

**Zoning Board of Adjustment
Monday, June 3, 2019, 6:30 p.m.
City Hall Council Chambers
3 Washington Street, 2nd Floor**

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – May 6, 2019
- III. Unfinished Business
- IV. Hearings:

ZBA 19-07:/ Petitioner, Brady Sullivan Keene Properties, LLC of 670 North Commercial Street, Suite 303, Manchester, NH, requests a Variance for property located at 0 Island Street, Keene, Tax Map Parcel #583-014-000-000, which is in the Commerce District. The Petitioner requests a Variance to allow a self-storage facility within the Commerce District where it's not a permitted use per Section 102-542, Permitted Uses, of the Zoning Ordinance.

- V. New Business:
- VI. Communications and Miscellaneous:
- VII. Non Public Session: (if required)
- VIII. Adjournment:

This page intentionally left blank

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 6, 2019

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Jane Taylor, Vice Chair
Joshua Greenwald
Joseph Hoppock
Michael Remy, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Michael Welsh
Louise Zerba, Alternate

I. Introduction

Chair Gorman called the meeting to order at 6:30 PM, welcomed the public, explained the rules of procedure, and introduced the Board members.

II. Minutes of the Previous Meeting – April 1, 2019

Mr. Hoppock noted a correction to the minutes. On page seven, the word *reached* should be eliminated from the following sentence: “Mr. Hoppock stated by looking at the purpose of the Ordinance, which he thinks is to prevent visual clutter and manage safety of signs so that people are not inundated with too much information too fast while driving down the road, he does not see how that overall purpose is at all impaired by this specific *reached* application of that Ordinance to this property.”

Vice Chair Taylor moved to approve the minutes of April 1, 2019 as amended, which Mr. Hoppock seconded and the Zoning Board of Adjustment carried unanimously.

III. Unfinished Business

IV. Hearings

ZBA 19-06:/ Petitioner, Island Bay, LLC of 674 West St., Keene, owned by John Baybutt and Fred Baybutt of 674 West St., Keene, requests a Variance for property located at 41 Avon St., Keene, Tax Map Parcel #578-001-000-000, which is in the Commerce District. The Petitioner requests a Variance to allow a residential single family use within the Commerce District where it is not a permitted use per Section 102-542, Permitted Uses, of the Zoning Ordinance.

Chair Gorman introduced the application and requested staff comments. Mr. Rogers used maps to demonstrate the location of this property at 41 Avon Street, off West Street just before the Kohls plaza; the property is adjacent to Antioch University New England (AUNE). This small brick home is located in the Commerce District. The applicant seeks a Variance to allow a single family use within the Commerce District where it is not a permitted use. This building was originally a small brick home, but the current use is as an office, with parking at the rear. The property was once a larger parcel that was subdivided in 1978, leaving the lot currently just under 9,000 sf, which today is considered a substandard lot in this district (15,000 sf minimum required).

Vice Chair Taylor recalled that before the adjacent building was taken over by AUNE, it was the Sprague & Carlton furniture factory. Mr. Rogers replied in the affirmative stating the application demonstrates the adjacent home was once used as a furniture showroom. Otherwise, since 1978, it has been used as an office space according to City records.

Chair Gorman recognized the applicant, Fred Baybutt of 674 West Street, Keene. Mr. Baybutt commended the Board's work; he was once a Zoning Board member. To demonstrate that this was always a house, Mr. Baybutt quoted the historian Phil Faulkner from a Keene Sentinel article on November 14, 2006:

Avon Street Building Began as West Street Home.

In February 1928, John Binney of New Ipswich bought 15 acres of lowland on the road leading from Main Street in Keene to Ash Swamp. Later that year he built a small brick house on the same road, which is now called West Street. Binney was appointed the 11th deacon of the Congregational Church in 1832. Henceforth, this house was commonly called the Deacon Binney Place. The Binney's lived there until 1872. In 1910 the house was moved to Norton Street at the south end of Avon Street near the railroad tracks.

Sprague & Carlton bought the house in 1940 and 11 years later moved it to its present location at 41 Avon Street. The house was restored and used as a public display area for furniture designed and manufactured in the factory across the street now owned by Antioch University New England. In 1963, the house was converted to sales executive offices.

Mr. Baybutt addressed the Variance criteria.

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

Mr. Baybutt said granting the Variance is not contrary to public interest because every historical reference to the building calls it a *house*. He cited the floorplans, which demonstrate it was designed and built as a house. He also cited the Historic Homes of Keene list (refer to the meeting packet), which lists the Binney House. The house was designed and built as a residence in 1828 and has been residential for well over a century. The house was moved to 41 Avon Street and in the 1980s was outfitted by Sprague & Carlton as a show home for furniture. A review of the City of Keene "Street Files" shows

no evidence the property was ever rezoned as commerce. The house was moved into the Commerce District as a house.

Upon Mr. Hoppock's request, Mr. Rogers confirmed the house was moved in 1951 to its current location at 41 Avon Street.

- 2) *If the variance were granted, the spirit of the ordinance would be observed because:*

Mr. Baybutt said granting this Variance would observe the spirit of the ordinance because the structure was designed and constructed as a residence and it is located within 500' of residential neighborhoods and the bike path to the east and south, respectively.

- 3) *Granting the variance would do substantial justice because:*

Mr. Baybutt said the Board should refer to his response to the first criteria.

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

Mr. Baybutt said granting the Variance would not diminish the surrounding properties because the building is located within 500' of a high density residential neighborhood. AUNE abuts the home directly and could potentially use the property to house visitors.

- 5) *Unnecessary Hardship*

- A. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*

Mr. Baybutt reiterated that the house was designed and built as a residence. The property is unsuitable for the Commerce Zone due to its residential design and construction. It has been very difficult to lease or sell as commercial given the residential quality of the building. Furthermore, with it being on the Historic Registry, there were no plans to demolish the interior to better suit a commercial use. Unfortunately, the house-like layout of the building, while charming to some, does not appeal to the mass small businesses. The owners have been approached to demolish the house for warehouse space, which would not be ideal for the City.

- ii. *The prosed use is a reasonable one because:*

Mr. Baybutt said this proposed use reflects more than a century's precedence of the property with a residential use (refer to the meeting packet for a photo of when the home looked like a boarding house).

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

Mr. Baybutt said the property cannot conform strictly to the ordinance because it was designed and built and was designated as part of the National Historic Registry as a residence. As is, the property does not reasonably fit a commercial use and should be allowed the residential use it was originally built for. Mr. Baybutt continued saying he knows financial hardship is not an acceptable reason to grant a Variance, but he has spoken with many realtors who say the building would be great as a house, but not as a commercial building. He thanked the Board for their time and welcomed questions.

Vice Chair Taylor asked if Mr. Baybutt and his company ever used the building as an office. Mr. Baybutt confirmed that many years ago Fairbanks Lock & Key owned it. More specifically, Vice Chair Taylor asked the most recent use of the building. Mr. Baybutt said it was most recently leased to The Simple Nest but there was insufficient foot traffic and they moved to Main Street. Vice Chair Taylor asked if the interior is configured as a single family residence; Mr. Baybutt confirmed there is a functioning kitchen and bathroom. Mr. Baybutt then confirmed there is space for approximately 15 cars behind the building and he believes four cars are allowed on the abutting sidewalk frontage; the Board was unaware street parking is allowed.

Mr. Hoppock asked what the building was used for between 1952-1971. Mr. Baybutt said that is when Sprague & Carlton used it as a display room; they set it up as a nice house to demonstrate to customers. Mr. Hoppock asked if there are Historic Registry restrictions that preclude changing the interior or exterior of the structure. Mr. Baybutt was unaware of any restrictions but said it is an old building and it would probably be more cost effective to demolish than renovate it. At its previous location on West Street, the house had a sister building, which was moved to Keene Housing on Harpers Lane.

Mr. Greenwald asked how long the building has been vacant. Mr. Baybutt replied six years, though not for lack of trying. Mr. Greenwald asked if the applicant plans to continue marketing the building for sale if the Variance is granted and Mr. Baybutt replied in the affirmative. Mr. Rogers confirmed if the Variance is granted and the property is sold under its current use as an office, the new owner would have two years to apply for a building permit to request a change of use back to a single family residence. If the Variance is granted, Mr. Baybutt can market the building as office and/or single family residence. Mr. Greenwald asked Mr. Rogers a follow up question: if a building permit was then granted to revert to single family residence, would the home be subject to the Community Development Department ensuring it meets today's residential

standards. Mr. Rogers confirmed that the home would have to meet the current building code to be granted a building permit for change of use.

Mr. Hoppock asked what happens if the new owner does not think they need a building permit. What if they move in and use each room as a typical home; why would they need a building permit. Mr. Rogers said he has not been inside the home and is unsure how accurate the floor plan is or if there are adequate living facilities, such as a full kitchen and bathroom. The building might require work for it to be a livable single family home and that work would require a building permit. If they just moved in they would be in violation of the Zoning Code that would require a permit to change the use of the property.

Chair Gorman asked the applicant if there is a functioning kitchen and bathroom. Mr. Baybutt said there is a kitchen and two water closets; there are no showers, so bathroom expansion would be a likely renovation. Mr. Remy asked if there has ever been a Variance application for this property before this one. Mr. Rogers did not find any previous applications for this property. Mr. Baybutt said he does not understand why it was never rezoned because it was always a residence that was just moved to the Commerce Zone.

Mr. Hoppock asked if all abutters were notified of this hearing and Mr. Rogers replied in the affirmative. Mr. Hoppock stated for the record that no abutters came to this hearing to speak for or against the application.

With no public comments, Chair Gorman closed the public hearing and the Board deliberated.

Mr. Greenwald stated he has been inside the building in question to market it for small business use and there was no interest because it did not feel suitable; it looks like a house and would need to be reconfigured to function as an office space, which is not cost effective. He agreed that although the property is surrounded by commerce, it is still a house with historical value, which would make tearing it down a hardship. While finances do not count as a hardship, Mr. Greenwald has shown the home to two clients with the same response that there is no use for this building as an office. He felt it made sense that it be used as a residential home despite being in the Commerce Zone.

Mr. Hoppock read from Sec. 102-541 of the Keene Zoning Ordinance: "*The intent of the commerce (COM) district is to provide an area for intense commercial development. The sites are typically accessed by vehicles, and more than one business in a building would be typical, as would shopping plazas.*" He said the list of permitted uses demonstrates intense commercial development. With that in mind, he did not see how the requested change of use from office to residential would alter the essential character of the neighborhood; this use should actually reduce congestion in the area. He did not see any public health, safety, or welfare concerns and he did not believe the change in use would devalue surrounding properties. The loss to the Baybutt's if the Variance is denied would not be outweighed by any gain to the public. He agreed there are special conditions with

the historical significance of the building and while there do not appear to be any precluding regulations, changes to the building would be unfortunate to see. It is a substandard lot today, it is near residences, and the new use would reduce traffic in the area. He agreed with Mr. Baybutt that it was built and constructed as a home and it could be destructive to change it. For these reasons listed, Mr. Hoppock believed the application met the five criteria for Variance.

Vice Chair Taylor stated she thinks the application meets many of the criteria regarding public interest and substantial justice; she believes there is a hardship. She expressed concern about the level of conflict between this application and the intent of the Zoning Ordinance. In 1970, the Commerce District was clearly written with an intent to ensure there was no “new” residential development. This building had a residential use but lost its residential character for a while. With that said, although there is a stark conflict with the ordinance, granting this Variance does not seem to be contrary to the public interest or injurious to public rights or welfare. She said it is a balancing act and she would have no hesitation if the intent of that particular zone were not so clear that it does not want residential use.

Mr. Remy agreed with Vice Chair Taylor and said that while building this house at its location today would not be allowed; because it already exists, he has no issue granting this Variance.

Mr. Greenwald said he feels sorry for this house because it is as though the Commerce District descended on it; the building is expected to adapt but it is still a historic home. This is not like converting a commercial property to a residential use. He said the home should stay as it was and he agreed with Mr. Hoppock that granting this Variance will not decrease the neighborhood’s value; it could enhance the neighborhood if AUNE wanted to use it as an auxiliary building. He was in favor of granting the Variance.

Chair Gorman said he agreed with most of the Board’s comments. Short of moving the home back to its original location, there are few solutions other than residential use, especially as the property has been vacant for some time.

Mr. Hoppock moved to approve ZBA 19-06, which Mr. Remy seconded. The Board reviewed the 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: 5-0.

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

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

Unnecessary Hardship:

Ms. Taylor said she wanted to clarify the record relative to the hardship criterion that the proposed use is reasonable.

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

- ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property: **5-0.***
- x. The proposed use is a reasonable one: **5-0.***

With a unanimous vote of 5-0, the Zoning Board of Adjustment approved ZBA 19-06.

- V. New Business
- VI. Communications & Miscellaneous
- VII. Non Public Session (if required)
- VIII. Adjournment

Hearing no further business, Chair Gorman adjourned the meeting at 7:08 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker

0 Island St. ZBA 19-07



Petitioner requests a Variance for self-storage units within the Commerce District where it's not a permitted use within the district per Section 102-542.



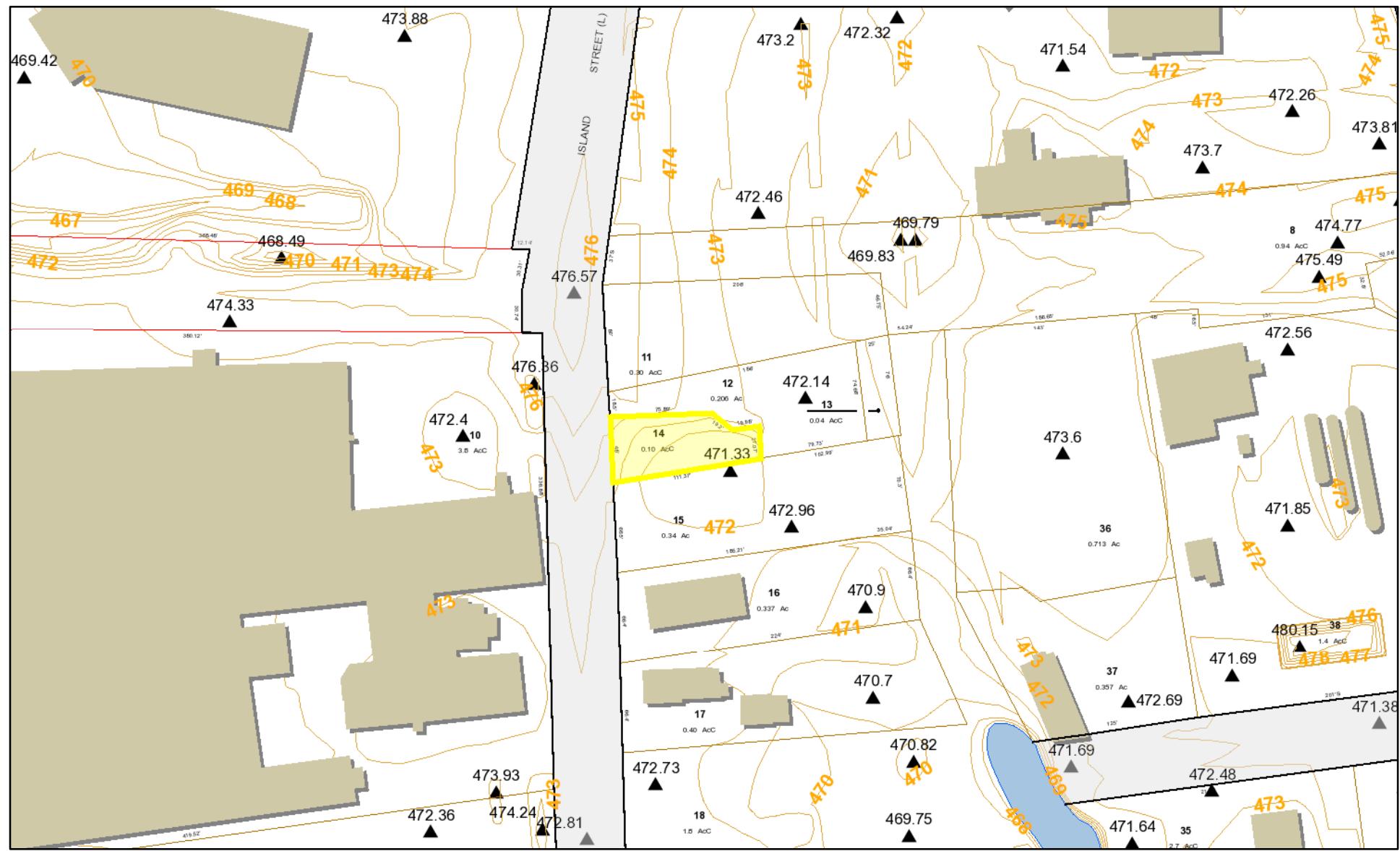
Keene, NH

May 23, 2019

CAI Technologies
Precision Mapping. Geospatial Solutions.

www.cai-tech.com

1 inch = 100 Feet



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



City of Keene
New Hampshire

NOTICE OF HEARING

ZBA 19-07

A meeting of the Zoning Board of Adjustment will be held on Monday, June 3, 2019 at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the petition of Brady Sullivan Keene Properties of 670 North Commercial St., Manchester who requests a Variance for property located at 0 Island St., Keene, Tax Map Parcel #583-014-000, which is in the Commerce District. The Petitioner requests a Variance for self-storage units within the Commerce District where it's not a permitted use within the district per Section 102-542 of the Zoning Code.

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

ZONING BOARD OF ADJUSTMENT

Corinne Marcou

Corinne Marcou, Clerk

Notice issuance date: May 24, 2019

APPLICATION FOR APPEAL

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

For Office Use Only:

Case No. ZBA 19-07
Date Filed 5/16/19
Received By CJM
Page 1 of 10
Reviewed By JR

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Brady Sullivan Keene Properties Phone: (603) 622-6223
Address 670 N. Commercial St. Ste 303 Manchester, NH 03101
Name(s) of Owner(s) Brady Sullivan Keene Properties, LLC
Address 670 N. Commercial St. Ste 303 Manchester, NH 03101
Location of Property O Island Street

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 583-014-000-000 Zoning District COM

Lot Dimensions: Front 48' Rear 27.67' Side 75.89' Side 111.37'

Lot Area: Acres .10 Square Feet _____

% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0sf Proposed 30,000sf footprint

% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 1,000 Proposed 30,000 ^{3 story bldg}

Present Use Vacant land

Proposed Use Self Storage

SECTION III - AFFIDAVIT

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

Brady Kelley
(Signature of Owner or Authorized Agent)

Date 5/9/2019

Please Print Name Benjamin Kelley, number

PROPERTY ADDRESS 0 Island Street

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 102-542 of the Zoning Ordinance to permit:
Self Storage within commerce zone

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

See Attached

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

See Attached

3. Granting the variance would do substantial justice because:

See Attached

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

See Attached

5. Unnecessary Hardship

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

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

See Attached

and

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

See Attached

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

Attachment

Response: Petition before Zoning Board of Adjustments

1. Granting the Variance would not be contrary to the public interest because the addition of the self-storage use would provide additional storage to those that need it both businesses and residential users nearby. The Self-storage facility would provide a combination of climate controlled storage and drive up storage that will accommodate growing demands.
2. Granting the variance is not contrary to the spirit of the ordinance because the goal of the commercial zone is to attempt to create opportunity for a wide variety of business to thrive. A Self-storage facility would give business in the area an opportunity to expand or grow by utilizing nearby storage as an affordable alternative for storing items needed for business. As well self –storage will draw people to the area from other nearby areas.
3. Granting the variance would do substantial justice because it will fit in with the area dynamic of, retail, residential and commercial uses and would support all of these adjacent uses.
4. The introduction of self-storage building would not diminish surrounding property values. The introduction of self-storage in this location would draw people from nearby residential areas and businesses that need additional storage close by. It would help attract people to support existing business and therefor strengthen surrounding property values.
5. Unnecessary Hardship
 - A
 - i. No fair and substantial relationship exists between the general purpose of the ordinance and the specific restriction because the use is one that supports all the elements of the adjacent businesses and residents. The property would thrive and contribute to the success of neighboring activities.
 - ii. The proposed use is reasonable again because it can play a supporting role for the surrounding businesses and residents. The use as it relates to this property doesn't create a large parking demand and can operate as proposed without compromising the parking requirements of the mill or other adjacent uses.
 - B. Given the building lot and extra parking that exists on the site the construction of another use would both take up area for the structure and require substantial parking to make it feasible. This particular use allows for a new business to be established on the excess parking area while not compromising parking needs of the area.



ZBA ABUTTERS LIST

ADDRESS: 0 Island Street

Notarized Statement

I, the undersigned Robert Renn, swear that to the best of my knowledge, the above is an accurate and complete abutters list.

Signature

STATE OF NEW HAMPSHIRE
CHESHIRE, SS

Subscribed and sworn before me this 10th day of May, 2019.

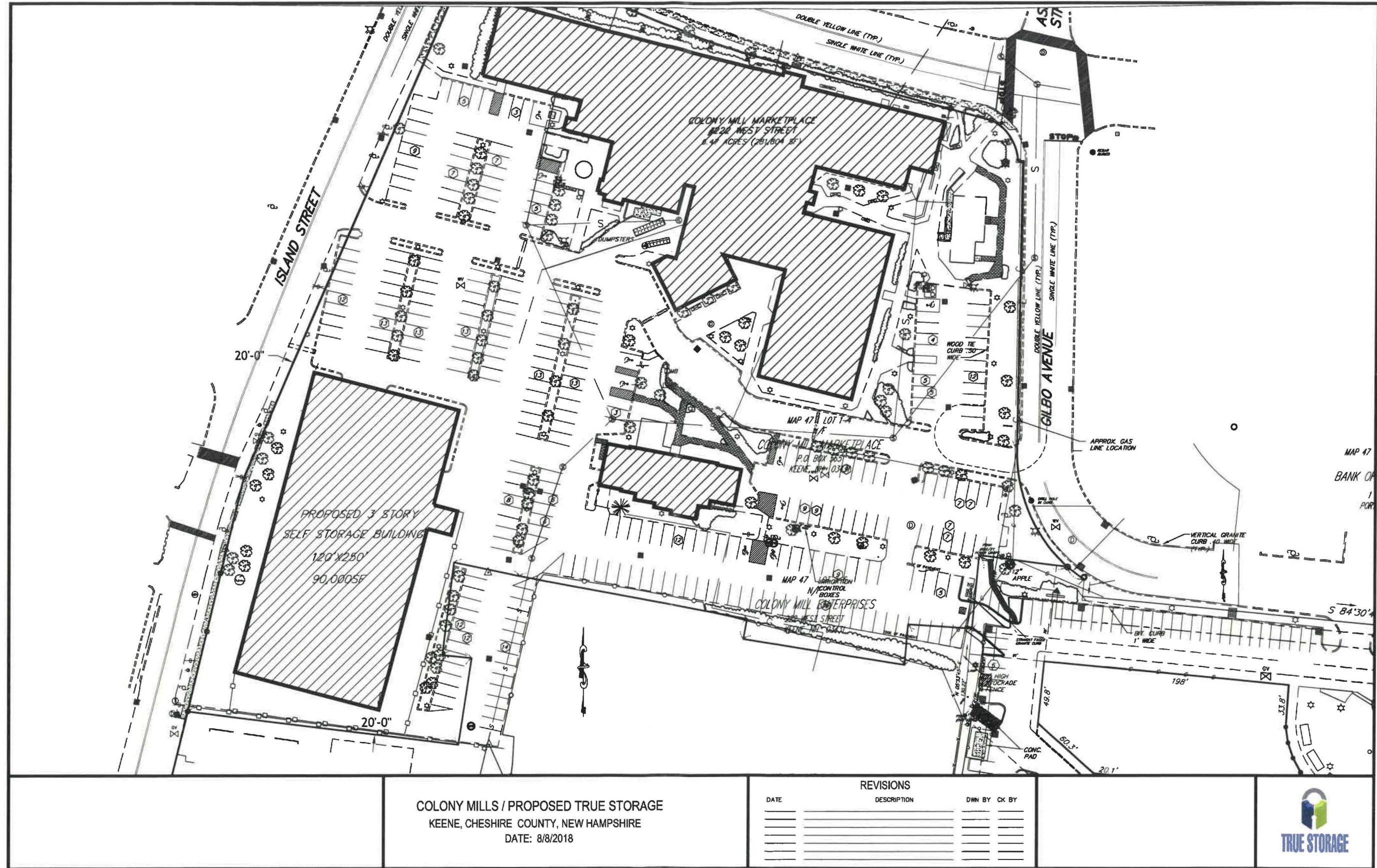
Notary Public/Justice of the Peace

My Commission Expires SHERRYL ZINN, Notary Public
State of New Hampshire
My Commission Expires June 7, 2022









**City of Keene
New Hampshire**

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, February 4, 2019

6:30 PM

Council Chambers

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator

Members Not Present:

I. Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM, introduced members of the Board, welcomed the public, and explained the rules of procedure. Chair Gorman welcomed new member Michael Remy to the Board.

II. Minutes of the Previous Meeting- January 7, 2019

Mr. Welsh made a motion to approve the minutes for January 7, 2019. The motion was seconded by Mr. Hoppock, which carried unanimously.

Hearings

ZBA 19-03:/ Petitioner, Bradley Sullivan Keene Properties of 670 North Commercial St., Manchester requests a Variance for property located at 0 Island St., Tax Map Parcel #583-014-000, which is in the Commerce District. The Petitioner requests a Variance for self-storage units within the Commerce District where it's not a permitted use within the district per Section 102-542 of the Zoning Code.

Mr. Rogers began his presentation stating the property is located on Island Street. He referred to the map displayed indicating the location of the Colony Mill in reference to the application site. The location of the property heading down Island Street off of West Street is on the left side and located on the back part of the Colony Mill. Mr. Rogers stated the whole area is located in the Commerce Zone. He explained the Commerce Zone runs half way down Island Street heading

toward Winchester Street on both sides of the road. Mr. Rogers noted that any development that may occur if the Variance were granted, the Applicant would need to merge the lots in order to meet zoning requirements for setbacks and other various issues. Several years ago there were multiple single family homes and businesses on adjacent lots that have been torn down. In the Commerce Zone self-storage units is not a permitted use.

Vice Chair Taylor asked which zones self-storage units would be permitted. Mr. Rogers responded self-storage units are permitted in the Industrial Zone and Commerce Limited Zone.

Chair Gorman recognized Benjamin Kelly, Brady Sullivan Keene Properties of 670 North Commercial Street, Manchester. Mr. Kelly stated they are seeking approval for a use Variance for this parcel. He noted that anything they do at this property would immediately be followed up with a merger of those multiple lots.

Mr. Kelly stated they are looking to put together the self-storage plan based on an amenity to serve the 90 unit apartments currently under construction at the Colony Mill building next door. Mr. Kelly stated their model for the self-storage units is not the traditional or older warehouse style with a drive-in but more of a retail style type storage with a climate controlled building. In addition, he noted that it would be similar to what is across the street. Mr. Kelly added that they felt the building would also fit into the neighborhood.

Mr. Kelly stated that when they got the approvals for the Colony Mill building they had 373 parking spaces. In addition, they had a traffic study and parking demand study done that showed at the anticipated peak demand time there would be around 175 vehicles. He noted that left them with a surplus of a couple hundred parking spaces. Mr. Kelly stated they would lose some parking with the proposed building. He referred to the plan displayed noting the green space and how the building does take up some parking space. Mr. Kelly stated that even with the new proposed structure they would still have about 119 parking spots on top of the 175 parking spaces to serve the new structure. He stated they feel there is adequate parking to serve peak demand at the residential and commercial uses at the Colony Mill.

Mr. Kelly stated what they would be proposing to the City if approved for the use would be roughly a 30,000 square footprint of a building that is 120' x 250'. Chair Gorman asked what number of stories is proposed. Mr. Kelly responded they are proposing three stories which would require a Special Exception. Chair Gorman asked Mr. Kelly to clarify if they would be coming back before the Board for a Special Exception in the event they acquire this Variance. Mr. Kelly responded most likely.

Mr. Hoppock stated that he cannot tell between the two plans that were submitted where the boundary lines and the setbacks are located. Mr. Kelly responded there are three or four different lots that they own so it does not meet setbacks because it would be at four different lots at this current time. He explained they did not want to merge these lots until they know it is an approved use since once the lots are merged, they cannot be unmerged. Mr. Hoppock asked what about the setback to Island Street. Mr. Kelly responded the building is situated to meet existing conforming setbacks and has been setup with 20 foot setbacks off Island Street. Vice Chair Taylor stated because the law changed in 2010, there is no such thing as a Use Variance and that

a Variance has to meet all the criteria. She stated that she is looking for more information than what has been presented. Vice Chair Taylor explained that the Board has to examine things such as what the building is going to look like or if it an amenity for an apartment use. She noted that Mr. Kelly also stated that it was going to be retail. Mr. Kelly responded speaking to the amenity for the apartments they do feel it would be for that use but not exclusively. He noted that it would be marketed toward the public as well.

Mr. Kelly described the building structure as a glass and steel framed building with an Eifs façade. He noted they have not gone too far with planning until they knew if it was an approved use. Mr. Kelly stated the idea is similar to Blue Bird Self-Storage. In addition, he stated the proposal is in line with what they did in Manchester along South Willow Street which is in the retail corridor. He described the proposed building as a three story mezzanine building that is an Eifs with a lot of glass with retail signage. In addition, he stated the building will have smaller types of storage units that are climate controlled. Mr. Kelly stated that he thinks that it would also be an improvement to the neighborhood and surrounding properties. He noted that Class A type building material would be used and built to match the quality of the Colony Mill. In addition, Mr. Kelly stated the proposal would fit in what is on West Street and the section of Island Street that is close to West Street. Mr. Kelly added that the building would have a lift and a retail type presence selling moving and packing materials.

Chair Gorman asked Mr. Kelly if he wanted to elaborate on the five criteria.

Mr. Kelly reviewed the criteria for a Variance.

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

Mr. Kelly stated that Island Street going to West Street is in the cross roads of where residential starts to meet business. He stated that it would certainly be an amenity not to just businesses but also to what will be the residences to the neighboring property. In addition, he stated that it would not just be an industrial yard but a combination of controlled storage units and some drive up as well. He stated this is a growing demand for business and residential users.

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

Mr. Kelly stated the goal of the Commercial Zone is to attempt to create opportunity for a wide variety of businesses to thrive. He stated that a self-storage facility would give businesses in the area an opportunity to expand or grow by utilizing nearby storage as an affordable alternative. In addition, he stated self-storage will draw people to the area from other nearby areas.

3. Granting the variance would do substantial justice because:

Mr. Kelly stated the Variance would do substantial justice because it will fit in with the area dynamic of retail, residential and commercial uses. In addition, he stated that it would support all of these adjacent uses.

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

Mr. Kelly stated the introduction of a self-storage building would not diminish surrounding property values. He noted that the area now is a parking lot and what they propose is a building built of Class A building materials. Mr. Kelly stated the introduction of self-storage in this location would draw people from nearby residential areas and businesses that need additional storage close by. He stated that it would help attract people to support existing businesses and therefore strengthen surrounding property values.

5. *Unnecessary Hardship*

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

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

Mr. Kelly stated no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific restriction because the use is one that supports all elements of the adjacent businesses and residents. He stated the property would thrive and contribute to the success of neighboring activities.

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

Mr. Kelly stated the proposed use is reasonable because it can play a supporting role for the surrounding businesses and residents. He stated the use as it relates to this property does not create a large parking demand and can operate as proposed without compromising the parking requirements of the Mill or other adjacent uses.

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

Mr. Kelly stated that given the building lot and extra parking that exists on the site, the construction of another use would both take up area for the structure and require substantial parking to make it feasible. He stated this particular use allows for a new business to be established on the excess parking area while not compromising parking needs in the area. He noted that an offsetting use is important to them because they do not want to compromise the parking ratio they have.

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

Mr. Hoppock asked Mr. Kelly to explain what the special conditions are at this property that distinguishes it from others in the area. Mr. Kelly responded that what they are proposing fits in as a like kind. In addition, he stated that right now it is a parking lot.

Mr. Hoppock asked zoning wise, what special feature exists or special problem exists that makes it different from others in the area that would create an unnecessary hardship if the Variance was not granted. Mr. Kelly responded that if looking at the adjacent surrounding businesses and residences this use although the current zone does not allow for it, their proposal fits in with and supports the adjacent business.

Vice Chair Taylor asked with the remodeling of the Colony Mill into residential units, if this entire area will be considered part of the Colony Mill site. Mr. Kelly responded that those are three separate lots. He referred to the map and stated that some of the area is parking spaces that are considered part of the Colony Mill. He noted these sites have separate addresses and tax map identification numbers. In addition, he noted that a portion of those parking spaces were included when they got approvals for with the Colony Mill redevelopment. Vice Chair Taylor asked if this was approved as a development site or part of the parking. Mr. Kelly responded that 222 West Street was what they got approval for which is a different address than what he is seeking approval for tonight. He stated that parking spaces are included in the count for 222 West Street's approval.

Mr. Rogers stated that it would be his belief that this parking was probably required when the Colony Mill was a much more mixed retail use building, which would have required more parking than the current change of use into residential units. He noted that this predates the ownership of Brady Sullivan for this property. Vice Chair Taylor asked if this area was part of the original site plan for this project. Mr. Rogers responded they may have included the parking spaces with that change of use. He explained that they far exceed the number of parking spaces needed for the apartments, restaurant and the other stand-alone building.

Vice Chair Taylor stated that she is trying to understand why they decided to develop this now as opposed to including it in the original site plan. Mr. Kelly responded that part of it was because they were actively working on plumbing and sheet rocking the units. He explained that until they had a good rhythm they would not try to tackle two different projects at the same time. In addition, he stated they had not done self-storage until a year ago. Mr. Kelly referred to their South Willow project and explained that after this project they began thinking about the Keene project with the available pad site. Mr. Kelly stated that now that they are heading into the final stages of the apartments, they feel that now is the time to develop the storage units into phases.

Vice Chair Taylor asked how many rental units would in the structure either at the two story level or the three story level. Mr. Kelly responded that he does not have an exact answer because the planning has not been finalized. He explained they have a rough footprint and an elevation drawing. Mr. Kelly stated the layout of units has not been completed. He noted that most of the units are under 6' x 8' and are smaller type units meant to accommodate a single or two bedroom apartment.

Chair Gorman asked if the structure has a proposal for a building at an estimated 90,000 square feet. Mr. Kelly responded that it something in that area. He noted there would be a common area and retail sales area. Chair Gorman asked how parking and traffic studies have been determined if the number of units is unknown. Mr. Rogers responded that for the parking they do have a formula which would be based on square footage that could be determined through the Zoning Code.

Chair Gorman welcomed comment from the public in favor of the application.

With no comment, Chair Gorman welcomed comment from the public in opposition of the application.

Anthony Mastronardi, 100 Darling Road, Keene stated that he was the owner of 70 Island Street which is the first property down from the proposed building site. He stated that he had hoped to see elevations because his property is located eight feet from his property. Mr. Hoppock asked Mr. Mastronardi to indicate the location of his property on the map. Mr. Mastronardi indicated the location. He stated that it looked like the proposed building online was going to be awfully close. Mr. Mastronardi stated that his concern is that he has a two story building that is currently facing a lawn and does not want to look out and see a building that is three stories blocking all of his windows. He stated that he was hoping to see elevations and setbacks. Mr. Mastronardi noted that Mr. Kelly has been a great neighbor and that he does not have enough information to say that he is oppose. He stated that he does have enough information to be concerned.

Chair Gorman commented that in the event the Board does decide to move forward with the Variance, Mr. Mastronardi will have opportunity to weigh in on height. He explained that it does appear the applicant would need to come back to the Board for a Special Exception for the third story they are proposing. Mr. Rogers added that in the Commerce Zone it is a 20 foot setback on all sides. Chair Gorman asked Mr. Rogers to clarify that a 20 foot setback would be met upon construction. Mr. Rogers responded at this point the applicant is before the Board for a Variance for the use. Chair Gorman asked if the applicant were seeking a setback Variance would they have to come back before the Board. Mr. Rogers responded in the affirmative.

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

The Board deliberated on the five criteria.

Mr. Hoppock stated that he does not see any hardship to this property and would like to see more detail on setback. He stated there has been no demonstration of special conditions that distinguishes it from others in the area. Mr. Welsh concurred with Mr. Hoppock. He explained it is that demonstration that is necessary as a basis for hardship and is not sure he has heard that yet. He referred to Vice Chair Taylor's comments that if a storage facility that is related to an apartment complex is not a commercial storage and is an accessory use. Vice Chair Taylor responded that it is her understanding if this was solely for the benefit of the main apartment building and storage for their use that it would be an accessory. She stated that when it is opened to the general public it is no longer an accessory use. Mr. Welch asked if the Board would even need to consider a Variance if it was an accessory use. Mr. Rogers replied that Vice Chair Taylor is correct. He explained that the applicant would be limited to a certain percentage that they could build, which would be high number knowing the size of the Colony Mill. In addition, he explained the fact that the use is open to the public is the need for the Variance. Mr. Greenwald added if that was their route they would probably not be doing that in the first place. He noted that it would not be financially viable. Mr. Greenwald explained that it will cost hundreds of thousands of dollars to build just to give free storage for their tenants. He further explained that it

would not be viable to charge tenants for storage because the tenants could turn around and opt out. He stated that is why he believes the applicant would want to open it up to the public.

Vice Chair Taylor stated that she does not have enough information and also does not see the hardship. She stated that a financial reason for building it to make the property have an appropriate financial balance sheet is not enough to give a hardship. Vice Chair Taylor stated that even with that, she does not have enough information on traffic flow or what the building will look like, even though that may be through the Planning Board. She added that this Board still has to decide what the impact is on the neighborhood. Vice Chair Taylor concluded stating that she has serious concerns.

Chair Gorman stated that while the Board does not weigh in on aesthetics, they do weigh in on the impact of public safety, size and scope. He stated that he believes the Board is being asked to approve something that has a lot of blanks left open. Chair Gorman stated that in his opinion he thinks that is risky. In addition, he does struggle for cause when looking at the hardship in terms of this property being distinct and having a special situation to allow this Board to approve this Variance. Mr. Greenwald concurred with Chair Gorman. He stated that he does not feel there is a significant hardship.

Mr. Hoppock stated that the applicant has the burden of proof on these things. He explained to the applicant that what he is hearing is a lot of concern about missing information. Mr. Hoppock stated that it may behoove Mr. Kelly to consider withdrawing the application in case of an adverse ruling. He explained this may be an option to consider now rather than risk a loss and have to come back to show a change of circumstance. Chair Gorman asked with the consensus of the Board, he would reopen the public hearing and allow for such action.

Mr. Greenwald asked Mr. Rogers if being in the Commerce District if that restricted any building of residential homes in that district. In addition, he asked if there was any other use. Mr. Rogers read the allowed permitted uses in the Commerce District according to Section 102-542 of the Zoning Code as follows; *banking or lending institution, clinics, drive-in uses, funeral parlor, garage, greenhouse, nursery, health and fitness center, historic site open to public, hotel, institutional use, motel, apartment, motor vehicle dealership, motor vehicle repair garage, paint shop, vehicle body shop, child care facility, office, parking area, private club, private school, publishing/printing, recreational activity as business, research and development, restaurants and retail sales/service.*

Mr. Rogers stated that this property did receive a Variance for the multifamily units that are going into the Colony Mill under a Variance that was granted by this Board. Mr. Greenwald asked if motel or apartment would fall under the category of multifamily. Mr. Rogers replied that he would have to look back at the definitions and that in his opinion it would not be a multifamily.

Chair Gorman asked Mr. Rogers if the Board is faced with a situation of making something more nonconforming even though a Variance has been granted. Mr. Rogers responded that since a Variance has been granted it is a legal nonconforming use that is occurring on the property and that would be the Board's decision if they believed it is allowing for a non-permitted use.

Mr. Remy referred to the fourth criteria regarding the impact of the surrounding values and that he is not sure how to determine that without knowing what the building is going to look like. Chair Gorman stated that he would agree with Mr. Remy. He added that he would like to see that answered as well and how it would impact the values of the surrounding properties.

Chair Gorman asked the Board if they agreed to reopen the hearing to hear from the applicant.

Mr. Hoppock stated the other option is for the applicant to withdraw without prejudice so the applicant can reapply later when he has the information that the Board needs.

With no objection from the Board, Chair Gorman reopened the public hearing.

Chair Gorman recognized Mr. Kelly and asked him if he wished to proceed with a vote or if he wished to request to withdraw the application. Mr. Kelly thanked the Board for their input. He stated that next time he will be more eloquent regarding the setbacks shown on the plan, get elevations and more detail on the building material. Chair Gorman suggested Mr. Kelly also present evidence to show a hardship.

Mr. Kelly then requested to withdraw his application without prejudice.

Mr. Hoppock moved to accept the applicant's request to withdrawal application ZBA 19-03 without prejudice. Vice Chair Taylor seconded the motion.

On a vote of 4-0, the Zoning Board of Adjustment approved the applicant's request to withdraw ZBA 19-03 without prejudice.

III. New Business

No new business was presented.

IV. Communications:

Mr. Rogers announced the Office of Strategic Initiatives is holding their 25th Annual Spring Planning and Zoning Conference that will be held on Saturday, June 1, 2019 in Concord. Mr. Rogers stated that the conference is informational and that Board members can contact the Community Development Department for registration.

VII. Adjournment

Hearing no further business, Chair Gorman adjourned the meeting at 7:14 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker
Reviewed and edited by
Corinne Marcou, Zoning Clerk