



## City of Keene Zoning Board of Adjustment

### AGENDA

**Monday, May 6, 2024**                      **6:30 p.m.**                      **City Hall, 2<sup>nd</sup> Floor Council Chambers**

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: March 4, 2024 & April 1, 2023
- III. Unfinished Business:
- IV. Hearings:

**Continued 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.

**Continued 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.

**Continued 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.

**Continued 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.

**Continued 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.

**ZBA-2024-11:** Petitioner, John Noonan of Fieldstone Land Consultants, 206 Elm St., Milford, requests a Variance for property located at 510 Washington St., Tax Map 532-003-000, is in the Commerce District and is owned by OM 510 Washington Street, LLC, 5 Patriot Lane, Wilbraham, MA. The Petitioner requests a Variance to permit the rear setback of 19.1 feet where 50 feet is required per Article 5.1.2 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**

3  
4  
5 **ZONING BOARD OF ADJUSTMENT**  
6 **MEETING MINUTES**  
7

8 **Monday, April 1, 2024**

**6:30 PM**

**Council Chamber,  
City Hall**

**Members Present:**

Joseph Hoppock, Chair  
Jane Taylor, Vice Chair  
Richard Clough  
Edward Guyot  
David Weigle, Alternate

**Staff Present:**

Corinne Marcou, Zoning Clerk  
Michael Hagan, Plans Examiner

**Members Not Present:**

9  
10  
11 **I) Introduction of Board Members**  
12

13 Chair Hoppock called the meeting to order at 6:30 PM and explained the procedures of the  
14 meeting. Roll call was conducted.  
15

16 **II) Minutes of the Previous Meeting – March 4, 2024**  
17

18 Ms. Taylor made a motion to approve the meeting minutes of March 4, 2024. Mr. Clough  
19 seconded the motion, which passed by unanimous vote.  
20

21 **III) Unfinished Business**

- 22 **A) Rules of Procedure Updates**  
23 **B) Fee Schedule Proposal**  
24

25 Chair Hoppock stated that the ZBA will skip over the unfinished business tonight due to the  
26 lengthy agenda.  
27

28 **IV) Hearings**  
29

- 30 **A) ZBA-2024-06: Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite  
31 **350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax  
32 Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North  
33 St., Jaffrey. The Petitioner requests a Variance to permit a mix of commercial and****

34 residential uses on a single 24.38 acre tract per Article 8.1.3 of the Zoning  
35 Regulations.

36  
37 B) **ZBA-2024-07:** Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite  
38 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax  
39 Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North  
40 St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an  
41 existing structure to be a three family residence per Article 3.1.5 of the Zoning  
42 Regulations.

43  
44 C) **ZBA-2024-08:** Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite  
45 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax  
46 Map #218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North  
47 St., Jaffrey. The Petitioner requests a Variance to permit a commercial and  
48 accessory use of a truck scale and scale house per Article 3.1.5 of the Zoning  
49 Regulations.

50  
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54 St., Jaffrey. The Petitioner requests a Variance to permit the renovation of an  
55 existing structure to be an agricultural retail store per Article 3.1.5 of the Zoning  
56 Regulations

57  
58 E) **ZBA-2024-10:** Petitioner, Ariane Ice, of Ice Legal, 6586 Hypoluxo Rd, Suite  
59 350, Lake Worth, FL, requests a Variance for property located at 21 Route 9, Tax  
60 Map#218-008-000, is in the Rural District and is owned by G2 Holdings, 25 North  
61 St., Jaffrey. The Petitioner requests a Variance to permit the use of accessory  
62 storage structures in the 50 ft. setback as measured from an abutting parcel owned  
63 by the Applicant per Article 3.1.2 & 8.4.1.C of the Zoning Regulations.

64  
65 Chair Hoppock stated that the Petitioner for ZBA-2024-06, ZBA-2024-07, ZBA-2024-08, ZBA-  
66 2024-09, and ZBA-2024-10 has asked to be moved to the next meeting. Michael Hagan, Plans  
67 Examiner, replied that is correct.

68  
69 Chair Hoppock opened the hearings for ZBA-2024-06, ZBA-2024-07, ZBA-2024-08, ZBA-  
70 2024-09, and ZBA-2024-10. He asked for a motion to continue.

71  
72 Mr. Clough made a motion to continue ZBA-2024-06, ZBA-2024-07, ZBA-2024-08, ZBA-2024-  
73 09, and ZBA-2024-10, property address 21 Route 9, Keene, Tax Map #218-008-000, owned by  
74 G2 Holdings, 25 North St., Jaffrey, NH, to the May 6, 2024 meeting of the Zoning Board of  
75 Adjustment. Ms. Taylor seconded the motion, which passed by unanimous vote.

77  
78 **F) Continued ZBA-2024-02: Petitioner, Thomas Hanna of BCM Environmental**  
79 **and Land Law, PLLC, Keene, requests a Variance for property located at 19 Grove**  
80 **St., Tax Map #585-055-000, is in the Residential Preservation District, and is owned**  
81 **by 1925 Grove Street, LLC, 295 Seaver Rd., Harrisville. The Petitioner requests a**  
82 **Variance to permit the conversion of a legally non-conforming office use to a third**  
83 **apartment unit in the Residential Preservation District per Article 3.2.5 of the**  
84 **Zoning Regulations.**

85  
86 Chair Hoppock asked to hear from staff.

87  
88 Michael Hagan, Plans Examiner, stated that this property at 19 Grove St., with .23 acres, is  
89 zoned Residential Preservation District. He continued that current uses are office with 1,248  
90 square feet of space; storage with 3,917 square feet of space; and two residential units with a  
91 combined 1,248 square feet; totaling 6,423 square feet of habitable and storage area. A Variance  
92 from April 15, 1975, ZBA-75-19, was to convert the small grocery store into office space for the  
93 coal and oil company business.

94  
95 Ms. Taylor asked if the building, since it does not meet any of the setbacks, is preexisting non-  
96 conforming. Mr. Hagan replied yes.

97  
98 Chair Hoppock asked to hear from the Petitioner.

99  
100 Tom Hanna of BCM Environmental and Land Law, PLLC, stated that he represents 1925 Grove  
101 St., LLC. He continued that with him tonight is its principal, Nancy Chabott, the widow of Tom  
102 Chabott. When the Chabott family moved from Canada to Keene, Eli Chabott purchased 19  
103 Grove St. in 1892. Tara Kessler of BCM found a Keene Sentinel ad from March 16, 1896  
104 showing that Eli Chabott sold groceries from 19 Grove St. as early as 1896. He did so for half a  
105 century, and at some point, added coal to his store inventory, along with a loading dock and barn.  
106 In the early 1970s, Eli Chabott's sons, Tom and Ted, purchased the property and turned the first  
107 floor into the office of Chabott Coal and Oil. The Variance in April 1975 must have been related  
108 to that. Sometime between 1970 and 1975, they converted the third-floor finished attic to an  
109 apartment. Thus, there was the Chabott Coal and Oil office on the first floor and two one-room  
110 apartments on the second and third floors, which continue to this day.

111  
112 Mr. Hanna continued that in 2016, Chabott Coal and Oil sold the business to Ciardelli Oil, which  
113 stayed in those offices until the fall of 2019 before moving to another Keene location. From the  
114 fall of 2019 to October of 2023, the first floor was rented to a chiropractor. Then, Nancy Chabott  
115 worked with Josh Greenwald, of Greenwald Realty, in an effort to find an office tenant.

116  
117 On Friday he (Mr. Hanna) emailed (the City) an email from Josh Greenwald, dated March 28,  
118 regarding his unsuccessful efforts to find an office tenant. Mr. Greenwald had zero inquiries.  
119 Nancy Chabott told him (Mr. Hanna) that Mr. Greenwald brought forth a vaping business as a  
120 prospective tenant, but she determined that that was not a good fit for her upstairs residential  
121 tenants or the neighborhood, in her view. In February or March, Ms. Chabott inquired whether

122 she could have an apartment, learned she would need a Variance, and retained BCM  
123 Environmental and Land Law.

124  
125 Mr. Hanna continued that they are seeking a Variance to convert the first floor from a legally  
126 non-conforming office to an apartment. Until 2021 when the Land Development Code (LDC)  
127 was adopted, a provision in the Ordinance allowed a conversion of a legally non-conforming use  
128 to another non-conforming use without the need for a Variance. He believes it was in the nature  
129 of a Special Exception. Since that option was no longer available to them, they are proceeding  
130 with the Variance from Section 3.2.5.

131  
132 *1. Granting the Variance would not be contrary to the public interest.*

133  
134 Mr. Hanna stated that they believe the proposed apartment would be less impactful than the  
135 office use, especially from a traffic point of view. He continued that Ms. Kessler provided the  
136 ZBA with an analysis she obtained by reviewing the ITE Trip Generation Manual. The  
137 combination of the three apartments, as opposed to the office use and two apartments, would  
138 reduce the traffic by approximately one half. In addition, it will reduce the parking demand as is  
139 set forth in the City's Zoning Ordinance that requires nine parking spaces, which is five spaces  
140 for the office, based on the square footage, and two spaces for each apartment. Only five spaces  
141 are available. The conversion would technically require six spaces. The five spaces will be  
142 maintained and there will be a reduced need/demand based on the first floor's change of use.

143  
144 Mr. Hanna continued that Sec. 9.2.8 is a "quirky provision" that gives credit for the deficiencies  
145 in current parking requirements. The existing deficiency is negative four, because nine were  
146 required and five exist, and if you apply that deficiency to the required six onsite spaces for the  
147 proposed three dwelling units, then the onsite parking requirement for the proposed multi-family  
148 use would be two parking spaces. It seems absurd, but it does not really matter, because the five  
149 existing parking spaces will continue to exist and be used for the multi-family house. He raises  
150 this because there is a good argument under the Ordinance that the conversion will bring the  
151 property into compliance with the parking requirement.

152  
153 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

154  
155 Mr. Hanna stated that he lists several reasons why he thinks this is the case. He continued that  
156 the spirit of the Residential Preservation District relates to the downgrading of the residential  
157 intensity from multi-family to single family. The proposed conversion of the first floor will  
158 reduce the traffic impact by about half, making it more compatible with residential use, and it  
159 will reduce the parking demand. This will be residential use instead of office use, in a residential  
160 zone, which is more compatible. Adding the third apartment results in the elimination of two  
161 non-conformities in the Zoning Ordinance. One is office use, and the other is the provision that  
162 prohibits mixed uses from residential districts. This would no longer be a mixed use and would  
163 no longer be the non-conforming office.

164  
165 *3. Granting the Variance would do substantial justice.*

166

167 Mr. Hanna stated that he suggests the applicant would suffer harm by being compelled to retain  
168 the office space, which would likely remain empty. Alternatively, Mrs. Cabott would have an  
169 office use that is not suitable. In the five or six months that Mr. Greenwald has actively marketed  
170 the property, he has had zero interest. Mrs. Chabott has been unable to find a compatible  
171 commercial tenant. Conversely, the public does not gain by prohibiting this Variance, whether  
172 the space stays as an office or is empty. Moreover, the public gains by having another housing  
173 opportunity. Clearly, that benefit is of great need these days.

174

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

177

178 Mr. Hanna stated that he submitted a colored map (to the ZBA) on Friday, “Land Uses  
179 Surrounding 19 Grove St.” He continued that given what that shows, it would be hard to argue  
180 that converting this apartment would diminish the values of surrounding properties, when  
181 approximately 20 of the properties in the general neighborhood and 14 on Grove St. are already  
182 two-, three-, or four-family homes. Moreover, Grove St. is not what he would call a “single-  
183 family residential street,” or an appropriate one. It is a high-traffic street with higher speed than  
184 is preferred, and most houses are close to the road. It is clear to him that the values of the  
185 surrounding properties would not be diminished by making this mixed use building a three-unit.  
186 It would reduce traffic, as he said previously. The historic pattern of this neighborhood has been  
187 two- and multi-family units.

188

189 5. *Unnecessary Hardship*

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

192

193 Mr. Hanna stated that this is a three-story building, and many of the buildings in this area are not.  
194 He continued that it might technically be two and a half stories; he is not sure. It has an unusual  
195 history going back 130 years, beginning as one of the earliest or the earliest grocery stores in  
196 Keene, then becoming the Chabott Coal and Oil business with related activities. It had a barn,  
197 loading dock, and a commercial garage for storing trucks. This very large building covers almost  
198 all the property. There is space for cars in the front and a strip of grass along the north side, but  
199 no room for a yard, especially if it were a single-family home. The building goes all the way  
200 back to the rear.

201

202 Mr. Hanna continued that the long history of mixed uses since the 1890’s is a special condition.  
203 The building footprint covers more than 60% of the lot, which is unusually large compared to  
204 even the other multi-family houses in the neighborhood. The property has limited parking, which  
205 is not necessarily the same condition that afflicts the neighborhood’s other properties. These  
206 special conditions distinguish 19 Grove St. from the other properties in the area. It would be an  
207 extreme hardship, and unreasonable, to force the 19 Grove St. building to transition to a single-  
208 family home. That will not happen in this neighborhood, and particularly not with this house,  
209 because of the building’s size, lack of land, and cost of conversion. That would apply to all the  
210 properties in the area. He thinks Grove St. itself is a special situation, as it has higher traffic than  
211 most.

212

213                   i.       *No fair and substantial relationship exists between the general public*  
214                   *purposes of the ordinance provision and the specific application of that provision to the*  
215                   *property because:*  
216

217 Mr. Hanna continued that for reasons stated, he believes there is no fair and substantial  
218 relationship between the general public purposes of the single family zoning ordinance  
219 [Residential Preservation District] that was adopted in 2017 and the specific application of that  
220 provision to the property, to the extent that the goal in 2017 when the Ordinance was adopted  
221 was to convert this whole area to single family residential. The goal is flawed, for a number of  
222 reasons, and unattainable, in his professional opinion. He knows Ms. Kessler agrees. He believes  
223 the goal was developed to protect the large neighborhood from college housing. The goal was  
224 developed prior to 2017 as people became aggravated, Med Kopczynski being one of them, with  
225 college housing. At the time, Keene State College (KSC)'s enrollment was approximately 4,300  
226 or 4,500 students. Enrollment has decreased annually since 2017, to 2,863 students in the fall of  
227 2023 and then to 2,733 students this semester. That is a reduction of 1,500+ students. As  
228 indicated above and shown on the map of land uses surrounding Grove St., about 20 of the  
229 neighborhood properties are two- and multi-family homes and have been that way historically.  
230 Grove St. itself is not conducive to single-family residences.  
231

232 Mr. Hanna stated that he wants to address the principle enunciated in the Simplex Technologies  
233 case from 2001, one of the standard milestone cases in zoning law, which sets forth the  
234 proposition that zoning ordinances must reflect the current character of the neighborhood. That  
235 case is 145 N.H. 727. An earlier case, *Belanger v. City of Nashua*, had the same kind of holding  
236 that the character of the neighborhood had to be maintained with the new ordinance. The  
237 Residential Preservation District is and always will be inconsistent with the Grove St.  
238 neighborhood's character. He wants to emphasize that neither Simplex nor *Belanger* were  
239 overruled. They did form the genesis of a revised statute in 2007. In 2008, he must acknowledge,  
240 the [Nine A. v. Town of Chesterfield] case stated, "*The current character of a neighborhood*  
241 *does not necessarily preclude a town from enacting an ordinance targeted at altering the*  
242 *neighborhood's character when a sufficient basis exists to do so.*" The key language in his view  
243 is "*when a sufficient basis exists to do so.*" While Simplex was not overruled, it was  
244 distinguished by Nine A. The question he puts to the ZBA, what is a "sufficient basis" for  
245 altering the character of a neighborhood with a Zoning Ordinance. In Nine A, it was the  
246 preservation of Spofford Lake. Yes, the proposed development that required a Variance was  
247 consistent with the neighborhood next to Spofford Lake, and in that case and under Simplex,  
248 since it was consistent with the character of the neighborhood, the Variance should have been  
249 granted. However, the court said in Nine A. that the preservation of a jewel and an incredible  
250 natural resource such as Spofford Lake is a sufficient basis to target an area and change it  
251 notwithstanding its character. That the need to preserve a natural resource outweighed the fact  
252 that the character of a neighborhood should control a zoning ordinance.  
253

254 However, Mr. Hanna continued, that is not the case in this situation. He hopes the ZBA agrees  
255 with him and does not know how they could not. This is not a unique resource or an  
256 environmental concern. Spofford Lake, for a substantial part of Chesterfield, is a critical  
257 resource, a major tax resource, and of major recreational benefit to the community. This  
258 provided a sufficient basis for a zoning ordinance that addressed that and attempted to preserve

259 Spofford Lake. Here (with the Residential Preservation District) is an effort to address college  
260 housing. It was, in his opinion, “over the top” in (what it was) trying to dictate to a neighborhood  
261 that has been multi-family for 100 years, on a fast-paced bypass type of highway, Marlboro St. to  
262 Community Way and Marlboro St. to Water St., and has houses close to the (street). The idea of  
263 converting those houses to single-family homes to address college housing was not sufficient  
264 justification that takes you out of the Simplex standard that says zoning ordinances must conform  
265 to the character of the neighborhood.

266  
267 *and*

268 *ii. The proposed use is a reasonable one.*

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

274  
275 Mr. Hanna stated that he did not address B. in writing, but he will put it in front of them in case it  
276 provides justification for granting this Variance. He continued that the reasonable use is, for all  
277 the reasons he has indicated, this house in particular is not readily convertible to a single-family  
278 home, given its characteristics. He previously recounted the special conditions that exist with this  
279 property, which distinguish it from the characteristics of the area. The ZBA could grant the  
280 Variance on that basis, but again, he thinks he has made the case in the first part (A).

281  
282 Ms. Taylor stated that she has questions about parking. She continued that a picture in the  
283 packet, on page 40 of 147, in its key, shows driveways in front of and on both sides of the  
284 building. However, the pictures that were submitted, on page 41 of 147, show the grassy area  
285 Mr. Hanna described. She is confused about where the five parking spaces are.

286  
287 Mr. Hanna replied that the driveway on the right side of 19 Grove St. does not belong to 19  
288 Grove St. He continued that three parking spaces are in front of the building, including one  
289 handicapped space, with the rear of the cars normally facing Grove St. The lower photograph on  
290 page 41 shows the two parking spaces on the south side of the building.

291  
292 Ms. Taylor asked if the handicapped space is on that parcel. Mr. Hanna replied to the right of the  
293 striped section, in front of the main door. Ms. Taylor replied that she thought it was one of the  
294 three that Mr. Hanna said were in front. Mr. Hanna replied yes, it is. He continued that it was  
295 required when it was an office space, but he does not think it would be required as an apartment.  
296 Ms. Taylor replied that that is out of the ZBA’s jurisdiction.

297  
298 Ms. Taylor stated that her other question about parking is regarding the first criterion, when Mr.  
299 Hanna talked about parking on “25 Rear Grove St.” She continued that she is not sure if that is  
300 truly “accessory” because it is on a different parcel, but besides that, what if at some stage that  
301 parcel is not in common ownership and that parking cannot be used. Mr. Hanna replied that that  
302 is correct – if that back lot is sold, since it is a separate lot, then it cannot be used for 19 Grove  
303 St. However, 19 Grove St. required nine parking spaces but always only had five, and now it [the

304 conversion] will reduce the number of required spaces from nine to six, and it will still have the  
305 parking spaces.

306  
307 Ms. Taylor replied that is much clearer. She continued that her last question is regarding her  
308 trying to understand the building. Mr. Hanna had said there were trucks at the loading dock. She  
309 asked him to indicate in a picture where that had been located. Mr. Hanna replied that page 42  
310 has a photo in the lower right. He continued that the entire building on the right is barn and  
311 garage and is substantially behind the living area of the house.

312  
313 Ms. Taylor asked if the plan is to convert that into the apartment. Mr. Hanna replied no, it will  
314 stay as a barn and not change at all. He continued that the only part being converted is the office  
315 space, which will be converted to two bedrooms. Page 41 shows the front of the building on the  
316 first floor with two bay windows facing Grove St. Behind the one on the right would be a kitchen  
317 area, and to your left on the south is a living room; it is a combined kitchen/living/dining room.  
318 On the north side behind the kitchen are two bathrooms, one half and one full. There is also a  
319 very small room on that side that would be converted into a laundry room.

320  
321 Ms. Taylor stated that she knows Mr. Hanna tried to explain this to the Board, but she wants to  
322 ask (staff), under that provision, to have five parking spaces. She asked if that is how it works.  
323 Mr. Hagan replied not only under that provision, but under another as well. He continued that it  
324 would require a letter, a signature, and some other (elements), and he could go through that list  
325 with the Board, but yes, they have options. [Section 9.2.7 has] a procedure for requesting an  
326 “Administrative Reduction” and outlines the criteria, if they wanted to request that, to have two  
327 for each, but they would fall under the other section as well, for that specific requirement Mr.  
328 Hanna stated.

329  
330 Mr. Clough asked if the front entrance would be considered the entrance just for the downstairs  
331 apartment. Mr. Hanna replied yes. Mr. Clough asked if it would thus be necessary to have  
332 handicapped parking in the front. Mr. Hanna replied that as he mentioned earlier, he does not  
333 think so. Mr. Clough asked if eliminating those stripes would give enough space to create two  
334 parking spaces there, because it would only be dedicated to that one entrance. Mr. Hanna replied  
335 possibly.

336  
337 Mr. Hagan stated that going from a two-family to a three-family or going from a commercial use  
338 to a residential use, as a three-family, the requirement for a handicapped space is not there yet.  
339 He continued that you would have to exceed six dwelling units, he believes, to be required to  
340 have handicapped parking space.

341  
342 Mr. Clough asked if there is a width requirement for each parking space. Mr. Hagan replied yes,  
343 9’x18’, or 8’x18’ with one foot between spaces. He continued that the current handicapped space  
344 looks large, and they could probably split that space to make up some more [parking spaces] on  
345 the right-hand side, as long as it met the minimum requirements. However, they need to maintain  
346 egress requirements out of a building, and they could not have a car in front (if it means not)  
347 having enough path to get out of the building. Mr. Clough asked if there is a width requirement  
348 for that ingress/egress space. Mr. Hagan replied 42 inches for commercial use. Mr. Clough  
349 replied that it thus might be close to getting four parking spaces in front, but he cannot tell from

350 the photographs. Mr. Hagan replied that they can take a look. He continued that the applicant  
351 does meet the requirements under the Ordinance.

352  
353 Mr. Hagan stated that to follow up with Ms. Taylor's comments about the remaining use, the  
354 back use will only be used for the apartments. Mr. Hanna replied no, the back use will be as it  
355 has always been used by family and friends, for storage. The conversion of the apartment is a  
356 one-to-one conversion from the office to the apartment and has no impact on the rest of the  
357 building. Mr. Hagan asked if it is correct that it will still be considered as and used as storage for  
358 (people other than) the residents. It cannot be an accessory use to the main use. He wants to  
359 clarify that the applicant wants to keep the portion of the Variance that was granted in 1975 for  
360 storage in that area. Mr. Hanna replied yes, that is correct.

361  
362 Chair Hoppock asked if the space Mr. Hanna was talking about that will not be used for this  
363 conversion is shown in the bottom photo on page 42. Mr. Hanna replied yes. Chair Hoppock  
364 replied that it looks like more than five cars could fit there. Mr. Hanna replied that is a separate  
365 lot. Chair Hoppock replied that that was his next question, because on page 40, the boundary line  
366 on the left side highlighted yellow area is the back of the building shown in the photo. Mr. Hanna  
367 replied yes, and the back of the lot. He continued that the property of almost all parking lot is a  
368 third lot that Mrs. Chabott owns, which is a vacant lot. Mr. Weigle asked if that is what he  
369 referred to as 53 on the chart. Mr. Hanna replied yes.

370  
371 Ms. Taylor asked Mr. Hagan how the ZBA granting a Variance to allow three residential units in  
372 this building would impact the storage and garage section. She asked if it is still considered  
373 'residential' even if someone who is using it is not living on the property. Mr. Hagan replied that  
374 is where he wanted some clarification for the record, so they can make sure that after this is  
375 done, they do not need to go back for another Variance to allow for a use. He continued that the  
376 way it was presented was that this was going to be converted to a three-family and that is all it  
377 will be used for, so those barns would be accessory to the main use. If not, they are a separate  
378 commercial use, or continue to be a separate commercial use, for storage for someone who does  
379 not live on the property. They had a 1975 Variance to allow for it, and if they want to continue to  
380 use it and just convert the office space to residential, that is fine.

381  
382 Ms. Taylor asked Mr. Hanna to speak to that. Mr. Hanna replied that he cannot say anything  
383 better than what Mr. Hagan just said. He continued that the barn and the storage area and two  
384 large garage entrances will not be used directly by the apartment tenants, but those spaces will  
385 continue to be used by the (Chabott) family, specifically Mrs. Chabott's three sons. It is a  
386 valuable space that will not just suddenly remain empty. It is accessed by the other lot, which  
387 will probably dictate that the other lot will not be sold soon.

388  
389 Chair Hoppock asked if there were any further questions from the ZBA. Hearing none, he asked  
390 if anyone from the public wished to speak in opposition to the application. Hearing none, he  
391 continued that the ZBA received a letter in opposition. He read it into the record:

392  
393 *"Dear Board Members,*

394

395 *Unfortunately, my wife and I are unable to attend the meeting of March 04, 2024, due to a*  
396 *previous commitment.”*

397  
398 Chair Hoppock stated that this case was originally scheduled for March 4. He continued reading  
399 the letter:

400  
401 *“Had we been able to attend the meeting we would have testified our opposition to the variance*  
402 *request. We have seen far too many variances issued in our neighborhood that have not been*  
403 *positive.*

404  
405 *We feel the variance request fails the follow two prongs of the variance test: (b) special*  
406 *conditions exist such that literal enforcement of the ordinance results in unnecessary hardship;*  
407 *(c) the variance is consistent with the spirit of the ordinance. If you examine the intent of the*  
408 *Residential Preservation District, it is to return the neighborhood to single-family. The building*  
409 *in question has a long history in its present form of mixed use with the former Chabot Coal*  
410 *operating from there for many years. Uses may revert to the day when Grove St. was a vibrant*  
411 *mix of housing and business. Grove St. today is a highway that connects Water St. to Marlboro*  
412 *St. We believe that before any changes be made to uses including by variance, the Grove St.*  
413 *blocks be reviewed as part of the planning processes used to create the Land Development Code.*  
414 *The first part of that process created the Downtown Districts including the Edge Districts. Grove*  
415 *Street Block as well as Blake Street Block were promised to be reviewed for inclusion in an Edge*  
416 *District. It seems that there are no plans to conduct that review as presently Community*  
417 *Development staff is concentrating on the next Master Plan.*

418  
419 *Sincerely,*  
420 *Medard and Dawn Kopczynski”*

421  
422 Chair Hoppock stated that that is the only opposition they have. Mr. Hanna stated that to be  
423 clear, he has addressed all the Variance criteria in some detail. He continued that Mr.  
424 Kopczynski’s last sentence was, *“It seems that there are no plans to conduct that review as*  
425 *presently, Community Development staff is concentrating on the next Master Plan.”* Although it  
426 does not matter what they are concentrating on, there is no plan at present to review this  
427 Ordinance any further. The ZBA does not get to set a moratorium on the granting of Variances,  
428 and they cannot stop the clock. If the applicant meets the criteria in April 2024 and deserves a  
429 Variance, then it should be awarded.

430  
431 Chair Hoppock asked if anyone from the public wished to speak in support of the application.  
432 Hearing none, he continued that the ZBA received the following letter in support:

433  
434 *“Good afternoon, Attorney Hanna,*  
435  
436 *I am writing in support of 19 Grove St. being approved a Variance for change of use for the 1<sup>st</sup>*  
437 *floor space from Office to Residential. I was hired as the Listing Agent for the space in October*  
438 *2023 when Dr. Brooks Seaman vacated the property. The anticipation was to secure another*  
439 *tenant interested in utilizing the space as an office. The listing most recently expired on March 3,*

440 2024. I had zero inquiries in the office rental despite aggressive marketing and being reasonably  
441 priced. Finding a viable tenant proved to be unsuccessful due to the following reasons.

442

443 1. Small office market is extremely small

444 2. Offices in space were too small

445 3. The location is primarily residential multi-family buildings

446

447 There is a high need for residential rentals in Keene. The highest and best use for that space  
448 going forward is as an apartment. It fits the neighborhood and is the highest and best use for the  
449 space in my opinion.

450

451 Joshua A. Greenwald”

452

453 Chair Hoppock asked if Mr. Hanna wanted to respond. Mr. Hanna replied no.

454

455 Chair Hoppock stated that hearing no further comments, they will close the public hearing and  
456 proceed to deliberations.

457

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

459

460 Ms. Taylor stated that she tends to agree with Mr. Hanna’s statement that this will be less  
461 impactful in the area than the office use. She continued that she remembers when it was the coal  
462 and oil business, and it was a busy office. She can see it having a reduction in automobile traffic  
463 and possibly a reduction in foot traffic as well. She does not think it is contrary to the public  
464 interest.

465

466 Chair Hoppock stated that he agrees. He continued that there is also the benefit of increasing the  
467 housing stock, even if only by one unit, with less traffic than office use and reduced parking  
468 requirements. He agrees that it would not be contrary to the public interest in this case.

469

470 Mr. Guyot stated that it seems like this change brings the property in closer alignment with the  
471 other residences, as has been pointed out, so it is moving in the right direction.

472

473 2. If the Variance were granted, the spirit of the Ordinance would be observed.

474

475 Chair Hoppock stated that he does not see any violation of the Ordinance’s basic zoning  
476 objective. He continued that in fact, it (the Variance) probably brings it (the property) closer in  
477 line with the intent of the Ordinance. It brings it closer to a single-family environment, getting  
478 rid of the mixed use and the office use. That brings it closer to the spirit of the Ordinance. He  
479 does not see any impact on health, safety, or welfare in connection with this application.

480

481 Ms. Taylor stated that she thinks this is one of the more difficult ones, because the Ordinance  
482 clearly states it wants to move toward single-family, but by the same token, it is still going from  
483 office to residential and eliminating the mixed use. She does not know if it is going in the right  
484 direction, but it is perhaps a little more in conformance with the Ordinance.

485

486 Chair Hoppock stated that he agrees with Ms. Taylor and sees other ZBA members nodding.  
487

488 3. *Granting the Variance would do substantial justice.*  
489

490 Ms. Taylor stated that the basic measure here is whether the public benefit outweighs any loss to  
491 the owner, and she thinks this one is clear. The public benefit of adding a housing unit, as  
492 opposed to the owner having a vacant property, so she thinks there is a public benefit.  
493

494 Chair Hoppock replied yes, especially when you consider the public benefit derived from not  
495 having a vacant property just sitting there. He continued that having another housing unit  
496 available on the market is also a public benefit.  
497

498 4. *If the Variance were granted, the values of the surrounding properties would not be*  
499 *diminished.*  
500

501 Chair Hoppock asked if anyone sees a diminution problem here. Mr. Weigle replied that it is  
502 almost the opposite if they convert it over. He continued that he is speculating, but if they are  
503 reducing the number of people traffic from commercial mixed use it would also probably reduce  
504 the traffic on the road and bring it closer to a residential street.  
505

506 Chair Hoppock stated that the “Land Uses Surrounding 19 Grove St.” map gives a good picture  
507 of the neighborhood. He continued that it (19 Grove St.) is a large lot size and a large building in  
508 relation to that lot size. The surrounding buildings all appear to be much smaller but have similar  
509 uses, as multi-family units. He does not see how that could translate into a property diminution  
510 problem anywhere in this neighborhood.  
511

512 Ms. Taylor stated that she thinks it has the potential to increase value, because for starters, they  
513 will not have vacant property. She continued that in addition, increased tax revenue will probably  
514 come from it if it is occupied as a residential unit.  
515

516 5. *Unnecessary Hardship*

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

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

522 *and*

523 ii. *The proposed use is a reasonable one.*  
524

525 Chair Hoppock asked if anyone wants to identify those special conditions. He continued that he  
526 thinks Mr. Hanna did a thorough job of that. He mentioned one, large building size in relation to  
527 large lot size, with not much room on the sides or front. Mr. Hanna also mentioned that this  
528 appears to be a three-story structure.  
529

530 Ms. Taylor stated that one of the first things she noticed when she read this application originally  
531 was how inconsistent the applicable Zoning Ordinance was to this street/area. She continued that

532 she thinks that does, in and of itself, create a hardship. The test is whether no fair and substantial  
533 relationship exists between the general public purpose of the Ordinance and the specific  
534 application of the provision to the property. She cannot see much relationship between the  
535 purpose of this Ordinance provision to any of the properties there. That, in and of itself, creates a  
536 hardship.

537  
538 Chair Hoppock replied that since the neighborhood does not look like anything described in the  
539 purpose, that is a good point. He continued that he agrees.

540  
541 Ms. Taylor made a motion to approve ZBA-2024-02, the request for a Variance to convert a  
542 legally non-conforming office use to a third apartment for property located at 19 Grove St., Tax  
543 Map #585-055-000, in the Residential Preservation District, per Section 3.2.5 of the Zoning  
544 Regulations. Mr. Weigle seconded the motion.

545  
546 1. *Granting the Variance would not be contrary to the public interest.*

547  
548 Met with a vote of 5-0.

549  
550 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

551  
552 Met with a vote of 5-0.

553  
554 3. *Granting the Variance would do substantial justice.*

555  
556 Met with a vote of 5-0.

557  
558 4. *If the Variance were granted, the values of the surrounding properties would not be*  
559 *diminished.*

560  
561 Met with a vote of 5-0.

562  
563 5. *Unnecessary Hardship*

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

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

570  
571 Met with a vote of 5-0.

572  
573 The motion to approve ZBA-2024-02 passed with a vote of 5-0.

574  
575 **G) ZBA-2024-03: Petitioner, Ryan Coyne of Sandri Realty, LLC of 400**  
576 **Chapman St., Greenfield, MA, requests a Variance for property located at 345**  
577 **Winchester St., Tax Map #111-027-000, is in the Commerce District, and owned by**

578 **Sandri Realty, LLC, of 400 Chapman St., Greenfield, MA. The Petitioner requests a**  
579 **Variance to permit the conversion of analog pricing signs to digital, electronically**  
580 **activated changeable copy sign per Article 10.3., Table 10-2 of the Zoning**  
581 **Regulations.**

582  
583 Chair Hoppock asked to hear from staff.

584  
585 Mr. Hagan stated that this property at 345 Winchester St. is zoned Commerce and is on .6 acres.  
586 He continued that the current use is retail sales and a vehicle fueling station. The current store  
587 size is 1,980 square feet, and the canopy size is 352 square feet. The only Variance he could find  
588 in the file was from March 7, 2011, ZBA-11-08, for a mechanically operated sign. Currently the  
589 Petitioner is applying for an electronically operated sign. They have a Variance for the current,  
590 mechanically operated sign. Like any Variance, it stays with the property. The ZBA can do  
591 conditions that the Petitioner no longer use a mechanically operated sign, but by way of the  
592 future, he does not anticipate seeing many.

593  
594 Ms. Taylor asked if her understanding is that this application is for a replacement, or an  
595 additional sign. Mr. Hagan replied that (an additional sign) is what the application was submitted  
596 for. He continued that there is no indication that the Petitioner will no longer ever use (the  
597 mechanically operated sign), but certainly the ZBA can ask to hear from the Petitioner and make  
598 a condition as they see fit.

599  
600 Chair Hoppock asked if Mr. Coyne was here.

601  
602 Mark Trumbull stated that he is here from Sandri Energy. He continued that they are doing a  
603 “Sunoco image upgrade” for the sign. They will have the same size signs as the ones in the photo  
604 and they will be static signs, not flickering.

605  
606 Ms. Taylor asked if it will be a replacement or an additional sign. Mr. Trumbull replied that it  
607 will not be an additional sign. He continued that it will be the same sign as the one that is there,  
608 just reimaged to (what is shown in the image). Ms. Taylor replied that it sounds like they are  
609 replacing what is there. Mr. Trumbull replied yes.

610  
611 Chair Hoppock asked Mr. Trumbull to speak to the criteria. Mr. Trumbull replied that what they  
612 (Sandri) want to do is, like the other (gas) stations, offer two different signs, one showing a  
613 discount on the price. They want to upgrade the sign with the purpose of drawing in more  
614 customers at the location.

615  
616 Chair Hoppock stated that he sees in the application that part of the reason is their desire to use  
617 the current technology. Mr. Trumbull replied that is correct, with LEDs.

618  
619 Chair Hoppock stated that they also want to reduce employee risk. Mr. Trumbull replied yes.  
620 Chair Hoppock asked Mr. Trumbull to talk about how it reduces employee risk. Mr. Trumbull  
621 replied that by showing the price differences on the signs, many customers do not understand  
622 that, but as far as the risk, there is not much at all. Chair Hoppock asked if there is danger in  
623 employees going out there and hand changing the signs. Mr. Trumbull replied no, because it will

624 be digital, and they can do it from inside the store. Chair Hoppock asked if it is correct that  
625 currently, they do not have that electronic benefit. Mr. Trumbull replied no, they use an old  
626 mechanical one. Chair Hoppock asked if it is correct that the new proposal would reduce that  
627 risk. Mr. Trumbull replied yes. He continued that the box was out back in the office.

628  
629 Ms. Taylor asked Mr. Trumbull to clarify which portions of the sign will be changeable. She  
630 asked if it would be just the price. Mr. Trumbull replied yes, just the price. He continued that  
631 they would have a little box out back that changes it automatically to show the discount. One  
632 would be the regular price and right below it would be the discounted price.

633  
634 Ms. Taylor asked if it is two-sided. Mr. Trumbull replied yes, just like the current one. Ms.  
635 Taylor asked if it is correct that they would change it as needed. She continued that for example,  
636 if the price and discount does not change for a week, they would not change the (sign). Mr.  
637 Trumbull replied that they only change it if there is a decrease or increase in the gas price.

638  
639 Chair Hoppock referred to photos on page 60 of the agenda packet and asked if it is correct that  
640 none of these signs would block traffic, because they are up high. Mr. Trumbull replied that is  
641 correct. Chair Hoppock asked if the signs emit noise or odors. Mr. Trumbull replied not at all.

642  
643 Ms. Taylor stated that the ZBA needs to consider the unnecessary hardship criterion. She  
644 continued that (the Petitioner) wrote "*not applicable*," but the ZBA needs to be able to find that  
645 there is a hardship in order to approve a Variance as it is a requirement. Mr. Trumbull replied  
646 that Sandri wants to be like the other gas stations that already have LED signs showing the  
647 discounts. He continued that Sandri is not able to do that, and gas prices (do change), which they  
648 are unable to advertise.

649  
650 Mr. Guyot asked if the Sunoco marketing standards require this type of change. Mr. Trumbull  
651 replied yes, they have to follow Sunoco's images. Mr. Guyot asked if not changing the image  
652 would result in hardship to Sandri's marketing. Mr. Trumbull replied yes, definitely.

653  
654 Mr. Weigle asked if the current sign is backlit by fluorescents or some other method. Mr.  
655 Trumbull replied that the one presently there is just lit. He continued that it is mechanical, and  
656 old. Mr. Weigle asked if it was something the employees would have to go out and change if the  
657 bulbs (go out). Mr. Trumbull replied that they have to go outside in front of it to get it to change.  
658 Mr. Weigle asked if to sustain the illumination of the mechanical sign someone would have to go  
659 out there on a lift or ladder to physically change it. Mr. Trumbull replied it is mechanical and  
660 sometimes they have to go out underneath it. He continued that they used to be able to do it right  
661 inside the location, but the system is old, and mechanical and is not LED. Mr. Weigle asked if it  
662 is correct that the new one will provide reliability and eliminate the need for employees to get on  
663 ladders. Mr. Trumbull replied yes.

664  
665 Ms. Taylor asked what it would mean for the business if the Variance was not granted. Mr.  
666 Trumbull replied that they would not be "up with Sunoco imaging." He continued that it would  
667 just be an older-looking station.

668

669 Mr. Clough asked if the brightness of the sign adjusts for nighttime versus daytime, and if it is  
670 programmed to do that. Mr. Trumbull replied that all it does is light up the numbers, like in the  
671 picture. He continued that LEDs are not very bright like the old style were.

672  
673 Chair Hoppock asked if there are any other gas stations near this one on Winchester St. Mr.  
674 Trumbull replied no, most of them are on West St. He continued that almost all of them have  
675 LED (signs), with the discount and everything else, just like the (photo).

676  
677 Chair Hoppock asked if Mr. Trumbull thinks the approval of this Variance would impact the  
678 values of any properties surrounding this property. Mr. Trumbull replied yes, he thinks so; it will  
679 look much nicer, more in form with the other stations. He continued that most definitely the  
680 lighting would. Chair Hoppock asked if the lighting would interfere with anyone else's use in the  
681 neighborhood. Mr. Trumbull replied no, not at all.

682  
683 Ms. Taylor asked Mr. Hagan if the current sign meets the Zoning requirements. Mr. Hagan  
684 replied he cannot answer that, but he can say that if what the Petitioner proposes, the signs  
685 remain the same size as the existing ones, they would be allowed to be put back up there, even if  
686 it were a non-conforming sign. It is legally non-conforming, so if the business were to change  
687 out those cabinets, they would be able to do that without requiring another Variance, due to the  
688 legal non-conformity of it.

689  
690 Chair Hoppock asked what he means by "cabinets." Mr. Hagan replied to the boxes on the sides,  
691 like where you see "24 hours" (in the photo). He continued that typically they are faced. He has  
692 not seen the application other than pictures. Typically, this is something they go over in the  
693 review process. They would look at the existing file and try to verify the size. If not, they would  
694 ask the applicant for the existing size, and allow the applicant to replace it with the same size.  
695 From what he understands, they will turn that (sign in the photo that says) "3.55" vertical and  
696 remain the same size. Chair Hoppock replied that is what the "after" picture appears to show.  
697 Mr. Hagan replied yes, they would be required to meet that, or come for another Variance if they  
698 could not. Currently, the way it is written and was proposed, and the staff's understanding, is that  
699 it will conform to what is already there, and the applicant would be able to do that under the  
700 Ordinance.

701  
702 Mr. Guyot asked if this Variance is required. Mr. Hagan replied they are seeking a Variance  
703 because the Ordinance does not allow this type of signage. He continued that if the applicant  
704 wanted to put up another mechanical sign, which they have a Variance for, (they could). The  
705 current sign was not allowed because it was a mechanical sign. The term in the Ordinance is  
706 "animated," which can mean activated by wind, or electronically or mechanically activated.  
707 Currently, the Ordinance allows drive-up menu board signs to be electronically activated. That is  
708 the only exemption the Ordinance has for electronically activated signs. The fueling has not been  
709 brought up to that standard yet.

710  
711 Chair Hoppock asked Mr. Trumbull how it would hurt the business if this Variance were not  
712 granted. Mr. Trumbull replied that the image would not be up to where it should be for Sunoco.  
713 He continued that it would tremendously impact the business's ability to offer discounts, because  
714 they could show the regular price (above) and (below, the discount you could get) if you have the

715 Sunoco app to get 10 cents off per gallon. It would be more competitive with the other locations,  
716 too.

717  
718 Mr. Weigle stated that previously Mr. Trumbull mentioned the business had a reduction in the  
719 number of gallons (sold), compared to other local stations that have upgraded their signs. He  
720 asked if this trend of lower sales is likely to continue if the business does not upgrade its signs.  
721 Mr. Trumbull replied yes because they are not advertising their discounts at all. He continued  
722 that they just offer whatever Sunoco does on their signs, but showing the discounts on the signs  
723 is a big thing.

724  
725 Chair Hoppock asked if it is fair to say that the public would benefit from the information Sandri  
726 is posting, knowing when the discount is available. Mr. Trumbull replied most definitely. He  
727 continued that it (the sign) would constantly show it. You always put up the big price when you  
728 have increases, when you are showing a discount down below, people look for that, especially  
729 when they are shopping. Just the sign alone is nice looking, too, which improves the property.

730  
731 Chair Hoppock asked if there were any further questions from the Board. Hearing none, he asked  
732 if anyone from the public wanted to speak in opposition to or in favor of this application.  
733 Hearing none, he asked if the Board members have enough information in order to act on this.  
734 He continued that they would close the public hearing and move to deliberations.

735  
736 1. *Granting the Variance would not be contrary to the public interest.*  
737

738 Chair Hoppock stated that he does not think the application is contrary to the public interest,  
739 because first, it offers information the public is interested in knowing. He continued that second,  
740 the applicant spoke about reducing risk of injury to employees, in terms of having to repeatedly  
741 go out there to change the signs. He continued that that procedure would be eliminated.

742  
743 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*  
744

745 Chair Hoppock stated that he does not see that there will be any risk to public health, safety, or  
746 welfare. He continued that the lights will not be bright, and there will be no noise or odor. It will  
747 not change the character of the neighborhood in that particular area because there is a lot of  
748 commerce there.

749  
750 3. *Granting the Variance would do substantial justice.*  
751

752 Chair Hoppock stated that the harm to the owner would be high and not outweighed by any  
753 corresponding public benefit [if the Variance were denied]. He continued that the public has the  
754 benefit of more information rather than less, especially when it is related to pricing information.

755  
756 4. *If the Variance were granted, the values of the surrounding properties would not be*  
757 *diminished.*  
758

759 Chair Hoppock stated that from listening to the applicant and from the Board talking about it, he  
760 does not see anything in this application that would result in surrounding properties losing value  
761 over this sign application.

762

763 5. *Unnecessary Hardship*

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

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

770 and

771 ii. *The proposed use is a reasonable one.*

772

773 Chair Hoppock stated that the special condition of the property that distinguishes it from other  
774 properties is that this is a station that would be at a disadvantage if it were not allowed to do what  
775 every other gas station in the city is allowed to do. He continued that that is what makes this  
776 property different. If one property is going to be allowed to have these signs, then it ought to be  
777 even-handed and applied fairly. This is a special condition that distinguishes this property from  
778 other similar properties, and the application of the sign ordinance to the property would cause an  
779 unnecessary hardship for that reason. He thinks the test is met.

780

781 Mr. Guyot stated that he will add that he heard Sunoco has certain marketing standards that may  
782 not be met without changing the signs. He continued that depending on the relationship between  
783 Sandri and Sunoco, with their agreement, there could be additional hardship there.

784

785 Chair Hoppock replied that he is not sure that is a lawful hardship, but it does tie into the  
786 problem of competition and the dissimilarity between this property and other properties. He  
787 continued that (Ms. Taylor) once spoke of a case involving financial hardship; he thinks the  
788 Harrington case but cannot remember. There is a limited set of circumstances where you can  
789 consider financial hardship in a commonsense way, but for a zoning hardship to exist there has to  
790 be something special about the property that distinguishes it from others in the area, and the  
791 hardship is created when the Ordinance is applied. That is why he is trying to compare this to  
792 similarly situated gas stations, convenience stores, or both.

793

794 Ms. Taylor stated that financial impacts are a consideration. She continued that she thinks the  
795 standard is that it cannot be the *sole* consideration. Something else the ZBA has not yet discussed  
796 is the gas station's location. The way it presents itself to the public has changed greatly over the  
797 year or 18 months during (nearby) construction, and now there is the roundabout. One of the  
798 things that contributes to hardship is the visibility issue. Cars are looking at the property and its  
799 signs from a completely different angle from what they did when it was originally erected. That  
800 does contribute. In this application it is not any one thing; she thinks there are several factors that  
801 contribute to the hardship, one being its visibility and how the way the public can look at the  
802 property has changed over time.

803

804 Chair Hoppock stated that he agrees with that perspective.

805 Ms. Taylor made a motion to approve ZBA-2024-03 for property at 345 Winchester St., Tax  
806 Map #111-027-000, in the Commerce District, for a Variance to permit an electronically  
807 activated, changeable copy sign, which is otherwise not allowed per Article 10.3 Table 10-2 of  
808 the Zoning Regulations. Mr. Clough seconded the motion.

809  
810 1. *Granting the Variance would not be contrary to the public interest.*

811  
812 Met with a vote of 5-0.

813  
814 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

815  
816 Met with a vote of 5-0.

817  
818 3. *Granting the Variance would do substantial justice.*

819  
820 Met with a vote of 5-0.

821  
822 4. *If the Variance were granted, the values of the surrounding properties would not be*  
823 *diminished.*

824  
825 Met with a vote of 5-0.

826  
827 5. *Unnecessary Hardship*

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

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

834  
835 Met with a vote of 5-0.

836  
837 The motion to approve ZBA-2024-03 passed with a vote of 5-0.

838  
839 **H) ZBA-2024-04: Petitioner, ReVision Energy, Inc., of 7A Commercial Dr.,**  
840 **Brentwood requests a Variance for property located at 521 Park Ave., Tax Map**  
841 **#227-027-000, is in the Conservation District and is owned by the City of Keene. The**  
842 **Petitioner requests a Variance to permit the installation of a large scale solar energy**  
843 **system on undeveloped land in the Conservation District per Article 7.3.5 of the**  
844 **Zoning Regulations.**

845  
846 **I) ZBA-2024-05: Petitioner, ReVision Energy, Inc., of 7A Commercial Dr.,**  
847 **Brentwood, requests a Variance for property located at 521 Park Ave., Tax Map**  
848 **#227-027-000, is in the Conservation District and is owned by the City of Keene. The**  
849 **Petitioner requests a Variance to permit the installation of a large scale solar energy**  
850 **system within the 50 ft setback required in the Conservation District and for large**

851 **scale solar energy systems in the Solar Energy System Ordinance per Article 7.3.5 &**  
852 **16.2.3 of the Zoning Regulations.**

853  
854 Chair Hoppock stated that they will open ZBA-2024-04 and ZBA-2024-05 together, then vote on  
855 each separately. He asked to hear from staff.

856  
857 Mr. Hagan stated that 521 Park Ave. is a 46-acre property in the Conservation Zone. He  
858 continued that it houses the Monadnock View Cemetery and its 4,800 square foot maintenance  
859 building, and the Monadnock View Community Garden with its 60 plots. The City put aside six  
860 additional plots for the Community Kitchen to grow its vegetables. He could not find any ZBA  
861 applications on file for this property.

862  
863 Chair Hoppock asked to hear from the Petitioner.

864  
865 Jason Reimers of BCM Environmental and Land Law stated that he represents ReVision Energy.  
866 He continued that with him tonight is Megan Ulin of ReVision Energy, and Tara Kessler of  
867 BCM, who helped prepare the application.

868  
869 Mr. Reimers continued that they are seeking a use Variance and a dimensional Variance. The  
870 first is a Variance from Section 7.3.5 to permit the use of this property, and the second is for  
871 relief from the 50-foot setback. If the Variances are granted, they would need a Conditional Use  
872 Permit from the Planning Board as well. He notes that the City brought this property to  
873 Revisions attention for this use.

874  
875 Megan Ulin stated that she is a Solar Project Developer with ReVision Energy, an employee-  
876 owned Certified B Corporation. She continued that they are guided by their mission and values  
877 of building a better world through solar power. They operate out of two offices in NH, in  
878 Brentwood and Enfield. They had the privilege of working with the City of Keene on two prior  
879 municipal projects, for the Wastewater Treatment Plant and the Public Works Department, as  
880 well as many small businesses and residents through their day-to-day work and Solarize  
881 Monadnock a few years ago. ReVision applauds the City for its goal of transitioning to 100%  
882 clean energy by 2030, and they are excited for opportunities for partnership, which has brought  
883 them here today.

884  
885 Ms. Ulin continued that ReVision has an agreement with the City of Keene to explore  
886 development opportunities on an unused section of the Monadnock View Cemetery parcel. It  
887 would be a “large-scale solar energy system” under the (LDC). It is about 59,000 square feet or  
888 1.3 acres, which is a small section of the overall parcel. The power would be used by the City of  
889 Keene or leased to benefit the Keene community through a community solar farm model. The  
890 project would be a fixed ground-mounted system with no moving parts. ReVision proposes  
891 screening as shown in the site plan to meet the guidelines for solar energy systems in the (LDC).

- 892  
893 1. *Granting the Variance would not be contrary to the public interest.*  
894  
895 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

896 Mr. Reimers stated that for the use Variance, the first two criteria are related, and he will address  
897 them together. He continued that this project satisfies both, as it will not be contrary to the public  
898 interest, and it will observe the spirit of the Ordinance. As the NH Supreme Court has said, two  
899 ways of looking at this are whether it will alter the essential character of the locality or  
900 neighborhood, or whether it would threaten public health, safety, or welfare, and this Variance  
901 would do neither one. The array would be located on an unused part of the cemetery that has  
902 existing underground utilities that make this area unsuitable for burials. He spoke with Andy  
903 Bohannon, now Deputy City Manager, who was involved with identifying this property for solar  
904 use. He identified it as a good candidate for solar. A letter of intent is attached to one of the  
905 Variance applications that is signed by the City. It describes four properties in Keene that would  
906 be suitable for solar.

907  
908 Mr. Reimers continued that the utilities that run through this part of the cemetery seem to include  
909 electricity, sewer, and water. They serve the facilities building for the cemetery and for the  
910 Recreation Department. Mr. Bohannon told him that when the nearby Parkwood Apartments  
911 were developed at the same time as the facilities building, it made sense to run the utilities  
912 through the field and over toward Parkwood. The site plan ReVision submitted shows the area  
913 where these utilities are that would essentially run through the middle of the solar field. He went  
914 out there a few times and he agrees that this is not one of the better-looking parts of the  
915 cemetery. It is close to the maintenance building, which has a lot of City trucks parked nearby,  
916 stacks of picnic tables waiting for summer, and a large pile of granite curbing waiting to be  
917 reused. It is not a scenic area. This area will never be used for burials, mainly because of the  
918 utilities, but also because it is not a desired part of the cemetery. Mr. Bohannon told him that it is  
919 less desirable from a burial standpoint because it is tucked away and not visible from the road.

920  
921 Mr. Reimers continued that as Mr. Hagan said, part of this area is used as a community garden,  
922 shown on the site plan on page 87. You can see part of the community gardens to the north of the  
923 proposed solar area. He learned that even with the solar array being located here, there is still  
924 room for another row of community gardens. He does not think there is a plan for that now, but  
925 if they want to expand that in the future, the solar array would not prevent it.

926  
927 Mr. Reimers asked if anyone needed clarification about anything on the site plan. Ms. Taylor  
928 asked how high the arrays are. Mr. Reimers replied 14 feet.

929  
930 Mr. Reimers stated that the proposed area is ideal for solar. He continued that it is already  
931 cleared, perfectly flat, and between the utility building and the Parkwood Apartments' carports.  
932 You can see the carports on the plan, the three long buildings within 10 feet of the property line  
933 and is out of sight from most of the gravesites. On the Parkwood Apartments side, the solar array  
934 will be blocked by the carports, which are about 15- to 20-feet high with a pitched roof. In  
935 addition, right on the property line behind the carports is a row of existing mature trees about 35-  
936 feet tall. ReVision proposes putting the solar array up against the edge of the field.

937  
938 Mr. Reimers continued that using this area for a solar system will not alter the essential character  
939 of the neighborhood. There are two ways to determine the existing character of a neighborhood.  
940 First, look at what is there and how it is being used. Second, look at the Zoning Ordinance and  
941 what *can* be used there. This field is a mixed-use area. Surrounding this field are the Parkwood

942 Apartments, Cedarcrest Center for children with disabilities, First Church of Keene, and the  
943 cemetery. The field itself is tucked away and largely hidden from view. For those reasons,  
944 adding solar to this mixed-use area will not alter the character of the neighborhood. He thinks  
945 adding a beneficial use and putting this land to its highest, best use for the community would  
946 complement the neighborhood.

947  
948 Mr. Reimers continued that Section 7.3.5, which ReVision is seeking a Variance from, only  
949 allows three uses in the Conservation District: cemetery, conservation area, and  
950 telecommunications facilities. All three uses are passive in nature, and so is a solar array. This  
951 area not only will not be used for cemetery purposes, one of the three permitted uses, it also does  
952 not have the qualities of a conservation area, another of the permitted uses. "Conservation area"  
953 is defined in the Ordinance as "*an area of undeveloped open space that preserves and protects*  
954 *natural features, wildlife, and critical environmental features, as well as sites of historical or*  
955 *cultural significance and may include opportunities for passive recreation such as hiking trails*  
956 *and lookout structures and environmental education facilities.*" This area does not have any of  
957 that as it is a flat field. He has been there twice and has never seen people on it. The Parkwood  
958 Apartment residents do not use it, because they are blocked by the carports; there might even be  
959 a fence in between.

960  
961 Mr. Reimers continued that looking at the three allowed uses, this use will not displace either the  
962 cemetery use or conservation area use, because it is just not suitable for that, and this use is  
963 similar to the third allowed use, telecommunications facility. Because a telecommunications  
964 facility is allowed here, he would submit that a solar array is similar and would not alter the  
965 character of the neighborhood. This use will also not threaten public health, safety, or welfare;  
966 there will not be a danger to anyone. Solar panels do not make noticeable noise. They do not  
967 have glare. They are hidden from view by existing trees, carports, and a proposed fence and  
968 proposed vegetation screening. The ground below them will remain pervious. Rather than  
969 threatening public health, safety, or welfare, this system is a benefit to the public. The letter of  
970 intent signed by the City and ReVision discusses the City's renewable energy goals and the  
971 desirability of the system. Thus, the City Council has already declared this system to be, in their  
972 opinion, in the public good and not a threat to public health, safety, or welfare.

973  
974 Mr. Reimers continued that for all those reasons, the applicant satisfies the first two Variance  
975 criteria.

976  
977 3. *Granting the Variance would do substantial justice.*

978  
979 Mr. Reimers stated that substantial justice is a balancing act, regarding the loss to the applicant  
980 and landowner if the Variance is denied versus the gain to the general public. He continued that  
981 denying the Variance will not result in any gain to the general public, and he thinks a denial  
982 would not benefit the public, because the public interest here is to help Keene reach its goal of  
983 100% renewable energy by 2030. The public would lose out if this Variance were denied. Denial  
984 would also cause a loss for the landowner, which is the City of Keene, for a few reasons. This is  
985 a cemetery, but this portion is not suitable for cemetery uses and is not needed for community  
986 gardens, so a denial would deprive the City of the best use of this portion of the cemetery. It

987 would also make it more difficult for the City to reach its renewable energy goal. For those  
988 reasons, the substantial justice criterion would be satisfied by granting the Variance.  
989

990 4. *If the Variance were granted, the values of the surrounding properties would not be*  
991 *diminished.*  
992

993 Mr. Reimers stated that this array will not diminish property values. He continued that the array  
994 will be screened from view from the Parkwood Apartments by the existing trees and carports.  
995 There will be minimal views to the north, northeast, and south sides, because they will install  
996 vegetative buffers. It will not have any impact on surrounding properties since it is a passive use.  
997 The surrounding properties being a mix of high-density residential, commercial, and institutional  
998 land lend to that conclusion. The Parkwood Apartments are in a High Density I Zone, and  
999 Cedarcrest and the Baptist church are in a Low Density Zone. Thus, more intensive uses are  
1000 already happening all around. Given the passive nature of the proposed solar energy system and  
1001 its limited impact on the adjacent mixed-use area, the value of surrounding properties will not be  
1002 diminished by this use.  
1003

1004 5. *Unnecessary Hardship*

1005 A. *Owing to special conditions of the property that distinguish it from other*  
1006 *properties in the area, denial of the variance would result in unnecessary hardship*  
1007 *because*  
1008

1009 Mr. Reimers stated that this is a unique property with several special conditions. He continued  
1010 that first, the property is in the Conservation District, which only allows three uses by right.  
1011 Second, being part of a cemetery, it is special in that it is not suitable for cemetery use, due to the  
1012 underground utilities, and it will never be used for burials. That makes it unique. It is also  
1013 unsuitable for conservation area use, due to the lack of important natural or cultural features. It is  
1014 not even very scenic. Third, this portion of the cemetery is unique because it is flat and clear of  
1015 trees and vegetation, and already contains a vegetative buffer and carports that already screen the  
1016 area. All that makes it a unique site that is distinguished from other properties in the surrounding  
1017 area.  
1018

1019 i. *No fair and substantial relationship exists between the general public*  
1020 *purposes of the ordinance provision and the specific application of that provision*  
1021 *to the property because:*  
1022

1023 Mr. Reimers stated that if Section 7.3.5 of the Zoning Ordinance were strictly enforced, this land  
1024 would be practically unusable, due to the limited uses allowed in the district and due to the  
1025 special conditions of this portion of the parcel. Denying the Variance would not further the  
1026 purposes of Section 7.3.5, which is to protect land areas that are “*identified as necessary to*  
1027 *preserve as open space because of their critical or delicate environmental nature,*” by allowing  
1028 for only certain passive uses. Because this portion of the property does not contain any of those  
1029 attributes, there is not a fair and substantial relationship between the Ordinance limitation and the  
1030 application of that limitation to this property.  
1031

1032 *and*

1033                   ii.    *The proposed use is a reasonable one.*

1034  
1035 Mr. Reimers stated that (the proposed use is a reasonable one) for all the reasons he has stated –  
1036 (the area is) flat, tucked away, and cannot be used for much else; and it (s use as a solar array)  
1037 will help the City meet its goals. He continued that finding suitable areas is not easy. The City  
1038 has identified this one. He has not seen anything that would make this use unreasonable.

1039  
1040                   B.    *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*  
1041 *hardship will be deemed to exist if, and only if, owing to special conditions of the*  
1042 *property that distinguish it from other properties in the area, the property cannot be*  
1043 *reasonably used in strict conformance with the ordinance, and a variance is therefore*  
1044 *necessary to enable a reasonable use of it.*

1045  
1046 Mr. Reimers stated that he does not think it is necessary to use this alternative unnecessary  
1047 hardship test, because the applicant satisfies the primary test, but (he will say) that this area  
1048 cannot be used without this Variance. He continued that (one could say) a telecommunications  
1049 facility might come along, but that has not happened, and solar is a better use.

1050  
1051 Mr. Reimers stated that he will move on to the dimensional Variance and try not to repeat  
1052 himself, but many of the attributes of and limitations of the site are overlapping with the two  
1053 Variances. The applicable setback here is 50 feet. That is the provision the applicant is seeking  
1054 relief from. Two sections set forth this 50-foot setback, 16.2.3 and 7.3.2.

1055  
1056 Mr. Reimers continued that ReVision proposes a perimeter fence around the entire solar field. It  
1057 would be 15 feet from the boundary to the west, the Parkwood Apartments side; and 10 feet from  
1058 the north property line with Cedarcrest. Along the Parkwood Apartments side, the first thing in  
1059 the setback would be the six-foot tall fence, and on the north side with Cedarcrest, the first thing  
1060 you would see would be the new vegetative screening, which would be in between the fence and  
1061 Cedarcrest. The fence will go along around the entire solar field and the solar array itself would  
1062 be 10 to 12 feet within the fence. According to his calculations, the array itself would be 25 to 27  
1063 feet from the west property line and 20 to 22 feet from the north property line.

1064  
1065 1.    *Granting the Variance would not be contrary to the public interest.*

1066  
1067 2.    *If the Variance were granted, the spirit of the Ordinance would be observed.*

1068  
1069 Mr. Reimers stated that relaxing the setback would not be contrary to the public interest and it  
1070 would observe the spirit of the Ordinance. He continued that the Parkwood carports are on the  
1071 west side, within 10 feet of the line. A line of mature trees is between the carports and the fence.  
1072 Those two screening elements will block the view from the apartments. There is no benefit to the  
1073 apartments to place the array or the fence further from the carports or existing trees because the  
1074 apartment residents do not use the field and he does not think they can even see it. Having the  
1075 (array) closer to the property line, instead of the middle of the field, means getting more of the  
1076 benefits of the screening of the tall trees and carports.

1077

1078 Mr. Reimers continued that on the Cedarcrest side, the view will be mostly blocked by  
1079 vegetative screening and the fence. The general purpose of setbacks is to ensure an adequate  
1080 buffer between structures and neighboring parcels to mitigate potential impacts such as noise and  
1081 overcrowding, and to lessen visual impacts of the solar array. Enforcing this setback will not  
1082 protect neighbors from noise, traffic, overcrowding, or visual impact, because it will be screened.  
1083 Again, noise is not an issue. He has solar panels at his house, and they do not make any noise.  
1084 Denying the Variance would not further the purposes of the setbacks.

1085  
1086 Mr. Reimers continued that this Variance would not be contrary to the public interest because it  
1087 will be screened, it is a passive land use, and it will not alter the character of the neighborhood or  
1088 threaten public health or safety to have the (array) closer to the property line.

1089  
1090 3. *Granting the Variance would do substantial justice.*

1091  
1092 Mr. Reimers stated that any loss to the individual that is not outweighed by a gain to the general  
1093 public is an injustice. He continued that that would occur here if the Variance were denied. This  
1094 part of the cemetery cannot be used for cemetery purposes, and the field is an ideal place for  
1095 (solar). Granting the Variance will allow the property owner and the City to expand its renewable  
1096 energy sources and use its property in the best way. The solar energy system cannot be located  
1097 further north or northeast because of the existing community gardens. The question was asked  
1098 whether that was possible, and the City did not want to, neither does ReVision. That is why it is  
1099 pushed up closer to the property lines. Not allowing this in this location will cause injustice to  
1100 both ReVision and the City, without any gain to the public.

1101  
1102 4. *If the Variance were granted, the values of the surrounding properties would not be*  
1103 *diminished.*

1104  
1105 Mr. Reimers stated that given the limited impact of the proposed solar energy system on the  
1106 adjacent properties and its proximity to higher intensity residential, commercial, and institutional  
1107 uses, granting the setback will not diminish the value of any surrounding properties. He  
1108 continued that it will be fully screened both with the existing buffer and the proposed fence and  
1109 vegetative buffers. For those reasons, the surrounding properties are well protected and insulated  
1110 from this solar array.

1111  
1112 5. *Unnecessary Hardship*

1113 A. *Owing to special conditions of the property that distinguish it from other*  
1114 *properties in the area, denial of the variance would result in unnecessary hardship*  
1115 *because*

1116 i. *No fair and substantial relationship exists between the general public*  
1117 *purposes of the ordinance provision and the specific application of that provision*  
1118 *to the property because:*

1119  
1120 Mr. Reimers stated that he has gone through the elements that make this a truly unique property  
1121 in this mixed-use neighborhood. He continued that the City is considerably limited in how it can  
1122 use this land, due to the use limitations of the district, the 50-foot setback, the existing  
1123 underground utilities, and the existing community gardens. It (the array) cannot be moved further

1124 away because the system has to be of a certain size to make it a worthwhile endeavor to justify  
1125 the utility connection costs. If this array were forced to be within the 50-foot setbacks it would  
1126 not work, given the other constraints on the property. Given the property's attributes and  
1127 constraints, there is no fair and substantial relationship between the setback provision and  
1128 applying it here.

1129  
1130 *and*

1131 *ii. The proposed use is a reasonable one.*

1132  
1133 Mr. Reimers stated that the use is reasonable for a variety of reasons.

1134  
1135 Mr. Weigle asked what the height is of the vegetative screening to the south. Ms. Ulin replied  
1136 that she does not think they specified a height or which plantings. She continued that that would  
1137 be determined during the site plan review stage. She expects the plantings would be at least six  
1138 feet tall, mitigating most but not all the view of the panels.

1139  
1140 Mr. Weigle stated that the panels are aimed southeast at 15-degree angles. He asked if that would  
1141 cause glare or glint down toward the buildings to the southeast. He continued that the Parkwood  
1142 Apartments are right next to it, but the panels are angled in the other direction. Ms. Ulin replied  
1143 that the panels are coated with an anti-reflective surface, so glare is extremely minimal. Mr.  
1144 Reimers stated that they have photos showing the existing line of trees, and you can sort of see  
1145 the carports behind them.

1146  
1147 Mr. Clough stated that he thinks the cemetery is southeast as well, so that is where the glare  
1148 would be going. Mr. Reimers replied that there is no glare from the solar system he has at home.  
1149 He continued that whatever that coating does, it works.

1150  
1151 Chair Hoppock asked why the City is even here. Mr. Reimers asked if he means because the City  
1152 is exempt from Zoning regulations. Chair Hoppock replied yes. Mr. Reimers replied that he does  
1153 not know exactly, but what he understands – and he does not remember who told him this – is  
1154 that the City prefers this be properly vetted through the Variance process. Until the City  
1155 exercises its right of first refusal to own and control the array, it is Revisions project.

1156  
1157 Ms. Taylor stated that she was going to ask whether ReVision was leasing it and then the City is  
1158 buying it, because that would get them out of RSA 674:54 (Governmental Land Uses). Mr.  
1159 Reimers replied that he can explain some of how it works if the ZBA wants. Ms. Taylor replied  
1160 no, that is okay; she will leave it up to others in the City.

1161  
1162 Ms. Taylor stated that she assumes they will need to have special power lines or something  
1163 similar for this energy to be transmitted. She asked where those would be located.

1164  
1165 Ms. Ulin replied that the current proposal is a three-phase extension coming in from Park Ave.  
1166 behind the last row of headstones. She continued that it would be underground and connecting to  
1167 utility infrastructure for the solar array. Ms. Taylor replied that she is a little concerned; within  
1168 the boundary is a row of trees. Ms. Ulin replied that it would be between the row of trees and the  
1169 gravesites. She continued that it is a tight location, but they have trenched there previously to

1170 bring in a communications line. ReVision would obtain City Council approval to be within that  
1171 proximity to the gravesites. That is one option. There has also been interest from the neighboring  
1172 non-profit, Cedarcrest. If that interest is renewed it would be different. She cannot speak to the  
1173 current level of interest. If the Variance is granted tonight that may be a possibility for  
1174 Cedarcrest; they might be interested.

1175  
1176 Ms. Taylor asked what the access will be for construction and maintenance if the Variance gets  
1177 approved and this goes through the process and gets constructed. Ms. Ulin replied that the access  
1178 would be through the existing cemetery road.

1179  
1180 Ms. Taylor stated that she also was concerned about the reflections and hopes that anti-glare  
1181 coating works. She continued that one more concern she has is the generality of ReVision saying  
1182 they just want to be within the 50-foot setback. Usually, the ZBA's practice has been to say,  
1183 "Not more than X feet to the setback." She asked if they would object, were the ZBA to approve  
1184 this Variance, to the ZBA limiting it (to a certain distance). First, she should ask if a six-foot  
1185 fence is considered a "structure."

1186  
1187 Mr. Hagan replied not in accordance with zoning, but anything over six feet is considered a  
1188 structure under the Building Code. Ms. Taylor asked if it is "six feet" or "over six feet." Mr.  
1189 Hagan replied, "over six feet." Ms. Taylor replied that a six-foot fence, then, would not be  
1190 considered a structure. Mr. Hagan replied not according to the Zoning Ordinance. Ms. Taylor  
1191 replied that if the Building Code says it is a structure, it is a structure, so the ZBA needs to  
1192 consider whether they are going to limit the distance. For example, to the west, "Not less than 25  
1193 feet from the western property line," and "not less than 20 feet from the northern property line"  
1194 or something similar.

1195  
1196 Mr. Hagan replied that as a follow-up to the question, fences are exempt from setback  
1197 requirements. He continued that this information is in the LDC starting on page 1.4, continuing  
1198 to page 1.5, as follows - Section 1.3 is "Rules of Measurement and Exceptions." Under that,  
1199 1.3.3 is "Setbacks and Build-To Dimensions." Under that is "A. Building Setback." Under that is  
1200 "4. Structure Setback Exceptions," and under that is "a. the following may be excluded from  
1201 required setbacks," and under that is "vi. Fences."

1202  
1203 Ms. Taylor replied that that answers her question. Mr. Hagan replied that Building and Zoning  
1204 are two different things, and the fence will be treated as a structure and will have to meet all the  
1205 snow and wind load requirements, but for zoning, it is exempt.

1206  
1207 Ms. Taylor stated that going back to her original question for the applicant, she wants to know if  
1208 ReVision has any objection to the ZBA putting a number on the amount they can violate the  
1209 setback. Because if the ZBA just says, "Sure, you can have a Variance to violate the 50-foot  
1210 setback," ReVision could put it six inches from the setback.

1211  
1212 Mr. Reimers replied that ReVision has no objection to (the ZBA putting a number on it), as long  
1213 as they are all talking about what the right number is. He continued that he thinks ReVision is  
1214 looking for "no closer than 25 feet" on the west/Parkwood side, for the edge of the array. On the  
1215 north/Cedarcrest side, they want to be "no closer than 20 feet."

1216 Chair Hoppock asked if it is correct that those are the only two sides in question. Mr. Reimer  
1217 replied yes, it is much more than 50 feet from the Baptist church side, and it is completely  
1218 screened.

1219  
1220 Mr. Guyot stated that on the Cedarcrest side, 25 feet is a very short distance because of the angle  
1221 of the lot lines. He continued that the lot line to Cedarcrest is not parallel with the fencing or the  
1222 array. Thus, the violation of the 50-foot buffer seems to be only at that intersecting corner. He  
1223 asked if he is reading that correctly. Mr. Reimer replied he thinks that is right; that is just the  
1224 closest pinch point and then it veers away.

1225  
1226 Mr. Weigle stated that they spoke about the construction access point. He asked if they could  
1227 speak about the continuing maintenance, such as whether these will need to be replaced in a  
1228 certain timeframe. Ms. Ulin replied that continuing maintenance is typically minimal for sites  
1229 like this. She continued that ReVision would expect about two to four service visits per year for  
1230 an annual inspection and verification. The panels are warrantied for 25 years, and they are  
1231 typically expected to last upwards of 40 years. Some electrical equipment, like inverters, have a  
1232 shorter life and would be replaced sometime within that timeframe. There will not be much  
1233 disturbance to the site for maintenance, maybe one electrician's van.

1234  
1235 Mr. Weigle stated that it appears they labeled the underground utility lines. He asked if the plan  
1236 is to construct solar panels over that area, too, or if they are excluding that area because of  
1237 having to dig supports for the 14-footers. Ms. Ulin replied that the area south of the last row of  
1238 panels is excluded to allow for space from the screening, so the panels are not shaded. She  
1239 continued that the route in the middle is excluded because of the underground utility lines that  
1240 are there. They do not want to hit those with foundations.

1241  
1242 Ms. Taylor asked how high these are off the ground. Ms. Ulin replied that the lower edge is three  
1243 feet off the ground. She continued that they are fixed by ground screws that go into the ground  
1244 and racking's are attached to that, so the lower edge is at three feet and the upper edge is no more  
1245 than 14 feet. Ms. Taylor asked if they are just on poles, not on a slab or something else. Ms. Ulin  
1246 replied that they are not on a slab; they are giant screws that go into the ground and then they  
1247 affix the racking structure to those screws.

1248  
1249 Ms. Taylor asked what happens to the ground underneath the arrays. Ms. Ulin replied that the  
1250 ground screws cause minimal disturbance; there is only disturbance where they enter the ground.  
1251 She continued that once the array's commercial lifespan is over it can be fully decommissioned.  
1252 Everything can be removed from the site. Ms. Taylor replied that she is thinking about the  
1253 maintenance, too, of the grass, weeds, and ponding. Ms. Ulin replied that they will not be  
1254 changing the grade of the site, so there should not be any negative impacts resulting from the  
1255 installation of the ground screws. ReVision maintains its sites, if it ends up being owned by  
1256 ReVision, or if the City owns it, maintenance falls to the City, but typically just mowing within  
1257 the site would take care of any maintenance.

1258  
1259 Chair Hoppock asked what the Planning Board step is that Mr. Reimers mentioned at the  
1260 beginning. Mr. Reimers replied a Conditional Use Permit would need to be obtained. He  
1261 continued that Article 16 states, "*Unless located in the Industrial District, medium-scale or*

1262 *large-scale ground-mounted solar energy systems shall require a Conditional Use Permit by the*  
1263 *Planning Board.*” He will note that this is technically a large-scale solar system, but it is on the  
1264 lower end of “large.” The Conditional Use Permit addresses height, setbacks, visual buffer, lot  
1265 coverage, noise and glare, environmental issues, security, and landscaping.

1266  
1267 Chair Hoppock asked if it is correct that they do not expect any landscaping issues with this site,  
1268 which is flat. Mr. Reimer replied that is correct; the site could not be flatter.

1269  
1270 Chair Hoppock asked if there were any further questions from the Board. Hearing none, he  
1271 continued that he does not see anyone from the public, so they will close the public hearing and  
1272 move to deliberations. They will begin with ZBA-2024-04.

1273  
1274 1. *Granting the Variance would not be contrary to the public interest.*

1275  
1276 Chair Hoppock stated that he agrees that granting the Variance would not be contrary to the  
1277 public interest, for all the reasons Mr. Reimers explained, including, as expressed in the letter of  
1278 intent and the public purpose for which it is trying to accomplish and in the “green manner” in  
1279 which it is trying to accomplish it. The fact that the City Council has acted on this means  
1280 something, in terms of public interest.

1281  
1282 Ms. Taylor stated that she agrees that this type of solar array is of benefit to the City, so it is  
1283 certainly in the public interest.

1284  
1285 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1286  
1287 Ms. Taylor stated that she is a little concerned about it meeting the spirit of the Ordinance,  
1288 although maybe someone could convince her that it does.

1289  
1290 Chair Hoppock replied that there are three uses allowed in the Conservation District – cemetery,  
1291 telecommunications, and conservation area. He continued that is a rather restrictive batch. This is  
1292 an interesting alternate use for a piece of cemetery land that cannot be used for cemetery land.  
1293 He never imagined that there was any cemetery land that could not be used for cemetery.  
1294 Keeping in mind the limited availability for use here, and what the ZBA heard about it not being  
1295 a danger to public health, safety, or welfare, the glare reduction, the lack of noise, the lack of  
1296 pollution, the minimal maintenance, he believes all of that to be true. The height of the panels is  
1297 low enough that you could be standing to the left of the carports and would not even know the  
1298 solar panels were there if you did not know it in advance. There will be no glare, nothing to  
1299 disturb anyone’s quiet or to create a nuisance of any kind to the neighbors. One of the neighbors,  
1300 Cedarcrest, seems to want to get involved with this in some fashion. Perhaps this would be a way  
1301 for Cedarcrest to get energy; he does not know. It (the solar array) will not change/affect the  
1302 character of the neighborhood. It is hard to describe a neighborhood that is mostly a cemetery  
1303 and apartments, which are screened off anyway. He does not think it will be a danger of any kind  
1304 and will not affect the spirit of the Ordinance.

1305

1306 Ms. Taylor stated that she thinks this is another case where the character of the neighborhood  
1307 does not match the Zoning Ordinance and the permitted uses. She continued that they had seen  
1308 that this evening more than once.

1309  
1310 Chair Hoppock replied that it is not hard to figure out why the City zoned this as Conservation  
1311 District. He continued that the cemetery has been there for more than 50 years. Thus, they zoned  
1312 it as Conservation, and this piece was caught up in it, and there are only three allowed uses.

1313  
1314 Mr. Guyot stated that regarding this meeting the spirit of the Ordinance, he got comfortable with  
1315 that with the passive nature of this activity. He continued that he thinks the applicant mentioned  
1316 it as well, trying to correlate solar with telecommunications facility, which is also rather passive,  
1317 as are cemetery and conversation are passive.

1318  
1319 Chair Hoppock replied that all those uses being passive, by definition, means you do not alter or  
1320 disrupt the character of the neighborhood. Mr. Guyot replied that he agrees.

1321  
1322 3. *Granting the Variance would do substantial justice.*

1323  
1324 Chair Hoppock stated that as he sees it, the benefit to the public is the public stands to gain  
1325 significantly from this project if it succeeds.

1326  
1327 Ms. Taylor stated that in some ways, the owner and the public are one and the same.

1328  
1329 4. *If the Variance were granted, the values of the surrounding properties would not be*  
1330 *diminished.*

1331  
1332 Chair Hoppock stated that he does not see anything that gives the Board trouble with this  
1333 criterion.

1334  
1335 5. *Unnecessary Hardship*

1336 A. *Owing to special conditions of the property that distinguish it from other*  
1337 *properties in the area, denial of the variance would result in unnecessary hardship*  
1338 *because:*

1339 i. *No fair and substantial relationship exists between the general public*  
1340 *purposes of the ordinance provision and the specific application of that provision*  
1341 *to the property because:*

1342  
1343 Chair Hoppock stated that he agrees with the applicant's counsel that the limited nature of  
1344 permitted uses in this area creates a special condition. He continued that going back to the  
1345 passive nature of the use, this application of the Ordinance for this use does not make sense.

1346  
1347 Ms. Taylor stated that the applicant's attorney made the point that denying the Variance would  
1348 not further the purposes of the Ordinance. She continued that she thinks that is what she was  
1349 concerned about earlier when she was talking about the spirit of the Ordinance, and she thinks it  
1350 is true. There does not seem to be much relationship between the way that this property is zoned  
1351 and what you can do with it.

1352 Chair Hoppock stated that there is an aerial photo on page 75 of 147 (in the agenda packet). He  
1353 continued that Mr. Reimers mentioned this would be on the lower side of (the definition of)  
1354 large-scale solar array, but it is still a large piece of land that cannot be used for cemetery, and no  
1355 one can/wants to use it for the other allowed uses. He continued that it does not make sense as  
1356 conservation land because of what is underneath it. It makes sense to use it for something  
1357 productive that is passive, quiet, and non-polluting.

1358  
1359 Mr. Weigle made a motion to approve ZBA-2024-04, Petitioner ReVision Energy, Inc., of 7A  
1360 Commercial Dr., Brentwood's request for a Variance for property located at 521 Park Ave., Tax  
1361 Map #227-027-000, in the Conservation District, owned by the City of Keene. The Petitioner  
1362 requests a Variance to permit the installation of a large-scale solar energy system on  
1363 undeveloped land in the Conservation District per Article 7.3.5 of the Zoning Regulations. Ms.  
1364 Taylor seconded the motion.

1365  
1366 1. *Granting the Variance would not be contrary to the public interest.*

1367  
1368 Met with a vote of 5-0.

1369  
1370 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1371  
1372 Met with a vote of 5-0.

1373  
1374 3. *Granting the Variance would do substantial justice.*

1375  
1376 Met with a vote of 5-0.

1377  
1378 4. *If the Variance were granted, the values of the surrounding properties would not be*  
1379 *diminished.*

1380  
1381 Met with a vote of 5-0.

1382  
1383 5. *Unnecessary Hardship*

1384 A. *Owing to special conditions of the property that distinguish it from other*  
1385 *properties in the area, denial of the variance would result in unnecessary hardship*  
1386 *because*

1387 i. *No fair and substantial relationship exists between the general public*  
1388 *purposes of the ordinance provision and the specific application of that provision*  
1389 *to the property.*

1390  
1391 Met with a vote of 5-0.

1392  
1393 The motion to approve ZBA-2024-04 passed with a vote of 5-0.

1394  
1395 Turning to ZBA-2024-05, Chair Hoppock asked if it is correct that on the west side, the array  
1396 would be "no more than 25 feet from the boundary line," and on the north side, it is "no closer  
1397 than 20 feet." He continued that they heard before that a fence is not a structure for purposes of

1398 zoning. Mr. Hagan replied that again, the Ordinance clearly states that fences are exempt from  
1399 setbacks.

1400  
1401 Tara Kessler of BCM Environmental Planning and Land Law stated that it is the edge of the  
1402 solar panel and not the array. She continued that the Ordinance defines “solar footprint” to  
1403 include the perimeter fence around the array. She wants it to be clear that the measurement is  
1404 from the setback to the edge of the solar panels, not the array itself, because the definition of  
1405 “solar footprint” includes the fence around the array.

- 1406  
1407 1. *Granting the Variance would not be contrary to the public interest.*  
1408 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*  
1409

1410 Chair Hoppock stated that much of the analysis of ZBA-2024-05 overlaps with the analysis of  
1411 ZBA-2024-04, in terms of the public interest, because of the space they have available in this  
1412 area.

1413  
1414 Ms. Taylor replied that what they have to consider here is that at least on the west side is the  
1415 existence of the buffer of the trees and carport on the adjacent property, and on the north side  
1416 there will be, or possibly is, vegetation. She continued that that goes to whether it is in the public  
1417 interest. By one token, if the ZBA approves the solar array as being in the public interest then  
1418 they have to determine whether putting the solar array that close to the property line within the  
1419 setback is in the public interest. She would say that because of the aspect of the surrounding  
1420 properties, there will be no negative impact and it would be in the public interest.

1421  
1422 Chair Hoppock added, because it supports the overall project, and he agrees with that. Putting the  
1423 structures within that distance, 25 feet on the west side and 20 feet on the north side, does not  
1424 create a public health, safety, or welfare issue or alter the essential character of the  
1425 neighborhood.

- 1426  
1427 3. *Granting the Variance would do substantial justice.*  
1428

1429 Ms. Taylor stated that since the applicant and the property owner are one and the same, by the  
1430 same token, the ZBA has to look at the general public. She continued that there will be a benefit  
1431 to the general public as well as to the property owner.

- 1432  
1433 4. *If the Variance were granted, the values of the surrounding properties would not be*  
1434 *diminished.*  
1435

1436 Chair Hoppock stated that he does not see any property diminution issues here.

- 1437  
1438 5. *Unnecessary Hardship*  
1439 A. *Owing to special conditions of the property that distinguish it from other*  
1440 *properties in the area, denial of the variance would result in unnecessary hardship*  
1441 *because*

1442                   *i.       No fair and substantial relationship exists between the general public*  
1443                   *purposes of the ordinance provision and the specific application of that provision*  
1444                   *to the property because:*

1445  
1446 Chair Hoppock stated that the special conditions here might be a little different (than with ZBA-  
1447 2024-04), although he does not think they need to be. He continued that they have the buffers of  
1448 the carports and trees, which justify further encroachment – not for further than 50 feet, not the  
1449 20 or 25 feet they are talking about. He believes those are special conditions of this property that  
1450 distinguish it.

1451  
1452 Ms. Taylor stated that usually when she is looking at a setback violation, she looks at whether  
1453 there is any other reasonable location that would avoid an incursion into the setback, and she  
1454 thinks they have heard a good deal of evidence that there is no practical way to site the solar  
1455 array without going into the setback. She continued that she thinks that, in and of itself, creates a  
1456 hardship.

1457  
1458 Chair Hoppock made a motion to approve ZBA-2024-05, the request of Petitioner ReVision  
1459 Energy, Inc., of 7A Commercial Dr., Brentwood, for a Variance for property located at 521 Park  
1460 Ave., Tax Map #227-027-000, in the Conservation District, owned by the City of Keene. The  
1461 Petitioner requests a Variance to permit the installation of a large-scale solar energy system  
1462 within the 50-foot setback required in the Conservation District and for large-scale solar energy  
1463 systems in the Solar Energy System Ordinance per Article 7.3.5 & 16.2.3 of the Zoning  
1464 Regulations, on the following conditions: on the west side, the setback will be encroached no  
1465 more than 25 feet from the edge of the solar panel, and on the north side no closer than 20 feet  
1466 from the edge of the solar panel. Mr. Clough seconded the motion.

1467  
1468 *1.       Granting the Variance would not be contrary to the public interest.*

1469  
1470 Met with a vote of 5-0.

1471  
1472 *2.       If the Variance were granted, the spirit of the Ordinance would be observed.*

1473  
1474 Met with a vote of 5-0.

1475  
1476 *3.       Granting the Variance would do substantial justice.*

1477  
1478 Met with a vote of 5-0.

1479  
1480 *4.       If the Variance were granted, the values of the surrounding properties would not be*  
1481 *diminished.*

1482  
1483 Met with a vote of 5-0.

1484  
1485 *5.       Unnecessary Hardship*

1486 A. *Owing to special conditions of the property that distinguish it from other*  
1487 *properties in the area, denial of the variance would result in unnecessary hardship*  
1488 *because*  
1489 *i. No fair and substantial relationship exists between the general public*  
1490 *purposes of the ordinance provision and the specific application of that provision*  
1491 *to the property.*

1492  
1493 Met with a vote of 5-0.

1494  
1495 The motion to approve ZBA-2024-05 passed with a vote of 5-0.

1496  
1497 **II) Unfinished Business**

1498  
1499 Chair Hoppock asked if anyone objects to tabling the Rules of Procedure Updates and Fee  
1500 Schedule Proposal for next time. Corinne Marcou, Zoning Clerk, replied that next month's  
1501 agenda will have at least five applications and the meeting might be long. She continued that last  
1502 month, Evan Clements, Planner, told the Board about how the Fee Schedule Proposal and the  
1503 Rules of Procedure changes, specifically for notifying abutters, are part of a larger, overall  
1504 Ordinance update that staff hopes to have collectively with the other regulatory boards as well.

1505  
1506 Chair Hoppock replied that he thinks that means the ZBA should address this tonight.

1507  
1508 Ms. Taylor stated that she did not have time to go line by line to see what had changed in the  
1509 latest iteration (of the Rules of Procedure), but after last month's discussions, she thinks the ZBA  
1510 is in agreement with all the language. They had a lengthy discussion on III.C regarding the  
1511 Notice of Decisions, and there is revised language at the end of that section, which she is fine  
1512 with. She asked if there are any other changes that the Board did not review last month. Ms.  
1513 Marcou replied no, that was the only change. Ms. Taylor replied that she would be fine with  
1514 voting to approve these changes.

1515  
1516 Ms. Taylor made a motion to approve the changes to the Zoning Board of Adjustment's Rules of  
1517 Procedure as presented. Mr. Guyot seconded the motion.

1518  
1519 Chair Hoppock asked for discussion. Hearing none, he called for a vote. The motion passed  
1520 unanimously.

1521  
1522 Chair Hoppock asked if they need to address the fee changes. Mr. Hagan replied that (the \$250)  
1523 was included in the Rules of Procedure changes. Ms. Taylor asked if that was the only fee  
1524 change. Ms. Marcou replied that as discussed with Mr. Clements last month, the other change  
1525 was staff's proposal to move away from Certified Mail and move to Certificate of Mail, which  
1526 will be a decrease based on USPS rates. The only fee change would be the fee for the  
1527 application, from \$100 to \$250. Ms. Taylor asked if there are then no additional fees. Ms.  
1528 Marcou replied that staff proposes keeping the legal notice fee of \$62 as is. Chair Hoppock asked  
1529 if that is because they expect to save money with this new Certificate of Mailing. Ms. Marcou

1530 replied that in while researching the fee schedule, they learned of other municipalities' legal fees,  
1531 which cover the basic information that the City of Keene, too, needs to provide to the public,  
1532 which has kept more in line with the City of Keene's fee for the legal notice (in the Keene  
1533 Sentinel), currently. Staff's changes, internally, have kept the fees relatively in line with what  
1534 they charge currently.

1535  
1536 Ms. Taylor replied that she recalls that the last time they looked at the fees, Ms. Marcou had  
1537 revised the content of the legal advertising, which cut down on the bulk. Ms. Marcou replied yes,  
1538 that is correct.

1539

1540 **III) Communications and Miscellaneous**

1541

1542 **IV) Non-public Session (if required)**

1543

1544 **V) Adjournment**

1545

1546 There being no further business, Chair Hoppock adjourned the meeting at 9:31 PM.

1547

1548 Respectfully submitted by,

1549 Britta Reida, Minute Taker

1550

1551 Reviewed and edited by,

1552 Corinne Marcou, Board Clerk

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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, 2<sup>nd</sup> 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 4<sup>th</sup> 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*

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](mailto: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](mailto: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



[www.cai-tech.com](http://www.cai-tech.com)

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: 13° 53' W  
 CONVERGENCE ANGLE -0° 22' 39"  
 OBSERVATION DATE: OCTOBER, 2022  
 COMBINED SCALE FACTOR: 0.99995790

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

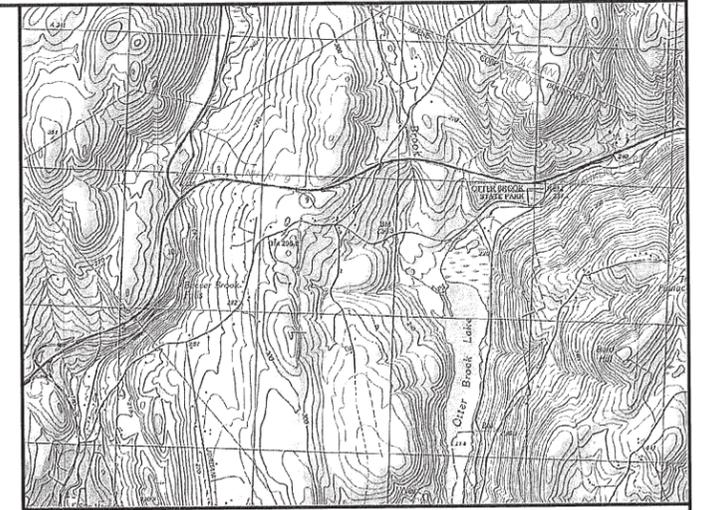
G2 HOLDINGS, LLC  
 TM 401 LOT 1  
 TOWN OF ROXBURY

JOHN BAYBUTT  
 TM 216 LOT 1

JOHN BAYBUTT  
 TM 401 LOT 19  
 TOWN OF ROXBURY

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

NO. 967  
 ERIC S. POSPISIL  
 POSPISIL  
 SIGNATURE



LOCATION MAP  
 1 inch = 2000 feet

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. 88-05837. Not Recorded.
- C. "Plan of Proposed T.L.R. Project No. 14201, NH Project No P-2962-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, 1956. On file and available on-line with the New Hampshire Department of Transportation, Right of Way Bureau.

NOTES:

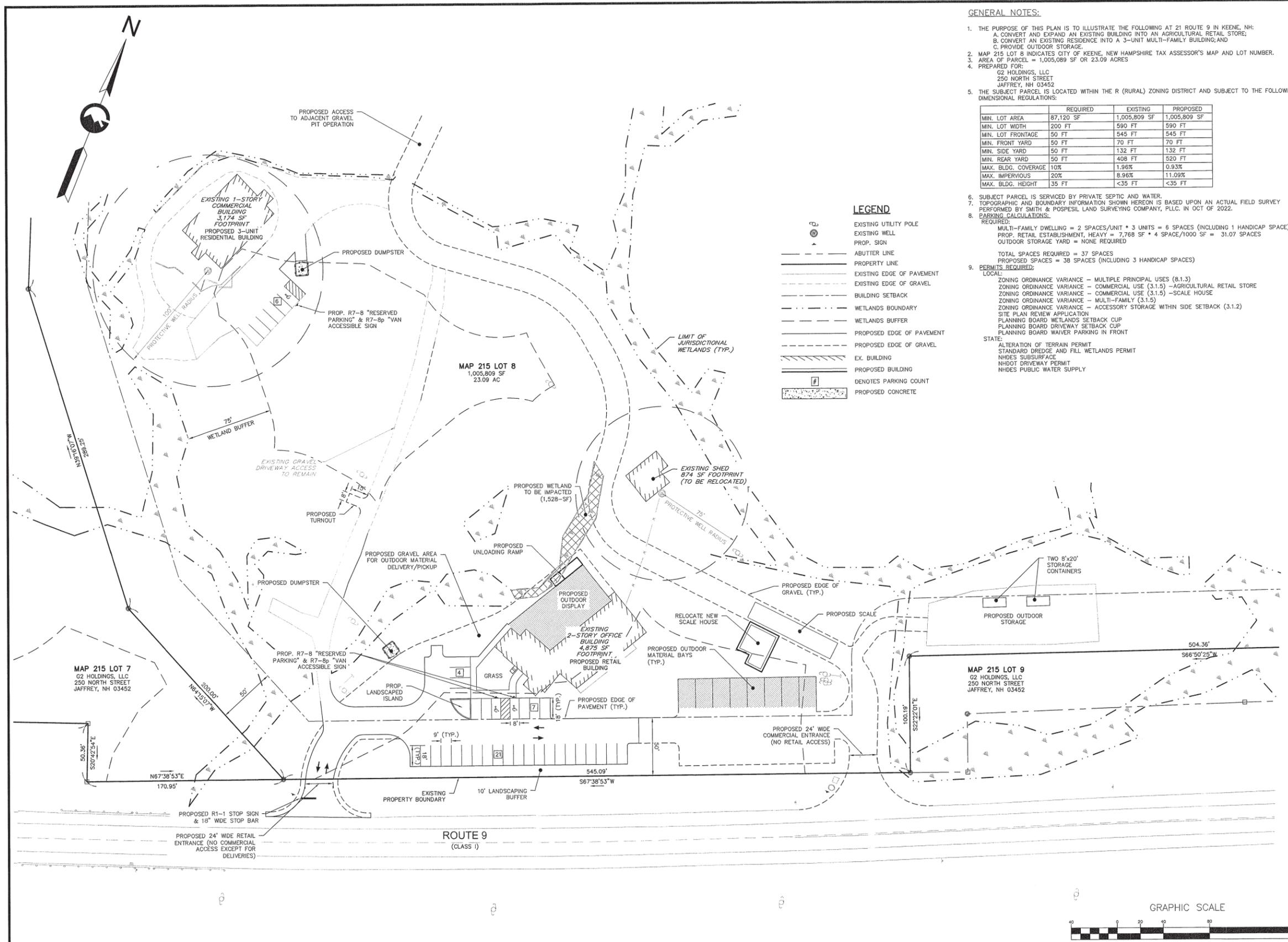
1. Owner of Record: G2 Holdings, LLC 250 North Street, Jaffrey, NH 03452.
2. The Basis of Bearing is Grid. The Horizontal Datum is on the New Hampshire State Plane Coordinate System NAD83 (2011). The Vertical Datum is NAVD 88. Both horizontal and vertical datums were derived from a static GNSS observation 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 of 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 & POSPISIL  
 LAND SURVEYING COMPANY, PLLC  
 240 QUEBEC ROAD, LYMAN, N.H. 03585  
 MARCH 14, 2024



**GENERAL NOTES:**

- THE PURPOSE OF THIS PLAN IS TO ILLUSTRATE THE FOLLOWING AT 21 ROUTE 9 IN KEENE, NH:
  - CONVERT AND EXPAND AN EXISTING BUILDING INTO AN AGRICULTURAL RETAIL STORE;
  - CONVERT AN EXISTING RESIDENCE INTO A 3-UNIT MULTI-FAMILY BUILDING; AND
  - PROVIDE OUTDOOR STORAGE.
- MAP 215 LOT 8 INDICATES CITY OF KEENE, NEW HAMPSHIRE TAX ASSESSOR'S MAP AND LOT NUMBER.
- AREA OF PARCEL = 1,005,089 SF OR 23.09 ACRES
- PREPARED FOR: GZ HOLDINGS, LLC, 250 NORTH STREET, JAFFREY, NH 03452
- THE SUBJECT PARCEL IS LOCATED WITHIN THE R (RURAL) ZONING DISTRICT AND SUBJECT TO THE FOLLOWING DIMENSIONAL REGULATIONS:
 

	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA	87,120 SF	1,005,809 SF	1,005,809 SF
MIN. LOT WIDTH	200 FT	590 FT	590 FT
MIN. LOT FRONTAGE	50 FT	545 FT	545 FT
MIN. FRONT YARD	50 FT	70 FT	70 FT
MIN. SIDE YARD	50 FT	132 FT	132 FT
MIN. REAR YARD	50 FT	408 FT	520 FT
MAX. BLDG. COVERAGE	10%	1.96%	0.93%
MAX. IMPERVIOUS	20%	8.96%	11.09%
MAX. BLDG. HEIGHT	35 FT	<35 FT	<35 FT
- SUBJECT PARCEL IS SERVICED BY PRIVATE SEPTIC AND WATER.
- TOPOGRAPHIC AND BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON AN ACTUAL FIELD SURVEY PERFORMED BY SMITH & POSPESIL LAND SURVEYING COMPANY, PLLC. IN OCT. OF 2022.
- PARKING CALCULATIONS:
 

REQUIRED:

  - MULTI-FAMILY DWELLING = 2 SPACES/UNIT \* 3 UNITS = 6 SPACES (INCLUDING 1 HANDICAP SPACE)
  - PROP. RETAIL ESTABLISHMENT, HEAVY = 7,768 SF \* 4 SPACE/1000 SF = 31.07 SPACES
  - OUTDOOR STORAGE YARD = NONE REQUIRED

TOTAL SPACES REQUIRED = 37 SPACES  
 PROPOSED SPACES = 38 SPACES (INCLUDING 3 HANDICAP SPACES)
- PERMITS REQUIRED:
 

LOCAL:

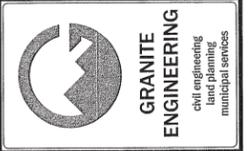
  - ZONING ORDINANCE VARIANCE - MULTIPLE PRINCIPAL USES (8.1.3)
  - ZONING ORDINANCE VARIANCE - COMMERCIAL USE (3.1.5) - AGRICULTURAL RETAIL STORE
  - ZONING ORDINANCE VARIANCE - COMMERCIAL USE (3.1.5) - SCALE HOUSE
  - ZONING ORDINANCE VARIANCE - MULTI-FAMILY (3.1.5)
  - ZONING ORDINANCE VARIANCE - ACCESSORY STORAGE WITHIN SIDE SETBACK (3.1.2)
  - SITE PLAN REVIEW APPLICATION
  - PLANNING BOARD WETLANDS SETBACK CUP
  - PLANNING BOARD DRIVEWAY SETBACK CUP
  - PLANNING BOARD WAIVER PARKING IN FRONT

STATE:

  - ALTERATION OF TERRAIN PERMIT
  - STANDARD DREDGE AND FILL WETLANDS PERMIT
  - NHDES SUBSURFACE
  - NHDOT DRIVEWAY PERMIT
  - NHDES PUBLIC WATER SUPPLY

**LEGEND**

- EXISTING UTILITY POLE
- EXISTING WELL
- PROP. SIGN
- ABUTTER LINE
- PROPERTY LINE
- EXISTING EDGE OF PAVEMENT
- EXISTING EDGE OF GRAVEL
- BUILDING SETBACK
- WETLANDS BOUNDARY
- WETLANDS BUFFER
- PROPOSED EDGE OF PAVEMENT
- PROPOSED EDGE OF GRAVEL
- EX. BUILDING
- PROPOSED BUILDING
- DENOTES PARKING COUNT
- PROPOSED CONCRETE



NO.	DATE	REVISIONS	COMMENTS	BY

OWNER/APPLICANT:  
 GZ HOLDINGS, LLC  
 250 NORTH STREET  
 JAFFREY, NH 03452

**GRANITE ENGINEERING**  
 civil engineering • land planning • municipal services

150 Dow Street, Tower 2, Suite 421  
 Manchester, New Hampshire 03101  
 603.518.8030

www.GraniteEng.com

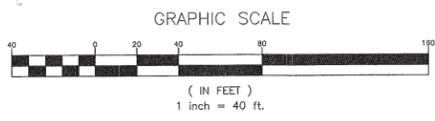
STAMP:

LOCATION:  
 KEENE TAX MAP 215 LOT 8  
 KEENE, NEW HAMPSHIRE  
 CHESHIRE COUNTY

PROJECT:  
**GORDON LANDSCAPE SUPPLY CENTER**

TITLE:  
**ZBA SITE PLAN**

PROJECT No. DATE: 23-0201-1 MARCH 15, 2024  
 SHEET: 1 OF 1  
 SCALE: HORIZ. 1"=40'





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, 2<sup>nd</sup> 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 4<sup>th</sup> 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](mailto: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](mailto: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 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.



## 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, 2<sup>nd</sup> 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 4<sup>th</sup> floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keeneh.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](mailto: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](mailto: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 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.



## 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, 2<sup>nd</sup> 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 4<sup>th</sup> 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](mailto: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](mailto: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.



## 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, 2<sup>nd</sup> 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 4<sup>th</sup> 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](mailto: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](mailto: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.

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# 510 WASHINGTON ST ZBA-2024-11



Petitioner requests a Variance to permit the rear setback of 19.1 feet where 50 feet is required per Articles 5.1.2 of the Zoning Regulations



NOTICE OF HEARING

ZBA-2024-11

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

**ZBA-2024-11:** Petitioner, John Noonan of Fieldstone Land Consultants, 206 Elm St., Milford, requests a Variance for property located at 510 Washington St., Tax Map 532-003-000, is in the Commerce District and is owned by OM 510 Washington Street, LLC, 5 Patriot Lane, Wilbraham, MA. The Petitioner requests a Variance to permit the rear setback of 19.1 feet where 50 feet is required per Article 5.1.2 of the Zoning Regulations.

You are receiving notice of this hearing as an abutter to or owner of property within 200-ft of the subject parcel.

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 4<sup>th</sup> floor of City Hall between the hours of 8:00 am and 4:30 pm or online at <https://keenenh.gov/zoning-board-adjustment>

Please be advised that this may be the only certified notice you will receive. You are encouraged to review future Zoning Board of Adjustment agendas for the status of this application at [keenenh.gov/zoning-board-adjustment](https://keenenh.gov/zoning-board-adjustment). If you have any questions, please contact me at the Community Development Department at (603) 352-5440.

Corinne Marcou, Zoning Clerk  
Notice issuance date April 26, 2024

# Zoning Board of Adjustment Variance Application



<b>For Office Use Only:</b>	
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](mailto: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: OM 510 Washington Street LLC

MAILING ADDRESS: 5 Patriot Ridge Lane, Wilbraham, MA 01095

PHONE:

EMAIL:

SIGNATURE: 

PRINTED NAME: Rakesh Patel

### APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

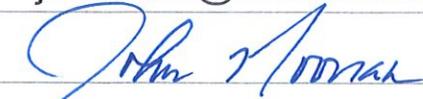
### AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY: Fieldstone Land Consultants, PLLC

MAILING ADDRESS: 206 Elm Street, Milford, NH 03055

PHONE: (603) 672-5456

EMAIL: [jenoonan@fieldstonelandconsultants.com](mailto:jenoonan@fieldstonelandconsultants.com)

SIGNATURE: 

PRINTED NAME: John Noonan

**SECTION 2: PROPERTY INFORMATION**

Property Address: **510 Washington Street**

Tax Map Parcel Number: **532-003**

Zoning District **Commerce District**

Lot Dimensions: Front: **233.5'** Rear: 155.16' Side: 130.87' Side: 141.02'

Lot Area: Acres: **0.744** Square Feet: 32,406

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **10.32%** Proposed: 23.97%

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: 79.63% Proposed: **74.09%**

Present Use: Gas Station, Convenience Store, Laundromat

Proposed Use: Gas Station, Convenience Store, Other Retail 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.

\* See attached

## SECTION 4: APPLICANTION CRITERIA

A Variance is requested from Article (s) 5.1.2 of the Zoning Regulations to permit:

A rear setback encroachment; 50-feet are required, we propose a 19.1-foot rear setback.

*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

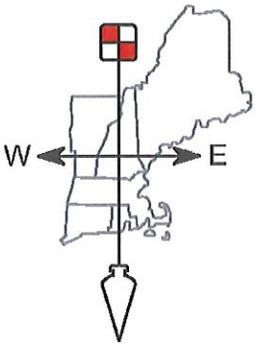
ii. The proposed use is a reasonable one because:

\*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





# FIELDSTONE

Surveying ♦ Engineering  
Land Planning ♦ Septic Designs

LAND CONSULTANTS, PLLC

206 Elm Street, Milford, NH 03055 - Phone: 603-672-5456 - Fax: 603-413-5456  
www.FieldstoneLandConsultants.com

## VARAINCE CRITERIA

### Dinkbee's Convenience Store / Mobil Gas Station Redevelopment

Tax Map 532, Lot 003

510 Washington Street - Keene, NH

April 19, 2024

Prepared For:

OM 510 Washington Street, LLC

### Project Narrative:

Fieldstone Land Consultants, on behalf of OM 510 Washington Street, LLC, is submitting this narrative for a variance application prior to a Planning Board Site Plan review application. The applicant is looking to expand the existing gas station, convenience store, and retail space (currently a laundromat). The proposal consists of razing the existing building, constructing a new building with two separate units, increasing parking spaces, and additional gas pumps.

The site is located on Tax Map 532, Lot 003 with the access and frontage on Washington Street. The size of the lot is listed as 0.744 acres with 233.5' of frontage per the City of Keene tax maps. The zoning district is Commerce (COM). The current use on the property is a gas station with a small convenience store and a laundromat combined in one building, and the use is permitted in this zone. The proposed use would be the same as the existing condition, but expand the space for both uses, provide separate units, and provide more parking on site. The proposal would also increase the number of gas pumps and the installation of a new underground fuel storage tank.

To accommodate the new building, we are requesting a variance from Article 5.1.2 *Dimensions & Siting*, Minimum Rear Setback. The property abuts a residential district, the required rear setback is 50 feet; we are proposing a 19.1-foot rear setback in order to hold the 20-foot front setback. While increasing the building size, adding additional gas pumps and parking, the redevelopment of this parcel will reduce the overall impervious surface by 5.5% from existing conditions.

**VARIANCE REQUEST:** The proposed redevelopment of this property requires a variance pursuant to Article 5, Section 5.1.2 to reduce the rear setback from 50 feet to 19.1 feet.

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

Granting the proposed variance for a reduced rear setback would not be contrary to the public interest. The Commerce District is intended to provide an area for intense commercial development that is predominantly accessed by vehicles. The subject parcel is a stand-alone property for this district in this area. The residential abutters to the rear are atypical; one property, Lot 519-037, is an undeveloped woodlot, with no frontage on any public way and listed as Land Use Code 700 – Forest White Pine in the assessing records. The other rear abutter, Lot 531-045, is a multi-family commercial development with 14 cottage style apartments, the assessing record describes this property as Land Use Code 108- Apartments – Com. The general public purpose of the ordinance is to separate commercial uses from residential uses. The rear abutters are not residential use. For these reasons and because the proposed variance would not alter the essential character of the neighborhood, threaten public health, safety or welfare, or otherwise injure public rights we believe granting the proposed variance would not be contrary to the public interest.

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

Granting the proposed variance would observe the spirit of the ordinance because it would allow this commercial property to be redeveloped. Intense commercial development is the purpose of the Commerce District. The spirit of the ordinance is to separate commercial uses from residential uses; while the abutting properties to the rear of the subject parcel are zoned as residential uses, in practice, these properties are not in keeping with typical residential uses. As outlined above, one of the parcels to the rear is a wood lot and the other parcel is a 14-unit multi-family development. For these reasons and because the proposed variance would not alter the essential character of the neighborhood, threaten public health, safety or welfare, or otherwise injure public rights we believe granting the proposed variance would observe the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Granting the proposed variance for a reduced rear setback would do substantial justice because the redevelopment of this property would benefit the applicant and the general public, by replacing an aging structure and layout with a modern facility that complies with current standards and regulations. Granting the proposed variance would allow for the redevelopment of this property, the expansion of the convenience store which serves many neighborhood residents, and additional gas pumps. The public would realize no appreciable gain from denying this variance.

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

The proposed variance allows for the existing use to continue in a new, expanded facility. There is no evidence that a reduction to the rear setback would diminish surrounding property values. It has been our experience that new development and investment in communities will often result in positive impacts to property values.

5. Unnecessary Hardship

- A. Owing to the 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:

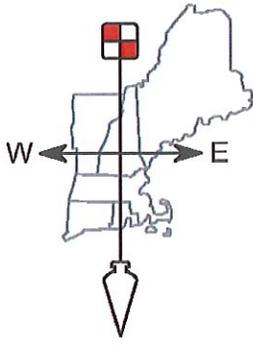
The subject property has special conditions which distinguish it from other properties in the area. As previously stated, the subject property is the only property amongst its immediate neighbors that is in the Commerce District. This property has the only vehicle fueling station in this part of the city and the only fueling station available when traversing NH Route 9 from the east. This property serves an important function for the immediate neighborhood and for travelers from outside the neighborhood both with the store and the gas station. The property is in need of modernization and expansion to keep up with the demand for services in this area. The general purpose of the ordinance is to prevent the proximity of unlike uses from being detrimental to property owners. The specific application of the rear setback requirement on this property, to further separate an existing use in an altered footprint, does not align with the general public purpose of the ordinance. Because of the special conditions of this property, the zoning restriction as applied to this property does not serve its purpose in a fair and substantial way.

- (ii) The proposed use is a reasonable one because:

The proposed use is reasonable because it will replace an existing, aging facility with a new facility that complies with modern standards.

- 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 the 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 special conditions of the property as set forth above distinguish this property from other properties in the area and prevent the property from being developed in strict conformance with the ordinance. A variance is therefore necessary to enable reasonable use of it because the zoning of the property and its lack of proximity to other properties in its zoning district limit the development potential of this property in strict conformance with the ordinance. The variance for a reduced rear setback is reasonable because it meets the spirit of the ordinance, will not diminish surrounding property values, and it will do substantial justice to the property owner and the general public.



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www.FieldstoneLandConsultants.com

April 15, 2024

FLC#3661.00 / SJB

List of Abutters  
Tax Map 532 Lot Number 003  
Keene, New Hampshire

Map 532 Lot 003-000  
OM 510 Washington Street, LLC  
16 East Main Street  
Westborough, MA 01581  
(510 Washington Street)

Map 518 Lot 001-000  
Shakour Diversified Inc  
P.O. Box 487  
Keene, NH 03431  
(520 Washington Street)

Map 518 Lot 002-000  
Jean M. Forbus Living Trust  
522 Washington Street  
Keene, NH 03431

Map 518 Lot 023-000  
Darron V. Friedman  
2 West Diane Drive  
Keene, NH 03431  
(527 Washington Street)

Map 518 Lot 024-000  
Jerusalem Lodge #104 Masonic Association  
525 Washington Street  
Keene, NH 03431

Map 518 Lot 025-000  
John J. Carland, Jr.  
521 Washington Street  
Keene, NH 03431

Map 518 Lot 026-000  
John J. Carland Jr., Faye E. Carland  
521 Washington Street  
Keene, NH 03431  
(0 off Washington Street)

Map 518 Lot 003-000  
Brett A. King, Sr., Kelly J. King  
524 Washington Street  
Keene, NH 03431

Map 518 Lot 004-000  
Chakrya Duggan  
526 Washington Street  
Keene, NH 03431

Map 518 Lot 005-000  
Robert Orr, Donna O'Hara-Orr  
8 June Street  
Keene, NH 03431

Map 519 Lot 037-000  
Fox Trail Farm LLC  
P.O. Box 626  
Keene, NH 03431  
(0 Fox Ave)

Map 519 Lot 039-000  
Warren A Denico III,  
Kristin Marie Denico  
14 June Street  
Keene, NH 03431

Map 531 Lot 045-000  
Charles D. Tousley Rev. Trust  
P.O. Box 626  
Keene, NH 03431  
(508 Washington Street)

Map 532 Lot 001-001  
Toby Tousley  
P.O. Box 626  
Keene, NH 03431  
(500 Washington Street)

Map 532 Lot 015-000  
City of Keene  
3 Washington Street  
Keene, NH 03431  
(0 Giffin Street)

Map 532 Lot 002-000  
Dennis E. Flagg, Eileen M. Flagg  
504 Washington Street  
Keene, NH 03431

Map 532 Lot 004-000  
Diane E. Burke, Daniel P. Burke  
515 Washington Street  
Keene, NH 03431

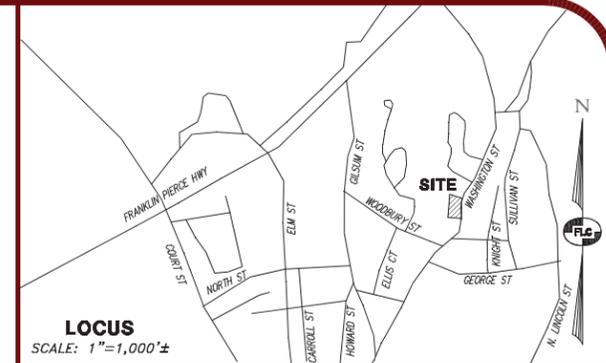
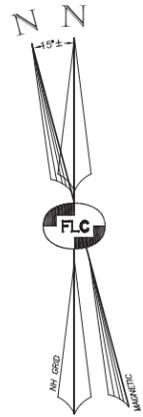
Map 532 Lot 005-000  
Jordan J. Estrada, Brianna Estrada  
27 Valleyview Drive  
Merrimack, NH 03054  
(507 Washington Street)

Map 532 Lot 006-000  
Patel K. Dharmesh  
503 Washington Street  
Keene, NH 03431

Map 532 Lot 007-000  
Jonathan R. Turgeon, Amy L. Campbell  
499 Washington Street  
Keene, NH 03431

Map 532 Lot 001-000  
Toby D. Tousley  
P.O. Box 626  
Keene, NH 03431  
(490 Washington Street)

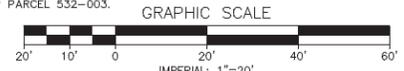
Engineer:  
Fieldstone Land Consultants, PLLC  
206 Elm Street  
Milford, NH 03055



**LOCUS**  
SCALE: 1"=1,000±

- NOTES:**
- OWNER OF RECORD FOR LOT 523-003 IS OM 510 WASHINGTON STREET, LLC, 16 EAST MAIN STREET, WESTBOROUGH, MA 01581. SEE C.C.R.D. BK. 3169 PG. 267 DATED JUNE 24, 2021
  - THE PURPOSE OF THIS PLAN IS TO DEPICT A PROPOSED CONVENIENCE STORE AND GAS STATION EXPANSION ALONG WITH ASSOCIATED SITE IMPROVEMENTS AS SHOWN.
  - THE TOTAL AREA OF TAX MAP LOT 532-003 IS 32,406 SQ. FT. OR 0.744 ACRES PER THE REFERENCE PLAN CITED HEREON. LOT FRONTAGE IS 233.00' ALONG WASHINGTON STREET.
  - THE PROPERTY IS LOCATED WITHIN THE COMMERCE DISTRICT (COM).
  - CURRENT ZONING REQUIREMENTS FOR THE COMMERCE ZONE:
 

MINIMUM LOT REQUIREMENTS	REQUIRED
LOT AREA (SF)	15,000
LOT FRONTAGE (FT)	50
FRONT (FT)	20
SIDE (FT)	20
REAR (FT)	50 (ABUTS RESIDENTIAL)
MAX. BUILDING STORIES	2
MAX. BUILDING HEIGHT (FT)	35
MAX. BUILDING COVERAGE (%)	80
MIN. GREEN/OPEN SPACE (%)	20
  - PARKING CALCULATION:**  
 -VEHICLE FUELING STATION (WITH OR WITHOUT RETAIL STORE) = 4 SPACES / 1,000 SF GFA  
 4,352 SF X 4 / 1,000 = 17.4 SPACES  
 -RETAIL ESTABLISHMENT, LIGHT (SMOKE SHOP) = 4 SPACES / 1,000 SF GFA  
 2,040 SF X 4 / 1,000 = 8.2 SPACES  
 TOTAL SPACES REQUIRED = 17.4 + 8.2 = 25.6 = 26 SPACES  
 TOTAL SPACES PROVIDED = 26 SPACES (INCLUDING 1 ADA SPACE)
  - THE BOUNDARY INFORMATION AND EXISTING FEATURES SHOWN WERE DEVELOPED FROM THE REFERENCE PLANS CITED HEREON AND ON-SITE FIELD SURVEY PERFORMED BY THIS OFFICE DURING THE MONTH OF OCTOBER 2023.
  - THE UNDERGROUND UTILITIES SHOWN HAVE BEEN COMPILED IN PART FROM PLANS OF RECORD AND FIELD LOCATION. THE LOCATION OF UNDERGROUND UTILITIES SHOULD BE CONSIDERED APPROXIMATE AND SHALL BE FIELD VERIFIED PRIOR TO ANY EXCAVATION OR CONSTRUCTION ACTIVITIES.
  - NO JURISDICTIONAL WETLANDS WERE FOUND ON THE PROPERTY.
  - THE LOT LINES LIE OUTSIDE THE LIMITS OF THE FLOOD HAZARD AREA PER FEMA F.I.R.M. PANEL 330050C0259E DATED MAY 23, 2006 FOR KEENE, NEW HAMPSHIRE COMMUNITY NO. 330023.
  - USDA SOIL TYPE FOR THE ENTIRE PARCEL IS 526B - CAESAR LOAMY SAND, 3% TO 8% SLOPES.
  - THE HORIZONTAL ORIENTATION AND VERTICAL DATUM ARE NAD83 AND NAVD88.
  - A PORTION OF TAX MAP PARCEL 531-045 LIES WITHIN THE SURFACE WATER PROTECTION OVERLAY DISTRICT WHICH REQUIRES A 30' WETLAND BUFFER. THE 30' BUFFER EXTENDS INTO TAP MAP PARCEL 532-003.



REV.	DATE	DESCRIPTION	C/O	DR	CK

**ZBA EXHIBIT**  
**TAX MAP LOT 532-003**  
**(510 WASHINGTON STREET)**  
**KEENE, NEW HAMPSHIRE**  
 PREPARED FOR:  
**RAKESH PATEL**  
 5 PATRIOT RIDGE LANE WILBRAHAM, MA 01095  
 LAND OF:  
**OM 510 WASHINGTON STREET LLC**  
 16 EAST MAIN STREET, WESTBOROUGH, MA 01581

SCALE: 1" = 20' APRIL 19, 2024

Surveying + Engineering + Land Planning + Permitting + Septic Designs

**FIELDSTONE**  
**LAND CONSULTANTS, PLLC**  
 206 Elm Street, Millford, NH 03055  
 Phone: (603) 672-5456 Fax: (603) 413-5456  
 www.FieldstoneLandConsultants.com

**REFERENCE PLAN:**  
 1. "BOUNDARY LINE ADJUSTMENT PLAN - BETWEEN LANDS OF - TOBY TOUSLEY - TAX MAP PARCEL NO. 532-003 - 510 WASHINGTON ST., KEENE, NEW HAMPSHIRE - & - FOX TRAIL FARM LLC - TAX MAP PARCEL NO. 519.037 - 0 FOX AVE., KEENE, NEW HAMPSHIRE", SCALE: 1"=40', DATED APRIL 22, 2021 BY HUNTLEY SURVEY & DESIGN, PLLC. PLAN IS RECORDED AS PLAN NO. 21074 34 IN THE C.C.R.D.

**LEGEND:**

EXISTING FEATURES	PROPOSED FEATURES
RIGHT-OF-WAY LINE	TEMPORARY SILT FENCE
BOUNDARY LINE	518 2 FT. CONTOUR
ABUTTING LOT LINE	520 10 FT. CONTOUR
BUILDING SETBACK LINE	SPOT GRADE ELEVATION
EDGE OF PAVED ROAD	SPOT ELEVATION AT CURB
EDGE OF GRAVEL ROAD	STORM WATER DRAINAGE
CURB LINE	DRAIN MANHOLE
STONE WALL	SILT SOCK FOR ALL CATCH BASINS
EDGE OF TREE LINE	SOIL TEST PIT
EDGE OF WETLANDS	TP: 1 L=LEDGE S=WATER ELEV.
WETLANDS BUFFER LINE	EDGE OF PAVEMENT
10' CONTOUR INTERVAL	CURBLINE (CAPE COD BERM)
2' CONTOUR INTERVAL	CURBLINE (GRANITE)
CULVERT	ASPHALT PAVED AREA
OVERHEAD UTILITY LINE	BUILDING
<b>532-003</b> TAX MAP & LOT NUMBER	TRAFFIC FLOW (NOT PAINTED ARROWS)
GRANITE BOUND FOUND	CONCRETE PAD/SIDEWALK
DRILL HOLE FOUND	HANDICAP PARKING STALL
IRON PIN FOUND	PROPOSED SANITARY SEWER
IRON PIPE FOUND	CULVERT W/ END SECTION & RIP-RAP
DRILL HOLE SET	HYDRANT, GATE VALVE & WATER MAIN
UTILITY POLE & GUY	GAS LINE, PROPANE
CATCH BASIN (SQUARE)	POLE & BUILDING MOUNTED LIGHTS
SEWER CLEAN-OUT	SIGN
WATER HYDRANT	
EXISTING BUILDING	
EXIST. UTILITY, ACCESS EASEMENT	

**UNIT 1 (4,352 SF)**  
**UNIT 2 (2,040 SF)**  
 TOTAL AREA=6,392 SF

**531-045**  
**CHARLES D. TOUSLEY REV. TRUST**  
 P.O. BOX 626  
 KEENE, NH 03431  
 BK 2864 PG 0304 03/20/2014

**532-003**  
**0.744 ± ACRES**  
 32,406 SQ.FT. ±  
 (PER REF. PLAN)

**519-037**  
**FOX TRAIL FARM LLC**  
 P.O. BOX 626  
 KEENE, NH 03431  
 BK 3102 PG 0477 03/03/2020

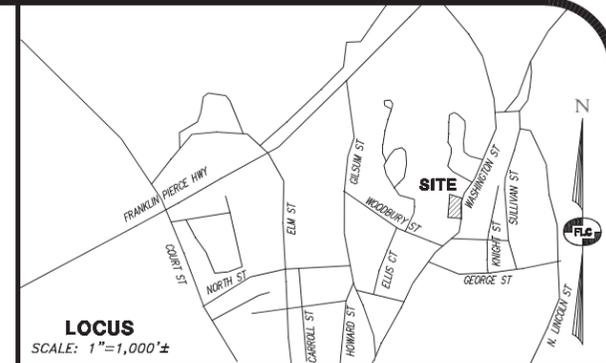
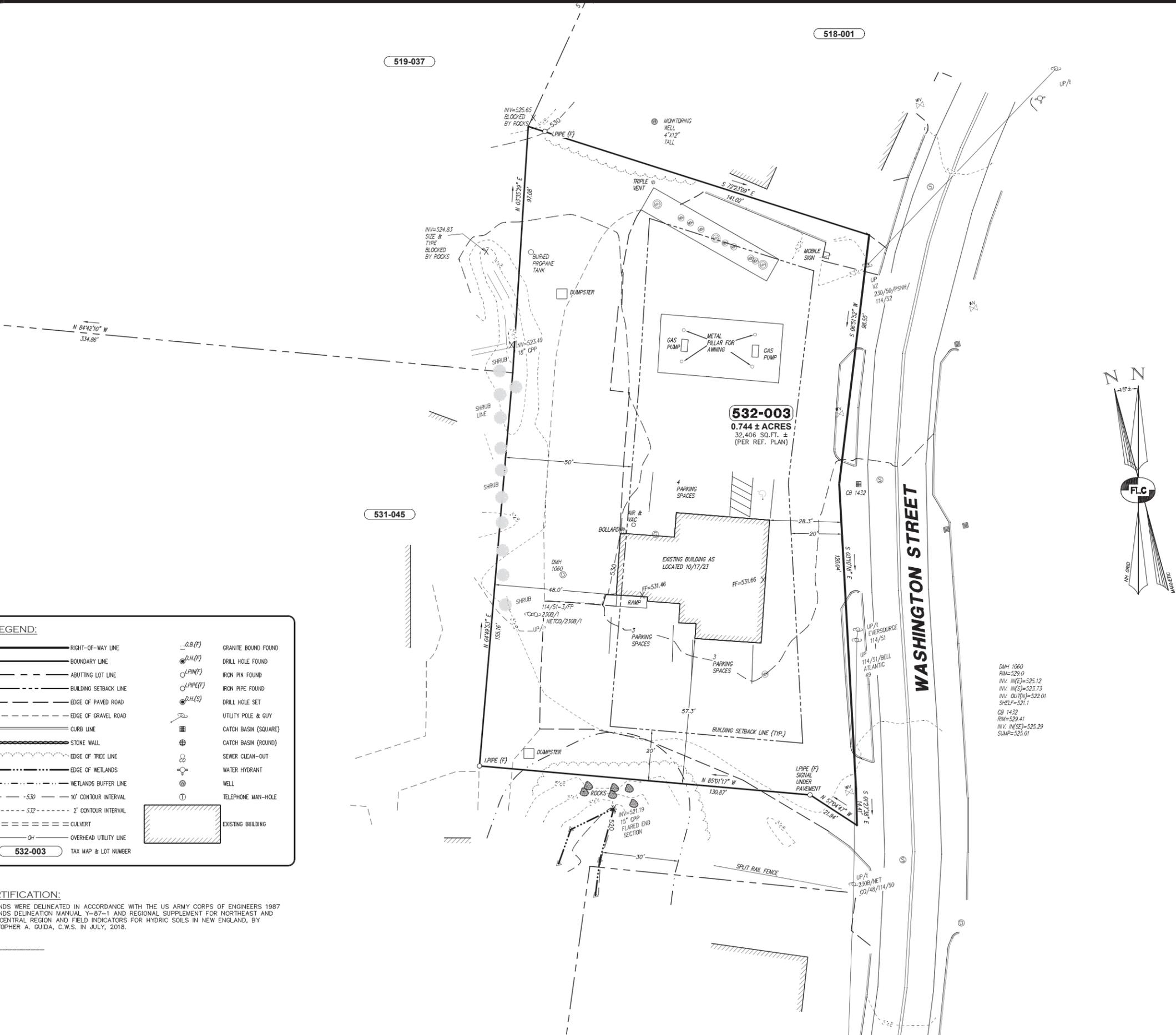
**518-001**  
**SHAKOUR DIVERSIFIED INC**  
 P.O. BOX 487  
 KEENE, NH 03431  
 BK 0835 PG 0487

**518-024**  
**JERUSALEM LODGE #14 MASONIC ASSOCIATION**  
 525 WASHINGTON ST.  
 KEENE, NH 03431  
 BK 2203 PG 0939 12/15/2004

**518-025**  
**JOHN J. CARLAND JR.**  
 521 WASHINGTON ST.  
 KEENE, NH 03431  
 BK 1037 PG 0402 06/01/1983

**532-004**  
**DIANE E. BURKE**  
 515 WASHINGTON ST.  
 KEENE, NH 03431-2748  
 BK 3157 PG 0660 04/02/2021

**532-005**  
**JORDAN J. ESTRADA**  
 27 VALLEYVIEW DR.  
 MERRIMACK, NH 03054  
 BK 3234 PG 0828 12/15/2022



- LOCUS**  
SCALE: 1"=1,000'±
- NOTES:**
- OWNER OF RECORD FOR LOT 523-003 IS OM 510 WASHINGTON STREET, LLC, 16 EAST MAIN STREET, WESTBOROUGH, MA 01581.
  - THE PURPOSE OF THIS PLAN IS TO DEPICT EXISTING CONDITIONS AND IMPROVEMENTS ON TAX MAP PARCEL 532-003.
  - THE BOUNDARY INFORMATION AND EXISTING FEATURES SHOWN WERE DEVELOPED FROM THE REFERENCE PLANS CITED HEREON AND ON-SITE FIELD SURVEY PERFORMED BY THIS OFFICE ON OCTOBER 17, 2023.
  - CURRENT ZONING REQUIREMENTS FOR THE COMMERCE ZONE:

MINIMUM LOT REQUIREMENTS	REQUIRED
LOT AREA (SF)	15,000
LOT FRONTAGE (FT)	50
<b>MINIMUM BUILDING SETBACKS:</b>	
FRONT (FT)	20
SIDE (FT)	20
REAR (FT)	50 (ABUTS RESIDENTIAL)
MAX. BUILDING STORIES	2
MAX. BUILDING HEIGHT (FT)	35
MAX. BUILDING COVERAGE (%)	80
MAX. LOT COVERAGE (%)	80

**LEGEND:**

—	RIGHT-OF-WAY LINE	○ G.B.(F)	GRANITE BOUND FOUND
—	BOUNDARY LINE	● D.H.(F)	DRILL HOLE FOUND
---	ABUTTING LOT LINE	○ I.P.M.(F)	IRON PIN FOUND
---	BUILDING SETBACK LINE	○ I.PIPE(F)	IRON PIPE FOUND
---	EDGE OF PAVED ROAD	● D.H.(S)	DRILL HOLE SET
---	EDGE OF GRAVEL ROAD	—	UTILITY POLE & GUY
---	CURB LINE	■	CATCH BASIN (SQUARE)
---	STONE WALL	■	CATCH BASIN (ROUND)
---	EDGE OF TREE LINE	—	SEWER CLEAN-OUT
---	EDGE OF WETLANDS	—	WATER HYDRANT
---	WETLANDS BUFFER LINE	○	WELL
---	10' CONTOUR INTERVAL	○	TELEPHONE MAN-HOLE
---	2' CONTOUR INTERVAL	▭	EXISTING BUILDING
---	CULVERT		
---	OVERHEAD UTILITY LINE		
---	TAX MAP & LOT NUMBER		

**CERTIFICATION:**  
WETLANDS WERE DELINEATED IN ACCORDANCE WITH THE US ARMY CORPS OF ENGINEERS 1987 WETLANDS DELINEATION MANUAL Y-87-1 AND REGIONAL SUPPLEMENT FOR NORTHEAST AND NORTHCENTRAL REGION AND FIELD INDICATORS FOR HYDRIC SOILS IN NEW ENGLAND, BY CHRISTOPHER A. GUIDA, C.W.S. IN JULY, 2018.

DATE: \_\_\_\_\_

REV.	DATE	DESCRIPTION	C/O	DR	CK

**EXISTING CONDITIONS PLAN**  
**TAX MAP LOT 532-003**  
**(510 WASHINGTON STREET)**  
**KEENE, NEW HAMPSHIRE**  
**PREPARED FOR:**  
**RAKESH PATEL**  
**5 PATRIOT RIDGE LANE WILBRAHAM, MA 01095**  
**LAND OF:**  
**OM 510 WASHINGTON STREET LLC**  
**16 EAST MAIN STREET, WESTBOROUGH, MA 01581**

SCALE: 1" = 20' DECEMBER 21, 2023

Surveying + Engineering + Land Planning + Permitting + Septic Designs

**FIELDSTONE**  
**LAND CONSULTANTS, PLLC**

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