



City of Keene Zoning Board of Adjustment

AGENDA

Monday, April 1, 2024 **6:30 p.m.** **City Hall, 2nd Floor Council Chambers**

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: March 4, 2023
- III. Unfinished Business:

- Rules of Procedure Updates
 - Fee Schedule Proposal

- IV. Hearings:

Continued ZBA-2024-02: Petitioner, Thomas Hanna of BCM Environmental and Land Law, PLLC, Keene, requests a Variance for property located at 19 Grove St., Tax Map #585-055-000, is in the Residential Preservation District, and is owned by 1925 Grove Street, LLC, 295 Seaver Rd., Harrisville. The Petitioner requests a Variance to permit the conversion of a legally non-conforming office use to a third apartment unit in the Residential Preservation District per Article 3.2.5 of the Zoning Regulations.

ZBA-2024-03: Petitioner, Ryan Coyne of Sandri Realty, LLC of 400 Chapman St., Greenfield, MA, requests a Variance for property located at 345 Winchester St., Tax Map #111-027-000, is in the Commerce District, and owned by Sandri Realty, LLC, of 400 Chapman St., Greenfield, MA. The Petitioner requests a Variance to permit the conversion of analog pricing signs to digital, electronically activated changeable copy sign per Article 10.3., Table 10-2 of the Zoning Regulations.

ZBA-2024-04: Petitioner, ReVision Energy, Inc., of 7A Commercial Dr., Brentwood, requests a Variance for property located at 521 Park Ave., Tax Map #227-027-000, is in the Conservation District and is owned by the City of Keene. The Petitioner requests a Variance to permit the installation of a large scale solar energy system on undeveloped land in the Conservation District per Article 7.3.5 of the Zoning Regulations.

ZBA-2024-05: Petitioner, ReVision Energy, Inc., of 7A Commercial Dr., Brentwood, requests a Variance for property located at 521 Park Ave., Tax Map #227-027-000, is in the Conservation District and is owned by the City of Keene.

The Petitioner requests a Variance to permit the installation of a large scale solar energy system within the 50 ft setback required in the Conservation District and for large scale solar energy systems in the Solar Energy System Ordinance per Article 7.3.5 & 16.2.3 of the Zoning Regulations.

ZBA-2024-06: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a mix of commercial and residential uses on a single 24.38 acre tract per Article 8.1.3 of the Zoning Regulations.

ZBA-2024-07: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an existing structure to be a three family residence per Article 3.1.5 of the Zoning Regulations.

ZBA-2024-08: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a commercial and accessory use of a truck scale and scale house per Article 3.1.5 of the Zoning Regulations.

ZBA-2024-09: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an existing structure to be an agricultural retail store per Article 3.1.5 of the Zoning Regulations.

ZBA-2024-10: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the use of accessory storage structures in the 50 ft. setback as measured from an abutting parcel owned by the Applicant per Article 3.1.2 & 8.4.1.C of the Zoning Regulations.

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

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1 City of Keene
2 New Hampshire

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5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Monday, March 4, 2024**

6:30 PM

**Council Chamber,
City Hall**

Members Present:

Joseph Hoppock, Chair
Jane Taylor, Vice Chair
Richard Clough
Edward Guyot

Staff Present:

Evan Clements, Planner
Michael Hagan, Acting Zoning Administrator
Jesse Rounds, Community Development
Director

Members Not Present:

David Weigle

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11 **I) Introduction of Board Members**

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13 Joe Hoppock called the meeting to order at 6:30 PM and explained the procedures of the
14 meeting.

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16 **II) Vote for Chair and Vice Chair**

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18 Ms. Taylor nominated Mr. Hoppock for Chair. Mr. Clough seconded the motion, which passed
19 with a vote of 3-0. Mr. Hoppock abstained.

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21 Chair Hoppock nominated Ms. Taylor for Vice Chair. Mr. Clough seconded the motion, which
22 passed with a vote of 3-0. Ms. Taylor abstained.

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24 **III) Minutes of the Previous Meeting: December 4, 2023**

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26 Chair Hoppock asked for comments on the minutes.

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28 Ms. Taylor noted a correction to line 237: the number "*16,007 square feet*" should be "*1,607*
29 *square feet.*"

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31 Ms. Taylor stated that she did not understand the following from line 338: "*...the carport roof*
32 *would have about a 12 10 pitch to the roof.*" She continued that she does not know what "12

33 10” is in this context. Evan Clements, Planner, replied that it refers to the degree per foot on the
34 roof’s pitch, and it is fine in the minutes as written.

35

36 Chair Hoppock asked for a vote on approving the meeting minutes of December 4, 2023 with
37 one amendment, changing “16,007” on line 237 to “1,607.” The minutes were approved with a
38 vote of 3-0. Mr. Guyot abstained.

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40 **IV) Unfinished Business**

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42 Chair Hoppock asked if there was any unfinished business. Mr. Clements replied no.

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44 **V) Hearings**

45

46 **A) ZBA-2024-01: Petitioner, Richard Robidoux, of Cheshire Builders, 48**
47 **Whittemore Farm Rd., Swanzey, NH, requests a Special Exception for property**
48 **located at 80 Krif Rd., Tax Map #115-008-000, is in the Commerce District and**
49 **owned by 80 Krif Rd., LLC. The Petitioner requests a Special Exception to permit**
50 **light industrial use in the Commerce District per Article 8.3.5.E of the Zoning**
51 **Regulations.**

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53 Chair Hoppock introduced ZBA 2024-01 and asked to hear from staff.

54

55 Michael Hagan, Plans Examiner, stated that there is conflicting information, but tax records
56 show that 80 Krif Rd. was built in 1986. He continued that the City issued a building permit on
57 June 29, 1989 for a 30,000 square foot, 14-unit condominium building, consisting of offices and
58 warehouses. The units in question are Units 13, 14, 12, and 11. On January 4, 1990 there was a
59 permit issued and a CO (Certificate of Occupancy) issued for Office and Warehousing. In 1994,
60 they expanded Unit 13 into Units 12 and 11 for Office and Warehousing. Currently, the last
61 permitted use for Unit 14 was Office and Warehousing. There are two ZBA decisions on this
62 property; neither affect the units in question. There was an appeal of an administrative decision
63 on two locations, Unit 3 and Unit 1 with both granted.

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65 Mr. Hagan continued that when this building was constructed, it was zoned Industrial. It went
66 through a rezoning in 2013-2014 where the property was rezoned to Commerce Limited. The
67 Land Development Code (LDC) change in 2021 included changes to the permitted uses within
68 that location, requiring a Special Exception for the use that is in front of the ZBA today.

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70 Chair Hoppock asked if the use they are looking for today was in existence when the 2021
71 change occurred. Mr. Hagan replied that to staff’s understanding, the business was in operation
72 in 2018. He continued that there are no permits on record for that business going into that
73 location. Chair Hoppock replied that it is an expansion, basically, according to the materials.

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75 Chair Hoppock asked if there were any further questions for staff. Hearing none, he asked to
76 hear from the Petitioner.

77
78 Richard Robidoux of Cheshire Builders, 48 Whittemore Farm Rd., Swanzey, stated that 603
79 OPTX wants to expand into two more condominium spaces to expand their company. He
80 continued that the changes required to make this space usable for them are all interior, with no
81 load-bearing changes to the facility. The only changes made to the outside of the building will
82 be a condenser or two as required to upgrade the heating system to more stringent temperature
83 controls to accommodate their manufacturing. Nothing in the expansion will be different from
84 what is already there in the first two condo spaces. The equipment is similar; there will just be a
85 little more of it.

86
87 Mr. Robidoux continued that the way the building is used on the outside will be the same. The
88 processes are all the same; it is just expanding into two more spaces. Regarding affecting
89 structures and important areas of the site and property, nothing will really be different. When
90 they (603 OPTX) got the two other condo spaces, that came with additional parking, too. He
91 does not see anything changing on the outside of the building other than a couple condensers,
92 and he does not see any issues with the expansion changing what they have been doing for the
93 past five and a half years. Thus, he thinks it is a rather minor scenario. He sees this (Special
94 Exception request) mostly as a technicality.

95
96 Chair Hoppock asked if it is correct that they will have five to eight more employees as a result
97 of this expansion. Mr. Robidoux replied that is correct. He continued that he would have Matt
98 Zabko, General Manager, speak to this.

99
100 Matt Zabko, General Manager of 603 OPTX, stated that the intent is to add five to nine jobs in
101 Keene through this expansion. He continued that it is a continuation of what they are already
102 doing, which is optics manufacturing. It is high-tech manufacturing, less like a machine shop
103 and more like a lab. They operate on two shifts.

104
105 Mr. Robidoux stated that five to nine employees would be added over a period of time. Mr.
106 Zabko replied yes, over the next year or so. Chair Hoppock asked if it is correct that they will
107 not have a third shift. Mr. Zabko replied that at this point, there is no intent to have a third shift.

108
109 Chair Hoppock asked him to explain about the expected new employees. He continued that two
110 new units will come with their own parking spaces. He asked how many parking spaces those
111 units receive as a result of being in that complex. Mr. Zabko replied that each unit has eight
112 spaces. Chair Hoppock asked if that is 16 spaces for five to nine new employees. Mr. Zabko
113 replied yes.

114
115 Ms. Taylor asked for Mr. Zabko to speak about what they are planning to do internally. She
116 asked if they are combining the units. Mr. Zabko replied that they are looking at a combination
117 of some additional manufacturing space for the manufacturer of infrared optics and mirrors,

118 along with an area for quality control, a small area for shipping and receiving, and some
119 additional office and meeting space.

120

121 Ms. Taylor stated that maybe her question is for staff. She continued that she does not know
122 what the building looks like inside. She asked if there is any concern for knocking down walls
123 or reconfiguring the interior. Mr. Hagan replied that currently, they have a building permit
124 application and have gone through the review process. He continued that staff is working
125 through the remaining issues in order to issue the building permit. One issue is receiving the
126 Special Exception for the use they (603 OPTX) propose on site. All of the building and fire
127 codes have been addressed to this point; there are just some remaining floodplain questions.

128

129 Chair Hoppock asked if there were any further questions for the Petitioner. Hearing none, he
130 asked for public comment. Hearing none, he closed the public hearing and asked the Board to
131 deliberate.

132

133 *A. The nature of the proposed application is consistent with the spirit and intent of the*
134 *Zoning Regulations, this LDC and the City's Comprehensive Master Plan, and complies*
135 *with all applicable standards in this LDC for the particular use.*

136

137 Chair Hoppock stated that the particular use is Light Industrial, and to him, that is consistent with
138 the purpose of the Commerce District and its history, since it has been in that kind of use since
139 about 1989. He continued that he thinks it is consistent with the spirit and intent of the Zoning
140 Regulations and the LDC. Everything will happen inside. It will just be an expansion of the
141 same activity that has been going on, with more machines and more employees, so there is a
142 public interest piece here that the City should not ignore. In his view, that makes it more
143 consistent with the spirit and intent. The applicant states that there have been no noise
144 complaints and no complaints of any kind, and staff did not mention anything like that. They are
145 in a review process now for a building permit. He thinks the first criterion is satisfied.

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147 Ms. Taylor stated that she agrees with Chair Hoppock's comments and will add that it is
148 consistent with other types of activities going on in the condominium complex and in that area of
149 Winchester St. Chair Hoppock agreed.

150

151 *B. The proposed use will be established, maintained and operated so as not to endanger the*
152 *public health, safety, or welfare.*

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154 Chair Hoppock stated that he does not see anything in the application, especially since
155 everything will happen inside, which would indicate that the proposed use would be established,
156 maintained and operated in a way that endangers public health, safety, or welfare. He does not
157 see anything in the materials or hear anything in the presentation that would even suggest that.
158 He thinks the second criterion is satisfied.

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160 Ms. Taylor stated that since it is contained inside the building, there is nothing "obnoxious,"
161 which comes later in the criteria, and nothing that would impact (public health, safety, or
162 welfare).

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Mr. Guyot asked about a loading dock. Mr. Zapko replied no, it is not a loading dock. He continued that there are existing roll-up doors. They will just use a portion of that existing door space for shipping and receiving. (They receive items) the size of UPS parcels, not (from) tractor-trailer trucks.

Chair Hoppock stated that as a reminder, the public hearing is closed, but he understands that Mr. Zapko was answering Mr. Guyot’s question.

C. The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area and will not impede the development, use, and enjoyment of adjacent property.

Chair Hoppock stated that this goes to Ms. Taylor’s point, and he does not think there is any question that the proposed use will be established, maintained, and operated so as to be harmonious with the surrounding areas.

Mr. Clough replied that he agrees. He continued that it is all contained, and it is already happening. It is all good.

Ms. Taylor stated that if they are looking at adjacent property being the other condominiums, they are all essentially developed.

D. The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.

Chair Hoppock stated that this came up in the presentation, and it seems to him that the proposed use will be an extension of what is there, into two units that will create a greater space. He continued that there would be no additional noise. There are no odors and glare and vibration are not an issue. With the surrounding areas not affected, he is satisfied that this criterion is met.

Mr. Clough stated that he thinks a number of those issues would actually impact what they (603 OPTX) try to do there, so they would try to keep all of that to a minimum anyway. Chair Hoppock replied yes, given that they are precision optics creators. That is a good observation.

E. The proposed use will not place an excessive burden on public improvements, facilities, services, or utilities.

Chair Hoppock stated that he does not think anything in this application suggests they will draw more water, more light, more Police or Fire activity, or be a burden on any public facility or improvement in the area.

Mr. Guyot stated that if anything, it (the expansion) will improve electrical consumption, because of the LED conversion in that space and adjacent space. Chair Hoppock agreed.

208 *F. The proposed use will not result in the destruction, loss, or damage of any feature*
209 *determined to be of significant natural, scenic, or historic importance.*
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211 Chair Hoppock stated that notwithstanding the fact that Krif Rd. has been there forever, he does
212 not think there is anything “historic” in the area or deemed of significant historic importance. He
213 continued that it is far away from the river. No part of this use would impact any part of the
214 area’s natural scenery. There would be no impact to the environment.
215

216 *G. The proposed use will not create a traffic safety hazard or a substantial increase in the*
217 *level of traffic congestion in the vicinity of the use.*
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219 Chair Hoppock stated that there will be five to nine new jobs, with more than sufficient parking
220 spaces to cover those new employees, and they will be working in two shifts, so the impact of
221 that minimal amount of traffic will be nothing on this site.
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223 Mr. Clough agreed.
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225 Chair Hoppock stated that if the ZBA members agree with the comments, they should make a
226 motion to approve ZBA 24-01.
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228 Ms. Taylor made a motion for the Zoning Board of Adjustment to approve ZBA 24-01 for a
229 Special Exception for property located at 80 Krif Rd., Tax Map #115-008-000, in the Commerce
230 Limited District. Mr. Clough seconded the motion.
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232 Chair Hoppock stated that it is to permit a Light Industrial use in the district. The motion passed
233 4-0.
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235 **B) ZBA-2024-02: Petitioner, Thomas Hanna of BCM Environmental and Land**
236 **Law, PLLC, Keene, requests a Variance for property located at 19 Grove St., Tax**
237 **Map #585-055-000, is in the Residential Preservation District, and is owned by 1925**
238 **Grove Street, LLC, 295 Seaver Rd., Harrisville. The Petitioner requests a Variance**
239 **to permit the conversion of a legally non-conforming office use to a third apartment**
240 **unit in the Residential Preservation District per Article 3.2.5 of the Zoning**
241 **Regulations.**
242

243 Chair Hoppock stated that the ZBA has been informed that the applicant, 1925 Grove Street,
244 LLC, has requested via email to the Community Development Department, a continuance of the
245 hearing because there is not a five-member board today. He continued that the Board is inclined
246 to grant such requests.
247

248 Chair Hoppock read ZBA 2024-02 into the record and opened the public hearing.
249

250 Mr. Clough made a motion for the Zoning Board of Adjustment to continue ZBA 2024-02 to the
251 next ZBA meeting, April 1, 2024, in accordance with the Petitioner's request. Ms. Taylor
252 seconded the motion, which passed by unanimous vote.

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254 **VI) New Business**

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256 **A) Vote to Adopt 2024 Meeting Calendar**

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258 Chair Hoppock asked if anyone had questions about the meeting schedule. Hearing none, he
259 asked for a motion.

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261 Ms. Taylor made a motion to adopt the 2024 meeting schedule as presented. Mr. Clough
262 seconded the motion, which passed by unanimous vote.

263

264 **B) Rules of Procedure Updates**

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266 Chair Hoppock stated that there are amendments to the Rules of Procedure to examine.

267

268 Mr. Clements stated that tonight staff are proposing two changes to the ZBA's Rules of
269 Procedure, one related to the type of mailing product staff utilizes to notify abutters and the other
270 required parties for public hearings. He continued that this is part of a comprehensive effort the
271 Community Development Department is doing to update all of its land use boards for abutter
272 notification. Currently, the certified mail rate is \$5.06. The USPS uses another product,
273 certificate of mailing, where they verify that City staff has brought the letters to the Post Office
274 to be mailed to abutters and other required parties. It is significantly cheaper per letter, and after
275 discussing it with the City Attorney, staff believes it meets the statutory requirement. Thus, they
276 are systematically going through and making this change to all land use boards. The ZBA is
277 unique for having all of that language embedded into the Rules of Procedure.

278

279 Mr. Clements continued that the second change is an update to what happens when there is a
280 situation in which (the ZBA votes) 2-2. The statute update says that if you do not have three
281 members voting in a certain direction, you have to table it until the next meeting when there are
282 enough board members to be able to issue a 3-X verdict. Staff proposes adding that into the
283 Rules of Procedure.

284

285 Mr. Clements continued that application fees in the Rules of Procedure (are something else to
286 consider), but he will hold off on that change until they go over the other proposed changes to
287 the Rules of Procedure, because that is a different agenda item and there is some research to go
288 over. The first change to the Rules of Procedure is on page 56 of 68 (in the agenda packet).

289

290 Mr. Hagan stated that (the first change is) there is no longer an application for a Change of a
291 Non-Conforming Use. To reflect the new LDC wording, that has been changed to Enlargement
292 or Expansion of a Non-Conforming Use.

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Chair Hoppock stated that that change is corrective, not substantive. Mr. Hagan replied that is correct.

Mr. Clements stated that on page 57, the proposed change is to replace the text “*Certified Mail*” with “*Certificate of Mail.*” He continued that he also proposes eliminating the description of the product for the post office, and inserting “*in accordance with the requirements of RSA 676:7.*” Then, as the statute evolves, they (staff and the board) do not need to return to the Rules of Procedure to make the changes again. It would just state that they will be notifying abutters and other required parties as required by State statute.

Chair Hoppock asked where that language would be. Mr. Hagan replied that it is the separate form the ZBA received from staff at the beginning of the meeting, with the red text. Mr. Clements stated that under “II. PROCEDURES FOR FILING APPLICATIONS” is “A. Application/Decision,” and under that is (a paragraph of text) labeled “b.,” and under that is “i.” Staff recommends that “i.” read, “*Personal notice shall be made in accordance with the requirements of RSA 676:7 to the applicant and to all abutters and holders of conservation, preservation, or agricultural preservation restrictions, not less than five (5) days before the date of filing.*”

Ms. Taylor stated that there is a similar change on the back. Mr. Clements replied that is correct, because there is another section in the Rules of Procedure that also discusses notification to abutters and public. He continued that that same change is proposed, from “*Certified Mail*” to “*Certificate of Mail.*”

Mr. Clements stated that going back a step, to page 57 of 68, “d. Abutter Notification Materials,” (under “A. Application/Decision,” under “II. PROCEDURES FOR FILING APPLICATIONS”), (staff proposes adding) clarifying information about who needs to be included on the abutters’ list, including the property owner, the applicant, authorized agent, and easement holders. That is all reflective of State statute.

Mr. Clements stated that (under “d. Abutter Notification Materials”), staff proposes changing the text of “iii.” to read, “*A check in an amount sufficient to cover the cost of legal notice advertising and required mailing,*” (instead of “*...advertising and mailing of certified letters to abutters.*”)

Mr. Clements stated that “B. Voting” (is under “III. CONDUCT OF PUBLIC HEARINGS,” on page 61,” and (the second sentence begins), “*Prior to voting the action, the Board shall render, as appropriate, findings of fact.*” He continued that the new language continues the sentence, “*and a decision by majority of vote, consisting of at least three concurring members.*” Staff also added, “*In the case of a tie vote, the applicant can either withdraw their application upon written request, or the Board shall vote to continue the application to the next meeting with a full five-member Board.*”

336 Ms. Taylor stated that it says, “*In case with a tie vote,*” and she thinks it should be, “*In case of a*
337 *tie vote.*” Mr. Clements agreed.

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339 Chair Hoppock stated that to (illustrate the) problem he sees with this, he will use tonight’s
340 Petitioner as an example. He continued that there are four Board members tonight. If they had
341 voted 2-2, the applicant could have said he wanted to come back next month. When there are
342 five Board members next month, they would have to start from the beginning. As long as no one
343 minds that, they can (make the change to the Rules of Procedure that staff proposes), because re-
344 starting would be necessary.

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346 Mr. Clements asked if he means they would re-start the ZBA’s deliberations. Chair Hoppock
347 replied no, they would have to start the hearing from scratch, because the fifth Board member
348 would not have heard any of it. Mr. Clements replied he thinks that is fair; it would be part of
349 the consequence of requesting a continuance. Chair Hoppock replied that it may not be an
350 efficient use of time, but it is fair. He continued that it might make sense to say to (such
351 applicants) that if they have any inclination, to just continue it, because it would not hurt.
352 However, there are cases in which applicants have a strict timeline. For example, a few months
353 ago there was an applicant with a grant. He is not sure how to solve that problem. Maybe it is
354 best to leave it up to the applicant.

355
356 Mr. Guyot stated that the applicant maintains the right to accept a 2-2 split or a 3-2 vote, a four-
357 member or five-member Board. Chair Hoppock replied that they need three affirmative votes to
358 get it passed. Mr. Guyot replied yes, but if there are four Board members present, the applicant
359 can choose whether to proceed, or to continue it to the next meeting. Chair Hoppock replied that
360 that is not what this says. He continued that if they can decide to proceed with a four member
361 Board, but then it is a tie vote, the applicant has the right to continue it at the next meeting and
362 try again. He would prefer applicants make a decision (up front) and say, “*I don’t want a four-*
363 *member Board; I’ll wait until the fifth Board member is here,*” and just be done, so there is no
364 risk of a tie. A situation like this happened less than six months ago. He thinks it will happen
365 infrequently, so he is fine with it if someone says that if it is a tie vote, they want to come to the
366 next meeting when the fifth member is here. As long as everyone is aware of the fact that they
367 would have to start over again, (this procedure) would be fine with him.

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369 Mr. Clements stated that the Rules of Procedure need to allow the instance where they are not
370 anticipating a 2-2 split and then they end up with one. He continued that then, they would need
371 to keep it going. They cannot just rely on the applicant voluntarily continuing their application,
372 because they might not know (what will happen). They might think the Board will all vote one
373 way, and then they do not. Ms. Taylor replied that is why it says, “*The Board shall vote to*
374 *continue....*” She continued that it would be the Board continuing the application for further
375 hearing, not the applicant. Mr. Clements stated that he is filling in for Corinne (Marcou, Zoning
376 Clerk), so he apologizes for not being super well versed in the implications of all of these
377 changes, but it says, “*or the Board shall vote to continue the application to the next meeting with*
378 *a full five member Board.*” Chair Hoppock replied, if they do not withdraw it. Mr. Clements

379 stated that they might not know when the next meeting with a full five member Board will be.
380 Chair Hoppock replied that they never know, because someone could get sick, like somebody did
381 tonight. It is unpredictable. Mr. Clements replied yes, it might need to be *“The next regularly*
382 *scheduled meeting.”*
383

384 Ms. Taylor stated that last year, the ZBA went several months without a full five-member Board,
385 and an application was continued repeatedly. She continued that she thinks that is what this
386 (proposed change) is addressing, because it would not make sense to continue it to the next
387 meeting if there were only four members present again. Mr. Clements replied yes, you never
388 know when there will be all five members. Ms. Taylor replied that she thinks they would need to
389 keep continuing it. Mr. Clements replied yes, until there is a five member Board or until the
390 applicant chooses to take their chances with a four member Board voting. Chair Hoppock stated
391 that if the applicant does not withdraw it, the ZBA is duty bound to continue it. Mr. Clements
392 replied as written, yes, versus just saying the application shall be continued to the next regularly
393 scheduled meeting. Then at the next regularly scheduled meeting if they have to do it again, they
394 still have that ability, but are not potentially stuck in this continuation loop if they can never get
395 five Board members.
396

397 Chair Hoppock stated that he does not have any objections to the way this (proposed change) is
398 written, as long as everyone understands the implications of it, which is his concern. He
399 continued that the applicants should be aware of this before they go forward, because they could
400 withdraw their application at the beginning before they even start, as the applicant did tonight
401 regarding ZBA 2024-02. They did not withdraw their application; they asked the Board to
402 continue it. That is fine, too.
403

404 Ms. Taylor stated that the Board does not know what the procedures are in the Community
405 Development Department when someone comes in and applications are scheduled for hearings.
406 Maybe this is already being done, but maybe part of it could be to let applicants know, *“By the*
407 *way, if you go with a four member Board and it is a 2-2 tie, it will end up being continued*
408 *anyway, so do you want to continue?”* Mr. Hagan replied that they do make applicants aware of
409 their rights on the application and the Rules of Procedure for that, if they do choose to move
410 forward with a four member Board like the applicants here tonight. Ms. Taylor asked if
411 applicants are aware of what might happen if there is a tie. Mr. Hagan replied yes, (one choice is
412 to) withdraw the application because no decision has been made. Ms. Taylor asked if they are
413 told that. Mr. Hagan replied yes, and many applicants ask what happens if there is a split vote,
414 and staff explains this criteria to them.
415

416 Mr. Guyot asked if applicants, as a matter of course, receive these Rules of Procedure. Mr.
417 Hagan replied no. He continued that the Rules of Procedure are available on the website and in
418 the office, however, for the public. Mr. Clements stated that the application procedures that staff
419 normally use are in Article 25 of the LDC. He continued that normally, they direct applicants
420 there.
421

422 Chair Hoppock stated that there was one other provision in subparagraph C, which he thinks Ms.
423 Taylor has some comments on.

424
425 Ms. Taylor stated that her only comments are regarding this (sentence in subparagraph C) and
426 the one typo she already mentioned, so she appreciates the work that has gone into this. She
427 continued that the last sentence, *“All Notices of Decision will expire in 24 months commencing*
428 *with the date following the date of the action of the Board if no action is taken based on the*
429 *Board decision,”* is very confusing. In addition, her opinion is that it is not following the State
430 statute. The State statute talks about final approval, and as written, this does not contemplate
431 what would happen if there was a motion for re-hearing, which extends the date, or an appeal to
432 the Superior or Supreme Court. She suggests the following: *“All notices of decision will expire*
433 *in 24 months, commencing with the date following the date of final approval.”* They could end it
434 there. That is reflective of what the statute says.

435
436 Mr. Clements replied that to make sure they are being consistent with other information; he and
437 Mr. Hagan can take this back to staff for a rewrite and present it to the ZBA next month. He
438 continued that that way they are not trying to change it on the fly, perhaps leading to a need to
439 change it again later. Tonight the Board can set subparagraph C aside and staff will return next
440 month with alternative language.

441
442 Ms. Taylor stated that RSA 674:33 I-a.(a) is probably one of the most confusingly numbered
443 statutes in the book. She continued that that is what she is concerned about, as it references
444 “final approval.” Chair Hoppock stated that if cases go to the Superior Court after they leave
445 here, and then may go to the Superior Court, it makes perfect sense. He continued that he agrees
446 that it is consistent with what he read in 674:33 I-a.(a). Mr. Clements replied that staff will look
447 at the language and edit it.

448
449 **C) Fee Schedule Proposal**

450
451 Mr. Clements stated that staff proposes increasing the application fee from \$100 to \$250. He
452 continued that staff conducted an analysis of fees that Keene’s sister communities require for
453 Variance requests and other ZBA applications and noted that an adjustment to the fee schedule
454 has not been conducted since 2017. Each community does it a little differently, but staff decided
455 that the increase from \$100 to \$250 would do a little more to capture the costs that go into staff
456 time in preparing the applications while not being unduly burdensome to applicants.

457
458 Chair Hoppock stated that he sees (in the materials staff provided) that Nashua has a fee for
459 submitting more than one request. Keene does not get many of those, but it could be something
460 like two Variances in one application. Mr. Hagan replied yes, there might be multiple Variances
461 asked for, for something like setbacks or impervious coverage.

462

463 Chair Hoppock stated that it is interesting that Concord has a rehearing fee of \$50. He asked if
464 Keene has considered that. Mr. Clements replied no. Chair Hoppock replied that Keene does
465 not get many of those.

466
467 Ms. Taylor stated that she really appreciates the work that went into this (review). She continued
468 that it is very helpful. Case law says you cannot charge fees for more than what the cost is that
469 you are incurring. Thus, if the City is ever challenged by any of this, they have the
470 documentation to show what it is costing. Chair Hoppock stated that to add to that, it is clear
471 that the City of Keene is charging less than the cost it takes staff to do this work. The City would
472 pass any audit with flying colors.

473
474 Mr. Hagan and Mr. Clements stated that all the credit goes to Corinne Marcou. Mr. Hagan stated
475 that she did a great job doing all of this research and putting all of this information together,
476 coming up with a reasonable fee to cover the ongoing and rising costs of operating. Ms. Taylor
477 and Chair Hoppock asked them to please pass the Board's compliments to Ms. Marcou.

478
479 Chair Hoppock asked if the Board should wait to vote on the fee changes at the same time as
480 staff gives them the revised policy changes. Mr. Clements replied that that would be his
481 recommendation, for them to vote to adopt all of the changes next month. Chair Hoppock asked
482 if the Board voting on the fee changes tonight would allow the Community Development
483 Department to start charging the new fees (before next month's meeting). Mr. Clements replied
484 no, because the land use fees are tied into the City Code, so the City Council needs to approve it.
485 He continued that staff are having each land use board approve the fee changes, and will then
486 compile that into one proposed ordinance change, to bring to Council.

487
488 Ms. Taylor stated that procedurally, tonight is their discussion of the proposed changes so they
489 should not be voting on them anyway. Mr. Clements replied that his understanding was that this
490 was brought up at a prior meeting. Mr. Hagan replied that the ZBA had heavy agendas for
491 several months and then did not meet in January or February. Ms. Taylor replied that she thinks
492 the Board had discussed the need to *have* this discussion, but had not yet discussed the actual
493 provisions. Chair Hoppock replied yes, this is the first substantive conversation the Board has
494 had about any of these changes. Mr. Clements replied that he understands what Ms. Taylor is
495 saying, and yes, voting next month is appropriate, procedurally. Chair Hoppock asked if that is
496 okay for staff's timeline. Mr. Clements replied yes, they are still months out, due to their work
497 with the other boards.

498
499 Ms. Taylor stated that she thinks the Board did discuss the "final approval" part. Chair Hoppock
500 agreed. Ms. Taylor stated that that should be an easy one to resolve.

501
502 **VII) Communications and Miscellaneous**

503
504 Mr. Hagan stated that Jesse Rounds, Community Development Director, is here tonight. He
505 continued that staff has been talking about doing a presentation to go over the broad scope of the

506 Zoning Ordinance, perhaps on a night when the Board does not have a heavy agenda. It would
507 help the Board members navigate the Zoning Ordinance more easily as they are seeing and
508 reviewing the applications, especially since there are two new Board members, and he cannot
509 remember the last time the Board had such a presentation, and the LDC has been updated. Chair
510 Hoppock replied that such a presentation would be welcome. Mr. Hagan replied that staff tries
511 to present the Board with the best education they can so the Board can make the best decisions
512 for the community.

513

514 Chair Hoppock asked Mr. Hagan to keep the Board updated on when they might do the
515 presentation. Mr. Hagan replied that next month the agenda will have at least four applications,
516 so he probably will not include the presentation then; they will try for May or June. Chair
517 Hoppock replied that whenever staff thinks is best works for the Board.

518

519 **VIII) Non-Public Session (if required)**

520

521 **IX) Adjournment**

522

523 There being no further business, Chair Hoppock adjourned the meeting at 7:27 PM.

524

525 Respectfully submitted by,
526 Britta Reida, Minute Taker

527

528 Reviewed and edited by,
529 Corinne Marcou, Board Clerk

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a majority vote of those members acting on any matter. All members hearing a matter shall vote; abstention shall not be allowed.

e. **Order of Business:** The order of business for regular meeting shall be as follows:

- i. Call to order by the Chair
- ii. Roll call by the Chair
- iii. Minutes of previous meeting
- iv. Unfinished business
- v. Public hearing
- vi. New business
- vii. Communications and miscellaneous
- viii. Other business
- ix. Non-public session (if required)
- x. Adjournment

(Note: although this is the usual order of business, the Board may change the order of business after the roll call in order to accommodate efficiency or the public.)

f. **Nonpublic Sessions:** All deliberations of the Board shall be held in public. Nonpublic sessions shall be held only as necessary and in strict compliance with the provisions of RSA 91-A. The Board may also adjourn, as needed, to meet with its attorney to receive legal advice, which will not constitute a nonpublic session pursuant to RSA 91-A.

II. PROCEDURES FOR FILING APPLICATIONS

A. Application/Decision

a. **Applications:** The original application forms may be obtained from either the Clerk or the Community Development Department. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Clerk who shall record the date of receipt over their signature. The forms provided by the City must be used; correctness of the information supplied shall be the responsibility of the petitioner at all times. Applications should be identified as one of the following: Appeal of an Administrative Decision, ~~Change of a Non-Conforming Use~~, Enlargement or Expansion of a Non-Conforming Use, Equitable Waiver of Dimensional Requirements, Special Exception, Extension, and Variance. All forms and fees prescribed herein and revisions thereof shall be adopted by the Board and shall become part of these Rules of Procedure.

i. Applications to Appeal from an Administrative Decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision or when such decision becomes known or reasonably

should have been known, by the petitioner as determined by the Board.

- b. A public hearing shall be held within ninety (90) days of the receipt of an application, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If a zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief. Public notice of public hearings on each application shall be published in the local newspaper and shall be posted at two locations, of which one posting may be on the City internet website, not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, all applicable provisions of the zoning ordinance, the type of appeal being made, and the date, time, and place of the hearing.
 - i. Personal notice shall be made in accordance with the requirements of RSA 676:7 to the applicant and to all abutters and holders of conservation, preservation or agricultural preservation restrictions not less than five (5) days before the date of the hearing.
- c. **Plot Plans:** A scale drawing showing the location and dimensions of all structures and open spaces on the subject lot and on the adjacent lots. Plans need not be professionally drawn, but must be a sufficient and accurate representation of the property. Plans deemed to be insufficient by the Clerk shall be returned, and no public hearing shall be scheduled until the receipt of an acceptable plan. The plot plan is to be a minimum of 8 ½ x 11 inches.
- d. **Abutter Notification Materials:** For the purpose of abutter notification, the following items shall be submitted with the application:
 - i. An abutters list that includes the property owner, applicant and if applicable, authorized agent, all owners of properties that directly abut and/or that are across the street or stream from the parcel(s) that will be subject to review, ~~and~~ all owners of properties located within two hundred (200) feet of the parcel(s) and holders of conservation, preservation, or agricultural preservation restrictions that will be subject to review. The certified list shall include all property owner names, property street addresses, property tax map parcel numbers, and mailing addresses if different from the property address. In the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association as defined in RSA 356-B:3, XXIII.

ii. Two (2) sets of legible mailing labels (Avery size 5160 or equivalent) for each abutter and including the owner of the property that will be subject to review and his/her designated agent(s).

iii. A check in an amount sufficient to cover the cost of legal notice advertising and required mailing. ~~of certified letters to abutters.~~

e. In accordance with RSA 676:5, IV, each application shall require the payment of an application fee to be determined by the Board, together with fees that may be required for investigative studies, document review or other administrative costs and expenses.

B. Other Requirements

a. **Appeals of Administrative Decisions:** An appeal from an administrative decision, filed in accordance with RSA 676:5, shall be filed within thirty (30) days of such decision.

b. **Person Authorized to Submit Applications:** To submit a proper application, an applicant must be one of the following persons:

i. The title or record owner of the subject property, or such owner's duly authorized agent, and signed as such on the application form.

ii. The holder of a valid Purchase & Sales Agreement or the holder of a valid Option for the purchase of the subject property (with a signed written consent of the title or record owner of such property, or such owner's duly authorized agent).

c. **Documentation of Title or Authority to Appeal:** The Board may require the holder of record title to submit documentary evidence as to Petitioner's title and holders of Purchase and Sale Agreements or Options may be required to submit evidence that they are valid holders of such agreements before the Board will consider their application.

d. **Inadequate Application:** Any Petitioner who submits an application, plans and/or exhibits that are deemed inadequate by the Clerk shall not be scheduled for a hearing before the Board until such time as the Clerk receives adequate plans or exhibits and application.

e. **Floor Plans:** When, in the opinion of the Community Development Department, floor plans are necessary in the case of conversions or renovations to an existing structure, Petitioner shall furnish interior floor plans to scale. Floor plans need not be professionally drawn, but must be a sufficient and accurate representation of the floor plan.

C. **Deadline for filing:** All required information under these rules must be submitted to the Clerk before the scheduled deadlines to be submitted to the Board. The

submittal deadline shall be no less than seventeen (17) days' prior to the next months meeting. The application will not be placed on the Agenda until all of the required information is received in a format acceptable to the Clerk.

- D. **Notification to Abutters and Public:** The Clerk will set a date, time, and place for a public hearing and shall notify the applicant and all abutters within two hundred (200) feet of the property (using the notification materials required by Paragraph A.d.i., above) ~~by Certified~~ as required by RSA 676:7 Mail, and shall cause a public notice of the hearing to be published in a newspaper of general circulation in the area, at least five (5) days' prior to the date fixed for the hearing on the application (RSA 676:7, I). Pursuant to RSA 676:7, II, the public hearing shall be held within forty-five (45) days of the receipt of a properly completed application (Paragraph A.b. above).
- E. **Fees:** The petitioner shall pay to the Clerk a non-refundable filing fee of ~~One Hundred Dollars (\$100.00)~~, Two Hundred and Fifty Dollars (\$250) at the time of filing. Additionally, reimbursement of the cost to notify each abutter, owner, and applicant by ~~Certified~~ required mail based on the current USPS postal rate and to publish a legal notice advertisement in the local newspaper, a fee of Sixty-Two Dollars (\$62.00) must be paid at the time of filing.
- F. **Assistance by City Staff:** The Zoning Administrator will be available to assist the applicant with the application form, drawings and plans. If necessary, clarification of the Zoning Ordinance can be obtained from the Zoning Administrator, but the City will not provide legal advice as part of the application process.
- G. **Procedural Compliance:** Unless any objection is specifically raised or procedural defect otherwise noticed during a public hearing, the Board shall assume that any application has been properly filed and that due notice has been given as required by these Rules of Procedure, Keene's Zoning Ordinance, and State statutes.
- H. **Consent to Inspection:** Upon filing any application, the owner of the affected land implicitly consents to inspection of property and building by City staff and Board members upon reasonable prior notice and at a reasonable time. In the event that such inspection is refused when requested, the application shall be dismissed without prejudice by the Board.
- I. **Supplemental Information:** If an applicant or applicant's agent submits supplemental information pertaining to an application within (10) days prior to the public hearing at which the application is to be heard, the board shall consider during the meeting and decide by majority vote, whether to accept the supplemental information for consideration at the meeting, or to continue the application to the next scheduled meeting to allow adequate time to review the supplemental information.

III. CONDUCT OF PUBLIC HEARINGS

requiring the reopening. All deliberations and decisions made by the Board shall continue to be conducted in public. The Board shall, when appropriate, render findings of fact.

- o. The Board may continue a public hearing to a place, date and time certain announced by the Chair without further public notice.
- B. **Voting:** Except as determined by the Board, the Board shall decide all cases immediately after the public hearing. Prior to voting the action, the Board shall render, as appropriate, findings of fact and a decision by majority of vote, consisting of at least three concurring members. The Board will approve, approve with conditions, deny the appeal, or defer its decision. In the case with a tie vote, the applicant can either withdraw their application upon written request, or the Board shall vote to continue the application to the next meeting with a full five member Board.
- C. **Decisions:** Notice of the Decision will be made available for public inspection within five (5) business days as required by RSA 676:3, *1* and will be sent to the applicant by regular mail. The decision shall include specific written findings of fact that support the decision. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the Planning Board, the Community Development Department, Assessor, and other City officials as determined by the Board. Decisions shall be based upon (1) all relevant facts and evidence introduced at the public hearing, (2) the application, (3) the Zoning Ordinance, and (4) applicable law. *All Notices of Decision will expire in 24 months commencing with the date following the date of the action of the Board if no action is taken based on the Board decision.* A Board Notice of Decision shall be valid if exercised within two (2) years from the date of final approval unless extended by the Board for good cause.
- D. **Rehearing by the Board:** The Board may reconsider a decision to grant or deny an application, or any other decision or order of the Board, provided a Motion for Rehearing is submitted to the Board no later than thirty (30) calendar days commencing with the date following the date of the action of the Board for which the rehearing is requested. Motions for rehearing can only be received in the office of the Board during normal business hours of Monday thru Friday, 8:00 a.m. to 4:30 p.m., City Hall, 4th floor, Community Development Department.
- E. **Motions for Rehearing:** The Board shall deliberate the Motion for Rehearing within thirty (30) days of the date of the filing of the Motion. The deliberation by the Board shall not require a public hearing and shall be conducted solely by the Board and based upon the contents of the Motion. If the Board grants a motion for rehearing, the new public hearing shall be held within thirty (30) of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

STAFF REPORT

During the previous fee schedule review in 2017, it was staff's recommendation to conduct a cost review on an on-going basis to keep the fees more in line with cost recovery goals as outlined in the City Council Fiscal Policy Resolution, R-2006-07-A. This report outlines the current cost review process and staff's recommendations for moving forward. The current Zoning Board of Adjustment application fee is \$100.00, established as part of the previous fee schedule review conducted in 2017. Outlined below is a breakdown of the steps required by staff to prepare the monthly Board agenda packet necessary to conduct the meeting.

The following is a compilation of data gathered from the past four calendar years from 2020-2023. The data shows the average City expense generated per petition submitted to the Zoning Board of Adjustment. The compilation includes tasks completed by staff along with hours and cost involved for each month's packets. City Staff involved in this process ranges from the Board Clerk to the Staff Liaison, Zoning Administrator, City Attorney, and the Community Development Department's Housing Inspector. The fee schedule also includes the costs associated with the posting of the legal notice (\$62.00 per applicant), mailing the Board members the monthly agenda packets, and the certified mailing (current USPS rate of \$5.04 per abutter) of the Notice of Hearing to each abutter.

While conducting research of other NH municipalities fee schedules, it was shared with Staff the draft legal notice used by some of these other communities. This was an opportunity for Staff to review our current formatting by reducing the length of the notice, while maintaining the requirements set by the State RSA's. This new formatting allows the legal fee to remain at its current cost to the applicant, which is in line with the actual cost of publishing the legal notice.

In addition to the review of how legal notices are formatted, staff reviewed the requirements of State RSA 21:53, which states *"The term 'verified mail' means any method of mailing that is offered by the United States Postal Service or any other carrier, and which provides evidence of mailing."* While discussing the costs of mailing via certified mail, it was discovered the US Postal Service provides an option called certificate of mailing, which is a decrease in costs for the applicant, while still meeting the notice requirements dictated by State RSA. In following the State RSA, it is recommended that the fee schedule state Notices of Hearing be mailed to abutters via certificate of mail.

The Board Clerk follows a 18-step process in completing the monthly agenda packet. The tasks involved require varying amounts of time for a number of staff members. Several steps consuming the most staff time are the proofreading of the previous meeting minutes, and the drafting and mailing of the Notices of Hearing. In addition, the creating of the agenda packet preparation takes a significant amount of time, with tasks that include not only the previously noted steps, but also the creation of the agenda, the conversion and sorting all documents to PDF format, then mailing the completed agenda packet to the Board members. Completing the

steps include posting the agenda packet on the City website, posting the agenda at three physical locations and creating the agenda packet PowerPoint.

Please note, in preparing the attached ZBA Fee Schedule Study, the 2023/2024 Operating Budget was used, specifically, Staffing Summary found on page 145, in determining each staff member’s hourly rate and hours required to perform their assigned tasks. See attached copy of the noted budget pages.

To gain the total amount of the cost to prepare for the monthly Zoning Board meeting, staff members were listed with each step assigned to them with the hours required to complete the task. Their total monthly hours were then multiplied by their hourly rate. These amounts were then compiled to receive a total cost to prepare for the monthly meeting.

The result of this analysis concludes the total cost to produce, post and mail the monthly agenda packet for the ZBA meetings is \$650.00. Given that this cost is significantly higher than the current \$100.00 application fee, it is recommended to increase this fee to \$250.00 as shown on the attached draft fee schedule.

Below is a summary of the fees charged by other NH Cities and Towns for their ZBA applications compiled during the research phase:

Municipality	Application Fee	Abutter Fee	Advertising Fee	Notes
Lebanon	\$150	Current USPS certified mail rate	Current USPS certified mail rate	
Londonderry	\$60	Current USPS certified mail rate	Current USPS certified mail rate	
Salem	\$125	\$5 per abutter	\$25	
Nashua	Variance \$900 All others \$330	In addition to the necessary postal fee, a \$3 charge per abutter	Included in application fee	Application with more than one request, additional \$200. Any Applicant postponement, additional \$100.00.
Concord	Application fees are based on zoning district. Many districts are \$460; others \$370.	Application fee includes mailing and legal notices. Those abutters whose property is outside the boundaries of the City, \$82.	Included in application fee	Rehearing request, \$50.
Bedford	\$100 for residential properties; \$200 for commercial properties	Current USPS certified mail rate	Included in application fee	
Portsmouth	1 & 2 family units, \$200; \$300 for 3+ units, with an additional \$50 for each residential unit over four-family, not more than \$3,000. Non-residential units, \$400 + \$5 for each \$1,000 of value of new construction, not to exceed \$3,000. Sign applications, \$200. Appeal of Administrative Decision, \$50.	n/a	Legal ad fee is divided by number of applications	

2020 - 2023 ZONING BOARD OF ADJUSTMENT FEE ANALYSIS

Year	# Petitions	Current Fee	Total Yrly. Revenue	Staff	Pre-meeting	Tasks to complete	Hr rate	Total \$
2020	29	\$100	\$2,900	Clerk:	5	proofreading minutes	\$39	\$195.00
2021	23	\$100	\$2,300		0.5	review meeting	\$39	\$19.50
2022	21	\$100	\$2,100		2.5	packet prep per petition	\$39	\$97.50
2023	28	\$100	\$2,800		1.7	abutter letters	\$39	\$66.30
Year	Total annual #Abutters	Months / #Petitions	Hrs working on NOH ^a	Subtotal:	9.7	total hrs preparing for meetings	\$39	\$378.30
2020	513	/12 /24	1.8	Staff Liaison:	0.25	application review	\$53	\$13.25
2021	451	/12 /36	1.6		0.5	review meeting	\$53	\$26.50
2022	429	/12 /28	1.5		0.5	meeting prep	\$53	\$26.50
2023	537	/12 /50	1.9	Subtotal:	1.25	total hrs preparing for meetings	\$53	\$66.25
Year	Total yrly cost-Legal Ads	#Petitions	\$ Per Petition	Zoning Admin:	0.5	review meeting	\$69	\$35
2020	\$1,711.62	29	\$59.02	Subtotal:	0.5	total hrs preparing for meetings	\$69	\$35
2021	\$1,140.80	23	\$49.60	City Attorney:	0.5	review meeting	\$86	\$43
2022	\$1,112.50	21	\$52.98	Subtotal:	0.5	total hrs preparing for meetings	\$86	\$43
2023	\$1,602.84	28	\$57.24	Housing Inspector:	0.5	pictures per packet	\$42	\$21
Average			\$54.71	Subtotal:	0.5	total hrs preparing for meetings	\$42	\$21
Staff	Salary w/ benefits ^b	# of hours/year	Hourly rate	TOTAL:				\$543
Zoning Admin	\$135,344	/1,950 ^b	\$69	LEGAL AD & PACKET MAILING: \$62 + \$45:				\$107
City Attorney	\$168,202	/1,950 ^c	\$86	TOTAL MONTHLY OF PREPARING AND MAILING AGENDA PACKET COST:				\$650
Staff Liaison	\$103,882	/1,950	\$53	^a number of abutters per month / number of petitions per year = average time spent preparing Notice Of Hearing (NOH)				
Clerk	\$76,863	/1,950	\$39	^b 1,950 - number of hours in a work year = 37.5 hrs a wk * 52 wks in a yr				
Housing Inspector	\$82,536	/1,950	\$42	^c \$23,382 total bennies for a full time employee = \$183,081 total bennies / 7.83 total FTE's				
# of Board Members	Average USPS fee	Monthly mailing costs						
5	\$9	\$45						

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19 GROVE ST.
ZBA-2024-02



Petitioner requests a Variance to convert a legal non-conforming office use to a third apartment in the Residential Preservation District per 3.2.5 of the Zoning Regulations



NOTICE OF HEARING

ZBA-2024-02

A meeting of the Zoning Board of Adjustment will be held on **Monday, March 4, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-02: Petitioner, Thomas Hanna of BCM Environmental and Land Law, PLLC, Keene, requests a Variance for property located at 19 Grove St., Tax Map #585-055-000, is in the Residential Preservation District, and is owned by 1925 Grove Street, LLC, 295 Seaver Rd., Harrisville. The Petitioner requests a Variance to permit the conversion of a legally non-conforming office use to a third apartment unit in the Residential Preservation District per Article 3.2.5 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk

Notice issuance date February 22, 2024

City of Keene, NH

Zoning Board of Adjustment Variance Application



For Office Use Only:
Case No. <u>ZBA-2024-02</u>
Date Filled <u>2/15/24</u>
Rec'd By <u>CM</u>
Page <u>1</u> of <u>21</u>
Rev'd by _____

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keeneh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: 1925 Grove Street LLC

MAILING ADDRESS: 295 Seaver Road, Harrisville, NH 03450

PHONE:

EMAIL: See Agent Info.

SIGNATURE: *Nancy B. Chabott, Manager*

PRINTED NAME: Nancy B. Chabott, Manager of 1925 Grove Street LLC

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: BCM Environmental and Land Law, PLLC

MAILING ADDRESS: 41 School Street, Keene, NH 03431

PHONE: (603) 352-1928

EMAIL: hanna@nhlandlaw.com; kessler@nhlandlaw.com

SIGNATURE: *Thomas R. Hanna*

PRINTED NAME: Thomas R. Hanna

SECTION 2: PROPERTY INFORMATION

Property Address: **19 Grove Street**

Tax Map Parcel Number: **585-055-000**

Zoning District **Residential Preservation**

Lot Dimensions: Front: **61'** Rear: **67.48'** Side: **152.46'** Side: **152.46'**

Lot Area: Acres: **0.23** Square Feet: **10,019**

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **N/A** Proposed: **N/A**

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: **N/A** Proposed: **N/A**

Present Use: **1 Office & 2 Apartments**

Proposed Use: **3 Apartments**

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

See Attached.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) **3.2.5** of the Zoning Regulations to permit:

The conversion of a legally non-conforming office use to a third apartment unit in the Residential Preservation District.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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 criterial 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.

See Attached.

NOTICE LIST

This template can be used to record the name, mailing address, street address, and tax map parcel (TMP) # for each party that is required to be noticed as part of an application.

OWNER NAME	MAILING ADDRESS	STREET ADDRESS (If different from mailing address)	TAX MAP PARCEL (TMP) #
See Attached.			

VARIANCE APPLICATION

19 Grove Street, Keene, NH (Parcel ID: 585-055-000)

PROJECT NARRATIVE

The Owner of the property at 19 Grove Street (Parcel ID: 585-055-000), 1925 Grove Street LLC, is seeking to convert an existing, legally non-conforming office to a third apartment unit. The property is in the Residential Preservation District, which does not allow for multi-family dwellings. As such, a variance is requested from Section 3.2.5 of the City's Zoning Ordinance to permit this conversion.

The existing building at 19 Grove Street has been a mixed-use building since the late 1800s. The first floor was used to house one of Keene's first grocers/grocery stores, which operated from the 1890s until the mid-20th century. This 1,248 square foot space was then used for several decades as an office for Chabott Coal and Oil. Most recently, it was used as office space for a Chiropractor.

The Owner has had difficulty finding a new tenant for this space for an office use and would like to convert the first-floor office unit to a residential apartment. This proposed use would be in keeping with the other uses on site as the building has two existing apartments units, and would be more aligned with the surrounding land uses on Grove Street, which are predominantly two- and multi-family dwellings.

RESPONSES TO VARIANCE CRITERIA

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

The proposed residential use will be less impactful on the surrounding neighborhood and more aligned with the purpose of the Residential Preservation District than the current office use. In addition, the proposed use would serve the public interest by increasing available housing during a time when such units are in short supply and high demand.

A third apartment unit in the building will generate less traffic than the existing combination of office and residential uses. The ITE Trip Generation Manual 10th Edition estimates that a "Single Tenant Office Building" (ITE Code #715) produces 1.74 vehicle trips per 1,000 square feet of gross floor area during the PM peak hour, and that "Multifamily Housing (Low-Rise)" (ITE Code #220) generates 0.56 vehicle trips per dwelling unit during the PM peak hour. Using these estimates, the existing building, which contains two dwelling units and a 1,248 square foot office space, generates approximately 3.29 vehicle trips during the PM peak hour. Whereas, the proposed multi-family residential use of three apartment units will generate approximately 1.68 vehicle trips during the PM peak hour. This proposed change of use will result in a 49% reduction in vehicular traffic to the site.

In addition to fewer vehicle trips, the proposed use will reduce parking demand onsite. Table 9-1 "Minimum On-Site Parking Requirements" of the Zoning Ordinance requires a total of 9 onsite parking spaces for the existing uses on the property. The "Office," which is 1,248 sq. ft., requires 5 onsite parking spaces and the two apartments require a total of 4 onsite parking spaces. Conversion of the office space to a third apartment will require 6 onsite parking spaces.

Due to the size of the existing building's footprint (6,073 square feet) and the size of the parcel (10,019 square feet), there is limited room on site for parking. Currently, there are 5 onsite parking spaces, where 9 are required by the Zoning Ordinance. As the current use has a parking deficiency of 4 onsite parking

spaces, Section 9.2.8 of the Zoning Ordinance allows for a parking credit to be applied to the onsite parking requirements for the proposed use. Section 9.2.8 states that:

“Any existing parking deficiencies of the required on-site parking spaces for the previous use may be credited to the new use at the discretion of the Zoning Administrator, provided that the previous use was legally established and the number of parking spaces has not decreased.”

If the existing deficiency of -4 onsite parking spaces is applied to the required 6 onsite spaces for the proposed three dwelling units, then the onsite parking requirement for the proposed multifamily use would be 2 parking spaces. However, the Owner intends to retain the existing 5 parking spaces, and does not plan to make any modifications to this parking.

In addition to the existing 5 parking spaces on the property, the driveway leads to a parking area on the abutting parcel to the south (25 Rear Grove Street, Parcel ID: 585-053-000), which is also owned by 1925 Grove Street LLC. This parking area is accessory to the parcels at 19 Grove Street and 25 Grove Street and may be used for overflow parking, if needed.

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

The conversion of the existing mixed-use building to a 3-unit multi-family dwelling will be more conforming with the purpose of the Residential Preservation District and the requirements of the Zoning Ordinance for residential districts/uses.

The Residential Preservation District was established in 2017 with the intent of returning “...*this area of the City to neighborhoods composed predominantly of moderately dense, single-family development.*” Although the proposed use is not a single-family dwelling, it is a residential use that is in keeping with the surrounding land uses, which are predominantly two- and multi-family dwellings. It is also more in keeping with the residential use permitted in the Residential Preservation District than the existing office use. Fourteen (14) of the 22 parcels on Grove Street have buildings with two or more dwelling units; 6 are single-family dwellings; 1 is a parking lot; and 1 is bank.

The existing building has been used for commercial and residential purposes for over a century, and is the only mixed-use building on Grove Street. However, mixed uses are not permitted on lots in residential zoning districts per Section 8.1.3 of the Zoning Ordinance. Granting the variance will allow the building to convert to a multi-family dwelling, thereby eliminating the nonconforming commercial use, as well as the nonconforming mixed uses.

3. Granting the variance would do substantial justice because:

Granting the variance will enable Owner to continue to use the building in a manner that is in keeping with the Zoning Ordinance without having to make major renovations to the building and site. As noted in the project narrative, the Owner has been unable to find a tenant for the first-floor office unit that would be compatible with the surrounding residential neighborhood or with the residential apartments in the building. The Owner would like to continue to use/rent the first-floor unit (1,248 square feet), which accounts for nearly 40% of the building’s livable floor area (3,184 square feet). As there is high demand for rental housing, and the existing building is surrounded by two- or multi-family dwellings, converting this space to a third apartment unit will allow the Owner to continue to rent/maintain the property in a way that is more conforming with the surrounding land uses and the Zoning Ordinance.

In addition, granting the variance will permanently eliminate the potential impacts that a commercial use might have on the surrounding residences, such as vehicle traffic, thereby enhancing the residential character of the neighborhood.

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

The proposed apartment use will have less of an impact on the surrounding area by generating less traffic and requiring less parking on site than the existing commercial office use. Furthermore, converting the existing mixed commercial/residential building to a three-family dwelling will make it more compatible with the uses of surrounding properties. Except for 87 Water Street, the parcel at 19 Grove Street is surrounded by two- or multi-family dwellings. The existing buildings in this area date back to the late 1800s and early 1900s, when the historic pattern of development was two-family and multi-family dwellings on smaller lots.

According to the City's assessing records:

- The abutting parcel to the north at 13 Grove Street is a two-family dwelling built in 1900 on a 0.2-acre lot.
- The abutting parcels to the south include 25 Grove Street, which is a two-family dwelling built in 1900 on a 0.13-acre lot, and 25 (Rear) Grove Street, which is a 0.18-acre lot used as accessory parking to the parcels at 25 and 19 Grove Street.
- The abutting parcel to the west (at the rear of the lot) at 10 Willow Street is a two-family dwelling built in 1850 on a 0.14 -acre lot.
- The abutting properties directly across the street (to the east) include 14-16 Grove Street, which is a three-family dwelling built in 1910 on a 0.14-acre lot, and 18 Grove Street, which is a two-family dwelling built in 1900 on 0.14-acre lot.

5. Unnecessary Hardship

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

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

The existing nonconforming building at 19 Grove Street and its nonconforming mixed commercial/residential uses were first established in the 1890s, over 130 years ago, by the Chabott family. At that time, and still today, the surrounding neighborhood was composed mostly of two- and multi-family dwellings on small lots spaced closely together. Unlike its neighboring properties, the building's first floor housed one of Keene's first grocery stores, Chabott Grocer, which operated from the 1890s until the mid-20th century. Its upper stories were used as apartment space by the Chabott family, and have since been rental apartments for the past thirty years. The first-floor space was later used for several decades as an office for Chabott Coal and Oil, and most recently, it was office space for a Chiropractor.

Historically, this 2.5-story building has had a larger footprint than surrounding buildings, due mostly to the storage space required for the former grocery use (3,917 square feet of the building remains as storage space for private use of the Owner). This footprint encompasses over 60.5% of the lot. The remaining land area is used for parking, a driveway, and a very small area of grass along the north side of the building.

Although the development pattern of this area has changed little over the past several decades, the City's long-range intent for new development in this area shifted in 2017 with the adoption of the Residential Preservation District. This newly formed district eliminated the allowance for two- and multi-family dwelling uses in this moderately-dense neighborhood. The only residential use permitted in the Residential Preservation District is single-family dwellings and mixed uses on a lot are not permitted.

Due to the unique size of this historic building, its nonconforming mixture of commercial space and apartments, and the predominance of two-family and multi-family housing in the immediate vicinity, it is unreasonable to require the Owner to transition this existing building to a single-family home to be conforming with the intent of the Ordinance. The requested variance would allow the Owner to continue use of the first-floor space of the building, for which it has had difficulty finding a new office/commercial tenant, in a manner that is more nearly conforming with the intent of the Residential Preservation District and is compatible with surrounding land uses.

ii. The propose use is a reasonable one because:

The proposed first-floor apartment will be more conforming with and less impactful on the surrounding residential area than the existing office/commercial use. Granting the variance will eliminate the existing non-conforming commercial use as well as the mixed uses on the property, and will enable the building to be used in a way that is compatible with the residential neighborhood. It will also allow the Owner to continue to utilize the property without having to make major changes to the site and building.

- 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.**

As the criteria in subparagraph A are established, a response to this section is not applicable.



19 Grove Street Plot Plan

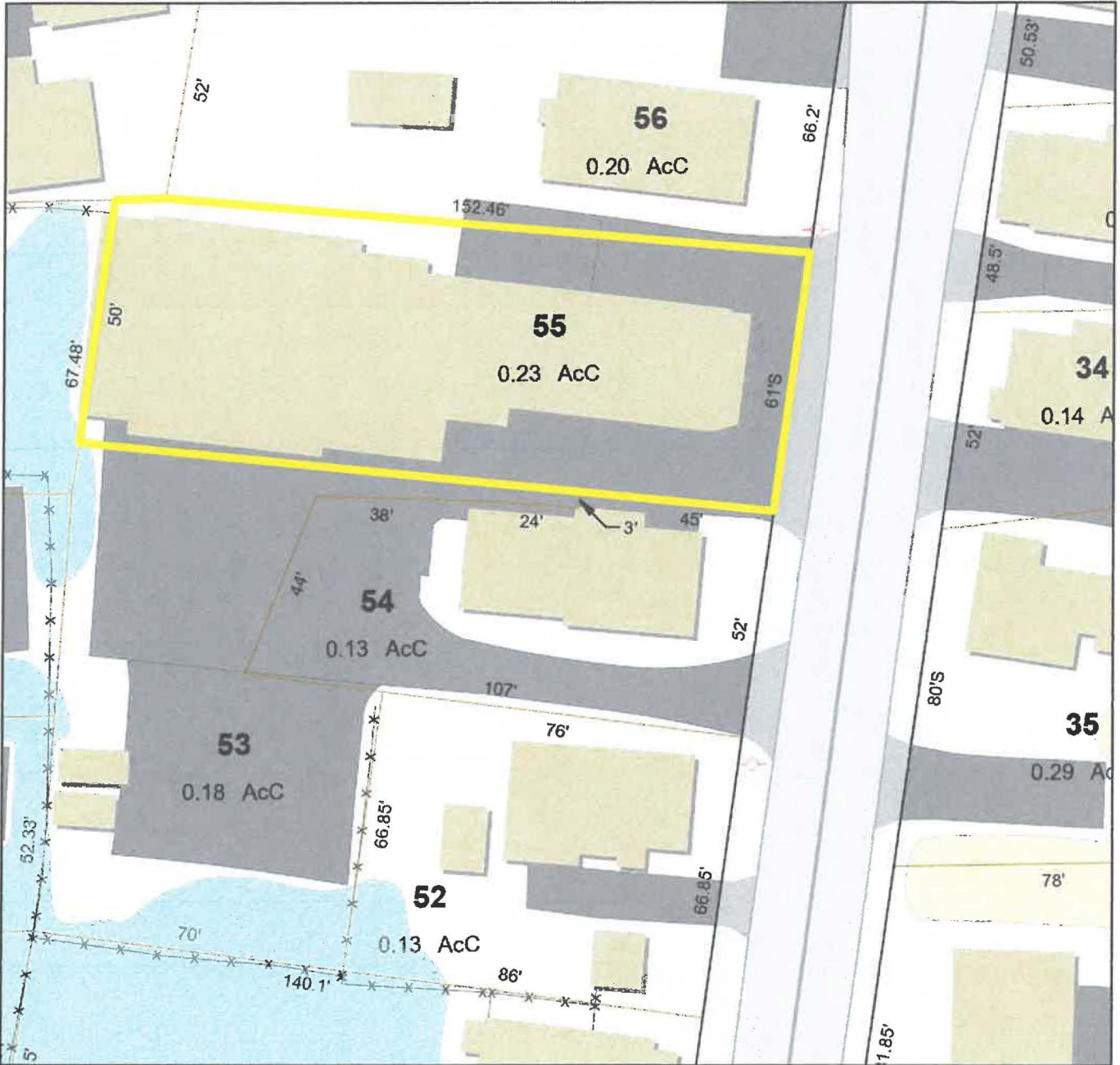
City of Keene, NH

1 inch = 35 Feet



www.cai-tech.com

February 7, 2024



	Property Line		Shadow		Fence Wall		Parking Lot
	Public Road		Right of Ways		Street Centerline		Roadway
	TaxmapText_Leaders		Building		Driveway		World Hillshade
	TaxmapText_Arrowheads		Utility Pole		Hardwood		
	Buildings		Edge Of Street		Mixed		

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.

PHOTO SHEETS FOR 19 GROVE STREET VARIANCE APPLICATION
(Photos Taken Feb. 11, 2024)



Photos above and below: Front elevation of 19 Grove Street (photos taken from Grove Street facing west).



PHOTO SHEETS FOR 19 GROVE STREET VARIANCE APPLICATION
(Photos Taken Feb. 11, 2024)



Above Photo: Parking area at 25(Rear) Grove Street that is adjacent to 19 Grove Street to the south (photo taken from the driveway of 19 Grove Street facing southwest); Below Photo: Rear of the building at 19 Grove Street and the adjacent parking area at 25(Rear) Grove Street (photo taken from the driveway of 19 Grove Street facing west).



PHOTO SHEETS FOR 19 GROVE STREET VARIANCE APPLICATION
(Photos Taken Feb. 11, 2024)

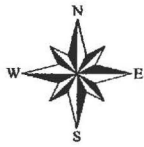


Above Photo: Two- and Multi-Family Dwellings across Grove Street from 19 Grove Street (photo taken facing east); Below Photo: View of 19 Grove Street and surrounding buildings (photo taken facing northwest).



NOTICE LIST FOR 19 GROVE STREET (Parcel ID: 585-055-000) VARIANCE APPLICATION

Parcel Number	Property Address	Owner Name	Owner Mailing Address	
585-053-000; 585-054-000; 585-055-000	25Rear GROVE ST.; 25 GROVE ST.; 19 GROVE ST.	1925 GROVE STREET LLC	295 SEAVER RD.	HARRISVILLE, NH 03450
585-056-000	13 GROVE ST.	210 HOLDINGS LLC	PO BOX 164	MARLOW, NH 03456
585-022-000	74-76 WATER ST.	74-76 WATER ST LLC	PO BOX 427	KEENE, NH 03431
585-030-000	131 WATER ST.	B&D HOLDINGS INC.	67 MOUNTAIN BLVD. EXT. SUITE 201	WARREN, NJ 07059-5602
585-061-000	77 WATER ST.	JANICE J. BOURASSA	77 WATER ST.	KEENE, NH 03431
585-033-000	14-16 GROVE ST.	THEODORE E. CHABOTT LIVING TRUST	245 CHURCH ST.	KEENE, NH 03431
585-026-000; 585-057-000	0 WATER ST.; 0 GROVE ST.	CITY OF KEENE	3 WASHINGTON ST.	KEENE, NH 03431
585-025-000	92 WATER ST.	CITYSIDE HOUSING ASSOCIATES LP	63 COMMUNITY WAY	KEENE, NH 03431
585-035-000	24 GROVE ST.	ROBERT S. CROWELL	24 GROVE ST.	KEENE, NH 03431
585-036-000	10 MYRTLE ST.	DIABCO PROPERTIES LLC	112 MAPLE ST	SCITUATE, MA 02066
585-031-000	113 WATER ST.	DIRTY WATER 113 LLC	49 MAIN ST.	NORWELL, MA 02061
585-059-000	87 WATER ST.	ELM CITY PROPERTIES LLC	16 NORTH SHORE RD.	SPOFFORD, NH 03462
585-064-000; 585-065-000; 585-066-000; 585-051-000	16 WILLOW ST.; 22 WILLOW ST; 28 WILLOW ST; 35 WILLOW ST	DONNA FORTE	134 DAVIS ST	KEENE, NH 03431
585-047-000; 585-048-000	52 WILLOW ST.; 58 WILLOW ST.	DONNA J FORTE PROPERTY MGMT LLC	134 DAVIS ST	KEENE, NH 03431
585-034-000	18 GROVE ST.	LAWRENCE R. GILMET, JR.	18 GROVE ST.	KEENE, NH 03431
585-060-000	81 WATER ST.	GREENWALD 2 LLC	PO BOX 361	KEENE, NH 03431
585-058-000	91 WATER ST.	JOSHUA GREENWALD	55 MAIN ST.	KEENE, NH 03431
585-023-000; 585-024-000	84 WATER ST.; 88-90 WATER ST.	WENDI HULSLANDER	20 VINE ST.	KEENE, NH 03431
585-052-000	29 GROVE ST.	ERICA KEMPF & DAVID BROUGHTON	29 GROVE ST.	KEENE, NH 03431
585-063-000	10 WILLOW ST.	MEDARD K. KOPCZYNSKI	10 WILLOW ST.	KEENE, NH 03431
585-032-000	8 GROVE ST.	LONDON REALTY TRUST SUSAN MAZZONE, TRUSTEE	98 OVERVIEW DR.	JAFFREY, NH 03452
585-037-000	24 MYRTLE ST.	CHRISTOPHER MCGARRY	24 MYRTLE ST.	KEENE, NH 03431
585-038-000	38 MYRTLE ST.	PETER T. MORAN	PO BOX 146	KEENE, NH 03431
585-062-000	4 WILLOW ST.	EST OF GREGORY PITTS SR & HEIRS IF ANY	4 WILLOW ST	KEENE, NH 03431
585-067-000	34-38 WILLOW ST.	MARK T. SYMONDS	167 DEPOT RD.	WESTMORELAND, NH 03467
585-050-000	43 GROVE ST.	TIMOTHY W. ZINN	9 FULLER DR.	BRATTLEBORO, VT 05301-6502
		BCM ENVIRONMENTAL & LAND LAW PLLC	41 SCHOOL ST.	KEENE, NH 03431



19 Grove Street Abutters in 200'

City of Keene, NH

1 inch = 137 Feet



www.cai-tech.com

February 7, 2024



— Condo	— WaterLines	— Building	— Hardwood
— Private Road	— TaxmapText_Leaders	— Utility Pole	— Mixed
— Property Line	— TaxmapText_Arrowheads	— Edge Of Street	— Parking Lot
— Public Road	— Buildings	— Fence Wall	— Roadway
— Right of Way	— Shadow	— Street Centerline	— World Hillshade
— Property TIC	— Right of Ways	— Driveway	
— Wetland	— Wet Areas	— Evergreen	

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.

Medard and Dawn Kopczynski

February 28, 2024

Honorable Chair and Members of the Zoning Board of Adjustment
C/O Community Development Department 4th Floor City Hall
Comments relative to ZBA 2024-22- 19 Grove Street Keene, NH 03431

Dear Board Members,

Unfortunately, my wife and I are unable to attend the meeting of March 04, 2024, due to a previous commitment. Had we been able to attend the meeting we would have testified our opposition to the variance request. We have seen far too many variances issued in our neighborhood that have not been positive.

We feel the variance request fails the follow two prongs of the variance test: (b) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; (c) the variance is consistent with the spirit of the ordinance. If you examine the intent of the Residential Preservation District, it is to return the neighborhood to single-family. The building in question has a long history in its present form of mixed use with the former Chabot Coal operating from there for many years. Uses may revert to the day when Grove Street was a vibrant mix of housing and business. Grove Street today is a highway that connects Water Street to Marlboro Street. We believe that before any changes be made to uses including by variance, the Grove Street blocks be reviewed as part of the planning processes used to create the Land Development Code. The first part of that process created the Downtown Districts including the Edge Districts. Grove Street Block as well as Blake Street block were promised to be reviewed for inclusion in an Edge District. It seems that there are no plans to conduct that review as presently Community Development staff is concentrating on the next Master Plan.

3.2.1 Purpose

The Residential Preservation (RP) District is intended to return this area of the City to neighborhoods composed predominantly of moderately dense single-family residential development. This district serves as an additional downtown zoning district that promotes pedestrian-scale development, walkability, bikeability, and urban green space where possible. All uses in this district shall have city water and sewer service.

Sincerely,

Medard and Dawn Kopczynski

meda
Dawn

10 Willow Street, Keene NH 03431



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345 WINCHESTER ST.
ZBA-2024-03



Petitioner requests a Variance for an electronically activated changeable copy sign per Article 10.3, Table 10-2 of the Zoning Regulations



NOTICE OF HEARING

ZBA-2024-03

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-03: Petitioner, Ryan Coyne of Sandri Realty, LLC of 400 Chapman St., Greenfield, MA, requests a Variance for property located at 345 Winchester St., Tax Map #111-027-000, is in the Commerce District, and owned by Sandri Realty, LLC, of 400 Chapman St., Greenfield, MA. The Petitioner requests a Variance to permit the conversion of an analog pricing signs to digital, electronically activated changeable copy sign per Article 10.3., Table 10-2 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	ZBA-2024-03
Date Filled	3/11/24
Rec'd By	CM
Page	1 of 13
Rev'd by	

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keeneh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: Sandri Realty, LLC.

MAILING ADDRESS: 400 Chapman St. Greenfield, MA 01301

PHONE: (413) 772-2121

EMAIL: mbehn@sandri.com

SIGNATURE: *Michael J Behn*

PRINTED NAME: Michael Behn

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Sandri Realty, LLC.

MAILING ADDRESS: 400 Chapman St. Greenfield, MA 01301

PHONE: (413) 772-2121

EMAIL: rcoyne@sandri.com

SIGNATURE: *Ryan Coyne*

PRINTED NAME: Ryan Coyne

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: PROPERTY INFORMATION

Property Address: **345 Winchester St.**

Tax Map Parcel Number: **111-027-000-000-000**

Zoning District **COM**

Lot Dimensions: Front: **189'** Rear: 210' Side: 169' Side: 169'

Lot Area: Acres: **.63** Square Feet: 35,490 sq'

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **6.57%** Proposed: 6.57%

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 54.53% Proposed: **54.53%**

Present Use: Gas station w/ convenience store

Proposed Use: Gas station w/ convenience store

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

The property is located on the corner of Key Rd. and Winchester St. & owned by Sandri Realty. We are looking to update the price sign to meet current imaging standards & to reduce employee risk.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 10²³ of the Zoning Regulations to permit:
Table 10-2

We would like to convert from analog pricing sign to a digital one.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

This is a price sign that will have better visibility for the consumer. It is the same size as the existing sign & will not restrict any visibility. There will be no flashing script moving on the price sign. This will be a static LED price sign.

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

We are not changing the size of the sign. We are only asking to enhance the currently dated & aging face of the sign.

3. Granting the variance would do substantial justice because:

Safety & accuracy.

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

Everything about the size will stay the same. We are only looking to update the image & look of the sign to meet 2024 image standards.

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:

N/A

and

ii. The proposed use is a reasonable one because:

We want to be able to show customers our gasoline prices & savings available by participating in the Go Rewards program.

We want to update current aging sign with new image.

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.

The LED gas price sign is similar to other signs at local gas stations.



200 feet Abutters List Report

Keene, NH
March 11, 2024

Subject Property:

Parcel Number: 111-027-000
CAMA Number: 111-027-000-000-000
Property Address: 345 WINCHESTER ST.

Mailing Address: RE SANDRI TVE LLC
400 CHAPMAN ST.
GREENFIELD, MA 01301-1736

Abutters:

Parcel Number: 111-003-000
CAMA Number: 111-003-000-000-000
Property Address: 340 WINCHESTER ST.

Mailing Address: STATE OF NH
PO BOX 483
CONCORD, NH 03302

Parcel Number: 111-004-000
CAMA Number: 111-004-000-000-000
Property Address: 346-354 WINCHESTER ST.

Mailing Address: RIVERSIDE IMPROVEMENTS LLC
565 TAXTER RD. STE. 400
ELMSFORD, NY 10523

Parcel Number: 111-004-000
CAMA Number: 111-004-000-001-000
Property Address: 348 WINCHESTER ST.

Mailing Address: RIVERSIDE IMPROVEMENTS LLC
565 TAXTER RD. STE. 400
ELMSFORD, NY 10523

Parcel Number: 111-004-000
CAMA Number: 111-004-000-002-000
Property Address: 360 WINCHESTER ST.

Mailing Address: RIVERSIDE IMPROVEMENTS LLC
565 TAXTER RD. STE. 400
ELMSFORD, NY 10523

Parcel Number: 111-004-000
CAMA Number: 111-004-000-003-000
Property Address: 362 WINCHESTER ST.

Mailing Address: RIVERSIDE IMPROVEMENTS LLC
565 TAXTER RD. STE. 400
ELMSFORD, NY 10523

Parcel Number: 111-004-000
CAMA Number: 111-004-000-004-000
Property Address: 342 WINCHESTER ST.

Mailing Address: RIVERSIDE IMPROVEMENTS LLC
565 TAXTER RD. STE. 400
ELMSFORD, NY 10523

Parcel Number: 111-017-000
CAMA Number: 111-017-000-000-000
Property Address: 58 KEY RD.

Mailing Address: WINCHESTER KEY LTD PARTNERSHIP
632 WASHINGTON ST.
SOUTH EASTON, MA 02375-1169

Parcel Number: 111-022-000
CAMA Number: 111-022-000-000-000
Property Address: 23-29 KEY RD.

Mailing Address: KEY ROAD OUTPARCEL LLC
565 TAXTER RD. STE. 400
ELMSFORD, NY 10523

Parcel Number: 111-025-000
CAMA Number: 111-025-000-000-000
Property Address: 0 KEY RD.

Mailing Address: RE SANDRI TVE LLC
400 CHAPMAN ST.
GREENFIELD, MA 01301-1736

Parcel Number: 111-026-000
CAMA Number: 111-026-000-000-000
Property Address: 0Rear WINCHESTER ST.

Mailing Address: RE SANDRI TVE LLC
400 CHAPMAN ST.
GREENFIELD, MA 01301-1736



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200 feet Abutters List Report

Keene, NH
March 11, 2024

Parcel Number: 111-028-000
CAMA Number: 111-028-000-000-000
Property Address: 333 WINCHESTER ST.

Mailing Address: KEENE RETAIL LLC
83 ORCHARD HILL PARK DR.
LEOMINSTER, MA 01453

Parcel Number: 111-029-000
CAMA Number: 111-029-000-000-000
Property Address: 329 WINCHESTER ST.

Mailing Address: 256 INVESTMENT ASSOCIATES LLC
2121 DOVER RD.
EPSOM, NH 03234

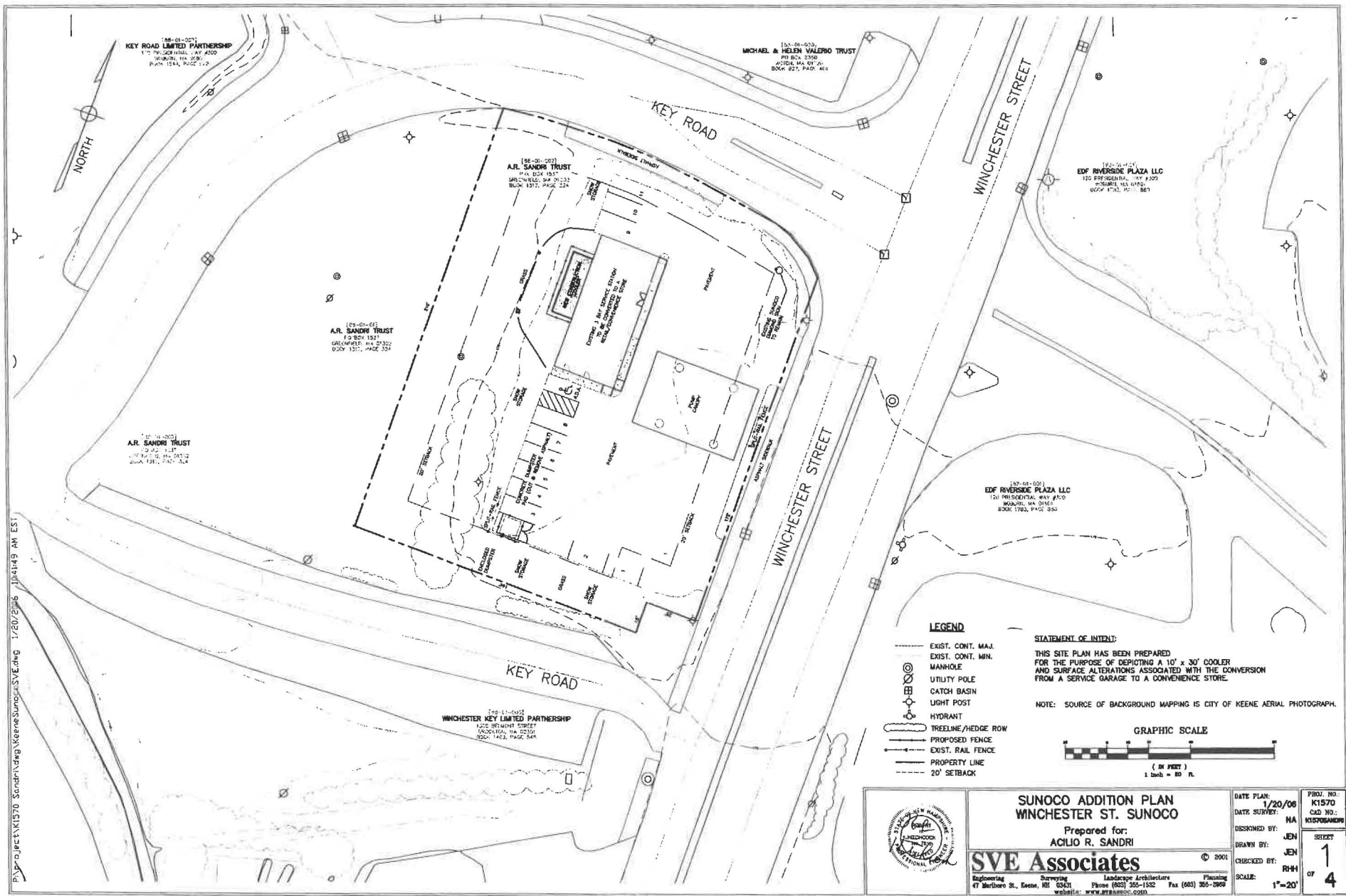


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3/11/2024

Page 2 of 2



P:\PROJECT\K1570_Sunoco\Drawings\Keene\Sunoco_SVE.dwg 1/20/06 10:41:49 AM EST

LEGEND

- EXIST. CONT. MAJ.
- EXIST. CONT. MIN.
- MANHOLE
- UTILITY POLE
- CATCH BASIN
- LIGHT POST
- HYDRANT
- TREELINE/HEDGE ROW
- PROPOSED FENCE
- EXIST. RAIL FENCE
- PROPERTY LINE
- 20' SETBACK

STATEMENT OF INTENT:

THIS SITE PLAN HAS BEEN PREPARED FOR THE PURPOSE OF DEPICTING A 10' x 30' COOLER AND SURFACE ALTERATIONS ASSOCIATED WITH THE CONVERSION FROM A SERVICE GARAGE TO A CONVENIENCE STORE.

NOTE: SOURCE OF BACKGROUND MAPPING IS CITY OF KEENE AERIAL PHOTOGRAPH.

GRAPHIC SCALE



**SUNOCO ADDITION PLAN
WINCHESTER ST. SUNOCO**

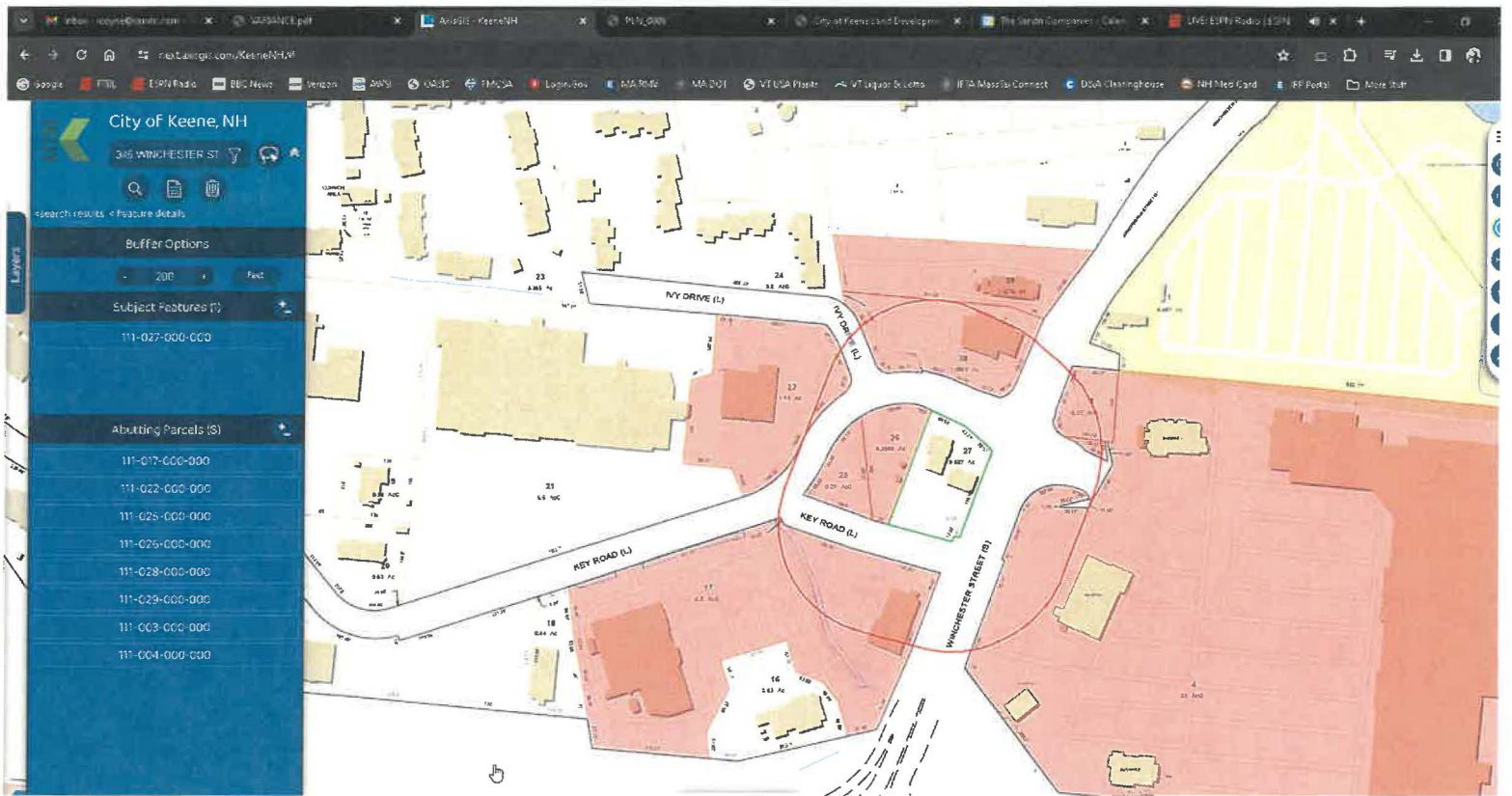
Prepared for:
ACILIO R. SANDRI

SVE Associates

Engineering Surveying Landscape Architecture Planning
 47 Marlboro St., Keene, NH 03401 Phone (603) 352-1332 Fax (603) 352-3999
 website: www.sveassociates.com

DATE PLAN: 1/20/06
 DATE SURVEY: NA
 DESIGNED BY: JEN
 DRAWN BY: JEN
 CHECKED BY: RH4
 SCALE: 1"=20'

PROJ. NO. K1570
 CAD NO. K1570B00000
 SHEET 1
 OF 4



Rendering
 ...for graphic purposes only and not intended for actual construction dimensions. For windload requirements, actual dimensions and mounting detail, please refer to final engineering specifications and install drawings.



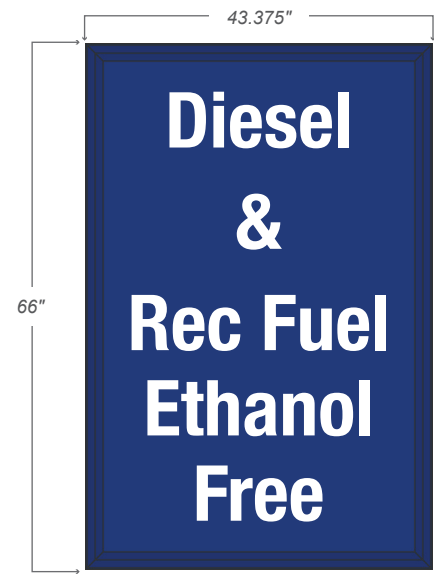
BEFORE

Option 1



AFTER

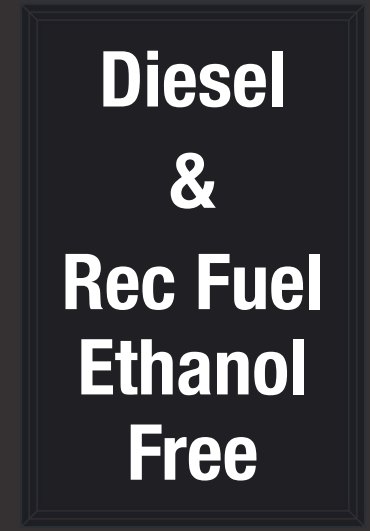
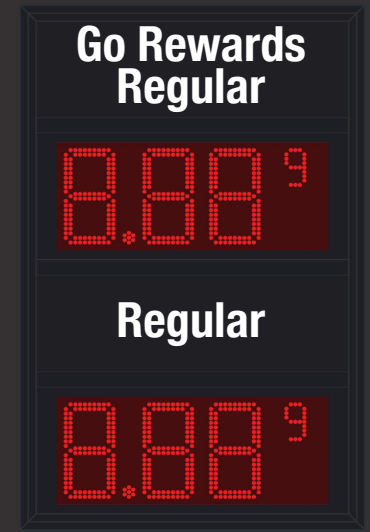
DAY



**Total:
39.8 Sq Ft**

NOTE: Final dimensions to be determined by Final Engineering

NIGHT



DISCLAIMER: Renderings are for graphic purposes only and not intended for actual construction dimensions. For windload requirements, actual dimensions and mounting detail, please refer to engineering specifications and install drawings.
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Customer: SUNOCO	*Must be printed actual size for scale to apply
Project No: 497123-1 AB	Scale: 1/2" = 1'
Date: 01/16/24	Drawn By: T. Heesen
Location & Site No: 345 Winchester St, Keene, NH 03431	22631

Description: Centennial 2.0 Image — 66x44 2P12RR & Imprint
Revised: 01/24/24
Revised:

Customer Approval: Graphics and colors on file will be used unless otherwise specified by customer. Please review drawing carefully. By signing below, you agree to graphics as shown above, and to location of sign as shown. Please return signed copy back to Everbrite.	
CUSTOMER SIGNATURE _____	DATE _____
LANDLORD SIGNATURE _____	DATE _____

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521 PARK AVE.
ZBA-2024-04 & 05



Petitioner requests a Variance for a large scale solar energy system in the Conservation District & within the 50 ft. setback per Article 7.3.5 & 16.2.3 of the Zoning Regulations



NOTICE OF HEARING

ZBA-2024-04

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-04: Petitioner, ReVision Energy, Inc., of 7A Commercial Dr., Brentwood, requests a Variance for property located at 521 Park Ave., Tax Map #227-027-000, is in the Conservation District and is owned by the City of Keene. The Petitioner requests a Variance to permit the installation of a large scale solar energy system on undeveloped land in the Conservation District per Article 7.3.5 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

City of Keene, NH

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No	ZBA-2021-021
Date Filled	3/12/21
Rec'd By	cam
Page	1 of 15
Rev'd by	

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keenenh.gov


SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: City of Keene
MAILING ADDRESS: 3 Washington St. Keene, NH 03431
PHONE: (603) 357-9804
EMAIL: edragon@ci.keene.nh.us
SIGNATURE: 
PRINTED NAME: Elizabeth Dragon

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: ReVision Energy Inc.
MAILING ADDRESS: 7A Commercial Dr. Brentwood, NH 03833
PHONE: (603) 583-4361
EMAIL: mulin@revisionenergy.com
SIGNATURE: 
PRINTED NAME: Megan Ulin

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: BCM Environmental & Land Law PLLC
MAILING ADDRESS: 41 School Street, Keene, NH 03431
PHONE: (603) 352-1928
EMAIL: reimers@nhlandlaw.com
SIGNATURE: 
PRINTED NAME: Jason Reimers

SECTION 2: PROPERTY INFORMATION

Property Address: **521 Park Ave**

Tax Map Parcel Number: **227/027**

Zoning District **Conservation**

Lot Dimensions: Front: **1107** Rear: **1324** Side: **1821** Side: **2266**

Lot Area: Acres: **46** Square Feet:

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **4.3%** Proposed: **2.9%**

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: **4.3%** Proposed: **4.3%**

Present Use: **Cemetery**

Proposed Use: **Large Scale Solar Array**

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

See attached.

SECTION 4: APPLICANTION CRITERIA

A Variance is requested from Article (s) 7.3.5 of the Zoning Regulations to permit:

The installation of a large-scale solar energy system on undeveloped land in the Conservation District.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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.

See attached.

USE VARIANCE APPLICATION
521 Park Avenue, Keene, NH (Parcel ID: 227-027-000)

PROJECT NARRATIVE

The Applicant, ReVision Energy, is seeking a use variance from Section 7.3.5 and Table 8-1 of the City of Keene Land Development Code to install a large-scale solar energy system on undeveloped land in Monadnock View Cemetery (Parcel ID: 227-027-000), which is in the Conservation District and is owned by the City of Keene. For several years, ReVision Energy has been working in partnership with the City of Keene to install solar developments on City-owned land to help achieve the City's goal of transitioning to 100% clean renewable energy for electricity by 2030. In 2023, the City identified a portion of Monadnock View Cemetery at 521 Park Avenue as a preferred site for an investor-owned ground-mounted solar energy system.

The proposed solar energy system will encompass approximately 1.35 acres (59,000 square feet) of the 46-acre parcel and will be installed in a cleared field in the northwest corner of the cemetery. This area of the cemetery is unsuitable for burials due to the presence of underground utilities.

RESPONSES TO VARIANCE CRITERIA

- 1. Granting the variance is not contrary to the public interest**
- 2. If the variance is granted, the spirit of the ordinance would be observed**

These first two variance standards are related and are considered together. See Harborside Assocs. v. Parade Residence Hotel, 162 N.H. 508, 514 (2011). "The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance." Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). For a variance to be sufficiently contrary to public interest, it "must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." Nine A LLC v. Town of Chesterfield, 157 N.H. 361, 366 (2008). While judging whether "granting a variance violates an ordinance's basic zoning objectives, [the court considers], among other things, whether it would alter the essential character of the locality or threaten public health, safety, or welfare." Id. This determination includes examining whether granting the variance would "alter the essential character of the neighborhood." Harborside Assocs., 162 N.H. at 514.

The proposed use will not adversely impact surrounding properties or the public interest. The solar energy system will be installed on an unused area of Monadnock View Cemetery that is at the rear (northwest corner) of the Cemetery's grounds and is out of sight from most grave sites. Surrounding this portion of the Cemetery are residential and commercial/institutional land uses including the Parkwood Apartments, a high-density apartment complex, and Cedarcrest, a specialized pediatric medical facility and school. The proposed solar energy system will be screened from the neighboring property to the west, the Parkwood Apartments, by a substantial buffer of mature trees and shrubs and by a row of enclosed carport structures that are located along the property line. To mitigate any visual impacts of the solar energy system on the parcel to the north (Cedarcrest) and the Cemetery, the Applicant will install a vegetative screen around the array's north, northeast, and south sides.

Similar to the other uses permitted in the Conservation District (e.g., cemetery, conservation area, telecommunications facilities), a solar energy system is a passive land use. The proposed solar energy system will not generate noticeable levels of noise or traffic. The land beneath and surrounding the solar panels will remain pervious and vegetated with grass, allowing for stormwater infiltration. The use will not threaten public health, safety, or welfare. To the contrary, the creation of solar energy is a benefit to public health. Given the mixed uses in the neighborhood, the proposed screening, and the passive nature of the solar energy system, the presence of the system will not alter the existing or permitted character of the neighborhood or locality.

The purpose of the Conservation District is “...to provide for those lands which have been identified as necessary to preserve as open space because of their critical or delicate environmental nature.” See Section 7.3.1 of the Keene Land Development Code. However, there are no critical or sensitive natural resources or features in the area of the proposed solar energy system. This land is not ranked as important wildlife habitat. There are no wetlands, floodplain, surface waters, or steep slopes present. There are no historical or cultural resources present. Also, no trees or mature vegetation will be removed as part of this proposal as this land is currently maintained as a flat, mowed field. For security reasons, a 6-foot-high, non-opaque fence will be installed around the perimeter of the array.

In sum, the solar array will not violate basic zoning objectives and, therefore, satisfies the first two variance criteria.

3. Granting the variance will do substantial justice

“Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Granting the variance will allow the property owner, the City of Keene, to utilize this undeveloped portion of the Cemetery in a manner that is consistent with the spirit of the ordinance and compatible with surrounding land uses. Denying the variance will not serve the public interest as the proposed solar energy system will be a source of locally generated, clean, renewable energy that will help the City of Keene meet its goal of transitioning to 100% renewable energy electricity by 2030.

4. Granting the variances does not diminish the values of surrounding properties

Compared to the existing, high-intensity land uses surrounding the parcel, the proposed solar energy system, which is a passive use, will not have a noticeable impact on surrounding properties. As stated above, the location of the proposed solar energy system is surrounded to the west and north by residential and commercial/institutional land uses including the 120-unit Parkwood Apartments, and the institutional/medical campus for Cedarcrest Center for Children with Disabilities. These neighboring properties are located in a mixed-use neighborhood along the Maple Avenue corridor, which is in the High Density 1 District and Low Density District. Institutional uses in this area include the First Baptist Church of Keene, Cheshire Medical Center’s West Campus, and the Trinity Lutheran Church. Adjacent to the Parkwood Apartments is the Park Place apartment complex, which contains 120 apartments.

With respect to visibility, the proposed solar energy system will be fully screened from the Parkwood Apartments site by an existing buffer of dense vegetation and rows of enclosed carports located along the property line in this area. The visual impact of the proposed solar energy system on Cedarcrest and the Cemetery will be minimal as a vegetative buffer will be installed to screen the solar panels on the north, northeast and south sides.

Given the passive nature of the proposed solar energy system and its limited impact on the adjacent area, the value of surrounding properties will not be diminished by the proposed use.

This variance criterion is arguably irrelevant to the remainder of the Cemetery property because the Cemetery is owned by the City, will forever be used as a cemetery, and is not taxed. Thus, the value of the Cemetery property is immaterial. Nevertheless, the presence of the solar energy system will not detract from the aesthetics of the Cemetery or otherwise negatively impact it.

5. Unnecessary Hardship

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

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

This is a unique property with special conditions that support a finding of unnecessary hardship. The property is in the Conservation District in which only three uses are permitted by right: "cemetery," "conservation area," and "telecommunications facilities." However, this portion of the Monadnock View Cemetery, which is nearly 4.5 acres, is not suitable for use as a cemetery due to the presence of underground utilities. This area of the parcel is also unsuitable for a "conservation area" due to the lack of important natural and cultural features. A "conservation area" is defined in Section 8.3.6.C.1 of the Keene Land Development Code as *"An area of undeveloped open space that preserves and protects natural features, wildlife, and critical environmental features, as well as sites of historic or cultural significance, and may include opportunities for passive recreation, such as hiking trails and lookout structures, and environmental education facilities."*

Therefore, the only reasonable permitted use for this area is "telecommunications facility," which would have a greater visual impact on surrounding properties than a ground-mounted solar energy system. "Telecommunications facilities" are defined in Section 8.3.7.E.1 of the Keene Land Development Code as *"Any structure, antenna, tower or other device, which provides commercial mobile wireless services, unlicensed wireless services, cellular telephone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services or other similar services. It does not include any structure erected solely for a residential, noncommercial individual use (e.g. television antennas, satellite dishes, amateur radio antennas)."*

This portion of the Cemetery is also unique because it is flat and already cleared of trees and vegetation (and already contains a vegetated buffer between it and the Parkwood Apartments). These physical attributes further distinguish this property from other properties in the area.

If the ordinance provision (Section 7.3.5) is literally enforced, this land would be practically unusable due to the limited uses allowed in the Conservation District and due to the special conditions of this portion of the parcel. This result would not have a fair and substantial relationship with the purpose of Section 7.3.5. Section 7.3.5 appears to have been intended to protect land areas that are identified as necessary to preserve as open space because of their critical or delicate environmental nature by allowing for only certain passive uses. Strictly applying those restrictive, permitted uses to this portion of the property will not further the intention of the zoning, and therefore there is not a fair and substantial relationship between the Ordinance provision and its application to this property.

ii. The propose use is a reasonable one because:

The proposed solar energy system is a passive use, similar to the existing cemetery use, that will not adversely affect the Cemetery and surrounding properties. Indeed, it is an ideal use for this area of the parcel, which is a flat, open field containing buried utilities that limit development options. The lack of environmentally sensitive natural or cultural features in this area and the proximity of intense residential and commercial/institutional uses, including a 120-unit apartment complex, make this site less suitable for conservation and environmental protection than other areas of the Conservation District. The proposed solar energy system is a reasonable way to utilize this undeveloped land with minimal impact on the site and adjacent lands. An adjacent small portion of the Cemetery is already being used by the Parks and Recreation Department as community garden plots. Adding a solar use to this area is a further beneficial use of a portion of the Cemetery that cannot be used for burial purposes.

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.

As the criteria in subparagraph A are established, a response to this section is not necessary. Nevertheless, because of the special physical conditions of the property (*e.g.*, buried utilities, community garden plots, etc.), a denial of the variance would render this property practically unusable for the purposes for which it is zoned. Therefore, a variance is necessary to enable a reasonable use of it.

NOTICE LIST

Variance Application for 521 Park Ave, Keene, NH

Parcel Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner City	Owner State	Owner Zip
227-027-000-000-000 <i>(Owner)</i>	521 PARK AVE.	CITY OF KEENE		3 WASHINGTON ST.	KEENE	NH	03431
<i>(Applicant)</i>		REVISION ENERGY INC. C/O MEGAN ULIN		7A COMMERCIAL DR.	BRENTWOOD	NH	03833
<i>(Attorney)</i>		BCM ENVIRONMENTAL & LAND LAW, PLLC		41 SCHOOL ST.	KEENE	NH	03431
227-001-000-000-000	630-670 PARK AVE.	BIG DEAL REAL ESTATE LLC		650 PARK AVE.	KEENE	NH	03431
227-016-000-000-000	85 STANHOPE AVE.	SAGA COMMUNICATIONS OF NEW ENGLAND INC		69 STANHOPE AVE.	KEENE	NH	03431
227-017-000-000-000	105 MAPLE AVE.	1ST BAPTIST CHURCH OF KEENE		105 MAPLE AVE.	KEENE	NH	03431
227-017-000-001-000	105REAR MAPLE AVE.	1ST BAPTIST CHURCH OF KEENE		105 MAPLE AVE.	KEENE	NH	03431
227-017-000-001-001	105REAR MAPLE AVE.	US CELLULAR		PO BOX 2629	ADDISON	TX	75001
227-017-000-002-001	105REAR MAPLE AVE.	AT&T		1010 PINE 9E-L-01	ST. LOUIS	MO	63101
227-017-000-003-001	105REAR MAPLE AVE.	VERIZON WIRELESS		PO BOX 2549	ADDISON	TX	75001
227-018-000-000-000	91 MAPLE AVE.	CEDARCREST INC		91 MAPLE AVE.	KEENE	NH	03431
227-022-000-000-000	59 MAPLE AVE.	PARKWOOD REALTY TRUST		681 PARK AVE.	KEENE	NH	03431
227-026-000-000-000	631 PARK AVE.	PPJ LTD. PARTNERSHIP		681 PARK AVE.	KEENE	NH	03431
526-026-000-000-000	5 OLIVO RD.	WYMAN ANN W.		5 OLIVO RD.	KEENE	NH	03431
526-027-000-000-000	3 OLIVO RD.	SELBY LEE A.		3 OLIVO RD.	KEENE	NH	03431
526-028-000-000-000	548 PARK AVE.	BEDARD KEVIN D.	BEDARD JENNIFER A.	548 PARK AVE.	KEENE	NH	03431
526-029-000-000-000	570 PARK AVE.	CDF HOLDINGS LLC		17701 COWAN #100	IRVINE	CA	92614
526-030-000-000-000	4-52 SUMMIT RD.	PRINCETON KEENE LLC		1115 WESTFORD ST.	LOWELL	MA	01851
526-031-000-000-000	460 PARK AVE.	MORSE, KAREN A.		5 HUSLANDER RD.	SPOFFORD	NH	03462
526-032-000-000-000	4 OLIVO RD.	WIRKKALA NICHOLAS G	WIRKKALA JESSICA L	4 OLIVO RD	KEENE	NH	03431-2212
527-002-000-000-000	477 PARK AVE.	477 PARK AVENUE REAL ESTATE LLC		PO BOX 10383	SWANZEY	NH	03446
527-003-000-000-000	445-451 PARK AVE.	CENTURY APARTMENTS ASSOCIATES		PO BOX 565	KEENE	NH	03431



AERIAL IMAGE OF PROPOSED SOLAR ENERGY SYSTEM SITE

521 Park Avenue, Keene, NH (Parcel ID: 227-027-000)

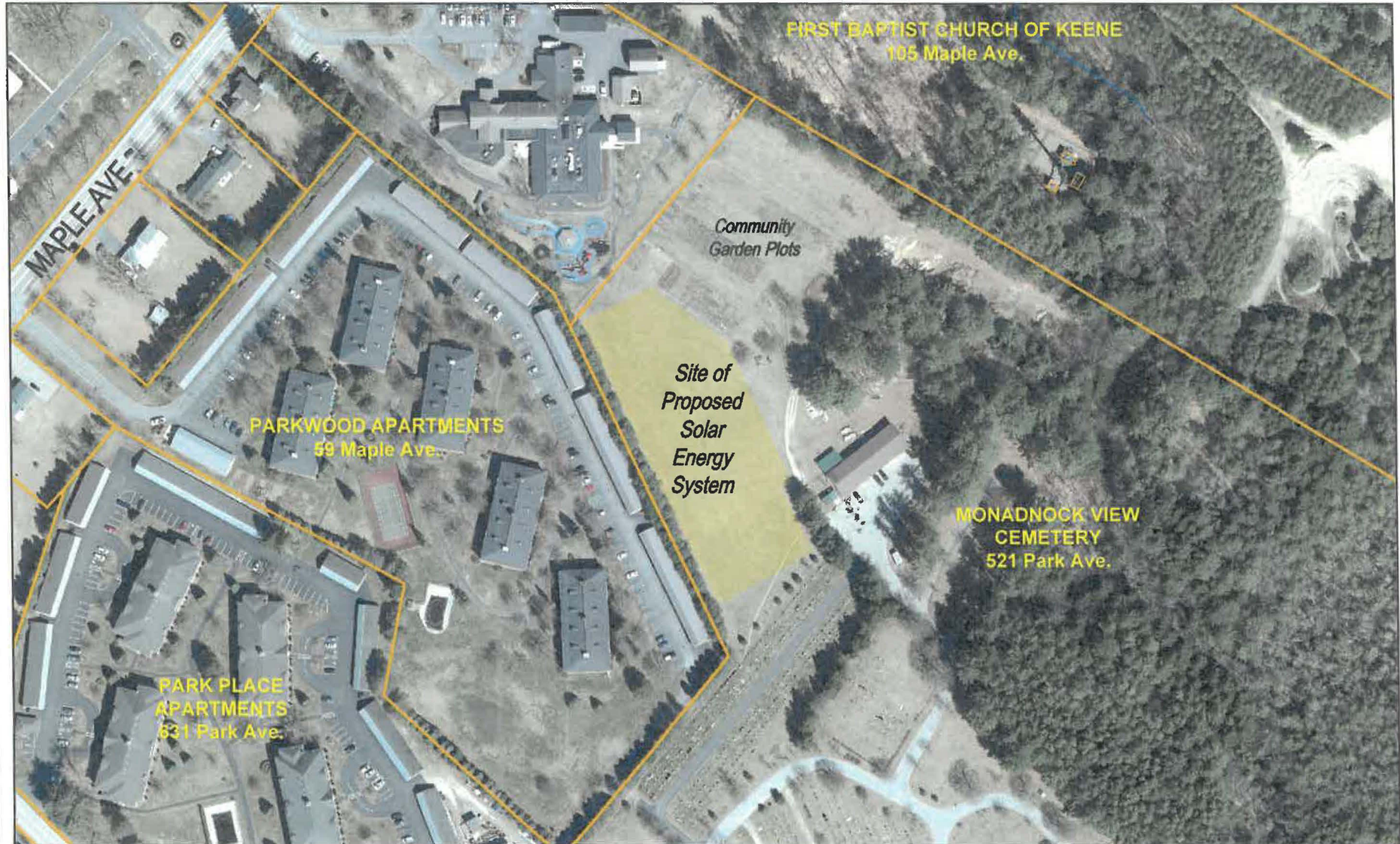


March 8, 2024

1 inch = 200 Feet



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Photo Sheets for Variance Application for
521 Park Avenue (Parcel ID: 227-027-000)



Above photo: View of the existing vegetative buffer adjacent to the Parkwood Apartments, (photo taken facing west from the site of the proposed solar energy system in Monadnock View Cemetery); Below photo: View of the proposed solar energy system site (photo taken facing north).



Photo Sheets for Variance Application for
521 Park Avenue (Parcel ID: 227-027-000)



Above photo: View of the proposed solar energy system site in Monadnock View Cemetery and of the adjacent property used by Cedarcrest Center for Children with Disabilities (photo taken facing north/northeast).

LETTER OF INTENT FOR COMMUNITY SOLAR ON CITY PARCELS

THIS LETTER OF INTENT AND EXCLUSIVITY AGREEMENT (“Agreement”) is entered into effective the 29th day of August, 2023 (“Effective Date”), by and between ReVision Energy Inc. (“ReVision”) a Maine corporation with a mailing address of 7 Commercial Drive., Brentwood, NH 03833, and the City of Keene, a NH municipal corporation with a mailing address of 3 Washington Street, Keene, NH 03431 (“City”) (collectively the “Parties”, or, singly, a “Party”).

RECITALS

WHEREAS, the City of Keene on January 17, 2019 established a goal of transitioning the city to 100 percent clean and renewable energy for electricity by 2030, and for all sectors including heat and transportation by 2050, by a 14-1 vote of the Keene City Council;

WHEREAS, the City of Keene is a leader in the New Hampshire Community Power movement and is seeking to integrate local, low-cost renewable energy generation into its public community power default electric service offering through various potential ownership models in the future, including appropriately-sited local community solar farms (“Systems”);

WHEREAS, Keene Housing and other local nonprofit organizations, as well as individual families in Keene, are also seeking to participate in local community solar farms (“Systems”) to offset their electricity needs and costs – as System owners and/or energy off takers under Power Purchase Agreement (PPA) – but lack sufficient land on which to develop and install the necessary Systems;

WHEREAS, ReVision is a renewable energy system development, design, and installation company that has partnered with the City of Keene, Keene Housing, and other local nonprofits since 2017 to install multiple municipal, nonprofit and private-sector solar energy generation projects, awarded via competitive RFPs, that provide energy and electric bill savings to taxpayers, nonprofits, and low-income residents of Keene;

WHEREAS, the City of Keene and Revision have identified multiple City land parcels that have limited public use and are interested in the feasibility of solar development on said parcels with the aim of entering into long-term lease, turnkey purchase, PPA and/or other agreements (“Contracts”) with ReVision so that the City or aligned community solar entities may participate in PPA, or own and operate the Systems for the benefit of the Keene community; **provided, however, that the City of Keene shall have priority, and the discretion, to select either one, or more, of the identified feasible parcels for System installation, together with priority in the execution of Contracts for the use/purchase of the generating capacity of the Systems;**

WHEREAS, ReVision has completed initial development due diligence, at its own expense, for each parcel identified and affirms the solar readiness and feasibility of the four sites (“Facilities”) listed in Appendix A for potential community solar farm Systems;

WHEREAS, the Parties mutually agree that in order to allow for the full development and financing (including civil/environmental engineering, local and state permitting, utility

interconnection, and grant solicitations) of Systems at one or more of the listed City Facilities, ReVision will need exclusive development rights for a period of up to thirty-six (36) months from the Effective Date; and

WHEREAS, on April 7, 2022 the Keene City Council voted unanimously to authorize the City Manager to do all things necessary to negotiate and execute a lease agreement with ReVision for a solar generating System at the first sites in Appendix A in connection with a Renewable Energy Fund grant application made by Keene Housing and ReVision to the State of New Hampshire, which funding round was subsequently put on hold (pausing solar development) and reopened in November 2022;

WHEREAS, on January 26, 2021 the City executed a Letter of Intent and Exclusivity Agreement with ReVision to facilitate development of solar farms at the City's Dillant-Hopkins Airport, following competitive RFP selection, including the 1.34 MW solar farm that was completed at the Keene Wastewater Treatment Plant in 2022 and the third Airport site shown in Appendix A;

WHEREAS, the Parties intend to finalize definitive Contracts setting forth the specific rights and obligations of the parties relating to the siting of Systems at one or more of the Facilities and setting forth the terms under which the City or another aligned financing entity shall own and operate the Systems at the Facilities upon installation by ReVision;

WHEREAS, the City is exploring the possibility of installing higher-voltage charging equipment and associated utility infrastructure for electric vehicles and electric aircraft at the Dillant-Hopkins Airport, to meet the growing demand for transportation electrification, which ReVision is capable of investigating, designing, and installing through its full-service EV Division which ReVision will provide a review as part of this agreement;

WHEREAS, as a preliminary step to the entering into such Contracts, the Parties wish to set forth their respective commitments to one another in this Agreement;

NOW THEREFORE, based upon the foregoing and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

AGREEMENT

1. Systems. Subject to further negotiation and agreement to proceed; to the priority retained by the City of Keene for the selection of the System location(s) and the use/purchase of generating capacity; to any modifications, terms or conditions the parties may ultimately agree to in the Contracts and in any other required agreements; and as may be further modified through the permitting and financing approval processes; the Systems shall consist of one or more community solar farms at the Facilities in Appendix A, which shall deliver tangible benefits to the City of Keene, Keene Housing and/or other local nonprofit or community solar entities, as well as potential EV charging systems.

2. Actions by the Parties. In order to allow for development of the proposed Systems subject to this Agreement, ReVision will make commercially-reasonable efforts to complete the

necessary development activities, at its own expense, to verify the suitability of each Facility for a community solar farm System and secure the requisite financing and energy offtake agreements to complete Systems installation and deliver financial benefits to local entities. Upon successful completion of the development activities and prior to construction, ReVision will present industry-standard Contracts to the City for consideration to enable the construction of Systems at each suitable Facility, and the Parties will negotiate and execute the final Contracts.

3. **Contracts Finalization.** The Parties understand that Contracts (whether for long-term leases, turnkey purchases, PPAs and/or other agreements) have yet to be finalized, and that Contract negotiations will be conducted in good faith.

4. **Exclusivity.** ReVision shall have thirty-six (36) months from the execution of this Agreement, or such later date as may be mutually agreed in writing by the Parties, to develop the Systems and to facilitate the finalization of the definitive Contracts to be entered into between the City of Keene and ReVision Energy, Keene Housing, or similar entities which may own and operate said Systems for the benefit of local residents (the "exclusivity period"). In consideration of the time and resources ReVision is devoting to such efforts, for the duration of the exclusivity period, City of Keene shall not enter into or continue any discussions or negotiations with, consider any other offers from, or enter into any other agreement or arrangement with any other person or entity other than ReVision regarding the development of a distributed generation system serving any of the Facilities listed in Appendix A.

5. **Costs and Expenses.** Each Party shall be responsible for covering its own costs and expenses relating to the development of the Systems and the negotiation of the Contracts, including without limitation, the cost of its own attorneys, consultants and advisors. It is anticipated that the City will incur no costs outside of its own internal legal review and will derive modest lease payments from the Systems owner(s).

6. **Confidentiality.** As a New Hampshire municipal corporation, the City is subject to the public disclosure requirements of NHRSA 91-A, and shall comply with the requirements of that statute with respect to the receipt and possible disclosure of governmental records arising from or related to the Proposal, this Agreement, or any finalized PPA. To the extent that confidential proprietary information is provided to the City, and marked as such, the City will endeavor to maintain the confidentiality of that information under RSA 91-A. If a public disclosure request is tendered to the City, the City will notify ReVision of the request within 5 business days. If ReVision objects to disclosure by the City, ReVision shall inform the City of the specific reasons for the objection. If the Parties are unable to agree on disclosure, then either party may seek a declaratory ruling from the Cheshire County Superior Court.

7. **No Joint Venture.** Nothing contained in this Agreement shall be construed as creating or establishing a joint venture or partnership between ReVision and City of Keene.

8. **Limitations of Liability.** In no event shall either Party be liable to the other Party or its representatives or customers for special, indirect, non-compensatory, consequential, punitive, or exemplary damages of any type, including lost profits, loss of business opportunity or business interruptions, whether arising in contract or tort (including negligence, whether sole, joint, or concurrent or strict liability), or otherwise, arising out of this Agreement.

9. Availability of Equitable Relief. Each Party understands and agrees that its breach or threatened breach of this Agreement will cause irreparable injury to the other Party and that money damages will not provide an adequate remedy for such breach or threatened breach, and both Parties hereby agree that, in the event of such a breach or threatened breach, the non-breaching Party will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. The Parties' rights under this Agreement are cumulative, and a Party's exercise of one right shall not waive the Party's right to assert any other legal remedy.

10. Applicable Law. This Agreement will be governed by the law of the State of New Hampshire without regard to conflicts of law principles.

11. Binding Provisions. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

12. Severability. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.

13. Counterparts. This Agreement may be executed electronically and in counterparts, each of which shall have the effect of and be considered as an original of this Agreement.

14. Access. The City shall allow ReVision, its employees, agents or consultants, reasonable access to the Facilities for purposes of determining the viability of the Facilities for construction of the Systems. ReVision shall comply with all reasonable requirements of the Facilities in accessing the Facilities. ReVision shall obtain and maintain general liability insurance in the amount of One Million Dollars naming the City as an additional insured, and obtain, or require, Workers' Compensation Insurance for any ReVision employee, or of its consultants or agents, in the New Hampshire statutory amounts, and shall provide evidence of such insurance to the City upon request. ReVision shall indemnify and hold the City of Keene, its officers and employees, harmless from any claims, damages, costs or expenses, including attorneys' fees, arising from any negligence of ReVision, its employees, agents or contractors, in accessing and performing the investigations on City property for the purposes stated in this Agreement.

15. Termination. This Agreement shall terminate upon the occurrence of one or more of the following events: If it is determined by the Parties that it is not feasible for Systems to be located at all of the Facilities, for any reason, after good-faith efforts have been made to overcome locational impediments; if the Parties, acting in good faith, are unable to negotiate Contracts necessary or required to implement and operate the Systems under terms and conditions acceptable to the Parties; in any event at the expiration of 36 months from the Effective Date unless this Agreement is extended by mutual written agreement of the parties. In the event of such termination, neither Party shall have any further right or obligations to the other Party under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

ReVision Energy Inc.

City of Keene

By: 

By: 

Print Name: Daniel Weeks

Print Name: Elizabeth Dragon

Title: Vice President

Title: City manager

**APPENDIX A:
City of Keene Parcels (Facilities) and Preliminary Engineer's Renderings
for Community Solar Farms (Systems)**

1. 0 Rose Lane - Parcel # 113-002 (zoned Industrial)

Description: former City Wastewater Treatment Plant with a sealed and capped landfill on which conventional development is restricted



2. 521 Park Avenue - Parcel # 227-027 (zoned Conservation)

Description: cleared field in northwest portion of lot nearby the Monadnock View Cemetery, which has underground utilities preventing cemetery expansion and limiting other future development



Airport Road,

3 Route 32, Swanzey – Keene Dillant-Hopkins Airport (zoned airport)

Description: cleared municipal airport parcels 12 and 14 south of main runway demarcated for future non-aviation development, outside of runway safety/object free areas and protection/visibility zones (see Figure 7: Airport Development Parcels - South)

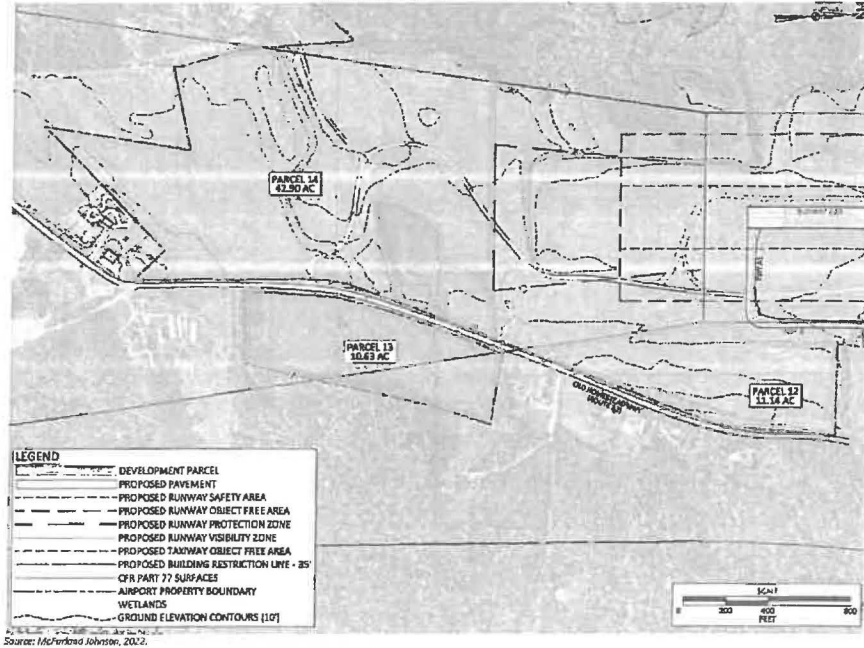


Parcel 12



Parcel 14

Figure 7: Airport Development Parcels – South



NOTICE LIST

Variance Application for 521 Park Ave, Keene, NH

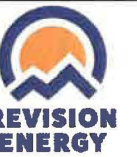
Parcel Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner City	Owner State	Owner Zip
227-027-000-000-000 <i>(Owner)</i>	521 PARK AVE.	CITY OF KEENE		3 WASHINGTON ST.	KEENE	NH	03431
<i>(Applicant)</i>		REVISION ENERGY INC. C/O MEGAN ULIN		7A COMMERCIAL DR.	BRENTWOOD	NH	03833
<i>(Attorney)</i>		BCM ENVIRONMEN TAL & LAND LAW, PLLC		41 SCHOOL ST.	KEENE	NH	03431
227-001-000-000-000	630-670 PARK AVE.	BIG DEAL REAL ESTATE LLC		650 PARK AVE.	KEENE	NH	03431
227-016-000-000-000	85 STANHOPE AVE.	SAGA COMMUNICATI ONS OF NEW ENGLAND INC		69 STANHOPE AVE.	KEENE	NH	03431
227-017-000-000-000	105 MAPLE AVE.	1ST BAPTIST CHURCH OF KEENE		105 MAPLE AVE.	KEENE	NH	03431
227-017-000-001-000	105REAR MAPLE AVE.	1ST BAPTIST CHURCH OF KEENE		105 MAPLE AVE.	KEENE	NH	03431
227-017-000-001-001	105REAR MAPLE AVE.	US CELLULAR		PO BOX 2629	ADDISON	TX	75001
227-017-000-002-001	105REAR MAPLE AVE.	AT&T		1010 PINE 9E-L-01	ST. LOUIS	MO	63101
227-017-000-003-001	105REAR MAPLE AVE.	VERIZON WIRELESS		PO BOX 2549	ADDISON	TX	75001
227-018-000-000-000	91 MAPLE AVE.	CEDARCREST INC		91 MAPLE AVE.	KEENE	NH	03431
227-022-000-000-000	59 MAPLE AVE.	PARKWOOD REALTY TRUST		681 PARK AVE.	KEENE	NH	03431
227-026-000-000-000	631 PARK AVE.	PPJ LTD. PARTNERSHIP		681 PARK AVE.	KEENE	NH	03431
526-026-000-000-000	5 OLIVO RD.	WYMAN ANN W.		5 OLIVO RD.	KEENE	NH	03431
526-027-000-000-000	3 OLIVO RD.	SELBY LEE A.		3 OLIVO RD.	KEENE	NH	03431
526-028-000-000-000	548 PARK AVE.	BEDARD KEVIN D.	BEDARD JENNIFER A.	548 PARK AVE.	KEENE	NH	03431
526-029-000-000-000	570 PARK AVE.	CDF HOLDINGS LLC		17701 COWAN #100	IRVINE	CA	92614
526-030-000-000-000	4-52 SUMMIT RD.	PRINCETON KEENE LLC		1115 WESTFORD ST.	LOWELL	MA	01851
526-031-000-000-000	460 PARK AVE.	MORSE, KAREN A.		5 HUSLANDER RD.	SPOFFORD	NH	03462
526-032-000-000-000	4 OLIVO RD.	WIRKKALA NICHOLAS G	WIRKKALA JESSICA L	4 OLIVO RD	KEENE	NH	03431-2212
527-002-000-000-000	477 PARK AVE.	477 PARK AVENUE REAL ESTATE LLC		PO BOX 10383	SWANZEY	NH	03446
527-003-000-000-000	445-451 PARK AVE.	CENTURY APARTMENTS ASSOCIATES		PO BOX 565	KEENE	NH	03431



SYSTEM SUMMARY	
DC SYSTEM SIZE	455.120 kW DC
AC SYSTEM SIZE	360.000 kW AC
PROJECT TYPE	GROUND MOUNT
TILT / AZIMUTH	35° / 157°

EQUIPMENT SUMMARY		
ITEM	DESCRIPTION	QTY
MODULE	Q CELLS Q.PEAK DUO XL-G1S.3/BFG (590W)	768
INVERTER	CPS SCA60KTL-DO/US-680	6
DAS	PRIVATE RGM	1

*System size subject to change



7 COMMERCIAL DRIVE
BRENTWOOD, NH 03853
(603) 658-0185

CLIENT:

CITY OF KEENE

PROJECT ADDRESS:

521 PARK AVENUE,
KEENE, NH 03431

SYSTEM TYPE:

GROUND MOUNT
PHOTOVOLTAIC ARRAY

NOT FOR CONSTRUCTION



REV	BY	DATE	DESCRIPTION
000	SFC	10/10/2023	ISSUES FOR INTERCONNECTION

DESIGNED BY: SFC
 PRINT SCALE: 24" x 36"
 SCALE: 1" = 30'
 DATE: DECEMBER 5, 2023
 PROJECT: ELECTRICAL SITE PLAN
 DRAWING NO: E100

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 BY ANY MEANS WITHOUT PRIOR WRITTEN
 CONSENT OF REVISION ENERGY, INC. THIS
 DIAGRAM IS BASED ON THE INFORMATION
 SUPPLIED AND IS SUBJECT TO CHANGE BASED
 ON ACTUAL CONDITIONS. APPLICABLE EDITIONS
 OF THE NATIONAL ELECTRICAL CODE AND LOCAL
 GOVERNMENTAL AUTHORITIES.



NOTICE OF HEARING

ZBA-2024-05

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-05: Petitioner, ReVision Energy, Inc., of 7A Commercial Dr., Brentwood, requests a Variance for property located at 521 Park Ave., Tax Map #227-027-000, is in the Conservation District and is owned by the City of Keene. The Petitioner requests a Variance to permit the installation of a large scale solar energy system within the 50 ft setback required in the Conservation District and for large scale solar energy systems in the Solar Energy System Ordinance per Article 7.3.5 & 16.2.3 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

City of Keene, NH

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	ZBA-2021-05
Date Filled	3/15/21
Rec'd By	CJM
Page	1 of 15
Rev'd by	

If you have questions on how to complete this form, please call: (603) 352-5440 or email: communitydevelopment@keenenh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: City of Keene

MAILING ADDRESS: 3 Washington St. Keene, NH 03431

PHONE: (603) 357-9804

EMAIL: edragon@ci.keene.nh.us

SIGNATURE:

PRINTED NAME: Elizabeth Dragon

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: ReVision Energy Inc.

MAILING ADDRESS: 7A Commercial Dr. Brentwood, NH 03833

PHONE: (603) 583-4361

EMAIL: mulin@revisionenergy.com

SIGNATURE:

PRINTED NAME: Megan Ulin

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: BCM Environmental & Land Law, PLLC

MAILING ADDRESS: 41 School Street, Keene, NH 03431

PHONE: (603) 352-1928

EMAIL: reimers@nhlandlaw.com

SIGNATURE:

PRINTED NAME: Jason Reimers

APPLICATION DESCRIPTION

Below is a description of each Zoning Board of Adjustment application as outlined in the [Land Development Code](#), Article 25. For more information and/or to discuss the application process with staff, contact the Community Development Department at (603) 352-5440.

- **Variance:** Per Article 25.5, zoning variances are intended to address unnecessary hardships or practical difficulties resulting from the strict application of the Zoning Regulations. the purpose of the variance process is to provide a narrowly limited means by which relief may be granted from the unforeseen applications of the Zoning Regulations.
- **Special Exception:** Per Article 25.6, a special exception seeks permission to do something that the Zoning Regulations permit only under certain special circumstances. All special exceptions shall be made in harmony with the general purpose and intent of the Zoning Regulations and shall be in accordance with the rules contained therein.
- **Expansion or Enlargement of a Nonconforming Use:** Per Article 25.7, a nonconforming use of a structure or land may be expanded or enlarged with approval from the Zoning Board of Adjustment, provided such expansion or enlargement does not violate any of the basic zone dimensional requirements of the zoning district in which it is located.
- **Equitable Waiver of Zoning Dimensional Requirements:** Per Article 25.8, in situations where a lot or structure is discovered to be in violation of a physical payout or dimensional requirement of the Zoning Ordinance, and such lot or structure is not legally nonconforming, a waiver from the requirement may be sought under certain conditions.
- **Appeal of Zoning Board of Adjustment Decision:** Per Article 26.1, appeals concerning any matter within the authority of the Zoning Board of Adjustment shall be in the manner provided for by NH RSA 676:5-7. In accordance with NH RSA 677:1-14, any person aggrieved by the decision of the Zoning Board of Adjustment shall file a motion for a rehearing with the Community Development Department within 30 calendar days after the date of the Zoning Board of Adjustment decision.
 1. The motion for rehearing shall fully set forth every ground upon which it is claimed that the decision rendered is unlawful or unreasonable.
 2. The Zoning Board of Adjustment shall deliberate the motion for rehearing within 30 calendar days of the date of the filing of the motion.
 3. If the Zoning Board of Adjustment grants a motion for rehearing, the new public hearing shall be held within 30 calendar days of the decision to grant the rehearing, provided all applicable fees are paid and an updated abutters list, including all owners of property within 200-ft of the subject parcel, is submitted by the party requesting the rehearing. Notice of the rehearing shall follow the procedures set for in NH RSA 676:7.
 4. If a motion for rehearing is denied by the Zoning Board of Adjustment, the applicant may appeal to the Superior Court within 30 calendar days after the date upon which the Board voted to deny the motion for rehearing.
 5. Any further appeal of a final decision or order of the Zoning Board of Adjustment shall be in accordance with NH RSA 677:4.
- **Appeal of Zoning Administrative Decision:** Per Article 26.2, in accordance with NHRSA 676:5, appeals to written decisions of the Zoning Administrator shall be made to the Zoning Board of Adjustment, provided the notice of appeal is filed with the Community Development Department within 30 calendar days after the date of the Zoning Administrator's decision. The notice of appeal shall specify all grounds on which the appeal is based, and why the request of appeal should be granted. Any person aggrieved by the decision of the Zoning Board of Adjustment shall petition for a rehearing, in accordance with NHRSA 677:1-14, before appealing the decision to the Superior Court.

SECTION 2: PROPERTY INFORMATION

Property Address: **521 Park Ave**

Tax Map Parcel Number: **227/027**

Zoning District **Conservation**

Lot Dimensions: Front: **1107** Rear: **1324** Side: **1821** Side: **2266**

Lot Area: Acres: **46** Square Feet:

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **4.3%** Proposed: **2.9%**

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: **4.3%** Proposed: **4.3%**

Present Use: **Cemetery**

Proposed Use: **Large Scale Solar Array**

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

See attached.

SECTION 4: APPLICANTION CRITERIA

A Variance is requested from Article (s) 7.3.2&16.2.3 of the Zoning Regulations to permit:

The installation of a large-scale solar energy system within the 50-foot setback required in the Conservation District and required for large-scale solar energy systems in the Solar Energy System Ordinance.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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 criterial 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.

See attached.

City of Keene, NH

Community Development Department Certified Notice List



If you have questions about how to complete an application, please call: (603) 352-5440 or email: communitydevelopment@keenenh.gov

Per Article 25.2.4 of the Land Development Code (LDC) and in accordance with state law, certain Zoning Board of Adjustment (ZBA), Planning Board, and Historic District Commission (HDC) applications require mailed notice.

The lists below outline the information that needs to be included on a notice list and mailing labels for applications submitted to the Community Development Department.

Instructions for creating a notice list for Planning Board and Zoning Board of Adjustment applications can be found on the [City of Keene's YouTube channel](#).

The following parties are required to be noticed as part of the application process:

- Property owner
- Project applicant
- Authorized agent (if applicable)
- All direct property abutters (including those across water bodies and roads), as well as all properties within 200-ft of the subject parcel
- Every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plan
- Holders of conservation, preservation, or agricultural preservation restrictions on the property

**Note: Only direct abutters must be noticed as part of HDC applications.*

For these applications, the following items must be submitted:

- A list of all persons entitled to notice
- 2 sets of mailing labels
- Notice certification form
- Mailing fee (current USPS certified mailing rate* x number of abutters)

**Please call the Community Development Department for the current certified mailing rate.*

The notice list shall include the following information:

- Property owner's name
- Property owner's mailing address
- Property owner's street address,
- The tax map parcel (TMP) number(s) (15-digit number)

The mailing labels shall include the following information:

- Property owner's name
- Property owner's mailing address
- The tax map parcel (TMP) number(s)

The City of Keene's [GIS Database](https://next.axisgis.com/KeeneNH/#) (<https://next.axisgis.com/KeeneNH/#>) can be used to generate an abutters list and mailing labels.

PLEASE MAKE SURE THAT ALL PARTIES INCLUDED ON THE NOTICE LIST ARE ALSO INCLUDED ON THE MAILING LABELS.

CERTIFICATION OF ACCURACY

By signing below, you are certifying that the submitted notice list is accurate and true to the best of your ability and that per Article 25.2.4.A.3 of the LDC, the notice list is current to within 10 days of the application submittal.

Megan Ulin

Print Name

3/8/2024

Date


Signature

DIMENSIONAL VARIANCE APPLICATION
521 Park Avenue, Keene, NH (Parcel ID: 227-027-000)

PROJECT NARRATIVE

The Applicant, ReVision Energy, is seeking a variance from Section 7.3.2 and Section 16.2.3 of the City of Keene Land Development Code to install a large-scale solar energy system within the 50-foot setback required in the Conservation District and required for large-scale solar energy systems in the City’s Solar Energy System Ordinance.

The proposed large-scale solar energy system will be located on an unutilized portion of land in Monadnock View Cemetery (Parcel ID: 227-027-000), which is in the Conservation District and is owned by the City of Keene. For several years, ReVision Energy has been working in partnership with the City of Keene to install solar developments on City-owned land to help achieve the City’s goal of transitioning to 100% clean renewable energy for electricity by 2030. In 2023, the City identified a portion of Monadnock View Cemetery at 521 Park Avenue as a preferred site for an investor-owned ground-mounted solar energy system.

The proposed solar energy system will encompass approximately 1.35 acres (59,000 square feet) of the 46-acre parcel and will be installed in a cleared field in the northwest corner of the Cemetery. This area of the Cemetery is unsuitable for burials due to the presence of underground utilities. The solar energy system will be surrounded by a 6-foot-high, non-opaque perimeter fence for security purposes. The approximate distance of the perimeter fence surrounding the solar energy system from the property line to west (Parkwood Apartments) will be 15 feet, and from the property line to the north will be 10 feet (Cedarcrest Center for Children with Disabilities). There will be approximately 10-12 feet between the edge of the solar panels and the surrounding perimeter fence.

RESPONSES TO VARIANCE CRITERIA

- 1. Granting the variance is not contrary to the public interest**
- 2. If the variance is granted, the spirit of the ordinance would be observed**

These first two variance standards are related and are considered together. See Harborside Assocs. V. Parade Residence Hotel, 162 N.H. 508, 514 (2011). “The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). For a variance to be sufficiently contrary to public interest, it “must unduly and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Nine A LLC v. Town of Chesterfield, 157 N.H. 361, 366 (2008). While judging whether “granting a variance violates an ordinance’s basic zoning objectives, [the court considers], among other things, whether it would alter the essential character of the locality or threaten public health, safety, or welfare.” Id. This determination includes examining whether granting the variance would “alter the essential character of the neighborhood.” Harborside Assocs., 162 N.H. at 514.

The proposed solar energy system Will not adversely affect surrounding properties or the public interest and will be in keeping with the spirit of the City’s zoning regulations. The proposed solar energy system will be installed in an area at the rear of Monadnock View Cemetery that is out of sight from most grave sites and is surrounded by residential and commercial/institutional land uses. The proposed system will be fully screened from the neighboring property to the west, the 120-unit Parkwood Apartments, by a substantial buffer of mature evergreen trees and shrubs and by enclosed carport structures located along the property line. To mitigate the visual impacts of the solar energy system on the Cemetery and on the property to the north, which is a specialized pediatric medical and educational facility, the Applicant will install a vegetative screen around the array’s north, northeast, and south sides.

The proposed solar energy system is a passive land use that will not generate noticeable levels of noise or traffic. The height of the ground-mounted solar panels will be 14 feet above grade, similar to the height of a single-story building. However, the massing of the proposed array will be less imposing than a building, as the panels will be mounted on open frames that are spaced apart and the land beneath the panels will remain vegetated with grass. A buffer will be maintained between the proposed solar panels and adjacent properties. The distance of the proposed solar panels from the nearest property line to the west will be approximately 25 and to the north will be 20 feet.

The general purpose of setbacks is to ensure there is an adequate buffer between structures and neighboring parcels to mitigate potential impacts such as noise and overcrowding. It is likely that the purpose of the City’s 50-foot setback required for large-scale solar energy systems is to lessen the visual impacts of solar arrays on adjacent properties. Here, the existing vegetated buffer and proposed buffer will serve this purpose. As noted above, the proposed solar energy system will not have noise impacts, will not be visually obtrusive, and will be setback from property lines. As such, the variance, if granted, would observe the spirit of the ordinance. Granting this dimensional variance will not alter the character of the neighborhood or threaten public health, safety, or welfare. Therefore, the variance satisfies the first two criteria.

3. Granting the variance will do substantial justice

“Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen Assocs. V. Town of Chichester, 155 N.H. 102, 109 (2007).

The area of the Monadnock View Cemetery that the solar energy system is proposed to be located cannot be used for cemetery purposes or as a building site due to the presence of underground utilities. The site, which is a flat, open field with development limitations, is ideal for a solar array. Granting the variance will allow the property owner, the City of Keene, which has a need to expand the supply of local renewable energy sources, to utilize this undeveloped portion of the Cemetery in a manner that is consistent with the spirit of the ordinance and is compatible with surrounding land uses. The solar energy system cannot be located further north or northeast because there are existing community garden plots that are rented by the Parks and Recreation Department. Use of this area for the solar energy system was explored but ruled out by the City because of this existing use. Thus, not allowing this solar energy system in the proposed location will cause a loss to both ReVision Energy and the City.

Denying the variance will not serve the public interest as the proposed solar energy system will be a source of locally generated, clean, renewable energy that will help the City of Keene meet its goal of transitioning to 100% renewable energy electricity by 2030.

4. Granting the variance does not diminish the values of surrounding properties

Given the limited impact of the proposed solar energy system on the adjacent properties and its proximity to higher intensity residential and commercial/institutional uses, granting the variance will not diminish the value of surrounding properties. With respect to visual impacts, the proposed solar energy system will be fully screened from the Parkwood Apartments site by an existing buffer of dense evergreen trees and vegetation along the property line. Allowing the solar panels to be placed closer to the property line will maximize the screening (from the Parkwood Apartments) offered by the existing trees and vegetation, as the panels will not be visible over these trees. In addition, nearly the entire length (577.17') of the northwestern boundary of the Parkwood Apartments parcel, which is shared with the Monadnock View Cemetery parcel, is lined with single-story carport structures. These structures are within 10 feet of the property line, and serve as a solid screen for visual impacts as well as a buffer for noise. The visual impact of the proposed solar energy system on the adjacent Cedarcrest property and the Cemetery will be substantially minimized as a vegetative buffer will be installed to screen the array on the north, northeast, and south sides. Also, the solar panels will be set back at least 20 feet from the property line to the north.

The location of the proposed solar energy system is surrounded to the west and north by residential and commercial/institutional land uses including the 120-unit Parkwood Apartments, and the institutional/medical campus for Cedarcrest Center for Children with Disabilities. These neighboring properties are in a mixed-use neighborhood along the Maple Avenue corridor, which is zoned as High Density 1 and Low Density. Nearby institutional include the First Baptist Church of Keene, Cheshire Medical Center's West Campus, and the Trinity Lutheran Church. Adjacent to the Parkwood Apartments is the Park Place apartment complex, which contains 120 apartments.

This variance criterion is arguably irrelevant to the Cemetery because the Cemetery is owned by the City, will forever be used as a cemetery, and is not taxed. Thus, the value of the Cemetery property is immaterial. Nevertheless, the presence of the solar energy system will not detract from the aesthetics of the Cemetery or otherwise negatively impact it.

5. Unnecessary Hardship

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

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

This is a unique property with special conditions that support a finding of unnecessary hardship. The property owner, the City of Keene is considerably limited in how it can utilize this land due to the use limitations of the Conservation District and this District's 50-foot structure setback.

The property is in the Conservation District in which only three uses are permitted by right: “cemetery,” “conservation area,” and “telecommunications facilities.” However, this portion of the Monadnock View Cemetery, which is nearly 4.5 acres, is not suitable for use as a cemetery due to the presence of underground utilities. This area is also unsuitable for a “conservation area” due to the lack of important natural and cultural features. A “conservation area” is defined in Section 8.3.6.C.1 of the Keene Land Development Code as *“An area of undeveloped open space that preserves and protects natural features, wildlife, and critical environmental features, as well as sites of historic or cultural significance, and may include opportunities for passive recreation, such as hiking trails and lookout structures, and environmental education facilities.”* Therefore, the only reasonable permitted use for this area is “telecommunications facility,” which would have a greater visual impact on surrounding properties than a ground-mounted solar energy system.

This portion of the Cemetery is also unique because it is flat and already cleared of trees and vegetation (and already contains a vegetated buffer between it and the Parkwood Apartments). These physical attributes further distinguish this property from other properties in the area. Also, the proposed location of the solar energy system is dictated by another special condition of the property, which is the existing community gardens to the north/northeast of the proposed solar location. This physical feature is unique to this property and prevents ReVision from locating the solar energy system further from property lines. As for the size of the solar energy system, it must be sufficiently sized to justify the utility connection costs. The size is also critical for helping the City meet its 2030 renewable energy goal. Thus, reducing the size to comply with the setbacks would make the project infeasible.

The presumed purpose of the 50-foot setback in Section 7.3.2 is to ensure there is an adequate buffer between structures and neighboring parcels to mitigate potential impacts such as noise and overcrowding and to protect land areas of a critical or delicate environmental nature (See Section 7.3.1 of the Zoning Regulations). The land on which the solar energy system is proposed is a mowed field that lacks sensitive or critical environmental features and contains buried utilities, which restrict how the land can be developed. It is located in close proximity to high intensity commercial and institutional uses on developed parcels in the High Density 1 and Low Density Districts. Furthermore, the proposed solar energy system is a passive use that will not generate off site impact such as noise and traffic. Thus, strictly applying the restrictive 50-foot structure setback required in Section 7.3.2 to this site will not further the intention of the setback provision and will render this land practically unusable.

The purpose of the City’s 50-foot setback required for large-scale solar energy systems is to lessen the visual impacts of solar arrays on adjacent properties. The land on which the solar energy system will be installed is adjacent to a substantial buffer of mature evergreen trees and shrubs and to carport structures that will fully screen the solar panels from the adjacent property to the west. A vegetative buffer will be installed to visually screen the solar energy system from the property to the north, which is a specialized medical and educational facility. The solar energy system will be installed over 100 feet from the nearest building on this parcel. As the visual impacts of the proposed solar energy system will be minimal due to existing site conditions and the Applicant’s proposal to screen the solar panels, there is no fair and substantial relationship between ordinance provision 16.3.2 and its application to this property.

ii. The propose use is a reasonable one because:

The proposed solar energy system is a passive use, similar to the existing cemetery use, that will not adversely affect the Cemetery and surrounding properties with noise, traffic, or visual impacts. The location of the proposed solar energy system in Monadnock View Cemetery is ideal for solar development. The land is a flat, open field containing buried utilities that limit development options. Also, the lack of environmentally sensitive natural or cultural features in this area and the proximity of intense commercial/institutional uses, make this site unsuitable for conservation and environmental protection, which is the purpose of the Conservation District. The proposed solar energy system is a reasonable way to utilize this undeveloped land with minimal impact on the site and adjacent lands. An adjacent small portion of the Cemetery is already being used by the Parks and Recreation Department as community garden plots. Adding a solar use to this area is a further beneficial use of a portion of the Cemetery that cannot be used for burial purposes.

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.

As the criteria in subparagraph A are established, a response to this section is not necessary. Nevertheless, because of the special physical conditions of the property (*e.g.*, buried utilities, community garden plots, etc.), a denial of the variance would render this property practically unusable for the purposes for which it is zoned. Therefore, a variance is necessary to enable a reasonable use of it.

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21 ROUTE 9 ZBA-2024-06, 07, 08, 09 & 10



Petitioner requests Variances for a mix use, 3 family dwelling unit, commercial & accessory use, an agricultural retail store & an accessory structure in the 50 ft setback on an 24+ acre lot per Articles 8.1.3, 3.1.5 & 8.4.1.C of the Zoning Regulations



NOTICE OF HEARING

ZBA-2024-06

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-06: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a mix of commercial and residential uses on a single 24.38 acre tract per Article 8.1.3 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:

Case No. _____
Date Filled _____
Rec'd By _____
Page _____ of _____
Rev'd by _____

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keeneh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: G2 Holdings, LLC

MAILING ADDRESS: 250 North Street, Jaffrey, NH 03452

PHONE: (603) 532-7397

EMAIL:

SIGNATURE:

PRINTED NAME: Ariane Ice, agent for Cody Gordon, Principal of G2 Holdings, LLC

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Same as Applicant

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Ariane Ice / Ice Legal, P.A.

MAILING ADDRESS: 6586 Hypoluxo Road, Suite 350, Lake Worth, FL 33467

PHONE: (561) 319-5557

EMAIL: ariane.ice@icelegal.com

SIGNATURE:

PRINTED NAME: Ariane Ice

SECTION 2: PROPERTY INFORMATION

Property Address: 21 ROUTE 9

Tax Map Parcel Number: 215-8

Zoning District Rural

Lot Dimensions: Front: See Attached Plan Rear: Side: Side:

Lot Area: Acres: 24.78 Square Feet: 1,079,417 Per town records. Recent survey shows 23.09 acres (1,005,089 sf).

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 1.96 Proposed: .93

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 8.96 Proposed: 11.09

Present Use: None

Proposed Use: Mixed commercial and residential.

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

The subject property, Parcel #215-8, is comprised of 24.78 acres abutting the Franklin Pierce Highway (State Route 9) and located at the northeast corner of the town limits in the Rural District. The Applicant/Owner is G2 Holdings, LLC which owns the parcels abutting two-and-a-half sides of the triangular-shaped subject property. One of those abutting parcels (215-7), is the site of a gravel pit.

The site was originally developed as the Palmer Lodge in the 1940s and was used more recently as a drug rehabilitation and juvenile detention center. Most of the buildings on the site have been vacant for nearly twenty years and have fallen into disrepair. Notably, these prior uses all had a mixed use in that they had commercial and residential components.

The overall proposed project contemplates the renovation of the main Lodge building for use as an agricultural retail center as well as the renovation of a former residential structure for use as a three-family dwelling. Additionally, the project proposes to install a scale for weighing products of the adjoining gravel pit and to provide storage space for Habitat for Humanity.

This application seeks variance relief from Section 8.1.3. which restricts multiple principal uses in residential zoning districts such as the Rural District here. The relief would consist of permitting the commercial uses of the agricultural retail store and scale house, as well as, the residential use of a three-family structure.

The Applicant hereby reserves its right to request additional variance relief in conjunction with the project.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 8.1.3 of the Zoning Regulations to permit:

A mix of commercial and residential uses on a single 24.38 acre tract.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

“The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.” *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577, 581 (2005). The two established pathways to determine whether a variance will violate a zoning ordinance’s basic zoning objectives are to examine: 1) whether the variance would alter the essential character of the neighborhood; and 2) whether the variance would threaten the public health, safety, or welfare. *Id.*

Abutting the subject property is an 86-acre gravel pit operation to the west that is owned and operated by the Applicant here as well as a 102-acre forested area owned by the Applicant in Sullivan to the north. Directly across State Road 9 to the south is a 141-acre ski area (Granite Gorge) in Roxbury. Much of the area beyond these immediate neighbors is forested and undeveloped but also contains a smattering of single-family residences. As discussed in the separate variance applications for the agricultural retail store and three-family residence, neither use is inconsistent with the essential character of the neighborhood. Given that the tract is twelve times the minimum lot size and that the distance between the commercial and residential uses is significantly more than the length of a football field, the fact that there are multiple uses on the tract will not be readily apparent.

Additionally, the variance would not threaten the public health, safety, or welfare. Again, given the wide separation between the types of uses, the allowance of these uses on a single tract would not present any additional public hazards. To the extent that the overall proposed project contemplates the removal and renovation of derelict structures, it will improve the safety of the public in that area.

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

The New Hampshire Supreme Court has held this and the prior criterion are related because it is in the public interest to uphold the “spirit of the ordinance.” Thus, if an applicant sufficiently demonstrates one, it almost certainly meets the other. *See, Farrar v. City of Keene*, 158 N.H. 684 (2009).

The Rural District is intended to provide for areas of very low-density development predominantly of a residential or agricultural nature. (Art. 3.1.1 of Keene Land Development Code, hereinafter “Art. ____”). The Rural District allows both commercial and residential uses (Art. 3.1.5). The specific commercial and residential uses here are very close to permitted primary uses (see, variance applications for the three-family dwelling and agricultural retail store).

The purpose of the multi-use restriction (particularly in residential areas) would be: 1) to maintain the essential character of the neighborhood; and 2) to protect the public safety by separation of residential and commercial uses. As discussed in Section 1 above, the size of the tract and the distance between the two uses satisfies both these purposes.

Moreover, allowance of both uses would promote current goals of increasing the housing supply. For example, a current New Hampshire House Bill seeks—as one part of a many-faceted approach to resolve the housing shortage—to allow use of new or rehabilitated housing units in a commercial zone (HB 1053 2024 Session; see, Ethan Dewitt, *As lawmakers eye statewide housing solutions, local control remains a barrier*, New Hampshire Bulletin, March 13, 2024). Here, the mixed use would be in a residential zone, but the effect would be equally support the purposes of recent changes to the Land Development Code designed to increase available housing. Thus the variance would observe the spirit of these ordinance changes.

3. Granting the variance would do substantial justice because:

“Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 109, 920 A.2d 1192 (2007) (quotation and brackets omitted). We also look “at whether the proposed development [is] consistent with the area’s present use.” *Id.* As discussed above, both the proposed uses are consistent, not only with permitted uses, but with the actual uses of the surrounding properties. Furthermore, both proposed uses are much closer to the permitted uses and neighboring uses than its previous uses—such as a juvenile detention center.

In *Malachy*, the Supreme Court of New Hampshire found that a proposed storage facility project worked a substantial justice because it posed no further threat to the wetlands, was appropriate for the area, and did not harm its abutters; and therefore the general public would realize no appreciable gain from denying this variance.” *Id.* The same is true for the uses proposed here.

In *Harrington v. Town of Warner*, 152 N.H. 74, 85, 872 A.2d 990 (2005), the Supreme Court of New Hampshire concluded that the applicant, who sought to expand a manufactured housing park, showed that substantial justice would be done in granting the variance “because it would improve a dilapidated area of town and provide affordable housing in the area.” Here, the proposed project would renovate already existing, dilapidated buildings for residential and commercial uses and thereby improving the overall tract by removing derelict structures around the property. Additionally, allowing residences in the same parcel as a commercial establishment would help increase the supply of affordable housing in the area.

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

The derelict structures on the property are an eyesore. Renovating and removing these structures would cause the values of the surrounding property to increase, rather than decrease. All residential and recreational uses in the general area are sufficiently distant from the subject property to be affected.

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:

As discussed above, the public purpose of the ordinance—to maintain separation of different uses for aesthetic and safety reasons—is met. Each of these uses involves the rehabilitation of existing buildings. Accordingly, the restriction, as applied to the property, does not serve the public purpose in a “fair and substantial” way.

The special conditions of the property cause the proposed use to be reasonable and the use does not alter the essential character of the neighborhood. One special condition of the property is that it has deteriorating existing buildings with a prior non-conforming use. It is appropriate to consider existing buildings as a special condition of the property. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 518, 34 A.3d 584, 592 (2011) (citing, *Farrar v. City of Keene*, 158 N.H. 684, 691, 973 A.2d 326 (2009), 158 N.H. at 689, 973 A.2d 326) (where variance sought to convert large, historical single use residence to mixed use of two residences and office space, size of residence was relevant to determining whether property was unique in its environment). Here, the existing buildings make the property different in a meaningful way from other properties in the area and is therefore burdened more severely by the zoning restriction. Denial of the variance may restrict any feasible use of the building resulting in further deterioration of the structures on the site.

Another special condition is that the property has always had a mixed residential and commercial use. The allowance of the variance for the mixed use does not bring the property further out of conformance with zoning ordinances. Instead, the overall project will bring the property closer to compliance with modern standards.

and

ii. The proposed use is a reasonable one because:

The proposed uses are very similar to permitted uses and meet the intent of the ordinance and recent changes to encourage an increase in the housing supply. Here, Applicant merely needs to show that the proposed multiple use is a reasonable one, given its special conditions. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 519, 34 A.3d 584, 592 (2011). As discussed above, the existing buildings makes the use a reasonable one.

B. Explain how, if the criterial 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.

Not applicable.



200 feet Abutters List Report

Keene, NH
March 13, 2024

Subject Property:

Parcel Number: 215-008-000
CAMA Number: 215-008-000-000-000
Property Address: 21 ROUTE 9

Mailing Address: G2 HOLDINGS LLC
250 NORTH ST.
JAFFREY, NH 03452

Abutters:

Parcel Number: 215-007-000
CAMA Number: 215-007-000-000-000
Property Address: 57 ROUTE 9

Mailing Address: G2 HOLDINGS LLC
250 NORTH ST.
JAFFREY, NH 03452

Parcel Number: 215-009-000
CAMA Number: 215-009-000-000-000
Property Address: 0 ROUTE 9

Mailing Address: G2 HOLDINGS LLC
250 NORTH ST.
JAFFREY, NH 03452

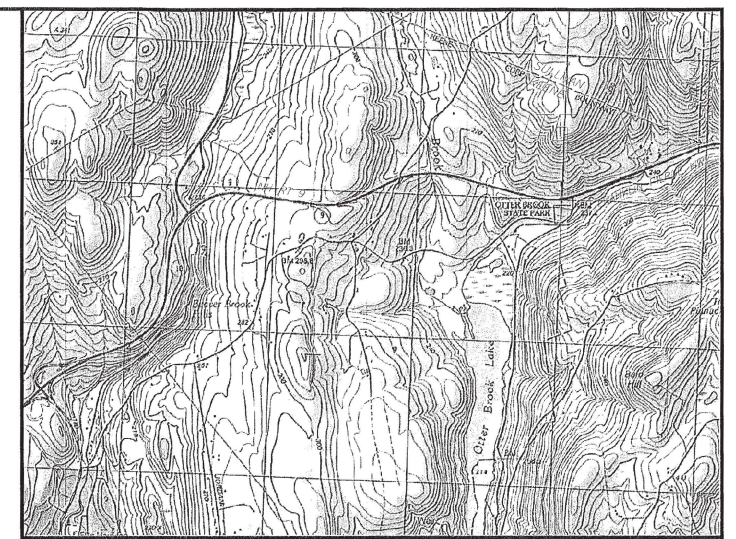


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Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.



NEW HAMPSHIRE STATE PLANE
 COORDINATE SYSTEM NAD 83
 MAGNETIC DECLINATION: 1° 53' W
 CONVERGENCE ANGLE: -0° 29' 19"
 OBSERVATION DATE: OCTOBER, 2022
 COMBINED SCALE FACTOR: 0.99995790



LOCATION MAP
 1 inch = 2000 feet

G2 HOLDINGS, LLC
 TM 215 LOT 8
 24.78 AC

G2 HOLDINGS, LLC
 TM 5 LOT 46 - 1
 TOWN OF SULLIVAN

G2 HOLDINGS, LLC
 TM 215 LOT 7

G2 HOLDINGS, LLC
 TM 215 LOT 8
 23.09 AC

G2 HOLDINGS, LLC
 TM 5 LOT 46
 TOWN OF SULLIVAN

G2 HOLDINGS, LLC
 TM 215 LOT 9
 .95 AC

G2 HOLDINGS, LLC
 TM 401 LOT 1
 TOWN OF ROXBURY

JOHN BAYBUTT
 TM 216 LOT 1

JOHN BAYBUTT
 TM 401 LOT 19
 TOWN OF ROXBURY

GRANITE GORGE
 PARTNERSHIP, LLC
 TM 401 LOT 18
 TOWN OF ROXBURY

Reference Plans:

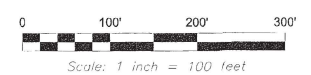
- A. "Steel Tape and Compass Survey of 3 Lot Subdivision for Wayne W. & Elaine Sargent, Route 9 Keene and Sullivan, NH", By Herbert E. Russell, RLS #21, Dated August, 1979. Recorded at Cheshire County Registry of Deeds Cabinet 2 Pg 94 Roll #305.
- B. "Boundary Survey: Land of Seafield Pines Hospital Corporation, Keene, Sullivan & Roxbury, County of Cheshire, State of New Hampshire" By C.T. Male Associates, P. C. Dated June, 1989. Job No. 89-05837. Not Recorded.
- C. "Plan of Proposed T.L.R. Project No. 14201, NH Project No P-29E2-C, Franklin Pierce Highway, City of Keene and Town of Roxbury, County of Cheshire.", By State of New Hampshire Department of Public Works and Highways, Dated November 16, 1996. On file and available on-line with the New Hampshire Department of Transportation, Right of Way Bureau.

NOTES:

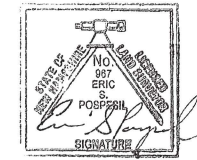
- 1. Owner of Record: G2 Holdings, LLC 250 North Street, Jaffrey, NH 03452.
- 2. The Basis of Bearing is Grid. The Horizontal Datum is on the New Hampshire State Plane Coordinate System NAD83 (2011). The Vertical Datum is NAVD 88. Both horizontal and vertical datums were derived from a static GNSS observation taken during the time of the field survey and processed using the Online Positioning User System (OPUS).
- 3. This plan is based on a field survey completed in October of 2022 using iGauge 8 dual frequency RTK survey grade GNSS receivers, and a Topcon Robotic Total Station. The survey is classified as Rural and exceeds the minimum positional tolerances for property corners (0.25') and control (0.13') computed using a least squares adjustment at the 95% confidence level.
- 4. The property lies in the Rural Zoning District - R. Building Setbacks are 50 feet - front, side and rear.

LEGEND

- Monument Found
- ▬ Highway Bound
- Calculated Point
- Well
- Utility Pole
- Septic Tank Cover
- Catch Basin
- Property Line
- - - - - Approx Abutters Line



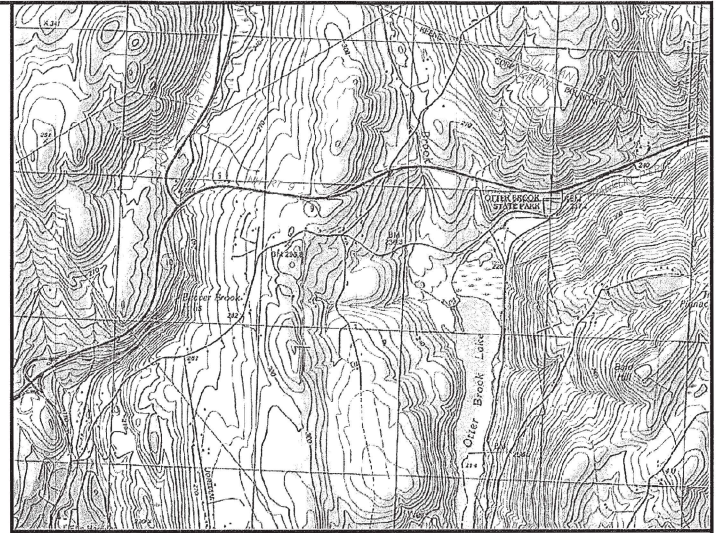
A SURVEY OF LAND FOR
G2 HOLDINGS, LLC
 TAX MAP 215 LOT 8 & 9
 VOLUME 3199 PAGE 1197 &
 VOLUME 3079 PAGE 283
 IN THE TOWN OF
KEENE, NEW HAMPSHIRE



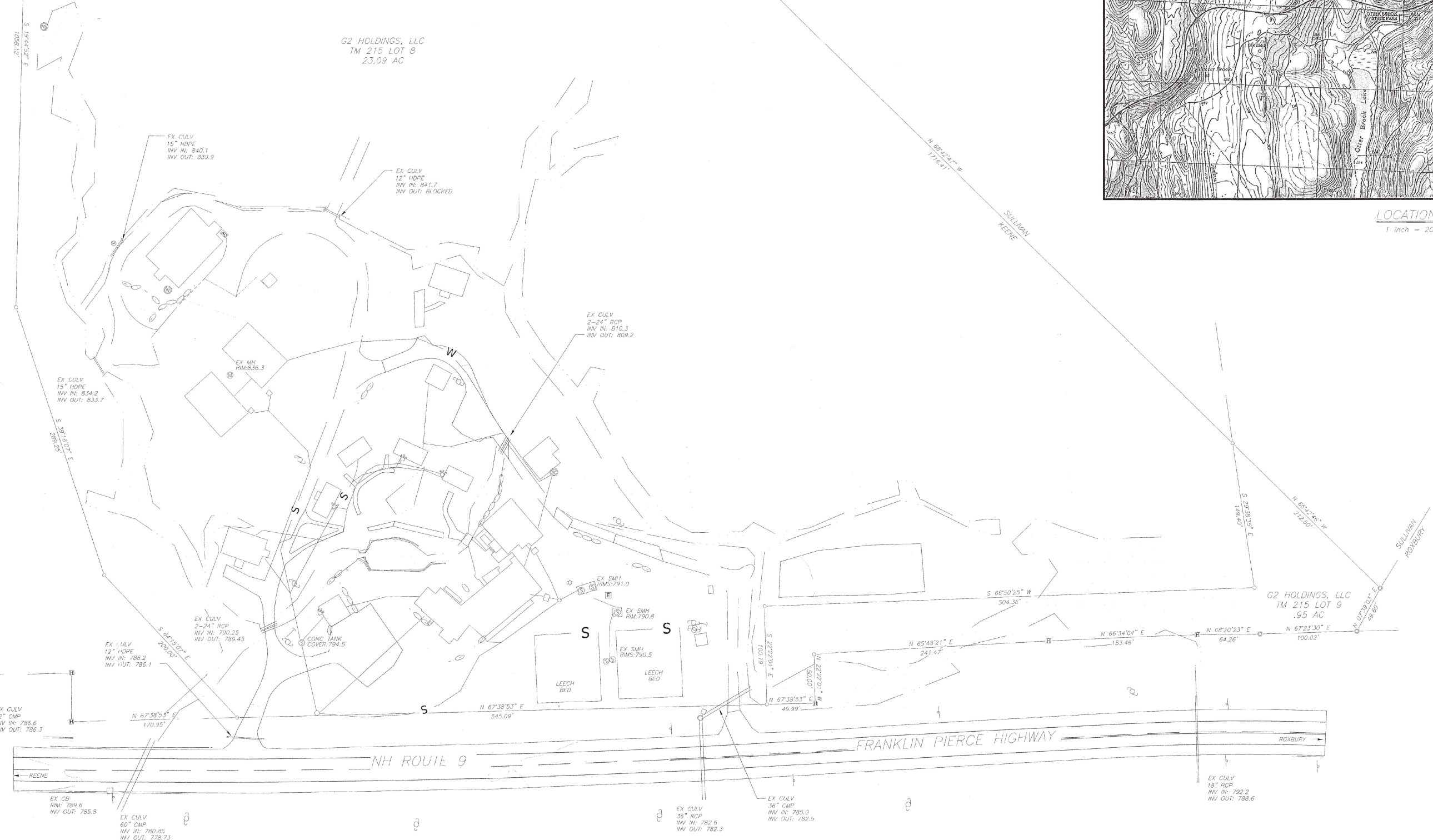
SMITH & FOSPESIL
 LAND SURVEYING COMPANY, PLLC
 240 QUEBEC ROAD, LYMAN, N.H. 03585
 MARCH 14, 2024

NEW HAMPSHIRE STATE PLANE
 COORDINATE SYSTEM NAD 83
 MAGNETIC DECLINATION: 13° 53' W
 CONVERGENCE ANGLE: -0°22'39"
 OBSERVATION DATE: OCTOBER, 2022
 COMBINED SCALE FACTOR: 0.99995/90

G2 HOLDINGS, LLC
 TM 215 LOT 8
 23.09 AC



LOCATION MAP
 1 inch = 2000 feet



- LEGEND**
- Monument Found
 - ▬ Highway Bound
 - Calculated Point
 - ⊙ Well
 - ⊙ Utility Pole
 - ⊙ Septic Tank Cover
 - Catch Basin
 - Property Line
 - - - Approx Abutters Line
 - Major Contour Line
 - - - Minor Contour Line
 - - - Stone wall/Retaining Wall
 - ▬ Wetland Edge
 - ▬ Gravel Edge
 - ▬ Concrete
 - ▬ Pavement



Reference Plans:

- A. "Steel Tape and Compass Survey of 3 Lot Subdivision for Wayne W. & Elaine Sargent, Route 9 Keene and Sullivan, NH," by Herbert L. Russell, RLS #21, Dated August, 1979. Recorded at Cheshire County Registry of Deeds Cabinet 7 Pg 94 Roll #305.
- B. "Boundary Survey: Land of Seaford Pines Hospital Corporation, Keene, Sullivan & Roxbury, County of Cheshire, State of New Hampshire" By C.T. Mole Associates, P. C. Dated June, 1989. Job No. 88-05837. Not Recorded.
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NOTES:

1. Owner of Record: G2 Holdings, LLC 250 North Street, Jeffrey, NH 03452.
2. The Basis of Bearing is Grid. The Horizontal Datum is on the New Hampshire State Plane Coordinate System NAD83 (2011). The Vertical Datum is NAVD 88. Both horizontal and vertical datums were derived from a static GNSS observation taken during the time of the field survey and processed using the Online Positioning User System (OPUS).
3. This plan is based on a field survey completed in October of 2022 using iGauge B dual frequency RTK survey grade GNSS receivers, and a Topcon Robotic Total Station. The survey is classified as Rural and exceeds the minimum positional tolerances for property corners (0.25') and control (0.13') computed using a least squares adjustment at the 95% confidence level.
4. The property lies in the Rural Zoning District - R. Building Setbacks are 50 feet - front, side and rear.

SMITH & POSPESIL
 LAND SURVEYING COMPANY, PLLC
 240 QUEBEC ROAD, LYMAN, N.H. 03585
 MARCH 14, 2024

EXISTING CONDITIONS PLAN FOR
G2 HOLDINGS, LLC
 TAX MAP 215 LOT 8 & 9
 VOLUME 3199 PAGE 1197 &
 VOLUME 3079 PAGE 283
 IN THE TOWN OF
KEENE, NEW HAMPSHIRE

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NOTICE OF HEARING

ZBA-2024-07

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-07: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an existing structure to be a three family residence per Article 3.1.5 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:

Case No. _____
Date Filled _____
Rec'd By _____
Page _____ of _____
Rev'd by _____

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keeneh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: G2 Holdings, LLC

MAILING ADDRESS: 250 North Street, Jaffrey, NH 03452

PHONE: (603) 532-7397

EMAIL:

SIGNATURE:

PRINTED NAME: Ariane Ice, agent for Cody Gordon, Principal of G2 Holdings, LLC

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Same as Applicant

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Ariane Ice / Ice Legal, P.A.

MAILING ADDRESS: 6586 Hypoluxo Road, Suite 350, Lake Worth, FL 33467

PHONE: (561) 319-5557

EMAIL: ariane.ice@icelegal.com

SIGNATURE:

PRINTED NAME: Ariane Ice

SECTION 2: PROPERTY INFORMATION

Property Address: 21 ROUTE 9

Tax Map Parcel Number: 215-8

Zoning District Rural

Lot Dimensions: Front: See Attached Plan Rear: Side: Side:

Lot Area: Acres: 24.78 Square Feet: 1,079,417 Per town records. Recent survey shows 23.09 acres (1,005,089 sf).

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 1.96 Proposed: .93

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 8.96 Proposed: 11.09

Present Use: None

Proposed Use: Mixed commercial and residential.

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

The subject property, Parcel #215-8, is comprised of 24.78 acres abutting the Franklin Pierce Highway (State Route 9) and located at the northeast corner of the town limits in the Rural District. The Applicant/Owner is G2 Holdings, LLC which owns the parcels abutting two-and-a-half sides of the triangular-shaped subject property. One of those abutting parcels (215-7), is the site of a gravel pit.

The site was originally developed as the Palmer Lodge in the 1940s and was used more recently as a drug rehabilitation and juvenile detention center. Most of the buildings on the site have been vacant for nearly twenty years and have fallen into disrepair.

The overall proposed project contemplates the renovation of the main Lodge building for use as an agricultural retail center as well as the renovation of a former residential structure for use as a three-family dwelling. Additionally, the project proposes to install a scale for weighing products of the adjoining gravel pit and to provide storage space for Habitat for Humanity.

This application seeks variance relief from Section 3.1.5 for the three-family dwelling. The relief would consist of expanding the scope of the permitted residential use such that a "Dwelling, Multi-family" is permitted despite the absence of a Conservation Residential Development.

The Applicant hereby reserves its right to request additional variance relief in conjunction with the project.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 3.1.5 of the Zoning Regulations to permit:

Renovation of an existing structure to be a three-family residence.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

“The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.” *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577, 581 (2005). The two established pathways to determine whether a variance will violate a zoning ordinance’s basic zoning objectives are to examine: 1) whether the variance would alter the essential character of the neighborhood; and 2) whether the variance would threaten the public health, safety, or welfare. *Id.*

Abutting the subject property is an 86-acre gravel pit operation to the west that is owned and operated by the Applicant here as well as a 102-acre forested area owned by the Applicant in Sullivan to the north. Directly across State Road 9 to the south is a 141-acre ski area (Granite Gorge) in Roxbury. Much of the area beyond these immediate neighbors is forested and undeveloped but also contains a smattering of single-family residences. Thus, the revived use of a building on the subject property as a three-family dwelling would not be inconsistent with the surrounding developed uses which, like dwellings, all fall within the character promoted by the Rural District designation. Thus, the variance would not alter the essential character of the neighborhood.

Notably, the purpose of the recent change from a 5- to 2-acre minimum lot size in the Rural District is to encourage a greater density. The allowance of one three-family dwelling on a 24-acre tract will be consistent with that goal, and yet, will maintain a far lower density than allowed if the property were subdivided.

Additionally, the variance would not threaten the public health, safety, or welfare. A retail establishment would not present any additional public hazards. To the extent that the overall proposed project contemplates the removal and renovation of derelict structures, it will improve the safety of the public in that area.

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

The New Hampshire Supreme Court has held this and the prior criterion are related because it is in the public interest to uphold the “spirit of the ordinance.” Thus, if an applicant sufficiently demonstrates one, it almost certainly meets the other. *See, Farrar v. City of Keene*, 158 N.H. 684 (2009).

The Rural District is intended to provide for areas of very low-density development predominantly of a residential or agricultural nature. (Art. 3.1.1 of Keene Land Development Code, hereinafter “Art. ____”). As one of the Residential Zoning Districts, the Rural District does not discourage residential uses or even multi-family residential uses (Art. 3.1.5). It permits single-family dwellings, and even two-and multi-family dwellings in Conservation Residential Development (“CRD”) Subdivisions. The building here falls within the “Dwelling, Multi-family” category which is defined as a structure containing 3 or more dwelling units located on a single lot...” (Art. 8.3.1.C).

Additionally, the proposed use meets the spirit of the CRD subdivisions, the purpose of which is to provide “greater flexibility and creativity in the design of residential development ... by allowing for clustering of dwelling units at a higher density ... provided a portion of the existing tract of land to be subdivided is permanently designated as open space” (Art. 19.3.1) Here, the building to be renovated meets all the CRD frontage and setback requirements and the limit of three dwellings per structure (with the Workforce Housing density incentive; Art. 19.3.3). The tract is nearly two-and-a-half times the CRD minimum tract size and contains far more unused land than the “open space” requirements would demand (Art. 19.3.2, 19.3.5). Under the CRD rules, the allowable density would be four times the dwelling units proposed here (Art. 19.3.2.C.).

Accordingly, the proposed three-family unit very nearly meets the residential requirements of Art. 3.1.5. In essence, the waiver only seeks relief from the necessity for CRD subdivision where the proposed tract and building would otherwise meet all the fundamental CRD requirements. The three-family unit, therefore, meets the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

“Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 109, 920 A.2d 1192 (2007) (quotation and brackets omitted). We also look “at whether the proposed development [is] consistent with the area’s present use.” *Id.* As discussed above, the proposed three-family residence is consistent, not only with the permitted residential and open space uses, but with the actual uses of the surrounding properties. For the subject property, the proposed use is much closer to the permitted uses and neighboring uses than its previous uses—such as a juvenile detention center.

In *Malachy*, the Supreme Court of New Hampshire found that a proposed storage facility project worked a substantial justice because it posed no further threat to the wetlands, was appropriate for the area, and did not harm its abutters; and therefore the general public would realize no appreciable gain from denying this variance.” *Id.* The same is true for the three-family dwelling proposed here.

In *Harrington v. Town of Warner*, 152 N.H. 74, 85, 872 A.2d 990 (2005), the Supreme Court of New Hampshire concluded that the applicant, who sought to expand a manufactured housing park, showed that substantial justice would be done in granting the variance “because it would improve a dilapidated area of town and provide affordable housing in the area.” Here, the proposed project would renovate an already existing, dilapidated building for residential use and thereby increase the supply of affordable housing in the area. It would improve the overall tract by removing derelict structures around the property.

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

The derelict structures on the property are an eyesore. Renovating and removing these structures would cause the values of the surrounding property to increase, rather than decrease. All residential and recreational uses in the general area are sufficiently distant from the subject property to be affected.

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:

As discussed above, the public purposes of the ordinance—to encourage the building of housing while maintaining open spaces—are met. The specific application of the ordinance to this property, however, would not allow a three-family home without CRD subdivision, even though it would meet or exceed the CRD requirements. Accordingly, the restriction, as applied to the property, does not serve the public purpose in a “fair and substantial” way.

The special conditions of the property cause the proposed use to be reasonable and (as discussed above) the use does not alter the essential character of the neighborhood. One special condition of the property is that it has an existing building with a prior non-conforming use. It is appropriate to consider existing buildings as a special condition of the property. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 518, 34 A.3d 584, 592 (2011) (citing, *Farrar v. City of Keene*, 158 N.H. 684, 691, 973 A.2d 326 (2009), 158 N.H. at 689, 973 A.2d 326) (where variance sought to convert large, historical single use residence to mixed use of two residences and office space, size of residence was relevant to determining whether property was unique in its environment). Here, the existing building makes the property different in a meaningful way from other properties in the area and is therefore burdened more severely by the zoning restriction. Denial of the variance may restrict any feasible use of the building resulting in further deterioration of the structures on the site.

and

ii. The proposed use is a reasonable one because:

The proposed use is very similar to a permitted use and meets the intent of the ordinance. Here, Applicant merely needs to show that the proposed three-family residence is a “reasonable use” of the property, given its special conditions. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 519, 34 A.3d 584, 592 (2011). As discussed above, the existing building makes the use a reasonable one.

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.

Not applicable.

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NOTICE OF HEARING

ZBA-2024-08

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-08: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit a commercial and accessory use of a truck scale and scale house per Article 3.1.5 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:

Case No. _____
Date Filled _____
Rec'd By _____
Page _____ of _____
Rev'd by _____

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keeneh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: G2 Holdings, LLC

MAILING ADDRESS: 250 North Street, Jaffrey, NH 03452

PHONE: (603) 532-7397

EMAIL:

SIGNATURE:

PRINTED NAME: Ariane Ice, agent for Cody Gordon, Principal of G2 Holdings, LLC

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Same as Applicant

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Ariane Ice / Ice Legal, P.A.

MAILING ADDRESS: 6586 Hypoluxo Road, Suite 350, Lake Worth, FL 33467

PHONE: (561) 319-5557

EMAIL: ariane.ice@icelegal.com

SIGNATURE:

PRINTED NAME: Ariane Ice

SECTION 2: PROPERTY INFORMATION

Property Address: 21 ROUTE 9

Tax Map Parcel Number: 215-8

Zoning District Rural

Lot Dimensions: Front: See Attached Plan Rear: Side: Side:

Lot Area: Acres: 24.78 Square Feet: 1,079,417 Per town records. Recent survey shows 23.09 acres (1,005,089 sf).

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 1.96 Proposed: .9

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 8.96 Proposed: 11.40

Present Use: None

Proposed Use: Mixed commercial and residential.

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

The subject property, Parcel #215-8, is comprised of 24.78 acres abutting the Franklin Pierce Highway (State Route 9) and located at the northeast corner of the town limits in the Rural District. The Applicant/Owner is G2 Holdings, LLC which owns the parcels abutting two-and-a-half sides of the triangular-shaped subject property. One of those abutting parcels (215-7), is the site of a gravel pit.

The site was originally developed as the Palmer Lodge in the 1940s and was used more recently as a drug rehabilitation and juvenile detention center. Most of the buildings on the site have been vacant for nearly twenty years and have fallen into disrepair.

The overall proposed project contemplates the renovation of the main Lodge building for use as an agricultural retail center as well as the renovation of a former residential structure for use as a three-family dwelling. Additionally, the project proposes to install a scale for weighing products of the adjoining gravel pit and to provide storage space for Habitat for Humanity.

This application seeks variance relief from Section 3.1.5. which restricts commercial uses in the Rural District. The relief would consist of permitting the commercial use of a scale house and scale. The proposal consists of installing a truck scale, as well as, renovating and relocating a 874 sf existing building to serve as the scale house. The scale and scale house would be used to weigh sand, gravel, and crushed stone to customers of the agricultural retail store. It would also be used to weigh the products of the abutting gravel pit.

The Applicant hereby reserves its right to request additional variance relief in conjunction with the project.

SECTION 4: APPLICANTION CRITERIA

A Variance is requested from Article (s) 3.1.5 of the Zoning Regulations to permit:

A commercial and accessory use of a truck scale and scale house.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

“The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.” *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577, 581 (2005). The two established pathways to determine whether a variance will violate a zoning ordinance’s basic zoning objectives are to examine: 1) whether the variance would alter the essential character of the neighborhood; and 2) whether the variance would threaten the public health, safety, or welfare. *Id.*

Abutting the subject property is an 86-acre gravel pit operation to the west that is owned and operated by the Applicant here as well as a 102-acre forested area owned by the Applicant in Sullivan to the north. Directly across State Road 9 to the south is a 141-acre ski area (Granite Gorge) in Roxbury. Much of the area beyond these immediate neighbors is forested and undeveloped but also contains a smattering of single-family residences. The weigh station here would consist of an existing building and an in-ground scale that is flush with the road, and therefore, not readily visible from neighboring areas. A variance, therefore, would present very little change to the aesthetics of the site, and as such, would not alter the essential character of the neighborhood. Moreover, to the extent that the character of the immediate neighborhood is influenced by the existing gravel pit operation next door, a weigh station—standard equipment for many gravel pits—would not alter that character of the surroundings.

Additionally, the variance would not threaten the public health, safety, or welfare. Again, given the wide separation between the types of uses, the allowance of these uses on a single tract would not present any additional public hazards. To the extent that the overall proposed project contemplates the removal and renovation of derelict structures, it will improve the safety of the public in that area.

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

The New Hampshire Supreme Court has held this and the prior criterion are related because it is in the public interest to uphold the "spirit of the ordinance." Thus, if an applicant sufficiently demonstrates one, it almost certainly meets the other. See, *Farrar v. City of Keene*, 158 N.H. 684 (2009).

The Rural District allows both commercial and residential uses. (Art. 3.1.5 of Keene Land Development Code, hereinafter "Art. ____"). The specific proposed use here is both accessory to the commercial use of an agricultural retail store and an extension of the permitted open space use of the gravel pit next door. The weigh station meets the accessory use criteria of Land Development Code, because, with respect to the agricultural retail store, the proposed use is: 1) incidental; 2) subordinate in area, extent and purpose; 3) located on the same site; and 4) does not preexist the principal use (Art. 8.4.1.B.). Additionally, the weigh station would not create a public or private nuisance. *Id.*

To the extent that the weigh station would also be used by the gravel pit next door, the spirit of the ordinance would be observed since the Rural District permits gravel pit operations (with Special Exception). A weigh station is "clearly incidental and customarily found in connection with" the principal use of a gravel pit. Indeed, it meets all the criteria of an accessory use of the existing gravel pit, except the "same site" requirement. Here, the importance of the "same site" requirement is highly attenuated given that the abutting gravel pit and the subject property have the same owner and may be treated as though they had been merged.

3. Granting the variance would do substantial justice because:

"Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 109, 920 A.2d 1192 (2007) (quotation and brackets omitted). We also look "at whether the proposed development [is] consistent with the area's present use." *Id.* As discussed above, the proposed use is consistent, not only with permitted use, but with the actual uses of the surrounding properties.

In *Malachy*, the Supreme Court of New Hampshire found that a proposed storage facility project worked a substantial justice because it posed no further threat to the wetlands, was appropriate for the area, and did not harm its abutters; and therefore the general public would realize no appreciable gain from denying this variance." *Id.* The same is true for the use proposed here.

In *Harrington v. Town of Warner*, 152 N.H. 74, 85, 872 A.2d 990 (2005), the Supreme Court of New Hampshire concluded that the applicant, who sought to expand a manufactured housing park, showed that substantial justice would be done in granting the variance "because it would improve a dilapidated area of town and provide affordable housing in the area." Here, the proposed project would renovate an already existing, dilapidated building for use as a scale house.

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

The derelict structures on the property (including the building to be used as a scale house) are an eyesore. Renovating and removing these structures would cause the values of the surrounding property to increase, rather than decrease. All residential and recreational uses in the general area are sufficiently distant from the subject property to be affected. The scale itself will have no effect on the values of surrounding properties since it will be flush with the road and will present virtually no change to the neighborhood aesthetic. Nor would the weigh station change the existing level of truck traffic to the gravel pit.

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:

The proposed use involves the rehabilitation of an existing building in connection with a new accessory use in connection with the proposed agricultural retail store and what may be considered an "extended" accessory use in connection with the abutting gravel pit. For the reasons listed above, the restriction, as applied to the subject property, does not serve the public purpose in a "fair and substantial" way.

The special conditions of the property cause the proposed use to be reasonable and the use does not alter the essential character of the neighborhood. One special condition of the property is that it has a deteriorating existing building with a prior non-conforming use. It is appropriate to consider existing buildings as a special condition of the property. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 518, 34 A.3d 584, 592 (2011) (citing, *Farrar v. City of Keene*, 158 N.H. 684, 691, 973 A.2d 326 (2009), 158 N.H. at 689, 973 A.2d 326) (where variance sought to convert large, historical single use residence to mixed use of two residences and office space, size of residence was relevant to determining whether property was unique in its environment). Here, the existing building makes the property different in a meaningful way from other properties in the area and is therefore burdened more severely by the zoning restriction. Denial of the variance may restrict any feasible use of the building resulting in further deterioration of the structures on the site.

and

ii. The proposed use is a reasonable one because:

The proposed use is very similar to permitted uses and meets the intent of the ordinance. Here, Applicant merely needs to show that the proposed use is a reasonable one, given its special conditions. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 519, 34 A.3d 584, 592 (2011). As discussed above, the existing building makes the use a reasonable one. Additionally, the weigh station is a reasonable accessory use for both the agricultural retail store and the existing gravel pit.

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.

Not applicable.

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NOTICE OF HEARING

ZBA-2024-09

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-09: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an existing structure to be an agricultural retail store per Article 3.1.5 of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	_____
Date Filled	_____
Rec'd By	_____
Page	_____ of _____
Rev'd by	_____

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keeneh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: G2 Holdings, LLC

MAILING ADDRESS: 250 North Street, Jaffrey, NH 03452

PHONE: (603) 532-7397

EMAIL:

SIGNATURE:

PRINTED NAME: Ariane Ice, agent for Cody Gordon, Principal of G2 Holdings, LLC

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Same as Applicant

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Ariane Ice / Ice Legal, P.A.

MAILING ADDRESS: 6586 Hypoluxo Road, Suite 350, Lake Worth, FL 33467

PHONE: (561) 319-5557

EMAIL: ariane.ice@icelegal.com

SIGNATURE:

PRINTED NAME: Ariane Ice

SECTION 2: PROPERTY INFORMATION

Property Address: 21 ROUTE 9

Tax Map Parcel Number: 215-8

Zoning District Rural

Lot Dimensions: Front: See Attached Plan Rear: Side: Side:

Lot Area: Acres: 24.78 Square Feet: 1,079,417 Per town records. Recent survey shows 23.09 acres (1,005,089 sf).

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 1.96 Proposed: .93

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 8.96 Proposed: 11.09

Present Use: None

Proposed Use: Mixed commercial and residential.

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

The subject property, Parcel #215-8, is comprised of 24.78 acres abutting the Franklin Pierce Highway (State Route 9) and located at the northeast corner of the town limits in the Rural District. The Applicant/Owner is G2 Holdings, LLC which owns the parcels abutting two-and-a-half sides of the triangular-shaped subject property. One of those abutting parcels (215-7), is the site of a gravel pit.

The site was originally developed as the Palmer Lodge in the 1940s, and was used more recently as a drug rehabilitation and juvenile detention center. Most of the buildings on the site have been vacant for nearly twenty years and have fallen into disrepair.

The overall proposed project contemplates the renovation of the main Lodge building for use as an agricultural retail center as well as the renovation of a former residential structure for use as a three-family dwelling. Additionally, the project proposes to install a scale for weighing products of the adjoining gravel pit and to provide storage space for Habitat for Humanity.

This application seeks variance relief from Section 3.1.5 for the agricultural retail center. The relief would consist of expanding the scope of the permitted commercial use—Greenhouse/Nursery—to include the sale of hardscape materials and agricultural tools and supplies.

The Applicant hereby reserves its right to request additional variance relief in conjunction with the project.

SECTION 4: APPLICATION CRITERIA

A Variance is requested from Article (s) 3.1.5 of the Zoning Regulations to permit:

Renovation of an existing structure to be an agricultural retail store.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

“The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.” *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577, 581 (2005). The two established pathways to determine whether a variance will violate a zoning ordinance’s basic zoning objectives are to examine: 1) whether the variance would alter the essential character of the neighborhood; and 2) whether the variance would threaten the public health, safety, or welfare. *Id.*

Abutting the subject property is an 86-acre gravel pit operation to the west that is owned and operated by the Applicant here as well as a 102-acre forested area owned by the Applicant in Sullivan to the north. Directly across State Road 9 to the south is a 141-acre ski area (Granite Gorge) in Roxbury. Much of the area beyond these immediate neighbors is forested and undeveloped. Thus, the use of property as an agricultural retail store would not be inconsistent with the surrounding developed uses which are commercial in character. This is particularly true regarding the sale of gravel pit products which is currently a use of the abutting parcel. Thus, the variance would not alter the essential character of the neighborhood.

Additionally, the variance would not threaten the public health, safety, or welfare. A retail establishment would not present any additional public hazards. To the extent that the overall proposed project contemplates the removal and renovation of derelict structures, it will improve the safety of the public in that area.

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

The New Hampshire Supreme Court has held this and the prior criterion are related because it is in the public interest to uphold the “spirit of the ordinance.” Thus, if an applicant sufficiently demonstrates one, it almost certainly meets the other. See, *Farrar v. City of Keene*, 158 N.H. 684 (2009).

The Rural District is intended to provide for areas of very low-density development predominantly of a residential or agricultural nature. (Art. 3.1.1 of Keene Land Development Code, hereinafter “Art. ____”). Art. 3.1.5 does not discourage commercial uses, but rather, allows more than any other residential district. It specifically encourages those that are consistent with a rural, agricultural environment (see also, community gardens and farming in the permitted open space uses). More importantly, the permitted commercial uses (such as animal-care facilities, kennels, and nurseries) are those that provide the services and products needed by residents in the Rural District. The proposed agricultural retail store, selling animal-care products and hardscaping tools and supplies, is exactly the type of commercial use contemplated by the ordinance. This use will become even more important since the provision of products such as hardscape materials will support the additional development encouraged by the recent move from five- to two-acre minimum lot sizes in the District.

Additionally, the proposed use includes, in large part, uses already permitted. For example, the agricultural retail store will include the operations of a “Greenhouse/Nursery” --a permitted use defined as “[a]n establishment where flowers, shrubbery, vegetables, trees, and other horticultural and floricultural products are propagated and sold, and may include the sale of items directly related to their care and maintenance.” (Art. 3.1.5 and 28) The proposed operations that are beyond the most basic Greenhouse/Nursery --such as selling animal-care products and hardscaping tools and supplies --are still very similar to those of a Greenhouse/Nursery and would attract the same or similar customer base. Moreover, the sale of hardscaping supplies such as gravel and crushed stone products is the same as the permitted use (with special exception) in the rural zone of a gravel pit.

3. Granting the variance would do substantial justice because:

“Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 109, 920 A.2d 1192 (2007) (quotation and brackets omitted). We also look “at whether the proposed development [is] consistent with the area’s present use.” *Id.* As discussed above, the proposed agricultural retail store is consistent, not only with the permitted rural-oriented commercial and open space uses, but with the actual uses of the surrounding properties (such as the gravel pit and ski area). For the subject property, the proposed use is much closer to the permitted uses and neighboring uses than its previous uses—such as a juvenile detention center.

In *Malachy*, the Supreme Court of New Hampshire found that a proposed storage facility project worked a substantial justice because it posed no further threat to the wetlands, was appropriate for the area, and did not harm its abutters; and therefore the general public would realize no appreciable gain from denying this variance.” *Id.* The same is true for the retail building proposed here.

In *Harrington v. Town of Warner*, 152 N.H. 74, 85, 872 A.2d 990 (2005), the Supreme Court of New Hampshire concluded that the applicant, who sought to expand a manufactured housing park, showed that substantial justice would be done in granting the variance “because it would improve a dilapidated area of town and provide affordable housing in the area.” Here, the proposed project would renovate the ramshackle main building for use as retail space and remove derelict structures around the property. The multifamily housing part of the project (addressed in a separate variance request) would also provide affordable housing in the area.

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

The derelict structures on the property are an eyesore. Renovating and removing these structures would cause the values of the surrounding property to increase, rather than decrease. All residential and recreational uses in the general area are sufficiently distant from the subject property to be affected.

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:

As discussed above, the public purposes of the ordinance—to encourage rural or agriculturally related businesses—are met. The specific application of the ordinance to this property, however, would not allow an agricultural retail store, even though it has many of the same elements as a permitted use (Greenhouse/Nursery). Accordingly, the restriction, as applied to the property, does not serve the public purpose in a “fair and substantial” way.

The special conditions of the property cause the proposed use to be reasonable and (as discussed above) the use does not alter the essential character of the neighborhood. One special condition of the property is that it has a commercial building with a prior non-conforming use. It is appropriate to consider existing buildings as a special condition of the property. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 518, 34 A.3d 584, 592 (2011) (citing, *Farrar v. City of Keene*, 158 N.H. 684, 691, 973 A.2d 326 (2009), 158 N.H. at 689, 973 A.2d 326) (where variance sought to convert large, historical single use residence to mixed use of two residences and office space, size of residence was relevant to determining whether property was unique in its environment). Here, the existing building makes the property different in a meaningful way from other properties in the area and is therefore burdened more severely by the zoning restriction. Denial of the variance may restrict any feasible use of the building resulting in further deterioration of the structures on the site.

Another special condition is that is proximity to the Applicant’s abutting gravel pit. This facilitates the delivery of gravel pit products to a location accessible to retail buyers—a fact that distinguishes it from commercially zoned properties that are far from the gravel pit.

and

ii. The proposed use is a reasonable one because:

The proposed use is very similar to a permitted use and meets the intent of the ordinance. Here, Applicant merely needs to show that the proposed agricultural retail operation is a “reasonable use” of the property, given its special conditions. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 519, 34 A.3d 584, 592 (2011). As discussed above, the existing building and proximity to the Applicant’s gravel pit makes the use a reasonable one.

B. Explain how, if the criterial 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.

Not applicable.

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NOTICE OF HEARING

ZBA-2024-10

A meeting of the Zoning Board of Adjustment will be held on **Monday, April 1, 2024, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA-2024-10: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North St., Jaffrey. The Petitioner requests a Variance to permit the use of accessory storage structures in the 50 ft. setback as measured from an abutting parcel owned by the Applicant per Article 3.1.2 & 8.4.1.C of the Zoning Regulations.

This meeting is open to the public, and anyone wishing to speak on the proposal will be given an opportunity to be heard during the public hearing for this application. The application for this proposal is available for public review in the Community Development Department on the 4th floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Corinne Marcou, Zoning Clerk
Notice issuance date March 21, 2024

Zoning Board of Adjustment Variance Application



For Office Use Only:	
Case No.	_____
Date Filled	_____
Rec'd By	_____
Page	_____ of _____
Rev'd by	_____

If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keeneh.gov

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, 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. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: G2 Holdings, LLC

MAILING ADDRESS: 250 North Street, Jaffrey, NH 03452

PHONE: (603) 532-7397

EMAIL:

SIGNATURE:

PRINTED NAME: Ariane Ice, agent for Cody Gordon, Principal of G2 Holdings, LLC

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY: Same as Applicant

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Ariane Ice / Ice Legal, P.A.

MAILING ADDRESS: 6586 Hypoluxo Road, Suite 350, Lake Worth, FL 33467

PHONE: (561) 319-5557

EMAIL: ariane.ice@icelegal.com

SIGNATURE:

PRINTED NAME: Ariane Ice

SECTION 2: PROPERTY INFORMATION

Property Address: 21 ROUTE 9

Tax Map Parcel Number: 215-8

Zoning District Rural

Lot Dimensions: Front: See Attached Plan Rear: Side: Side:

Lot Area: Acres: 24.78 Square Feet: 1,079,417 Per town records. Recent survey shows 23.09 acres (1,005,089 sf).

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: 1.96 Proposed: .9

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 8.96 Proposed: 11.40

Present Use: None

Proposed Use: Mixed commercial and residential.

SECTION 3: WRITTEN NARRATIVE

Article 25.5.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed variance.

The subject property, Parcel #215-8, is comprised of 24.78 acres abutting the Franklin Pierce Highway (State Route 9) and located at the northeast corner of the town limits in the Rural District. The Applicant/Owner is G2 Holdings, LLC which owns the parcels abutting two-and-a-half sides of the triangular-shaped subject property. One of those abutting parcels (215-7), is the site of a gravel pit.

The site was originally developed as the Palmer Lodge in the 1940s and was used more recently as a drug rehabilitation and juvenile detention center. Most of the buildings on the site have been vacant for nearly twenty years and have fallen into disrepair.

The overall proposed project contemplates the renovation of the main Lodge building for use as an agricultural retail center as well as the renovation of a former residential structure for use as a three-family dwelling. Additionally, the project proposes to install a scale for weighing products of the adjoining gravel pit and to provide storage space for Habitat for Humanity.

This application seeks variance relief from Articles 3.1.2. and 8.4.1.C. of the Keene Land Development Code ("Art. ____") which do not allow accessory structures in the 50-foot setback in the Rural District. The relief would consist of permitting the accessory use of storage structures on an existing paved area located in a setback from the lot line between the subject property and another parcel owned by the Applicant. The storage structures would be conex containers for the storage and sale of building materials by Habitat for Humanity. As storage for building materials, the structures would be accessory to the agricultural retail store which would sell related tools and supplies.

The Applicant hereby reserves its right to request additional variance relief in conjunction with the project.

SECTION 4: APPLICANTION CRITERIA

A Variance is requested from Article (s) 3.1.2, 8.4.1.C of the Zoning Regulations to permit:

The use of accessory storage structures in the 50 ft. setback as measured from an abutting parcel owned by the Applicant.

Briefly describe your responses to each criteria, using additional sheets if necessary:

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

“The requirement that the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the ordinance.” *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102, 105 (2007). The first step in analyzing whether granting a variance would be contrary to the public interest or injurious to the public rights of others is to examine the applicable zoning ordinance.” *Chester Rod & Gun Club, Inc. v. Town of Chester*, 152 N.H. 577, 581 (2005). The two established pathways to determine whether a variance will violate a zoning ordinance’s basic zoning objectives are to examine: 1) whether the variance would alter the essential character of the neighborhood; and 2) whether the variance would threaten the public health, safety, or welfare. *Id.*

Abutting the subject property is an 86-acre gravel pit operation to the west that is owned and operated by the Applicant here as well as a 102-acre forested area owned by the Applicant in Sullivan to the north. Directly across State Road 9 to the south is a 141-acre ski area (Granite Gorge) in Roxbury. Much of the area beyond these immediate neighbors is forested and undeveloped but also contains a smattering of single-family residences. Thus, the character of the subject property's surroundings consists of diverse, but widely separated uses—a character which would not be altered by storage structures.

Additionally, the variance would not threaten the public health, safety, or welfare. Given the wide separation between the types of uses in the area, the allowance of accessory structures in the setback would not present any additional public hazards.

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

The New Hampshire Supreme Court has held this and the prior criterion are related because it is in the public interest to uphold the “spirit of the ordinance.” Thus, if an applicant sufficiently demonstrates one, it almost certainly meets the other. See, *Farrar v. City of Keene*, 158 N.H. 684 (2009).

The Rural District allows both commercial and residential uses. (Art. 3.1.5). The specific proposed use here is accessory to the commercial use of an agricultural retail store. Moreover, one of the purposes of the setback preventing the overcrowding of land (including the appearance of overcrowding) and public safety. See, *Perreault v. Town of New Hampton*, 171 N.H. 183, 188, 193 A.3d 266, 270 (2018). Here, the subject property is twelve times the size of the minimum lot size (two acres)—more than enough space for all the proposed uses if they were each treated as though it were on a separate lot. Additionally, since the overall project contemplates the removal of many structures, the overall result will be less crowding, than more.

Importantly, the structures would be in a setback from the Applicant's own property—a 50-foot-wide strip that extends between the existing paved area where the structures would be located and State Road 9. This wooded, non-buildable, fifty-foot strip serves several purposes in meeting the spirit of the ordinance: 1) it largely shields the paved area from view from passersby on State Road 9 such that the structures would not contribute to any appearance of overcrowding or negative aesthetic; 2) it eliminates the concern that structures in the setback would interfere with a neighbor's rights; and 3) it provides a 50-foot buffer between the storage area and State Road 9 which satisfies the public safety purpose of separating vehicular traffic from stationary objects. Thus, the purposes of the setback requirement are met since the subject property and the buffering strip have the same owner and may be treated for these purposes as though they had been merged.

And finally, the overall project reduces the number of structures on the parcel, such that the storage structures would not contribute to crowding or the appearance of crowding.

3. Granting the variance would do substantial justice because:

“Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen Assocs. v. Town of Chichester*, 155 N.H. 102, 109, 920 A.2d 1192 (2007) (quotation and brackets omitted). We also look “at whether the proposed development [is] consistent with the area's present use.” *Id.* As an accessory use of the proposed agricultural retail store, the storage structures would be consistent, not only with an allowed use, but with the actual uses of the surrounding properties.

In *Malachy*, the Supreme Court of New Hampshire found that a proposed storage facility project worked a substantial justice because it posed no further threat to the wetlands, was appropriate for the area, and did not harm its abutters; and therefore the general public would realize no appreciable gain from denying this variance.” *Id.* The same is true for the use of the setback proposed here.

In *Harrington v. Town of Warner*, 152 N.H. 74, 85, 872 A.2d 990 (2005), the Supreme Court of New Hampshire concluded that the applicant, who sought to expand a manufactured housing park, showed that substantial justice would be done in granting the variance “because it would improve a dilapidated area of town and provide affordable housing in the area.” Here, the overall proposed project would renovate already existing, dilapidated buildings.

All the variance factors, particularly the “substantial justice” and “unreasonable hardship” factors, present a balancing of public benefits or detriments against the private benefits or detriments of the landowner. See, *Simplex Techs., Inc. v. Town of Newington*, 145 N.H. 727, 731, 766 A.2d 713, 717 (2001). Here, granting the variance benefits the public by assisting a charitable non-profit organization, Habitat for Humanity, with little or no corresponding public detriment.

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

As discussed above, the structures will be largely shielded from view from the road and neighboring properties and would not create a negative aesthetic that would diminish the values of surrounding properties—many of which belong to the Applicant anyway.

When viewed as but one part of the overall project that will renovate and restore derelict structures, granting the variance would cause the values of the surrounding property to increase, rather than decrease. All residential and recreational properties in the general area (not owned by the Applicant) are sufficiently distant from the subject property such that there would be no appreciable effect on value.

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:

The proposed use is accessory to the proposed agricultural retail store. For the reasons listed above, the restriction, as applied to the subject property, does not serve the public purpose in a “fair and substantial” way.

The special conditions of the property cause the proposed use to be reasonable and the use does not alter the essential character of the neighborhood. One special condition of the property is that the area for the storage structures is a paved area already in the setback. It is appropriate to consider an existing man-made feature as a special condition of the property. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 518, 34 A.3d 584, 592 (2011) (citing, *Farrar v. City of Keene*, 158 N.H. 684, 691, 973 A.2d 326 (2009), 158 N.H. at 689, 973 A.2d 326) (where variance sought to convert large, historical single use residence to mixed use of two residences and office space, size of residence was relevant to determining whether property was unique in its environment). Here, the paved area makes the property different in a meaningful way from other properties in the area and is therefore burdened more severely by the zoning restriction. Denial of the variance restricts any feasible use of the paved area.

and

ii. The proposed use is a reasonable one because:

The proposed use is accessory to a proposed use, both of which meet the intent of the ordinance. Here, Applicant merely needs to show that the proposed use is a reasonable one, given its special conditions. *Harborside Assocs., L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 519, 34 A.3d 584, 592 (2011). As discussed above, use of a paved area in the setback from the Applicant's own property is a reasonable one.

B. Explain how, if the criterial 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.

Not applicable.