

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 a 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 scheduled 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 Petitioners 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 plain forgot.

Mr. Welsh asked if there was any provision for a land owner who has been granted a Variance, 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 temporarily and 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 would to be 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, that is 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 apply 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 responsible 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 of past Board actions on a property 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 the Board would vote to affirm the application if the use is more conforming than the prior special use. In addition, he asked if the use is found to be less conforming 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 that 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 the 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 an affront 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 they will put something up that will not die. Chair Stout stated that it is always a complicated area in what is distinguished 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