

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, January 7, 2019

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Jane Taylor, Vice Chair
Joseph Hoppock
Joshua Greenwald
Michael Welsh

Staff Present:

John Rogers, Zoning Administrator

Members Not Present:

I. Introduction of Board Members

Vice Chair Gorman called the meeting to order at 6:31 PM and introduced members of the Board.

II. Minutes of the Previous Meeting-October 1, 2018 & November 5, 2018

Vice Chair Gorman asked the Board to review the minutes for October 1, 2018.

Ms. Taylor noted the following corrections:

- Page 5, 4th paragraph, first sentence, the words “not prohibited” corrected to “prohibited”.
- Page 6, first paragraph, last sentence, the word “forecloses” corrected to “closes”.
- Page 14, third paragraph, fifth sentence, the words “of a nonconforming” corrected to “for a nonconforming”.
- Page 16, second paragraph, the word “appeasing” corrected to “pleasing”.
- Page 18, last paragraph, last sentence, “Ms. Frederick” corrected to “Ms. Frederickson”.
- Page 19, third paragraph, last sentence, the words “the case law may not be substantial less adequate” be removed.

- Page 19, sixth paragraph, the word “endearment” corrected to “enlargement”.
- Page 19, last paragraph, second sentence, “statutes in case law” corrected to “statutes and case law”.
- Page 22, second paragraph, second sentence, the word “some” be removed after the word “contemplative”.
- Page 22, the first Findings of Fact corrected to 0-5.
- Page 23, the second Findings of Fact corrected to 2-3.
- Page 23, the sentence “On a vote of 5-0...” corrected to “On a vote of 0-5...”

Mr. Welsh noted the followings corrections:

- Page 5, first paragraph, first the word “incorrect” be corrected to “correct”.
- Page 23, on a vote of 5-0, the Zoning Board of Adjustment denied ZBA 18-19.
- Page 26, second to last paragraph corrected to “Vice Chair Gorman made a motion to deny ZBA 18-19. The motion was seconded by Mr. Greenwald.”

Mr. Welsh made a motion to accept the minutes from October 1, 2018 as amended. The motion was seconded by Ms. Taylor, which carried unanimously.

Vice Chair Gorman then asked the Board to review the minutes for November 5, 2018.

Mr. Welsh noted a correction on page 26, sixth paragraph, “The motion was seconded by Mr. Greenwald, which carried unanimously” corrected to “The motion was seconded by Mr. Greenwald, which failed unanimously”.

Ms. Taylor noted the following corrections:

- Page 26, last paragraph corrected from “Vice Chair Gorman made a motion to approve the motion to rehear ZBA 18-18. The motion was seconded by Mr. Greenwald, which carried unanimously”. The sentence corrected to “Vice Chair Gorman made a motion to approve the motion to rehear ZBA 18-18. The motion was seconded by Mr. Greenwald, which failed unanimously. The vote was 0-5”.
- Vice Chair Gorman made a motion to deny the motion to rehear ZBA 18-18. The motion was seconded by Mr. Greenwald.

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

- Page 32, second paragraph “Wes’s Color Center” corrected to “Clesson’s Color Center”.
- Page 33, fourth paragraph, “Wes’s Color Center” corrected to “Clesson’s Color Center”.
- Page 35, third paragraph, first sentence the word “maybe” corrected to “may be”.

- Page 45, second to last paragraph, last sentence, the word “outside” corrected to “inside”.

Mr. Hoppock made a motion to accept the minutes from November 5, 2018 as amended. The motion was seconded by Mr. Welsh, which carried unanimously.

III. Elections for Chair and Vice Chair

Mr. Greenwald made a motion to nominate Mr. Gorman as Chair of the ZBA. The motion was seconded by Mr. Hoppock, which carried unanimously.

Mr. Welsh made a motion to nominate Ms. Taylor as Vice Chair of the ZBA. The motion was seconded by Mr. Hoppock, which carried unanimously.

IV. Hearings

ZBA 19-01:/ Petitioner, Bruce R. and Kimberly A. Pilvelait Revocable Trust, represented by Thomas R. Hanna of 41 School St., Keene requests a Variance for property located at 0 Hurricane Rd., Keene, Tax Map Parcel #106-008-000, which is in the Rural District. The Petitioner requests a Variance for the construction of a single family home on a lot in the Rural District containing 3.7 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present per Section 102-791, Table of Basic Zone Dimensional Requirements of the Zoning Code.

Mr. Rogers explained the two applications before the Board are two side by side lots located on Hurricane Road. He referred to a map indicating the location of the property is heading down Arch Street going toward Westmoreland. The property is located in the Rural District, where five acres is the minimum required lot size.

Mr. Rogers researched the property and it was determined this lot was part of a subdivision that occurred in the 1970's. In the 1980's, the zones were changed. However, these lots were subdivided in a time where two acres were required. Mr. Rogers noted since then these lots have become nonconforming.

Vice Chair Taylor asked if the map of the lot line adjustment has been accomplished. Mr. Rogers responded that it was his understanding in speaking with the applicant the lot line adjustment will happen if the Variance is granted. He noted the applicants would need to go through the Planning Board to get the lot line adjustment.

Chair Gorman recognized Attorney Thomas Hanna of 41 School Street. Attorney Hanna stated he represents the owners of the two lots, Kimberly and Bruce Pilvelait. He stated the two lots are located just easterly of the former Scranton property. The property is located approximately 6/10 of a mile up Hurricane Road from the intersection of Hastings Avenue. In addition, the property is located 4/10 of mile from Felt Road and 3/10 of a mile beyond the property is the intersection of Dickinson Road.

Attorney Hanna stated they propose a lot line adjustment on the internal lot line. He stated the reason for the lot line adjustment is in order to have both lots fully comply with the setback

requirements, especially the 200 foot width requirement at the building line. Attorney Hanna quoted the definition of a building line from the Zoning Ordinance to state that a “*Building line means a line parallel to the street, establishing the closest point to the street at which a structure can be constructed.*”

Attorney Hanna noted the Board will see on their copy of the map, the building line of 200 feet. He stated that incidentally that 200 foot building line is the Rural District setback and is not Low Density. He noted this lot will comply with all dimensional requirements for the Rural District with the exception of the lot size. He noted that he was going to treat these lots as the same because their general characteristics are the same. In addition, his responses for the Variance criteria are also the same for both lots.

Attorney Hanna stated with sight line, the sight distance is excellent. He noted it is a straight shot right in front of the two lots. In addition, there is at least 250 feet of sight distance in either direction. He stated that it is definitely not an unduly trafficked area and has a speed limit of 30 miles per hour.

Attorney Hanna stated there will be full compliance with the setbacks. He stated these lots are about 800 feet deep, which he noted was unique. A feature of a lot of the properties that he has worked on, on Hurricane Road is that there are a lot of steep slopes. Attorney Hanna stated these lots are not as steep compared to many others. He stated these two lots have flat areas for building. He stated the drainage is excellent on this lot and a natural drainage will continue. In addition, he noted there are swales fairly close to Hurricane Road.

Attorney Hanna stated his clients in this instance are ideal clients. The moment they came to him they explained the reasoning for wanting to have these two lots. He noted his clients wanted to do this right. Attorney Hanna then recommended his clients contact Jim Phippard and Dave Bergeron from Brickstone Land Use Consultants, LLC. His clients did, and then proceeded to complete a land survey and a septic evaluation. Attorney Hanna referred the Board to the letter submitted from the septic designer. In addition, they did wetlands delineations and topography work. The retention of Brickstone Land Use Consultants, LLC was to make sure that a house could fit nicely on either lot without violating any City Ordinances or state environmental regulations.

Attorney Hanna then referred the Board to the plan located in their packet. He indicated the location of Hurricane Road and the existing property line. Attorney Hanna stated the proposal is the shaded area of parcel B would be swapped for parcel A. Parcel A would then become part of lot #9. He stated the building lines and the way they interpret the Ordinance is to look at the very first place from the street that could establish the 200 foot building line. He then indicated the location of the building lines on both lots. Attorney Hanna noted that this does not mean someone has to build there but is a means to demonstrate compliance with the Ordinance. In addition, he noted this area for the housing is likely but not precise. He said it is intended to demonstrate a house of average size can be located without violating any of the Ordinances or statutes.

Attorney Hanna then indicated the large swale area that is likely to continue to be a major source of where the drainage will go naturally. He stated that Hurricane Road has a guard rail on the left

protecting drivers from the ditch. Attorney Hanna indicated where the fence ends is a nice spot for a driveway that avoids wetlands. Attorney Hanna noted that his idea is to talk about both properties at the same time otherwise it would be repetitive. Chair Gorman asked if there was any objection from the Board. With no objection, Attorney Hanna continued his presentation.

Mr. Hoppock asked Attorney Hanna to speak to the distance between the two driveways and the grades. Attorney Hanna responded that the distance between the two of them is 183 feet from the closest part of the driveway. He added that Mr. Pilvelait could speak more accurately to the slope of the driveways.

Chair Gorman then recognized Bruce Pilvelait, 30 Sunnyside Circle, Charlestown. Mr. Pilvelait stated these lots are relatively flat compared to the other properties along most of Hurricane Road. He referred the Board to the topography map in order to see where there are many lines close together, which indicates a steep section. The lines drawn further apart are the flatter section. Mr. Pilvelait stated the driveway areas are relatively flat and lead up to the house sites. Their plan is to put the house site on top of a knoll, excavate down about 15 feet and put a house on top.

Attorney Hanna referred to the plan noting that test pits were done. In addition, he also wanted to point out the wetland area are the hashed areas on the plan.

While referencing a map of the subject properties, Attorney Hanna stated there are five property lots that are two acres or less situated next to each other. There are also 18 lots that are sub five acres within close proximity of the Pilvelaits properties. Attorney Hanna noted the 18 lots include the Pilvelait's. Vice Chair Taylor asked if this was 18 total or 18 vacant lots. Attorney Hanna responded there are 18 lots that are less than five acres and many are built on. Mr. Pilvelait's also stated that most of these lots have homes on them.

Attorney Hanna reported this was a subdivision that was done by John Lankhorst that was completed in the early 1970's and then the Ordinance changed to create the five acre minimum. He believed there was a substantial period of time before the 1980s where lots of less than five acres was the minimum lot size. He noted there was an exception that would allow lots of less than five acres to be built on if it could be demonstrated that a septic system would be sustainable on lot.

Attorney Hanna then proceeded to review the criteria.

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

He stated that he has given the Board several reasons about why these are very good building lots. The first thing to check out on any lot is if the lot can support a septic system. He referred to the copy of the letter from Mike Faulkner, a licensed designer of subsurface disposal systems and certified septic system evaluator. In addition, he stated that Mr. Phippard and Mr. Bergeron took a good look at the drainage system and determined this is a site that will not have any drainage issues.

He referred to the Liebert case that was a sub five acre lot where there was an issue with drainage on Daniels Hill Road.

Attorney Hanna stated the Pilvelait lot does have a berm that is in the middle of the two lots. He noted it does not affect sight distance but does screen the activities behind it from the road.

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

Attorney Hanna stated a house can fit on either of these lots and meet more of the restrictive Rural District requirements for setbacks and so forth. The lots will be in keeping with the area. He noted the case of *Belanger vs. City of Nashua* case, stating that one does look at the nature of the neighborhood. He explained the Belanger case stated that cities have an obligation to have their ordinances or application of the ordinance reflect the current characteristics of the neighborhood. He noted this area was close to the Low Density District and the three lots adjacent to it are substandard.

Granting the variance would do substantial justice because:

Attorney Hanna stated that any loss to the individual that is not outweighed by a gain to the general public is considered to be an injustice. He stated the Board will hear directly from his client about the importance of having both of these lots. In addition, the harm to his clients as a result of the denial would not be outweighed by any particular gain to the general public. Attorney Hanna explained this was for reasons he had previously stated.

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

Attorney Hanna stated the lot will not be heavily cut and will be maintained by keeping many of the trees. He stated the site is a nice location for a house and that the houses will be well done and valuable. Attorney Hanna noted the lots are taxed as building lots right now and have been.

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 purposes of the ordinance provision and the specific application of that provision to the property because:

Attorney Hanna stated these lots have been separate lots since early 1970 when it was the Lankhorst subdivision. He stated part of that subdivision with similar size lots, contains houses on them and the lot in between them does not. He stated if you look at the character of the neighborhood under the *Belanger vs. City of Nashua* case under Simplex, the character of the neighborhood indicates that sub five acre lots are not uncommon and are in keeping with the neighborhood. He stated you cannot look at the underlying purposes of the Rural District under this case law without looking at what has happened to the character of the neighborhood. The

proposed houses on these lots will continue to have a rural feel, are 800 feet deep, meet the rural standards for setbacks of 50 feet on the sides and are substantially more than 50 feet from the front. In addition, the lots will meet the 200 foot building width law. Attorney Hanna emphasized that these lots have been taxed around \$45,000 per lot. He noted that of the eight sub five acre Variances that the Board has heard since 2012, the Board has granted all eight. He said there are quite a few lots where Variances have been granted that are substantially smaller than these lots. In addition, he noted that those lots do not have the attributes of these two lots.

ii. The proposed use is a reasonable one because:

Attorney Hanna stated the proposed use for a single family home is a permitted use in the Rural District. The proposed use and the lot size will be consistent with the uses and the pattern of development in the neighborhood. The proposed use is reasonable because 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.

Attorney Hanna stated they have requested the Variances be extended under Ordinance 102-36(b) and under State Statute 674:33 I (a). He commented that the statute states that Variances are valid for two years or as extended by the Zoning Board for good cause.

Attorney Hanna then read a portion of Ordinance 102-36(b) as follows *“Applications for extensions shall be heard as a new petition; any other time limitation shall be specifically prescribed by the zoning board of adjustment”*.

Attorney Hanna stated the Board has had some precedent with granting these extensions. He referenced an extension request for Catherine Ruffle in 2016. Attorney Hanna stated that Ms. Ruffle requested an extension of ten years. In her case, Ms. Ruffle reported to the Board that she had ten years before retirement and hoped to will the land on Chapman Road onto her children if she did not build on it at the time of her retirement. He stated both City staff and others reported the Board does have the authority to approve these extensions. Attorney Hanna referred to the minutes of November 7, 2016 and read the following, *“Mr. Stout said he thinks there is a compelling argument to approve the Variance having seen the effect on taxes over the last 24 years”*. Attorney Hanna added that he thinks the Board will understand after hearing from Mr. Pilvelait, why the Pilvelait’s have good reason to want some substantial time period beyond the two years to work out their long term family planning.

Chair Gorman welcomed those to speak in favor of the application.

Bruce Pilvelait returned to address the Board. He explained that he and his wife, Kimberly currently live in Charlestown with their middle son, John. Mr. Pilvelait stated their younger son is away at college and their older daughter lives outside the home. He stated their middle son John continues to live with them and they are purchasing this property for long term planning. Mr. Pilvelait stated they are thinking about relocating to Keene in order to have a more upscale environment. He explained that Charlestown is rural and a relatively poor farming community. In addition, they love Keene. He stated they love Keene because of the amenities, the college

town and all of the things to do. They want to relocate to Keene now that they have freedom to think about retirement. He noted they are ten years or so from being able to retire and this is their long term planning. Their son John has special needs and he may always live with them. Mr. Pilvelait explained they are not sure but are working toward a long term independent plan for him. However, they are thinking about his long term living arrangements as well and want to give him as much independence as possible. He said this property with adjacent residences affords them the flexibility to do whatever their son's needs become in the future. In event that their son is able to live on his own and move away, these properties becomes part of their estate to pass down to their heirs.

With no further comment, Chair Gorman welcomed those to speak in opposition of the application.

Parker Hansel, 233 Hurricane Road, stated that he moved to Keene in 1983. He referred to the map indicating the houses that were already there when he moved to Hurricane Road. He stated that he has some concerns. Mr. Hansel stated the main thing is precedence and whether Hurricane Road is going to be lined with two acre lots. He stated that he would not object to a house if the two lots were combined. Mr. Hansel stated the two lots in discussion are long and narrow and thinks that allowing this will put two houses close together in a Rural District. He also had the impression there are some restrictions on what can be done with the stone walls along Hurricane Road. He noted that Hurricane Road is a historic road with the stone walls and thinks that someone should do some research as to what can be done with these walls.

Mr. Hansel stated that he also owns, along with his brother, another property on Hurricane Road and has a vested interest. He has no objections to neighbors; he is just concerned about the nature of what is happening along Hurricane Road. Mr. Hansel noted there has been a lot of development. In closing, he stated that he would like to see everyone follow the zoning that was put in place 40-50 years ago.

Sally Hansel, 233 Hurricane Road, stated that when they moved here it was their understanding that this area was five acre zoning and was the Rural District. Ms. Hansel stated that when the City puts together a master plan they have a master plan in their head and it is intended to be kept that way. She stated that little by little all these houses have been built. Ms. Hansel does not see why the City had eight requests in that last few years and all have been passed when the Master Plan is saying the City wants five acres. She stated that it is easy to lose what the plan originally was because now all these other houses were approved so the rest should be approved. Ms. Hansel stated that in the end there will not be a Rural District.

With no further comment, Chair Gorman welcomed comments from the Board.

Mr. Greenwald asked if the Hansel's knew what uses have been attempted with these lots over the last twenty years. Mr. Hansel responded nothing that they knew of except that it was recently purchased.

Chair Gorman asked if Attorney Hanna wished to offer a rebuttal.

Attorney Hanna stated that the Zoning Ordinance trumps the Master Plan. He stated the Ordinance has to be based on the Master Plan and the Ordinance provides for Variances. Attorney Hanna stated that he mentioned there have been eight of these applications for the sub five acre lots since 2012. He reported that he has had a number of them before the Board, such as on Gunn Road. He stated that Gunn Road did a subdivision with two acre lots. Attorney Hanna stated that not long after that subdivision was approved by the Planning Board, the five acre zoning came into effect. He stated that every time someone wanted to build on these new lots, the developer had done all of the infrastructure and a Variance was still needed and Variances were granted. He stated Keene is somewhat unusual in how they treat substandard lots. Attorney Hanna stated that many municipalities have a lot of record provision that allow for building on legally nonconforming lots. Usually those ordinances state that as long as a septic system can be approved and the lot meets all other zone dimensional requirements, a lot can be developed.

Vice Chair Taylor noted that it is not relevant what other communities may have in their zoning ordinances. She asked much time the applicant is requesting an extension for and if this was something Attorney Hanna thought should be handled at this meeting. Attorney Hanna responded in the affirmative. He stated the request is to seek an extension of eight years beyond the two year time limit for a total of ten years. Vice Chair Taylor stated that this letter was not part of the Board's packet. Attorney Hanna then presented a copy of the letter to the Board.

Vice Chair Taylor then read the letter requesting the extension from Attorney Hanna, dated on December 20, 2018. The letter was addressed to Nathaniel Stout, Zoning Board of Adjustment.

The section of the letter requesting the extension is read as follows:

“Assuming the variances are granted, Mr. and Mrs. Pilvelait seek and extension of 8 years beyond the 2-year time limit (for a total of 10 years) during which the variances will remain valid”. I will address this at the end of this letter.

Sec. 102-36(b) imposes a 2-year time limit to act on a variance. Mr. and Mrs. Pilvelait seek an 8 year extension to allow a total of 10 years to build their homes. Their request relates to planning for the long-term care of their special needs son. We will be prepared to provide additional details at the hearing”.

Vice Chair Taylor referenced Ordinance 102-36(b) *“Applications for extensions shall be heard as a new petition...”* She stated that her experience with the request for extension is that it is exercised as you are getting towards the end of the two year period and is for good cause. She noted the local Ordinance is that it has to be heard as a new petition. She has never seen one of these at the front end of a Variance request as opposed to after its approved and further down the road. Attorney Hanna stated that he has seen them and that he really does not think the Ordinance should be read that strictly. He explained that with a two year term, an Applicant may find that the time has gone by and they realize that they haven't started on their house and their time is running out. It is then that they need to seek an extension. He referred to the situation with Ms. Ruffle, where she received an extension in 2016 for ten years. Attorney Hanna stated that from the efficiency of the process, the inconvenience and expense of the applicant and the Board's time there is good cause to know that two years is too short of time. He added that in his

view they are bringing a new petition contemporaneously with the application for Variance. He stated that it is totally appropriate to consider this now and not put the Applicant through coming back and possibly missing the date and suddenly having to apply for a new Variance. Attorney Hanna stated he cannot tell if his clients will need ten years but it does coincide with their retirement. In addition, he stated they have a situation where they are assessing the level of opportunity to have an independent situation to the extent feasible. Attorney Hanna stated that right now is time to accept extension.

Mr. Welsh asked if Mr. Rogers is familiar with any other Variances that have attached conditions pertaining to duration. Mr. Rogers responded not during his time as the Zoning Administrator. He referenced Ordinance 102-36(b) as follows “*Applications for extensions shall be heard as a new petition; any other time limitation shall be specifically prescribed by the zoning board of adjustment*”. He stated that based on this, it is up to the Board to prescribe the time.

Mr. Welsh asked if there is anything prohibited from attaching a different time limit. Mr. Rogers responded that based on Attorney Hanna’s testimony and reading the Ordinance that he would defer this to the Board if they felt comfortable.

Attorney Hanna added that it was his understanding of statute 674-33 I (a). He stated that he believes the statute is relatively new. He explained that he thinks the statute was essentially to prohibit towns from having periods of time less than two years. He read statute 674-33 I (a) as follows “*variance authorized under paragraph one shall be valid if exercised within two years from the date of final approval or as further extended by the local ordinance or the zoning board of adjustment for good cause provided that no such variance shall expire within six months after resolution of a planning application on reliance on the variance*”. Attorney Hanna added they recognize that the Board does not have to do this but he thinks they have been given good cause.

Mr. Greenwald asked if the property was owned by the Pilvelait’s for the last five or six years. Attorney Hanna responded in the affirmative. Mr. Greenwald asked if he knows the circumstances of why it lists the name Asher on the assessing card. Attorney Hanna replied that he did a title search and the property was bought from the Scranton Estate. Mr. Pilvelait stated they purchased the property from the Scranton Estate. Mr. Greenwald stated during his research of the assessing card he discovered that it lists something different. Attorney Hanna stated that he did see what Mr. Greenwald saw on the assessing card but that it must be an error.

Mr. Greenwald asked what the circumstances surrounding the purchase were since it was five years ago. He noted the intentions are very compelling but five years ago that may not have been the case. Mr. Pilvelait responded that life as a parent of someone that has special needs is very difficult and is a fluid situation. He stated they spent five years of their son being in high school to prepare him for independence when he left high school. They thought they had a good plan in place then they had a setback. Mr. Pilvelait stated in 2013 they had plans to transition into Keene so their son could continue to work and go to the YMCA. He explained the last five years has been difficult and their intention is the same as it has always been. Mr. Pilvelait emphasized that their intention is to transition to Keene in order to have more resources and amenities for their son. He noted there has been a delay.

Mr. Pilvelait then explained that they did get a good deal on the property and did negotiate with the Scranton estate.

Mr. Pilvelait stated their intent remains the same. He explained that it is the reason why they want to appeal to the Board to consider the longer duration for the Variance. Mr. Pilvelait noted that five years can go by in the blink of an eye. Mr. Pilvelait stated they looked at other properties on Darling Court but these two adjacent lots seemed like a great way to accomplish their goal.

Chair Gorman asked if there was any new information that should be presented from those opposed to the application.

Ms. Hansel asked what happens if the Applicant is granted the Variance, plans change and the two building lots then are sold. Chair Gorman responded that the Variance goes with the property not the owners.

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

The Board agreed to review the criteria for ZBA 19-01 and 19-02 combined.

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

Mr. Hoppock stated that he does not think these applications, for the purposes or uses that these people propose will alter the essential character of the neighborhood or create a safety hazard to any degree. He stated that he is convinced that all of the criteria are satisfied. In addition, he stated that Attorney Hanna spells it out clearly that the septic system is supported, sight line on the driveways is good and the road is straight beyond these two properties for some distance. Mr. Hoppock stated that he does not see any public safety issue there or a problem with health or welfare. In addition, he noted that it is the character of the neighborhood is rural and will remain that way.

Mr. Welsh concurred with Mr. Hoppock's statements.

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

Vice Chair Taylor stated that she has concerns with this because she does not agree that the spirit of the ordinance would necessarily be observed. She stated that was the whole point of turning the zoning requirements from two acres to five acres. Vice Chair Taylor stated there are many substandard lots but the Board is required to take each application on its own merits. She does not think that it does meet the spirit of the ordinance because it does exactly the opposite of what the Zoning Ordinance was intended to do.

Mr. Hoppock stated that he respectfully disagrees. He stated that it does meet the spirit of the ordinance because it does maintain the rural character of the area. In addition, he stated that he is satisfied with the presentation and that the criteria is met.

Mr. Welsh stated that it is an affirmation that it is consistent with the existing rural character and they would blend into the next consideration which is substantial justice consideration. He stated that it is relevant to him that these lots were sold as building lots at less than five acres and was subdivided before the Zoning Ordinance was changed. He stated that it is unlikely to see a proliferation of situations of this sort because there are not more pre-zoning ordinances sub five acre lots.

Granting the variance would do substantial justice because:

Mr. Greenwald stated that in his opinion they will never know the value of the purchase. He stated that he understands the purchase was negotiated strongly. Mr. Greenwald stated there is no way to buy two building lots for \$75,000, without knowing there is something they might not be able to do. He stated that he did not know if they thought they could build on both lots when they purchased them.

Chair Gorman referred to Mr. Greenwald's statements. He stated when someone does purchase real estate it is certainly up to them to do any due diligence to figure out if lots are buildable regardless if they are separate or one lot.

Attorney Hanna asked Chair Gorman to reopen the hearing since the discussion was moving toward self-created hardship. He stated the issue that Chair Gorman referred to was self-creating hardship and that his clients should have known the restrictions on the lot. Attorney Hanna stated the Supreme Court has stated that is not a determinative factor and is not a dispositive factor. He said the fact that they did or did not know the fact is that they did know it was two lots and they have the right to apply for a Variance. Chair Gorman noted that he was unable to finish his previous statement before Attorney Hanna's request to reopen the public hearing. He concluded by stating that the applicants do have the right to request a Variance.

With no objection, Chair Gorman reopened the public hearing.

Attorney Hanna stated the fact that the Pilvelait's paid \$75,000 for two building lots is not dispositive on the issue of whether they knew or did not know about their opportunities. He stated they may have known they needed to apply for a Variance but the fact is that they knew this was five acre zoning and knew they could not get a building permit. Attorney Hanna stated this is called a self-created hardship and they are not entitled to benefit. He noted that in this case, it is restricted because there are two lots that are substandard. Attorney Hanna explained that it does not preclude them from coming forward and asking for a Variance. Chair Gorman stated that what they buy is fairly arbitrary. He stated the reason they are here is because they are not buildable lots and the request is for a Variance to make them buildable.

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

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

Mr. Hoppock stated the proposed development is consistent with that area's present use, as such you can reason there are two single family homes on a rural road with other single family homes. He noted this is not going to change the values of anyone. In addition, Mr. Hoppock stated that no one has brought forward any evidence to the Board that would indicate that is the case. He added the surrounding properties values would not be diminished because it is consistent with present use.

Mr. Greenwald stated that he would concur with Mr. Hoppock.

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:

Vice Chair Taylor stated that while a self-created hardship if they purchased the property knowing it was not buildable without a Variance cannot be dispositive. She stated it is entirely appropriate for the Board to consider it. She stated she has a problem with a concept of granting Variances on this purely because of a zoning issue. Vice Chair Taylor stated basically what they are asking for is to be relieved from the area of requirements. She has not heard of any specific relationship to special conditions to the property and is purely a matter of zoning. She stated that even though it may be a reasonable use it has to meet both prongs and she does not see the hardship.

Mr. Welsh stated the general public purposes of the ordinance in terms of conditions that have already been discussed such as septic, drainage and sight distance, that it is his impression a large part of why the five acre number has arrived. Mr. Welsh stated that the Board has heard substantial testimony that those issues have been taken care of in this case. He stated the purpose of the Ordinance is not supported any more by upholding that Ordinance when these conditions are satisfied.

Mr. Hoppock stated that he would largely concur with Mr. Welsh's comment. He added that as he sees it, the general public purpose of the Ordinance for Hurricane Road is a Rural District to maintain Low Density development. He stated denying the application would present that there would be no fair and substantial relationship between that general purpose and the specific application. He added the application goes to the general purpose of the Ordinance because it is a Low Density proposal and they are under the five acre minimum. Mr. Hoppock stated to no fault of their own that was changed to the property before they even bought the property. In addition, Mr. Hoppock stated that he does not agree with the self-created hardship analysis and thinks that the Board should stick to the five criteria. He stated that they do propose a reasonable use and are maintaining rural character of the area and that is why he supports this application.

ii. The proposed use is a reasonable one because:

Mr. Hoppock stated that it is a single family home and is a permitted use in that district. He stated that it is a reasonable use because the proposed use is exactly what is allowed there and they are not doing anything beyond trying to build a home.

Mr. Greenwald asked if this was a single lot and the proposal was to subdivide it to turn into two lots but then was denied, would it be a hardship to deny them the ability to subdivide. Vice Chair Taylor noted the subdivision is something that would be before the Planning Board. Mr. Rogers stated that the subdivision would go before the Planning Board and they would not be able to subdivide due to violation of the Zoning Code. In addition, they would need to get a Variance prior to subdivision before it could even occur.

With no further comment, Chair Gorman explained that the Board would vote on one application ZBA 19-01 and then ZBA 19-.02.

Mr. Hoppock made a motion to approve ZBA 19-01. The motion seconded by Mr. Welsh.

The Board reviewed Findings of Fact.

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

If the Variance were granted, the spirit of the Ordinance would be observed: 4-1 Vice Chair Taylor opposed

Granting the Variance would do substantial justice: 4-1 Vice Chair Taylor opposed

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

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship: 4-1 Vice Chair Taylor opposed

On a vote of 4-1, the Zoning Board of Adjustment approved ZBA 19-01. Vice Chair Taylor opposed

Mr. Hoppock made a motion to approve the request for an eight year extension, on top of the two years for the duration of this Variance. The motion was seconded by Mr. Welsh.

Chair Gorman welcomed comment from the Board.

Mr. Greenwald stated this request is a long time and noted there is a possibility these properties could be sold. He noted there is a reason for every two years. Mr. Greenwald asked if there was some middle ground between two and ten years. He agreed that two years goes by quickly and that the Pilvelait's may not know what they are doing with the properties. Vice Chair Taylor

stated that she agrees with Mr. Greenwald's statement. She stated that she cannot see the justification in granting an extension on the front end.

On a vote of 0-5, the motion to approve the request for an eight year extension, in addition to the two years for the duration of this Variance was denied.

Mr. Greenwald made a motion for an extension for four years in addition to the two years, for a total of six years be approved. The motion was seconded by Mr. Hoppock.

On a vote of 4-1, the motion for an extension for four years in addition of the two years, for a total of six years was approved. Vice Chair Taylor voted in opposition.

ZBA 19-02:/ Petitioner, Bruce R. and Kimberly A. Pilvelait Revocable Trust, represented by Thomas R. Hanna of 41 School St., Keene requests a Variance for property located at 0 Hurricane Rd., Keene, Tax Map Parcel #106-009-000, which is in the Rural District. The Petitioner requests a Variance for the construction of a single family home on a lot in the Rural District containing 2.97 acres where 5 acres is the minimum required lot size in the Rural District where city water and city sewer are not present per Section 102-791, Table of Basic Zone Dimensional Requirements of the Zoning Code.

Mr. Hoppock made a motion to approve ZBA 19-02. The motion was seconded by Mr. Welsh.

The vote is on based on Attorney Hanna's presentation, previous statements, discussion and deliberations.

The Board reviewed Findings of Fact.

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

If the Variance were granted, the spirit of the Ordinance would be observed: 4-1 Vice Chair Taylor opposed

Granting the Variance would do substantial justice: 4-1 Vice Chair Taylor opposed

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

Unnecessary Hardship

E. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because: 4-1 Vice Chair Taylor opposed

On a vote of 4-1, The Zoning Board of Adjustment approved ZBA 19-02. Vice Chair Taylor voted in opposition.

Mr. Hoppock made a motion for an extension for four years in addition to the two years, for a total of six years be approved. The motion was seconded by Mr. Welsh.

On a vote of 4-1, the motion for an extension for four years in addition to the two years, for a total of six years was approved. Vice Chair Taylor voted in opposition.

V. New Business:

Mr. Rogers asked the Board to review and vote on the 2019 Board meeting calendar.

Mr. Greenwald made a motion to accept the 2019 Board meeting calendar as presented. The motion was seconded by Mr. Hoppock.

On a vote of 5-0, the Zoning Board of Adjustment approved the 2019 ZBA Calendar as presented.

VII. Adjournment

Vice Chair Taylor made a motion to adjourn the meeting. The motion was seconded by Mr. Hoppock, which carried unanimously. Hearing no further business, Chair Gorman adjourned the meeting at 8:31 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker