

**Zoning Board of Adjustment  
Monday, November 5, 2018, 6:30 p.m.  
City Hall Council Chambers  
3 Washington Street, 2<sup>nd</sup> Floor**

**AGENDA**

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – September 4, & October 1, 2018
- III. Unfinished Business
- IV. Hearings:

**Continued ZBA 18-17:/** Petitioner, The Prospect Woodward Home of 194-202 Court St., request a Variance for property located at 95 Wyman Rd., Tax Map #221-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit a free standing sign 29.32 square feet in an area where 20.00 square feet is the maximum area allowed per Section 102-1310.2B.

**ZBA 18-21:/** Petitioner, Naomi McWhrik of 260 Land Road, Richmond, NH, requests a Variance for property located at 28 Park Ave., Tax Map #564-034-000, owned by 28 Park Ave. Plaza, LLC of 28 Park Ave., Suite 103 and is in the High Density District. The Petitioner requests a Variance to permit a hair salon for services and sales in an existing non-conforming mixed use building where mixed uses, services and sales uses are not listed a permitted uses in the district per Section 102-422, Permitted Uses in the High Density of the Zoning Ordinance.

**ZBA 18-22:/** Petitioner, House of Hope of Swanzey, NH, represented by Brickstone Land Use Consultants, LLC of 185 Winchester Street request a Change of a Non-Conforming Use for property located at 31 Wyman Road, Tax Map #221-029-000, owned by Jeanna C. Hamblet Revocable Trust of 31 Wyman Road, and is in the Corporate Park District. The Petitioner requests a Change of a Non-Conforming Use to permit a non-conforming use to be changed to another non-conforming use.

- V. New Business:
- VI. Communications and Miscellaneous:  
  
Building Better Together update from Tara Kessler, Senior Planner, Community Development Dept.
- VII. Non Public Session: (if required)
- VIII. Adjournment:

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City of Keene  
New Hampshire

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

**Monday, September 4, 2018**

**6:30 PM**

**Council Chambers**

**Members Present:**

Nathaniel Stout, Chair  
Joshua Gorman, Vice Chair  
Michael Welsh  
Jane Taylor  
Louise Zerba, Alternate

**Staff Present:**

Thomas Mullins, City Attorney  
Gary Schneider, Plans Examiner  
John Rogers, Zoning Administrator

**Members Not Present:**

**I. Introduction of Board Members**

Chair Stout called the meeting to order at 6:30 PM, introduced members of the Board and welcomed everyone to the meeting.

**II. Minutes of the Previous Meeting-June 4, 2018 & August 6, 2018**

Ms. Zerba and Ms. Taylor recused themselves from voting because they did not attend the meeting on June 4, 2018.

Chair Stout noted a correction on page 5, seventh paragraph, "After a brief" should be changed to "After a brief discussion among Board members ensued, the Board agreed to withdraw the motion". In addition, on page 5, last paragraph, "Mr. Welsh made a motion to deny the request of" should be changed to "Mr. Welsh made a motion to deny the request to".

Mr. Welsh made a motion to approve the minutes for June 4, 2018 as amended. The motion was seconded by Vice Chair Gorman, which carried unanimously.

Mr. Welsh and Ms. Zerba recused themselves from voting because they were in not in attendance of the meeting on August 6, 2018.

Chair Stout noted the minutes need to reflect the Board welcomed Ms. Taylor to the Board under Item I.

Ms. Taylor made a motion approve the minutes for August 6, 2018. The motion was seconded by Vice Chair Gorman, which carried unanimously.

#### IV. Hearings

**Continued ZBA 18-12:/ Petitioner, Kay M. Alderman of 350 Hurricane Rd, requests a Variance for property located at 350 Hurricane Rd., Tax Map # 234-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit the extension of a garage to within 11 feet of side boundary line and to within approximately 45+/- feet of Hurricane Rd. where 50 feet is the setback requirement for both side and front side yards per Section 102-791, Basic Zone Dimensional Requirements.**

Chair Stout asked for a City staff report. Mr. Schneider reported there was a request for continuance based on medical issues that occurred with the Petitioner over the weekend. The request is to postpone the hearing until the next Board meeting that will be held on October 1, 2018.

Vice Chair Gorman made motion to postpone ZBA 18-12 until the next Board meeting that will be held on October 1, 2018 at 6:30 PM in Council Chambers. The motion was seconded by Mr. Welsh, which carried unanimously.

Chair Stout announced that in the interest of time he would move to ZBA 18-14 ahead of ZBA 18-13.

**Continued ZBA 18-14:/ Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene requests a Variance for property located at 76 Railroad St., Keene, Tax Map # 574-010-000, owned by The Moving Company Dance Center, 76 Railroad St., Keene and is in the Central Business District. The Petitioner requests a Variance to permit a lodging house in the Central Business District where a lodging house is not a permitted use per Section 102-482 of the Zoning Ordinance.**

Mr. Rogers reported a request was received in August from Hundred Nights for a zoning determination on the use of Hundred Nights to be considered a hotel and not a lodging house. Based on this request and as the Zoning Administrator, he determined Hundred Nights is a lodging house and not a hotel. Mr. Rogers explained that based on this determination, Hundred Nights have expressed their desire to appeal this decision to the ZBA. In addition, based on the appeal process, Hundred Nights is asking for a continuance on the Variance application.

Mr. Rogers distributed a copy of the letter of request for the postponement from Hundred Nights. The email was dated Tuesday, September 4, 2018, and sent from Mindy Cambiar. In the email Ms. Cambiar requested the following:

- 1) Hundred Nights will be submitting an application to appeal the Administrative Decision regarding the definition of the use of Hundred Nights as a hotel rather than a lodging house. The application will be submitted before September 14, 2018, so that it can be brought up at the October meeting.
- 2) Due to the fact that Hundred Nights is going to submit an Appeal of the Administrative Decision, Hundred Nights is requesting that they be allowed to postpone the presentation and decision of the previously applied for zoning Variance that, if granted, would allow Hundred Nights to operate a lodging house in the Central Business Zone.

Mr. Rogers also distributed a copy of the letter the City sent to Hundred Nights. The letter informed Hundred Nights of a receipt of a request to define the use of the Hundred Nights Homeless Shelter as a hotel rather than a lodging house for purposes of the City of Keene Zoning Ordinance.

Chair Stout recognized a member of the public that presented question. Chair Stout announced this was not a public hearing at this time. However, he asked the Board how they would feel about taking a comment from the public. After a brief discussion, the Board agreed to take a comment from the public if the question is in regards to procedures.

Stephen Bragdon, 51 Railroad Street, stated he wanted to point out to the Board this hearing was schedule for September and all of the opposition was present. Chair Stout told Mr. Bragdon that was not a procedural question and would not allow him to continue. Mr. Bragdon then asked if the Board was planning on having the hearing on the question if Hundred Nights is a boarding house or a hotel before the October hearing. Chair Stout replied in the negative and stated that the next time the ZBA considers this matter will be in a public session that has been duly noted. Mr. Bragdon asked if the hearing would be on the whole zoning issue. Chair Stout replied that was not an answer that he could provide at this time and was something that would be addressed by the Administration. Mr. Bragdon added that this process is leaving a lot of people in limbo. Chair Stout reminded Mr. Bragdon this was not a public hearing.

Ms. Taylor then made a motion to continue ZBA 18-14 to October 1, 2018 at 6:30 PM in Council Chambers. Vice Chair Gorman seconded the motion, which carried unanimously.

**Continued ZBA 18-13:/ Petitioner, Jacob D. and Geraldine J. Liebert of 447 Hurricane Rd, represented by Brickstone Land Use Consultants, LLC of 185 Winchester St., Keene, requests a Variance for property located at 0 Hurricane Rd., Tax Map # 225-016-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to allow construction of a single family home on an existing two acre lot in the Rural District where five acres is required per Section 102-791, Basic Zone Dimensional Requirements.**

Chair Stout stated that as a member of the Board he is compelled to recuse himself from the hearing as he is an abutting neighbor to the Petitioner. Vice Chair Gorman assumed the role of Chair Pro-Tem.

Chair Pro-Tem Gorman asked for the City staff report. Mr. Schneider displayed a map, indicating the location of the property is in highlighted yellow on the map and located at 0 Hurricane Road. He noted there is no structure on the property at this point. Mr. Schneider then indicated the red line on the map indicates the 200 foot abutters list.

Mr. Rogers provided a brief history on the property by explaining the property was a subdivision that was approved in 1976 by the Planning Board. In 1976, the Zoning Code allowed for 2 acre lots and this property was located in what was known as the Agricultural Zone. The zone is now called the Rural Zone.

Mr. Rogers reported in 1977, there was a zoning change. He noted at that time, nothing was done to the property. Mr. Rogers stated there is an RSA that speaks to having a five year exemption from changes to the zoning code as long as there has been some substantial development. He

explained in this case, it is a vacant lot and there was no development that was required per the subdivision and already on a city road with no city utilities.

Mr. Rogers then noted the five year exemption has come and gone. He said to qualify for the exemptions there would have to be some substantial development, which has not occurred. It has been the interpretation of the Department in the past that it does not meet today's zoning of a five acre lot and is reason why the Petitioner is before the ZBA.

Mr. Welch asked if the change Mr. Rogers was referring to is the passage of a five acre minimum as opposed to a two acre minimum. He asked when the ordinance was changed to the Steep Slope Ordinance. Mr. Rogers replied approximately 4-5 years ago. In addition, Mr. Welch asked when the Surface Water Ordinance occurred. Mr. Rogers replied this occurred during the same time period as the Steep Slope Ordinance. He noted those areas would have to be addressed if the Petitioner was granted a Variance. Mr. Welch referred to the map stating that lots on the map seem to indicate the lots are less than five acres with existing structures. Mr. Rogers stated in 1976, these lots were approved by the Planning Board.

Chair Pro-Tem Gorman welcomed the Petitioner.

David Bergeron, Brickstone Land Use Consultants, LLC of 185 Winchester Street, stated that he is representing the land owners. Mr. Bergeron presented a plan of the subdivision that was actually a two lot subdivision that was approved in 1976. Mr. Bergeron stated the Liebert's purchased the property in 1986 and at the time the Zoning Board still allowed development in the Rural Zone if they met certain conditions. He reported they purchased the property with the idea to eventually do something with the lot. In 2015, a Variance was granted for the application and that has since lapsed.

Mr. Bergeron then presented a blow up of the two acre lot. He reported they conducted wetland delineation on the lot as well as a soil test. Mr. Bergeron then referred the Board to the letter sent by Tom Forest, a septic designer that determined the lot will support the necessary utilities to develop the lot. In addition, Mr. Bergeron reported that in the letter Mr. Forest stated he found a large enough area for a septic system to support a three bedroom house.

Chair Pro-Tem Gorman stated that he was unable to find the septic approval letter Mr. Bergeron referenced. Mr. Bergeron presented the Board with a copy of the letter. Chair Pro-Tem Gorman asked the Board if they objected to him reading the letter. With no objection, Chair Pro-Tem Gorman read the letter sent by the septic designer, Tom Forest. The letter confirmed that lot Tax Map #225-016-000 was investigated to determine the lot can support a septic system per State of New Hampshire design requirements. A test pit and perk test were conducted on the lot. It was determined the lot contains the proper soils and a large enough receiving area for a three bedroom system.

Mr. Bergeron then reviewed the criteria.

*Granting the variance would not be contrary to the public interest.*

Mr. Bergeron stated this two acre lot has been in existence for 40 years and predates the change in the Rural Zone from two acres to a minimum of five acres for a building lot. The surrounding area has several residential properties that are less than five acres in size that were most likely

constructed at the time when the Rural Zone allowed two acre lots. Mr. Bergeron stated that the Variance would not be contrary to the public interest.

*If the variance were granted, the spirit of the ordinance would be observed.*

Mr. Bergeron stated the intent of the Rural Zone is to provide low density development and room for on-site utilities for the residences. The zone has 50 foot setbacks to allow more room and privacy between residences. The setbacks between a residence built on this lot and the abutting properties will meet or exceed the minimum setback requirements. He stated the houses on the abutting properties are all located approximately 200 feet from the potential building site on this lot. Mr. Bergeron stated they have had a test pit done on the existing lot to determine the suitability for a septic system and well and have determined that the lot will support the necessary utilities to develop the lot.

*Granting the variance would do substantial justice.*

Mr. Bergeron stated this lot has existed since 1975. The Liebert's purchased the property in January of 1983 and at that time the Keene Zoning Ordinance allowed construction on a two acre lot in the Rural Zone with the proper soils which they felt would have allowed them to build on the lot. He noted that a 1986 zone change removed that provision in the ordinance eliminating their ability to attempt to comply with the ordinance.

*If the variance were granted, the values of the surrounding properties would not be diminished.*

Mr. Bergeron stated this lot has existed in this location for 40 years and has been part of the existing neighborhood. There are other lots in this area that are less than five acres and consistent in size with this one. He stated granting the Variance would allow the use of the property that is similar and consistent with the character of other lots in the neighborhood and would not reduce property values.

*Unnecessary hardship*

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

*1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*

Mr. Bergeron stated the restrictions to the property create an unnecessary hardship to the owner. The owner purchased the lot with the idea of selling it in the future for a building lot. The current restrictions to the lot take that ability away from the owner and the lot cannot be developed without the Variance. In addition, he noted there are several other developed lots along this area of Hurricane Road that are less than five acres and this lot is similar in size to other properties in the zone.

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

Mr. Bergeron stated the surrounding lots vary in size with many along the frontage of Hurricane Road less than five acres in size. Allowing the development of the lot would reflect the character of the neighborhood and would be in keeping with other developed lots that surround the

property. He noted the intent of the ordinance can be maintained. In addition, he stated the setbacks from abutting properties will be maintained and buildings will be more than the required setback from each other.

*B. Explain how, if the criteria and subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Mr. Bergeron stated the Liebert's own the abutting property as well as the two acre lot. They looked at the possibility of adding land area to the two acre lot to make the lot conform to the five acre minimum required by Zoning. However due to the adoption of two land use regulations by the City of Keene, adding additional land area to the lot is not a reasonable alternative. Mr. Bergeron stated the Hillside Protection Ordinance and the Surface Water Protection Ordinance prevent use of much of the land owned by the Liebert's for low density purposes. He noted the Hillside Protection Ordinance prohibits land in excess of 25% from lot size calculations and allows only half of the land area between 15% and 25% in lot size calculations. In addition, he noted the Surface Water Protection Ordinance prohibits wetlands in lot size calculations.

The Liebert's own 41.5 acres. Approximately 1.75 acres is wetlands and cannot be use to add to the existing lot. Approximately 41.5% is steeper than 25% and cannot be counted for density. Approximately 42% is between 15% and 25% so only half can be counted for density. Due to the location of the steep slopes and the wetlands, approximately 20 acres would need to be added to the two acre lot to conform to the lot size requirements.

Ms. Zerba referenced the long driveway along the with amount of vegetation that would be cut off. She asked what this will do to the water runoff. Mr. Bergeron stated there are requirements in the Steep Slope Ordinance that require erosion control and that the driveway standards not be more than 10 feet wide. In addition, he stated there are storm water requirements that must be met in order to maintain the runoff.

Mr. Welsh asked City staff if there is a five year grandfather clause on other rules about land use such as Surface Water and Steep Slopes. Mr. Rogers replied the RSA speaks to the regulations in general and any of those would apply. He stated the interpretations from the City staff from the RSA, in regards to the five year exemption window, have long since passed.

Mr. Welsh referenced the ability to count accessibly Steep Slopes or Wetland as lot size. He asked if the grandfather clause is in place would not the necessity of expanding the lot be just a mere three acres in order to get it up to five acres. Mr. Bergeron replied that the RSA state law has nothing to do with the City of Keene municipal regulations, which are the Steep Slopes and Wetlands Ordinances. He noted that once ordinances are enacted they must be met.

Chair Pro-Tem Gorman asked for the actual usable acreage of the proposed lot. Mr. Bergeron replied that as far as usable land, to be able to develop, he explained the state allows a septic system up to 35% slope. He stated they can still develop the lot and meet the requirement for setbacks. He stated these restrictions apply primarily to figuring lot size and the amount of area that can be impacted.

Chair Pro-Tem Gorman asked the reason why the Petitioner's did not take advantage of the Variance at that time. Mr. Bergeron replied his clients are transitioning to retiring and trying to decide where they want to go. He explained that time had got away from them and they just plan forgot.

Mr. Welsh asked if granting the prior Variance if there was any provision for a land owner to ask for an extension on the timeframe as opposed to coming before the Board. Mr. Bergeron replied in the affirmative. Mr. Rogers added that it has been practice of the Board to grant extensions. Chair Pro-Tem Gorman asked for public comment for those in favor of the application.

With no comment, Chair Pro-Tem Gorman welcomed those opposed to the application.

Pat Gutierrez, 467 Hurricane Road, stated their home is located down the road from the proposed lot. She indicated the location of her property on the map, stating that her property used to be called "Bossy Boots Trust". She stated they purchased their property two years ago and are concerned because they thought they had purchased an idyllic piece of property in Keene. She noted her home was built in 1810 and is situated on 2.5 acres. Ms. Gutierrez stated she researched the statute that requires an applicant to establish the four criteria to obtain a Variance. She stated that she wished to address the criteria.

Ms. Gutierrez addressed the criteria.

- She stated in the State of New Hampshire, the applicant has to establish special conditions that distinguish it from the area. She stated that she would put forth that New Hampshire is not called the "Granite State" for nothing. Ms. Gutierrez stated there is a huge ridge behind her home and the area is all rocky and unusable. She said their leach field abuts the wetland that is on the Liebert's property heading south toward Keene. In addition, their well is not that far from their leach field and the Liebert's septic system would be above this area. She noted this is a concern.
- Ms. Gutierrez said the applicant must demonstrate their property is different from surrounding properties and zoning restrictions that would make their property distinct. She stated that she would pose the land is all very similar and consists of rocky ledge. In addition, she stated that it would be wrong for the Zoning Board to set precedence that a hardship is considered if a landowner is unable to develop a property they purchased 40 years earlier.
- She said the reasonable use aspect is not supposed to affect abutting neighbors. Ms. Gutierrez stated that she does not understand how this parcel would be that unique to be granted this Variance. She said granting the Variance sets precedence that all other large tracts of land on Hurricane Road can be developed.
- She said in reference to the public interest she proposes that if it is supposed to be a rural area she is not sure why a Variance would be granted for a two acre lot. She noted the site would need a new driveway through a wetland and proposed site was a lousy piece of land. In addition, she explained there are a lot of problems with runoff on Hurricane Road. She approached the Board with photographs of the damage from a storm that happened in August.
- Ms. Gutierrez referred to the criteria of diminishing value to surrounding properties. She stated that she has been investing in her property and questioned how her property would

not be deemed less valuable if there is a neighbor with only so many feet above her property.

Chair Pro-Tem Gorman asked when Ms. Gutierrez purchased her property. Ms. Gutierrez replied in 2016. Chair Pro-Tem Gorman asked if she was aware of the Variance that was granted three years ago. Ms. Gutierrez replied that she was not.

Sharon Stout, 446 Hurricane Road, stated her property was diagonally across from the Petitioner's property. She stated there is a huge culvert underneath the road that is right next to her property. Ms. Stout said it is possible if wetlands are taken away, the City would have to do an incredible amount of work to get the drainage out. She reported that the City has put in a culvert and water really rushes through when it storms. In conclusion, she stated the whole reason Variances expire is because things change and there have been substantial storms that are causing this to happen.

Terrence Mack, 460 Hurricane Road, stated that he has lived in his home for 57 years. He reported that his lot was established in the 1940's.

Mr. Mack stated that the flooding is a horror show and has been going on more and more over the past 20-25 years. He stated that he never used to get water in his dug cellar. Mr. Mack explained what has happened is that many more new homes have been built on slopes on Hurricane Road. He further explained that instead of a slope for water to soak in as coming down, these homes are plateaued. Ditches behind these homes have been dug to protect their land.

Mr. Mack stated that he sent photographs from the last storm to the City. He noted that he stood in front of his house in water that was ankle deep to photograph the amount of water.

Mr. Mack explained that water comes down in front of his house and then enters into the wetland. He reiterated there is a tremendous amount of water. He explained those wetlands are flooded temporally and is wet year round. He said that water is constantly running off and any storm we get accumulates. He said the culvert Ms. Stout referenced does not take the water below. He noted this is 24-30 inch culvert and that water crosses the road and drops down about 60-70' into White Brook.

Mr. Mack stated the torrent of water is unbelievable and he is getting tired of having to replace his driveway. In addition, he noted that the culverts above his home plug up. He reported there was a major revamping with these culverts a few years ago. Mr. Mack stated what the Petitioner is proposing to develop, is the whole front section piece of land that floods. He stated to even consider a roadway through that property it would take several thousands of yards of fill. Mr. Mack noted this would be a complicated fill.

Mr. Mack then stated that it would take a 30 inch culvert on both sides of the road to accommodate the terrible amount of water that comes down Hurricane Road. He said the land has been this way for 60 years and he can never image developing this land. Mr. Mack explained the natural water ways are protecting the people above him as well as protecting his house. He reiterated those wetlands are very important. He said with the storm patterns changing, becoming more violent a mistake will be made with the wetlands and Hurricane Road will be in trouble.

Matthew Hall, 431 Hurricane Road, referenced the large culvert and stated that the culvert fails. Mr. Hall stated that he is down the hill and aware of the yards of fill he receives gratis from the City. In addition, he stated the ditch by his home has eroded so badly that the original asphalt from the road is exposed. He noted the old asphalt road is 18 inches down. Mr. Mack stated there is a water problem that goes further down the hill.

Ms. Taylor asked Mr. Bergeron if the largest lot on the subdivision has anything built on it. Mr. Bergeron replied in the affirmative, adding that it is a single family home. Mr. Bergeron indicated the location of the property on the map.

Mr. Bergeron stated that he wanted to address some of the issues discussed by the abutters. He addressed the property at 467 Hurricane Road. He stated as far as developing, everything is downhill from this abutter. In addition, he referenced the septic, well and runoff noting that everything goes away from this abutter and there should not be any impact.

Mr. Bergeron stated he recognizes there are issues on Hurricane Road and an issue with runoff because of the steep slopes. In addition, he noted there are regulations in place such as the Steep Slope Ordinance that require additional steps to be taken. He said as far as wetland permits, there is a new regulation that came out last year that deals with street crossings. He explained street crossings must have a runoff designed to prove to be able to pass the minimum of 50 year storms. Mr. Bergeron reiterated that all requirements that have to met and addressed.

Mr. Bergeron added that a storm water control system would be a good idea in this area and in return benefit the neighborhood.

Mr. Mack stated that something was brought up about the driveway that is going to be put in using part of the old road. He noted there is no old road Hurricane Road and that the road was redesigned back in 1760. In 1760, there was an old strip of road, offset from where it is now and he noted this was a wagon road. Mr. Mack reiterated there is no old road.

With no further comment, Chair Pro-Tem Gorman closed the public hearing.

Ms. Taylor commented that she disagrees with the City's interpretation. She stated that one of the roles of the Zoning Board is to determine that the right application is in front of the Board. She stated that she is not convinced this application requires a Variance at all. She stated the statute that has been referenced the five year exemption has been rewritten several times. Ms. Taylor stated that one of the provisions in it applies to both sites and subdivision. She said the statute has what it calls active and substantial development of a subdivision. She said her question and concern is that if there is a two lot subdivision and 50% of lot has been developed is that not active and substantial development. She said if there are two lots and one has been developed then the other one should be alright. Ms. Taylor stated her concern is whether a Variance is required and that the law is not as clear as it could be.

Mr. Rogers stated the RSA states that for every subdivision and site plans, the five year exemption does not imply unless there has been active development. He said using the Planning Board rules, their definition of active and substantial development speaks to construction or insulation of basic infrastructure. Mr. Rogers noted this project did not require since it was an already existing road. In addition, he said it also requires at least one building foundation, access

ways, minimum gravel base utilities and underground conduit. He said none of which occurred on this property and the reason why staff determined a Variance was required.

Ms. Taylor stated that she wanted to raise the point that she believes active and substantial development is when there is at least 50% of the lot developed. She also noted that this law was substantially different years ago.

Chair Pro-Tem Gorman reopened the public hearing to ask Mr. Bergeron a question.

Chair Pro-Tem Gorman asked if the two lot subdivision in 1976 was an existing single lot with a dwelling unit already on the lot and then got approved to subdivide the lot. Mr. Bergeron replied in the affirmative. Ms. Taylor stated that her point was that the law was completely different at that time. Mr. Bergeron stated the Petitioner is willing to take the time for the Board to look into this before acting on a Variance. Chair Pro-Tem Gorman asked if this would call for a review of the Administrative Decision. Mr. Rogers replied this would be left up to the Board. He stated that it was the practice of both the Department and Board to look at the property as already having received a Variance and has been the practice to look at these type properties requiring a Variance.

With no further comment, Chair Pro Tem Gorman closed hearing.

Mr. Welsh stated the basis for granting a Variance is clear right now and asked if the same basis was in place when the Variance was granted in 2015. Mr. Welsh then asked if it was reasonable to consider those arguments back in 2015 are similar to the arguments today in regards to granting a Variance. Mr. Rogers stated that he would recommend the Board take this application on its own and not think of the 2015 Variance application.

Ms. Zerba stated that she was in a quandary because the change in climate has changed and storms are greater in intensity. She noted that she came in ready to approve the request. After listening to the neighboring comments about the storm water issues in that area, she noted her concern. Ms. Zerba asked if City staff and the applicant could get together to try to see if the City is responsibility for installing a bigger culvert to protect the abutting properties. Mr. Rogers stated that if the Variance was granted the applicant would have to go through the process in regards to building permits and regulations for Surface Water and Steep Slopes. Ms. Zerba asked if there could be a condition put on the Variance as no storm water runoff as a result of the construction. Mr. Rogers replied that he would not recommend having this type of condition due to what is already in place for permitting.

Chair Pro-Tem Gorman stated that it was important for the Board to recognize the wetlands are fairly independent areas of the Zoning Board. He stated the Board should be concerned with the five criteria.

Ms. Taylor stated that she hopes in the future if the Board continues applications, the Board has copies of the minutes in order to have a better insight into what has occurred.

Chair Pro-Tem Gorman stated that it would be his inclination to continue with the Variance application because the property was granted a Variance three years ago. He explained that that Variance has expired due to lack of action and the Petitioner now wants to develop the property. Chair Pro Tem Gorman asked if the Board agreed. All members of the Board agreed.

The Board reviewed the criteria.

1. *Granting the variance would not be contrary to the public interest-* Ms. Zerba stated that her original thinking is that there are other pieces of property along Hurricane Road that are less than five acres. Notably in that a two acre area and she stated this would not be a unique request. Mr. Welsh stated that the Board has heard well considered arguments about the nature of storms and different conditions that have beset the area over time. He stated his sense is the nature of storms and an increase in frequency was something that was noticed 3-4 years ago in spite of recommendation not to consider. He said his sense is having not heard enough of an argument to consider the original Variance an error. Chair Pro-Tem Gorman stated that he would agree with Ms. Zerba's comments in terms of the multitude of 2 +/- acre properties in that area are all fairly close to the application. He said the water problem does already exist on the street and he does not know how building on more stringent guidelines than ever before would negatively impact a situation that already exists. Ms. Zerba stated that she would like to see some form of mitigation in that area.
2. *If the variance were granted, the spirit of the ordinance would be observed-* Mr. Welsh stated this was evident based on the reasons presented. Ms. Zerba stated all of the setbacks have been met. In addition, she stated the septic and well has been approved by a qualified person. Ms. Taylor stated that it meets all of the requirements as she understands for size. She also stated that a Variance in her opinion in this case is overkill.
3. *Granting the variance would do substantial justice-*Ms. Zerba stated the Liebert's purchased the property believing that it would be a two plot subdivision and would be allowed to construct a single family home on the lot. Mr. Welsh stated that he would concur with Ms. Zerba's comments. He stated that the background he has read is that justice is a concept not a legal term. Mr. Welsh stated the arguments heard are about fairness and are reasons why the Variance is being looked at now. He stated that he does not think ill will be served by granting the Variance.
4. *If the variance were granted, the values of the surrounding properties would not be diminished-* Mr. Gorman stated that it does meet setbacks and does fit the mold in terms surrounding lots. He stated that he does not know how it can have a diminutive impression that substantially already exists. Mr. Gorman stated that it was not egregious in terms of setbacks. He stated that he does not know that it would have any impact and is a reasonable request.

Ms. Taylor stated the property has adequate road frontage and meets all regulatory requirements. She questioned if there is any relationship between restriction and the actual existence of the lot.

5. *Unnecessary Hardship-*

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

- i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that*

*provision to the property-* Ms. Zerba stated there are already two acre or smaller lots in that area and does not think there is an unfair or substantial relationship.

- ii. *The proposed use is a reasonable one-* Mr. Gorman stated that the Board had already covered this answer and referred to the discussion in the previous comments.

*5B. Explain how, if the criteria and subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it-*Mr. Welsh stated in regards to the condition, the applicant has done his due diligence to try to creatively problem solve on a reconfiguring the lot. He stated he was impressed with the difficulty of the task and the effort behind it. Mr. Welsh stated the granting of the Variance is appropriate under this condition.

Ms. Zerba made a motion to approve ZBA 18-13 to allow construction of a single family home on an existing two acre lot in the Rural District where five acres is required per Section 102-791. The motion was seconded by Mr. Welch, which carried unanimously.

The Board reviewed the Findings of Fact.

*Granting the Variance would not be contrary to the public interest:* Granted- 4-0

*If the variance were granted, the spirit of the ordinance would be observed.* Granted, 4-0

*Granting the Variance would do substantial justice.* Granted 4-0

*If the Variance were granted, the values of the surrounding properties would not be Diminished.* Granted 4-0

*Unnecessary Hardship –*

*A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship.* 4-0

With a vote of 4-0, the Zoning Board of Adjustment approved ZBA 18-14.

Chair Stout rejoined the meeting.

**ZBA 18-15:/ Petitioner, Raette Trombly of Keene, requests a Change of a Non-conforming Use for property located at 15 King Ct., Keene, Tax Map #112-022-000, owned by William Stretch, Jr. of Oshawa, Ontario, and is in the Low Density District. The Petitioner requests a Change of a Non-Conforming Use to permit a fitness facility use in an already non-conforming use of a retail facility.**

Mr. Schneider indicated the location of the property is located just before the intersection of Main Street and Route 101. He described the street as a small, dead end street. Mr. Schneider reported that 15 King Court used to be the location of Indian King Framery, which was a retail

store. The proposal is for a woman's fitness center. He noted the change of use is the reason why the Petitioner is present.

Mr. Rogers added that under Section 102-207 of the Zoning Code it states, *"The zoning board of adjustment may, in appropriate circumstances and with appropriate safeguards, permit a nonconforming use to be changed to another nonconforming use, provided such changed use is more in conformity with the spirit and intent of this chapter than the prior use and is not more injurious, obnoxious or offensive to the neighborhood than the existing use"*. Mr. Rogers stated the applicant was before the Board to change from one nonconforming use to another.

Chair Stout asked if the property was located in the Low Density District. Mr. Rogers replied in the affirmative. Mr. Schneider added that the Low Density District is for residential lots for single family dwelling units.

Chair Stout asked if Board would vote to affirm the application if the use is more conforming than the prior special use. In addition, he asked if use is found to be less nonconforming the Board would vote against the application. Mr. Rogers replied in the affirmative.

Mr. Welsh stated when considering a change in use, he was unable to find a definition for retail but was able to find the definition of a health and fitness facility. He asked if a fitness facility was the designation for the existing Variance. Mr. Schneider stated that it was their understanding that Indian King Framery made frames and sold them and would be considered a retail establishment. He also noted that there was not a definition for retail. Mr. Rogers asked the Board to follow the definition for a health and fitness facility when considering the application.

Chair Stout then read the permitted uses in the Low Density District as follows:

- Accessory Dwelling Unit
- Dwelling, Single Family
- Group Home
- Harvesting of Forestry Products
- Historic Site Open to Public
- Home Occupation Incidental to Main Residential Use
- Institutional Use

Chair Stout welcomed the applicant to come forward.

David Bergeron, Brickstone Land Use Consultants, LLC of 185 Winchester Street, stated that he was representing the Petitioner. He presented an existing condition plan for the property. Mr. Bergeron then referred to a map and indicated the location King Court. John R. Coughlin Real Estate and Clough Harbor and Associates are located at the end of King Court. Mr. Bergeron stated that King Court is basically all commercial uses and in the back part of the UNH facilities with dorm buildings are located. He indicated there are 14 parking spaces along the front of the building and eight spaces in the back of the building.

Mr. Bergeron stated the proposed use is a fitness center and operation would be Monday through Friday and open on Saturday until noon.

Mr. Bergeron reviewed the criteria.

1. *The change of use will be more in the spirit and intent of the Zoning Ordinance.* Mr. Bergeron stated the change in use to a fitness facility will be more conforming than the previous use as a retail store. The existing building is a two story building containing 4,560 square feet of office and retail space. He stated that Zoning requires one parking space per 200 square feet or 23 total parking spaces, which is nonconforming.

He stated that the proposed fitness center is required to provide one parking space per 500 square feet of floor area or 10 total parking spaces, which conforms to the Zoning requirement.

2. *The changed use will not be more injurious, obnoxious or offensive to the neighborhood.* Mr. Bergeron stated the location is surrounded by businesses to the east on King Court, the state highway to the south and Keene State College to the north and west. He noted there is one single family that abuts the property to the north and is over 250 feet from the building.

He reported all activities at the fitness facility will be conducted indoors and will not result in excess noise. All cars going to the facility will use King Court for access and will not pass by the residence on Appleton Street.

Mr. Bergeron stated the fitness facility closes at 7:30 PM Monday through Friday and noon on Saturday. He noted that there will be no activity late at night.

The site is served by City sewer and water and is adequate for the proposed use.

In conclusion, Mr. Bergeron emphasized the proposed fitness facility will not be injurious, obnoxious or offensive to the neighborhood.

Ms. Taylor asked if the intent was to keep the same parking configuration. Mr. Bergeron replied in the affirmative. Ms. Taylor asked if the change of use would require a site plan review. Mr. Rogers replied this would be required to go through the Planning process. Ms. Taylor asked how many employees or participants would be at the facility throughout the day.

Ms. Jacqueline Trombly, 43 Evans Circle, replied there would be 40 people throughout the day between the hours of 5am-7pm.

Ms. Zerba asked if this was Ms. Trombly's current business at the moment. Ms. Trombly replied they are hoping to purchase an existing business and then relocate the business. Ms. Taylor asked if the fitness facility would be on both floors. Ms. Trombly replied in the affirmative. Ms. Taylor asked how many people the facility could accommodate at one time. Ms. Trombly replied 30 people. Ms. Taylor asked what would happen if they all came in separate cars. Mr. Bergeron stated there are 24 parking spaces and more parking on site could be a possibility with an expansion. He stated at this point they are not sure if this would be necessary. Mr. Bergeron noted there are a total of 14 parking spaces in the back and eight in the front of the building. Ms. Trombly stated there are also additional six parking spaces that belong to State that could be of use.

Vice Chair Gorman asked if the parking at the proposed fitness center exceeds the required parking for a fitness center. Mr. Bergeron replied in the affirmative, noting that ten spaces are required by Zoning.

Chair Stout noted there is no definition of a fitness facility in the Zoning Ordinance. Mr. Rogers stated there is no definition and referred to the Board to the definition of a health and fitness center. Chair Stout asked the Board to stick to the official definition of a health and fitness. Chair Stout asked applicant if they would be fine with voting as a health and fitness center. Ms. Trombley replied in the affirmative.

Ms. Taylor asked if the applicant will provide additional services such as retail clothing or selling of supplements. Ms. Taylor stated the reason she is asking this question is because the definition of a health and fitness center may include but not limited to certain activities. Ms. Taylor referred to the health and fitness definition and read the list of activities as follows: *“Activities which are normal and incidental to health and fitness centers may include, but are not limited to, childcare; juice bars; cafes; retail sales of sporting accessories, clothing and equipment; retail sales of health supplements; massage therapy; chiropractic therapy; tanning; manicures; pedicures; spa treatments and saunas”*.

Ms. Trombley replied they would just have exercise equipment and exercise classes. She stated they are not looking to add retail inside the building. Ms. Trombley noted there was not enough parking to add retail. Chair Stout stated that Ms. Taylor’s line of questioning could lead to some conditions if the Board finds necessary.

Ms. Zerba asked if there would be any exterior changes to the building. Mr. Bergeron replied in the negative.

Ms. Zerba asked if there would be additional lighting installed. Mr. Bergeron replied there additional lighting may be installed. He noted this would be a Planning Board issue.

Chair Stout welcomed public comment.

With no comment, Chair Stout closed meeting.

The Board reviewed the criteria.

1. *The change of use will be more in the spirit and intent of the Zoning Ordinance.* Ms. Zerba stated there is so much commercial space already in that area and was not opposed to the space becoming a fitness center. Ms. Taylor stated that she finds the use as problematic and does not see how it is a less intense or equivalent type of use. She reiterated that she has concerns and does not think the use is in the Spirit of the Ordinance. Ms. Taylor stated the use is more intense due to the hours of operation and the number of cars that would be using site.

Chair Stout stated that he agreed with Ms. Taylor’s comments. In addition, he stated if the fitness facility got to be very popular the traffic could spill out to the neighborhood. Vice Chair Gorman noted that any operation could become popular and spill outside of the area. In addition, he stated the facility could become too big for the location and is

speculative. He stated that in his opinion, he does not think that a fitness facility use is more nonconforming than the already nonconforming retail use.

Mr. Welch stated he thinks more of potential uses than actual uses. He stated the array of potential under the category of retail is more nonconforming with the Low Density Zone. In addition, he stated the potential that is a front to the intent of the Low Density Zone is less with a fitness facility than a retail facility. Chair Stout stated the nature of business groups of people arrive together and do not have that in most retail operations. He asked the Board to consider a condition that the fitness center offers classes of a certain size to prevent possible interference with neighbors. Ms. Taylor stated she had a problem with setting this type of condition that could limit someone's business.

2. *The change use will not be more injurious, obnoxious or offensive to the neighborhood.* Vice Chair Gorman stated the given nature of neighborhood, it is not residential in all reality. He noted the office building next to, the college property behind and the highway right next to this property in question speak to the use nicely. Chair Stout stated he would agree with Vice Chair Gorman. However, Chair Stout stated that an argument about an oddly placed zone is no argument in terms of a court of law. Vice Chair. Gorman stated that he was not arguing the zone is inappropriate, he is arguing more that the properties within zone are nonconforming. Mr. Welsh stated the condition of existing neighborhood is that such proposed use is not more injurious or obnoxious and pulls his answer in agreeing in the change of use.

Ms. Zerba stated she would support this by placing a condition to add the wording, "Operations will close at 7:30 PM Monday through Friday and noon on Saturday and Sunday".

Ms. Taylor stated she agreed with Chair Stout comments about taking the zone as it is noting that she is more concerned with a 5 AM start time. She explained there are residential uses that abut the back side. Ms. Taylor stated that she had a sense she would not want that activity in her back yard at 5 AM.

Vice Chair Gorman asked City staff if there is any stipulation in retail use when choosing to open or close doors. Mr. Schneider replied there is some indication when lights need to be shut down. Vice Chair Gorman stated that as current existing retail use, someone could and open doors at 5 AM and close at 2 AM. Mr. Rogers replied there are stipulations in regards to the Sign Code about shut off with signs.

Mr. Welch made a motion to approve the change of use will not be more injurious, obnoxious or offensive to the neighborhood. The motion was seconded by Vice Chair Gorman, which carried unanimously.

The Board reviewed the Findings of Fact.

1. *The change of use will be more in the spirit and intent of the Zoning Ordinance.* Granted 4-1, Ms. Taylor opposed.
2. *The change use will not be more injurious, obnoxious or offensive to the neighborhood.* Granted 4-1, Ms. Taylor opposed.

Vice Chair Gorman made a motion to approve the Change of a Non-Conforming Use to permit a health fitness facility use in an already non-conforming use of a retail facility. Mr. Welsh seconded the motion, which carried unanimously.

On a vote of 4-1, the Zoning Board of Adjustment approved ZBA 18-15. Ms. Taylor voted in opposition.

**ZBA 18-16:/ Petitioner, Jeremiah Boucher of Keene Self Storage, LLC, 12 Bradco St., requests a Special Exception for property located at 12 Brado St., Tax Map #117-041-000, owned by Gridley Enterprises, LLC of 33 Hall Court, Peterborough, NH and is in the Industrial District. The Petitioner requests a Special Exception for a proposed expansion of the existing self-storage facility.**

Mr. Schneider indicated the location of the property is on Bradco Street and is adjacent to Hamshaw Lumber. Bradco Street is located off of Winchester Street and across the street from Matthew's Road.

Mr. Schneider stated the property is located in the Industrial Zone and the Petitioner is requesting to expand by adding more storage units.

Mr. Rogers stated this property, under the permitted uses, does require a Special Exception from the Board. He reported the property did receive a Special Exception in 1999. Mr. Rogers stated there were some conditions placed on that approval and that it would be up to the Board to determine to continue with those conditions. He said if there is an expansion of the use, under Section 102-37b the Applicant must obtain a new special exception. Mr. Rogers read Section 102-37b (b) *any addition or expansion of an existing use for which a special exception has been granted must receive a new special exception if:*

- (1) *There is an addition or expansion of over 20 percent or over 500 square feet, whichever is less, of the area of the existing structure.*

Chair Stout asked if new conditions would follow or if the Board would have to reiterate the new Special Exception. Mr. Rogers recommended the Board reiterate the new conditions in the Special Exception, if approved. Mr. Rogers stated the existing conditions were an existing 50 foot buffer enhanced with evergreen under direction of the Planning Board. The second condition was that the building construction was to be of natural color with more in keeping with neighborhood under direction of the Planning Board. Chair Stout asked if there is confirmation conditions were met. Mr. Rogers replied that one of the things that would need to be reaffirmed is the buffer zone. There was concern noted in the file that the buffer zone was not being done correctly. In addition, recently there was a concern with the buffer zone being cut down. He stated that one of the abutters is present and could fill the Board in on the current conditions. Ms. Taylor noted she was a Board member the first time this petition was heard and recalls conditions were placed on the approval. After the approval, she stated all existing trees were cut down and the City got involved.

Ms. Taylor asked City staff if this application would have to go to before the Planning Board for site review. Mr. Rogers replied in the affirmative, if the Special Expectation was granted.

Chad Brannon, Civil Engineer for Fieldstone Land Consultants LLC, representing Keene Self-Storage stated the site consists of 5.4 acres of land. He said the plan before the Board is the same that was approved in 1999. He stated he was under the impression there was a time condition where they would have to come back before the Board for a Special Exaction. He noted there no modifications that have been done from a layout and building standpoint.

Mr. Brannon presented a site plan to the Board explaining when the construction happened by the previous owner pointing out the yellow highlighted buildings. The square footage of the building that exists now is 28,275 square feet and the proposed buildings highlighted in blue are 16,750 square feet.

Mr. Brannon described the site as straight forward with a main entrance that comes into the site on the east of the property. The office area is located on the front corner of the building that is situated on the east side of the building. Mr. Brannon stated the building runs along the eastern boundary of the property.

Mr. Brannon stated his client is proposing to construct additional units because the site is nearly at 100 % capacity. He stated they would address, through the Planning process, any storm water, lighting or any of the other 19 development standards.

Mr. Brannon stated they are here at this meeting to specifically address the expansion of use.

Chair Stout asked the Board if there were any questions.

Ms. Zerba asked if Mr. Brannon was representing the same owner in 1999. Mr. Brannon stated that he was representing Keene Self-Storage, LLC and that his client was looking to purchasing the property. He stated that he knows based on site inspections that he was not aware of any tree cutting that has happened recently. He suspects concerns relative to the buffer but noted this can be addressed with the approval. Chair Stout stated that he wanted to make it clear the Board has the right to follow through on special Conditions.

Ms. Taylor asked what type of storage the Petitioner was proposing. Mr. Brannon replied that there typically there is a contract between land owner and the person renting that spells out what is and what is not allowed. He noted storing hazardous material onsite is always prohibited. He said fuel and automotive are on occasion accepted. Mr. Brannon noted there is someone on site at all times, observing site conditions. Mr. Rogers read a storage facilities restrictions in the Industrial Zone under Section 102-632 as follows, *“The following cannot be stored in these facilities: perishable foods; live or dead animals or plants; explosives including fireworks; flammable liquids; any hazardous material of any kind; items that may give off offensive or noxious odors; any liquids that leak, freeze, or break their container; automobiles; and trucks. Outdoor storage is prohibited”*.

Chair welcomed public comment.

Armanda Henderson, 16 Bergeron Avenue, stated that she is an abutter of the storage units. She stated she took pictures of the fresh cut trees. Ms. Henderson noted these are not the pines that were supposed to be the buffer because these trees died years ago. Ms. Henderson asked to

present these pictures to the Board. Chair Stout asked the Board if they wished to see the pictures. All members of the Board agreed.

She noted once fall comes there is a direct view of the storage units. She took another picture in September of the trench right by the storage unit that is directly behind her house. She presented other pictures that showed the high amounts of water.

Ms. Henderson asked if the design of the proposed storage units is the same design as the current units and if the units would be facing Bergeron Avenue. In addition, she asked Mr. Brannon to confirm what the yellow units and blue units are depicted on his diagram.

Vice Chair Gorman stated the pictures Ms. Henderson provided indicate fresh cuts. He asked her if these trees are on the storage property or on a different property. Ms. Henderson replied this was where the buffer was supposed to be located. Vice Chair Gorman noted that the photos depicted fairly recent fresh cuts and the trees seemed to be a couple of inches in diameter. Ms. Henderson stated that was correct.

Mr. Brannon clarified the yellow buildings on the plan do exist and any work on the site further will be away from residential properties. In addition, he noted there will be no impact on the buffer areas in question. He said when he visited the site he did not walk behind the building to see the tree cuts. He stated that could be addressed further as a part of the permit process. The proposed style of the buildings is a metal building verses concrete block. He stated there will be a similar design with a peaked roof. He added the height and material that will be used is more common for self-storage units today.

Mr. Brannon reviewed the criteria.

1. *The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location.* Mr. Brannon stated this project proposes to expand the existing self-storage facility on the subject property. He stated this use already exists in the district and is an appropriate use for this location.
2. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.* Mr. Brannon stated an approval of the proposed expansion of the existing self-storage facility would have no negative impacts on the value of any property within the district nor would it be injurious, obnoxious or offensive to the neighborhood. He stated this proposal would result in no changes to the neighborhood as the use already exists on-site.
3. *There will be no nuisance or serious hazard to vehicles or pedestrians.* Mr. Brannon stated this proposal would not cause any nuisance or serious hazard to vehicles or pedestrians. He explained the existing entrance to the self-storage facility is adequate for the expansion and self-storage sites in general do not generate any measureable traffic.
4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.* Mr. Brannon stated adequate and appropriate facilities for this project will be provided for the proper operation of the

proposed use. He stated this project will require Planning Board review and approval and all necessary improvements to the property will be incorporated into the final design plans. Mr. Brannon noted the same proposal was previously approved but was never constructed so the approvals have lapsed. In addition, he noted that low mounted lighting will be added and would primarily be for security and not for lighting the parking lot.

Chair Stout welcomed public comment.

Ms. Henderson referred to the pictures she presented and indicated vehicles have been stored at these units. She noted that she understood that vehicles would not be stored here so it does not turn into a junk yard.

She stated that when they started construction last time there was so much vibration that everything was falling off her hutch. Ms. Henderson called the Planning Board to address the noise and vibrations.

With no comment, Chair Stout closed the hearing.

Chair Stout stated that he was unsettled. He stated that he would prefer to hold off on a vote until City staff provides a report about the buffer requirements in the previous Special Exception. Mr. Rogers stated that would be regardless of this Special Exception as well as the complaint about the buffer zone and vehicles being stored. He stated the complaint about the vehicles would be dealt with as a site plan violation and that the Board could move forward with the application. He noted regardless of what happens at this meeting they would address if there are site plan violations at the property. Chair Stout stated the issue he has is that if the Board approves new petition it may not have conditions and if there are, those conditions may or may not be met.

Mr. Rogers noted that the way the conditions should have been addressed at the site plan review by Planning Board. Chair Stout asked if the Special Exception was imposed by the Zoning Board. Mr. Rogers replied the Special Expectation was imposed by the Zoning Board on a condition it be approved by the Planning Board. Chair Stout stated that he has trouble passing an affirmative vote on a Special Exception if he feels the applicant did not meet the conditions. Mr. Rogers stated conditions put on by Zoning Board were that buffer zone and the color of the buildings would be dealt with at the Planning Board level. Mr. Rogers read the conditions as follows "*an existing 50 foot buffer be enhanced with appropriate evergreens under the direction of the Planning Board*" He said the Planning Board dealt with buffer zone.

Ms. Taylor stated that her recollection is that the buffer was supposed to be an evergreen buffer that was cut down. She stated this would have been in violation of the Zoning Board's approval regardless of the site plan. She suggested two courses of action. The first is to put off the application until the status of the enforcement of the original Special Exception is determined. Secondly, the Zoning Board could consider altering the new Special Exception. She noted Magnolia Way did not exist 20 years ago. She suggested the Board consider putting a condition that a vegetative buffer be maintained between this property and residential abutting properties.

Vice Chair Gorman asked if it is reasonable by putting a condition to restore the buffer prior to construction begins. He noted that they do not seem to be true to their word and would enforce

the matter. Ms. Zerba stated that she liked that idea. Chair Stout stated he is highly skeptical of imposing any new condition when the past ones have not been met and does not see the effectiveness. Vice Chair Gorman stated the effectiveness is that the Petitioner wants to build additional units and cannot do so until vegetative buffer have been built.

Mr. Brannon requested to make a comment. The Board then agreed to reopen the public hearing to hear his comments.

Mr. Brannon stated that he was representing the new owner of the property, Keene Storage, LLC. He reiterated that he could not speak to any of the issues that have occurred in the past. Mr. Brannon stated that any issues relative to the buffer they would be willing to address at the approval and site plan approval. He stated that it was a condition of the Board in the past and should be moving forward.

Jim Dempsey, Bergeron Avenue, stated the applicant is not the current owner. He stated the new owner would assume responsibility of the corrective activity.

Vice Chair Gorman asked City staff if violations carry with property. Mr. Rogers replied in the affirmative. Mr. Schneider clarified there is only one house on Magnolia Way and that none of these other lots have been built on.

Mr. Dempsey recommended that if this petition is approved, there is a condition that they will put something up that will not die. Chair Stout stated that it is always a complicated distinguishes between the Planning Board and Zoning Board. Chair Stout stated he has been on both Boards and he considers it to be very serious when conditions are not met from either Board. He noted this happens far too often.

With no further comment, Chair Stout closed the public hearing.

Ms. Taylor asked if the lots on Magnolia Way are still capable of being built. Mr. Schneider replied in the affirmative.

Mr. Rogers then referenced Section 102-92 of the Zoning Code as follows, *“All lots with an approved site plan shall be maintained on a regular basis. Maintenance shall include, at a minimum, replacing dead trees, shrubs, etc.; trimming and mowing; and maintenance/painting of fences, flagpoles, and other items that contribute to the total esthetic look of the site”*. He stated that was Section the City would address with the property owner, regardless of the outcome of this meeting.

Chair Stout suggested that if this is not continued for staff review, he would vote against the application. Ms. Zerba stated that she was not in favor of postponement and recommended Vice Chair Gorman’s recommendation of a special condition. The Board then discussed the different options for conditions.

After the discussion concluded, Chair Stout asked if there was a motion.

Vice Chair Gorman made a motion to approve the Special Exception for ZBA 18-16 provided that all previous zoning and site plan conditions are met prior to the beginning of any new

construction. In addition, a continuous vegetative evergreen buffers are established along the boundary between all residential properties and the self-storage units. Ms. Zerba seconded the motion, which carried unanimously.

The Board reviewed the criteria.

1. *The proposed use is a similar to one or more of the uses already authorized in that district and is in the appropriate location for such a use.* Ms. Taylor stated it is in an appropriate zoned area and is an existing use in this district
2. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.* Ms. Zerba and Ms. Taylor stated that as long as all the conditions must be observed. Chair Stout reiterated the same.
3. *There will be no nuisance or serious hazard to vehicles or pedestrians.* Vice Chair Gorman stated that he does not believe this would be an issue. Ms. Taylor noted there are adequate accommodations such as a fence.
4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.* Vice Chair Gorman stated these facilities are already located on the property.

The Board reviewed the Findings of Fact.

*The proposed use is a similar to one or more of the uses already authorized in that district and is in the appropriate location for such a use.* Granted 5-0

*Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.* Granted 5-0

*There will be no nuisance or serious hazard to vehicles or pedestrians.* Granted 5-0

*Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.* Granted 5-0

On a vote of 5-0, the Zoning Board of Adjustment approved ZBA 18-16 with conditions listed.

#### **V. New Business:**

#### **VII. Adjournment**

Ms. Zerba made a motion to adjourn the meeting, which was seconded by Mr. Welch and carried unanimously. Hearing no further business, Chair Stout adjourned the meeting at 9:45 PM.

Respectfully submitted by,  
Jennifer Clark, Minute Taker

City of Keene  
New Hampshire

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

**Monday, October 1, 2018**

**6:30 PM**

**Council Chambers**

**Members Present:**

Nathaniel Stout, Chair  
Joshua Gorman, Vice Chair  
Michael Welsh  
Joshua Greenwald  
Jane Taylor

**Staff Present:**

Thomas Mullins, City Attorney  
Gary Schneider, Plans Examiner  
John Rogers, Zoning Administrator

**Members Not Present:**

Louise Zerba, Alternate

**I. Introduction of Board Members**

Chair Stout called the meeting to order at 6:30 PM, introduced members of the Board and welcomed everyone to the meeting. Chair Stout also welcomed and introduced new member Joshua Greenwald to the Board.

**II. Minutes of the Previous Meeting-September 4, 2018**

The Board moved to defer approval of the September 4, 2018 minutes until the next meeting that will be held on November 5, 2018. The motion passed unanimously.

The ZBA agreed to change the order of hearings as follows: ZBA 18-14, ZBA 18-18 and ZBA 18-12, ZBA 18-17 and ZBA 18-19.

**IV. Hearings**

**Continued ZBA 18-14:/ Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene requests a Variance for property located at 76 Railroad St., Keene, Tax Map # 574-010-000, owned by The Moving Company Dance Center, 76 Railroad St., Keene and is in the Central Business District. The Petitioner requests a Variance to permit a lodging house in the Central Business District where a lodging house is not a permitted use per Section 102-482 of the Zoning Ordinance.**

Mr. Greenwald announced he needed to recuse himself due to a conflict of interest. With no objection, the Board continued with hearing ZBA 18-14.

Chair Stout read an email into record that was sent to the Board by Mindy Cambiar. The email notified the Board that The Moving Company Dance Center (MOCO) signed a purchase and sales agreement with another purchaser at 76 Railroad Street. In addition, Ms. Cambiar stated in the email this made her very sad and explained the need to withdraw their application for a Variance at that location. However, Ms. Cambiar stated in the email that Hundred Nights will be requesting an Appeal of Administrative Decision for ZBA 18-18.

Ms. Taylor made a motion to accept withdrawal for continued application ZBA 18-14. The motion was seconded by Vice Chair Gorman, which carried unanimously.

**ZBA 18-18:/ Petitioner, Hundred Nights, Inc., of 17 Lamson St., Keene requests an Appeal of an Administrative Decision based on the definition of a hotel versus a lodging house and the Administrative Decision by the Zoning Administrator that Hundred Nights, Inc. “is considered to be a lodging house under the City’s Zoning Ordinance, and not a Hotel.**

After reading the request, Chair Stout announced the Board has been advised it would not be appropriate for the Board to offer an opinion on this, given there is not an application to which this matter applies.

Chair Stout asked the Board if there was a motion.

Mr. Welsh made a motion to deny application ZBA 18-18 for an Appeal of an Administrative Decision. The motion was seconded by Vice Chair Gorman.

As the Board moved to deny the request, Attorney John Rab, 234 Court Street, Keene came forward to request to address the Board. The City Attorney stated it would appropriate to allow Attorney Rab to speak prior to voting on the motion. Chair Stout welcomed comment.

Attorney Rab stated he was representing Hundred Nights and they object to the Board’s denial of this outright on the basis of a lack of standing. He asked if the Board does deny the application, the Board state the reasons for denial. Attorney Rab stated it was their firm belief they have the powers under RSA 674:33A that the Board hear the appeal. He explained they are appealing a determination of a zoning official with respect to the Zoning Ordinance. He noted they have a clear standing to do such.

Chair Stout asked the Board if there were any questions. With no comment, the hearing continued.

Attorney Rab reiterated that if the Board does deny the application, the Board state reasons clearly for the record in order to provide them a record for appeal. Chair Stout stated that Attorney Rab’s reference to RSA 674:33A does not refer to whether or not there is an active case, to which this advice is relevant. Attorney Rab stated this is a separate accepted application and they are appealing a specific decision. He noted the application was duly docketed and is not related to the application that was withdrawn. In addition, he stated this is not related to a specific property and is related to a specific decision made by a Zoning Officer. Chair Stout asked if there is an application before the Board at the present time. Attorney Rab replied in the

affirmative and that it was an Appeal of an Administrative Decision. Chair Stout stated that he would disagree that an Appeal of an Administrative Decision is an application for a Variance. Attorney Rab stated this application was a separate matter before the Board. Chair Stout stated that it may be a separate matter but the matter should refer to an active case. He noted this was based on the advice given to the Board. Attorney Rab stated if that is the case the reasons for denial should be made clear. Chair Stout stated that he believed he had just done so.

Attorney Rab then asked if the Board was denying the application because they have withdrawn their application for a Variance for the MOCO building. Chair Stout replied that was incorrect and is because the Board does not have an application before the Board. Ms. Taylor added the Board's role is not to issue any advisory opinion. She stated the request to the Administrative Official related specially to a certain property that is the subject of the Variance that is now withdrawn. Based on this information, Ms. Taylor stated the result in any decision other than a denial would result in an advisory decision, which the Board is not empowered to give. Attorney Rab stated Hundred Nights requested the City define the use of Hundred Night's homeless shelter as a hotel rather than a lodging house for purposes of the Zoning Ordinance. He reiterated this is a separate matter and is not related to the application for the MOCO building.

Chair Stout asked for comment from the City Attorney.

Mr. Welsh asked for clarity on the assertion being made by Hundred Nights that there is no specific linkage of their question about definition to a specific property. The City Attorney stated that he would defer back to the N.H. Supreme Court's decision on *Perron v. Concord*. He explained that once the application was withdrawn there is no live application before the Board to consider the Administrative Decision against. The City Attorney continued to explain that there is no case or controversy and the same standard applies over in the Superior Court. He stated if there is no case or controversy before the Board, the Board is prohibited from issuing an advisory opinion.

The City Attorney stated the Supreme Court case stands exactly for that proposition. He stated once the *Perron v. Concord* matter was resolved by the Board in Concord and concluded, the applicant requested an opinion from the Board as to what they could or could not do. The Supreme Court properly confirmed that the Board does not have the authority to issue an advisory opinion. The City Attorney said Hundred Nights may disagree with that opinion, which he understands. Therefore, he stated there is a process which would need to go to the Superior Court for a decision.

The City Attorney stated that his advice is that it would be an issuance of an advisory opinion and is not prohibited under law. He noted this decision was up to the Board.

Mr. Welsh asked the City Attorney to clarify if withdrawal of the application places the question in the status of not something that has a case or controversy attached to it. The City Attorney replied that was correct. Mr. Welch then asked if that status means that anything the Board would be giving is an advisory opinion, which is something that case law has shown is not appropriate. The City Attorney stated that is a correct restatement of what he stated to the extent that they may have another property that would qualify for status or meet the definition. He stated that it would then be proper for the Board to consider the issue.

With no further comment, Chair Stout thanked the City Attorney.

Chair Stout welcomed public comment.

The City Attorney stated this was not a public hearing on this question and is very much like a motion for reconsideration. He explained the motion for reconsideration is filed with the body, the body makes a decision based on the documents filed and this was filed. The City Attorney stated Hundred Nights had the opportunity to state their position at this point and his suggestion is that the hearing forecloses at this point.

Chair Stout retracted welcoming comment from the public. The Board moved to vote.

On a vote of 4-0, the Zoning Board of Adjustment denied ZBA 18-18.

Mr. Greenwald joined the rest of the Board for the remainder of the petitions.

**Continued ZBA 18-12:/ Petitioner, Kay M. Alderman of 350 Hurricane Rd, requests a Variance for property located at 350 Hurricane Rd., Tax Map # 234-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit the extension of a garage to within 11 feet of side boundary line and to within approximately 45+/- feet of Hurricane Rd. where 50 feet is the setback requirement for both side and front side yards per Section 102-791, Basic Zone Dimensional Requirements.**

Chair Stout asked for the City staff report.

Mr. Schneider displayed a map stating the location of the property highlighted in yellow. He noted Hurricane Road is just above the property and to the south is Aldridge Road and Dickinson Road. He noted all of these properties are in the area of the Rural Zone.

Chair Stout asked for the overall acreage. Mr. Schneider replied 3.9 acres.

Chair Stout welcomed James Mountford, 350 Hurricane Road, Keene. Mr. Mountford stated that he was the husband of the applicant Kay Alderman. He noted the reason for the Variance is because they want to put an addition on their garage. Mr. Mountford stated his wife has been faced with medical issues and she wants to move the washer and dryer from the basement up to the next level. He stated they are putting in a mudroom and that takes up half of the two car garage. In order to keep the two car garage they will need to add another bay. He noted his neighbor's property line comes within 11 feet of their property line. Mr. Mountford stated the abutting neighbors have provided a letter in support of the application.

Ms. Taylor stated the map provided in the packet did not indicate the terrain in that area. Mr. Mountford replied the edge by the garage is built up and there is a lawn that drops off to the level of the walkout cellar. Ms. Taylor asked City staff in reference to the 11 feet to the property line if there are some provisions with fire code. Mr. Rogers replied that it would not refer to a single family home, especially with a single story home.

Chair Stout explained to Mr. Mountford that the applicant has the option to read through their application. He asked Mr. Mountford if he wished to address the criteria in his application. Vice Chair Gorman stated that it was not necessary and that Mr. Mountford had stated his case.

Mr. Mounford stated that Attorney Tom Hanna prepared their application. He declined to read through the criteria.

Ms. Taylor referred to the letter Mr. Mountford stated he had from his neighbor that spoke in support of the application. Mr. Schneider provided a copy of the letter to Board. Chair Stout read the letter to the Board.

The letter was sent from Mark and Sharon Rhoades 354 Hurricane Road, Keene and stated they had no objection to the applicant's building an addition to their garage on their property. In addition, the Rhoades stated there is no need to add shrubbery or landscaping between their properties.

Vice Chair Gorman asked if a vegetative buffer currently exists. Mr. Mountford replied in the affirmative.

Ms. Taylor asked how far the neighbor's house is on other side of the vegetative buffer. Mr. Mountford replied approximately 75 feet.

Chair Stout welcomed public comment.

With no comment, Chair Stout closed the public hearing and asked if there was a motion.

Vice Chair Gorman made a motion to approve ZBA 18-12. The motion was seconded by Mr. Welch.

Chair Stout stated that he drives past this property frequently and noted the buffer is more than adequate. He added that he sees no problem with plans to proceed. In addition, he stated there is a hardship here and is in favor.

Ms. Taylor stated that she wanted to clarify that it appears the hardship is related to land and due to the terrain. She stated when she drove by the property it is clear the terrain drops off and is not sure there would be any opportunity to build in back of house and be within the setbacks.

The Board reviewed the criteria.

1. *Granting the variance would not be contrary to the public interest.*

Ms. Taylor stated this is an area of single family residences and the addition is not going to be any closer to the street. She stated there no interference and is in keeping with the neighborhood. She added that granting the Variance does meet that criteria.

2. *If the variance were granted, the spirit of the ordinance would be observed.*

Chair Stout stated there was no major change in anything the ordinance stipulates for this zone. In particular, he stated that it is not out of keeping with other properties in the area.

3. *Granting the variance would do substantial justice.*

Chair Stout stated the Board has already heard of the need.

4. *If the variance were granted, the values of the surrounding properties would not be diminished.*

Vice Chair Gorman stated this is not a substantial change to the property. He noted this is a rural house in the Rural District. In addition, Vice Chair Gorman commented there will be no impact to buffers or the surrounding property values.

5. *Unnecessary hardship*

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

*i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*

Ms. Taylor reiterated the nature of the terrain. In addition, she stated that is the only place to do this without building a two story foundation underneath a garage expansion.

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

All members of the Board agreed the use is reasonable based on previous statements.

The Board reviewed the Findings of Fact.

1. *Granting the variance would not be contrary to the public interest. Granted 5-0*
2. *If the variance were granted, the spirit of the ordinance would be observed. Granted 5-0*
3. *Granting the variance would do substantial justice. Granted 5-0*
4. *If the variance were granted, the values of the surrounding properties would not be diminished. Granted 5-0*
5. *Unnecessary hardship*
  - A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

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

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

With a vote of 5-0, the Zoning Board of Adjustment approved ZBA 18-12.

The Board took a brief recess at 6:58 PM. The meeting was called back to order at 7:05 PM.

**ZBA 18-17:/ Petitioner, The Prospect Woodward Home of 194-202 Court St., request a Variance for property located at 95 Wyman Rd., Tax Map #221-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit a free standing sign 29.32 square feet in an area where 20.00 square feet is the maximum area allowed per Section 102-1310.2B.**

Chair Stout asked for City staff report.

Mr. Schneider displayed a map stating the property highlighted in green. He indicated the location of the property is on Wyman Road. The top of the page on the map is Wyman Road heading toward Old Walpole Road and the bottom of page is heading back towards Route 12. He noted the property is on both sides of Wyman Road. The property is in the Rural Zone and in this zone a 20 square foot free standing sign is permitted. Mr. Schneider stated this is a legal commercial piece of property. He explained the Sign Code was recently amended to allow signage in legally nonconforming commercial properties.

Mr. Welch asked if this is a legal nonconforming rural district property. Mr. Schneider responded that prior to the revisions to the Sign Code, signage was not allowed on any residential piece of property. He stated it was recently amended to allow signage as long as the applicant conforms to the signage requirements in the Office Zone. Mr. Rogers added this part of the changes to the Sign Code was to try to allow for situations where in the Rural Zone there are a lot of commercial type activities.

Ms. Taylor asked City staff to clarify that this development is there because of prior Variances and is not a nonconforming use. Mr. Rogers stated the use that is currently there itself is an allowed use on this road. Ms. Taylor asked if this was an application for one sign or more signs. Mr. Rogers stated that based on his understanding the request was for one sign.

Vice Chair Gorman asked if there are setback requirements for the sign. Mr. Rogers replied the applicant would meet the 50 foot setback in the Rural Zone.

Jim Phippard, Brickstone Land Use Consultants, LLC spoke on behalf of The Prospect Woodward Home. He stated the application is for a Variance for a larger than normally permitted sign in this location. He stated the Board has already heard from staff up until this year that signs were not permitted in the Rural Zone. He noted they have been working on this project for several years and in the meantime the Sign Code was amended and a provision was added to allow for legal commercial uses in Residential Zones to have signage. Mr. Phippard stated in the

Office Zone a free standing sign up to 20 square feet is permitted. He said originally two signs were requested but at the last minute they changed the health center sign back to 20 square feet.

Mr. Phippard then displayed a picture of the sign they are proposing for the community center, which he noted is the largest building at Hillside Village. Mr. Phippard stated this is a five story building on Wyman Road that appears as two stories because it is cut into the slope. The back side of the building that is not visible from Wyman Road is a five story building. He indicated the location of Wyman Road and the community center building. The community center is 588 feet long and two stories high. Across the street is the health center building that is a four story building. Mr. Phippard stated they are proposing to place a sign for the community center or the main sign at Hillside Village adjacent to Wyman Road. He also stated that in the Office District, the sign setback is five feet from the right of way. Mr. Rogers noted that it would be his interpretation that it is the zone the applicant is asking for signage to be in, which is in the Rural Zone and not the Office Zone. Therefore, the applicant would have to meet the 50 feet setback. Mr. Phippard stated that it is apparent that he will be coming back to the Board for additional Variances for sign locations.

Mr. Phippard stated that the important thing to understand is they are proposing to place a sign in view of Wyman Road as people approach the property. Mr. Phippard stated the sign will be a two faced sign, six feet high and close to the ground. He said the sign panel itself is 4 X 7 feet 4 inches, which is the sign between the posts. The posts are stone covered to match the facade on the building to help blend in with the background.

Vice Chair Gorman stated that he was concerned the Board is looking at a Variance for a sign and noted that the location of the sign is unknown. He added the location will play a factor and that he would have a difficult time voting on this time without knowing where the sign will be placed. He suggested presenting everything at once. Mr. Phippard stated that he was caught off guard by this decision. Vice Chair Gorman stated he could not vote on the size of the sign unless he knew where it would be located.

Mr. Phippard stated that he understands and requested to table the hearing until the next hearing. He stated that he will file an additional application for a Variance and will review the application with Mr. Rogers. Mr. Rogers stated that he would appreciate the opportunity to meet with Mr. Phippard to have this clarified in order to have an appropriate application for the Board.

Vice Chair Gorman asked if continuing the application will impede in the progress of the project. Mr. Phippard replied continuance would delay the manufacturing of the signs.

Ms. Taylor stated she does not know if the other signs are all within the appropriate size limitations. She then suggested if there is a possibility for any of those signs to be a different size to try to handle all of this in one application. Mr. Phippard stated that all of the other signs comply with size at this time but may not comply with setbacks.

Vice Chair Gorman made a motion to continue ZBA 18-17 until the next Board meeting on November 5, 2018. Ms. Taylor seconded the motion, which carried unanimously.

**ZBA 18-19:/ Petitioner, Hope Chapel of 667 Main St., represented by Chad Branon of Fieldstone Land Consultants, PLLC of 206 Elm St., Milford, NH, requests an Enlargement of a Non-Conforming Use for property located at 667 Main St., Tax Map #120-055-000, owned by Keene Four Square Church, 667 Main St., Keene. The Petitioner requests an Enlargement of a Non-Conforming Use to expand the existing church with a building addition and associated site improvements.**

Chair Stout asked for the City staff report.

Mr. Schneider stated the location of the property is at 667 Main Street. He referred to a map indicating the top of page is heading back into town and the bottom of page heading into Swanzey. He stated Hope Chapel used to be the Hungry Lion and has been a place of worship for a number of years. He stated residential properties are located in the back of the property as well as all around the neighborhood. The property is located in the Low Density Zone and is a legal nonconforming use. Mr. Rogers stated the history of the property is that it has been multiple restaurants over the years. He stated back in 1998 they received a change of non-conforming use under ZBA 98-16, to convert from a restaurant to the institutional use as church under Harvest Christian Fellowship.

Chad Branon of Fieldstone Land Consultants, PLLC of 206 Emerald Street, Milford stated that he represents the landowner and applicant. He stated the property is situated at 667 Main Street and is currently occupied by Hope Chapel. They are proposing to construct a 7,045 square foot addition off the rear of the building.

Mr. Branon stated the site as it exists today is essentially developed. He explained there is an existing church parking lot along the entire front of the property and two curb cuts onto Main Street. The property is paved right up to an abutting house and the back parking lot is paved up to the proposed building site. He stated that parts of the project will make the site more conforming. It was noted the site does not meet the greenspace requirements. Mr. Branon reported they will be eliminating one curb cut along Main Street, address drainage improvements and incorporating some low impact drainage solutions. Mr. Branon stated they will be constructing some rain gardens along the front and removing pavement against the existing building areas. In addition, they will be removing pavement along the proposed building, the southern boundary of the existing parking and pavement along the northwest boundary. He noted there will be a lot of relative features that will bring the property into compliance under the current development standards.

Mr. Branon referred to the 1998 ZBA decision and noted that they must maintain the existing grass buffer at the rear of the property "as is". He noted they are not proposing to expand the improvements in that direction and are trying to consolidate the improvements to the existing impacted area. Mr. Branon state they are going to be required to do some tree clearing along the back edge of the parking lot to address drainage improvement. They are proposing to construct a storm water management area that will capture essentially all of the runoff from the existing parking lot. In addition, they are proposing a drainage swale that parallels the southern boundary of the parking area to captures all runoff and routing it into the basin.

Mr. Branon asked the Board if they had any questions based on the plan.

Mr. Greenwald asked what the use is of the proposed structure. Mr. Branon replied they would be relocating the existing sanctuary to this new building. In addition, there will be a multipurpose room for weddings or youth group functions. Mr. Branon noted that all functions will be associated with church functions. Mr. Greenwald asked if there was a potential for a school. Mr. Branon replied he was unaware of any plans for a school.

Vice Chair Gorman asked if the proposed space will be leased out for functions. Mr. Branon replied that he is not aware this is a use the applicants are seeking. He noted the primary use will be for a sanctuary. Mr. Branon explained the room they currently hold their services in is small and the seating is tight. The proposed addition will provide a much better seating plan along with an elevated platform for services and speakers. Vice Chair Gorman asked how the existing sanctuary will be used. Mr. Branon replied the applicants have discussed using this as a children's sanctuary. Vice Chair Gorman asked what the building will be constructed of primarily. Mr. Branon replied they are proposing a metal building.

Ms. Taylor asked if the surrounding properties are mostly single family residential properties. Mr. Branon replied the majority of the properties southwest and north is single family residential homes. He noted there are one or two commercial businesses on the other side of Main Street. Ms. Taylor asked Mr. Branon to identify the residential streets on the map. Mr. Branon identified Leawood Avenue, Linwood Avenue and Edgewood Avenue. Ms. Taylor asked if there is adequate parking for the proposed expansion. Mr. Branon replied because of the previous uses on the property there was an expansive parking lot along the back and to the north of the site. He said the site does meet all parking requirements and they have addressed the parking components. Mr. Branon noted they are also removing parking in areas that exist within 15 feet of property lines.

Ms. Taylor referred to the apartment building to the north of the property and asked if there only access was through the Church's property. Mr. Branon replied this is not their only access.

Ms. Taylor then referred to a photograph in packet of a storage trailer and dumpster. She asked Mr. Branon to indicate the location of these on the map. Mr. Branon explained this picture was taken in the southerly direction along the back corner of the building. He stated this whole area is where the addition would be constructed. He said in bringing the project into conformance, the dumpster location they are proposing is on the southern boundary and would be a fully enclosed dumpster.

Mr. Greenwald stated the reason why he asked if the use would be a school is that this facility normally just operates on Sunday's. Mr. Branon replied that most often churches offer services a couple times a week. Mr. Greenwald asked if this is what this church offers. Mr. Branon replied that he was unable to answer because he would not want to restrict this from being an option. Mr. Greenwald stated the reason he was asking if it was a school because there are buses, drop offs and other things of this nature. Mr. Branon noted that nothing of this nature has been presented to him.

Vice Chair Gorman asked City staff in the event they did want to use this addition for purpose of a school what zoning limitation would be in effect. Mr. Rogers replied the school would fall as an instructional use. However, he stated that it could also fall under a change of a non-conforming use even though it is in the same category going from a church to a school. In addition, he stated that it might be considered a change a nonconforming of use and be required to revisit Board at that time.

Mr. Welsh asked looking at Criteria #3 there is a mention of some assurance the enlargement and/or expansion does not violate any of the basic zone dimensional requirements set forth in the Zoning Ordinance. He stated that he presumes this is in regards to setbacks and building dimensions. He asked Mr. Branon to talk about dimensional required setbacks and how they may be impacted, if at all by the proposal. Mr. Branon replied the best way to address this is to explain what has brought before them here today. He stated they took part in a review meeting with City staff, went through the proposal and then submitted a formal site plan submission to the Community Development Office. City staff then reviewed the application in its entirety and they felt the only item they would need relief from is the expansion of a nonconforming use. He stated he believes they meet all of the dimensional criteria and the other 19 development standards that are reviewed. In addition, he stated the proposed addition does meet all setback requirements. As a part of the design process they have redesigned the site to address pedestrian traffic and vehicular circulation. Based on this design they believe they can improve vehicular and pedestrian traffic along Main Street as well as inside the site. Mr. Branon explained the improvements will be made by defining travel paths more clearly, providing landscaped areas in appropriate locations, adding walkways and adding handicap access in appropriate locations.

Mr. Brannon reviewed the criteria.

1. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.*

Mr. Branon stated approval of the proposed expansion of the existing church would have no negative impacts on the value of any property within the district nor would it be injurious, obnoxious or offensive to the neighborhood. This proposal would result in no changes to the neighborhood as the use already exists on-site. He stated they would be maintaining the vegetative buffer to the abutting property owners but do have to accommodate some storm water. He explained this was the reason for the tree cutting in that one area. Mr. Branon stated they believe they have put a design together that balances the criteria and is sensitive to neighboring properties.

2. *There will be no nuisance or serious hazard to vehicles or pedestrians.*

Mr. Branon stated this proposal would not cause any nuisance or serious hazard to vehicles or pedestrians. The site improvements proposed will reduce the amount of existing impervious cover on-site therefore reducing the number of parking spaces and potential traffic over what presently exists. He stated the project also proposes to reduce the width of the existing curb cut to allow for better traffic flow and safety entering and exiting the site. The project also incorporates on-site pedestrian and vehicular traffic circulation improvements. Based on this

evaluation this project should have no adverse impacts on the traffic characteristics of the surrounding roadway network.

- 3. Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.*

Mr. Branon stated the appropriate facilities for this project will be provided for the proper operation of the proposed use. The site is serviced by municipal sewer and water, propane gas and overhead utilities. He stated this project will require Planning Board review and approval and all necessary improvements to the property will be incorporated into the final design plans.

The site will maintain all existing utility connections.

With no further comment from Mr. Branon, Chair Stout welcomed public comment. He asked for those in favor of the application to come forward.

Dawn Yocum 108 Greenwood Avenue, Keene stated that her property abuts Hope Chapel. She stated that she is not sure where the petitioner is seeking to build an addition. She asked Mr. Branon to indicate on his map the grassy area that touches her property. She asked if these are trees they are considering cutting. Mr. Branon indicated the existing tree line that surrounds the grassy area and explained the improvements are east of that area. He said they are imposing some tree cutting on the western edge primarily for storm water. Ms. Yocum asked where her house is in reference to this proposal. She reiterated that she does not understand the location of the addition and that she has vested interest. She stated that she is not against the application but wanted to be informed. Chair Stout explained the Board cannot conduct a meeting with personal interchanges of this nature and apologized. He asked if there was anything the Board could help answer. She replied that her question would refer to Criteria #1.

Mr. Branon noted that he would be happy to measure out the distance out to property after the hearing.

John Dunnell 30 and 34 Lynwood Avenue, Keene commented on the fact that there does not appear to be any representation of the proposed building. He noted it is important as far as any impact to neighbors from this proposal. Chair Stout explained to Mr. Branon that this application will also go before the Planning Board and the Planning Board will likely be the better venue for that specific question. Mr. Dunnell stated the size and scope of the project would have impact on the neighbors. Ms. Taylor added the size of the building directly bears on what is appropriate of a nonconforming use. Vice Chair Gorman stated in summary the Board will address impact in regards to size but will not address aesthetic impact. He noted that is for the Planning Board to consider. Vice Chair Gorman stated the Board will look at impact based on size and scope of project.

Mr. Dunnell asked about the lighting for this project since he is an abutting neighbor. Chair Stout noted that lighting is one of the 19 standards before the Planning Board.

Mr. Dunnell then stated that in reviewing the petitioner's website and earlier discussion at this meeting, Hope Chapel talks about the addition of a gymnasium for the youth group. He stated that in his mind when there is currently no gymnasium it would be considered a change of use for that structure.

Mr. Dunnell noted the nuisances associated with any public construction with a nonconforming use in a Low Density Zone. He said in the Low Density Zone people usually do not have to deal with dumpsters being picked up, car noises and door lock beepers. He noted these are all considered to be nuisance items. In addition, he stated that more and more people assembled in a particular area and children playing in the buffer zone are also nuisance items.

Mr. Dunnell reported that Hope Chapel's website mentioned Christian bands would be coming to the church. He noted this was a noise consideration.

Mr. Dunnell then asked if he could approach the map displayed by Mr. Branon. With no objection, Mr. Dunnell stated the northwest corner of their proposal indicates they would be adding parking spaces highlighted in the gray area. Mr. Dunnell stated in that whole area there is a living hedge that was put in 1971 to protect properties from visual sounds. He noted they are proposing cutting this and this would be cutting existing living hedge. He noted this hedge was attached to their deed and is a document that has some substance.

Mr. Dunnell then proceeded to read Chapter 2 from the Board Handbook and read RSA 674:19 as follows, *"Does the challenged activity have a substantially different impact on the may not render the property proportionally less adequate. Because nonconforming uses violate the spirit of zoning laws, any enlargement or extension must be carefully limited to promote the purpose of reducing them to conformity as quickly as possible"*.

Mr. Dunnell continued quoting a case from NH Supreme Court as follows, *"The ultimate purpose of zoning regulations contemplates that nonconforming uses should be reduced to conformity as completely and rapidly as possible."* New London Land Use Assoc. v. New London Zoning Board.

Mr. Dunnell explained that does not in itself lend to a situation as such where there is a 7,000 square foot existing building, with a proposal to add on a 7,000 square foot building behind it.

Lila Sinclair 24 Lynwood Avenue, Keene stated her property was located next to the Dunnell properties. Speaking to Criteria #1; she was concerned about the uses of the property. She stated that Hope Chapel has frequently used the parking lot to let homeless stay in RV's and trucks with animals and ducks. She noted they use the corner of their property that abuts her property. Chair Stout asked Ms. Sinclair to indicate the location of her property on the map. She approached the map and indicated the location of her property as well as the Dunnell's properties.

She noted the representations on the map are not to scale.

Ms. Sinclair stated in one corner of the property there was a whole summer where a homeless person stayed with his ducks in the church's parking lot. She reported this person was eventually plugging his coffee pot into her home and leaving his coffee pot in her yard. Ms. Sinclair asked what could potentially happen if Hope Chapel is permitted to double in size. She stated losing some of the privacy shield as well as the expansion of their building is a concern. Ms. Sinclair also reported that Hope Chapel let a trucker stay in the parking lot and the noise and lighting of the truck was a nuisance. In addition, she stated the applicant also allowed someone to sell vegetables in the front of building. Ms. Sinclair questions how they are actually going to use this extra space.

Ms. Sinclair stated that Hope Chapel could have been neighborly and sent a packet to the abutting neighbors explaining their intentions. She added that taking out privacy buffers and adding a metal building that is not aesthetically appealing is not neighborly. Another concern Ms. Sinclair emphasized is what will happen to her property value if the application is approved. She noted that Mr. Branon's map is not true to scale because of how tightly all of the homes are located in that neighborhood. She explained that most of the yards in that neighborhood are very small and most people sit in their front yards. Ms. Sinclair also wanted to note to the Board that just this past weekend in the field, there was an RV parked on the property for some sort of revival activity.

Ms. Sinclair concluded that the applicant has not been transparent about their activities as well as their own representation of the property.

James Frederickson, 675 Main Street, Keene stated that his property abuts the petitioner's property on the south side. He asked for the height of the proposed addition. Chair Stout replied that will be discussed.

Jane Frederickson, 675 Main Street, Keene stated that she was not here to necessarily oppose the building plan but was seeking clarity. She said they need to be sure that the buffer of trees and bushes will still be there when the project is done. Ms. Frederickson asked how they would get that reassurance. Chair Stout responded the Board will address this question. In addition, she said it seems to her that building this large structure and doubling the size makes the property more less conforming to the Low Density Zone.

John Dunnell, 30 Lynwood Avenue, Keene stated he is a contractor and that the impact of the project is substantial to the neighbors. He indicated the location of his property on Mr. Branon's map and noted the map is not to scale. Mr. Dunnell stated that the map does not show where the houses are truly located. He noted the three homes that directly abut the property will be demolished with runoff and also be hit with huge snow storage. Mr. Dunnell stated these homes were built before setbacks were put into place and homes are really less than 10 feet from the property line. He said the massive amount of water will change the yards of these homes. Chair Stout stated that if this application gets through, the Planning Board may have one stipulation that there is no extra water allowed. Mr. Dunnell stated the proposal is absurd and is a major concern.

He noted improvements to the parking lot are great. He said if this was a much smaller addition people would agree with the proposal. Mr. Dunnell concluded that he likes building improvements but for a nonconforming use this is a ridiculous structure for a conforming use.

Ron Hitchings 14 Leawood Avenue, Keene stated that he was also an abutting neighbor. He emphasized the massiveness of the water flow that is in his yard. Currently, all the water in the back parking lot comes over the line and across his lawn. Then the water goes back into the culvert on the back part of his land and runs into Ms. Sinclair's back yard as a pond. He reiterated there is a huge runoff concern.

With no further comment, Chair Stout acknowledged Mr. Branon.

Mr. Branon stated the plan he presented is absolutely to scale. He noted the homes in some areas are certainly close in others areas and are not located within the required distance to locate to meet submission requirements. He asked the Board if he could be afforded the time to respond to the abutter concerns. With no objection, Mr. Branon continued.

Mr. Branon stated they are reducing the impervious cover onsite. He explained with no drainage improvements there would be an improvement to storm water runoff. They are reducing the existing coverage on this site. Mr. Branon stated they are proposing infiltration and rain gardens along the front of property. In addition, they are proposing a swale on the southern part of the property. This will capture runoff from the rear pavement runoff and bring it to the storm water management area. Mr. Branon stated the roof runoff from the structure will be routed to the storm water management system. In addition, they are replacing the leaching basins in the parking lot. Mr. Branon stated that not only is there a reduction in impervious cover as well as a reduction in runoff, there will be even more reduction in runoff because they are implementing storm water practices to meet current City standards. He said the issue is that some of these storm water improvements do require cutting some form of the vegetation.

Vice Chair Gorman asked if some of the parking spots could be surrendered in lieu of the buffer being an issue. He stated that it seems they could excavate some of the parking area and hold storm water in that area. Mr. Branon replied they are proposing that in areas. He explained they are meeting the City parking requirements and do not have extra spaces available.

Mr. Branon stated as related to storm water this project will most certainly address those concerns. He noted as it relates to buffering they meet all of the dimensional setback requirements and are increasing the buffering because they are removing pavement that exists on the southern boundary. Chair Stout stated in reference to removing the pavement he asked what will be in place. Mr. Branon replied loam and seed at this time.

Mr. Branon said they are not proposing any tree cutting to the closest neighbors. He indicated that the first property on the corner is 140 feet from back from the edge of parking lot. Mr. Branon said size of the building proposed is a function of a growing church. He referred to the concern raised about a gymnasium and the proposed basketball hoop. Mr. Branon

emphasized this concept is not uncommon for these type of facilities. He stated the idea is to keep the children active and bring them into the church.

Mr. Branon said the lighting plan would be submitted to the Planning Board and that there would be no light pollution.

Mr. Branon stated this was an existing parking lot and that they are working within the existing footprint of the parking lot. He referred to the map and noted the hatched area on the map is proposed pavement. Mr. Branon explained the reason for the pavement is to make this area function in order to maintain the parking. Chair Stout asked if the hedge would need to be removed. Mr. Branon replied there is a partial hedge they are proposing to remove. He stated the Church could work on placing some form of hedge on the back side of the parking spaces.

Mr. Branon said he does not want to lose sight they are proposing to repurpose and construct a building inside an existing parking area. He noted this addition is standard size for a sanctuary hall because the idea is to fan the seats around the stage. He noted the idea is to increase the numbers in the church.

Chair Stout asked for the height of the proposed addition. Mr. Branon replied 33 feet to the peak and that it is a single story building.

Vice Chair Gorman asked if this is an allowable height in that zone. Mr. Branon replied in the affirmative.

Ms. Taylor asked what the height is of the existing building. Mr. Branon responded 20 feet approximately.

Chair Stout welcomed new questions or comments from the public.

John Dunnell, 30 Lynwood Avenue, Keene stated the buffer zone sounds immature and was put in 1971. He said this was a 20 foot tall tree structure and is the length of the parking lot. Mr. Dunnell stated that he wanted it to be known this buffer would be gone and was something that could not be put back. Mr. Dunnell noted that the buffer consisted of honey suckle bushes.

John Holbrook, 11 Leawood, Keene stated that he lives directly behind the proposed building. Mr. Holbrook stated that Mr. Branon keeps referring to the tree line. Mr. Holbrook stated that this tree line is sort of a joke because they are sumac trees. He noted that all these trees do is intertwine and kill everything and he needed to take these trees out. Currently, Mr. Holbrook has a great big hole in that area of his property. Mr. Holbrook stated now there is a proposal to put up a 33 foot structure that will be in his line of sight. He stated he would appreciate putting trees in this area as a buffer.

Gerri Frederickson 675 Main Street, Keene stated they are only people that have a tree line and their tree line goes across the existing building. She said that Mr. Branon says they do not plan cutting down trees but she understand there are trees in this area on her property. Ms. Frederick

stated that she would like to know if Hope Chapel thinks they own that buffer. Vice Chair Gorman added that Mr. Branon stated there would be no tree cutting on her side of the property.

Chair Stout invited Mr. Branon back to address Ms. Frederickson's question.

Mr. Branon reiterated they are not proposing cutting trees any trees in the location of Ms. Frederickson's property. He stated he implied they are removing pavement behind the building and reestablishing vegetation. He said there will be no trees clearing in the southern edge and are working with impacted area.

Vice Chair Gorman asked if it was accurate the rear tree buffer that would be removed, distance being 100 feet, is a wide open field. Mr. Brannon replied in the affirmative. He added they will work with the closest abutter if there was some hedging they felt would be a good fit.

With no further comment, Chair Stout closed the public hearing. The Board began deliberations.

Ms. Taylor stated she has some concern because the three criteria do not reflect the required criteria, which is more established by case law verses statutes. She referenced *New London Land Use Assn. v. New London ZBA, 130 N.H. 510 (1988)* it was the challenge activity has a substantially different impact on the neighborhood. She stated what concerns her are the criteria of whether it is an enlargement or expansion of a nonconforming use. Ms. Taylor read as follows, "*However, enlargement or expansion may not be substantial and may not render premises or property proportionally less adequate the case law may not be substantial less adequate*".

Chair Stout stated the Board was looking at endearment of nonconforming uses as listed in Section 102-210 of the Zoning Code. Chair Stout read as follows "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:*

- (1) Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.*
- (2) There will be no nuisance or serious hazard to vehicles or pedestrians.*
- (3) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.*

Chair Stout stated those are the criteria stated. Ms. Taylor stated that was correct but City Code is still subservient to state statutes in case law. She stated her point is to consider the standard the state has set and is something to keep in the back of the Board's mind. Chair Stout asked if Ms. Taylor if she would care to rephrase the criteria in terms of criteria the Board could take. Vice Chair Gorman stated the word "substantial" is relative and does not know if there is a finite

definition that could incorporate this to the discussion. Vice Chair Gorman suggested the Board go through criteria and see where that leads. The Board agreed.

The Board reviewed the criteria.

1. *Such approval would not reduce the value of any property within the district not otherwise be injurious, obnoxious or offensive to the neighborhood.*

Mr. Greenwald stated as a real estate agent, the things that he saw during the presentation are not selling features. He noted the sketch of the proposed building. Mr. Greenwald stated it will devalue the abutting properties. In addition, he stated that he would not go as far to say that it is obnoxious but that it was certainly breathtaking to see the magnitude of the substantial increase in size. He stated that it will have a negative effect to surrounding properties.

Vice Chair Gorman stated that it is important the Board does not lose sight with some of things the Board is charged with addressing. He stated some of things are not in the purview of the Board such as runoff, aesthetic and building height. Vice Chair Gorman noted these are to be addressed by the Planning Board or City Code. Though he did stated there are concerns on the removing of buffers, doubling of size on the proposed nonconforming use, and the question of what the use will be and the distribution to the neighbors would almost definitely weigh on the property values.

Mr. Welsh stated the idea that it would have no impact on the property value to the district is hard to imagine. He stated “substantial” being a case law citation term does occur in the doubling of size the elevations. Mr. Welsh stated this is a tough case to make that the expansion will satisfy these criteria. He stated that he is not sure that case has been made.

Ms. Taylor stated that she largely in agreement of what has been said. She stated that from what she has seen during this presentation is the virtual doubling of the size and the ability to use this non-conforming use does qualify as substantial. She said the types of activities are not necessarily bad activities but they will result in a much enlarged and expanded use. Ms. Taylor stated that she thinks this will have a negative impact on the neighborhood. She noted not just value but also levels of nuisance and enjoyment of properties. Ms. Taylor stated that she find this as very problematic.

Chair Stout stated the Board has heard a lot of comments on both sides and that the Board has tried hard to afford everyone the time to express their opinion. He stated he hopes that is how everyone feels.

Mr. Greenwald referred to Mr. Dunnell’s comments about expanding a nonconforming use and what should happen is to move toward conforming as rapidly as possible, if possible. Mr. Greenwald noted this proposal is the complete opposite.

Chair Stout stated there are aspects that are more conforming aesthetically. He stated there is a major improvement to the aesthetics as to what exists today. He noted not so much that it would overrule the negative connotations.

*2. There will be no nuisance or serious hazard to vehicles or pedestrians.*

Vice Chair Gorman stated that does not believe this will be impacted to any degree. He said they are creating a better curb set situation. He noted Route 12 is a heavily traveled street and does not think in this particular question there is impact in terms of causing hazard.

Ms. Taylor stated there was no information presented in that point is what happens to improvement to city sidewalks that exists along Route 12. She stated that she would agree this does not factor in overall.

Mr. Welsh stated that he sees a bit of improvement and a more logical way of parking. He stated the flow will be improved with more logical parking spaces.

Mr. Greenwald does not know what will be done with the multipurpose building. He stated when he asked earlier if this could be a school, he noted that schools have commutes. Mr. Greenwald explained that having a school would add more vehicles which in return would mean there would be more vehicles entering and exiting. He stated that by adding a school, wedding receptions or other functions he cannot see this being better and feels this has the potential to be more dangerous.

*3. Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.*

Vice Chair Gorman state this property has City water utility connections that will be mandated by City Code and does not see any issues.

Ms. Taylor stated she is not sure other than basic utilities the Board has adequate information to determine what other services may be required. She noted this is because the Board does not have all of the details of the different uses, especially if they permit campers onsite.

Chair Stout stated what the Board has heard tonight is that the Church allows certain activities that may be all noble and well-conceived but also may affect the neighborhood in adversarial ways. He stated that he does not think the Board should suggest the applicant did not bring adequate information.

Vice Chair Gorman stated that in reference to criteria #3 there are adequate facilities present currently as are the roads but the fact that the church has broken Zoning Code by allowing people to take up camp on their property is not what the Board needs to concentrate on. The property does have adequate facilities.

With no further comment, Chair Stout asked for a motion.

Ms. Taylor made a motion to approve ZBA 18-19 an enlargement of a nonconforming use to include there are maintained vegetative buffers between this property and all surrounding residential properties. Chair Stout seconded the motion.

Ms. Taylor explained the reason she suggested to add vegetate buffers to the motion is that even though there are vegetative buffers that do exist, it sounds some contemplative some may be removed or lessened more appropriate because these are such dissimilar uses if some protection is afforded to the surrounding residential properties.

The Board reviewed the Findings of Fact.

1. *Such approval would not reduce the value of any property within the district, no otherwise be injurious, obnoxious or offensive to the neighborhood.* 5-0
2. *There will be no nuisance or serious hazard to vehicles or pedestrians.* 3-2, Vice Chair Gorman and Mr. Welch voted in the affirmative.
3. *Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.* 4-1 Ms. Taylor voted in opposition

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 18-19.

Vice Chair Gorman made a motion to deny ZBA 18-19. The motion was seconded by Mr. Greenwald.

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 18-19.

## **V. New Business:**

Mr. Rogers stated the Board has expressed an interest in taking a look at what is included in the Board's packets. He thought this would be an opportunity to gather feedback from the Board. Mr. Rogers stated they are taking a look at the GIS mapping services and what layers could be added to help better illustrate the maps.

Chair Stout stated that his understanding is that the type of information brought forward from the City could have implications and demonstrate favoritism. Mr. Rogers stated that he is hesitant for City staff to do a lot of research on certain areas. He stated that he feels the burden falls to applicant. Chair Stout referred to the standard of the Planning Board on to vote whether or not the application is complete. Mr. Rogers stated that he will confirm with City Attorney and report back to the Board.

Chair Stout urged the Board to read through applications right away in case of a conflict of interest. He explained it would help City staff find an alternate in a prompt manner.

Ms. Taylor stated that it would helpful to have prior information about Board activity for a property such as a prior Variance. Mr. Rogers stated that he will confirm with the City Attorney if this is possible and report back to the Board. Ms. Taylor stated that she appreciates having relative correspondence available on an application.

Ms. Taylor stated that she would like to see the abutters list in order to help identify potential conflicts. Mr. Rogers stated abutter lists would now be included in the packet.

Mr. Welch asked if the entire packet is available online for abutters to access. Mr. Rogers's replied the packets are a part of the agenda and available online. Mr. Welch asked if the abutter notice is clear so that if abutters have questions they are able to access the packet online. He suggested language be added to the notices to inform abutters where additional information can be found. Mr. Rogers replied the notice of hearing includes the date and time of the meeting, petition and the Variance that is being requested.

Mr. Rogers stated this suggestion is a great idea and that language will be added to the abutter notices.

Vice Chair Gorman stated that he was happy with packets and commended the work of City staff.

## **VII. Adjournment**

Hearing no further business, Chair Stout adjourned the meeting at 9:17 PM.

Respectfully submitted by,  
Jennifer Clark, Minute Taker

95 WYMAN RD.  
ZBA 18-17



Petitioner requests a Variance to permit a free standing sign 29.32 square feet in an area where 20 square feet is the maximum area allowed per Section 102-1310b.



City of Keene  
*New Hampshire*

**NOTICE OF HEARING**

**ZBA 18-17**

A meeting of the Zoning Board of Adjustment will be held on Monday, October 1, 2018 at 6:30 PM in City Hall Council Chambers, 2<sup>nd</sup> floor, 3 Washington St, Keene, New Hampshire to consider the petition of The Prospect Woodward Home of 194-202 Court St., who request a Variance for property located at 95 Wyman Rd., Tax Map #221-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit a free standing sign 29.32 square feet in an area where 20.00 square feet is the maximum area allowed per Section 102-1310.2b.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance: September 18, 2018

# APPLICATION FOR APPEAL

Zoning Board of Adjustment  
3 Washington Street, Fourth Floor  
Keene, New Hampshire 03431  
Phone: (603) 352-5440

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 18-17</u>
Date Filed	<u>9/10/18</u>
Received By	<u>CJM</u>
Page	<u>1</u> of <u>11</u>
Reviewed By	<u>G.S.</u>

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

## TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

### SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) The Prospect Woodward Home Phone: \_\_\_\_\_  
Address 194-202 Court Street Keene NH 03431  
Name(s) of Owner(s) Same as above  
Address \_\_\_\_\_  
Location of Property 95 Wyman Road

### SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 221-019-000-000 Zoning District Rural  
Lot Dimensions: Front 1810' +/- Rear 912' +/- Side 1730' +/- Side 1650' +/-  
Lot Area: Acres 37 +/- Square Feet 1,611,720 +/-  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0.02% Proposed 4.5%  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 0.02% Proposed 10.2%  
Present Use Continuing Care Retirement Committee (Hillside Village)  
Proposed Use Continuing Care Retirement Community

### SECTION III - AFFIDAVIT

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Kimball B Temple Date 9/6/18  
(Signature of Owner or Authorized Agent)

Please Print Name KIMBALL B TEMPLE MD

PROPERTY ADDRESS 95 Wyman Road

---

***APPLICATION FOR A VARIANCE***

- A Variance is requested from Section (s) 102.1310.2.B of the Zoning Ordinance to permit:  
a free standing sign 29.32 sf in area where 20.00 sf is the maximum area allowed.  
See Attached

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

1. Granting the variance would not be contrary to the public interest because:

2. If the variance were granted, the spirit of the ordinance would be observed because:

3. Granting the variance would do substantial justice because:

4. If the variance were granted, the values of the surrounding properties would not be diminished because

5. Unnecessary Hardship

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

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

and

ii. The proposed use is a reasonable one because:

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

PROPERTY ADDRESS 95 Wyman Road, Hillside Village

### APPLICATION FOR A VARIANCE

- A variance is requested from Section (s) 102-1310.2.b Signs in office district, neighborhood business district, and legal non-conforming commercial property in any district of the Zoning Ordinance to permit:  
Construction of a freestanding sign 29.32 sf in area on a legal non-conforming commercial property in the Rural District where 20 sf is the maximum area allowed for a freestanding sign.

#### DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

It is in the public interest to allow clear, well designed signage to identify an institutional use in the Rural District. Hillside Village is a unique project and contains three very large buildings on a 50 acre site. The signage for Hillside Village needs to fit the design of the buildings at the site and provide a balance so it will not look out of place. Allowing a sign size of 29.32 sf accomplishes this without creating a threat to public health, safety or welfare.

It is in the public interest to allow a larger sign on a property when there is no threat to public health, safety or welfare.

- 2. If the variance were granted, the spirit of the ordinance would be observed because:** The spirit of the ordinance regarding signs is *“the effective use of signage to direct movement, to advertise, and to inform the public while protecting the safety and general welfare of the public, preserving neighborhood character, and minimizing visual clutter.”* Hillside Village is a 50 +/- acre site containing large buildings which are surrounded by forests and an open field. The proposed signs are designed to complement the building designs in this setting. The proposed signs are an attractive site feature which identify the buildings and their main access points without causing a threat to the safety and general welfare of the public. The size of the signs is compatible with the buildings in this setting and therefore meets the spirit of the ordinance.

**3. Granting the variance would do substantial justice because:**

Hillside Village falls under the Institutional Use definition in the zoning ordinance. When the Institutional Use category was created, signs for institutional uses were not addressed. In this case, Hillside Village is considered a legal, non-conforming commercial property and is required to meet the sign dimensional requirements for the Office District. Buildings and lots in the office district are very small and the sign dimensional restrictions reflect that. On a large 50-acre site with four and five story buildings, a 20 sf freestanding sign is too small and out of proportion, looking like a mistake. There would be no benefit to the public to deny the variance request. In this case, granting the variance to allow a sign which is sized to be in balance with the site would do substantial justice.

4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** The proposed signs are located at the main entries to the Community Building and the Health Center. They are not visible from any adjacent properties. The proposed signs are attractive and in balance with the existing buildings at the site. Granting the variance will not diminish the values of surrounding properties.

5. **Unnecessary Hardship**

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

i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

This 50-acre property contains three large four and five story buildings making it unique in the Rural District. This creates a special condition for this property and distinguishes it from all other properties in this area.

The ordinance requires that signs for this use meet the size requirements for signs in the Office District. The existing lots and buildings in the Office District are very small, so it makes sense to require smaller signs which are in scale with the area. It is not fair or reasonable to limit freestanding signs to no more than 20 sf when they will be placed in front of such large buildings. The signs will look too small and out of balance. They will detract from the overall appearance of this area.

If the variance is granted there will be no threat to public health, safety or welfare. Denial of the variance would not benefit the public and would result in an unnecessary hardship to the landowner.

**And**

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

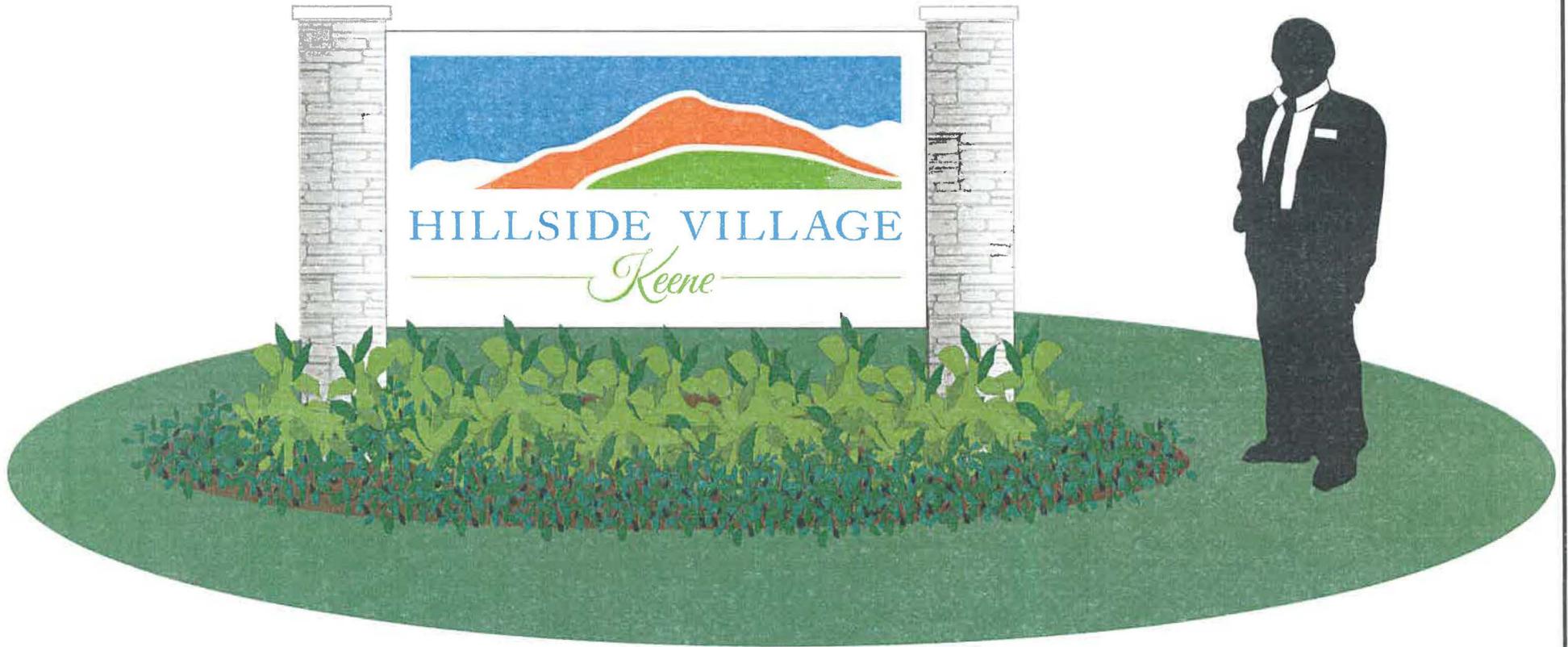
The proposed signage has been designed to complement the building architecture at Hillside Village while clearly identifying the site. It is in balance with the scale of the buildings at this site. The signs will not be visible from adjacent properties. The proposed use is reasonable because, as proposed, the use will not pose a threat to public health, safety or welfare; it meets the spirit of the ordinance; and it will not result in diminished property values.

**B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

This 50-acre property contains three large four and five story buildings making it unique in the Rural district. This creates a special condition for this property and distinguishes it from all other properties in this area.

The ordinance requires that signs for this use meet the size requirements for signs in the Office District. The existing lots and buildings in the Office District are very small, so it makes sense to require smaller signs which are in scale with the area. It is not fair or reasonable to limit freestanding signs to no more than 20 sf when they will be placed in front of such large buildings. The signs will look too small and out of balance. They will detract from the overall appearance of this area.

A variance is necessary to allow signs appropriate in scale for this site. If the variance is granted there will be no threat to public health, safety or welfare. Denial of the variance would not benefit the public and would result in an unnecessary hardship to the landowner.



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<b>ARCHETYPE SIGNWORKS</b> SIGNAGE ■ GRAPHICS ■ DISPLAYS PO BOX 127 ■ PETERBOROUGH ■ NH ■ 03458 603.924.3332 www.ArchetypeSignworks.com	<b>CLIENT:</b> HILLSIDE VILLAGE WYMAN ROAD KEENE, NH	<b>TITLE:</b> COMMUNITY CENTER SIGN PROJECTED APPEARANCE WITH LANDSCAPING	<b>SCALE:</b> N.T.S.
	<b>PROJECT:</b> EXTERIOR SIGNAGE MAIN ID SIGNS	<b>DRAWING NO.:</b> 180906-001-A	<b>DATE:</b> 09-06-2018
			<b>FOR PERMITTING</b>

SIGN PANEL AREA:  
7.33' W X 4.00' H = 29.32 SQ. FT.

FABRICATED ALUMINUM DOUBLE-SIDED SIGN PANEL  
WITH RAISED DIMENSIONAL GRAPHICS

FABRICATED ALUMINUM COLUMN CAP  
PAINTED WHITE

CONCRETE BLOCK COLUMN  
WITH STONE VENEER TO  
MATCH BUILDING (TYP.)

FINISHED  
GRADE

ILLUMINATION: EXTERNAL FROM GROUND

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SIGNAGE ■ GRAPHICS ■ DISPLAYS

PO BOX 127 ■ PETERBOROUGH ■ NH ■ 03458  
603.924.3332  
www.ArchetypeSignworks.com

CLIENT:  
HILLSIDE VILLAGE  
WYMAN ROAD  
KEENE, NH

PROJECT:  
EXTERIOR SIGNAGE  
MAIN ID SIGNS

TITLE:  
COMMUNITY CENTER SIGN  
FRONT ELEVATION VIEW

DRAWING NO.:  
180906-002-A

SCALE:  
N.T.S.

DATE:  
09-06-2018

FOR PERMITTING

ABUTTERS TO 95 WYMAN ROAD

221019000,221018000 etc  
The Prospect Woodward Home  
194-202 Court Street  
Keene NH 03431

221021000,221022000  
NH Black Brook LLC  
5620 Old Mile Hill Road  
Orefield, PA 18069

210048000  
Bruce L Borden Revocable Trust  
173 Wyman Road  
Keene NH 03431

211003000  
Kendall J Dicey  
220 Old Walpole Rd  
Keene NH 03431

221028000  
Caitlin Whitehead  
238 Warren Rd  
Framingham MA 01702

210011000  
Thomas D Borden  
152 Wyman Road  
Keene NH 03431

221020000  
Lory Family Rev Trust  
63 Wyman Road  
Keene NH 03431

221017000  
Spofford Stage Real Estate LLC  
PO Box 572  
Spofford NH 03462

Brickstone Land Use Consultants LLC  
185 Winchester Street  
Keene NH 03431

28 PARK AVE.  
ZBA 18-21



Petitioner requests an a hair salon for services & sales in an existing non conforming mixed use building where mixed uses are not listed as permitted uses per Section 102-422.



# City of Keene

New Hampshire

## NOTICE OF HEARING

### ZBA 18-21

A meeting of the Zoning Board of Adjustment will be held on Monday, November 5, 2018 at 6:30 PM in City Hall Council Chambers, 2<sup>nd</sup> floor, 3 Washington St, Keene, New Hampshire to consider the petition of Naomi McWhrik of 260 Land Road, Richmond, NH, requests a Variance for property located at 28 Park Ave., Tax Map #564-034-000, owned by 28 Park Ave. Plaza, LLC of 28 Park Ave., Suite 103 and is in the High Density District. The Petitioner requests a Variance to permit a hair salon for services and sales in an existing non-conforming mixed use building where mixed uses, services and sales uses are not listed a permitted uses in the district per Section 102-422, Permitted Uses in the High Density of the Zoning Ordinance.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, NH 03431 between the hours of 8:00 am and 4:30 pm. or online at <https://ci.keene.nh.us/zoning-board-adjustment>

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance: October 25, 2018

# APPLICATION FOR APPEAL

Zoning Board of Adjustment  
3 Washington Street, Fourth Floor  
Keene, New Hampshire 03431  
Phone: (603) 352-5440

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 18-21</u>
Date Filed	<u>10/18/18</u>
Received By	<u>CJM</u>
Page	<u>1</u> of <u>11</u>
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

## TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

### SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Naomi McWhirk Phone: (603) 831-0066  
Address 260 Lang Rd. Richmond NH 03470  
Name(s) of Owner(s) 28 Park Ave Place LLC  
Address 28 Park Ave, Suite 103 Keene NH 03431  
Location of Property 28 Park Ave Keene NH 03431

### SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 564-034-000 Zoning District 5 High Density  
Lot Dimensions: Front 51 Rear 286.34 Side 355 Side 595.51  
Lot Area: Acres 1.24 +/- Square Feet 53,815  
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 13% Proposed 13%  
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing \_\_\_\_\_ Proposed \_\_\_\_\_  
Present Use Mixed Use / retail / residential / office  
Proposed Use Mixed Use / retail / residential / office / Salon Sales and Services

### SECTION III - AFFIDAVIT

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Theodore Grossing Date 10/17/18  
(Signature of Owner or Authorized Agent)

Please Print Name Theodore Grossing

## APPLICATION FOR A VARIANCE

- A variance is requested from Section(s) **102-422. Permitted Uses in High Density district** of the Zoning Ordinance to permit: a hair salon for services and sales in an existing nonconforming mixed use building where mixed uses, services, and sales uses are not listed as permitted uses in the district.

### DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

- 1. Granting the variance would not be contrary to the public interest because:**  
The building existing now is nonconforming with retail, warehouse, office, and residential uses. In this area are other mixed use, nonconforming buildings such as a convenience store and deli, a salon, and a hardware store, all with apartments above. This building was used previously for a commercial bakery for wholesale bread making (2011), a paint store (1990) for selling wholesale and retail, a shoe store, and a school for bar tending (1994). If allowed this variance, it will be low intensity use which is compatible with the other mixed use buildings in the neighborhood. It is in the public interest to maintain the spirit and character of these mixed uses.
- 2. If the variance were granted, the spirit of the ordinance would be observed because:**  
The spirit of the ordinance is to protect the health, safety, and welfare of the public. This can be done by allowing uses which are similar and compatible to the surrounding land uses which this variance proposes. The proposed use will not generate any significant traffic or any excessive noise to disturb the neighboring properties. There is on-site, ample parking to accommodate customers. This proposal will not compromise public safety or threaten the welfare of the public.
- 3. Granting the variance would do substantial justice because:** Since being rezoned from business to High Density in 1977, the buildings uses has been mixed and nonconforming. A granted variance will allow continued mixed use of the property. The abutting parking lot is capable of accommodating above average traffic with a wide clear line of sight in both directions in accessing Park Avenue. This proposal meets the spirit of the ordinance and granting the variance would do substantial justice.
- 4. If the variance were granted, the values of the surrounding properties would not be diminished because:** This property has been nonconforming with mixed uses for a long time. Those of which include retail, office, warehousing, wholesale bakery, as well as residential. This proposal will allow a private salon, similar to the mixed use of one of the abutting properties, which will be low intensity without excessive noise or traffic. Granting a variance will not diminish the surrounding property.
- 5. Unnecessary hardship**

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

**i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

This property is in an area with both mixed and nonconforming uses. Before 1977 it was zoned as Business. As HD approvals were granted to the property by the ZBA to expand the business uses of it. One of which allowed for the construction of a new building, and the building of and addition in the rear. If the ordinance be enforced to prohibit the proposed salon services and sales use, an unnecessary hardship will result. This proposal is compatible with the mixed uses in the area, and will not put the public welfare to risk. There is no fair and substantial reason to deny this variance.

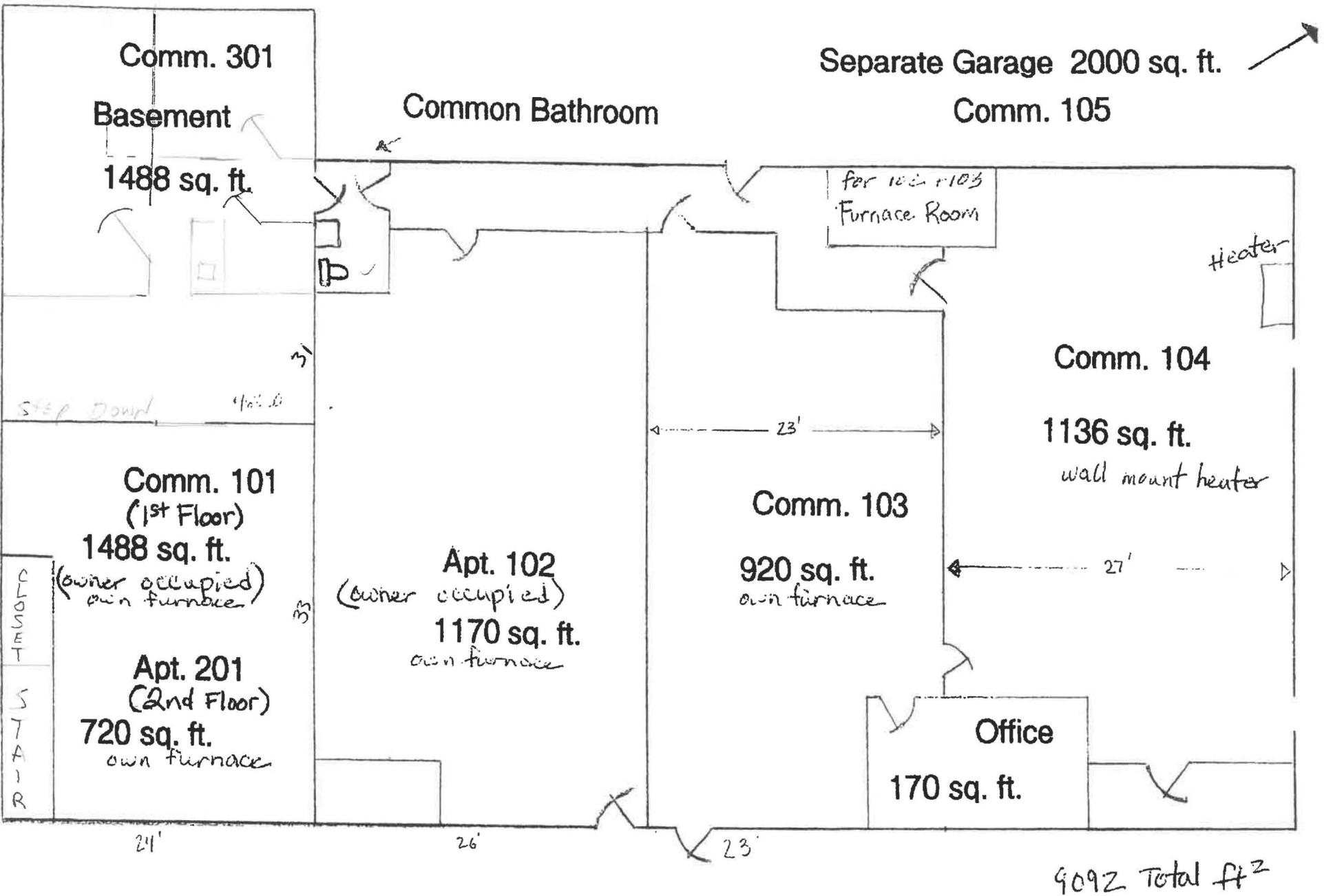
**And**

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

The proposed use will exist together without conflict with the mixed uses in the area. There is ample space on the lot to provide enough parking and amenities for this use. No excessive noise or traffic will be generated by the proposed use. The public health and welfare will not be endangered, and will not put vehicles or pedestrians at risk. Considering the special conditions of this property, it is fair and reasonable for this variance to be granted.

**B. Explain how, if the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

This property, in an area with mixed uses and nonconforming uses became nonconforming when it was rezoned to High Density in 1977. Approvals were given by the ZBA in 1994 and 1978 to widen the use on the property. A warehouse building was put in the rear, and additions were built to expand for business. This creates unnecessary hardship if the ordinance is enforced to prohibit the proposed salon sales and services use. This plan is parallel to the mixed uses in the area and will not put the public welfare at risk or be harmful to pedestrians. Salons are permitted in HD in home use giving this proposal a uniqueness of meeting the conforming and nonconforming uses of the area. There is no fair and substantial reason to deny this variance.





# 28 Park Ave.

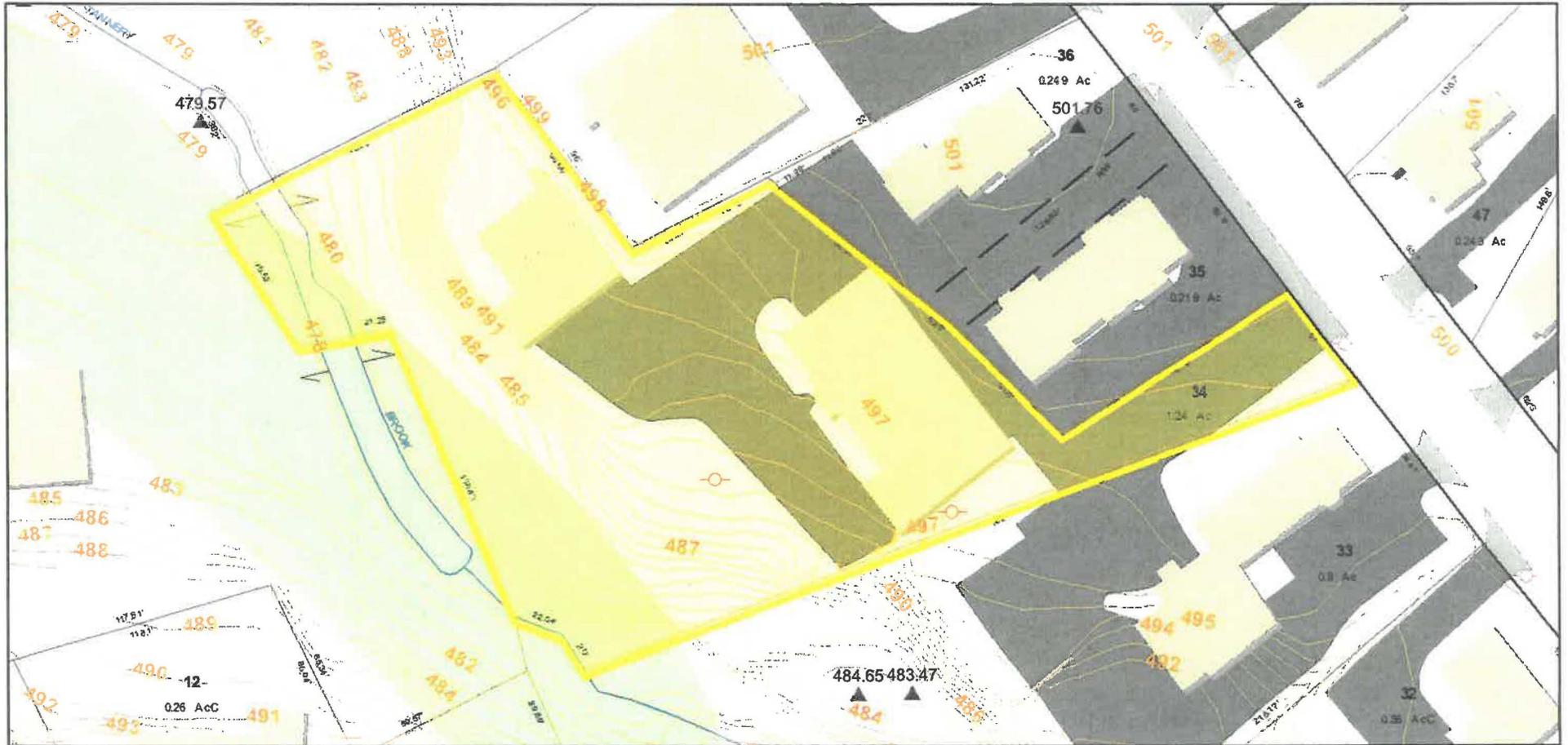
Keene, NH



July 26, 2018

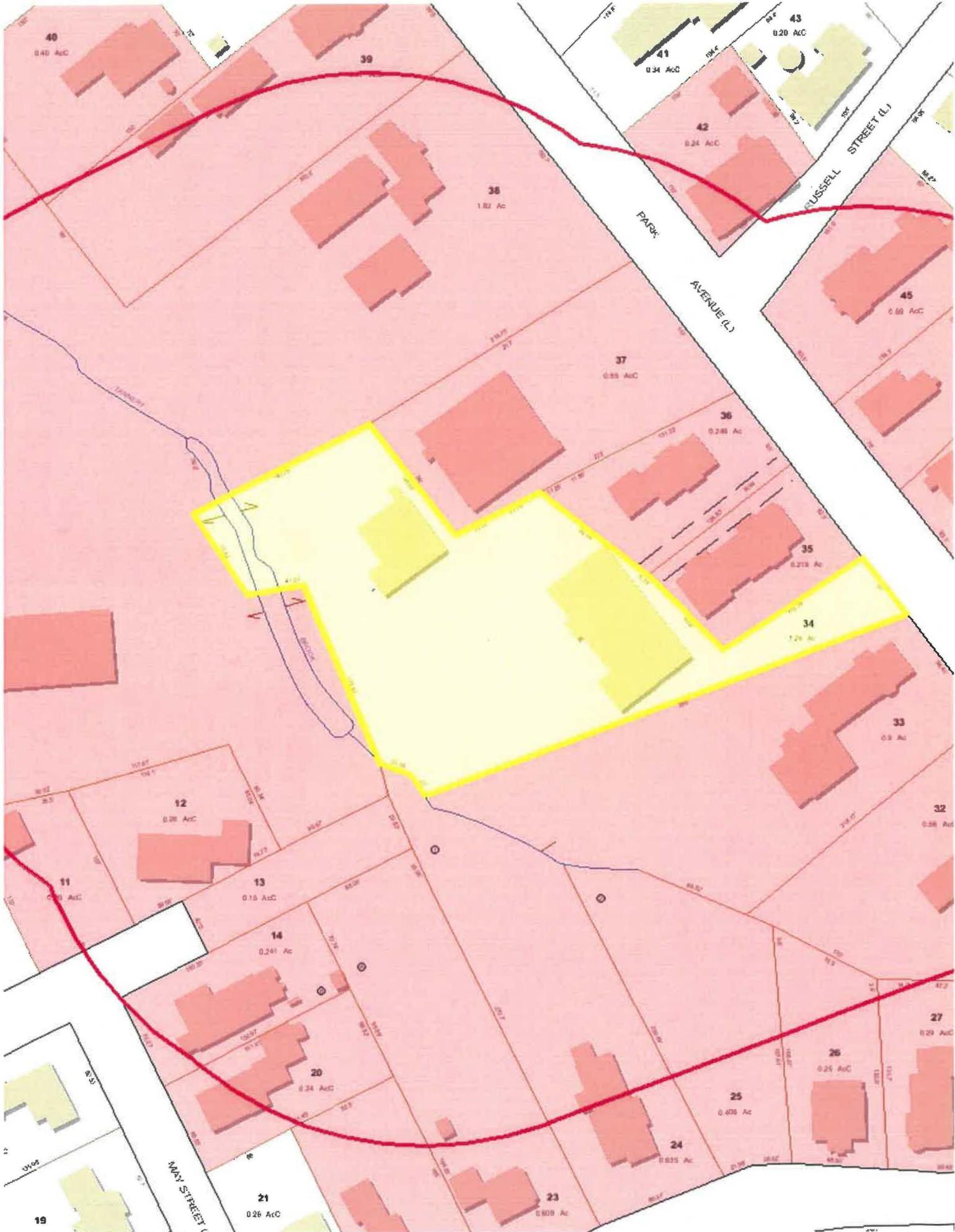
1 inch = 67 Feet

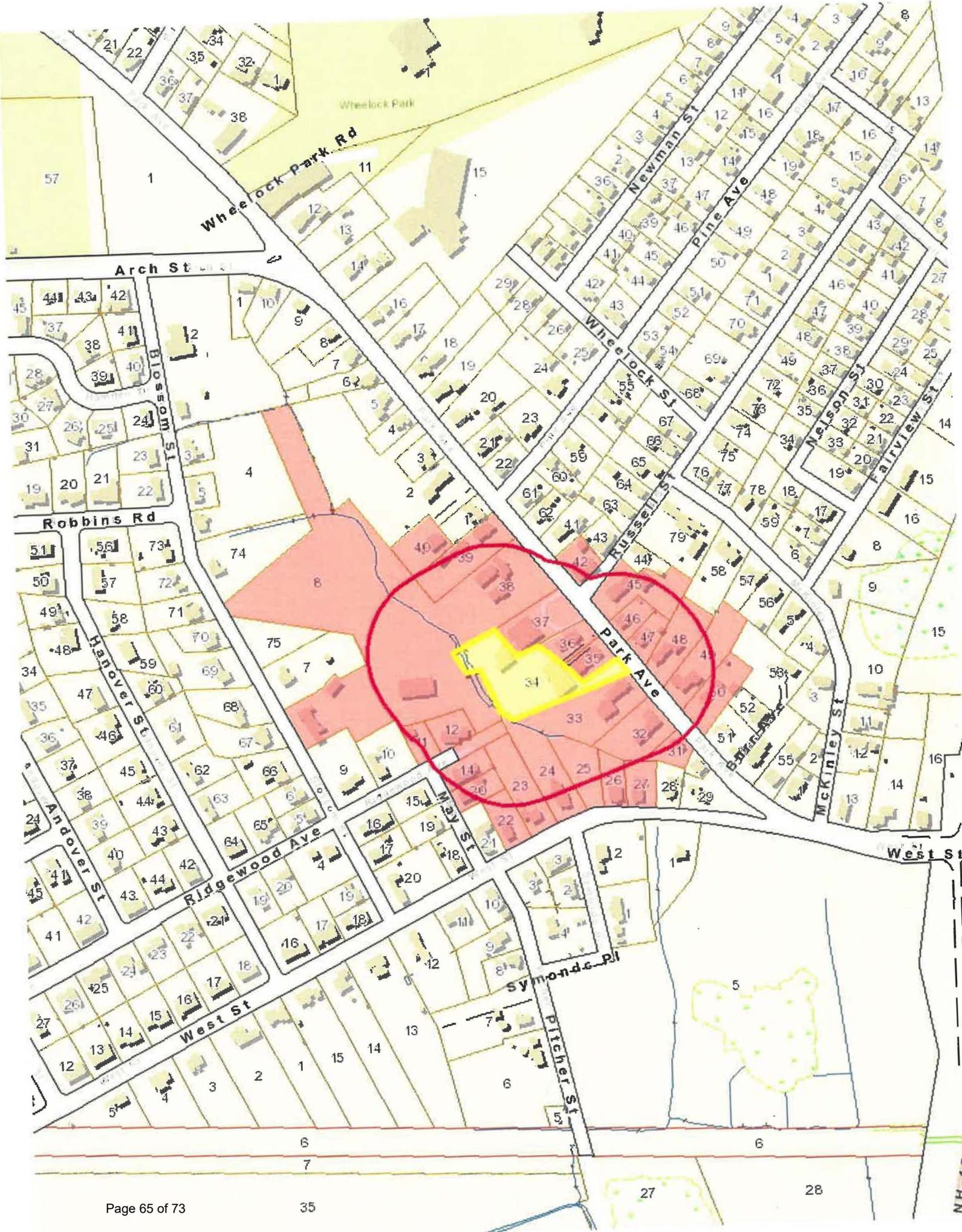
www.cai-tech.com



PWater	Property Hook	Shadow	PALUSTRINE
Property Line	Property TIC	Right of Ways	Utility Pole
Public Road	WaterLines	Contour	Driveway
Right of Way	Buildings	Spot Elevation	Parking Lot

Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.





564-048-000-000-000  
20-23 PARK AVENUE PROPERT  
63 EMERALD ST. PMB 174  
KEENE, NH 03431-3626

564-023-000-000-000  
JEAN LIONEL G. JR.  
577 WEST ST.  
KEENE, NH 03431-2809

564-008-000-000-000  
MITCHELL, WILLIAM R.  
25 BLOSSOM ST.  
KEENE, NH 03431

564-027-000-000-000  
CHAMBERLIN NANCY C. LIVIN  
567 WEST ST.  
KEENE, NH 03431

564-031-000-000-000  
JENKINS SHANE W.  
18 PARK AVE.  
KEENE, NH 03431

564-037-000-000-000  
MOSAKOWSKI STEPHEN W.  
343 SCHOOL ST.  
BOYLSTON, MA 01505

564-012-000-000-000  
CHRETIEN RUSSELL W. III  
1 RIDGEWOOD AVE.  
KEENE, NH 03431

564-039-000-000-000  
JOHNSON GARY & SHARON TRU  
48 PARK AVE.  
KEENE, NH 03431

564-020-000-000-000  
ROBERTS FREDERICK  
9 MAY ST.  
KEENE, NH 03431

564-013-000-000-000  
CITY OF KEENE  
3 WASHINGTON ST.  
KEENE, NH 03431

564-033-000-000-000  
KALICH RICHARD L.  
16 NORTH SHORE RD.  
SPOFFORD, NH 03462

564-014-000-000-000  
SANFORD FAMILY REV. TRUST  
2 RIDGEWOOD AVE.  
KEENE, NH 03431

564-025-000-000-000  
DELANEY PETER C.  
303 JORDAN RD.  
KEENE, NH 03431

564-036-000-000-000  
KARTER KARL REV. TRUST  
72 ADAMS ST.  
KEENE, NH 03431

564-050-000-000-000  
SMITH, CHRISTOPHER D.  
15 PARK AVE.  
KEENE, NH 03431

564-024-000-000-000  
DELANEY PETER C.  
303 JORDAN RD.  
KEENE, NH 03431

564-026-000-000-000  
LORENZ WILLIAM G.  
65 WILLOW BAY DR.  
PONTE VEDRA, FL 32081-0616

564-032-000-000-000  
TIMOTHY ROUSSEAU'S PROPERT  
40 GREENWOOD RD.  
DUBLIN, NH 03444

564-046-000-000-000  
EISNER, TABATHA  
29 PARK AVE.  
KEENE, NH 03431

564-045-000-000-000  
LOWER FRED D.  
77 HALLWOOD DR.  
SURRY, NH 03431

564-042-000-000-000  
TULLOCK PROPERTIES LLC  
37 PARK AVE.  
KEENE, NH 03431

564-049-000-000-000  
GRAY DAVID I.  
9 RIDGEWOOD AVE.  
KEENE, NH 03431

564-035-000-000-000  
MAHENDRAKUMAR MANAGEMENT  
65 PLAIN RD.  
HINSDALE, NH 03451

564-011-000-000-000  
VEKASY REV. TRUST  
5 RIDGEWOOD AVE.  
KEENE, NH 03431

564-022-000-000-000  
HEED PETER W.  
581 WEST ST.  
KEENE, NH 03431

564-047-000-000-000  
MAST DAVID H.  
27 PARK AVE.  
KEENE, NH 03431

564-040-000-000-000  
JAMESON HOWARD T.  
54 PARK AVE.  
KEENE, NH 03431

564-038-000-000-000  
MILLER BRIAN A.  
42 PARK AVE.  
KEENE, NH 03431-2352

31 Wyman Rd.  
ZBA 18-22



**Petitioner requests a Change of a Non-Conforming Use to permit a non-conforming use to be changed to another non-conforming use.**



# City of Keene

*New Hampshire*

## NOTICE OF HEARING

### ZBA 18-22

A meeting of the Zoning Board of Adjustment will be held on Monday, November 5, 2018 at 6:30 PM in City Hall Council Chambers, 2<sup>nd</sup> floor, 3 Washington St, Keene, New Hampshire to consider the petition of House of Hope of Swanzey, NH, represented by Brickstone Land Use Consultants, LLC of 185 Winchester Street request a Change of a Non-Conforming Use for property located at 31 Wyman Road, Tax Map #221-029-000, owned by Jeanna C. Hamblet Revocable Trust of 31 Wyman Road, and is in the Corporate Park District. The Petitioner requests a Change of a Non-Conforming Use to permit a non-conforming use to be changed to another non-conforming use.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, NH 03431 between the hours of 8:00 am and 4:30 pm. or online at <https://ci.keene.nh.us/zoning-board-adjustment>

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance: October 25, 2018

# APPLICATION FOR APPEAL

Zoning Board of Adjustment  
3 Washington Street, Fourth Floor  
Keene, New Hampshire 03431  
Phone: (603) 352-5440

<b>For Office Use Only:</b>	
Case No.	<u>ZBA 18-22</u>
Date Filed	<u>10/18/18</u>
Received By	<u>CM</u>
Page	<u>1</u> of <u>6</u>
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

## TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

## **SECTION I - GENERAL INFORMATION**

Name(s) of Applicant(s) House of Hope C/O Brickstone Land Use Consultants LLC Phone: 603-357-0116  
 Address PO Box 10371 Swanzey NH 03446  
 Name(s) of Owner(s) Jeanna C Hamblet Rev. Trust  
 Address 31 Wyman Road Keene NH 03431  
 Location of Property 31 Wyman Road Keene NH

## **SECTION II - LOT CHARACTERISTICS**

Tax Map Parcel Number 221-029-000 Zoning District Corporate Park  
 Lot Dimensions: Front 612 +/- Rear 619 +/- Side 290 +/- Side 352 +/-  
 Lot Area: Acres 5.5 Square Feet 239,580  
 % of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 2% Proposed 2%  
 % of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 6% Proposed 6%  
 Present Use Single Family  
 Proposed Use Group Home

## **SECTION III - AFFIDAVIT**

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Jeanna C Hamblet dotloop verified 10/18/18 11:27AM EDT DG2M-YE4P-TU5H-CSAZ Date 10-18-18  
(Signature of Owner or Authorized Agent)

James P. Phippard, AGENT  
 Please Print Name Jeanna C Hamblet JAMES P. PHIPPARD, AGENT

## APPLICATION FOR CHANGE OF A NONCONFORMING USE

The Zoning Board of Adjustment may, in appropriate circumstances and with appropriate safeguards, permit a nonconforming use to be changed to another nonconforming use provided that the following criteria are met.

### DESCRIBE BRIEFLY YOUR RESPONSE TO EACH QUESTION:

**1. The changed use will be more in the spirit and intent of the Zoning Ordinance.**

The change in use to a group home for women and children will be more in the spirit of the Corporate Park ordinance than the previous use as a single-family home. The House of Hope program is a self-funded, long term (18-24 month) program of therapy, support and training for the residents who are recovering from substance and sexual abuse. The House of Hope program conservatively has a 20:1 Social Return on Investment and uses no public resources for implementation. They will be taught life skills and working skills to help them become self-supporting, dependency free, productive citizens. They will also be making craft products such as quilts, baskets, wreaths, paintings, etc. which will be offered for sale in local retail stores such as Hannah Grimes. They will produce food products such as vegetables grown on site and honey from on-site beekeeping. This business aspect makes the proposed use more in the spirit of the Corporate park ordinance.

In a general sense, the spirit and intent of zoning is to protect the health, safety and welfare of the public. This is accomplished in two ways with this proposal:

First, by helping women who have overcome addictions to become self-supporting, dependency free, productive citizens, the entire community benefits. These women become contributing members of society, better parents, and reliable workers. The product, or business, of House of Hope is taking broken people who have been treated as 'goods' or commodities as addicts, victims of sexual violence and second-class citizens and helping them to a better life. They do it with a 90% success rate based on a program with a 40-year history. They ask nothing from the City of Keene or any other government entity but a change in use of the property that is something much more in line with the spirit of the Corporate Park ordinance.

Second, this proposal will save the existing historic house and barns. The Captain Isaac Wyman house was built in 1777 on what is an iconic site at the northern gateway to Keene. The home has been beautifully restored and provides an important statement as a gateway property. House of Hope will

preserve the home and barns as they exist today. They will have no signs, no large parking lot and have no plans to alter the appearance of the house or barns. A traditional Corporate Park use would more than likely lead to the removal of the house and barns to provide a pad site for a new building. The preservation of a historic building on a gateway property is a benefit to the public.

**2. The changed use will not be more injurious, obnoxious or offensive to the neighborhood.**

This location is an area of Corporate Park properties and businesses. There is one single family home abutting the property to the north of the site at the corner of Wyman Road and Black Brook Road. NH Rt. 12 is just south of the site. House of Hope has no plans to alter the appearance of the house and barns. Residents will not be allowed to have a car so there will be no large parking lot. There will be no sign added to the property, so the appearance will continue as it is today.

- Most of the therapy and training programs will be conducted inside the house or barns and will not result in excess noise.
- Bill and Phyllis Phelps are the founders and Executive Directors of House of Hope and will live at the facility. The only other traffic generated will be from volunteers working with the residents or transporting residents to appointments. Residents are not allowed to have cars. This small amount of traffic will not affect the safety or capacity of Wyman Road.
- There will be no drugs or medications dispensed at this facility.
- As a residential facility, there will be no programs or activities late at night.
- The site is served by city sewer and city water is available to the site and is adequate for the proposed use.

The proposed use as a group home for women and children will not be more injurious, obnoxious or offensive to the neighborhood than its current use as a single-family dwelling.

# 31 WYMAN ROAD

Write a description for your map.

Legend

Google Earth

200 ft



ABUTTERS TO 31 WYMAN ROAD

221-029-000,221-027-000  
Jeanna C. Hamblet Rev. Trust  
31 Wyman Road  
Keene NH 03431

221-001-000  
Marko Kivisto  
300 Summit Road  
Keene NH 03431

221-002-000  
Keene Executive Homes LLC  
10 Optical Ave. Real Estate Dept.  
Keene NH 03431

221-003-000  
Keene Executive Homes LLC  
7 Corporate Drive  
C/O C&S  
Attn: Real Estate  
Keene NH 03431

221-026-000,221-028-000 etc  
Caitlin Whitehead  
238 Warren Rd  
Framingham MA 01702

226-013-000  
Black Brook Logistics LLC  
7 Corporate Drive  
Keene NH 03431

House of Hope  
PO Box 10371  
Swanzey NH 03446

221017000  
Spofford Stage Real Estate LLC  
PO Box 572  
Spofford NH 03462

Brickstone Land Use Consultants LLC  
185 Winchester Street  
Keene NH 03431

Subscribed and sworn to before me by  
James P Phippard, this 15th day of  
October 2018 in Keene NH

  
James P Phippard

  
Ann E Quirk, Notary Public  
My commission expires 03/07/2023