which is consistent with the character of the neighborhood.
- The Variance would be in the spirit of the Ordinance because the Ordinance is meant to ensure public safety and a safe distance will be maintained between the new garage and the garage on the adjacent lot.
- The Variance would do substantial justice because the current small garage cannot be expanded so this would keep vehicles off the road.
- Value of surrounding properties will not be diminished because it is an old neighborhood with compact lots and many accessory buildings. Moving the garage closer to the rear will increase curb appeal of the lot and reduce crowding.
- Not granting the Variance would be a hardship because adhering to the 10 and 20 foot setbacks would not allow enough turning room to enter and exit the new garage.

Chair Zerba said there are a lot of houses in that neighborhood which do not have setbacks and are very compact. She opened the public hearing.

Marissa and John Burbank, 37 Richardson Court, Keene, spoke in support. They are neighbors and are not opposed to this Variance.

Chair Zerba closed the public hearing.

Mr. Hoppock made a motion to approve ZBA 16-48, which was seconded by Mr. Stevens.

Chair Zerba reviewed the Findings of Fact:

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

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

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

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

Unnecessary Hardship

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

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

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

On a vote of 5-0, the Zoning Board or Adjustment approved ZBA 16-48.

5) New Business

a. 2017 Draft Schedule

Mr. Hoppock made a motion to approve the proposed 2017 ZBA schedule, which was seconded by Mr. Stout and carried unanimously.

b. Rules of Procedure

The Board discussed guidelines for paperwork that can be delivered by applicants the night of a meeting. The Board decided the night of a meeting, if anything is handed in, the Board can decide to postpone reviewing the application to have more time with the new materials.

6) Communication and Miscellaneous

7) Non Public Session (if required)

8) Adjournment

Hearing no further business, Chair Zerba adjourned the meeting at 9:18 PM.

Respectfully submitted by,
Katie Kibler, Minute Taker