



City of Keene Zoning Board of Adjustment

AGENDA

Tuesday, September 5, 2023
Council Chambers

6:30 p.m.

City Hall, 2nd Floor

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: August 7, 2023
- III. Unfinished Business:
- IV. Hearings:

ZBA 23-23: Petitioner, Live Free Recovery, LLC., represented by Chuck Ritchie of Fieldstone Land Consultants, PLLC, requests an Expansion for property located at 106 Roxbury St., Tax Map #569-066-000 and is in the Downtown Edge District. The Petitioner requests an expansion of a 16 bed residential drug/alcohol treatment facility to a 28 bed residential drug/alcohol treatment facility. The expansion does not require any external changes to the building or site.

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

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1 **City of Keene**
2 **New Hampshire**

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

8 **Monday, August 7, 2023**

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Joseph Hoppock, Chair
Jane Taylor, Vice Chair
Joshua Gorman
Michael Welsh
Richard Clough

Staff Present:

Corinne Marcou, Zoning Clerk
Michael Hagan, Plans Examiner

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

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

15 **II) Minutes of the Previous Meeting – July 3, 2023**
16

17 Ms. Taylor stated that lines 174 to 189 in the meeting minutes of July 3, 2023 have references to
18 “344 Chapman Rd.,” and her question is whether it should be 334 Chapman Rd. She is not sure
19 if that was a typo or if the speaker said “344.” Zoning Clerk Corinne Marcou replied that she
20 and the minute taker will listen to the audio to determine the answer and make corrections if
21 needed. Mr. Gorman stated that he recalls the owner also referring to the property as “344.” Ms.
22 Taylor replied that it is confusing, because the application was 334.
23

24 Mr. Gorman made a motion to approve the minutes of July 3, 2023, subject to the address
25 correction. Mr. Welsh seconded the motion, which passed by unanimous vote.
26

27 **III) Unfinished Business**
28

29 Chair Hoppock asked if there was unfinished business. Staff replied no.
30

31 **IV) Hearings**
32
33

34 **A) Continued ZBA 23-16: Petitioner, 147-151 Main Street, LLC and**
35 **represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a**
36 **Special Exception for property located at 147 Main St., Tax Map #584-060-000-and**
37 **is in the Downtown Core District. The Petitioner requests to permit a drive-through**
38 **use in the Downtown Core District at this property, per Chapter 100, Article**
39 **8.4.2.C.2 of the Zoning Regulations.**
40

41 Plans Examiner Michael Hagan stated that the ZBA continued this petition from the last meeting.
42 He further stated that staff did some research and found there was a Variance on the abutting
43 property, which was in question, at 143 Main St. It will now be subdivided and reduce the
44 parking area for that. The Variance was granted in 2020 and has now expired. If they want to do
45 the use, or another use, they will have to come back and comply with those requirements. The
46 Variance expired because it was not executed with the building permit.
47

48 Chair Hoppock asked if anyone had questions about that. Hearing none, he asked to hear from
49 Jim Phippard of Brickstone Land Use Consultants, LLC.
50

51 Jim Phippard stated that in June, this was continued, because the Board felt the information
52 (about 143 Main St.) was necessary before they deliberated. He continued that at the July
53 meeting, there were only four Board members present and the applicant requested a full Board of
54 five, which brings them too tonight.
55

56 Mr. Phippard stated that since it has been two months, he will briefly review the Special
57 Exception criteria. He indicated 147 Main St. on an image, and Davis St., and stated that the
58 colored-in area is the land in the property that is included in this request. He continued that in
59 this location, the building burned and has been razed, filled and is ready to be redeveloped. The
60 owner, 147-151 Main St., LLC, proposes constructing a new three-story building on this
61 property that would have mixed uses on the ground floor and apartments on the upper two floors.
62 He showed a drawing of the proposed building and stated that it matches the footprint of the
63 previous building and is essentially lot line to lot line. He continued that they propose a
64 boundary line adjustment with the adjacent property at the rear, which will enable them to
65 lengthen the lot. Today the lot is 63 feet wide and 130 feet long. With the proposed boundary
66 line adjustment, it will be 63 feet wide but 176 feet long. That enables them to add on-site
67 parking and a proposed drive-through lane. The drive-through lane is permitted in the
68 Downtown Core District by Special Exception
69

70 Mr. Phippard continued that the drive-through use will be a restaurant located in half of the
71 building with a pick-up window. It will not be a typical drive-through like the others in Keene as
72 there is no order board when you drive in. It is just an access for cars to come in and pick up
73 their order, which they either phoned in or placed online, and paid for remotely. They will be
74 coming to the drive-through just to pick the order up. It is a relatively new development in the
75 food industry because of the pandemic and is becoming more popular. It is a shorter drive-
76 through lane than one at McDonalds or Dunkin in town, because the lack of order board means

77 they do not need the queuing lane. People will have already placed their orders and paid for their
78 food and will just be coming through to pick it up. If a person is told their order will be ready in
79 20 minutes and arrives at the site after 15 minutes and the order is not ready, (an employee) will
80 tell the person to come back in five minutes, and to not sit there and form a queue on the
81 property. It is no secret that the restaurant proposing to go here is Little Caesars. There are
82 thousands of Little Caesars across the country and this is how they do (business) today; they
83 know what they are doing, having done it over and over in many locations, and it works. It is an
84 idea that has finally come to Keene.

85

86 Mr. Phippard stated that he will go through the criteria.

87

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

91

92 Mr. Phippard stated that the drive-through use is permitted by Special Exception, so (the City)
93 contemplated that this type of use might be proposed. He continued that this is a good location
94 for it. The mixed-use building will add to the vibrancy of downtown because there will be
95 apartments as well as businesses. They feel that complies with the recommendations of the
96 Comprehensive Master Plan (CMP) and it will provide a convenient operation for customers to
97 order food and come through to pick it up. There are no outside seats, like there used to be for
98 Cobblestone (the former business). There are no seats inside; it is not a sit-down restaurant; this
99 is a take-out only restaurant.

100

101 *2. The proposed use will be established, maintained, and operated so as not to endanger the*
102 *public health, safety, or welfare.*

103

104 Mr. Phippard stated that he explained how the drive-through lane works, and that is what makes
105 it work – no order board, no stopping to pay, no waiting for your food to be prepared while you
106 are sitting in line. He continued that he thinks it will operate safely in this location with access to
107 the site from Davis St. There is a one-way entrance, with cars traveling through to a one-way
108 exit, and then they can go right or left on Davis St. The intersection at Main St., because there is
109 a median on that section, has a right-turn-only in and right-turn-only out. The intersection
110 operates efficiently and safely. They avoid the safety issues that can be created by long queues.

111

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

115

116 Mr. Phippard stated that the preliminary drawing gives the Board an idea of the architecture. He
117 continued that it is a brick building. The drawing shows the windows for the apartments on the
118 upper two floors. The ground floor will have the storefront glass one would expect to see on
119 Main St. The architecture is similar to and harmonious with the downtown architecture, thus, he
120 and his client think it fits in very well with the downtown businesses, and they think it will be a
121 complement to the nearby buildings and businesses. Since there is no indoor or outdoor seating,
122 there is very little noise associated with this use. There are no fumes or vibrations that could

123 disturb abutting properties. An enclosed dumpster will be located at the back corner of the
124 property where it is easily accessible for the trash company to get in and out. They think it fits
125 the site very well. They have also added five on-site parking spaces, which will either be
126 available to employees or assigned to residents on the upper floors. Parking is not required in the
127 Downtown Core, though there is public parking available on Davis St. and Main St. The
128 Commercial St. lot is a short walk away from this property as well. They think the (drive-
129 through) can operate efficiently in this location and not cause a problem for any adjacent
130 properties.

131
132 4. *The proposed use will be of a character that does not produce noise, odors, glare, and/or*
133 *vibration that adversely affects the surrounding area.*
134

135 Mr. Phippard stated that he has already covered why he believes this (criterion) is (met) – there
136 will be no outdoor seating and no order board. He continued that the hours of operation will be
137 10:30 AM to 9:00 PM, seven days a week. Since they are not open late at night, they will not be
138 generating a lot of noise after hours. Since they do not open until 10:30 AM, that misses the
139 peak hours of traffic in the morning. They anticipate having 200 sales per day. Little Caesars
140 knows their business, and for this type of location and this size of facility, they can accurately
141 predict what their sales will be. They anticipate 60 sales during the peak hour of 5:30 to 6:30
142 PM. Sixty vehicle trips with cars entering and exiting on Davis St. and then either continuing to
143 Main St. or down toward Wilson St. Sixty vehicle trips in an hour is not a lot of traffic. The
144 Planning Board does not require applicants to do a traffic report unless there are 100 cars or
145 more; this is under that threshold. He does not anticipate any problems with traffic, especially
146 with Main St. as a right-in-only/right-out-only.

147
148 5. *The proposed use will not place an excessive burden on public improvements, facilities,*
149 *services, or utilities.*
150

151 [Mr. Phippard did not speak to this criterion, moving from #4 to #6, though the applicants
152 written narrative is discussed in response for #4.]

153
154 6. *The proposed use will not result in the destruction, loss, or damage of any feature*
155 *determined to be of significant natural, scenic, or historic importance.*
156

157 Mr. Phippard stated that the old building is already gone. He continued that it burned quite badly
158 and could not be saved. It has been completely removed from the property, which is now a
159 vacant lot. Thus, there are no features for which this (criterion) would (apply).

160
161 7. *The proposed use will not create a traffic safety hazard or a substantial increase in the*
162 *level of traffic congestion in the vicinity of the use.*
163

164 Mr. Phippard stated that they will have up to 20 employees, who will work different shifts during
165 the day. He continued that there will be up to four employees, at a maximum, during any one
166 shift with on-site parking for employees. In addition, as he described, the intersection will have
167 right-in/right-out turns, and thus should not create a safety hazard at all.

168

169 Mr. Welsh stated that he has a few areas of question. He continued that one is the application's
170 consistency with the CMP. Mr. Phippard makes the argument that the upstairs, and the varied
171 uses of the building, is consistent with the CMP, and he agrees. However, throughout the CMP
172 is an emphasis on (development that is) human-scale, walkable, (with) pedestrian access, and
173 things like that. A case could be made that this applicant is more consistent with the CMP if it
174 were not solely a car drive-through facility. He asked if it is possible to have not seating or
175 (space for) consumption on the premises, but pick-up of an order that does not involve a car.
176

177 Mr. Phippard replied yes, they anticipate a large part of the market will be college students, and
178 because the college is within walking distance, they think that a lot of their traffic in that area
179 will be foot traffic.
180

181 Mr. Welsh stated that his second question is in regard to the impact on the surrounding
182 properties. He continued that he likes the idea that people whose food is not ready may agree to
183 leave and drive around for two minutes, but he can also see the possibility that they would want
184 to just stick around if it will only be a couple minutes. He can see both sides and will take that as
185 a wash. The surrounding properties include a bar immediately to the west, which has outdoor
186 seating and presumably wants to preserve an atmosphere that is conducive to people hanging out
187 there. He thinks another restaurant is going in immediately to the west as well. He asked what
188 Mr. Phippard would say to someone who says that (the drive-through use) will create glare,
189 vibration, and possibly odors that would be offensive to the people in those facilities.
190

191 Mr. Phippard replied that there is already another pizza place close by, two properties over. He
192 continued that there will be a commercial vent from the commercial kitchen, so he imagines
193 there will be the smell of pizzas cooking. There are no windows on the west side of the building,
194 just the pick-up window. There are doors, then apartments upstairs. He does not think that
195 (creates) excessive glare that will affect the operations of the business to the west. Mr. Welsh
196 replied that he is thinking about the headlights from the cars that roll through to pick up their
197 food. Mr. Phippard replied that the Land Development Code (LDC) requires screening for drive-
198 through lanes, which means there will be a six-foot high solid fence along the westerly boundary,
199 screening the headlights of the cars turning in. He continued that there is also a six-foot high
200 fence in (another) area, and then cars are back on the street. Ways to address that type of
201 situation are thus built into the regulations.
202

203 Mr. Welsh stated that his last area of concern is the potential for congestion on Davis St., a side
204 street that does not get a lot of traffic. He continued that he could see people wanting to come
205 into this property from both lanes, and getting into situations where there is already a queue and
206 waiting perhaps on the street. He knows a traffic study is not required, but he wonders if Mr.
207 Phippard foresees, given the number of spaces or amount of space on the property, that there will
208 be times during peak hour when people will be waiting in the street to enter the property to do
209 their pick-up.
210

211 Mr. Phippard replied that he does not anticipate people would be waiting in the streets unless
212 they are using one of the parallel parking spaces available on the opposite side of the street. He
213 continued that people are likely to wander into the large parking lot at St. Bernard's Church,
214 which is always rather empty except for Sunday mornings. Even when the church has evening
215 events and activities, hundreds of parking spaces are still available. People will park there, as he
216 himself has when he was unable to find parking downtown when Dominos was here. He thinks
217 people are much more likely to park at the church and walk over, than to park in the road or
218 obstruct traffic. Davis St. has a low level of traffic, which is good. It has enough capacity to
219 easily take on 60 additional vehicle trips over a one-hour period. That is one car per minute,
220 which is not a tremendously high volume, and below the threshold for traffic studies.

221
222 Mr. Gorman stated that going back to Mr. Welsh's question about the CMP, he understands that
223 the mixed use is a perfect use and in the spirit of the CMP. That is inarguable, however, the
224 reason they are here tonight is the drive-through, not the mixed use. He asked if Mr. Phippard
225 could say more about how the drive-through is in the spirit of the CMP or the LDC.

226
227 Mr. Phippard replied that mostly it relates to customer experience and customer satisfaction. He
228 continued that customers today want that convenience; they do not want to have to park and get
229 out of their car. That is why (Little Caesars) has gone in this direction across the country, and he
230 thinks it will hold true here as well. Providing a business downtown that meets customers'
231 requirements and satisfies customers is good economically for downtown Keene. It brings
232 people back to this area and meets their needs.

233
234 Mr. Gorman stated that regarding the traffic, he noticed that in the drawing the lane is much
235 wider on the entrance side as opposed to the exit side, and out of curiosity, wondering what the
236 purpose is. He asked if there would be two lanes to enter and one to exit, or if it is just the
237 placement. Mr. Phippard replied that part of developing a site plan is looking at turning radiuses,
238 and a garbage truck coming into the property from either direction to access the dumpsters needs
239 the wider lane.

240
241 Mr. Gorman stated that it is hard to see in the drawing how many cars would fit in line during the
242 peak hour of business. Mr. Phippard replied that it would be five or six, depending on how close
243 (they are to each other). He continued that typically they allow 24 feet per car in a drive-through
244 lane. Depending on the use, the most common size is a ten-car queue. That did not work for the
245 business that he will be talking about in the next hearing on tonight's agenda. However, this
246 type of drive-through lane is much quicker since it is just for pick-up and not ordering, paying, or
247 waiting, since ordering and paying have already been done.

248
249 Ms. Taylor stated that she, too, has traffic concerns. She continued that Mr. Phippard mentioned
250 the next application. When that came before the ZBA, (Mr. Phippard said) they (the business)
251 would be able to service a car in about a minute, so they could have sixty cars in an hour.
252 Obviously, that did not work, because the ZBA has the next application (for a Variance). And
253 that (business) could, as Mr. Phippard said, stack ten cars. Now, the ZBA has this application for

254 a drive-through (for Little Caesars), and the theory is that each car will take about a minute to get
255 through the drive-through, but only five or six cars can be stacked. She is very concerned. St.
256 Joseph's is a school and there are many children running around when school is in session.
257 There is considerable traffic on Davis St., stating that when she has been there, the parking
258 spaces are usually full. She is concerned about creating another issue, even though Davis St. is a
259 secondary street and West St. (where the business in the next application is) is a primary street.
260 She asked Mr. Phippard to address that.

261
262 Mr. Phippard stated that he is sorry he brought up the next application, because he does not want
263 to mix the two. Ms. Taylor replied that she is not trying to; she is just talking about the idea of
264 "a minute per car," and questioning whether that actually works. Mr. Phippard replied that the
265 school across the street is open in daylight hours, Monday through Friday, whereas (Little
266 Caesars) peak hour is 5:30 to 6:30 PM when the school is closed, when the children are gone and
267 the school's parking lot is mostly empty. He continued, that adding that amount of traffic at that
268 time of day is safe and does not interfere with the school's operation or the children's safety.
269 Regarding the 60 vehicle trips, if you are just driving in to pick up your order when it is ready, it
270 takes less than a minute for you to say who you are and give your order number, take your pizza,
271 and drive away. When he asked the Little Caesars representative about it, saying that only five
272 cars will fit in the queue, he said, "That is more than we need." The Little Caesar's
273 representative explained to Mr. Phippard in detail how the operation works. He (Mr. Phippard)
274 believes him. He will go into far more detail in the next application to help the Board understand
275 what happened (with the other business with the ten-car queue), but this is a completely different
276 operation for a drive-through lane as it is pick-up only; that is what makes all the difference.
277 Little Caesars has about 4,000 restaurants across the country, and they are doing this (drive-
278 through) in as many of them as they can. They already have hundreds and hundreds (of drive-
279 throughs) they were able to give Mr. Phippard information about, regarding their needs for the
280 queue. They will not have an order board and will not have any seating. There is no reason for
281 customers to linger there unless they come too early and are trying to linger because their order
282 is not ready. (Little Caesars') operation teaches them to leave; (employees tell) them to come
283 back in five minutes and their order will be ready. When he (Mr. Phippard) submitted this
284 application (to the Community Development Department), John Rogers tested him on this,
285 saying that he is one of those people who will call in an order then go right down and wait ten
286 minutes at the site. You will not wait ten minutes here, because (Little Caesars) will not let you.
287 As you would be blocking the drive-through and other customers coming to pick up their orders.
288 (Employees) will say, 'John Rogers, you were told to come at 7:00 when your order would be
289 ready, and here it is 6:50, so please come back.' (In that situation) they would already have Mr.
290 Rogers's money. He does not know if they would lose repeat business from it; a customer may
291 get angry, but probably he will (leave the queue) and not cause a problem.

292
293 Ms. Taylor asked how it is supposed to be handled if there are, say, four cars waiting to pick up
294 their orders and someone wants to back out of one of those parking spaces. Mr. Phippard replied
295 that there is a chance that could happen. He continued that she might have noticed the width.
296 They will paint a line in the parking lot so that when they go to the pick-up window, they are on

297 the outside of that lane, and if someone must get out of a space, there is enough room for them to
298 back out. They might have to wiggle a couple times to get out, but it is doable. They looked at
299 that with their turning templates, just to make sure. It works unless someone is driving an
300 extended cab pick-up truck, four-door, 24-feet long, but usually those (drivers) would know
301 better than to put themselves in that type of situation. The parking spaces are 18 feet long.
302

303 Chair Hoppock stated that he has a couple questions about traffic and noise. He continued that
304 regarding the peak hour of 5:30 to 6:30 PM, from roughly September to March, it will be dark.
305 He asked what kind of lighting would be there. Mr. Phippard replied that wall-mounted lights on
306 the west side of the building, a pole-mounted light marking the entrance curb cut and the sign.
307 Chair Hoppock asked if the lights will be taller than the fence. Mr. Phippard replied yes, they
308 will be 15 feet tall, and the fence is 6 feet tall. He continued that the lights will be full cut off
309 LED fixtures, so they shine straight down.
310

311 Chair Hoppock asked if there will be an area on the street that (employees) can direct customers
312 to if customers show up too early, telling them to go to park for five minutes. Mr. Phippard
313 replied that he does not know where (employees) will direct people to. He continued that they
314 could suggest people go across the street to the church parking lot, or people could drive around
315 to the roundabout, do a drive around the beautiful Main St. and then come back in five minutes.
316 It is up to the customer. (Little Caesars employees) are instructed to tell customers to please
317 move and come back in five or ten minutes.
318

319 Chair Hoppock asked if the Board had further questions for the applicant. Hearing none, he
320 asked for public comment, beginning with anyone wishing to speak in opposition. Hearing none,
321 he stated that the Board received an email from Jason Frost on August 7, 2023. He read it into
322 the record:
323

324 *“Good Morning,*

325
326 *I am unable to attend tonight's meeting in regards to the variance request by Pappas for the*
327 *former Cornerstone [sic] building on the corner of Main Street and Davis Street. Please accept*
328 *this note in my absence.*
329

330 *I own the property at 29 Davis Street, which is one building down (adjacent to the old Anderson*
331 *Florist building) and I have reviewed the proposal by Mr. Hanna and Mr. Pappas.*
332

333 *There are numerous issues with the proposal but I will highlight here what I believe to be the*
334 *most problematic.*
335

336 *Mr. Hanna has stated that 100-200 additional cars will be entering in/out of the back lot of the*
337 *new building. He indicated that this will not adversely affect the area and I don't believe this to*
338 *be true. Davis Street is a side street and is not designed or set up to handle that level of*
339 *additional traffic. This increase in traffic will not be harmonious to the street with an increase in*

340 *lights and noise affecting the quality of life for residents. It will also decrease the safety of the*
341 *residents and the school directly across the street with the added volume of vehicles.*

342
343 *When their customers' orders are not ready because they invariably showed up early, where will*
344 *they go? Will they continue to drive around Davis and Wilson adding to the congestion?*

345
346 *This proposal flies in the face of what the core district is intended to be. Which is an area to*
347 *promote walking, shopping and generally enjoying the beautiful downtown that we have. It can*
348 *and will decrease my property value, as who wants to live next to a Little Caesars?*

349
350 *If this variance is approved, who is to say we won't end up with yet another Dunkin Donuts?*
351 *Arbys? Drive thrus should be in districts currently operating in a like kind situation similar to*
352 *Key Road, Walmart Plaza and West Street.*

353
354 *I humbly ask that you deny this request. Thank you for your time and attention.*

355
356 *Regards,*

357
358 *Jason Frost”*

359
360 Chair Hoppock stated that he does not see anyone present wishing to speak in opposition. He
361 asked if anyone wanted to speak in favor. Hearing none, he asked if Mr. Phippard wanted to
362 respond to Mr. Frost’s comments, although he thinks he has answered much of it already.

363
364 Mr. Phippard stated that he does not think he needs to repeat it all, but he thinks that when Mr.
365 Frost is referring to drive-throughs, he is thinking of something like a McDonald’s drive-through
366 or other fast food drive-throughs, and he agrees that that would not be appropriate in this
367 location. He continued that this (Little Caesars drive-through) will be very specifically
368 controlled, with no order board, no paying, just driving through and picking up your order. That
369 is the major difference, and that is why it can work here.

370
371 Mr. Gorman asked if the applicant would be open to the idea of putting that into any type of
372 approval. He continued that the Board is really approving a drive-through. If the property were
373 to ever change hands or be leased by someone else, Mr. Gorman asked, would the stipulation of
374 “no order board” be appropriate for the applicant? Mr. Phippard replied absolutely, that is fine.
375 He continued that if it changes hands and someone wants to come in and change the operation,
376 his understanding is that John Rogers would say they have to go back to the ZBA and redo the
377 Special Exception for such a significant change. Mr. Gorman replied that he thinks if the Board
378 approved it as a drive-through and Little Caesars bailed, then Dunkin came in, he disagrees; he
379 thinks it would just become a Dunkin. He continued that he thinks the lack of order board
380 addresses that, and if the applicant wanted to come in later to change that, they certainly could.

381
382 Chair Hoppock asked if there was any further comment. Hearing none, he closed the public
383 hearing and asked the Board to deliberate.

384 *1. The nature of the proposed application is consistent with the spirit and intent of the Zoning*
385 *Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all*
386 *applicable standards in this LDC for the particular use.*
387

388 Ms. Taylor stated that she disagrees that the application is consistent with the spirit and intent of
389 the Zoning regulations. She continued that everyone who has been living in Keene for the last
390 eight or ten months, with the back and forth over the redesign of Main St., knows that the one
391 thing that was hammered by both sides was the CMP concept of reducing the number of vehicles
392 that are just cruising through the downtown to get to one place or another, and making it more
393 walkable. She has a real issue with the representation that (this application) is consistent with
394 the CMP.
395

396 Mr. Welsh stated that he concurs, but his concern has been pushed some distance toward
397 acceptance by the idea – which he is not sure will be a condition – that there will be a walk-in
398 feature to this restaurant. He continued that before, he was under the impression that there would
399 not be an option for people to walk in and pick up, and that a pedestrian would have to go elbow
400 in between the cars and pick up at the window in the back. That would be very non-walkable.
401 He is a little less concerned regarding the first criterion, perhaps on the edge of being sold.
402

403 Chair Hoppock stated that he thinks Ms. Taylor is right that the whole idea behind the planning
404 of Central Square was to reduce traffic downtown overall. That goes to spirit and intent.
405

406 Mr. Gorman stated that his stance was a little different from Ms. Taylor's. He continued that he
407 agrees that this is likely to have some traffic involved with it, but he thinks that any use that ends
408 up occurring here will have some degree of intensity, as it should, since it is a building on Main
409 St. When he contemplates the level of intensity, culminating with the fact that it is a mixed use
410 and will provide more housing and a couple more businesses in the downtown area, (he thinks)
411 yes, they want Main St. to be walkable, but the reality is that to support business it needs to be
412 both. He thinks that is where they landed, with the whole Main St. (plan) – both things
413 (walkability and vehicle access) need to be supported, because that is what supports the
414 businesses. When he looks at 200 cars, compared to the overall traffic count on Main St., he
415 thinks that any successful pair of businesses there is going to generate at least that much activity,
416 hopefully, or they likely will not survive. His concern is more with the queuing, which falls into
417 some of the other categories, but he also is able to contemplate that this is more of a pick-up
418 window than a drive-through. He compares it to the difference between waiting at the drive-
419 through teller window and going through the ATM. There is a big difference. He thinks
420 allowing this business to be on Main St. does fit the CMP and the spirit, and he thinks they
421 probably will have more walk-in customers than you would think, because of the college and all
422 of the other things going on around here. It would not surprise him if half of those 200
423 customers a day were walk-in.
424

425 *2. The proposed use will be established, maintained and operated so as not to endanger the*
426 *public health, safety, or welfare.*

427 Chair Hoppock stated that with most of these factors, traffic, and noise factor in. He continued
428 that he wishes the Board had something before them that showed a bit more confirmation that
429 Little Caesars' model actually works, so they do not have "another Aroma Joes problem" on
430 their hands. That is what gives him pause, because all of these well-laid plans may or may not
431 work. As Mr. Phippard said, customers are going to do what they are going to do – they might
432 show up early and want to wait around, and he realizes they cannot wait in the line because there
433 will be someone behind them laying on the horn. However, he wishes he saw more objective
434 evidence that this model works. He is concerned that it be maintained and operated so as not to
435 endanger public health, safety, or welfare because of the traffic.

436
437 Ms. Taylor stated that she agrees with Chair Hoppock, and the only other concern she has is for
438 people who may walk up and pick up their pizza, decide to eat it in the area, and then just dump
439 their trash. She continued that she does not know if the model provides for Little Caesars to
440 provide trash receptacles in the area.

441
442 *3. The proposed use will be established, maintained, and operated so as to be harmonious*
443 *with the surrounding area and will not impede the development, use, and enjoyment of*
444 *adjacent property.*

445
446 Chair Hoppock stated that they have one abutter concern from Mr. Frost, and to an extent, he
447 shares Mr. Frost's concerns about Davis St.'s capacity. He continued that it is not a wide road.
448 He appreciates the fact that the school across the street will not be in full operation at the hour of
449 5:30 PM, but he does not know what sort of extracurricular or night activities the school has
450 going on, although that is of lesser concern. He appreciates that there will be a fence to reduce
451 the lighting problems and the noise. He is concerned about the model working, regarding traffic
452 management.

453
454 Ms. Taylor stated that she wants to note that the screening is required by the LDC. She asked if
455 this would need to go before the Planning Board. Mr. Hagan replied yes. Ms. Taylor replied
456 that in that case, the Planning Board will have something to say about lighting, screening, and
457 other issues. She echoes Chair Hoppock's comments regarding the capacity of Davis St. Maybe
458 there are not 60 cars in an hour; maybe it is only 30 or 40, but that is still a lot of traffic on Davis
459 St.

460
461 *4. The proposed use will be of a character that does not produce noise, odors, glare, and/or*
462 *vibration that adversely affects the surrounding area.*

463
464 Chair Hoppock stated that there is a lot of overlap in these criteria, and he does not have
465 anything else to add.

466
467 Mr. Gorman stated that for anyone who can answer, his question is whether all of the students at
468 the school are dropped off, and if it is true that there is not a bus. Mr. Hagan replied that the
469 school has a drop-off queue that starts off of Main St., at the school's main entrance, and exits
470 off Wilson St. He continued that cars come off Main St., go through the lot, and then go out on
471 Wilson St.

472

473 Mr. Gorman asked if he knows what enrollment is. Mr. Hagan replied no. Mr. Gorman replied
474 that his point is that if they do not know, but they do know that students are dropped off,
475 assuming it is not a problem, because they would know if it was. He guesses that the number of
476 students is in the triple digits, and he has never noticed, in all his years traveling Davis St., that
477 that was a point of congestion. He thinks that type of queuing for student drop-off is very similar
478 to what is here (for Little Caesars). It is difficult for him, too, to think that everyone will comply
479 and keep moving along, but he thinks it would be a one-off event for someone to just decide they
480 were going to plant themselves (in the queue) and not move. Regarding intensity, this use,
481 compared to Cobblestone and Piazza, is not very intense. Previously, there was a bar that was
482 rowdy and loud until about 2:00 AM, and an ice cream place that was rather busy back in the
483 day, with cars and people. He thinks that no matter what they put in this location, it will have a
484 degree of intensity that could raise a flag about Davis St., but the reality is that that street has
485 been used that way, short of the last couple years when the building was gone due to fire. It has
486 served intense uses on that corner as well as the intense use of a school, without problem.

487
488 Mr. Gorman continued that criteria two through four seem to blend together. He does not see a
489 hugely excessive burden on a couple hundred cars coming in to grab a pizza that they called in
490 ahead. Athens (Pizza) probably does that, and they (the Board) just do not know it. He thinks
491 people will circle around, park somewhere else, or show up on time.

492
493 5. *The proposed use will not place an excessive burden on public improvements, facilities,*
494 *services, or utilities.*

495
496 Chair Hoppock stated, “Out of all these that we have here, certainly traffic is not an issue here. It
497 should not be, anyway.” In terms of utilities, facilities, or services, he does not see that this
498 proposed use has any impact whatsoever on public services. He asked if anyone has a different
499 perspective.

500
501 Ms. Taylor stated that she thinks the only issue, again, goes back to the traffic issue. She
502 continued that a street is a public improvement. (Traffic) would be her only concern.

503
504 6. *The proposed use will not result in the destruction, loss, or damage of any feature*
505 *determined to be of significant natural, scenic, or historic importance.*

506
507 Chair Hoppock stated that he does not think this criterion is applicable. Mr. Gorman replied that
508 he thinks the loss of feature already occurred when the fire happened. He continued that the fact
509 that it will be brick and sort of blend in with the historic elements of downtown is favorable, but
510 this criterion is tough to apply to this application.

511
512 7. *The proposed use will not create a traffic safety hazard or a substantial increase in the*
513 *level of traffic congestion in the vicinity of the use.*

514
515 Chair Hoppock stated that this is what the Board has been talking about throughout the hearing.

516
517 Ms. Taylor stated that she agrees and thinks this is the key issue for this application. Chair
518 Hoppock agreed.

519 Mr. Clough stated that he would add that technically, if there was a traffic counter and someone
520 was asked to go around the block again, that would count as another trip. He continued that
521 there would thus be a little more traffic than 60 (vehicles per hour) if someone is asked to drive
522 around the block again. However, he is not sure of the exact figures, but he believes Main St.
523 has somewhere between 8,000 to 10,000 vehicles per day, so the impact (this application) would
524 have on Main St. is still rather small. It just comes down to the impact to Davis St.

525
526 Chair Hoppock replied that that is where he is coming from, too. He continued that when you
527 leave the facility you have to go right or left. Left takes you to Main St. then you have to go
528 right. Right takes you through the neighborhood and down to Ralston St.

529
530 Chair Hoppock asked if anyone had more to add for deliberations. Hearing none, he asked for a
531 motion.

532
533 Mr. Gorman made a motion to approve ZBA 23-16 with the condition of no exterior order board.

534
535 Mr. Welsh stated that he does not believe that in the application materials the Board has for the
536 facility described as having a walk-in component, but it has been discussed that way in this
537 hearing. He asked if the Board wants to include a condition that there needs to be a walk-in
538 option for people picking up, especially if they are thinking that two thirds or half of the people
539 might be walk-ins. Chair Hoppock replied that given the configuration of the building and its
540 layout on Main St., he does not think they need that, because people will walk in there anyway.
541 He continued that with what the Board is hearing tonight, (Little Caesars) will not turn away
542 business; if someone (walks in) for a pizza, fine. He is not personally concerned about that part
543 of it. He thinks Mr. Gorman's condition is appropriate, especially if (the property) changes
544 hands down the road and it is a Dunkin, Arby's, or something else like that.

545
546 Mr. Welsh stated that he then wants to ask the applicant a question. He continued that regarding
547 the configuration that the Board saw that had a door for customers to go in, he is under the
548 impression that it will just be a glass front with no doors.

549
550 Chair Hoppock opened the public hearing and asked the applicant to address Mr. Welsh's
551 question. Mr. Phippard showed the drawing and indicated the front elevation, facing on Main St.
552 He stated that there are three entry doors planned – one for this business; one for the other half of
553 the building, which there is no tenant for currently, but which could be an office or another
554 restaurant; and one in the center, which is the lobby for access to the apartments upstairs. Mr.
555 Welsh asked which door is the one a customer would go in to pick up a pizza on foot. Mr.
556 Phippard replied to the southernmost door.

557
558 Mr. Gorman stated that in theory, someone who did not want to be in the queuing lane or showed
559 up early could simply circle around, park on Main St., go in the front entrance, and hang out until
560 their order was ready. Mr. Phippard replied that is correct. Mr. Gorman replied that that means
561 the ability to pick up the food exists in several ways. He continued that you could park down by

562 the Colonial (Theater), and go for a walk to pick up your food, as so many people do when they
563 do business on Main St. They do not necessarily park in front of the entrance of their
564 destination. In theory, these 200 customers a day would be using Main St. parking, Davis St.
565 parking, the queuing lane, or walking in, not solely using the queuing lane.
566

567 Mr. Phippard replied that he agrees that it is all the above. He continued that he thinks he turned
568 it in with the application, but there is a floor plan of the ground floor. Chair Hoppock replied
569 that the Board's packet has the lot plan, but not the floor plan. Mr. Phippard replied that he
570 thinks this (floor plan) should make it clear to Mr. Welsh that there is a public entrance on Main
571 St.
572

573 Chair Hoppock stated that that addresses the question. He closed the public hearing.
574

575 Mr. Welsh seconded the motion.
576

577 *1. The nature of the proposed application is consistent with the spirit and intent of the Zoning*
578 *Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all*
579 *applicable standards in this LDC for the particular use.*
580

581 Met with a vote of 5-0.
582

583 *2. The proposed use will be established, maintained and operated so as not to endanger the*
584 *public health, safety, or welfare.*
585

586 Met with a vote of 5-0.
587

588 *3. The proposed use will be established, maintained, and operated so as to be harmonious*
589 *with the surrounding area and will not impede the development, use, and enjoyment of*
590 *adjacent property.*
591

592 Met with a vote of 5-0.
593

594 *4. The proposed use will be of a character that does not produce noise, odors, glare, and/or*
595 *vibration that adversely affects the surrounding area.*
596

597 Met with a vote of 4-1. Ms. Taylor was opposed.
598

599 *5. The proposed use will not place an excessive burden on public improvements, facilities,*
600 *services, or utilities.*
601

602 Met with a vote of 5-0.
603

604 *6. The proposed use will not result in the destruction, loss, or damage of any feature*
605 *determined to be of significant natural, scenic, or historic importance.*
606

607 Met with a vote of 5-0.

608

609 7. *The proposed use will not create a traffic safety hazard or a substantial increase in the*
610 *level of traffic congestion in the vicinity of the use.*

611

612 Met with a vote of 3-2. Chair Hoppock and Ms. Taylor were opposed.

613

614 The motion passed with a vote of 3-2. Chair Hoppock and Ms. Taylor were opposed.

615

616 **B) ZBA 23-19: Petitioner, Aaron Wiswell of West St. AJ's, LLC, Berwick, ME,**
617 **and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC,**
618 **requests a Variance for property located at 348 West St., Tax Map #577-025-000-**
619 **and is in the Commerce District. The Petitioner requests to permit a side pavement**
620 **setback of 1.5 feet where eight feet is required per Chapter 100, Article 9.4.2, Table**
621 **9-2 of the Zoning Regulations.**

622

623 **C) ZBA 23-20: Petitioner, Aaron Wiswell of A & B, LLC, Berwick, ME, and**
624 **represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a**
625 **Variance for properties located at 364 West St. and 12 Pearl St., Tax Map #577-026-**
626 **000 & 577-027-000 and is in the Commerce District. The Petitioner requests to**
627 **permit a side pavement setback of two feet where eight feet is required per Chapter**
628 **100, Article 9.4.2, Table 9-2 of the Zoning Regulations.**

629

630 Chair Hoppock stated that the Board will hear ZBA 23-19 and 23-20 together, then vote on each
631 separately. He read them each aloud and asked to hear from staff.

632

633 Mr. Hagan stated that 348 West St. is zoned Commerce. He continued that it is on .23 acres and
634 was built in 2022. It is a one-story, 819 square foot drive-through coffee shop. A Variance was
635 granted in April of 2022 to permit a lot size smaller than the minimum requirement of 15,000
636 square feet. The other property, 364 West St., also zoned Commerce, is on .48 acres, one story
637 currently with a canopy. It is a repair garage and office or retail space. There was no further
638 information at the time in the file for this property.

639

640 Ms. Taylor asked about 12 Pearl St., which is involved in the second Variance as well. Mr.
641 Hagan replied that 12 Pearl St. is not a part of it. Chair Hoppock replied that it is a part of ZBA
642 23-20. Mr. Hagan replied once it is combined, yes, though regarding the application for the two
643 Variances, it currently has not been merged at this time. He asked Mr. Phippard if that was
644 correct; Mr. Phippard replied that it was. Chair Hoppock asked for confirmation that there are no
645 outstanding Variances for 12 Pearl St. Mr. Hagan replied that that is correct.

646

647 Chair Hoppock asked to hear from the applicant.

648

649 Jim Phippard (of Brickstone Land Use Consultants, LLC) stated that he is here representing both
650 properties tonight. He continued that Aroma Joes is existing and operating, indicating it on the
651 right-hand side of the drawing. He continued that on the left-hand side of the drawing is the old
652 gas station property at the corner of Pearl St. and West St. The gas station is still there, waiting
653 to be torn down. They (he and his client) have a conditional site plan approval to construct a car
654 wash on this property, and it would be configured as he is showing here. Twelve Pearl St. is
655 affected by the site plan but not by this request tonight. Twelve Pearl St. is an existing, single-
656 family house, and would be removed along with the old gas station. These lots are being merged
657 to create one property for the car wash. Before the Board tonight are applications for two
658 Variances, because it affects two different properties. The same people, under different legal
659 entities, own the properties.

660
661 Mr. Phippard continued that when they applied for and received approvals, they got a Variance
662 to construct on an undersized lot in the Commerce District, believing this plan would work. It
663 (Aroma Joes) opened in April of this year and to their surprise, the queue lengths were longer
664 than ten cars at least once a day and sometimes twice a day. When they developed the plan, he
665 himself was concerned about the length of the queue. They could provide a 10-car queue that
666 wraps around the building. (The owners) provided him with information from over 100
667 operating Aroma Joes up and down the east coast that they are involved in, all quite similar in
668 size, operating exactly the same, with no seats. You drive in, place your order at an order board,
669 drive around the building, pay for your order, and pick up your order and leave. The 10-car
670 length queues were adequate on every one of those sites. Then they come to Keene, NH, and for
671 some reason, in Keene is “off the charts.” They sold 40% more product over the first two
672 months than they have ever sold in any Aroma Joes that they are involved in, with no
673 explanation. He asked (the owners) what is selling the most, and they replied it is not coffee, but
674 energy drinks. The teenagers and the college students come in two to three times a day to get
675 these energy drinks of all different flavors, loaded with caffeine. (The owners) could not keep it
676 in the store and bought a van just to bring more supplies from their other stores to the Keene
677 store, three times a week. It does not fit their model, and they think the reason why is, they knew
678 they would get a big draw from the college students.

679
680 Mr. Phippard continued that he thinks the problem is that most college students will not walk to
681 Aroma Joes from the college; they drive. Once that started, there were problems with the
682 queues. He himself would go to the site in the morning and sit there for an hour, watching the
683 cars coming in. One day when he was there, he saw four cars backed up into West St. One car
684 was waiting to turn left from West St. into the site when a police officer showed up. He wishes
685 he had written down the officer’s name, because he did a great job handling these people. The
686 people were young, and a couple of them were quite angry and aggressive. The officer told them
687 to move along because they were blocking traffic. The young man at the head of the line of four
688 cars said, “No, I’m next in. I’m not moving.” The officer was firm with him and told him he
689 had to move right then, or get out of the car, and he had his hand on his handcuffs, calling the
690 man’s bluff. The man went tearing out. Then the officer waved the next cars along, and they
691 moved along. Mr. Phippard continued that it was scary. He himself was very nervous after

692 watching that, and felt partly responsible, because he did the site plan, and it was not working
693 properly. He was then tasked with coming up with a solution. (The owners) had recently
694 purchased this property, and they were standing there watching those incidents happen. It
695 happened again while they were there. The Police Officer was there for an hour, and said to him
696 (Mr. Phippard), “Fix this. This is not part of my job; I don’t want to be here every day.” He
697 took that seriously, and approached the owners, saying, “We have to do something.”
698

699 Mr. Phippard continued that immediately, they stopped using the parking spaces, which gave
700 them room for two more cars (in the queue). They put up cones and made the queue line longer,
701 giving them a temporary solution. The LDC does not require them to have those four parking
702 spaces, since there are no seats (at Aroma Joes), so they could get away with it, but the owner did
703 not want to do that – he wanted his employees to be able to park there. With the (other) site
704 being redeveloped, they talked about how to add another entry lane. A couple other Aroma Joes
705 that these owners have do have double entry lanes. He (Mr. Phippard) looked at how they did it
706 and came up with the concept (the Board is seeing tonight). They could still use the same curb
707 cut, cut a little wider, and add a second drive-through lane. (Drivers) are forced to merge when
708 they get to a certain point, but it adds five more cars to the queue. He thinks they can fix the
709 problem as it would give them a 15-car queuing distance, but to accomplish this, they need to do
710 a boundary line adjustment. Thus, they will take a strip of land from the larger lot and add it to
711 the other one. Then, he needed pavement setback Variances, which is why he is here tonight, to
712 build this plan. He can still provide separation between the drive-throughs, and still provide an
713 area for a fence in there to meet some of those Zoning requirements, but he needs the Variance
714 for the paving setback. He thinks it will work, and it will greatly improve the situation that is
715 happening on West St.
716

717 He continued that when the college students went home for the summer, this issue went away.
718 He thinks his theory is correct that (the queuing problem is due to) the college crowd that is
719 driving instead of walking. There is a walk-up window, which is now used regularly, he thinks
720 because of the queuing issue. People have been parking at the gas station and walking up to the
721 window, placing an order, then going back to their car and leaving, instead of in the queue. They
722 have been trying to work it out, but a permanent solution is what he thinks is best. He talked
723 with the owners and said, you must have experience with higher peaks when your other stores
724 first opened and then it dies down as people get more accustomed to it. The owner said that is
725 true, but they are afraid that when the college students come back, this will start all over again.
726 If it does not, then maybe he does not have to do this and they will not use the Variances, but this
727 gives a permanent solution and gets it up to 15 in the queue lane, which is unheard of for Aroma
728 Joes.
729

730 Mr. Phippard stated that he will go through the criteria, which are almost identical for both
731 properties, because it is the same property line that they share where this pavement
732 encroachment occurs. He showed a plan sheet and stated that the shaded areas represent the area
733 where the pavement is encroaching into the side setbacks. He continued that this is a pavement
734 setback, not a building setback. They are okay with lot coverage, okay with drainage, and okay

735 with all the other dimensional requirements, except for the lot size for Aroma Joes. This will
736 affect only the indicated area between the two properties. Both are commercial uses, both with
737 the same owners.

738

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

740

741 Mr. Phippard stated that he thinks it is in the public interest to correct the safety problem that
742 they have inadvertently created, and that it is a serious safety problem. He would be afraid to see
743 more incidents like the one that occurred that day when the young man was very disrespectful to
744 the police officer. The police officer handled the situation well and nothing came of it. He (Mr.
745 Phippard) would be afraid to have another incident like that. It is in the public interest to allow
746 them to correct the queuing problem, on (the owners') own property at their own expense.

747

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

749

750 Mr. Phippard stated that the spirit of the Ordinance, other than addressing public health, safety,
751 and welfare – which is important, and which this application does do – relates to green space
752 between these properties. Since both properties have the same owners, no one else is affected by
753 this. Both uses are drive-throughs, with a 6 foot high solid fencing required to screen them from
754 each other and from adjacent properties. Placing a fence there, there will be one and a half to
755 two feet away from the fence with a strip with landscaped stone. They can fit a little bit of
756 greenery in there, but that is a Planning Board issue. This has to go to the Planning Board, if the
757 ZBA grants the Variances. If the ZBA does not grant the Variances, he does not know what they
758 (he and the owners) are going to do.

759

760 3. *Granting the Variance would do substantial justice.*

761

762 Mr. Phippard stated that he believes this is true. He continued that the owners of this restaurant
763 do not have an explanation for why it is so successful, but it is, and that is good for Keene in that
764 regard. He and the owners want it to comply and to operate safely. Granting the Variance will
765 allow them to accomplish that, and he thinks that accomplishes substantial justice.

766

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

769

770 Mr. Phippard stated that this is the common boundary line between the two business properties
771 with the same owners. He continued that the Zoning requirements in the LDC require a six-foot
772 high solid fence to be erected between them. Thus, it does not relate to any other property. It
773 has no effect on any other property, and therefore, he does not believe it diminishes property
774 values.

775

776 5. *Unnecessary Hardship*

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

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

783
784 Mr. Phippard stated that the very small size of the commercial lot is something the Board did
785 recognize was a limiting factor on this property. He continued that Ms. Taylor had expressed
786 concern about whether it could support this use, and he admits that she was right. He thinks that
787 creates a situation that results in a hardship for the landowner. They do not have any width to
788 work with, so they are doing the best they can by buying the adjacent property, doing the lot line
789 adjustment, and then creating the barrier between the two uses. He thinks it works, because of
790 where the Variances are located, it does not have any impact on anyone else on the site. They
791 (the owners) are willing to do this at great expense to them. They recognize how serious this
792 issue is in the street and do not want that to continue happening.

793
794 *and*

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

796
797 Mr. Phippard stated that the addition of the second drive-through lane is a use he thinks is
798 reasonable and necessary, because of the success of the business. He continued that it is
799 permitted by Zoning. The modifications to the site plan will require them to screen these areas,
800 so he thinks that makes it reasonable.

801
802 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
803 *hardship will be deemed to exist if, and only if, owing to special conditions of the property that*
804 *distinguish it from other properties in the area, the property cannot be reasonably used in strict*
805 *conformance with the ordinance, and a variance is therefore necessary to enable a reasonable*
806 *use of it.*

807
808 Mr. Phippard stated that they went through this with the development of the Aroma Joes, and the
809 Board granted the Variance to allow that to be redeveloped commercially. He continued that he
810 did not anticipate this problem and thinks this is a necessary Variance to allow them (him and the
811 owners) to fix it.

812
813 Mr. Welsh stated that he has a couple of questions, beginning with regarding these periods of
814 congestion and possible queuing of people in the street. He continued that he drives by there
815 twice a day, and except for during the first week, he did not see cars backed up into the street.
816 He asked what time of day this happens.

817
818 Mr. Phippard replied that it varies. He continued that when he witnessed it, it was between 8:00
819 and 9:00 AM on a weekday, noontime on a Saturday, and several times between 5:00 and 6:00

820 PM. It depends on the day of the week and the weather. On a rainy day, he went between 8:00
821 and 9:00 AM and only saw three cars on the lot. He does not have an explanation for that. But it
822 happened way too frequently.

823

824 Mr. Welsh stated that his second question is regarding the solid fence proposed between the two
825 properties and the two opposing lanes. He continued that he is mildly concerned that they could
826 have, in theory, two lanes of traffic going against each other in a configuration in which you will
827 be passing cars on a side you are not used to, "British-style." He asked if the solid fencing will
828 be such that you will not really notice the cars on the other side. Mr. Phippard replied that it is
829 six feet high, so if you are sitting in a car, you cannot see over the fence.

830

831 Ms. Taylor stated that maybe they have looked into this already, but her question is how the two
832 lanes of traffic would merge. She asked if Mr. Phippard had any information on how safe an
833 event that is. Mr. Phippard replied that he asked (the owner) about how this works at the other
834 Aroma Joes, and (was told that) people work well. They respect each other, in their cars, and
835 take turns, allowing someone who arrived before them to go ahead of them. He has seen this
836 (type of configuration) operate at Dunkin on West St., which he frequents almost every day, and
837 sees a car coming in from Avon St. and a car in the lot letting that car in. Maybe it is because we
838 live in a small town like Keene, but he thinks the merger will work. Customers will recognize
839 that it is a necessary evil, because it gets them off the street, and they do not get in trouble with
840 the police. The police officer made it clear; the second time he saw the police officer there, he
841 went up and down the line, telling each person that he would not put up with any backups in the
842 street, and anyone who finds themselves in the street needs to move along and come back.

843

844 Mr. Phippard continued that they also took another measure that he wants the Board to be aware
845 of. They lengthened the queue by eliminating the temporary use of the parking spaces, and
846 (Aroma Joes) also had an employee come out with a tablet to take orders. Thus, they were
847 taking orders ahead and taking payment ahead, which sped up the queue, because it was more
848 like the Little Caesars (model). By the time people got to the window, all they did was pick up
849 their order, which was helping move the customers through the queue. They would probably
850 revert to that if they cannot do the two-entry-lane solution.

851

852 Ms. Taylor stated that she has seen the backup even when the students are not at the college. She
853 continued that it is not as frequent, but it still happens, so she is rather glad to see this
854 (application). Her other question is, she wants to make sure that this does not impact the travel
855 lanes at all on the lot of what is going to be the carwash.

856

857 Mr. Phippard replied that this does not change the carwash plan at all. He continued that he
858 looked at trying to shift it over closer to the street, but he would have needed a Variance for a
859 pavement setback at Pearl St. They felt that was too important of a green space and buffer area,
860 because the vacuums are on the Pearl St. side. They ended up not changing the approved
861 carwash plan at all.

862

863 Ms. Taylor asked if the shaded gray area is not a change in the pavement, but just how close it
864 will be to the property line. Mr. Phippard replied that is correct. He continued that because they
865 moved the property line, not the pavement, this ends up within the pavement setback.
866

867 Chair Hoppock asked Mr. Phippard to remind him of when Aroma Joes opened. Mr. Phippard
868 replied April of this year. Chair Hoppock asked if there has been a noticeable slackening off the
869 street backup since then. Mr. Phippard replied that since the college students went home at the
870 end of May, he has only witnessed one incident of backing into the street, and it was brief, with
871 just two cars. He continued that he thinks it has greatly diminished, but the fear is that when the
872 college reopens next month, it will start all over again.
873

874 Chair Hoppock asked when they expect these corrective measures to be taken if the Variances
875 are approved. Mr. Phippard replied that they will try to get in front of the Planning Board in
876 September, which is the next available meeting with the changes to be constructed right away in
877 October. They are putting fencing up now, and getting ready to demolish the old buildings and
878 you can see how far they stayed away from the Aroma Joes side of the lot. That is to allow this
879 to happen as quickly as possible, if they get the approvals.
880

881 Chair Hoppock asked if the Board had further questions. Hearing none, he asked for public
882 comment, beginning with anyone wishing to speak in opposition. Hearing none, he asked for
883 public comment in support. Hearing none, he (closed the public hearing and) asked the Board to
884 deliberate on ZBA 23-19.
885

886 *1. Granting the Variance would not be contrary to the public interest.*
887

888 Chair Hoppock stated that it is always nice when they see something that is consistent with the
889 public interest. He continued that in all the years he has been sitting here, he does not think he
890 has ever seen a Variance requested to cure a Variance that was premature. Having said that, he
891 thinks this is not contrary to the public interest. He agrees with Mr. Phippard that this would
892 correct the safety problem he spoke of.
893

894 Mr. Welsh stated that he agrees with Chair Hoppock and those would be his comments for ZBA
895 23-20, also. Mr. Gorman replied that he thinks the Board can deliberate on ZBA 23-19 and then
896 make their deliberations inclusive when they open ZBA 23-20. Chair Hoppock replied that they
897 will get to that when they get to that.
898

899 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*
900

901 Ms. Taylor stated that she has witnessed a few close calls, not just people getting angry, but also
902 given the fact that West St. is notable for people (not) observing the speed limit. She continued
903 that she has seen people slamming on their brakes, so they do not hit a car when there have been
904 cars queuing out into West St. She continued that she thinks this will help the public health,
905 safety, and welfare.

906 3. *Granting the Variance would do substantial justice.*

907

908 Chair Hoppock stated that the Variance will do substantial justice in his view because of the
909 safety problems, and the gain to the public is significant, in terms of the amelioration of those
910 safety problems. The loss to the individual, if this were denied, would be considerable, because
911 (the owner) would be without reasonable means to correct this problem. He believes the third
912 criterion is satisfied in that regard. He continued that he sees other Board members nodding.

913

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

916

917 Chair Hoppock stated that as Mr. Phippard mentioned, the two properties are owned by the same
918 people, although as different corporations, with the same purpose going on here. He continued
919 that given that, he does not see that this proposal affects the values of either of those properties
920 or any other property in the area.

921

922 5. *Unnecessary Hardship*

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

926 i. *No fair and substantial relationship exists between the general public*
927 *purposes of the ordinance provision and the specific application of that*
928 *provision to the property*

929 *and*

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

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

936

937 Chair Hoppock stated that he agrees that the small lot size is a factor here, especially for ZBA
938 23-19. He continued that they could talk about ZBA 23-20 separately, if they want. It does
939 make the application of the setback requirement to the ZBA 23-19 lot more difficult.

940

941 Ms. Taylor stated that the issue here, again, is the small lot size as it was with the first Variance
942 for this property. She continued that there is an issue, clearly, and she is not aware of any other
943 way to resolve the problem, linking it back to the public health, safety, or welfare issue. If it is
944 going to be corrected, she thinks the hardship is that there does not appear to be any other way to
945 fix it. Chair Hoppock replied yes, and at the same time, it appears that it needs a fix.

946

947 Mr. Gorman stated that he agrees with all the commentary leading up to this, and he echoes that
948 the real hardship here is the situation that has been created by this undersized property with a

949 heavy amount of business, and this offers a solution. He continued that it is seemingly the only
950 solution.

951
952 Ms. Taylor stated that she wants to add that because the ZBA had granted the first Variance, she
953 thinks this takes it out of the situation where you would have a property owner self-creating a
954 hardship. She continued that she thinks the ZBA had a part in creating a hardship by approving
955 (the first Variance).

956
957 Chair Hoppock asked if there were any further comments from the Board regarding ZBA 23-19.
958 Mr. Gorman replied that Ms. Taylor was right.

959
960 Mr. Hagan stated that Section 20.6.2 B. of the LDC states, “*Where allowed, drive-through lanes*
961 *shall be screened away from any adjacent public rights-of-way (not including alleys), existing*
962 *residential property, or residential zoning districts.*” He continued that thus, a fence is not
963 required between (the two properties). He thought he would mention that, in case the ZBA
964 wants to make it a condition. They (the Aroma Joes owners) are proposing it, but if it makes a
965 difference to the Board, it could go with either Variance, if the Board feels it is necessary.

966
967 Chair Hoppock stated that it seems to him that just separating the two, having the carwash lanes
968 away from the coffee lanes, (is enough). He continued that he doubts there is any prospect of
969 cars getting the lanes mixed up, but still, it makes sense to him to have a barrier of some kind, a
970 fence. He asked if anyone wanted to make a motion with that condition in mind.

971
972 Mr. Gorman made a motion to approve ZBA 23-19 with the stipulation of having a six-foot tall,
973 stockade-style fence along the boundary of the two properties. Ms. Taylor seconded the motion.

974
975 1. *Granting the Variance would not be contrary to the public interest.*

976
977 Met with a vote of 5-0.

978
979 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

980
981 Met with a vote of 5-0.

982
983 3. *Granting the Variance would do substantial justice.*

984
985 Met with a vote of 5-0.

986
987 4. *If the Variance were granted, the values of the surrounding properties would not be*
988 *diminished.*

989
990 Met with a vote of 5-0.

991

- 992 5. *Unnecessary Hardship*
993 A. *Owing to special conditions of the property that distinguish it from other*
994 *properties in the area, denial of the variance would result in unnecessary hardship*
995 *because:*
996 i. *No fair and substantial relationship exists between the general public*
997 *purposes of the ordinance provision and the specific application of that provision*
998 *to the property.*
999

1000 Met with a vote of 5-0.

1001

1002 *and*

- 1003 ii. *The proposed use is a reasonable one.*
1004

1004

1005 Met with a vote of 5-0.

1006

1007 The motion to approve ZBA 23-19 with the condition passed with a vote of 5-0.

1008

1009 Chair Hoppock asked if there was anything specific Mr. Phippard wanted to add regarding ZBA
1010 23-20. Mr. Phippard replied no. Chair Hoppock asked if there was any public comment for
1011 ZBA 23-20, in opposition or in favor. Hearing none, he (closed the public hearing and) asked
1012 the Board to deliberate.

1013

1014 Chair Hoppock asked if it is correct that Mr. Gorman proposes going straight to voting on the
1015 criteria. Mr. Gorman replied that he would be comfortable saying that his sentiments regarding
1016 ZBA 23-19, on items 1 to 5, are the same regarding ZBA 23-20.

1017

1018 Ms. Taylor asked to see the plan again. She stated that her understanding is that the Pearl St. lot
1019 does not come as far back as the Aroma Joes. She continued that if that is correct, then she does
1020 not think they need to consider that at all, but the question she has is whether they should equally
1021 condition any approval on requiring a six-foot tall solid fence between the carwash property and
1022 the Aroma Joes property. That is a general discussion question.

1023

1024 Chair Hoppock replied that you would not have two fences back-to-back with each other. Ms.
1025 Taylor replied no, but she just wants to make sure it is clear that (one of the two) would build it.
1026 Mr. Gorman asked if Ms. Taylor means she wants to be clear that the fence will continue out past
1027 the Aroma Joes property to the end point of the carwash property. Ms. Taylor replied yes, that is
1028 a better way of expressing it. She continued that she would like to see that solid fence all the
1029 way along. She does not recall what is behind the Aroma Joes, but she just thinks that it would
1030 be appropriate. Mr. Gorman replied that probably it would be appropriate for it to go along the
1031 entire rear boundary, too, if they could call it the “rear” – off the carwash property where the
1032 residential property sits. Ms. Taylor replied that that is not a question before the ZBA; the only
1033 question before the ZBA is the paving setback. Mr. Gorman agreed and stated that the motion
1034 should include a continuous fence on the easterly boundary of the carwash.

1035 Chair Hoppock opened the public hearing and asked Mr. Phippard to speak to this. Mr. Phippard
1036 stated that to clarify on the conditionally approved site plan for the carwash, the six-foot fence
1037 starts at Pearl St. and wraps around the property all the way up to the front of Aroma Joes. It is
1038 already on the conditionally approved site plan, so that is a requirement.

1039
1040 Ms. Taylor stated that she thinks her concern was sort of expressed in their consideration of the
1041 Little Caesars lot. She continued that if either property were to be sold to some new entity,
1042 whether they remained carwashes and Aroma Joes or not, if the Board includes it as a condition
1043 in the Special Exception, then it is likely the fence will remain. Chair Hoppock replied that he
1044 has no opposition to that being a condition in this application. Mr. Gorman replied that neither
1045 does he. He continued that it sounds like they want to build a fence there anyway. Chair
1046 Hoppock replied that it sounds like they have to.

1047
1048 Mr. Gorman made a motion to approve ZBA 23-20, provided there is a six-foot high, stockade-
1049 style fence along the entire easterly boundary. Mr. Welsh seconded the motion.

1050
1051 1. *Granting the Variance would not be contrary to the public interest.*

1052
1053 Met with a vote of 5-0.

1054
1055 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1056
1057 Met with a vote of 5-0.

1058
1059 3. *Granting the Variance would do substantial justice.*

1060
1061 Met with a vote of 5-0.

1062
1063 4. *If the Variance were granted, the values of the surrounding properties would not be*
1064 *diminished.*

1065
1066 Met with a vote of 5-0.

1067
1068 5. *Unnecessary Hardship*

1069 A. *Owing to special conditions of the property that distinguish it from other*
1070 *properties in the area, denial of the variance would result in unnecessary hardship*
1071 *because:*

1072 i. *No fair and substantial relationship exists between the general public*
1073 *purposes of the ordinance provision and the specific application of that provision*
1074 *to the property.*

1075 Met with a vote of 5-0.

1076
1077 *and*

1078 ii. *The proposed use is a reasonable one.*

1079

1080 Met with a vote of 5-0.

1081

1082 The motion to approve ZBA 23-20, with the condition, passed with a vote of 5-0.

1083

1084 Chair Hoppock recessed the meeting at 8:15 PM and called it back to order at 8:21 PM.

1085

1086 **D) ZBA 23-21: Petitioner, Christine Salema of SS Baker’s Realty Co., Inc.,**
1087 **Keene requests a Variance for property located at 428 Main St., Tax Map #112-004-**
1088 **000 and is in the Low Density District. The Petitioner requests a personal service**
1089 **establishment where it is not currently a permitted use per Chapter 100, Article**
1090 **3.3.5 of the Zoning Regulations.**

1091

1092 Chair Hoppock asked to hear from staff.

1093

1094 Mr. Hagan stated that the property is in the Low Density District, located on a half-acre. He
1095 continued that currently there is a three-story structure, an office building that is 5,518 square
1096 feet with the third floor unused at the moment. The property has four different Variances dating
1097 back to 1971 when it was being used as Monadnock Nursing Home. There was an application
1098 for a daycare at one point, which was pulled from application. In 1987 it was kind of a cleanup
1099 of an unpermitted use, which is what the letter said, requiring two Variances in 1987 – ZBA 87-
1100 81 and ZBA 87-82. One was for the lot coverage requirement and an addition, and a change of
1101 use to an office with conditions. He gave the Board members copies of those conditions tonight.

1102

1103 Chair Hoppock asked if this is the one saying the use would be limited to professional offices
1104 only. Mr. Hagan replied that is correct.

1105

1106 Ms. Taylor stated that her first question is procedural. With this Variance, are they amending the
1107 prior Variance, or is this just sandwiched on top of it? Mr. Hagan replied that it is a separate
1108 Variance application, and he would treat it as such, to include this additional use. They can take
1109 it as a whole as applied for personal care services, which include multiple services under that
1110 category. He can read the Board what those are under the “personal care services” since it is
1111 defined differently than in the past. It used to be that the proposed used would be included under
1112 “office,” as there was no real definition. With the LDC change, they included this as “personal
1113 services” and gave a definition of what those are.

1114

1115 Chair Hoppock asked Mr. Hagan to read what those other potential uses are. He continued that
1116 if the ZBA approves this, they are opening up the door for those uses. Mr. Hagan stated that the
1117 LDC says, in section 8.0.3 W. Personal Service Establishment, *“Defined [as] an establishment*
1118 *that provides services of a personal nature including, but not limited to, barbershops or hair*
1119 *salons, spas, nail salons, laundromats, dry cleaners, tailors, tattoo or body piercing parlors.”*

1120

1121 Ms. Taylor stated that if she recalls correctly, this is very similar to what they had for 441 Main
1122 St. as well – it was personal services but also had this kind of limitation. She continued that she
1123 does not remember if they incorporated the earlier Variance or uses into the new one. That is
1124 what her concern is. Since this is the second time the Board has had this in a year, she wonders
1125 if the (Community Development) Department has ever thought about looking at this issue a little
1126 more closely. Mr. Hagan replied that not that he is aware of, but John Rogers is not here tonight,
1127 and he would defer to him. He continued that that is certainly something they can bring up after
1128 this meeting.

1129
1130 Chair Hoppock asked if there were any further questions for staff. Hearing none, he asked to
1131 hear from the applicant.

1132
1133 Christine Salema stated that she is the managing member of SS Baker’s Realty, LLC. She
1134 continued that this was her first time (presenting to the ZBA). As Mr. Hagan mentioned, the
1135 building has been used for quite a few things over the years, including a nursing home, realtors,
1136 construction, and currently offices of various businesses. She has owned the building since
1137 2007, so those uses she mentioned have been within her experience. Of late, she has been
1138 approached for some of the open spaces she has for these types of services, a hairdresser, and an
1139 esthetician. She thought it wise to look into this and see whether she could get the Variance to
1140 accommodate these businesses. Ironically, she used to work in the building at 441 Main St. that
1141 Ms. Taylor referenced, and Ms. Taylor is correct, they did change, and now they provide these
1142 services. That is another reason she thought this was something she should pursue.

1143
1144 Ms. Salema continued that she could go through the criteria.

1145
1146 *1. Granting the Variance would not be contrary to the public interest.*

1147
1148 Ms. Salema stated that she believes that the (potential) tenants request would be in keeping with
1149 what is already in the building. She continued that there would be no change to the building and
1150 no change to the lot, and therefore, from the outside there would be very little difference. The
1151 habits and hours these (new tenants) would be professional, just as they are now.

1152
1153 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1154
1155 Ms. Salema stated that she does not think this Variance would diminish the public health, safety,
1156 or welfare, nor the character of the neighborhood. She continued that they are not changing the
1157 building or parking lot at all. From the outside, it looks the same.

1158
1159 *3. Granting the Variance would do substantial justice.*

1160
1161 Ms. Salema stated that if the Variance were denied, the public would not gain anything from
1162 that, but on the flip side, the landlord, herself, would lose substantially the opportunity to fill
1163 some open spaces.

1164 4. *If the Variance were granted, the values of the surrounding properties would not be*
1165 *diminished.*

1166
1167 Ms. Salema stated that they are not changing the building at all, and it does not diminish or
1168 change the surrounding homes and businesses. She continued that most of the street is a mix of
1169 quite a few different things. She thinks Low Density was intended to maintain some of the
1170 single-family homes, but as Mr. Hagan described the history of this, this has not been a single-
1171 family home or residence throughout all the years. Thus, it is a rather special condition here that
1172 she is requesting.

1173

1174 5. *Unnecessary Hardship*

1175 A. *Owing to special conditions of the property that distinguish it from other*
1176 *properties in the area, denial of the variance would result in unnecessary hardship*
1177 *because:*

1178 i. *No fair and substantial relationship exists between the general public*
1179 *purposes of the ordinance provision and the specific application of that provision*
1180 *to the property*

1181 *and*

1182 ii. *The proposed use is a reasonable one.*

1183 B. *Explain how, if the criteria in subparagraph (A) are not established, an*
1184 *unnecessary hardship will be deemed to exist if, and only if, owing to special conditions*
1185 *of the property that distinguish it from other properties in the area, the property cannot*
1186 *be reasonably used in strict conformance with the ordinance, and a variance is therefore*
1187 *necessary to enable a reasonable use of it.*

1188

1189 Ms. Salema stated that this criterion is a bit more subjective, but she thinks that the current
1190 zoning restriction for the Low Density District interferes with the reasonable use of this
1191 particular building, and therefore provides the hardship. She continued that as she said, it has not
1192 been a residence for decades, maybe not even ever. She could not find any evidence in the
1193 history she looked up that it was ever a single-family home. As Mr. Hagan said, it is a little over
1194 5,500 square feet, which is very large. In order to provide financial return on that property and
1195 to maintain it to the standard it is at now, she hopes the Board considers this so that she could
1196 open it to other businesses. Post-COVID, as the Board might have already learned from other
1197 businesses or know in general, many people are working at home, and therefore, the need for an
1198 office outside of the home is not as popular as it used to be. Again, she does not think this
1199 (Variance) would affect anyone in a negative way, and therefore, it is a reasonable request.

1200

1201 Mr. Welsh stated that he has a few questions, beginning with the post-COVID rental market. He
1202 continued that he was wondering if, maybe in some detail with respect to this particular building,
1203 Ms. Salema could describe quantitatively or qualitatively the difficulty of filling these spaces.

1204

1205 Ms. Salema stated that currently, in her building, there are different businesses occupying offices
1206 as opposed to just (one company), and when they lose an employee, they have not replaced the

1207 employee, and therefore, there is a vacant office. The company is still there, but the amount of
1208 people and the amount of space they are taking is less. That has been her experience post-
1209 COVID.

1210

1211 Mr. Welsh stated that he has another question that involves a comparison to the other Variance
1212 that was granted across the street. He continued that the description of “personal service
1213 establishment” is so broad that it includes things like tattoo parlors and dry-cleaning businesses
1214 and whatnot, some less consistent with the Low Density District than others. He thinks one of
1215 the ways around that last time was to place conditions on the approval of the Variance that
1216 restricted it to the more amenable kinds of uses. Specifically, he read the previous meeting
1217 minutes from this past Variance application, “*The personal service shall be restricted to one*
1218 *professional personal service provider per unit, who schedules by appointment only, and is*
1219 *licensed by the State for their particular professional personal service [...].” He asked if Ms.*
1220 *Salema or the tenant would be agreeable to the attachment of conditions of that sort to this*
1221 *Variance.*

1222

1223 Ms. Salema replied that she cannot speak for the tenant she referenced in the application,
1224 because she has not discussed that with her. She continued that she and that (prospective) tenant
1225 had not proceeded to the next step yet, because she did not know if it was going to be possible.
1226 Submitting the application, she really thought that it was more of a broader request, in the sense
1227 that it is not just about that one particular woman who approached her to do her hairstyle
1228 business. To answer Mr. Welsh’s question from her own perspective, yes, she would be
1229 amenable to that.

1230

1231 Chair Hoppock asked if Ms. Salema could tell the Board more about the fifth criterion. He
1232 continued that he wants to try to flesh that out a bit, because that is the hardest criterion. He is
1233 looking for the special conditions of the property. He noticed that it is a large building on a large
1234 lot. Ms. Salema replied yes, the building is quite large. She continued that it is not set up as a
1235 home, as she mentioned, and does not think it was ever a home, although she could be wrong. If
1236 it were ever a single-family home, it would have to be at least 50 years ago. The only other thing
1237 to do is office space, and in order to do that and fill the space and maintain the building, given its
1238 size, its taxes, and all of that, it leans itself towards opening those offices to different tenants.

1239

1240 Mr. Gorman stated that along with the fact that the building is large and unique in stature and lot
1241 size, it is safe to say that the impact of COVID, too, on office spaces in general (is a factor). He
1242 continued that they do read about it, on a national level as well as locally. He is familiar with the
1243 fact that there is a lessening need for offices, and it is important to repurpose these buildings to
1244 keep them, as Ms. Salema says, able to be maintained and kept up nicely the way Ms. Salema
1245 does keep that building. It is safe to say that the change has created somewhat of a hardship for
1246 the property as well. He asked if it is correct that in a perfect world, she would still be renting
1247 this as offices, if the market would allow. Ms. Salema replied yes, she thinks Mr. Gorman’s
1248 point is valid and true. She continued that as she said, she personally has not lost a business that
1249 was using office space in her building, but when the (business) has lost employees, either

1250 through attrition or termination, they are not taking as much space in the building, creating that
1251 void. She has not seen many people come in. She has a sign outside and they do advertise a
1252 little bit, but she has not seen as many people calling or needing office space as she has in the
1253 past.

1254
1255 Ms. Taylor stated that she is not clear about whether Ms. Salema has a specific tenant in mind, or
1256 if it is just the category that she wants to be able to use. Ms. Salema replied that originally, she
1257 was approached by a hair stylist who saw the (rental) sign and wanted to know about renting
1258 some space. She continued that she showed her the space and told her that she needs to check,
1259 because she did not think she could have (a hairstylist) there. When she checked, she found out
1260 that that was true, and therefore, she proceeded with the application. After she submitted the
1261 application, she received a phone call from an esthetician, which would be under the same
1262 category. She could not go any further with the hair stylist or the esthetician, because she does
1263 not have the ability to actually say to them, “Yes, I can rent this space to you; let’s put a lease
1264 together,” until she goes through this process (with the ZBA).

1265
1266 Ms. Taylor stated that she has a question about parking. She continued that it is not clear to her
1267 whether this is a space that was occupied, and thus maybe Ms. Salema did have adequate
1268 parking, or whether it has been vacant for a long time, which means they would have to consider
1269 whether she needs parking. Ms. Salema replied that there are 23 parking spaces, and that is not
1270 an issue for them at any time. She continued that this space was previously occupied by her own
1271 business, and she does not need as much space any longer.

1272
1273 Ms. Taylor stated that her final question is, in addition to the list of conditions that Mr. Welsh
1274 suggested – and she does not remember if this was near the end of the list or not – would she
1275 have any objection to a possible condition that would restrict retail sales? Ms. Salema asked Ms.
1276 Taylor to define that. Ms. Taylor replied that there are personal service providers who sell
1277 products that are ancillary to their trade, such as hair stylists selling shampoo. She asked if Ms.
1278 Salema had any concerns about that. Ms. Salema replied that she would rather tenants be
1279 allowed to sell shampoos and (similar products) right within their shop. She continued that she
1280 would be fine with saying that she does not want a retail shop, such as a clothing shop or
1281 something like that that is more in the commercial line, but she thinks most (hairstylists and
1282 estheticians) do sell a “little bit of this and that,” and she would like to be able to allow. Ms.
1283 Taylor asked if she means retail that would be ancillary to that specific business. Ms. Salema
1284 replied that was correct.

1285
1286 Mr. Gorman stated that he thinks the stipulation of “by appointment only” assists with that, too,
1287 because it would be very difficult to run a full-blown retail operation by appointment only, but it
1288 does still allow for the ancillary selling of a shampoo to someone whose hair you just cut. He
1289 continued that it could be a chiropractor selling supplements, or things of that nature.

1290
1291 Chair Hoppock stated that he has a follow-up to Ms. Taylor’s question about parking. He asked
1292 how many tenants Ms. Salema has, and how many people currently rely on the lot for parking.

1293 Ms. Salema replied that not everyone is there every day; they come and go when they choose.
1294 She continued that she has a CPA tenant, a business owner who employs three people, so that is
1295 four. Another tenant is a bookkeeper, mostly there during tax season but not the rest of the year.
1296 Another tenant is a real estate group that uses the office for paperwork and things like that; they
1297 have one office. She does not know how many realtors they have and does not see many people
1298 going in and out of the office. There is also a tile company, with one full-time employee. She
1299 herself is in the office as well. There are 23 parking spaces and on an average day,
1300 approximately six spots are taken. Chair Hoppock replied that it does not seem like they are
1301 using even half of the parking spaces. Ms. Salema agreed.
1302

1303 Ms. Taylor asked Mr. Hagan what the parking requirements are. Mr. Hagan replied that the
1304 requirement is four parking spaces for both office and personal care services – four (parking
1305 spaces) per (one) thousand (square feet). This is 5,500 square feet but that does not include
1306 bathrooms. He gave them an overall square footage and (staff) would have to look at it
1307 completely, but it sounds like it meets the minimum requirements for 5,500 square feet, which
1308 would be 22 spaces.
1309

1310 Mr. Gorman replied that the likelihood is that if you really calculate it, the square footage would
1311 be diminutive by stairways and bathrooms, so it is very safe to say that it exceeds the parking
1312 requirements. Mr. Hagan replied that what he can say is that it meets the minimum.
1313

1314 Chair Hoppock asked if the Board had further questions for the applicant. Hearing none, he
1315 asked if Ms. Salema wanted to add anything, based on the Board's questions. Ms. Salema
1316 replied no.
1317

1318 Chair Hoppock asked for public comment, beginning with people in opposition. Hearing none,
1319 he asked for public comment in favor. He continued that the Board has an email from William
1320 Beauregard, which he will read into the record:
1321

1322 *"I write to express my support for ZBA 23-21, a request for a variance submitted by SS Baker's*
1323 *Realty Co. LLC, for the property they own at 428 Main Street. My wife and I own 440 Main*
1324 *Street which abuts 428 Main Street immediately to the south. We are currently out of town and*
1325 *will be unable to attend the Zoning Board of Adjustment meeting today, Monday, August 7,*
1326 *2023.*
1327

1328 *The use proposed by the applicant, a personal service establishment, is very similar in nature to*
1329 *the other uses currently allowed in their building. These uses have been utilized for many years*
1330 *at this location. The site has ample parking and access to Main Street is very good. The use*
1331 *proposed is also similar to the use currently permitted at 441 Main Street, the large white office*
1332 *building on the corner of Main Street and King Court, which is virtually across the street from*
1333 *the subject property. 441 Main Street causes no adverse impact on the neighborhood so I believe*
1334 *it will work well at the subject property and no adverse impact will be caused by the granting of*
1335 *this variance.*
1336

1337 *Regarding the specific criteria required for the Zoning Board of Adjustment to grant a variance:*

1338

1339 *Criteria #1 Granting the variance would not be contrary to the public interest because the*
1340 *proposed use is currently allowed in a building across the street. The proposed use is in demand*
1341 *and easy access is required, particularly for elderly clients or those clients with disabilities. The*
1342 *traffic pattern for the proposed use would be very similar to the existing uses allowed.*

1343

1344 *Criteria #2 As mentioned above, the traffic generated by the proposed use would be very*
1345 *similar to the existing uses so there would be no greater impact on the neighborhood so the spirit*
1346 *of the ordinance would be observed.*

1347

1348 *Criteria #3 With the difficulty renting office space due to the impact of the Covid-19 epidemic,*
1349 *the proposed use would do substantial justice by allowing the owner to rent space currently*
1350 *difficult to tenant.*

1351

1352 *Criteria #4 As mentioned above, the proposed use would have a pattern of traffic which would*
1353 *be very similar to the existing allowed uses and any impact would be de minimis. Hence, the*
1354 *values of surrounding properties would not be diminished.*

1355

1356 *Criteria #5 Regarding “Unnecessary Hardship”, this building had been set up for office*
1357 *rentals and for many years had been rented as such. As the owner Colonial Rental Management*
1358 *and the owner of Edgewood Real Estate Agency, I am very familiar with rental trends in Keene.*
1359 *When the Covid-19 epidemic struck, many offices closed and employees worked remotely. As the*
1360 *epidemic waned and employees continued to work remotely, it was difficult if not impossible to*
1361 *rent office space and the demand for office space dropped precipitously. That demand has not*
1362 *rebounded and it will likely not ever fully rebound. This is an issue impacting not just this office*
1363 *building but many other office buildings and office uses throughout the community. By allowing*
1364 *similar uses in the building, this hardship will, to a degree, be addressed.*

1365

1366 *All this said and to reiterate, the proposed use will fit well into this building and into this part of*
1367 *Keene and I would urge the Zoning Board of Adjustment to approve the request.*

1368

1369 *Yours, respectfully,*
1370 *William A. Beauregard”*

1371

1372 Chair Hoppock stated that this is the only written correspondence he is aware of the Board
1373 having received for this application, and he does not see anyone present from the public wishing
1374 to speak, so he will close the public hearing. He asked the Board to deliberate.

1375

1376 *1. Granting the Variance would not be contrary to the public interest.*

1377

1378 Chair Hoppock stated that he does not see anything in the application that would be contrary to
1379 the public interest. He continued that it is a use that is consistent with the area.

1380

1381 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1382

1383 Chair Hoppock stated that nothing in the application strikes him as being a threat to public
1384 health, safety, or welfare. He continued that it will not impact the character of the neighborhood
1385 in any way that he can see.

1386
1387 Mr. Welsh stated that he agrees, in particular if the Board was able to add the condition that they
1388 added in the prior application (for the property) across the street, 441 Main St. He read (from the
1389 meeting minutes), “*The personal service uses shall be restricted to one professional service*
1390 *provider per unit, who schedules by appointment only, and is licensed by the State for their*
1391 *particular professional personal service.*” He continued that in his thinking, that limits away
1392 from things like dry cleaners and laundromats, which he thinks would not be in the character of a
1393 residential neighborhood. Chair Hoppock replied that he is on board with that condition.

1394
1395 Ms. Taylor stated that she would add that the Board has been cautioned on occasion to take
1396 applications individually, and one approval does not necessarily set a precedent to approve
1397 another. She continued that in this case; however, she thinks those conditions are applicable to
1398 this application. Chair Hoppock asked if that is because of the proximity of the two properties,
1399 or the similarity of the neighborhood. Ms. Taylor replied that it is more about the nature of the
1400 buildings, because 441 Main St., if her recollection is correct, is a large, older building that has
1401 been divided up into several offices. In addition, the owner has also had the same issue as Ms.
1402 Salema, with the post-COVID lack of demand for office space, but there seems to be a demand
1403 for this type of use. She thinks it is more the nature of the building than the location.

1404
1405 Mr. Gorman stated that he agrees with Mr. Welsh and Ms. Taylor that these stipulations would
1406 be, to him, imperative to approving this Variance. He continued that he does not see a dry
1407 cleaning facility the same as a hairdresser. These contingencies shrink it back down to what they
1408 would intend it to be, a single tenant who is performing a direct service to customers by
1409 appointment only. Chair Hoppock agreed.

1410
1411 3. *Granting the Variance would do substantial justice.*

1412
1413 Chair Hoppock stated that he does not see any gain to the public by denying the Variance, and he
1414 sees harm to the applicant by denying it. He continued that people like the applicant are
1415 struggling with lots of availability and little demand, in terms of some spaces, and need to tailor
1416 their business approach to meet the demand that is out there for the type of space where it can go.
1417 Personal service seems to be one way to do it. He agrees that there is no harm to the public or
1418 the neighborhood.

1419 4. *If the Variance were granted, the values of the surrounding properties would not be*
1420 *diminished.*

1421
1422 Chair Hoppock sees no prospect of diminished property values in the neighborhood by virtue of
1423 this application.

1424
1425 5. *Unnecessary Hardship*

- 1426 A. *Owing to special conditions of the property that distinguish it from other*
1427 *properties in the area, denial of the variance would result in unnecessary hardship*
1428 *because*
1429 i. *No fair and substantial relationship exists between the general public*
1430 *purposes of the ordinance provision and the specific application of that provision*
1431 *to the property.*
1432

1433 Chair Hoppock stated that he is having a hard time with the special conditions of the property.
1434

1435 Mr. Gorman stated that whenever he looks at an older building that was constructed in a time
1436 when things were completely different, it is these large buildings stuck in residential areas that
1437 really have no hope of ever becoming single-family homes again. He continued that they made
1438 perfect office buildings for the longest time, but things change. It is important to stay fluid when
1439 things do change, and repurposing a building because it no longer has a true, viable use based on
1440 the current state of things compared to how they were, he thinks that embodies hardship. You
1441 need the ability to have reasonable use of your property. If you have a very large property with a
1442 lot of parking and a big lot that functioned well for many years as offices, but is no longer
1443 functioning because of things beyond your control, that is a hardship for the property, and
1444 repurposing the use is the solution. The ZBA is part of the repurposing process, and actually, the
1445 CMP even speaks to finding repurpose for historic buildings, older buildings that have fallen out
1446 of favorable use. He can get his head around the hardship based on the societal shift away from
1447 office use as well as the size of the building and the size of the lot being an anomaly within its
1448 neighborhood. It is very similar to the Coughlin building across the street.
1449

1450 Chair Hoppock replied that that was very helpful.
1451

1452 Ms. Taylor stated that this is one of the classic situations where actually the special condition of
1453 the property is the building. She continued that it may not be distinguishable from its immediate
1454 neighbors, but it is still in a Low Density District and she would say that there is no fair and
1455 substantial relationship between the public purpose of the Ordinance and how it is applied to this
1456 particular building. Chair Hoppock asked if she means because of the size. Ms. Taylor replied
1457 yes, because of the size, the nature, and its long-standing use.
1458

1459 Mr. Gorman made a motion to approve ZBA 23-21 with the following conditions: the personal
1460 service uses shall be restricted to one professional service provider per unit, who schedules by
1461 appointment only, and is licensed by the State for their particular professional personal service.
1462 Mr. Welsh seconded the motion.
1463

1464 1. *Granting the Variance would not be contrary to the public interest.*
1465

1466 Met with a vote of 5-0.
1467

1468 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1469 Met with a vote of 5-0.

1470

1471 3. *Granting the Variance would do substantial justice.*

1472

1473 Met with a vote of 5-0.

1474

1475 4. *If the Variance were granted, the values of the surrounding properties would not be*
1476 *diminished.*

1477

1478 Met with a vote of 5-0.

1479

1480 5. *Unnecessary Hardship*

1481 A. *Owing to special conditions of the property that distinguish it from other*
1482 *properties in the area, denial of the variance would result in unnecessary*
1483 *hardship because*

1484 i. *No fair and substantial relationship exists between the general public*
1485 *purposes of the ordinance provision and the specific application of that provision*
1486 *to the property because:*

1487 *and*

1488 ii. *The proposed use is a reasonable one.*

1489

1490 Met with a vote of 5-0.

1491

1492 The motion to approve ZBA 23-21 with conditions passed with a vote of 5-0.

1493

1494 E) **ZBA 23-22: Petitioner, Casey Cota of Cota & Cota, Inc. of Bellows Falls, VT,**
1495 **requests a Special Exception for property located at 455 Winchester St., Tax Map**
1496 **#115-025-000, is owned by Donald E. Barnes and is in the Industrial District. The**
1497 **Petitioner requests to permit an office use in the Industrial District at this property,**
1498 **per Chapter 100, Table 8-1, Permitted Principal Uses, of the Zoning Regulations.**

1499

1500 Chair Hoppock asked to hear from staff.

1501

1502 Mr. Hagan stated that 455 Winchester St. is in the Industrial District on .95 acres. He continued
1503 that it is a one-story building of 1,368 square feet. Its last permitted use was a car rental
1504 business. That was under ZBA 99-13, that was granted on August 2, 1999 for a vehicle rental
1505 condition. A Variance from July 6, 1998, was for a modular home business with a display
1506 model, limited to a certain size. There were five additional ZBA applications in the 1970s but
1507 not pertinent to (this), and obviously, the Ordinance has changed since then anyway, so he did
1508 not write them all down.

1509

1510 Chair Hoppock asked if the Board had questions for Mr. Hagan. Hearing none, he asked to hear
1511 from the applicant.

1512 Casey Cota, President of Cota & Cota, stated that it is a family business, 82 years long, started by
1513 his grandparents. He continued that they deliver heating oil, propane, and kerosene, and do
1514 furnace service and plumbing services as their main course of business. Mostly the work is
1515 office in nature, or someone coming in to get parts to go out to fix a furnace or a plumbing issue,
1516 or a manager being there (preparing) to go look at code checks for a customer's home. The
1517 office nature would be someone coming in to set up a new account or to pay a bill. With this
1518 type of business, there is not a lot of customer traffic or interaction. Many people mail their
1519 bills, but if they have questions about bills, sometimes they will come in to get better
1520 clarification, or to get questions answered on an estimate for a new heating system or air
1521 conditioning, or things of that nature. It is not a highly busy location from that standpoint and is
1522 relatively small staffed to start with.

1523
1524 *A. The nature of the proposed application is consistent with the spirit and intent of the Zoning*
1525 *Regulations, this LDC and the City's Comprehensive Master Plan, and complies with all*
1526 *applicable standards in this LDC for the particular use.*

1527
1528 Mr. Cota stated that he feels the nature of the application is consistent with the spirit of the
1529 zoning. (It is about) being able to have a viable business, which is very similar to the other
1530 businesses that are around there, like Dead River Oil across the street, and F.W. Webb, which is
1531 down (the street) and both are heating in nature.

1532
1533 *B. The proposed use will be established, maintained and operated so as not to endanger the*
1534 *public health, safety, or welfare.*

1535
1536 Mr. Cota stated that the property will be maintained in accordance with making sure that public
1537 health and safety are there. He continued that Cota & Cota takes good care of all of its properties
1538 as they take pride in what they have.

1539
1540 *C. The proposed use will be established, maintained, and operated so as to be harmonious with*
1541 *the surrounding area and will not impede the development, use, and enjoyment of adjacent*
1542 *property.*

1543
1544 Mr. Cota stated that Cota & Cota would not do that, (would not cause) any harm to any of the
1545 neighbors. He thinks Cota & Cota being there will allow the property to be better maintained
1546 than it has been since it currently is very overgrown. Cota & Cota will make sure to clean up the
1547 building to hopefully last for the next 50 years.

1548
1549 *D. The proposed use will be of a character that does not produce noise, odors, glare, and/or*
1550 *vibration that adversely affects the surrounding area.*

1551
1552 Mr. Cota stated that the nature of what Cota & Cota is doing should not cause any of those
1553 issues. He continued that the noise will be people talking on the phone, and cars coming in and
1554 out; it should not be an issue.

1555

1556 *E. The proposed use will not place an excessive burden on public improvements, facilities,*
1557 *services, or utilities.*

1558
1559 Mr. Cota stated that he does not feel that Cota & Cota would cause an issue this way. He
1560 continued that again, being a small office with just a couple of staff members inside, it should
1561 not have any adverse effect to town services.

1562
1563 *F. The proposed use will not result in the destruction, loss, or damage of any feature determined*
1564 *to be of significant natural, scenic, or historic importance.*

1565
1566 Mr. Cota stated that they are not changing how it looks from the outside, except for cleaning up
1567 some bushes and that kind of (work). Nothing really should be disturbed. The landowner,
1568 Donald Barns, had fixed all the potholes around the building and that (sort of issue) already.

1569
1570 *G. The proposed use will not create a traffic safety hazard or a substantial increase in the level*
1571 *of traffic congestion in the vicinity of the use.*

1572
1573 Mr. Cota stated that he does not feel this will be a safety hazard with traffic. He continued that
1574 he does not think there will be an increase of traffic coming in and out of his property that will
1575 have any significant impact or noticeable impact. In fact, it should cut down on the trips of
1576 vehicles going in and out of F.W. Webb if Cota & Cota has their own parts in their own facility
1577 as well.

1578
1579 Chair Hoppock asked if it is correct that no oil or parts will be stored on the property. Mr. Cota
1580 replied no oil, but there will be service parts, plumbing parts, and parts of that nature.

1581
1582 Chair Hoppock asked if the left side of the picture is the parking area. Mr. Cota replied yes.
1583 Chair Hoppock asked if he knows how many parking spaces there are. Mr. Cota replied several.
1584 He continued that he would say there is enough parking for probably 10 to 15 vehicles, and it
1585 goes further out back as well.

1586
1587 Chair Hoppock replied that he saw that; it seems like a dogleg left. Mr. Cota replied yes. He
1588 continued that they could probably accommodate 15 to 20 vehicles easily. Chair Hoppock asked
1589 if it is correct that they do not expect to have that kind of volume there. Mr. Cota replied that is
1590 correct, he would expect a maximum of about four vehicles.

1591
1592 Ms. Taylor stated that she was curious about the storage of parts. She continued that she knows
1593 the “office” definition says that an office “is not materially involved in the fabricating,
1594 assembling, warehousing, or on-site sale, etc., etc.” She was curious as to warehousing. There is
1595 a difference, obviously, between a warehouse and storing parts in a room. She asked about the
1596 basic scope of what Mr. Cota thinks they might have.

1597
1598 Mr. Cota replied that usually what they try to have is the inventory that is consistent with one
1599 service van. He continued that it is expensive for parts to be on the shelf, so they do not want to

1600 hold on to too much, but they also want to cut down on the amount of times that a service
1601 technician has to go back and forth to a warehouse. Whatever they use that day, they turn it in,
1602 and then they will have whatever the technician used that day on the shelf tomorrow. This is just
1603 to maintain a normal, working inventory; it is not excessive.

1604
1605 Ms. Taylor asked if Cota & Cota keeps the company truck on the property and the technicians
1606 and delivery people drive their own cars and take them home. Mr. Cota replied that (the
1607 technicians) take their own vehicles home. It cuts down on running around, so if there is a call
1608 early in the morning, the technicians can go directly to the call from their home instead of
1609 coming to the office and then leaving and going back. He continued that many of Cota & Cota's
1610 service technicians are dispatched from their homes, going to their first call.

1611
1612 Ms. Taylor asked if they keep oil delivery trucks (at this office). Mr. Cota replied no, they do
1613 not have vehicles there.

1614
1615 Chair Hoppock asked if the Board had further questions. Hearing none, he asked for public
1616 comment, beginning with anyone opposed. Hearing none, he asked for anyone who wished to
1617 speak in favor. Hearing none, he (closed the public hearing and) asked the Board to deliberate.

1618
1619 *A. The nature of the proposed application is consistent with the spirit and intent of the*
1620 *Zoning Regulations, this LDC and the City's Comprehensive Master Plan, and complies*
1621 *with all applicable standards in this LDC for the particular use.*

1622
1623 Ms. Taylor stated that as they can tell from her questions, her concern mostly was whether this
1624 would be used as an actual office, or if it would also be used for storage, servicing, and things
1625 like that. She continued that Mr. Cota's responses did somewhat allay her concerns and this does
1626 not look like it will be used for storage of vehicles or equipment or anything else of that nature.

1627
1628 Chair Hoppock replied that he agrees.

1629
1630 *B. The proposed use will be established, maintained and operated so as not to endanger the*
1631 *public health, safety, or welfare.*

1632
1633 Chair Hoppock stated that from the definition he heard, he does not think this proposed use will
1634 be maintained or operated in a manner to endanger the health, safety, or welfare of anyone in the
1635 area or the people who work there.

1636
1637 Ms. Taylor stated that if the building is used and the lot is cleaned it up it might actually be safer
1638 than it is now, with the way people cut across lots out there when they can.

1639
1640 Mr. Gorman stated that he agrees with everything they said.

1641

1642 C. *The proposed use will be established, maintained, and operated so as to be harmonious*
1643 *with the surrounding area and will not impede the development, use, and enjoyment of*
1644 *adjacent property.*

1645
1646 Mr. Gorman stated that he thinks that the proposed use will be harmonious with the surrounding
1647 properties as it will fit right in. He thinks it is a great use for this formerly decrepit building,
1648 being cleaned up and being used well.

1649
1650 D. *The proposed use will be of a character that does not produce noise, odors, glare, and/or*
1651 *vibration that adversely affects the surrounding area.*

1652
1653 Mr. Welsh stated that it seems like the proposed use would actually emit less noise, less odors,
1654 and less glare than the prior use, and increase property values. Chair Hoppock asked if he means
1655 the prior use as a rental car facility. Mr. Welsh replied yes.

1656
1657 E. *The proposed use will not place an excessive burden on public improvements, facilities,*
1658 *services, or utilities.*

1659
1660 Mr. Gorman stated that there will not be an excessive burden on public improvements or
1661 facilities. He continued that this will not be a high volume use. Water, sewer, and things of that
1662 nature should be intact and adequate, as well as parking. He does not see any increased burden.
1663 As Mr. Welsh said, it is probably a step down from what was there, in terms of activity and
1664 burden.

1665
1666 F. *The proposed use will not result in the destruction, loss, or damage of any feature*
1667 *determined to be of significant natural, scenic, or historic importance.*

1668
1669 Ms. Taylor stated that they do not have any topographic map and she did not have a chance to
1670 look it up, but there are many wet areas around there, so her only concern would be if they
1671 expand pavement or redo something and it is a wet area. She continued that however, she is sure
1672 the Community Development Department will take care of that.

1673
1674 Mr. Hagan replied that it is in the floodplain, and that is something staff would process as part of
1675 this permitted change of use application. He continued that there have been many significant
1676 changes in those buildings up and down the street, and bringing them up to the requirements.

1677
1678 G. *The proposed use will not create a traffic safety hazard or a substantial increase in the*
1679 *level of traffic congestion in the vicinity of the use.*

1680
1681 Chair Hoppock stated that there is nothing about this proposed use that would create a traffic
1682 safety hazard or increase traffic levels in the area. He continued that he believes it is the area
1683 past Krif Rd., past the car dealerships. Mr. Hagan replied that it is just before Krif Rd.

1684
1685 Mr. Gorman made a motion to approve ZBA 23-22. Ms. Taylor seconded the motion.

1686

1687 A. *The nature of the proposed application is consistent with the spirit and intent of the*
1688 *Zoning Regulations, this LDC and the City's Comprehensive Master Plan, and complies*
1689 *with all applicable standards in this LDC for the particular use.*
1690

1691 Met with a vote of 5-0.
1692

1693 B. *The proposed use will be established, maintained and operated so as not to endanger the*
1694 *public health, safety, or welfare.*
1695

1696 Met with a vote of 5-0.
1697

1698 C. *The proposed use will be established, maintained, and operated so as to be harmonious*
1699 *with the surrounding area and will not impede the development, use, and enjoyment of*
1700 *adjacent property.*
1701

1702 Met with a vote of 5-0.
1703

1704 D. *The proposed use will be of a character that does not produce noise, odors, glare, and/or*
1705 *vibration that adversely affects the surrounding area.*
1706

1707 Met with a vote of 5-0.
1708

1709 D. *The proposed use will not place an excessive burden on public improvements, facilities,*
1710 *services, or utilities.*
1711

1712 Met with a vote of 5-0.
1713

1714 E. *The proposed use will not result in the destruction, loss, or damage of any feature*
1715 *determined to be of significant natural, scenic, or historic importance.*
1716

1717 Met with a vote of 5-0.
1718

1719 G. *The proposed use will not create a traffic safety hazard or a substantial increase in the level*
1720 *of traffic congestion in the vicinity of the use.*
1721

1722 Met with a vote of 5-0.
1723

1724 The motion passed with a vote of 5-0.
1725

1726 V) **New Business**
1727

1728 Chair Hoppock asked about the abutters list (issue). He asked Ms. Marcou to tell the Board
1729 about what the people in Concord said about not providing the abutters list.
1730

1731 Ms. Marcou replied that from what she can remember from the training several weeks ago, it was
1732 suggested by the NHMA (New Hampshire Municipal Association) not to include the abutters list

1733 in the publication of the (agenda) packet. She continued that if the Board would like, she can
1734 add it to the Board members' packets when she mails them.

1735
1736 Chair Hoppock replied that his concern is checking for conflicts. Ms. Marcou replied that that is
1737 why she could continue to mail it to the Board.

1738
1739 Ms. Taylor stated that abutters lists are public information, so she does not understand. She
1740 continued that unless there has been a change in law, case law, or statute, she would tend to
1741 ignore the NHMA's advice. Anyone can go on the website, press the "abutters" button, and get
1742 the list. She was saying to Ms. Marcou earlier that the Board's general practice has been that if
1743 (a Board member) sees they have a business relationship or a familiar relationship (with a
1744 property), they announce it, and the assembled multitude decides whether there is a conflict. It
1745 just does not make any sense (to not have the lists). Chair Hoppock replied that he has recused
1746 himself in cases when he has seen something on a list that caused him to realize he should not do
1747 it.

1748
1749 Ms. Marcou stated that she thinks the training was taped and will review for anything
1750 specifically that was cited, or if it was just a recommendation. If it was just a recommendation,
1751 she would continue to add the abutters list.

1752
1753 Chair Hoppock stated that he does not care what the recommendation is. It is that useful. Mr.
1754 Gorman replied that he thinks the question is whether it is a mandate or a recommendation. Ms.
1755 Marcou replied yes, that is what she will check; she believes it was a recommendation. Ms.
1756 Taylor replied that she would love to know the reasoning (for the recommendation).

1757
1758 Chair Hoppock asked if there was any other new business. Ms. Marcou replied that she, Mr.
1759 Rogers, and Mr. Hagan have been holding off because there have been such full agendas these
1760 past few months, but they want to bring forward a couple items regarding the rules of procedure.
1761 She continued that there are minor changes they want to suggest. However, they want to have
1762 enough time to discuss it, not at 9:30 PM. Chair Hoppock replied that he completely agrees.
1763 Ms. Marcou replied that at some point, they will be bringing those forth.

1764
1765 **VI) Adjournment**

1766
1767 There being no further business, Chair Hoppock adjourned the meeting at 9:25 PM.

1768
1769 Respectfully submitted by,
1770 Britta Reida, Minute Taker

1771
1772 Reviewed and edited by,
1773 Corinne Marcou, Board Clerk

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106 ROXBURY ST.
ZBA 23-23



Petitioner requests an expansion of a 16 bed residential drug/alcohol treatment facility to a 28 bed residential drug/alcohol treatment facility.



NOTICE OF HEARING

ZBA 23-22

A meeting of the Zoning Board of Adjustment will be held on **Tuesday, September 5, 2023, at 6:30 PM** in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the following petition.

ZBA 23-23: Petitioner, Live Free Recovery Services, LLC, represented by Chuck Ritchie of Fieldstone Land Consultants, PLLC, requests an Expansion for property located at 106 Roxbury St., Tax Map #569-066-000 and is in the Downtown Edge District. The Petitioner requests an expansion of a 16 bed residential drug/alcohol treatment facility to a 28 bed residential drug/alcohol treatment facility. The expansion does not require any external changes to the building or site.

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

Corinne Marcou, Zoning Clerk

Notice issuance date August 25, 2023

City of Keene, NH

Zoning Board of Adjustment Enlargement or Expansion Application



| | |
|-----------------------------|-----------------------|
| For Office Use Only: | |
| Case No. | <u>ZBA23-23</u> |
| Date Filled | <u>8/18/23</u> |
| Rec'd By | <u>CJM</u> |
| Page | <u>1</u> of <u>17</u> |
| Rev'd by | _____ |

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

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY: Live Free Recovery Services, LLC c/o Ryan Gagne

MAILING ADDRESS: 106 Roxbury Street, Keene, NH 03431

PHONE: (603) 438-3276

EMAIL: rgagne@livefreerecoverynh.com

SIGNATURE:

PRINTED NAME: Ryan Gagne

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: cebranon@fieldstonelandconsultants.com & clritchie@fieldstonelandconsultants.com

SIGNATURE:

PRINTED NAME: Chuck Ritchie

SECTION 2: GENERAL PROPERTY INFORMATION

Property Address: **106 Roxbury Street**

Tax Map Parcel Number: **569-066**

Zoning District: **Downtown - Edge**

Lot Dimensions: Front: **79±'** Rear: **94±'** Side: **134.5±'** Side: **134.5±'**

Lot Area: Acres: **0.28±** Square Feet: **12,196±**

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: **28±** Proposed: **28±**

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: **83±** Proposed: **83±**

Present Use: **Residential Drug/Alcohol Treatment Facility (16 beds)**

Proposed Use: **Residential Drug/Alcohol Treatment Facility (28 beds)**

SECTION 3: WRITTEN NARRATIVE

Article 27.7.4.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed expansion or enlargement of a nonconforming use.

See attached narrative

SECTION 4: APPLICATION CRITERIA

Article 25.7.1: A nonconforming use of a structure or land may be expanded or enlarged with approve from the Zoning Board of Adjustment, provided such expansion or enlargement does not violate any of the basic zone dimensional requirements of the zoning district in which it is located.

An enlargement and/or expansion of a nonconforming use is required in order to:

See attached narrative

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

1. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.

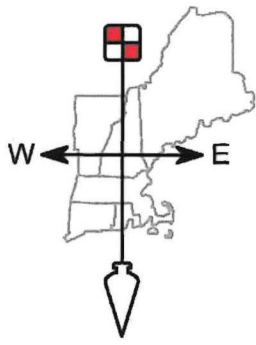
See attached narrative

2. There will be no nuisance or serious hazard to vehicles or pedestrians.

See attached narrative

3. Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.

See attached narrative



FIELDSTONE

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Land Planning ♦ Septic Designs

LAND CONSULTANTS, PLLC

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

Expansion of Nonconforming Use Narrative

Tax Map Parcel 569-066
106 Roxbury Street - Keene, NH

August 18, 2023

Prepared For:
Live Free Recovery Services, LLC

As agent for Live Free Recovery Services, LLC, Fieldstone Land Consultants, PLLC is submitting this Zoning Board of Adjustment application in order to expand an existing nonconforming use. The subject parcel is located at 106 Roxbury Street and is known as lot 66 on tax map 569. It is 0.28 acres with 79± feet of frontage on Roxbury Street per the City GIS. The current use is a 16 bed residential drug/alcohol treatment facility. The proposed expansion will consist expanding the use to a 28 bed facility. This expansion does not require any external changes to the building or site.

Section 25.7 of the Land Development Code outlines the requirements for the expansion or enlargement of a nonconforming use. The approval standards are outlined below with explanations on how the following conditions apply.

- A. Such expansion or enlargement would not reduce the value of any property within the zoning district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.
The proposed expansion will not require any exterior changes to the building or site. The enlargement will just be addition beds inside the treatment facility. This allows for the visual appearance of the neighborhood to remain the same and will not reduce, or have any substantial impact on the value of surrounding properties. The current use as a drug/alcohol treatment facility is essentially a residential use and the expansion will not create noise or light pollution. The additional beds will not be injurious, obnoxious, or offensive to neighbors as the existing site/use is consistent with surroundings.
- B. There will be no nuisance or serious hazard to vehicles or pedestrians.
The proposed expansion does not propose any new pavement or alter vehicle or pedestrian travel ways. The existing sidewalk along Roxbury Street will remain as it currently exists. The parking area will also remain as-is. For these reasons, the proposed expansion will no create a nuisance or serious hazard to vehicles or pedestrians.

Live Free Recovery Services, LLC
106 Roxbury Street – Keene, NH
Expansion of Nonconforming Use

Page 2 of 4

C. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

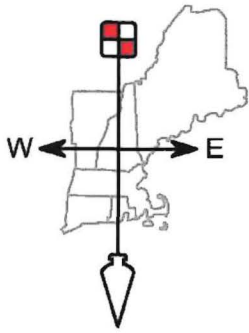
The current and proposed expansion of the drug/alcohol treatment facility provides and will continue to provide proper facilities for the operation of the use. The expansion is an additional 12 beds (from 16 to 28) and can be handled by the City water and sewer connection services. The building will remain the same size and continue to provide adequate access via foot and car to the site. Residents are not allowed to have vehicles, so existing parking for staff will continue to be sufficient as it currently exists.

For the reasons above, we believe the proposed expansion of the nonconforming use is reasonable and we look forward to discussing this further at the next Zoning Board of Adjustment meeting.

This information was prepared by:
Fieldstone Land Consultants, PLLC



Chuck L. Ritchie, E.I.T.
Project Engineer



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LAND CONSULTANTS, PLLC

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

August 17, 2023

RE: Live Free Recovery Services, LLC
106 Roxbury Street - Keene, NH
Tax Map Parcel 569-066

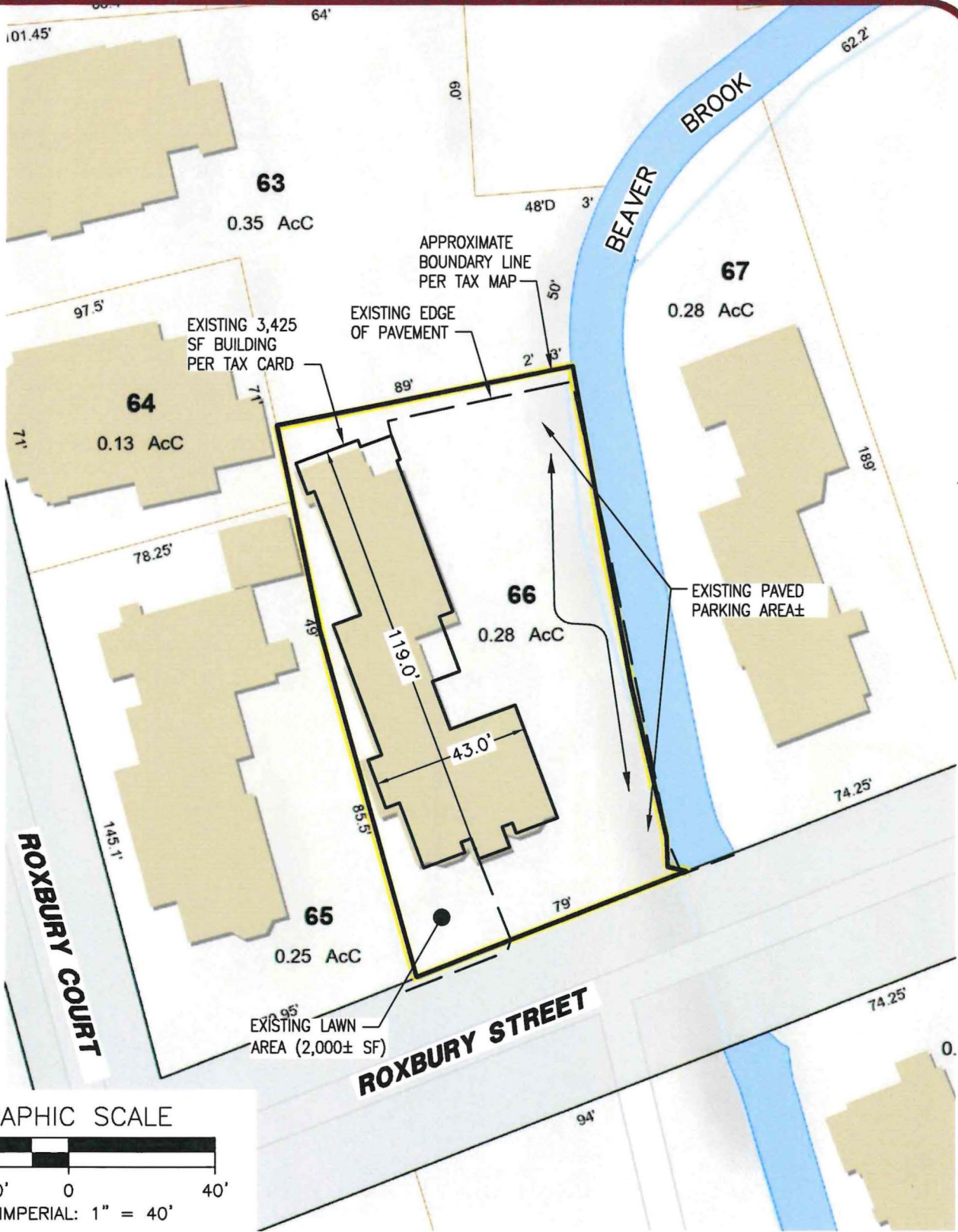
To Whom It May Concern:

The undersigned hereby authorizes Fieldstone Land Consultants, PLLC to act as their agent in filing and seeking the necessary local, state and federal approvals for the above referenced project.

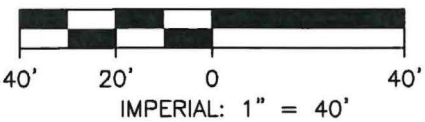
Very truly yours,

Signature: 

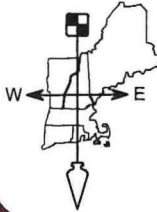
Print: Ryan Gagne Date 8/17/23



GRAPHIC SCALE



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FIELDSTONE
LAND CONSULTANTS, PLLC

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

ZONING EXHIBIT PLAN

**TAX MAP PARCEL 569-066
106 ROXBURY STREET
KEENE, NEW HAMPSHIRE**

SCALE: 1" = 40'

AUGUST 18, 2023

FILE: KEENECN00.dwg

SHEET NO. 1 OF 1

Congregate Living & Social Service License Board Criteria

Sec. 46-565. Licensing board review procedures.

(a) The licensing board shall consider the following criteria when evaluating whether to approve, renew, or deny a congregate living and social services license application.

(1) The use is found to be in compliance with the submitted operations and management plan, including but not limited to compliance with all applicable building, fire, and life safety codes.

(2) The use is of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.

(3) The use does not produce public safety or health concerns in connection with traffic, pedestrians, public infrastructure, and police or fire department actions.

(b) The licensing board may require conditions on a license as reasonably necessary to insure compliance with the requirements of this article.

(1) Failure of any licensee to comply with such conditions shall be considered a violation of the license.

(2) Such conditions may include restrictions on the operation of the use (e.g. reduced hours of operation, limits on occupancy), and may include limits on the term of the license to a period less than one-year.

(c) The licensing board shall provide notice of its decision on the application in writing to the applicant. In the event that the application is denied, the licensing board shall provide a written statement to the applicant stating the specific reasons for the denial.

(Ord. No. O-2021-04, § V, 5-20-2021, eff. 9-1-2021)