

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 5, 2025

6:30 PM

**Council Chambers,
City Hall**

Members Present:

Richard Clough, Chair
Edward Guyot, Vice Chair
Tad Schrantz
Adam Burke

Staff Present:

Evan Clements, Planner, Deputy Zoning
Administrator
Mari Brunner, Senior Planner, Acting Zoning
Administrator

Members Not Present:

Zach LeRoy, Alternate

I) Introduction of Board Members

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

II) Minutes of the Previous Meeting: April 7, 2025

Mr. Schrantz made a motion to approve the meeting minutes of April 7, 2025. Mr. Guyot seconded the motion, which passed by unanimous vote.

III) Unfinished Business

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

IV) Hearings

- A) **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.**

Chair Clough introduced ZBA-2025-03 and asked to hear from the Petitioner.

Jarod Goodell stated that to begin, he has a clarification to make for the record. He continued that the opening remarks mentioned that this is specific to a parcel, and this is not parcel-specific.

The written zoning interpretation mentions that the interpretation is for all properties and the requirements in the Downtown Edge District specifically.

Mr. Goodell continued that he would begin with a summary of how they got to this point. On April 8, he requested in writing that the Zoning Administrator issue a written determination regarding its interpretation of “Front Setback – Build-to Zone.” On April 14, the Acting Zoning Administrator issued that determination. The written determination stated, in summary, that all structures on a lot must comply with the Build-to Zone. He followed with this appeal, which he is presenting tonight.

Mr. Goodell continued that he believes the written interpretation is incorrect. He believes that the text of the Land Development Code (LDC) is clear on its face and is not subject to modification. New Hampshire courts have found that *“Where the language of a statute is clear on its face, its meaning is not subject to modification.”* The written determination alters the clear text by defining words in ways that the City Council did not intend. The courts have stated, *“We will neither consider what the legislature might have said nor add words that it did not see fit to include.”* The written determination is inconsistent with the entire scheme of the LDC. When looking at a statutory scheme, in this case the entire LDC, you must look at not just the sentence or paragraph you are looking at, but the words in the entire scheme of the code. Finally, the current text of the LDC only requires that “a” structure be located specifically in the Front Setback - Build-to Zone. The code does not require that “all or any” structures be located in the Front Setback - Build-to Zone, despite the written determination.

Mr. Goodell stated that in the LCD, the Build-to Zone is listed in Article 1.3.3(E) as, *“The area on a lot, measured perpendicularly from the lot line, within which a structure must locate. A Build-to Zone sets a minimum and maximum dimension within which the building façade line must be located. 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.”* He continued that he included the graphic from the LDC. Build-to Zone is also listed in Defined Terms, which is in Article 29. He put the text side by side (in a slide) so the ZBA can see that the wording is verbatim. Both the language in Article 1.3.3(E) and the Defined Terms are identical. That is good news.

Mr. Goodell stated that he wants to point to the definition of “setback.” He wants to read a line from the written zoning determination, because there is a difference between “setback,” “front setback,” and “Front Setback - Build-to Zone.” They are all different things, each individually defined. The Acting Zoning Administrator writes, at the beginning of the second paragraph, *“The City of Keene Zoning Regulations utilize both conventional setback requirements and build-to requirements in different contexts.”* That is important. He agrees with the Acting Zoning Administrator that a setback, side setback, and a Build-to Zone are different setbacks. That is why they are listed separately in both the Rules of Measurement, Article 1.3.3(E), and the Defined Terms, because they have different meanings and different purposes.

Mr. Goodell stated that the definition of a “setback” in both the Rules of Measurement and Defined Terms is, *“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 to the property line.”* The definition of “setback, front” is, *“The required minimum or maximum distance that a building or structure must be located from the front lot line.”* He continued that he has not sat through as many meetings as Chair Clough or Mr. Guyot, and he knows several other Board members are new, but he knows that when boards like the ZBA or the City Council create and craft language, they choose their words very carefully. During past meetings, he has heard ZBA members say, *“I’d rather it say (this)”* or *“I’d rather it say (that),”* or *“I’m not comfortable with that language.”* They need to respect such boards when they choose words and respect the meaning of the words they choose. Thus, he thinks it is important to recognize that the definition of “setback” and “setback, front” use different words. In this case, he has highlighted “any” in the “setback” definition and the word “a” in “setback, front.”

Mr. Goodell continued that as it pertains to the real-world application of the front setback in the Downtown Edge District, (he wants to share something) from Article 4.4.1, the dimensional requirements for projects, structures, or buildings in the Downtown Edge District. Specifically, in this instance, C. Front Setback requirement, is a 0–20-foot Build-to Zone. The graphic shows the depiction the LDC uses. He indicated the Build-to Zone in the graphic, and continued that in essence, as he understands it, a building is required to be built within that depicted area. It could be right up, 0-foot on the sidewalk or on the street, or it could be as far back as 20 feet. As long as the front of the building sits in that area, it is in conformity with the dimensional requirements.

Mr. Goodell continued that he owns several lots on Marlboro St. but will select (this) specific one, highlighted in yellow on the screen, which is a big, long building. What he could potentially do is tear that building down, then, (with a new graphic) with the building removed he could build something new within that 0–20-foot Build-to Zone, (what is shown in the graphic). This is a big, long lot. If he wanted to add, say, two more buildings behind it, the written zoning interpretation would not allow for that, because the determination states that all structures or buildings would need to be located in the Build-to Zone.

Mr. Goodell continued that he thinks a threshold question is whether the LDC allows multiple structures, because they need to look at this in the context of the entire scheme of the LDC. Thus, they turn back to Article 1.3.2(B), which is where they found the Build-to Zone in the first instance. A section here talks about building coverage. The language states that *“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 of all principal and accessory structures by the total lot area.”* The words “buildings,” “structures,” “building footprints,” and “principal and accessory structures” are all plural. The LDC and the City Council at the time, just in the last five years as this document was being written, contemplated the idea that they would have multiple structures on a lot, and that when they do, there is a way they will calculate building coverage for the purposes of dimensional requirements. Thus, he thinks the answer is clear that the crafters of the LDC did contemplate multiple structures and they were okay with that.

Mr. Goodell stated that regarding the question of why they are concerned with Build-to Zones, a few weeks ago, the Joint Planning Board/Planning, Licenses and Development Committee met, and this very issue came up with regards to another project. He wants to play the ZBA a snippet of the video from that meeting, because he does not think he and City staff disagree on the intent of the Build-to Zone. He thinks there is a question of the interpretation of the language. Understanding the intent is important.

Mr. Goodell played the video clip, which had the following audio:

Evan Clements, Deputy Zoning Administrator: *“The intent of the Build-to Zone is that on the street, pedestrian-scale feel. I think there is a way that we can come up with, for any district that uses the Build-to Zone, to say that when you want to come in and develop this lot, your first building or a building that is decided to be the most appropriate for that pedestrian orientation, be in that Build-to Zone. Then once you have met that requirement, what you do behind it, go crazy. Do what you want. Obviously, follow the rest of the rules, but go (crazy). Why are we so concerned with the building be attached to itself?”*

Kate Bosley, City Councilor: *“I agree. [...]”*

Mr. Goodell stated that again, he agrees with the Deputy Zoning Administrator that the important part of the Build-to Zone is that they keep the buildings up close and sort of hugging the street or sidewalk to create that downtown and pedestrian feel, which is the intent of the downtown zoning districts. He thinks you can meet that by placing structures behind the first, conforming, primary structure. He thinks the intent is clear, and both he and City staff agree on what the intent is here. He thinks allowing developers to develop behind initial principal structures that conform is a good thing; it allows for infill housing development that is much needed in the city. He did not depict it on his map, but right now there is a big, long structure there, and he could rebuild if he wanted to take that structure down and put a new building up. He could put a big, long building up, but he cannot put up three buildings with gaps in between. It takes some mental gymnastics to really understand why they would want that, or if that makes any sense.

Mr. Goodell continued that he thinks the real question for the Board is whether the current language is clear on its face. His bold assumption is that City staff agree on the intent but maybe do not feel comfortable with the language now and are looking for clarification on whether the words say what maybe they all think the words should say. His argument is that the words are clear already. The definition of “setback” uses the word “any” when referring to structures that must apply to an ordinary setback. Or, as the Acting Zoning Administrator put it, a conventional setback requirement. The definition of “setback, front” uses the word “a” when referring to a structure that must locate in the “setback, front,” and the definition of “Build-to Zone” also uses the word “a” when referring to the area in which a structure must locate.

Mr. Goodell continued that the LDC says that when a term is not defined, you turn to the Merriam-Webster Online Dictionary. The word “a” has about 25 meanings, so he removed the ones that did not apply in this case and presented the ones he thought most accurately

represented the definition of “a” in this context. As a noun, it is “*one designated ‘a’ especially as the first in order or class.*” As an indefinite article, it is “*used as a function word before singular nouns when the referent is unspecified.*” The Acting Zoning Administrator stated that they believe “a” was used as an indefinite article in the interpretation.

He continued that the definition of “any” as an adjective is “*one, some, or all indiscriminately of whatever quantity: a) one or more - used to indicate an undetermined number or amount, b) unmeasured or unlimited in amount, number, or extent.*” As a pronoun, it is “*anything or things*” or “*any part, quantity, or number.*” The definitions of “a” and “any” are different. The Indefinite Article Argument from the Merriam-Webster Dictionary says, “*The word ‘a’ or ‘an’ used in English to refer to a person or thing that is not identified or specified. The most common of all adjectives are the two or three articles. An article always comes before the noun it describes and before any other adjectives that also describe the noun. Articles are used to show whether or not the noun refers to a specific person or thing. The indefinite article is ‘a.’ It identifies a single, but not specific, person or thing. ‘An’ is used instead whenever the following word begins with a vowel sound.*” Mr. Goodell gave four example sentences using “a” and “an.”

Mr. Goodell continued that more lines from the Merriam-Webster Dictionary say, “*In English grammar, ‘a’ or ‘an’ (indefinite articles) are used with singular, countable nouns, while ‘any’ is used with plural or uncountable nouns, and in negative sentences and questions.*” Essentially, you use “any” for plural nouns, and “a” or “an” for referring to one item. Mr. Goodell showed an example of what it means to define “any” and “a,” by having the Board imagine that a tabletop has a piece of paper on it, and three rubber ducks must be placed on the table, with one rule – a duck must be located within the piece of paper. He continued that the intent is clear on its face. Only *a* structure must locate in the Build-to Zone. The words “a” and “any” are not interchangeable, and the crafters of the LDC chose different words because they intended for different meanings.

Mr. Goodell continued that in the zoning interpretation, the Acting Zoning Administrator writes, “*The phrase ‘a building or structure to be placed on a lot subject to the Build-to Zone dimensions and 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 and siting regulations must locate in the Build-to Zone.’*” At the beginning of this presentation, he mentioned that the LDC is clear on its face and is not subject to modification. To support his claim, the Acting Zoning Administrator literally had to re-write the words that were already written and say that “this means the same as that.” The Acting Zoning Administrator goes on to say that in Article 29, “Defined Terms,” the definition for “setback” refers to “*any building or structure*” instead of “*a building or structure.*” They were making a different argument, but he agrees that the definition of “setback” is different than “front setback - Build-to Zone,” whereas (the definition of) “setback” uses “any” building and (the definition of) “front setback - Build-to Zone” uses “a” building.

Mr. Goodell stated that in conclusion, he prays that the ZBA will find that the written determination ZBA-2025-03, relating to the application of the Build-to Zone

dimensional requirement to multiple structures on a lot, is in error and to withdraw or invalidate it and find that the current language of the LDC only requires that a single structure be located in the Build-to Zone and then additional structures after the first compliant structure may locate outside of the Build-to Zone.

He continued that there might be an argument tonight that if the ZBA finds in his favor on this there could be collateral implications with other things in the LDC. He thinks that should not be of concern to the ZBA or to himself at this time. If there are other issues in the LDC, they should be taken up separately and at a different time, either by this board or the City Council. They have to look at the LDC as it stands now, as a snapshot in time, and make a determination off the current text.

Chair Clough thanked Mr. Goodell and asked to hear from staff.

Mari Brunner, Senior Planner, Acting Zoning Administrator, stated that she will run through her normal process when she is making an interpretation of the code, specifically with respect to zoning dimensional requirements. She continued that then, she will talk about the specific case that instigated this written interpretation and appeal.

Ms. Brunner stated that when she looks at any sort of proposal, request, or application, she knows that in the LDC all development, all redevelopment, the creation of all new lots, and everything, has to comply with the rules of the LDC. Specifically, under the “Applicability” section in Article 1, the LDC states, “*Except for non-conformances allowed pursuant to Article 19, no structure may be erected, converted, enlarged, reconstructed, moved, or altered; no land or structures may be used or changed; and no lots of record established by subdivision or otherwise, that do not comply with all applicable regulations of this LDC.*” Therefore, when the Community Development Department receives an application or an inquiry where there is a proposed new building or buildings, she first checks to make sure that the proposed use is allowed in the zoning district, and then, she checks to make sure the proposed building, buildings, or structures will conform with all of the zoning dimensional requirements of the district. Zoning dimensional requirements within the LDC include the minimum lot size; minimum lot width; the front, side, and rear setbacks; maximum impervious coverage; maximum building coverage; and maximum building height. The requirements are meant to control the pattern of development and the placement of buildings on lots in relation to the street and other buildings.

Ms. Brunner continued that for every new use, building, structure, or lot, either she or Mr. Clements as the Deputy Zoning Administrator will review the proposal to make sure all the requirements for that zoning district are met. They do this for every new building or structure, regardless of whether there is already a building on the lot or whether multiple buildings are proposed or just one. They apply them to everything that is proposed. For example, if they have a lot that is already developed and already has a principal structure on it and a second principal structure is proposed, that second principal structure would have to meet the maximum height requirement. They would not allow the second building to be higher than the maximum height

for that district, because every building in that district has to meet the height requirement. It is the same thing with the setbacks and the overall impervious coverage. It applies to everything on the lot.

Ms. Brunner continued that the presence of a building on the lot does not negate the need for the second building to comply with these requirements. However, in specific instances that are clearly spelled out in the Code, certain zone dimensional requirements do not apply to a specific use, uses, or structures. These are clearly stated in the Rules of Measurement and Exceptions, in Article 1, Section 1.3 of the LDC. For example, under Section 1.3.3 – Setbacks in Build-to Dimensions, subsection 4 is about structure setback exceptions. It includes a list of structures that may be excluded entirely from the required setbacks. An example would be steps and stairs necessary to provide access to a building or structure. Another example would be fences, and another example would be signs that are regulated by Article 10. Those types of structures are completely exempt from setbacks.

Ms. Brunner continued that another section says that structures within a residential district may encroach up to 10 feet from the rear property line. Examples of that include pools, decks, and accessory dwelling units. The way that she reads the Code is that if a structure is not listed in this list of exemptions, then it has to comply with all of the zone dimensional requirements for the zoning district it is proposed to be in.

She continued that as the Petitioner pointed out, in Article 29, the definition of “setback” does use the word “any.” Article 1, Section 1.3 – Rules of Measurement and Exception, also includes a definition of “building setback.” She read it aloud: “*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 the building or structure, unless expressly permitted by this LDC.*” In this instance, it uses the word “a” instead of “any.” She believes the intent was for those definitions to be identical because they are defining the exact same term, so if they were not identical, that would make the document internally inconsistent.

Ms. Brunner continued that she appreciates Mr. Goodell’s presentation, because it clearly showed what the issue is. The applicant is proposing to demolish an existing structure and build three new detached duplexes on an interior lot in the Downtown Edge District. The proposed use is allowed, which is great. The next step is to look at the relevant dimensional requirements for a non-corner lot in this district. Those are:

- Have a minimum lot size of 10,000 square feet and a minimum lot width of 50 feet.
- The front setback is a 0–20-foot Build-to Zone.
- The minimum interior side setback is 0 feet.
- The rear setback is 25 feet because it is adjacent to a residential zoning district.
- The minimum front Build-to percentage is 60%.
- The maximum height is 40 feet and three stories.
- The minimum ground floor height is 12 feet.
- The minimum ground floor transparency is 30%.

- The maximum blank wall area is 30 feet.
- The maximum height of building entry threshold above the sidewalk is 18 inches.

Ms. Brunner continued that the reason she wanted to read through all those is because many of them pertain to the relationship between the building and the street. Looking at the district as a whole, all the dimensions are designed around the way that the building interacts with the street, which is why it is required to be up close to the front of the lot. Again, this is a form-based code district and one of the reasons for the form-based code is to create that building façade line along the street, similar to what you see on Main St., and create more interaction with the pedestrian realm. That is why there are so many of these dimensional requirements here that you would not see outside of the downtown. Other areas in the Zoning Code do not have things like “transparency” and “blank wall area” and “maximum height of the threshold above the sidewalk.” That is all very oriented towards buildings that are up close to the sidewalk and the right-of-way.

Ms. Brunner stated that the Build-to Zone is defined in Article 1, Section 1.3.3, subsection E. as *“the area on a lot measured perpendicularly from the lot line within which a structure must locate. A Build-to Zone sets a minimum and maximum dimension within which the building façade line must be located. (e.g. 0-5 feet). 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.”* In addition, it includes a minimum front Build-to percentage of 60%, and the definition of a Build-to percentage is in Article 1, Section 1.3.3(D). That states, *“A Build-to percentage specifies the percentage of the building façade that must be located within the Build-to Zone or at the Build-to line. Façade articulation (e.g. window or wall recesses and projections) do not count against the required Build-to percentage. Plazas, outdoor dining, or other public open space features that are also bounded by a building façade parallel to the frontage are counted as meeting the Build-to percentage. Build-to percentage is calculated by building façade, not lot width.”* Based on these two definitions, and the fact that there are no exemptions listed anywhere in the LDC for this use in this district, it is her interpretation that at least 60% of the front building façade of all new proposed structures on the lot are required to be built within the front Build-to Zone.

Ms. Brunner continued that she went to the Merriam-Webster Dictionary when looking at the definition of “a.” One of the definitions is as an indefinite article. The example the dictionary gave is what really helped her understand, and it said, *“A person who is sick cannot work.”* In that instance, “a” was used in the same way that you would normally use “any.” You could also say, *“Any person who is sick cannot work.”* Thus, in some instances, “a” can be used in the same way that you would use the word “any.” Another example would be, *“Let’s go see a movie.”* There is no specific movie that we have in mind; it is indefinite. Her interpretation when reading the definition is that that is just the definition, and then how it applies and what it applies to is articulated within the Zoning Ordinance. In the Zoning Ordinance it says whether there are exceptions. In this case, there are no exceptions, so she goes back to the provision at the beginning that says all structures have to comply with all the rules in the LDC. That is how she made her interpretation.

Chair Clough stated that since all of these distances are set sort of for perspective, his question is whether there is a minimum height of a building in that zone or whether there ever has been one. Ms. Brunner replied that she does not think there is one in the Downtown Edge District, but some zones have a minimum height. Chair Clough replied that depending on the setback, the height would actually create perceptions that are different.

Mr. Schrantz stated that he has a clarification question regarding the 60% information she provided. He asked if it is correct that the zoning allows for multiple buildings on a lot in this instance. Ms. Brunner replied yes. Mr. Schrantz replied that the argument is that all buildings would have to be within the Build-to Zone and 60% of their elevation dimension would have to be facing the street. He asked if that is correct. Ms. Brunner replied that the way the code reads, basically 60% of that façade has to be within the Build-to Zone, and it does not count things like projections of awnings or a recess in the building, or maybe a courtyard with public space. That would still count toward the 60% as long as it is bounded on either side by building façade that is in the zone. Mr. Schrantz asked if it is correct that it does not have to do with the total façade of a building, just the façade that is in the Build-to Zone has to be 60%. Ms. Brunner replied yes. She continued that as Mr. Goodell was explaining, the rest of the building does not need to be in the Build-to Zone, just the front façade, and just 60% of it.

Mr. Burke stated that he thinks it comes down to the definition of “a.” He continued that if a building has to be in the Build-to Zone, then he thinks Mr. Goodell has a point in his argument about the interpretation of what is written there. His question is regarding Ms. Brunner’s reference to “all” structures and reference to “any” structures. He asked if she could expand on that. She gave the example of going to see “a” movie, meaning any movie there. He is curious about the definition of “any” in the way the LDC writes the code today.

Ms. Brunner replied that the LDC does not define “a” or “any;” it just relies on the common meanings of those words. Mr. Burke replied that he is asking about Ms. Brunner’s interpretation in her written argument. He asked if she could expand on what her argument was in the letter to Mr. Goodell, in reference to “any” structure being required to be in the Build-to Zone.

Ms. Brunner replied that for her it goes back to Article 1, the applicability section of the LDC. She continued that Section 1.1.4 – Applicability, part A., reads, *“To the extent allowed by law, the provisions of this LDC shall apply to all land, buildings, structures, and uses located within the jurisdiction of the City of Keene, NH.”* There, the LDC uses the word “all.” Part B. reads, *“Except for non-conformances allowed pursuant to Article 19, no structure may be erected, converted, enlarged, reconstructed, moved, or altered; no land or structures may be used or changed; and no lots of record established by subdivision or otherwise, that do not conform with all applicable regulations of this LDC.”* She interprets that to mean all buildings have to comply with the zone dimensional requirements. The definition is just trying to define what a Build-to Zone is, in her interpretation. It is an area on a lot where the front façade has to be located.

Ms. Brunner continued that this section says that all buildings have to comply with all the rules and regulations. Article 1, Section 1.3 does not list that duplexes are exempt from any of these

setbacks, or that a second principal structure is exempt, or anything like that. Thus, her conclusion is that every building has to comply with the Build-to Zone. An accessory dwelling unit can only be with a single-family home, and it is a single dwelling unit, and it has to be accessory to the primary use. In this instance, the applicant was proposing three structures, each of which would be its own principal use. And to her knowledge, there are not any exceptions in the code for a principal structure to not comply with the setbacks.

Chair Clough asked if the Board had further questions for Ms. Brunner. Hearing none, he asked if Mr. Goodell had anything else to say.

Mr. Goodell replied yes, he wants to address an argument. He continued that Section 1.1.4. is accurately titled 'Applicability'. He continued that the Acting Zoning Administrator is relying on the words in the last line of subparagraph B, "*applicable regulations of the LDC.*" That word "*applicable*" is very important. There are many things in the LDC that do not apply to, say, residential districts, but do apply to commercial districts or downtown districts, and vice versa. It is important, then, to not view subsection B. as saying that everything has to comply with every word and every requirement in the LDC. Things need to only comply with the *applicable* portions of the LDC. In this case, the LDC is clear that only "a" building needs to comply with the Build-to Zone specifically. That is his counterargument to the idea that this should be the safety net in this instance to catch this. You might call it a loophole or a mistake in words, but that is what the words are today.

Mr. Goodell stated that he thinks the Build-to percentage argument is a red herring. He continued that the Build-to percentage is a sub-requirement of the Build-to Zone. Yes, a structure must comply with having 60% in the Build-to Zone, but only "a" structure needs to be in the Build-to Zone, so as long as 60% of "a" structure is in the Build-to Zone, you have met the requirement. Regarding the argument about building height, (on the screen are requirements of) the Downtown Growth District, including building height. He cannot use the Downtown Edge District as an example of building height, because building height is not a requirement in that district. He asked if that is correct. Ms. Brunner replied that she believes there is a requirement for a maximum height of 40 feet or three stories, but there is no minimum. Mr. Goodell replied that that is a great example of how there are things in the LDC that apply only in certain circumstances. A building minimum height is a requirement of the LDC, but it is not a blanket requirement for everything, it is only where it is applicable.

Mr. Goodell continued that regarding building height, the definitions (in Section 1.3.4 Building Height) does not really cite "a" or "any" structure. There is no specific language like what is found in the Build-to Zone or Front Setback that uses the words "*a building*" or "*any building.*" He understands the Acting Zoning Administrator's argument here, but he thinks it is sort of apples to oranges. The language is very different between Building Height as an example to Build-to Zone.

Mr. Goodell continued that the Acting Zoning Administrator also talked about intent and stated that maybe some of the language is inconsistent. He does not disagree. If the language is

inconsistent, it should be fixed, but the words that exist today are the rules that the City Council has said the community will live by.

Mr. Goodell continued that regarding whether the “all encompassing” argument is at play here, regarding the applicability issue, the law in NH is that you cannot drive faster than the speed limit. But the speed limit is different on every road, so the law does not say, for example, that you cannot drive faster than 50 mph. It says you cannot drive faster than the posted speed limit. He views the Build-to Zone as a requirement on a specific road, or in this instance, a specific zoning district. A single rule is not all encompassing on the entire city, which he thinks is the catch-all argument that is being made here with regards to that applicability section.

Mr. Goodell continued that lastly, he wants to address the “*Let’s go see a movie*” example. If he said that phrase to the group, he assumes everyone would understand they are only attending one movie that night, not two or three.

Chair Clough asked for public comment, positive or negative. Hearing none, he closed the public hearing and asked the Board to deliberate.

Chair Clough stated that the first thing he noticed was that when he looked for the definition, he found it on the fourth page and not in the glossary, and they do not agree. He continued that the definition for “setback” says “a,” but the glossary says “any.” That is an inherent conflict. He does not know how they could possibly resolve that, because they cannot re-write it. Thus, it comes down to interpreting “a” and “any” and how it would be applied towards this, and whether the Board finds for the (applicant) or the administrator.

Mr. Schrantz stated that he, too, went to the Merriam-Webster Dictionary to try and figure out the definitions of “a” and “any.” He continued that the one piece he is leaning on here is that 3.B., related to the indefinite article discussion they were having, says “any,” and the example Ms. Brunner was using, “*A person who is sick cannot work,*” refers to “any.” He thinks this will be a longer conversation as they go through this, but for him, it is not easy to get clarity on a definition of “a” or “any.” It is definitely an interpretation. That is what he has read and seen in Merriam-Webster. He thinks more conversation is needed, because trying to get clarity on “a” and “any” and the way it is used throughout the document leads to potential interpretations that will be critical to where they get the source from.

Mr. Guyot stated that he agrees with Mr. Schrantz, but to aid in the process, he brings it now to the context in which the term is being used. He continued that when they look at the definition of the Build-to Zone, it seems logical to him that “a” means “one” in this instance, when you bring it into the context of the regulations. The inconsistencies are there, which is troubling, but looking at the words as they stand, within the context of that section, right now he sees “one.”

Mr. Burke stated that he kind of agrees. He continued that to him, “a” means “one,” and “any” would mean “any of one,” not “all.” He is looking at it as, if a structure has to be in the Build-to Zone, it does not necessarily mean *all* of the structures in that lot have to be in the Build-to Zone.

He thinks this is an interpretation issue; with the way it is written. As he reads through everything, he does not see anything that tells him “a” means “all,” which he thinks is the challenge.

Chair Clough stated that he did a search in the LDC to see how many times “*a building*” is mentioned and how many times “*any building*” is mentioned. He continued that “*a building*” is mentioned about 144 times, and “*any building*” is mentioned about 24 times. If you read what follows those words, both “*a building*” and “*any building*,” you would see that at least half of those instances would have nothing to do with this. For example, “*Any building’s windows must be...*,” which has nothing to do with setbacks or anything like that. “*A building*” is used a lot. He does not know if that is always meant to be a singular, unique building, or if they are using it much more ubiquitously, “*a building*.” It is almost like there are very specific times it is being used. He does not know, in terms of Article 4.4.1. To him, the fact that it says “a” building must be in a certain part of it, does not help at all. That does not necessarily mean either unique or one of many. He does not really find an answer for that.

Chair Clough continued that if the Board feels that “a” means a single, unique building, and the applicant is looking for multiple, then they would find for the applicant. If the Board feels that “a” is much more open to interpretation, then they would find for staff. It sounded to him that the Board is leaning more toward “a” means a single. He asked if anyone contests that significantly.

Mr. Guyot replied at this point, no. He continued that it is challenging. The grammatical definitions of the word “a” create a challenge, but generally, from what he has seen reading through the dictionary definitions and doing some other research, it moves to the singular. Then, when he brings it into the context, it seems to lean even further to the singular, relative to the Build-to Zone. Yet if you go to other areas, it could go either way. There are a lot of challenges there.

Chair Clough replied yes, he thinks there are places in the LDC where “a” is not unique. They are saying “*a building*” that is in this, and there could be multiples, and it is referring to any of the buildings that are multiple. The fact of “*a building*” in this zone must have a certain setback, that actually means *every* building in the zone must have conformed to that setback.

Mr. Schrantz stated that if he recalls, from some of the conversation, they are not supposed to be thinking about intent. He continued that it is really about the specific definition of “a” versus “any or all” in this specific context. He thinks context is fine, but intent is not something they are looking at. Thus, he agrees with Mr. Guyot that in general language and with the way he would speak, “a” is singular and “any” would be multiples. Again, he falls back on, because of the way the document is written and because of the way that it is somewhat inconsistently interpreted, and then going to Merriam-Webster where “a” can clearly mean “any,” that is the biggest challenge for him in voting on this issue. To say if it is definitive, and if there is good clarity there, and if not, then the Board still needs to make a ruling and determine how to move forward on this. However, he thinks they are all sensing and feeling the same thing. He does not want to speak for anyone here, but he thinks there is not enough clarity to make it an easy decision.

Chair Clough stated that with the choices in front of them, they either have to follow one side or the other or continue the meeting. He continued that personally, he is not sure he would get further clarity if he slept on this for a year. He would love to have a lightning bolt strike him with pure clarity, but that is not going to happen. He asked for others' thoughts.

Mr. Burke made the following motion, which was seconded by Mr. Guyot.

On a vote of 4-0, the Zoning Board of Adjustment reversed the administrative decision ZBA-2025-03 where the Acting Zoning Administrator made the interpretation that all building structures on a lot in the Downtown Edge District are subject to the Build-to Zone dimensional requirement per Article 4.4.1 of the Zoning Regulations.

V) New Business

VI) Staff Updates

A) Master Plan – Future Summit

Mr. Clements stated that as everyone has heard, the City is undergoing a Master Plan comprehensive update. He continued that the Future Summit is scheduled for Tuesday, June 3, 2025. Ms. Brunner replied that at www.keenemasterplan.com a StoryMap is available, that explains the six pillars and the goals. She continued that a short survey is available there until May 12.

B) Board Data Collection

Mr. Clements stated that as Mr. Burke brought up at the last meeting, it would be helpful to comprehensively track ZBA decisions to identify potential changes to the code. He continued that it is a great idea, and staff will share with the board once the best way is determined.

C) OPD's Spring 2025 Planning and Zoning Conference – May 10, 2025

Mr. Clements stated reminder about the Office of Planning and Development Spring conference scheduled on May 10. He continued that it is free, virtual, and for anyone who is available, he highly recommends attending it provides an overview of how to be a Planning and Zoning board member. This conference discusses state statute and how everything works, and he highly recommends it for both new and senior members on the Board.

VII) Communications and Miscellaneous

Chair Clough asked if there was any further business. (No).

VIII) Non-Public Session (if required)

IX) Adjournment

There being no further business, Chair Clough adjourned the meeting at 7:34 PM.

ZBA Meeting Minutes
May 5, 2025

ADOPTED

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Clerk