



AMENDED

City of Keene Zoning Board of Adjustment

AGENDA

Monday, May 5, 2025 6:30 p.m. City Hall, 2nd Floor Council Chambers

- I. Introduction of Board Members:
- II. Minutes of the Previous Meeting: April 7, 2025
- III. Unfinished Business:
- IV. Hearings:

ZBA-2025-03: Petitioner, Jarod Goodell, Keene, requests an appeal of an administrative decision from ZBA-2025-03 for property located at 67 Marlboro St, Tax Map #590-090-000-000-000. The Petitioner is appealing the Acting Zoning Administrator's decision that all buildings and structures on a parcel located in the Downtown Edge District must be located within the front setback 0-20 ft built-to-zone per Article 4.4.1 of the Zoning Regulations.

- V. New Business:
- VI. Staff Updates:

Master Plan – Future Summit
Board Data Collection
OPD's Spring 2025 Planning and Zoning Conference – May 10, 2025

- VII. Communications and Miscellaneous:
- VIII. Non-Public Session: (if required)
- IX. Adjournment:

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1 City of Keene
2 New Hampshire

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

8 **Monday, April 7, 2025**

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Richard Clough, Chair
Edward Guyot, Vice Chair
Adam Burke
Zach LeRoy, Alternate

Staff Present:

Evan Clements, Planner, Deputy Zoning
Administrator

Members Not Present:

Tad Schrantz
Stephen Tarbox, Alternate

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

13 Chair Clough called the meeting to order at 6:30 PM and explained the procedures of the
14 meeting. Roll call was conducted. Chair Clough stated that Mr. LeRoy is a voting member
15 tonight.
16

17 **II) Minutes of the Previous Meeting: March 3, 2025**
18

19 Mr. Burke made a motion to approve the meeting minutes of March 3, 2025. Mr. Guyot
20 seconded the motion, which passed by unanimous vote.
21

22 **III) Unfinished Business**
23

24 Chair Clough asked if there was any unfinished business. Mr. Clements replied no.
25

26 **IV) Hearings**
27

28 **A) ZBA-2025-02: Petitioner, Marcia Parody of 61 Aldrich Road, represented**
29 **by Wendy Pelletier of Cardinal Surveying & Land Planning, requests a variance for**
30 **property located at 53 Aldrich Road, Tax Map #234-010-000. This property is in the Rural**
31 **District and is owned by Marcia Parody. The Petitioner requests a variance to permit the**

replacement of an existing dwelling with a new dwelling while maintaining the current 38 foot setback where 50 feet is required per Article 3.1.2 of the Zoning Regulations.

Chair Clough asked if the Petitioner is comfortable moving forward with a four-member board tonight. (Yes.) Chair Clough introduced ZBA-2025-02 and asked to hear from staff.

Mr. Clements stated that the subject parcel is an existing 12.2-acre lot with an existing single-family residence, detached garage, and associated site improvements. He continued that the residence was constructed in 1960, containing approximately 12,157 square feet of living area and it is located approximately 38 feet from the side property line. Most of the lot is characterized by steep slopes and wetlands. In their narrative, the applicant states that the existing house location is the only relatively flat portion of the lot suitable for development. The applicant seeks a Variance to demolish the existing residence and construct a new single-family residence in the general building area but not the same footprint as the existing residence.

Mr. Clements continued that the new residence will be located 38 feet from the property line to not encroach further into the side yard setback than the current site conditions. The Variance is required for the new residence to be located within the side yard setback as this proposal is categorized as the Relocation of a Non-Conforming Structure, which is only allowed without a Variance if the relocation would make the structure conforming.

Mr. Clements continued that surrounding uses include residential to the north, south, east, and west, predominantly single-family residential, as well as some undeveloped land to the east. The entire neighborhood is zoned Rural, with a small pocket of Low Density development in the northeast area near the intersection of Aldrich Rd. and Hurricane Rd. Relevant sections of the Zoning Ordinance include the purpose statement for the Rural District, which is *“intended to provide for areas of very low density development, predominantly of a residential or agricultural nature. These areas are generally outside the valley floor, beyond where water, sewer, and other City services can be readily supplied.”* The Dimensions and Citing Requirements for the Rural Zone is relevant, in that all yard setbacks – front, rear, and side – are normally 50 feet. The section for Relocation of a Non-Conforming Structure is 19.3.3, *“A non-conforming structure may not be relocated in whole or part to any other location on the same lot, unless such relocation would make the structure conforming.”* That is why they are here this evening.

Chair Clough asked if anyone had any questions for Mr. Clements. Hearing none, he asked to hear from the Petitioner.

Wendy Pelletier of Cardinal Surveying & Land Planning stated that she is here representing Marcia Parody. She continued that Mr. Clements did a great job introducing the lot. It is a 12-acre lot with an abnormal shape. At some point, a house lot was taken out from right in the middle of it, which makes building a house anywhere else on this lot almost impossible. They (she and Ms. Parody) did not explore the northeast side, but due to wetlands, slopes, and other terrain, it does not make sense to build a house there as they were going to look at subdividing.

Thus, the Parody's considered tearing down the existing house, which was built in the 1960s, and building in the same location. As you can see in the picture displayed in the agenda packet, moving it even just a little bit would put it on the steep slopes. The picture of the house shows that the stone wall is about 38 feet uphill from the house. Beyond this is the Parody's Monadnock View Christmas Tree Farm, which they own a large parcel behind the subject parcel where they plan to replace the house with one very similar in size.

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

Ms. Pelletier stated that the existing dwelling will be replaced with a new dwelling that is no closer [to the setbacks] than the existing dwelling. She continued that it does not threaten public health, safety, or welfare.

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

Ms. Pelletier stated that as Mr. Clements said, it is rural development, and this house will not change the feel of the neighborhood as everything is very rural out there. The new house will still be in the same place, and it will still be a small dwelling.

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

Ms. Pelletier stated that it does not alter the character of the neighborhood, and as they said, due to the unique shape of the lot, there is no place else on this parcel that is practical to build on, other than right in that space, which would do justice for the client.

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

Ms. Pelletier stated that the house will remain the same. She continued that it actually might improve other properties, because the value of the house will be more than it is now since the current house is getting a little run down.

5. *Unnecessary Hardship*

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

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

and

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

Ms. Pelletier stated that the special conditions of this property (are) the shape of the lot and where the existing dwelling sits, along with the slopes and wetlands that distinguish this from other lots in the area. She continued that the 50-foot setback would not work on this property. They feel that this is a fair waiver to ask for as it does not change anything. The proposed use is reasonable since it will remain a residential use, and it will not be increasing the non-conformity.

Chair Clough thanked Ms. Pelletier and asked if Board members had questions.

Mr. Guyot asked if the 38-foot measurement is on the straight boundary line on the righthand side, next to the Christmas tree farm property, or if it is to the front. Ms. Pelletier replied that it is on the side. She continued that page 30 of the handout is a copy of the site plan they surveyed, and the 38 feet is the closest corner on the dwelling.

Mr. Burke asked if it is correct that Ms. Parody also owns the lot next to it, for the Christmas tree farm. Ms. Pelletier replied yes, the Parody's own the abutting lot.

Chair Clough asked if there were further questions. Hearing none, he thanked Ms. Pelletier and stated that there might be more questions later. He asked for public comment, beginning with anyone wishing to speak in opposition. Hearing none, he asked if anyone wanted to speak in support. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Mr. Burke stated that he thinks they meet this legal criterion. He continued that there is no harm to public safety or the neighborhood character, based on the application.

Mr. Guyot stated that he agrees. Chair Clough stated that he agrees as well.

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

Mr. Burke stated that he thinks this meets the criteria. He continued that it maintains the existing non-conforming setback without any encroachment beyond the 38-foot setback it currently allows.

Mr. Guyot stated that he would also add that from a sideline perspective, the bulk of the proposed dwelling is actually further away from the lot line than the existing dwelling corner. Looking at the site plan, it seems to him that it will look like it is further away. He asked if that is a garage or bump-out. (Unidentified speaker) replied that it is a small garage. Mr. Guyot stated that he thinks it meets the criteria.

Chair Clough replied yes, it is still a dwelling, still single-family, and it would not encroach any closer than the existing one, essentially.

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

161
162 Mr. Guyot stated that he thinks from the owner's perspective it does do substantial justice. They
163 brought up in the application that the unique shape and the slopes of the lot cause the challenge
164 here, and this is the only place the (dwelling) can go. Looking at the slope, halfway through the
165 house, there is close to a 5- to 10-foot drop. Thus, it is a unique site and rather challenging.

166
167 Chair Clough stated that he agrees. He continued that looking at the parcel layout, if they did not
168 place the house in the section they are placing it in, they would have to put in a driveway that
169 goes all the way up to the larger section. If he is correctly guessing what the topographical lines
170 would be, they would still probably be running very close to the 38 feet, because that is the
171 higher ground and everything else slopes away from it. It looks like it slopes down into wetlands.
172 Thus, it is not all that big an area that would be buildable. He does not see how they could site it
173 anywhere else on the property.

174
175 Mr. LeRoy stated that the fact that they are basically just replacing the existing home in the same
176 location, for the most part, makes the most sense.

177
178 Chair Clough replied yes, because otherwise they would be extending the driveway. He
179 continued that he does not know what the water situation is, but it would be a significant change
180 in all the services if they tried to relocate it, with possibly not gaining more than a few feet of
181 setback.

182
183 4. *If the Variance were granted, the values of the surrounding properties would not be*
184 *diminished.*

185
186 Mr. Burke stated that he thinks it meets that criterion. He continued that if anything, he thinks it
187 will improve the value of the properties, because they are updating the existing structure.

188
189 Mr. LeRoy stated that he agrees. Mr. Guyot stated that he agrees, too.

190
191 5. *Unnecessary Hardship*

192 A. *Owing to special conditions of the property that distinguish it from other*
193 *properties in the area, denial of the variance would result in unnecessary hardship*
194

195 Mr. Burke stated that the wetlands and the slope surfaces on the property provide a hardship to
196 try to move (the dwelling) to meet the setback requirements. He continued that he would say it
197 meets the criterion.

198
199 Mr. LeRoy stated that he agrees on all points.

200
201 Chair Clough stated that when you look at the map and realize the other building lot that was
202 chopped out of it would have probably been the only other place you could have built, had it all

203 been one contiguous unit, makes that the case. He continued that he does not see any solution
204 that would not be very costly and not be much of a gain.

205
206 *i. No fair and substantial relationship exists between the general public*
207 *purposes of the ordinance provision and the specific application of that provision*
208 *to the property because:*

209
210 Chair Clough stated that he does not see how trying to enforce a 50-foot setback, when there is
211 no place else to build it, would be doing justice. He continued that he does not think it does
212 disservice to the existing Ordinances.

213
214 *and*

215 *ii. The proposed use is a reasonable one.*
216

217 Chair Clough stated that he sees the Board members nodding their heads. He continued that it is
218 a domicile, so there is no change in the usage, with essentially the same footprint and same
219 placement. All the other setbacks are fine except for this one.

220
221 Chair Clough asked if anyone had anything else to add. Hearing none, he asked for a motion.

222
223 Mr. Burke stated that he would like to make a motion to approve ZBA-2025-02 and asked for
224 assistance with the correct wording of the motion. Mr. Clements provided assistance.

225
226 Mr. Burke made a motion to approve ZBA-2025-02, a request for a variance for property located
227 at 53 Aldrich Road, Tax Map #234-010-000, in the Rural District and owned by Marcia Parody.
228 The Petitioner requests a variance to permit the replacement of an existing dwelling with a new
229 dwelling while maintaining the current 38-foot setback where 50 feet is required per Article 3.1.2
230 of the Zoning Regulations. Mr. Guyot seconded the motion.

231
232 *1. Granting the Variance would not be contrary to the public interest.*
233

234 Met with a vote of 4-0.

235
236 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*
237

238 Met with a vote of 4-0.

239
240 *3. Granting the Variance would do substantial justice.*
241

242 Met with a vote of 4-0.

243
244 *4. If the Variance were granted, the values of the surrounding properties would not be*
245 *diminished.*

Met with a vote of 4-0.

5. *Unnecessary Hardship*

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

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

and

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

Met with a vote of 4-0.

The motion passed unanimously with a vote of 4-0.

V) New Business

Chair Clough asked if there was any new business. Mr. Clements replied no.

VI) Staff Updates

Mr. Clements stated that given tonight's questions about the wording of motions, he would like to offer to include suggested motion language in the staff report for future meetings. He asked if the Board is comfortable with that. Chair Clough replied yes.

A) Master Plan Update

Mr. Clements stated that the City is going through a Comprehensive Master Plan update, and he encourages everyone to check out *keenemasterplan.com*. He continued that Staff and the Master Plan Steering Committee just finished six strategic pillars, which will be the main tenets of the document itself. Another Future Summit is scheduled for June 3 of this year, at which they will release the draft document. Another survey will go out in the next week or so, to get final feedback on the strategic pillars, the overarching strategies, along with the goals and action items. They are also working on the Future Land Use Map, to look at the zoning districts and the current development pattern in the city, and to see what they like and what they would like to change. Unsurprisingly, everyone is looking for more opportunities for housing, as well as other uses.

B) Council Actions Annual Reporting

Mr. Clements stated that Councilor Haas made a request to City Council, which the Council discussed. He continued that the Council is requesting an annual briefing on the business of all

the City's boards, committees, and commissions. It will take a low amount of effort. The chair or representative can give that presentation in person if they choose or send a brief letter to the Council. The Board can work with staff support/himself to figure out what makes the most sense. It seems to be voluntary, but staff is in support of all the boards and commissions checking in periodically with the Council.

Mr. Clements continued that the ZBA's business is statutorily rigid, and well-documented, so it might not be as exciting of an exercise as it could be for boards doing more creative work that does not always get the attention it deserves, such as the Heritage Commission or Energy and Climate Committee. Thus, these reports to Council are a good opportunity for those types of bodies. But it is also a good opportunity for the ZBA to check in with the City Council and let them know what the ZBA is doing.

Chair Clough asked if Mr. Clements could give the ZBA a heads up, say a month or two before the Council is expecting a report from them. He asked if the ZBA would then work together to create a report, or if Mr. Clements would just need to talk with him (Chair Clough) about that. Mr. Clements replied that it is up to the Board. He continued that it will probably be the Chair's responsibility to write the letter or attend a meeting of whichever Council subcommittee is most appropriate for the ZBA's presentation.

Chair Clough asked for the Board's thoughts. Mr. Guyot stated that it looks like the Council wants a report around July 1. Mr. Clements replied yes, that is the initial target.

Jay Kahn, Mayor, stated that he noticed that the ZBA has had a leadership transition, and he wanted to come and thank the Chair and Vice Chair for stepping up, and thank the ZBA members for being consistent and active members. It is an important board, quasi-legislative. The ZBA's actions are final unless they are appealed.

He continued that he would like to reflect on a possible schedule for the ZBA to think about for their report. The State legislative session is going on, with a lot of re-thinking around zoning and whether there is going to be a Zoning Board of [Adjustment], or if they go back to the courts for determinations of appeals. He is not sure how it will all work out. However, the ZBA might think about how their work over this past year has translated into what kind of volume. The City does not aggregate that information very much for any of the committees and boards. For example, maybe the ZBA has had 20 or 30 appeals in a year – many people do not know. That might be the kind of public interest the Council would be interested in – how many applications were approved, or how many were sent back for an additional hearing, although the ZBA does not usually do that. They could also [mention] what some of the ZBA members' concerns are relative to these legislative transitions, give a heads up on issues the ZBA is concerned about, and thoughts on how to adjust. He does not think they need to wait for the end of a fiscal year or calendar year, necessarily. They could take advantage of a time when other committees are not seeking to do their reports at the same time. Because of the ZBA's quasi-

legislative function and how it relates to the State government, it might make sense to look to that schedule.

The Mayor continued that he also recommends the ZBA work with their staff liaison. Staff have the ZBA's records in good order. He reads them himself. They could target the delivery of the report to Council for perhaps October where he thinks the ZBA Chair should attend the meeting in case there are questions. He thanks the ZBA for all they are doing, which he appreciates. If anyone has suggested nominees for new members, he welcomes those names as he would like to fill in the ZBA's membership.

Mr. Clements stated that the Mayor made a good point – information about how many cases the ZBA has had and what action they have taken on those cases would be easy to put together. He continued that that would be a great tidbit of information for the City Council. It is an interesting situation. Generally speaking, they do not want Variance applications, because they want people to work within the Zoning Ordinance, but if the ZBA is getting the same requests for the same Variances repeatedly, it is great to be able to track that. They might then think, "Maybe it is time to change the Zoning Ordinance, because obviously, this is not working how we want it to be working."

Mr. Clements stated that the Board members might be following what is going on in the legislative session at the State level. He continued that there are many potential changes to local control and what authority municipalities have for their Zoning Ordinances. It is worth checking out. If Board members have opinions, they should contact their representatives about them.

Chair Clough thanked Mr. Clements and the Mayor and asked if anyone else had anything to add.

VII) Communications and Miscellaneous

VIII) Non-Public Session (if required)

IX) Adjournment

There being no further business, Chair Clough adjourned the meeting at 7:03 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk

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City of Keene, NH

Zoning Administrator Written Interpretation Application

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



For Office Use Only:

Case No. ZBA-2025-03

Date Filled 4/11/25

Rec'd By ED

Page 1 of 5

Rev'd by _____

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: **JARED GOODELL**

MAILING ADDRESS: **PO BOX 305 KEENE, NH 03431**

PHONE: **603-762-0202**

EMAIL: **J.GOODSELL@ICLOUD.COM**

SIGNATURE: _____

PRINTED NAME: **JARED GOODELL**

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: PROPERTY INFORMATION

Property Address: **67 MARLBORO STREET**

Tax Map Parcel Number: **5900900000000000**

Zoning District **DOWNTOWN EDGE**

Present Use: **MULTI FAMILY**

Proposed Use: **MULTI FAMILY**

SECTION 3: WRITTEN NARRATIVE

Article 26.9.4.A.: Describes the property location and owner of the subject property if the question of interpretation relates to a specific tract of land.

**see attached email from Jared Goodell,
sent on April 8, 2025. - Mari Brunner*

SECTION 4: ZONING INTERPRETATION REQUEST

A written interpretation is requested from Article (s) 4.4.1 of the Zoning Regulations

Article 26.9.4.C: An explanation of the zoning question or issue for which the applicant is seeking an interpretation and any supporting documentation. (use additional sheets if needed)

Does the present definition of 'build-to zone' ("BTZ") require that all structures on a lot be located within the BTZ?

SUBMITTAL REQUIREMENTS

A complete application must include the following items and submitted by one of the options below:

- **Email:** communitydevelopment@keenenh.gov, with **"ZBA APPLICATION"** in the subject line
- **Mail / Hand Deliver:** Community Development (4th Floor), Keene City Hall, 3 Washington St, Keene, NH 03431

The submittal requirements of a Zoning Administrator Written Interpretation are outlined further in **Article 26.9** of the Land Development Code.



WRITTEN NARRATIVE:

This narrative is an explanation of the zoning question or issue for which the applicant is seeking an interpretation and any supporting documentation. **see attached email from 4/8*



ZONING INTERPRETATION REQUEST:

This narrative describes the property location and owner of the subject property if the question of interpretation relates to a specific tract of land.



SECTION OF ZONING REGULATION: 4.4.1

Section from which a written interpretation is requested.



APPLICATION FEE:

\$125 (checks made payable to City of Keene, credit cards accepted via phone or in person)

Mari Brunner

From: Jared Goodell <jared@titonmarketing.com>
Sent: Tuesday, April 8, 2025 11:49 AM
To: Mari Brunner
Cc: Amanda Palmeira; Evan Clements; Paul Andrus; Michael Hagan
Subject: Build-to Zone Determination

Mari -

As we have discussed, I am looking to erect up to 4 duplex residential buildings at 67 Marlboro Street in Keene (the "Project"). These new buildings would be in place of the existing building, which I am seeking to have demolished as a part of the Project. The subject property is located in the Downtown Edge zoning district.

Throughout the preliminary discussions with the Community Development Department (the "Department") regarding this proposal, there has been disagreement in the interpretation of the *Front Setback - Build-to Zone*. The Department has taken the position that **all** structures on a parcel must be located in the *Front Setback - Build-to Zone*, in this case, 20 feet. Section 4.4.1, Keene Land Development Code, amended May 2024.

On the other hand, I contend that the Front Setback - Build-to Zone only requires a **single** structure to be located within the Build-to Zone.

Respectfully, I disagree with the Department's interpretation. I provide the following in support of that position;

The Land Development Code is clear on its face and not subject to modification. This matter is one of statutory (Land Development Code) interpretation. "The interpretation of a statute is a question of law, which we review de novo." Zorn v. Demetri, 158 N.H. 437, 438 (2009)(citing Correia v. Town of Alton, 157 N.H. 716, 718 (2008)). "When interpreting a statute, we first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." State v. Bickford, 167 N.H. 669, 672 (2015) (citing Pelkey v. Dan's City Used Cars, 163 N.H. 483, 487 (2012), aff'd, 569 U.S. 251 (2013)). "We do not read words or phrases in isolation, but in the context of the entire statutory scheme." Id. "When construing federal statutes, we construe them in accordance with federal policy and precedent." Id. "Where the language of a statute is clear on its face, its meaning is not subject to modification." Hutchins v. Peabody, 151 N.H. 82, 84 (2004) (citing Remington Invs. v. Howard, 150 N.H. 653, 654 (2004)). "We will neither consider what the legislature might have said nor add words that it did not see fit to include." Id.

In Keene's Land Development Code (the "LDC"), there are several defined terms. Several of those terms are relevant in this matter, including:

Setback - The distance between any property line and the nearest point to which **any building or structure can be erected**. Measurement shall be to the outermost vertical plane nearest the property line. Emphasis supplied.

Setback, Front - The required minimum or maximum distance that a building or structure must be located from the front lot line. Emphasis supplied.

Setback, Rear - The required minimum or maximum distance that a building or structure must be located from the rear lot line. Emphasis supplied.

Building Setback - The required minimum or maximum distance a building or structure must be located from a lot line, which is unoccupied and unobstructed by any portion of a building or structure, unless expressly permitted by this LDC. Emphasis supplied.

Build-To Zone (BTZ) - A build-to-zone (BTZ) is the area on a lot, measured perpendicularly from the lot line, within which a structure must locate. A BTZ sets a minimum and maximum dimension within which the building façade line must be located (e.g. 0-5-ft). Façade articulation (e.g. window or wall recesses and projections) are not counted as the building façade line, which begins at the applicable façade wall.

Building Coverage - Maximum area of a lot that is permitted to be covered by buildings or structures, which is measured by dividing the total area of building footprints (as measured from the outside ground wall and floor wall lines) of all principal and accessory structures by the total lot area.

These definitions are important, and when read in the context of the entire LDC (statutory scheme), support my position that only one building needs to be located in the *Front Setback - Build-to Zone*.

It is clear that the City Council contemplated that multiple structures may be located on a single lot. Evidence of this can be found in the definition of Building Coverage, where the language states "**total area of building footprints of all principal and accessory structures by the total lot area**." It is also worth noting that Building Coverage is a *dimensional requirement*, similarly to setbacks and build-to zones.

It is similarly clear that when the City Council intended for language to represent one building or structure versus more than one, they specifically chose words to make that clear. For instance, in the definition of Setback, the language states, "... to which **any building or structure can be erected**." The words "any building or structure" strongly suggests that more than one building may exist on a lot and that all structures on the lot must conform.

Whereas in the definition of "Setback, Front," the council chose different words. Instead of using the word "**any**" before building or structure, they chose the word "a."

The same goes for the definition of Build-To Zone (BTZ), the council specifically chose the word "a" before the word "structure."

Because the LDC does not define "a", we look to the dictionary for guidances to the ordinary meaning of the words. See *State v. Ruff*, 155 N.H. 536, 539 (2007). The word "a" is a *determiner*. While the dictionary contains several varying definitions, only two fit in the instant matter. First, "A" is defined as: "**one**

single." The second definition is: "used with units of measurement to mean **one** such unit." Emphasis supplied. In fact, the word "a" is derived from Middle English, a weak form of Old English and meant ān 'one'.

Given the clear and concise language of the Land Development Code, it remains my position that the built-to zone only requires that one structure be located in the build-to zone and that other structures may be located on the lot and outside the build-to zone.

I respectfully ask that the Department reconsider its determination and, regardless of reconsidering, issue a written determination on this issue.

Regards,

Jared Goodell



WRITTEN ZONING INTERPRETATION

Applicant: Jared Goodell
Code Reference(s): Article 1, Section 1.3.3.E and Article 4, Section 4.4.1
Date of Decision: April 14, 2025
Subject: ZBA-2025-03 Relating to the application of the “Build-to Zone” dimensional requirement to multiple structures on a lot.

Dear Mr. Goodell,

We are in receipt of your request for a written interpretation of the City of Keene Zoning Regulations. Your request asks for an interpretation of Section 4.4.1 of Article 4 of the Land Development Code (LDC) relating to the “Dimensions and Siting” requirements for properties in the Downtown Edge (DT-E) District. Specifically, you would like to know whether all structures built in this zoning district must comply with the front setback requirement in sub-section C, which requires a 0–20-foot Build-to Zone.

The City of Keene Zoning Regulations utilize both conventional setback requirements and “build-to” requirements in different contexts in order to regulate where buildings and structures may be located on a parcel of land. Defined in Article 1, Section 1.3.3 of the LDC, Setbacks and Build-To Dimensions encourage different kinds of building forms and development patterns and are applied to different areas of the City where a specific development form and pattern is desired. Setbacks encourage a development pattern with spacing between buildings and the street. Build-To Dimensions encourage a development pattern that forms a relationship between a building or structure and the public right-of-way by requiring the building façade to be located close to, or on, a property line. Both measurement tools are fundamentally linked as part of the Dimensions & Siting regulations.

As stated in the Purpose section of Article 4, “Downtown Zoning Districts,” the intent of the dimension and siting requirements for the downtown zoning districts are *“To facilitate development that reinforces and enhances existing varied character areas, and encourages creative, innovative development within downtown Keene”* and *“Allow for new development that is creative, innovative, and sustainable, and that reinforces the vibrancy, human scale, and pedestrian-orientation of downtown.”* The Build-to dimensions require building placement that promotes greater interaction between pedestrian users in the public right-of-way and ensures that the pattern of development is consistent with the character of the area in terms of building massing, scale, and placement on a lot.

The definitions for Setbacks and Build-To Dimensions both refer to “...a building or structure...” and provide additional clarification on where a building or structure can be located on a lot. The indefinite article “a” is used as a function word before a singular noun followed by a restrictive modifier. In the case of the Build-To Zone definition in Section 1.3.3.E of the LDC, “A build-to zone (BTZ) is the area on a lot, measured perpendicularly from the lot line, within which a



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structure must locate." According to the online Merriam Webster Dictionary definition of "a," the use of the indefinite article in this manner means "any." The phrase, "A building or structure to be placed on a lot subject to the Build-To Zone Dimensions & Siting regulations must locate in the Build-To Zone," is the same as saying, "Any building or structure to be placed on a lot subject to the Build-To Zone Dimensions & Siting regulations must locate in the Build-To Zone." It is worth noting that in Article 29, "Defined Terms" of the LDC, the definition for Setback refers to "...any building or structure..." instead of, "a building or structure." Based on the grammatical analysis above, the use of "any" or "a" is functionally the same and does not change the overall application of the Dimensions & Siting regulations.

The administration of this rule of measurement applies to every parcel of land within the City. When a building or structure is proposed to be located on a lot, it must be placed on that lot in accordance with the Dimensions & Siting requirements of the LDC for the Zoning District that lot is located in. Each instance of a building or structure proposed to be placed on a lot must be evaluated to determine if it meets all the requirements of the LDC. This evaluation is independent of a project that proposes to construct multiple buildings at the same time, or if there are existing buildings or structures already placed on the lot.

Furthermore, the Dimensions & Siting requirements are not satisfied for all buildings or structures on a lot if only one building or structure is placed to meet the requirements, as the placement of each building or structure is a unique occurrence that shall be evaluated accordingly.

In accordance with NH RSA 676:5 and Section 27.2 of the LDC, any aggrieved party may appeal this administrative decision to the Zoning Board of Adjustment within 30 days of the date of decision.

If you have any questions about this decision, please do not hesitate to contact me at (603) 352-5440.

Thank you,

A handwritten signature in cursive script, appearing to read 'Mari Brunner', written in dark ink.

Mari Brunner
Acting Zoning Administrator/ Senior Planner

City of Keene, NH

Zoning Board of Adjustment Appeal of Administrative Decision

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



For Office Use Only:	
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Rev'd by	_____

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: JARED GOODELL

MAILING ADDRESS: PO BOX 305 KEENE NH 03431

PHONE: 6037620202

EMAIL: J.GOODSELL@ICLOUD.COM

SIGNATURE:

PRINTED NAME: JARED GOODELL

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 1: ZONING REFERENCE

Section (s) of the Zoning Regulations in question:

4.4.1 Dimensions and Siting, Front Setback 0-20 ft Build-to Zone

Decision of the Zoning Administrator to be reviewed: (Attach addition sheets if needed)

The acting zoning administrator has determined that, for parcels located in the downtown edge zoning district, all buildings or structures on a parcel must be located within the front setback 0-20 ft build-to zone.

Basis for error in the Zoning Administrator’s decision:

See attached.

Statement from the Zoning Administrator:

Re: In the Appeal of Administrative Decision, ZBA-2025-03 Relating to the application of the “Build-to Zone” dimensional requirement to multiple structures on a lot.

The acting zoning administrator’s (the “Administrator”) written interpretation, dated April 14, 2025 (the “Decision”), of the front setback build-to zone (the “BTZ”) is in error because the Administrator has modified the definition of “front setback” and “build-to zone” in contradiction of the the Rules of Applicability of the City of Keene, New Hampshire Land Development Code (the “LDC”), particularly sections 1.2.1, titled Definitions, and 26.9.1, titled Description. “Where the language of a statute is clear on its face, its meaning is not subject to modification.” *Hutchins v. Peabody*, 151 N.H. 82, 84 (2004 (citing *Remington Invs. v. Howard*, 150 N.H. 653, 654 (2004))).

The Administrator’s Decision states that **all** buildings and/or structures on a lot subject to the LDC, particularly section 4.4.1 Dimensions and Siting, Front Setback 0-20 ft Build-to Zone, must be located within the 0-20 ft Build-to Zone.

On the other hand, appellant Jared Goodell (the “Appellant”), argues that the LDC only requires **one** building and/or structure be located within the BTZ and that additional principal buildings and/or structures on the same lot are not required to be located in the BTZ. Appellant states the following in support of that position;

Section 1.2.1 of the LDC states:

Terms that are not specifically defined in this LDC shall be accorded their commonly accepted meanings, unless the context in which they are used clearly indicates to the contrary.

A. For the purposes of determining the commonly accepted meaning of any term, reference may be made to the latest edition of Webster's Dictionary.

B. Terms not otherwise defined in this LDC that are defined in NH Revised Statutes Annotated (RSAs) may take on the statutory definition.

C. The definitions of this LDC shall take precedence over any conflicting definitions, if such conflict arises.

Article 29 of the LDC provides the following relevant definitions to the instant matter:

Build-To Zone (BTZ) - A build-to zone (BTZ) is the area on a lot, measured perpendicularly from the lot line, within which a structure must locate. A BTZ sets a minimum and maximum dimension within which the building façade line must be located (e.g. 0-5-ft). Façade articulation (e.g. window or wall recesses and projections) are not counted as the building façade line, which begins at the applicable façade wall.

Setback, Front - The required minimum or maximum distance that a building or structure must be located from the front lot line.

The Administrator's Decision seeks to modify the definition of both "Build-To Zone (BTZ)" and "Setback, Front" because its decision ignores the common meaning of the word "a". Both definitions contain similar language that states, "... within which a structure must locate..." and "... that a building or structure must be located..." Terms that are not specifically defined in (the) LDC shall be accorded their commonly accepted meanings. (LDC, 1.2.1) For the purposes of determining the commonly accepted meaning of any term, reference may be made to the latest edition of Webster's Dictionary. (LDC, 1.2.1(a)) The word "a" is not a defined term in the LDC.

According to the online edition of the Merriam-Webster dictionary, the word "a" has several definitions. The relevant definitions to the instant matter are;

1. Noun. one designated *a* especially as the first in order or class;
2. Indefinite article. used as a function word before singular nouns when the referent is unspecified;

3. Indefinite article. Middle English, from Old English ān one.

Giving deference to the dictionary definition of “a”, then one must read the definitions of both “Build-To Zone (BTZ)” and “Setback, Front” in the LDC to mean that only one building or structure must locate in the BTZ or from the front lot line. Other additional buildings or structures located on the same parcel are not required to locate in the BTZ or conform to the setback, front, so long as a building and/or structure has already located within the “BTZ” or “setback, front”, thereby meeting the requirements of the dimensions and siting requirements of the LDC.

The word “a” is a type of determiner and goes before a noun. “A” before a noun shows that what is referred to is not already known to the speaker, listener, writer and/or reader (it is the indefinite article). Suppose that an event organizer claims “Whoever wins this game, I will get him a cookie!” Do the words 'a cookie' mean 'one cookie' or 'any cookie' or 'more than one cookie' or 'any one cookie'? Prevailing teaching of the English language informs us that, in fact, when you say "a cookie", it means a single cookie, because the function of the indefinite-article is to denote that it is singular.

Additionally, and in the alternative, Appellant argues that the intent of the crafters of the LDC can be determined by reading the definitions of “Build-To Zone (BTZ)” and “Setback, Front” in the context of the entire LDC. For instance, when reading the definition of “Setback” in the LDC, we find that the crafters chose different words to define a generalized “setback.” The Setback definition is:

Setback - The distance between any property line and the nearest point to which any building or structure can be erected. Measurement shall be to the outermost vertical plane nearest the property line. Emphasis supplied.

In the *Setback* definition, the word any replaces the word a before the words “building or structure” when compared to the definitions of Build-to Zone (BTZ) and Setback, front. When construing that language according to its plain and ordinary meaning, its

clear that the Setback definition applies to any building or structure on a lot, as opposed to just a building or structure in the Build-to Zone (BTZ) and Setback definitions. “When interpreting a statute, we first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning.” State v. Bickford, 167 N.H. 669, 672 (2015) (citing Pelkey v. Dan's City Used Cars, 163 N.H. 483, 487 (2012), aff’d, 569 U.S. 251 (2013)).

Where the crafters meant for a setback to apply to **any** structure on a lot, they specified the same. The crafters intended to define a general setback and more specific setbacks (front, BTZ, rear, side) differently. They understood and intended that different setbacks (front, BTZ, rear, side) would and could be applied differently, and so they sought to define those terms *individually*. They chose their words carefully and found it important that a Setback applied to any building or structure on a lot, but that a “setback, front” or “build-to zone”, for instance, should only apply to a building or structure on a lot.

The Administrator argues, in the Decision, that the word “a” and “any” are interchangeable in the instant matter. That argument is a red herring. The crafters of the LDC specifically chose the word “a” in some instances and the word “any” in other instances. We assume they chose their words carefully and chose different words because they intended different meanings. It is inconceivable that the crafters chose different words when they intended to convey the same meaning of those words. The Administrator seeks to cloud the meaning of the words to buttress the Decision and to avoid collateral implications from a plain and ordinary reading of the text.

The Administrator may argue that conflicting language exists concerning setbacks and build-to zone. While Appellant disagrees that such conflicting language exists, to the extent that the Zoning Board of Adjustment finds that conflicting language does exist, such conflicts are preempted, and the definitions cited herein shall control, by section 1.2.1(c) of the LDC which states that, “The definitions of this LDC shall take precedence over any conflicting definitions, if such conflict arises.”

Furthermore, the Administrator may suggest that the illustrations provided in the LDC to depict setbacks in the build-to zone only depict a single building or structure and such depiction provides evidence that all buildings or structures must be located within the setback, front or build-to zone. This argument shall fail, however, given the language of the LDC which states, “Graphics, illustrations, diagrams, and flowcharts are included in this LDC to visually explain the intent and requirements of the text. **In the case of a conflict between the text and any graphic, illustration, diagram, or flowchart, the text controls.**” LDC, 1.2.7. Emphasis supplied.

The Administrator’s Decision that ***all*** buildings and/or structures on a lot are subject to the Front Setback 0-20 ft Build-to Zone is in error and seeks to modify the plain text of the LDC. For the reasons stated herein, the Zoning Board of Adjustment should find that Section 4.4.1 of the LDC requires that only ***a*** building and/or structure must be placed in the “Front Setback 0-20 ft Build-to Zone” ***and*** that additional principal buildings and/or structures on a lot are not subject to the “Front Setback 0-20 ft Build-to Zone” after the first buildings and/or structure complies.

Appellant respectfully requests allotted time for oral agreement of this appeal at the hearing of the same.