

City of Keene  
New Hampshire

ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES

**Monday, December 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 and introduced the Board members.

**2) Minutes of the Previous Meeting-November 7, 2016**

Mr. Stout noted a correction to the minutes of November 7, 2016 on page 15 of 18, second paragraph, “Mr. Stout said the applicants need to understand the Board is being asked to weigh in on a major variance and have been given a single substantial figure”, should read “Mr. Stout said the applicants need to understand that the Board is being asked to weigh in on a major variance and have not been given a single substantial figure”.

Chair Zerba gave a correction to the minutes: on page 4 of 18, last line on the bottom of the page, “Chair Zerba read a letter sent in response to this application”, should state “Chair Zerba read a letter from Dawn Kopczynski, 10 Willow Street, Keene in response to this application”.

Mr. Hoppock noted a correction on page 4 of 18, third paragraph, the words “at the December 5, 2016 meeting” should be “to the December 5, 2016 hearing”.

Mr. Curran made a motion to approve of the minutes of November 7, 2016 as amended. Mr. Hoppock seconded the motion, which carried unanimously.

**3) Unfinished Business**

None at this time

#### 4) Hearings

**Continued 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 stated the Board asked the Matheson’s to return and present their completed application. The Board was already familiar with the location of the property and did not need Mr. Schneider to locate the property.

Chair Zerba welcomed Roy Matheson, 143 Jordan Road, Keene and asked Mr. Matheson to briefly review the five criteria discussed at the last meeting. Mr. Matheson explained they are requesting a Variance for a live/work situation, so they can repurpose the property to something that has commercial value that will also allow them to live on the property. He continued that at the last meeting he did not fill out Section 5 of the application and has since completed this section. Chair Zerba requested Mr. Matheson to present a brief overview of Section 5 to the Board.

Mr. Matheson stated he felt the map presented at the previous meeting was not a true representation of the property. He stated by looking at the size of the property compared to the size of the structure and then the allowed uses, there is a significant difference between the sizes that will make the property a commercial use at the value of the property. Mr. Matheson said if the property was converted to any of the other commercial uses as allowed in the Zone, such as an insurance company or a college, the size of the property would not allow such use. He said another issue in the area is the presence of Dead River located right across the street. Mr. Matheson stated that when potential buyers came to look at the property they did not have a pleasant reaction to the propane gas company. As a positive approach, Mr. Matheson stated what he was trying to do was fit in with the neighborhood by going with the set-up. He continued that half the area is residential and other half is athletic. Mr. Matheson stated he is asking for a Variance to be a single family residential use with a commercial use that has a much smaller footprint than any of other commercial uses in the area. He stated the property will be safe, clean and there will be no changes to the building.

Chair Zerba asked the Board if there were any questions. Mr. Stout asked if this was Mr. Matheson’s explanation of a hardship. Mr. Matheson replied yes and that he provided a brief overview because the explanation of a hardship was a few pages long. Mr. Matheson said there is a lack of a reasonable connection between what the property can

be now and what it would cost to bring up to any of the allowed uses such as a college or insurance company. He continued the structure would need to be torn down because there is not ample space for parking. Other examples of hardship in the area stated by Mr. Matheson were the existence of Dead River and the access from Main Street. Mr. Matheson stated as the Board has read in previous minutes the safe access in this area is hardly attainable and there are enough accidents. Mr. Matheson stated the idea of a day care is not a good idea and only having the option to turn right at 5:00 PM is also not a good idea.

Mr. Hoppock asked Mr. Matheson if what he was saying was that due to the configuration of lot and available space, the use he is requesting a Variance for, which is the residential use coupled with commercial would create a hardship if he couldn't use the land for purposes of residential use. Mr. Matheson replied yes.

Chair Zerba opened the public hearing. 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. Stout said that he does not think it is contrary and noted the Board heard from one neighbor in support and nothing against the Variance. He noted the property is located in a peculiar area in that it is in a mix of residential and industrial. Mr. Stout said by the nature of the area he does not see any conflict or harm. Mr. Stevens agreed and said generally when a residence is added to a property it increases the attention paid to a property and better for the public. Chair Zerba agreed that the public interest is better served by having someone living in that building rather than some of the uses which an Industrial Zone would allow. Mr. Hoppock said he would also agree the proposed Variance use would not alter the essential characteristics of the neighborhood.

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

Mr. Stevens said he fully agreed based on the reasons he provided.

*Granting the Variance would do substantial justice:*

Chair Zerba said presently the homeowners are unable to use the building as defined in the Zone and this will do substantial justice for the home owner. Mr. Hoppock said he sees this as a win-win for the applicant and the City because a better use would be made of the property. He continued to deny the Variance would cause the applicant a loss greater than any gain to the public.

*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:*

Chair Zerba said this was the section left blank on the application last time and has since been completed adequately. Mr. Hoppock stated Mr. Matheson demonstrated that the special conditions, configuration of the property and the cost associated with changing the building would create unique circumstance that would make applying the ordinance a hardship to Mr. Matheson. Chair Zerba said she agreed with Mr. Hoppock.

*x. The proposed use is a reasonable one:*

Chair Zerba said this was given.

Mr. Hoppock made a motion to approve ZBA 16-45, 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 16-45.

**Continued 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 and she welcomed Mr. Christopher Lewis, 670 North Commercial Street, Manchester.

Mr. Lewis said based on last meeting there were three main areas the Board asked to be addressed in further detail. He continued stating that the most significant being the traffic study and the parking area. A copy of the traffic analysis dated December 2, 2016 was presented to the Board. Mr. Lewis stated the traffic engineer who prepared the traffic analysis would walk the Board through the analysis followed by an updated floor plan outlining how the 90 units will be laid out.

Traffic Engineer Jeffrey Dirk, 10 NE Business Center Drive Andover, MA proceeded to explain the traffic analysis and parking evaluation. Mr. Dirk asked the Board to turn to page two of the letter presented where a table was shown. The table as Mr. Dirk stated was the substance of the analysis. He said what they were looking to compare was The Colony Mill building both as it is currently occupied with commercial uses to the amount of traffic an apartment community would generate. The table showed what the traffic characteristics would be on a daily basis, which is two-way traffic over a 24 hour period. He said that is counting traffic if someone stood at the end of the driveway and counted everything that entered and exited the property. The next three numbers on the table Mr. Dirk explained were the weekday commuter morning peak hours, weekday commuter evening peak hours, and Saturday midday peak hours generally when people are shopping. Each of the three rows of numbers on the table as explained by Mr. Dirk is the highest traffic volume hours. Mr. Dirk said the table showed that the 90 unit apartment community generates significantly less traffic if it was fully occupied compared to The Colony Mill building as it exists today. He said there is the roughly 100,000 square feet of parking space and 25,000 square feet of parking space that is not currently occupied. Based on the traffic analysis study Mr. Dirk stated the apartments would represent a significant reduction on traffic compared to the commercial use today and is also less impactful.

The second analysis on page three of the letter showed the parking characteristics of the 90 unit parking community. Mr. Dirk stated they looked at statistics that are published for apartment complexes because with apartment communities one cannot point to a number on a table and state that it generates a certain amount of parking demands. He continued it has to do with whether there are public transportation services and such. Looking at this site in particular, Mr. Dirk stated there is limited access to public transportation and it is assumed people would own automobiles. He continued that based on these statistics it is

indicated for apartment complexes the peak parking demand is close to two spaces per residential unit. Mr. Dirk said looking at the parking demands for a 90 unit community there would be a peak parking demand of 175 parking spaces and the site has 375 spaces. He concluded there is more than sufficient parking spaces for the 90 unit community and there is reserve capacity for an additional 200 spaces that would be provided for the Elm City Brewery. Mr. Dirk asked the Board if there were any questions.

Mr. Hoppock said Table 1 does not appear to address the 90 residential units and how many tentative commercial units. He asked the ratio between residential units and commercial operations. Mr. Lewis replied the proposed application was to produce up to 90 apartment units and that would essentially fill a majority of the building excluding the Elm City Brewery. He stated that is subject to a number of things taking place such as the existing leases. Mr. Lewis said they were trying to present a definitive number as asked from the Board. Chair Zerba asked Mr. Lewis to generally describe the layout in terms of square footage. Mr. Lewis then presented the Board with the proposed floor plans.

Mr. Lewis explained the proposed floor plan represents The Colony Mill and the adjacent building previously known as the candy shop. He reiterated the proposal in this meeting is everything of those two buildings excluding the brewery. Chair Zerba asked Mr. Lewis if the commercial building would be The Center of Keene. Mr. Lewis replied yes.

Explanation of the plan ensued and Mr. Lewis provided a walkthrough of the plan. The first plan he explained was the ground floor plan that showed the restaurant and amenities. He noted that when they design these buildings one of the things they look for is exiting, life safety issues and everything is built around this circulation. Mr. Lewis said what they envisioned is the primary entrance on the ground floor along with a courtyard, the second floor is planned for 36 units, and the third floor is planned for 22 units and the fourth floor with two stand-alone units.

Chair Zerba asked the Board if there were any questions. Mr. Stout said that it struck him that the square footage for an average apartment would be substantially larger than the units presented. He continued the units presented were 725 square feet, 800 square feet, 985 square feet and questioned why larger units weren't included in the proposed plan. Mr. Lewis replied he wanted to demonstrate where they came up with the 90 units and they may not go that high in number of units. He noted a typical studio apartment is 600 square feet and pointed out the 750 square foot unit would be a one bedroom, the 800 square foot unit would be a standard two bedroom and the 1000 square foot units are a larger version of that two bedroom. Chair Zerba said that once the market study is completed she assumed they could go up or down with square footage. Mr. Lewis replied yes. Mr. Stout said the Variance being considered is up to 90 units and asked if it is up to the Board to decide on number of units. Chair Zerba replied that she does not think that is within the Board's purview to determine number of units and asked Mr. Schneider to

confirm. Mr. Schneider replied that it could have an impact on traffic. Chair Zerba stated the Variance request was for up to 90 units. Mr. Hoppock said the Board can submit conditions to the Variance approval. Mr. Stout noted there have been other occasions where stipulations have been put in to the Variance approved and believes the Board has the authority to affect that decision. Mr. Curran asked how the Board would know the right number of units. Mr. Hoppock replied the Board would know from the application itself, the Variance criteria compared to the application and the facts provided by the applicant. He continued stating that the Board would need to make the best judgment on the number of units. Mr. Curran said the biggest question was the traffic study and the welfare, health and safety of the citizens. These numbers as Mr. Curran stated have been provided by the applicant.

Chair Zerba asked again if there were any questions. Mr. Stevens said he thought initially there would be store fronts on the bottom level and mostly apartments on upper floors. He said according to the proposed plan there is not a plan for storefront other than the restaurant and asked if this was accurate. Mr. Lewis replied that statement was accurate. He continued stating that the way they originally approached the situation was that they have existing leases and are not opposed to retail should it be appropriate. Mr. Stout asked in reading the minutes this month if the Board asked if any similar housing proposals had been made within commercial districts and considered any Variances. Mr. Schneider replied that at the last meeting he had some information regarding large apartment buildings that the City has seen developed in the last few years. He said Acadia Hall on Emerald Street and West Mill Housing on Railroad Street are in the Central Business Zone; The Mills project on Ralston Street took advantage of the SEED District requirements.

Chair Zerba asked the applicant about the information on the market study. Ben Kelly, 670 N. Commercial, Manchester stated they have continued to look at the market and overall the biggest thing looked at is they can compete based on price, uniqueness and quality. He continued that they have conducted market research on this project and that is how each project is handled. Mr. Kelly stated they look into the market they are currently in or looking to get into and research the quality or lack of housing stock. Next they determine if they are able to be competitive based on price and what they can produce for finished product. He concluded they have approximately 1200 units under development and some in similar size cities to Keene and some in larger cities.

Chair Zerba asked the applicant if they were applying for a Historic Rehabilitation Tax Credit and wanted to know if for some reason this credit fell through, if the property would still be maintained as a historic building. Mr. Lewis replied yes. Mr. Kelly said the historic building is what makes the property unique and also what will sell the property. He added the hardwood floors, brick; unique exposed beams are the sweet spot for this property.

Chair Zerba welcomed public comment. Mr. Stout said he is not clear on how this qualifies for a Variance relative to the hardships. He asked to hear what the hardships are associated with this application. Chair Zerba asked the applicant to go through the five criteria.

John Rokeh, 89 King Road, Chichester, NH reviewed the five criteria:

- *Mr. Rokeh stated granting the Variance would not be contrary to public interest because the public interest is to get as many people as possible into this area and promote a good commercial base. He continued right across the street from the property is a Central Business District and if the building was located in that area a Variance would not be needed.*
- *Mr. Rokeh stated the use is not contrary to the spirit of the Ordinance because the area is a Commercial Zone and the goal of the zone is to get businesses to come back by having consumer demand in the area. He continued by converting the building consumer demand is inserted right in the middle.*
- *Mr. Rokeh stated granting the Variance would do substantial justice because Brady Sullivan would be able to finish out the building. He continued if the top level of building was finished and the commercial tenants receive a lot more business and want to stay there may be more flexibility to bring in more commercial tenants. He concluded that is one of the reasons the application was requested for up to 90 units.*
- *Mr. Rokeh stated they do not feel that by developing a mixed-use development or introducing residential to the area would diminish the surrounding values. He stated it is a Commercial District and they intend to switch it to partial commercial in the building, leaving the restaurant and then having multi-family units. Introducing more people to the area, as Mr. Rokeh stated will help support surrounding businesses and the proposed development will enhance property values.*
- *Not granting the Variance would cause substantial hardship for the owner. Mr. Rokeh stated they have discussed the problems with keeping this building fully occupied as a commercial enterprise. He continued by placing limitations, there is no other option but to keep pursuing the same thing that has happened with this building. He concluded Brady Sullivan is trying to make sure the building is maintained and fully occupied.*

Mr. Schneider stated he needed to clarify Mr. Rokeh's statement about the zones next door to the property. He continued stating that the zones that are next door to the property are Central Business Limited not Central Business and Central Business Limited does allow multifamily dwelling units.

Chair Zerba closed the public hearing to deliberate.



Mr. Hoppock said he felt the criteria were met last month and his concern was the traffic issue. He continued stating that the applicant did not address the pedestrians crossing the street but based on the traffic study he was satisfied that should not be a concern to public safety. Mr. Hoppock said he was prepared to support the application based on the information presented and thanked the applicants for bringing the information to meeting.

Chair Zerba asked the Board to discuss each criterion without a motion.

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

Mr. Stout stated he was concerned for the public interest and not simply because of the plan itself. He said the plan calls for an exorbitant number of housing units and asked about the effects on the community. Mr. Stout said references have already been made to pedestrian traffic and there have been no answers to that question. He continued stating that he had to question if this plan is realistic in terms of what the market proposes and especially in context of a very definitive change in the Commerce Zone. Mr. Hoppock replied to be mindful of the observation in terms of the public interest the Board has to decide if the Variance request would violate the ordinance's basic zoning objective. He continued it is not up to the Board to second guess the applicant's business plan. Chair Zerba said she agreed with Mr. Hoppock. Mr. Curran said he referenced RSA 674-17 and referenced the Board to read the purposes of the zoning law as the Board moves forward with a decision.

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

Mr. Hoppock said he observed that the Commerce Zone being adjacent to Central Business Limited would make the proposed residential use consistent with the character of the neighborhood. He continued stating that the traffic study establishes to his satisfaction that there will unlikely be any harm to the public in terms of safety or welfare issues. Mr. Stout said for the purpose of discussion there is a three member consensus that the actual proposal for 90 units is not up to question. He continued that the discussion is about whether housing should be allowed in this particular zone and not whether or not the quantity of housing is up for discussion. Mr. Stout said he continues to maintain that is a reasonable discussion to have with his colleagues. He continued stating he is open to granting the Variance and hopes that his colleagues will consider the number and nature of units fewer than 1000 square feet. Chair Zerba replied she is not qualified to make that judgement. Mr. Hoppock said the Zoning Board of Adjustment is not the Planning Board and agreed with Chair Zerba about having the qualification to make judgements on number of units permitted to develop. He continued explaining to Mr. Stout that he does not agree with his concerns but the Board has to evaluate the information provided which includes a traffic study and decide if the Board is comfortable with up to 90 units. Mr. Stevens commented that was one of the reasons he

wanted to see what 90 units would look like and the information satisfied his requirement from that standpoint. He added the layout seems to be a realistic layout for apartments.

Mr. Stout said at the last meeting the Board determined a third apartment in a zone on Water Street was too condensed. Mr. Stout questioned finding condensed housing in one area and not another. Mr. Stevens replied that zoning is different in each area and if this area was treated as Central Business or Central Business Limited it tends to encourage a denser population verses the other application discourage a denser population. Mr. Stout replied he didn't mean to compare the two districts but didn't understand why density was an issue before and why it wasn't with this application.

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

Chair Zerba stated based on the comments heard, the applicant is planning to the keep building as a historical building and she is pleased to hear they will maintain as such. Mr. Hoppock stated this will also add value to surrounding properties.

*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:*

Mr. Stout asked if it is possible to know the contiguous area of the Commerce Zone and stated the area appears to be surrounded by Central Business Limited. He continued asking the size of the zone on which The Colony Mill sits. Mr. Schneider, using the presented map of the proposed property, indicated the two zones surrounding The Colony Mill are Commerce Zone and Central Business Limited Zone to the Board. Mr. Hoppock stated in his view the general public purpose of the ordinance is to restrict residential development in a Commerce District. He continued the specific application for residential units is not related to the restriction on residential units in the area because of the hardship. Mr. Hoppock stated that the building is configured in such a way that other than the commercial retail operation that hasn't been successful, the building is not going anywhere and the need for housing in the area would suggest the hardship would be with the applicant if the Zoning Ordinances are not varied in this case, which would be to allow the residential uses. Mr. Stout stated he was unable to find the eligible uses in Commerce and the uses must not be limited to retail. He continued there is a need to remember other uses are available. Mr. Hoppock read the uses permitted in the Commerce District as follows: banking, clinic, drive-in use, funeral parlor, garage

business, greenhouse, fitness center, hotel, motel, motor vehicle repair garage, paint shop, vehicle body shop, nursery or child care facility, offices, and parking lot.

Chair Zerba stated the request was reasonable and supports the request. Mr. Stevens stated request was reasonable and that economics have changed over the years.

Mr. Hoppock made a motion to approve ZBA 16-47 for up to 90 units and Mr. Curran seconded the motion.

Chair Zerba reviewed the Findings of Fact:

*Granting the Variance would not be contrary to the public interest:* Granted 4-1.

*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 4-1.

*x. The proposed use is a reasonable one:* Granted 4-1.

The Zoning Board of Adjustment approved ZBA 16-47 for up to 90 units 4-1.

**ZBA 16-49:/ Petitioner, Warnick Associates, Inc. of 151 Main St. Suite 1, Salem, NH, requests a Variance for property located at 130 Summit Road, Keene, NH, which is in the Low Density District and owned by the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints of 50 East North Temple Street, Salt Lake City, Utah. The Petitioner requests a Variance to allow signage in the Low Density District where signage is not allowed per Section 102-1291 and Division 7 of the Zoning Ordinance.**

Chair Zerba introduced the application and Mr. Schneider indicated the location of the property on Summit Road. He continued stating that the Church has been at the property for several decades and the applicant is looking to identify the property with a sign.

Chair Zerba welcomed Timothy Warnick, 151 Main St, Salem with Warnick Associates Inc. Mr. Warnick stated he was an architect the Church contracted to assist with permitting of the sign.

Chair Zerba asked Mr. Warnick to present the five criteria or give a brief overview of the request. Mr. Warnick said the Church is in need of a sign and he had contacted the City several times in preparing the documents. He continued that the zone the property is located in is Low Density District and is not specifically addressed in the Zoning Ordinance under the requirements for signage. Therefore, he continued stating that signs are not permit able in that district so he was directed to come before the Board and request a Variance. When the Church built their first phase the public Zoning Ordinance in the City was not established at that time. Mr. Warnick stated the Church was permitted under the commercial building code because it was considered commercial. He continued there are other buildings on the street that would also be considered commercial. Mr. Warnick stated that the need is there and also a wonderful tree line along the front property line. The Church is an international organization that has a lot of membership and visitors come from all over the world. The building is not similar to other buildings they have within their organization due to signage. The logo of the church is located on the sign at all of the other properties within the organization. Mr. Warnick stated having a logo on the sign will give the property a sense of identity. He noted he passed the property on several occasions due to a lack of sign and stated the sign is need based. Chair Zerba asked why after all these years the sudden need. Mr. Warnick said the local bishop of the church was present at the meeting and could answer that question. He continued stating the reason by speculating it is because the vegetation is lush now, the Church has a standardized program all over the world and people need to identify the location.

Chair Zerba asked the Board if there were any questions for Mr. Warnick. Chair Zerba asked Mr. Warnick if he had met with Code Enforcement to ensure the sign falls within the permit specifications. Mr. Warnick replied yes and that he went by the standard plans for permit.

Mr. Hoppock said he had a difficult time reading the plan because the type was so small and asked for clarification on the dimensions of the sign. Mr. Wanick replied the sign is approximately 7 feet 4 inches wide by approximately 4 feet 10 inches high and the base is an additional 12 inches. He continued that the entire sign from the ground up is rounded to 6 feet. Mr. Hoppock said he did not see the figures in the application. Mr. Warnick apologized and said the figures were in the building permit. He continued stating that the location of the property line is already quite a distance from the sidewalk and the regulations for signs require another 5 feet back so the sign is far off from the road. Mr. Warnick said the sign requested at this distance is still positioned so someone driving by will be able to get an eye shot. Mr. Stout asked Mr. Warnick how he chose the orientation of the sign. Mr. Warnick replied if someone was pulling into the church they would see the sign head on and someone coming from the opposite direction would see the sign before passing the building. Chair Zerba asked if the sign would be lit. Mr. Warnick

replied no. Mr. Schneider looked at the site plan and asked Mr. Warnick if it was critical the sign be 5 feet off the driveway and 5 feet off property line. Mr. Warnick replied the reason the sign is shown 5 feet off the property line is because that was within the regulations. Mr. Schneider said that is correct but asked if there was any leeway because when in close proximity of an entrance and a right of way the sign must be 10 feet away from the property line. He continued asking Mr. Warnick if this was an issue for visibility issues. Mr. Warnick replied that it was an issue having the sign even 5 feet off the property line because the property line is already so far from the street and if he had known about this information earlier he would have asked for Variance on property line to get the optimal visibility. Mr. Stout asked if this condition would have to be stated in the Variance. Chair Zerba replied yes.

Mr. Hoppock asked Mr. Schneider if the Board could approve with the setback of 10 feet back from the property line and 10 feet from the driveway. Mr. Schneider read Section 102 -1311 2D:

*Proximity to street property line and/or entrance/exit. Freestanding signs located closer than ten feet from the street property line and closer than ten feet from an entrance or exit are not permitted.*

Mr. Stevens asked Mr. Warnick if the tree line is basically the property line. Mr. Warnick replied the tree line is on the street side of the property line. Mr. Schneider said signs are not allowed in the Low Density Zones and Mr. Warnick is asking for a Variance in the Low Density Zone. He continued stating that it is the purview of the Board that if the sign location was permitted, the Board could condition to allow what Mr. Warnick has requested. Chair Zerba asked if the three trees on the plan are the property line. Mr. Warnick replied that is correct and asked to approach the Board to show the tree line on the plan.

Mr. Hoppock asked if there was any reason why the sign cannot be put in 5 feet from the driveway. Mr. Warnick replied 10 feet from the sidewalk or curb would be acceptable. Mr. Stevens said based on the plan it looks like it states 9 feet from driveway entrance. Mr. Warnick replied 10 feet from driveway entrance would be fine. Mr. Stevens said he is fine with the 9 feet requested because the sign is so far back and would have to drive a battleship to block the view. Chair Zerba asked for the footage from the sidewalk. Mr. Schneider replied the requirement is from the property line not the sidewalk. Mr. Stout asked if the right of way is extraordinarily wide. Mr. Schneider replied yes and said if the Board feels there is enough visibility the Board can waive those requirements. Mr. Stout said that is what he would suggest simply because the right of way is extraordinarily wide. Chair Zerba asked if there were further questions. Mr. Warnick asked if the dimensional requirements could be considered at this meeting. He noted how far back the property line is from the street and asked if Board would approve putting the sign on the

on property line to maximize visibility. Mr. Stevens replied if the request was to make it closer to the 5 feet the Board would have to re-notice. Mr. Schneider said he disagreed because there are no requirements in the Low Density Zone and it is up to the Board to either grant or not grant the look or height of the sign. He continued these are all requirements out of the Commerce Zone. Mr. Stout asked if the distance from the curb and the property line was known. Mr. Schneider replied no. He continued that most of the right-of-ways in the City are 50 feet wide.

Chair Zerba opened the public hearing.

Greg Smith, 200 West Surry Road said he was the one that brought the idea of the sign forward and is a member of the Church. For the last five years, Mr. Smith said he served as Bishop and the reason he asked the Church to provide a sign was from a point of frustration. He continued as they tried to hold activities at the building such as family outings, scouting, preparedness fairs, family history conferences and quite often people do not know where the building is located. Mr. Smith said the YMCA is used as a landmark and a lot of people pass the church. In order to alleviate the issue he asked the Church for a sign. Mr. Smith said he believes the zoning at this property is in the Low Density Zone but is also pretty sure the property neighbors a High Density Zone just to the side of the property. He continued that the Church has low key signs at all of their properties and there is no lighting to disturb the neighbors. Mr. Smith concluded by stating he hoped the Board would approve the Variance.

Mr. Stout asked if the applicant wanted to light the sign, would the applicant have to come back for a Variance. Mr. Schneider said what the Board would be approving, if approved, at this meeting are certain things and it is up to the purview of the Board to specifically authorize a lit sign. He continued that the Board can also suggest what signage is allowed in the Low Density Zone. Mr. Schneider said if lighted signs were not authorized at this meeting, the applicant would have to come back. Mr. Stout said he would like to ask the applicant if they are absolutely certain if they do not want lighting. Mr. Schneider replied internally illuminated signs are prohibited and external lights are not prohibited.

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

Mr. Stevens said this was a perfectly reasonable request and has driven by the building for his entire life and never knew about the building. He continued that a sign is needed for the building and would help alleviate problems. Mr. Stevens said he was fully in support of the Variance. Chair Zerba asked if there was an issue with location or how the information was presented. Mr. Stevens replied he has no issue with the information presented at the meeting. Mr. Stout suggested the Board should allow the sign at the

property line and 9 feet from the driveway line. He continued the reason for the suggestion is that the right-of-way is prohibitively wide and it has been expressed to the Board the proximity to the road has a direct barring to visibility. Mr. Stout said it does not affect the neighborhood and the one concern would be safety due to the wide entry way to the parking lot with a large right-of-way. He continued he did not see a problem with allowing the sign to edge the property line so long as the sign faces the road. Mr. Curran agreed and said the Church has had to put up with no signs for twenty plus years and the Board should allow the sign to sit at the property line. Mr. Hoppock said he would approve a non-illuminated sign that is 7 feet 4 inches long by 4 feet 10 inches high, on a 12 inch base set no closer than 9 feet from the entry driveway and no closer than one foot from the property line. Mr. Stout said he did not want to restrict the applicant's ability to put projected lighting on the sign. Mr. Hoppock said that was an illuminated sign and recommended non illuminated period. Mr. Stout said he believed the applicant would like to have the option to put lighting on the sign and what he recommended was against an internally illuminated sign. Mr. Stevens said in order to save a future unnecessary meeting would be to approve the Variance conditioned against an internally illuminated sign takes care of the issue. Chair Zerba said she supported the request.

Mr. Hoppock motioned to approve ZBA 16-49 conditioned on the following: 1) The sign will not have an internal illuminations feature 2) the sign dimensions not exceed 7 feet 4 inches wide in length and 4 feet 10 inches in height, mounted on a one foot base 3) the sign be placed no closer than 9 feet from the entry driveway and no closer than one foot from the property line that is adjacent to the Summit Road. Mr. Curran seconded the motion.

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 16-49 with the conditions stated.

**ZBA 16-50:/ Petitioner, Willow A. Pellerin of 154 Esty Road, Westmoreland, NH, requests a Variance for property located at 21 West Street, Keene, which is in the Central Business District and owned by Whetstone, LLC of Vernon, VT. The Petitioner requests a Variance to allow hanging a sign above the bottom windowsill of the second story per Section 102-1312 (36) of the Zoning Ordinance.**

Chair Zerba introduced the application and Mr. Schneider indicated the location of the property. Mr. Schneider said Ms. Pellerin has a boutique on the first floor and would like to advertise her boutique with the photos of the sign provide to the Board. He continued she is requesting to place the sign in between the two second floor windows above her boutique. In accordance with the sign code, Mr. Schneider said signage or first floor businesses cannot go any higher than the bottom of the second floor window sill.

Mr. Stout asked if a sign would be allowed on the wall below the second story window sills. Mr. Schneider replied this is beneath the green awning and there is little room above the awning. He continued the entire store front has even less room because the front is all glass.

Willow Pellerin of 21 West Street, Keene explained the store front on either side of her boutique has a wooden panel section that is labeled and she is unable to letter because of the fire hydrant hookup. She continued she does have a sandwich sign and is knocked down by people. Mr. Stout asked Ms. Pellerin if the proportions of the sign depicted are in the illustrations presented. Ms. Pellerin replied the stick on part of the illustration is not as big as the sign and directed Mr. Stout to look at the scale depicted on the plan. Ms. Pellerin stated the sign is 3 feet 10 inches by 3 feet 10 inches. Mr. Curran said the sign was a nice looking sign. Ms. Pellerin replied the sign was custom work with a stained glass backing. Mr. Stout asked if the sign will it weather due to the stained glass. Ms. Pellerin said the sign was created to handle weather elements and stated that each piece of stained glass was cut separately. Chair Zerba asked Ms. Pellerin if the sign was already constructed. Ms. Pellerin replied yes. Chair Zerba asked Mr. Schneider if the sign met all of the specifications and requirements. Mr. Schneider said he was sure all of the requirements were met due to the size of the sign. He continued that there used to be a sign in that location and there are brackets still in the wall that the sign will utilize.

Ms. Pellerin said the property manager has already approved of the sign and has given their blessing. Mr. Stout asked Ms. Pellerin if the sign would be illuminated. Ms. Pellerin replied no. Mr. Hoppock asked Mr. Schneider what the rationale is for height restrictions



on this sign in the district. Mr. Schneider said this was intended so other tenants in large buildings in the Central Business Zone can have signage and aesthetics is another reason.

Chair Zerba opened the public hearing.

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

Mr. Hoppock said he would approve as presented with the sign dimensions of 3 feet 10 inches by 3 feet 10 inches. He continued that the as a matter of criteria the sign is tasteful and identifies the business which is an appropriate request. Mr. Hoppock said it does not make any sense to allow a limited business use such as a business or a church in a place where signage is not permitted. He said this is part of the reason he believes this is a hardship for this property at this location.

Mr. Hoppock motioned to approve the sign as presented and the dimensions as presented. Mr. Stevens seconded the motion.

*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 16-50 with the dimensions stated.

5) **New Business**

None

6) **Communication and Miscellaneous**

7) **Non Public Session (if required)**

8) **Adjournment**

Hearing no further business, Chair Zerba adjourned the meeting at 8:19 PM.

Respectfully submitted by,

Jennifer Clark, Minute Taker