



Board of Appeals
Thursday, January 25, 2024 3:30 p.m.
2nd Floor Conference Room
City Hall
3 Washington St.

AGENDA

- I.** Introduction of Board Members
- II.** Vote Chair and Vice Chair
- III.** Minutes of the previous meeting: Board of Appeals: June 13, 2023;
Housing Board of Appeals: November 9, 2022
- IV.** New Business
- V.** Unfinished Business
 - a. Rules of Procedure
 - i. Board of Appeals
 - ii. Housing Board of Appeals
- VI.** Adjourn

Page intentionally left blank

City of Keene
New Hampshire

BOARD OF APPEALS
MEETING MINUTES

Tuesday, June 13, 2023

4:30 PM

**Council Chambers,
City Hall**

Members Present:

Malcolm Katz, Chair
Doug Brown
Corinne Park

Staff Present:

John Rogers, Building & Health
Official/Zoning Administrator
Corinne Marcou, Board Clerk
Michael Hagan, Plans Examiner

Members Not Present:

Steve Walsh
Donald Flibotte

1) Introduction of Board Members

Chair Katz called the meeting to order at 4:30 PM and roll call ensued.

2) Minutes of the Previous Meeting – May 30, 2023

A motion by Mr. Brown to adopt the minutes of the May 30, 2023, meeting was duly seconded by Ms. Park and the motion carried unanimously.

3) New Business:

a. BOA 23-01: Petitioner, Toby Tousley of Keene, has filed a petition for an Appeal of Building Code, 2018 IBC Section 202, Change of Occupancy

Chair Katz welcomed the applicant, Toby Tousley of Keene, who shared some materials with the Board. Mr. Tousley said that he did not intend to fight every City Code decision. He said that is not who he is and that he has a good relationship with the Code Enforcement Department. He acknowledged that the Board of Appeals had seen him a lot recently, but said he always tried to work things out with Code Enforcement before coming to the Board. Mr. Tousley said that initially, he disagreed with the ruling that this was a change of occupancy, but the City pushed back, and so he agreed to work it out. He thought they had worked out this situation, but he said the Fire Chief, Don Farquhar, wrote to him and refused to issue a permit, stating that this was a change of use, and the Chief did not propose any ways to fix the situation. Mr. Tousley said that because it was a change of use, it had to go to the Fire Chief. Mr. Tousley said he was not purposefully being obstructive to the Code Enforcement Department, stating that they are highly professional, and he typically did not have issues with them.

Mr. Tousley referenced the materials he gave to the Board. He recalled that this was about a change of occupancy. So, he referred to the International Building Code (IBC) 202 and International Existing Building Code (IEBC), both of which he said describe the 3 things that trigger a change of occupancy. *“A change in the use of a building or a portion a building which results in one of the following: (1) A change of occupancy classification; (2) A change from one group to another group within an occupancy classification; (3) Any change in use within a group for which there is a change in application of the requirements of this code.”* Mr. Tousley referred to (1) and said that changing from an assembly to business group or business group to education would be a change of occupancy. He said (2) did not apply here because this use remained in Business Group B. He said (2) would be a change from one group to another within the occupancy classification; if changing from group A1 to A2, for example, he said that would be a change of use. He reiterated that (2) did not apply here because Group B does not have any sub-groups. Mr. Tousley stated that the City alleged that there was a change in the application requirements, as stated in (3). Mr. Tousley believed that the City had misinterpreted (3).

Mr. Tousley continued on the topic of a change in application requirements as stated in (3) above. He said that this was about a proposed hair salon in a space that had been used for offices and different things over the years. He said this proposed hair salon was an occupancy that consisted of one open room. He reiterated that this had consistently been a business space consisting of one room. No physical changes were proposed to the doors, walls, or windows. He said this occupancy would not require a greater occupant load, degree of safety, structural strength, fire protection, or means of egress. Everything would stay the same but the name on the door would change.

Next, Mr. Tousley referred to additional commentary that was provided by the Code Enforcement Department. He said that additional commentary on the Code was very helpful in determining what the Code means. Mr. Tousley thought that Code Enforcement was hung up on the portion of the Code that talks specifically about a beauty parlor moving into an old post office. He said he understood that Code Enforcement was trying to “cover their butt.” He quoted the Code, which states that, *“Where a beauty parlor moved into an old post office, while remaining a Group B building, it would be a change in level of activity.”* Mr. Tousley said that the change in level of activity and change of application requirements were what mattered in this case. He said that of course there would be a change in level of activity between a post office and beauty parlor; a post office might have a loading dock or sorting areas that would not be open to the public and likely would not have adequate egress. He said that tearing walls down and opening an old post office for a beauty parlor would obviously be a change in level of activity. Mr. Tousley said the previous occupants of the space in question included an advertising agency, a small employment center, a computer network business, and a non-profit organization. All of those previous occupants had 1–4 clients per hour; he said all of those were different than a post office, which might have dozens of clients at a time. In comparison, the proposed beauty salon would have two stations and there would most likely never be more than two clients in the space per hour. Thus, Mr. Tousley said there was no change in the level of activity.

Mr. Tousley continued explaining why he did not feel this was a change in level of activity. He referred to the IBC, which shows what is considered a “Business Group.” He cited some unusual Business Groups, like airport traffic control towers, animal hospitals, kennels and pounds, dry cleaning, food processing, post offices, and radio and television. Mr. Tousley said that if the beauty salon was moving into one of those spaces, then it would absolutely be a change of use, but they were not moving into one of those spaces. He said they would be removing the desk from the office and moving in 2 hair chairs. He said there was no change in activity, use, or occupancy.

Lastly, Mr. Tousley referred to a list of similar projects within this same building over the last number of years, stating that none were considered a change of occupancy. He said that in November 2013, there was a hair salon. There was also a design studio. In 2015, there was another hair salon in a space previously occupied by a business coach; that was not a change of use or occupancy. Harvest Time Herbs was not a hair salon but had to install a 3-bay sink in a space that was previously a single office. In 2020, Kelly Picard opened a hair salon 3 doors down from the space proposed for the new hair salon in question and that was not a change of use. Mr. Tousley said someone could say that the Codes had changed. However, he said the wording was exactly the same in the 2015 Code and that the intent had been the same since 2003; nothing had changed in decades. Mr. Tousley did not understand why all of these examples he listed were not also considered changes of use.

Chair Katz welcomed the owner of the proposed hair salon, Heather Fish of Swanzey. Ms. Fish explained how this situation had been a financial burden. She said this was the third time she was moving her salon and something like this had never happened before. She had been a downtown Keene business owner on Central Square for nine years that was an office before her salon, and she never went through anything like this. Ms. Fish said the Fire Chief completely refused to issue a permit via email. She said she was at a loss. She hoped to work together and reach an agreement that would allow her to move forward.

Chair Katz asked for Staff comments from John Rogers, the City’s Building Official. Mr. Rogers agreed that Mr. Tousley had always been willing to try to work with the Community Development Department. The Board had copies of the IBC and Mr. Rogers first referenced Section 302, which talks about ten occupancy classifications that Mr. Tousley referenced. Many of those uses have sub-categories and others are just their classifications, with the Business Group being one of them. Mr. Rogers referred to the change of occupancy definition that Mr. Tousley cited, which states that even though beauty parlors and post offices are both within the same use group, it would still be considered a change of use. As mentioned, (3) in the definition that Mr. Tousley quoted above states that, “*Any change in use within a group for which there is a change in application of the requirements of this code.*” Mr. Rogers asked the Board to keep that in the back of their minds.

Mr. Rogers also referenced the IEBC because this is an existing building with proposed renovations to convert an office into a hair salon. He said that Section 1001.1 of the IEBC was almost word-for-word the same as the IBC. He referred the Board to the commentary section, which states that even though there is a change within the same group, it could still be a change of use. He quoted: *“For instance, imagine that a community center is sold and converted to a dance hall. Both of these are considered by the IBC as being an Occupancy Classification Group A-3, but the requirements of the code to each facility could be considerably different. The dance hall might have a higher occupant load and, therefore, require different egress facilities. This specifically states that if the change in occupancy would result in a different fire protection threshold in Chapter 9 of the IBC, then it must be addressed.”* Mr. Rogers said the goal of the change of use was to verify and determine if any changes would be triggered through the Building Code. Even though the Building Code tries to group similar uses together in those classifications, they are not all exactly the same, and there would be different Code requirements between the uses in a group.

Mr. Rogers referred to Chapter 10 of the IEBC that defines a change of use. He said this hair salon would not be a change from one classification to another or one group to another; this was a change of use within the Group B use group. The IEBC states that, *“A change of occupancy that is only a change in use can be dealt with as a Level 1, 2 or 3 alteration in accordance with Chapter 7, 8 or 9.”* Mr. Rogers said the amount of work occurring would cause a project to fall into one of those chapters. He said that just because there is a change of use, it does not mean that the Department would hold an applicant or building owner to the whole Building Code. However, the Code does dictate that, *“... depending on the extent of the remodel and with the particular requirements contained in Section 1006, Structural; Section 1007, Electrical; Section 1008, Mechanical; and Section 1009, Plumbing. The exception provides for special considerations for historic buildings, as given in Section 1205.”* Mr. Rogers said Mr. Tousley mentioned no structural changes and that basic electrical work occurring would just need to meet the Building Code, but there are no specific electrical requirements for a hair salon. As the Building Official for the City of Keene, Mr. Rogers thought that Section 1008 on mechanical changes was the trigger in this instance. He referenced Table 403.3.1.1. – Minimum Ventilation Requirements and stated that there were different ventilation requirements for an office and a beauty salon, even just a hair cutting salon. While he was not saying it was the case in this situation, Mr. Rogers said that if a nail station—a customary accessory use in a hair salon—were added to this beauty salon, a much higher level of mechanical ventilation would be needed. These are the specific types of things that are triggered for the City’s Plans Examiner to consider when there is an application for a change of use. Mr. Rogers said it was not like the Department would go through the whole Building Code for a project. Still, in this instance, Section 1009 on plumbing also applied to this change of use within a group. Mr. Rogers recalled the application was to install a few hair stations, sinks, and maybe a hand wash station. Mr. Rogers said the City’s Plans Examiner, Michael Hagan, was present to answer questions, including whether anything plumbing related would be triggered for a hair salon. Mr. Rogers said the only issue Mr. Tousley did not touch on was mechanical. He added that Mr. Tousley spoke more about the impact of activities, such as no change from two customers or two workers per hour. From the

perspective of the Building Code, Mr. Rogers said there were some concerns about occupant load, but as Mr. Tousley pointed out, Mr. Rogers did not think that was an issue. To Mr. Rogers, the trigger that required this application to go through the change of use process was based off the mechanical code. He said this space might already meet the mechanical requirements, but without the change of use review, the City could not know. It is possible that Mr. Tousley and Ms. Fish would not have to do anything with the ventilation, but the City must be able to confirm that.

Chair Katz asked whether the two triggers for the City of Keene denying the permit were the plumbing (potentially) and the air supply/ventilation system. Mr. Rogers said he would not say that “the City of Keene was denying a permit” but the change of use permit process does have some additional approval requirements, which Mr. Rogers said was one of Mr. Tousley’s main concerns appealing to this Board, and that he understood the frustration. Still, Mr. Rogers did not see how the Community Development Department could not consider this a change of use based on the Code (and commentary), which he thought was pretty clear on changes of use. Mr. Rogers said it was not that the permit would be denied, but City Staff would most likely need more information to approve that permit. Chair Katz asked Mr. Rogers to clarify whether he was asking the applicant for more information to verify that the air system is sufficient. Mr. Rogers said Mr. Hagan should speak to that because he reviewed the initial plan for the space. Chair Katz said he understood that for a Level 2 existing building, adding plumbing would make a difference. Mr. Rogers said that it would make a difference for the different levels, but a change of use could technically occur without any construction; the main thing for the change of use designation is a more in-depth review. The change of use review is not triggered by the level of work. Mr. Rogers quoted IEBC again, “*A change of occupancy that is only a change in use could be dealt with as a Level 1, 2, or 3.*” Chair Katz said the applicant would not be moving any doors or windows, and there would be no structural changes; the issues were a few stations and the ventilation system. Mr. Rogers did not have the information in front of him but thought Level 1 was pretty minimal. Chair Katz thought Level 1 was surface remodeling (e.g., carpeting and wall treatment). Mr. Rogers thought the Chair was correct about those cosmetic changes.

Ms. Park was unclear as to whether Mr. Tousley was trying to avoid a change of use application; she also questioned the fire side of all of this. Mr. Rogers said Mr. Tousley would have to speak to some of this. Mr. Rogers said that when Mr. Hagan did his initial plan review, the change of use requirement was triggered. Then, Mr. Rogers said that Mr. Tousley responded indicating that he disagreed and he had made his case at this meeting that this business is within use Group B. Mr. Rogers said that Community Development Department Staff responded to Mr. Tousley by referencing the commentary from the IBC and the example of a post office changing to a hair salon; while that conversion could be possible without structural work, Mr. Rogers said it would certainly be a change of use because of the mechanical code and the different calculations for air exchanges between those two uses. Thus, as the Building Official, Mr. Rogers said his opinion was that a change of use permit was needed. He said that just one Building Permit would cover the change of use and any plumbing, electrical, and structural work. He said it seemed that only

minimum plumbing work was needed in the space, but City Staff needed to be able to verify the mechanical issues, which was being triggered by the change of use review.

Chair Katz asked whether the mechanical requirements had changed over the past several years. Mr. Rogers said he did not review back into the previous codes. He said that NH was under the 2018 Code, which was a relatively new change. Mr. Rogers said that some things Mr. Tousley spoke about had not changed in previous editions of the mechanical table that Mr. Rogers referenced.

Mr. Brown said the space obviously had ventilation. He asked, if there was a robust mechanical set-up in the space, whether Mr. Tousley would still have to go through this review process. Mr. Rogers said yes, that was his opinion at this point in time. Mr. Rogers said it was really about being able to document what was actually in the space. It was possible that no work would be needed, but City Staff had to be able to verify and document those conditions. Mr. Rogers said that if someone came into the office for a Building Permit, what would be reviewed is the previous use, the proposed new use and the differences between the two, which may trigger further reviews. In this instance, the main thing that caught Mr. Rogers' attention was the mechanical code and the air exchanges that need to occur, and he said that review needed to be conducted. In Mr. Rogers' opinion, this met the definition of a change of use because the Code requires something different between an office and hair salon.

Ms. Park noted that the space in question had been a hair salon in the past. Mr. Rogers did not think so; he thought Mr. Tousley had referenced some other spaces inside this building that had previously been permitted as hair salons.

Chair Katz said a permit would be needed to install the appropriate plumbing for the hair salon. He questioned whether things like the volume of water were of any concern. Mr. Rogers said no, there was nothing he was aware of. This is a large multi-use building that runs on City water and sewer and to Mr. Rogers' knowledge, there was no concern about the building having the proper utilities. Chair Katz said the main concern was verification of the mechanical system and ventilation in the space, and Mr. Rogers agreed. Mr. Rogers said the Board's authority at this time was not to modify the Code but to judge whether Mr. Rogers—as the Building Official—interpreted the Code correctly/incorrectly. Chair Katz said the Board's challenge was in defining what was causing the change of use so that the applicant could solve the problem. The Chair thought he was hearing that proper application of the Code would be to verify the mechanical system to determine if it was sufficient for a beauty parlor. To Chair Katz, everything else seemed to be okay.

Chair Katz welcomed the Plans Examiner, Mr. Hagan, who said that in reviewing and determining a change of use, the IEBC requires looking at those sections [mentioned earlier]. He said the requirements were not just mechanical, but included things like accessibility, which was assessed during the Plan Review process; other requirements include plumbing, electrical, fire alarms, smoke detectors, fire extinguishers, etc., within the scope of a change of use. Mr. Hagan

said that this was not just mechanical, but the change of use encompassed all of the requirements he listed. Mr. Hagan said they had worked through and accomplished most of that list toward issuing a Building Permit. Mr. Hagan reiterated that the Board was to determine whether Mr. Rogers' determination was correct and that this is a change in use. Beyond mechanical issues, things had to be assessed such as carpets, materials, wall treatments, sink location and type, etc., that are all regulated by the Code. Mr. Hagan knew it was easy to say that the space was just going from an office to a hair salon, but there are a lot of considerations that City Staff must question (e.g., would there be a nail station); he said it usually comes in a letter from the tenant operating that facility.

Mr. Brown asked if the application of the Code being different, even within this use group, was triggering some of this. Mr. Hagan said that was correct. Mr. Brown reiterated that even though it is the same use Group B (business), the Code would be applied in different ways depending on the use. Mr. Hagan said that was correct. Mr. Rogers said that what Mr. Brown was talking about was addressed under the third bullet in the definition of change of occupancy: "*Any change in use within a group for which there is a change in application of the requirements of this Code.*" Mr. Rogers agreed with Mr. Tousley that this was not a change from Group A to Group B, for example, this was all within Group B. Still, under third statement of the definition of change of use, there is a difference in the requirements of the application between an office use and hair salon use, despite both being in Group B.

Chair Katz welcomed Mr. Tousley to speak again. Mr. Tousley thought Mr. Hagan had clarified some things and Mr. Tousley said that they had been working well together. Mr. Tousley said he tried to address the three bullet points that Mr. Hagan and Mr. Rogers had mentioned; Mr. Tousley thought they had accomplished all of it. Mr. Tousley said the problem was that the Community Development Department had classified this as a change of use, which by default must be reviewed by the Fire Chief. Mr. Tousley said the Fire Chief flat out refused to issue this permit or provide a way to solve the issue; he said the Fire Chief refused to give any permits for this building. Mr. Tousley said that if this was not a change of occupancy, it would not have gone to the Fire Chief, and the Community Development Department could have handled it administratively like they did with the previous three hair salons in this building. He said there is another hair salon 3–4 doors down the hall and he did not need the Fire Chief to sign off on that one. This was what frustrated Mr. Tousley. He was also frustrated by the fact that change in use and change in occupancy are not the same. Mr. Tousley said he agreed that he needed to follow the requirements for change of use and to follow Level 1, 2, or 3. He said he would be happy to provide any information about the plumbing and anything else needed. Still, he said this was not considered a change of occupancy. For instance, Mr. Tousley asked, if the same office occupant was still in the space and they decided to install three lavatories, would that be a change of use? He said that just installing lavatories did not constitute a change of occupancy. He said the only changes for the new hair salon tenant would be to move the office desks out and add a hair wash station. He said it came down to the level of activity. Mr. Tousley continued by discussing fire hazards, which were cited in the definition of change of occupancy in Chapter 10 of the IBC. He said the fire protection threshold sprinklers needed would not change between the office and hair

salon. Mr. Tousley said he understood that he needed to provide information demonstrating that the plumbing works properly but said that was not a change of occupancy. He thought that Mr. Rogers' decision that this was a change in occupancy was inaccurate.

Mr. Rogers referred to Chapter 10 of the IBC again, noting that Mr. Tousley had mentioned fire separations. Mr. Rogers clarified that he at no point mentioned fire separation. Rather, he put forth the IBC commentary under the definition of change of use, which talks about structural, electrical, mechanical, and plumbing. Chair Katz thought it seemed like the main point of this argument was about the relationship of the Fire Department to the Building Permit for this project that centered on what was being called a change of use; he asked if that was correct. Mr. Tousley stated [off mic from the audience] that he believed that was accurate. Mr. Rogers deferred to Mr. Hagan. Still, Mr. Rogers said that if this was just about plumbing in a commercial setting, he thought it highly unlikely that the Fire Department would have any involvement other than the change in tenant; the Fire Department would not need to issue things like an Assembly Permit. Chair Katz said that in the past, when drawings were submitted to the City for a permit, they always received a written signature from the Fire Department to approve any changes. Chair Katz asked if he was hearing correctly, in this case, that it would not matter what the applicant does because the Fire Chief would not sign off on it. Mr. Rogers could not speak for the Fire Chief. Mr. Rogers pointed out that Mr. Tousley did submit an appeal to the Fire Chief along the lines of this same conversation. The Building Code process is different than the Fire Code, for which appeals go to the Fire Chief first. Once the Fire Chief responds to Mr. Tousley's appeal, then Mr. Tousley could appear before this Board of Appeals again for that issue.

Chair Katz closed the public hearing for Board deliberations.

Mr. Brown thought this Board was in an odd position and Chair Katz agreed. Mr. Brown said that every time he read this appeal and thought he understood it, he had to start over again. At this point, he thought he did understand it enough to agree that he thought the new tenant did trigger a review. Unfortunately, he said that just by triggering the review, it would bring other people into the approval process. Mr. Brown did not see any way for the Board to avoid this uncomfortable situation.

Chair Katz noted that in the past, this Board had been able to voice their opinions or thought processes about the Building Department but had not been able to alter black-and-white written Code. Mr. Brown said he could see City Staff's logic and he understood what Mr. Tousley wanted. Still, personally, Mr. Brown thought this change unfortunately triggered a small thing that needed to happen. While Mr. Brown did not like it, he thought there was no way around it. Both Ms. Park and Chair Katz agreed with Mr. Brown. Chair Katz said it was unfortunate that this review was being triggered, but he thought that if City Staff received more information, it would likely resolve the mechanical issue. If all the requirements were resolved, Chair Katz did not see any reason why the Fire Department would not approve. Mr. Brown said it sounded like if the space was perfect for a hair salon, this would still be triggered because of the change in

use. Ms. Park wondered whether this would still be triggered even if the space was perfect for a hair salon because there were other Fire Department issues with this building. Chair Katz did not think the other issues in the building had a lot to do with it. Rather, the Chair thought this was about the need to review the mechanical system to verify that the air exchange meets the requirements for a hair salon, even if it might have met the requirements for a beauty salon when it was an office. Still, Chair Katz said that had to be verified and he thought there could be a simple way to accomplish that. In previous meetings, Chair Katz recalled reviewing the Fire Chief's requirement for a certified fire protection engineer and the Board determined that Mr. Tousley could choose anyone he wanted that was qualified versus spending a lot on the certified engineer. Chair Katz thought Mr. Tousley was trying to comply with everything but was running into some roadblocks.

Chair Katz reopened the public hearing.

Mr. Brown asked Mr. Rogers, if this was a hair salon already but the tenant changed for a new hair salon, how that situation would play out. Mr. Rogers replied that if this space was already permitted as a hair salon, then there would be no change of use. If it remained as a hair salon but added a nail station, that would most likely require a Building Permit because there would need to be enhanced ventilation; still, this would not require a change of use permit. Chair Katz reiterated that if it was a hair salon before and the new tenant was also a hair salon, the City would still have to assess the various aspects like the mechanical system for the Building Permit, but it would not constitute a change of use. Mr. Brown agreed. Chair Katz said the issue at hand was for the Board to decide whether Mr. Rogers was correct that this was a change of use.

Chair Katz recognized Mr. Tousley, who said he wanted to be clear that he was not trying to do something and avoid a Building Permit. He stated that he believed he only needed a Building Permit to address the plumbing (the only change he proposed), not a change of occupancy. He reiterated that change of occupancy and change of use are different, and stated that this was a change of use within the same Group B. He said it would be a change of occupancy if there was a change in activity level or requirements for safety. Mr. Tousley said Mr. Rogers misunderstood him when he used one for Mr. Rogers' example that stated: "*It is a change of use ... only if it is a different fire protection threshold.*" Mr. Tousley said the key was that if there was a change in the fire protection threshold it would be a change of use. He said the key to change of occupancy had nothing to do with installing a sink but had to do with thresholds for things like fire sprinklers, exit signs, and means of egress that keep people safe. Mr. Tousley believed that his case was a perfect one to prove that this did not need to be a change of occupancy but was a matter of issuing a simple Building Permit based on the things Mr. Hagan addressed.

Mr. Rogers referenced the IBC again, in which the commentary on change of use states that: "*A change of occupancy that is only a change in use can be dealt with as a Level 1, 2, or 3 alteration in accordance with Chapters 7, 8, or 9, depending on the extent of remodel and with the particular requirements contained in Section 1006, Structural; Section 1007, Electrical;*

Section 1008, Mechanical; and Section 1009, Plumbing.” Because of the mechanical requirement, Mr. Rogers did not see how a change of use would not be triggered.

Chair Katz asked, if the mechanical system was verified as adequate, would it still be a change of use? Mr. Rogers replied that it would still be a change of use, noting that it is a different requirement; Staff could not just say the space meets the requirement and it would go away. Calling it a change of use was what was triggering these things (e.g., mechanical system). Mr. Rogers said that if a hair salon had different electrical and plumbing needs, for example, those things would have to be reviewed and met. He said that if the ventilation meets the necessary air turnover requirements, then they would meet the requirement, but Mr. Rogers said the only way to get to that point was to have it reviewed as a change of use; there are different ventilation requirements between an office and salon.

Chair Katz closed the public hearing.

Ms. Park thought the issue the Board needed to decide was whether this was a change of use within the occupancy, not a change of occupancy, and whether that change of use required a permit that could potentially have other steps or “hoops” to get through. Chair Katz said he was unsure how the Board could address Mr. Park’s second point. Ms. Park thought the Board’s part was only to determine whether they thought the Code was applied correctly and whether the Board would agree with the Building Code regardless of anything else going on with this building. Chair Katz agreed. Chair Katz said that based on what he read, this case was a change of use, not a change of occupancy. Ms. Park agreed. Mr. Brown said that the Building Department claimed that it was a change of use, so the Board needed to decide whether it agreed with that determination.

Ms. Park made the following motion, which Mr. Brown duly seconded. On a vote of 3–0, the Board of Appeals agreed with the City of Keene Building Department that a change of use was correctly triggered in this case, not a change of occupancy.

4) New Business

5) Adjournment

There being no further business, Chair Katz adjourned the meeting at 5:26 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Taker
June 20, 2023

Edits submitted by,
Corinne Marcou, Board Clerk

Page intentionally left blank

City of Keene
New Hampshire

HOUSING BOARD OF APPEALS
MEETING MINUTES

Wednesday November 9, 2022 4:30 PM Miller-Vincent Room, Keene Public Library

Members Present:

Malcolm Katz, Chair
Steve Walsh
Donald Flibotte
Doug Brown

Staff Present

John Rogers, Building & Health Official
Ryan Lawliss, Housing Inspector
Corinne Marcou, Board Clerk

Members Not Present:

1) Call to Order

Chair Katz called the meeting to order at 4:30 PM.

2) Approval of Meeting Minutes – October 12, 2022

Chair Katz asked for comments on the previous minutes. Hearing none, he asked for a motion to accept the minutes. Mr. Brown made the motion to accept the minutes as written with Mr. Flibotte seconded.

3) Unfinished Business

Chair Katz requested from staff, any unfinished business. Mr. Rogers replied that at the previous meeting, the Board discussed the possibility of community service as a means of violation payment. This idea will require further discussion by staff, and that nothing has been implemented at this time.

Chair Katz requested an update from the previous applicants and if the property had been cleaned, and the tickets paid. Mr. Rogers replied that all has occurred.

4) New Business

Chair Katz opened the public hearing, requesting to hear from each of the petitioners individually. The first to appear was Ben Wright of 21D Winchester Ct. Mr. Wright explained to the Board that at the time they received the ticket, the yard had been cleaned. He further explained that he and his friends don't find it fair for each to receive a ticket, when it should be

the house as a collective to be ticketed. He continued that his neighbors received tickets last year, explaining that the ticket should have been given to the household, not individually, as they appealed the tickets as well.

Chair Katz asked how long the trash was in the yard. Mr. Wright explained that the yard was a mess for about a day, explaining that he was home for the weekend, and had returned from his 10 am class. He continued that he was under the impression that his fellow housemates were outside watching football on Sunday evening, and the yard was cleaned on Monday morning. Mr. Flibotte asked what was the trash. Mr. Wright explained that there were a couple of chairs, cans and other small objects. Mr. Lawliss presented the Board with pictures of the yard showing the debris in the yard.

Chair asked for clarification from Mr. Wright on the policy in their lease as to who is to clean the trash. Mr. Wright stated that it is the tenants.

Mr. Walsh requested to hear from Mr. Lawliss, who could explain the timeframe of the violation.

Mr. Lawliss, Housing Inspector, stated that he viewed the property later in the morning, around 11 am, Monday morning, October 24th, as he typically does. He stated that was when the photos were taken. Having been called away on another issue, he left the property to return later in the day to hand deliver the tickets; continuing that upon this return, the property was clean. This was early afternoon, between 2-3 pm. Mr. Walsh asked if there had been any warnings for this property prior to the appealed violations. Mr. Lawliss replied that yes, during Parents Weekend, he believe to have been September 24th, both of these units, C & D, were given written warnings.

Mr. Flibotte asked if the pictures of the yard were taken before or after Mr. Lawliss' initial visit to the property. Mr. Lawliss replied that the pictures were taken upon his initial visit to the property, prior to his need to address another issue. Mr. Flibotte asked what the trash was, as one picture looked like there was a cooler. Mr. Lawliss replied that there was a trunk, plenty of cans, boxes, empty cases of beer, and it seemed that there were pallets and/or furniture that was taken apart.

Chair Katz asked to hear from Michael Sheridan of 21D Winchester Ct. Mr. Sheridan presented the Board with a video of the yard after it was cleaned, as they were being issued their tickets. He further stated he didn't think it fair that each were issued a ticket, not the household.

Mr. Walsh asked if there is a timeframe on the written warning stating when the yard needs to be cleaned? Mr. Lawliss stated that typically there is a 24 hour notice, with some variable for certain instances. He further explained that the written warning is a mechanism to provide the tenants the need to maintain a clean yard; if not, violation tickets will be issued.

Chair Katz asked what date the violations were written. Mr. Sheridan stated that the written warning was issued on Alumni Weekend, and then never received a written warning for the trash on the violations. Mr. Sheridan did state that the trash was in the yard for a few hours Monday morning prior to the violations being issued. Mr. Lawliss stated that a written warning is not

given for each time a violation is seen; not resetting the violation. The written warning is given the first time, then violations are given each subsequent time a violation is seen.

Chair Katz asked to hear from the next petitioner, Andrew Miller of 21 C Winchester Ct. Mr. Miller stated that, as the others have, that they were issued violations after the yard had been cleaned; he receiving his after returning from his 4 pm class. He reiterated that each individual had received tickets, where they felt it should have been one for the whole house. He continued that once Mr. Lawliss was seen taking pictures, the tenants went outside to clean the yard.

Chair Katz asked how many were involved with the party, and the making of the mess in the yard. Some of the tenants were there according to Brendan DiSilva. Mr. Flibotte asked if they were neighbors. Mr. Sheridan explained that, yes, they live on the same property, and that their apartments abut each other, with a shared porch. Mr. Flibotte asked when the party took place. It was explained by the applicants that there wasn't a party per say, but a gathering of individuals watching Sunday night football. Mr. Sheridan stated that there was a cooler for empty beer cans, but stated it was difficult to clean the trash when the landscapers don't go to the property for weeks and there are leaves cover the cans.

Chair Katz asked to hear from Nicholas Mason of 21C Winchester Ct. He stated that he didn't think it was fair that each individual was ticketed, when the household should have been. He stated that he has an early class on Monday morning, did help to clean the yard but was not home when issued the ticket. He continued that he and his fellow roommates were trying to have fun, watching the game outside during the nice weather. He stated that they do respect the community and attempt to keep the yard clean, doing their best. He stated that they apologize for the mess, and is willing to work with Mr. Lawliss.

Chair Katz asked if there were any questions for Mr. Mason. Hearing none, he asked to hear from the last applicant. Brendan DiSilva of 21 D Winchester Ct. stated that he didn't feel it fair that each individual received a ticket as \$125 is expensive for a college student. He continued that when there was trash in the yard, they did clean it. Chair Katz asked if when Mr. Lawliss returned with the tickets, if the yard was cleaned. Mr. DiSilva state yes. Chair Katz asked if it is currently still clean. Mr. DiSilva replied yes.

Chair Katz asked if all the applicants are college students and what grades they are. They replied that they are seniors and juniors, living on their own for the past year or so.

Chair Katz closed the public hearing for Board discussion. Mr. Flibotte asked the same question he's asked of previous applicants, if they would have a party at their parents homes, would they leave the yard full of trash. Some of the applicants replied that they had class on Monday, with Mr. Flibotte responding that was no excuse as the yard should have been cleaned the night of the gathering. He further asked how many were present the night they watched the football game; and that there were plenty of people available to assist. He further explained that the next time there is a gathering, to clean up when they are done then there would not be any issues.

Mr. Walsh made the comment that when Mr. Lawliss returned to the property, the yard was cleaned and it is his opinion that these tickets be voided. They were asked to have the yard

cleaned, and it was. He continued that there needs to be another means other than individual tickets. Mr. Lawliss made the comment that two individuals have received violations in the past, prior to this incident.

Mr. Miller stated that the property is the cleanest it has ever been and that they have learned their lesson.

Mr. Brown stated he agrees with Mr. Walsh. He continued that these types of hearings are frustrating, and it seems that the message is not taken seriously in the neighborhood. He continued that the Board has shown some forbearance with previous hearings, with the hopes that the message would be shared that the Board is serious. Mr. Brown continued that the repeated appeals brought to the Board is infuriating, stating that in this case, he does agree with Mr. Walsh. He asked that the message be brought back to the neighborhood that these appeals end, that if there is to be a gathering, to ensure that the property is cleaned, eliminating the need for a violation and/or an appeal.

Chair Katz suggested ticketing the house, not the individual, with a fine for each of the five applicants \$25.00. Both Mr. Brown and Chair Katz agreed that the next violation to be appealed might not see the same outcome.

Mr. Rogers recommended that each of the tickets be reduced to the \$25.00 fine as a payment tracking mechanism.

Chair Katz asked for a motion. Mr. Flibotte made the motion to reduce each individual ticket to \$25.00. Mr. Rogers made the suggestion that the payment is made within seven days of the dated of the decision, if not, the fine is returned to the \$125.00 amount.

Mr. Brown stated as a reminder to the applicants that the City addressed previous issues from this neighborhood by having these ordinances adopted and enacted.

Mr. Flibotte made the motion, Mr. Brown seconded. The motion was approved unanimously.

Chair Katz adjourned the meeting at 5:00 PM.

Respectfully submitted by Corinne Marcou, Board Clerk

Page intentionally left blank

CITY OF KEENE
NEW HAMPSHIRE

BOARD OF APPEAL

RULES OF PROCEDURE

I. GENERAL RULES

- A. **Authority:** These rules of procedure are adopted by the Authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and Chapter 2, Division 6, of the City Code of Ordinance. The Board of Appeal (“Board”) shall have and shall exercise all of the powers enumerated in RSA 674:34, or as otherwise provided by State statute and City Ordinances.
- B. **Purpose:** The purpose of these rules is to provide guidance to the Board and all persons participating in proceedings held before the Board, and to allow for the orderly and efficient handling of all matters within the jurisdiction of the Board. Proceedings are not to be strictly governed by formal rules of evidence or parliamentary procedure. Instead, these rules are intended so that all parties interested in an application before the Board will be allowed a reasonable opportunity to fully participate and share their views, facts, evidence, and opinions for the Board’s consideration in reaching an appropriate decision. The Board is authorized, by a vote of two-thirds (2/3) of the five (5) member Board, to suspend, supplement, alter, or amend any specific rule or procedure, as may be appropriate in a particular matter, in order to best accomplish this purpose.
- C. **Members and Officers:** All members of the Board, including up to two (2) alternate members, shall be appointed by the Mayor of the City of Keene pursuant to RSA 673:6, and applicable City Ordinance.
- a. Members must reside in the City of Keene and are expected to attend each meeting of the Board to perform their duties and responsibilities. Any member unable to attend a meeting shall notify the Clerk as soon as possible.
- b. Due to their special knowledge of building and housing issues, members of the Board Appeal shall be appointed to serve on the Housing Standards Board of Appeals established under Division 21, of Chapter 2, of the City Code of Ordinances.
- c. A Chair shall be elected annually by a majority vote of the Board in the month of January. The Chair shall preside over all meetings and hearings,

appoint such committees as directed by the Board, and shall affix their signature in the name of the Board.

- d. A Vice Chair shall be elected annually by a majority vote of the Board in the month of January. The Vice Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair.
 - e. A Clerk (who shall not be a Board member) shall be appointed by the City of Keene Building Official, to maintain a record of all meetings, transactions, and decisions of the Board, and perform such other duties as the Board may direct by resolution and otherwise assist the Board.
 - f. The Chair and Vice Chair shall serve for a one (1) year term and shall be eligible for re-election and shall continue to serve until annual elections are next held.
- D. **Alternates:** Two (2) alternate members may be appointed by the Mayor of the City of Keene, pursuant to RSA 673:6, and applicable City Ordinance to serve whenever a regular member of the Board is unable to fulfill that member's responsibilities.
- E. **Membership Qualifications:** The Board shall consist of members who are qualified by experience and training to determine appeals pertaining to the State Building Code or State Fire Code.
- F. **Meetings:** Regular meetings shall be held in the Council Chambers, at 3 Washington Street, Keene, New Hampshire, or another location as determined by the Chair, and duly noticed by the Clerk. Other meetings may be held on the call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.
- a. **Quorum:** A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.
 - i. The Clerk shall make every effort to ensure that all five (5) members, and one (1) or two (2) alternates, are present for the consideration of any appeal or application.
 - ii. If any regular Board member is absent from any meeting or hearing or disqualifies them self from sitting on a particular case, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.
 - iii. If there are less than five (5) members (including alternates) available, the Clerk shall give the option to the applicant to

proceed or not prior to the scheduled meetings. Should the applicant choose to proceed with less than five (5) members present that shall not solely constitute grounds for a re-hearing should the application be denied. All decisions of the Board shall require the concurrence of at least three (3) members. The option to request to reschedule a meeting of less than five (5) members is not absolute, and the Board may, at its discretion, proceed to consider an application with less than a five (5) member Board.

- b. **Public Hearing Limits:** The Board shall not open a new or continued public hearing after 10:00 p.m.
- c. **Disqualification:** If any member finds it necessary to disqualify (or recuse) themselves from sitting in a particular case, as provided in RSA 673:14, they shall notify the Clerk as soon as possible so that an alternate may be requested to sit in their place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.
 - i. Either the Chair or the member disqualified before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall step down from the Board table during the public hearing and during deliberation on the case.
 - ii. Any interested person appearing in a proceeding, having any information or reason to believe that a Board member should be disqualified, shall notify the Chair as soon as possible and in any event before the commencement of such public hearing.
 - iii. Any Board member or other interested party may, in accordance with RSA 673:14, prior to the commencement of any public hearing, request the Board make the determination as to whether such Board member should be disqualified.
 - iv. In deciding issues of disqualification, the Board shall be guided by RSA 500-A:12, pertaining to jury selection and the requirement that jurors shall be “indifferent,” as well as the City of Keene Code of Ordinances §2-1111, et seq. (“Conflict of Interest”).
- d. **Order of Business:** The order of business for regular meetings shall be as follows:
 - i. Call to order by the Chair

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

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

- e. **Nonpublic Sessions:** All deliberations of the Board shall be held in public. Nonpublic sessions shall be held only as necessary and in strict compliance with the provisions of RSA 91-A:3. The Board may also adjourn, as needed, to meet with its attorney or to consider legal advice in accordance with RSA chapter 91-A.

II. PROCEDURES FOR FILING APPEALS

A. Appeal/Decision:

- a. The original appeal forms may be obtained from either the Clerk or the Community Development Department. Each appeal to the Board shall be made on forms provided by the Board and shall be presented to the Clerk who shall record the date of receipt over their signature. The forms provided by the City must be used; correctness of the information supplied shall be the responsibility of the appealing party at all times.
- b. Regular meetings of the Board shall be held not more than sixty (60) days after the date of the filing of an appeal of an action or decision unless otherwise extended by agreement of the parties to the appeal.
- c. Notice of all meetings shall be given to the public per RSA 91-A:2, II. The appellant shall be provided with notice of the date and the time of the meeting at which the appeal is to be heard at least seven (7) days prior to the meeting date, excluding the mailing date and the date of the meeting, by means of first-class mail sent to the address provided by the appellant.

B. Manner of Taking Appeal:

- a. Any person aggrieved by an order or decision arising under the building code, or arising under the fire code, may, within fifteen (15) days of the date of the order, appeal to the Board.

- b. The applicant shall provide the Clerk with all information requested on the form provided by the Board and any such additional information and data as may be required to advise the Board fully with reference to the application for appeal. Appeals must be made on the proper form.
- c. The appropriate Code Official shall transmit to the Clerk of the Board all documents or relevant information constituting the record of action taken by the Official upon which the appeal is based.
- d. An appeal filed according to the above shall be assigned an appeal number within five (5) days of receipt by the Clerk. Appeals will be heard in the order they are received.
- e. The Clerk of the Board shall schedule the hearing; shall notify all interested parties of the hearing; and shall give notice including the time, date, and place of the meeting, to the interested parties, and to anyone requesting such information. Notice of the meeting will be posted in a public place pursuant to RSA 91-A:2, II.
- f. The appellant may appear on their own behalf at the hearing or may be represented by counsel or by an agent. Both the appellant and the Code Official may speak to the appeal. The Chair may allow other individuals to speak on any appeal before the Board if the Chair determines that it would assist the Board in making its decision. The appellant shall be given an opportunity for final rebuttal.
- g. The Board shall provide written notice to the appellant and to the Code Official of the Board's decision within fourteen (14) days after the hearing decision date.

III. CONDUCT OF PUBLIC HEARINGS

- A. **Conduct:** The conduct of public hearings shall be governed by the following rules unless otherwise directed by the Chair:
 - a. The Chair shall call the meeting to order, introduce the Board members, and review the previous meeting's minutes for corrections and for a motion for adoption.
 - b. The Chair shall read the appeal application and report on how public notice and personal notice were provided and, where appropriate, summarize the legal requirements that must be met by the applicant to obtain the relief being requested.
 - c. Members of the Board may ask questions at any point during testimony.

- d. Each person who appears before the Board shall be required to state their name, address, and indicate if the person is a party to the appeal or an agent or counsel of a party to the appeal.
 - e. Any member of the Board, through the Chair, may request any party to the appeal to speak a second time. The Chair may impose reasonable time restrictions on individuals who wish to speak.
 - f. Any party to the appeal who wants to ask a question of another party to the appeal must do so through the Chair.
 - g. The appellant shall be called first to present the appeal.
 - h. The strict rules of evidence shall not apply, however, the Board may accept any evidence that pertains to the facts of the appeal or how the facts relate to the provisions of the relevant State Code under the appeal.
 - i. After all parties have been afforded a reasonable opportunity to testify, the public hearing shall be declared closed by the Chair and no further testimony will be received from the appellant or any other parties (other than minor technical or procedural information as may be needed from City staff), unless the Board, on its own motion, shall reopen the public hearing to receive additional testimony or information. If the hearing is reopened, all interested parties shall be given the opportunity to speak to the issue requiring the reopening. All deliberations and decisions made by the Board shall continue to be conducted in public. The Board shall, when appropriate, render findings of fact.
 - j. The Board may continue a public hearing to a place, date, and time certain announced at the meeting by the Chair without further public notice.
- B. **Right of Floor:** Board members shall require recognition by the Chair before referring any questions or providing any comment to the appellants, representatives or agents of appellants or others appearing before the Board. Upon being recognized by the Chair, said Board member shall confine his or her questions or comments to the issue at hand, avoid personalities, and refrain from impugning the motives of any other Board member's argument, comment, or vote. All participants in Board hearings shall act respectfully.
- C. **Recess:** The Chair may call a recess for a brief period during any meeting.
- D. **Voting:** Per RSA 674:34, an appeal shall be determined only on the claim by the appellant that the true intent of the relevant State Code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed. The Board shall have no authority to waive the requirements of the State Building Code or the State Fire Code.

- E. **Further Appeal:** An Appeal of final decisions of the Board shall be made within thirty (30) days of the date of the Board's decision to the State Building Code Review Board in accordance with RSA 155-A:10, IV(e) and RSA 155-A:11-b.
- F. **Re-Hearing Procedures.** Within thirty (30) days after the Board has made a decision on an appeal, any party to the appeal may request a re-hearing before the Board. The Board may order a re-hearing, if, in the Board's sole discretion, it determines that information or evidence submitted to it with the request for re-hearing was not reasonably available at the time of the appeal; and determines that such information and/or evidence has, or may have had, a material impact on the decision by the Board. The Board will determine whether or not to grant a re-hearing within thirty (30) days of the filing of the request. A request for a re-hearing shall not be a prerequisite for any interested party to file an appeal of the Board's final decision with the State Building Code Review Board.
- G. **Records:** The records of the Board shall be kept by the Clerk and made available for public inspection from the Clerk at City Hall, 4th floor, Community Development Department, in accordance with RSA 673:17.
 - a. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made. RSA 676:3.
 - b. Minutes of all meetings including names of Board members, people appearing before the Board, a brief description of the subject matter, and decisions made by the Board shall be open to public inspection within five (5) business days of the public meeting. RSA 91-A:2, II.
 - c. The official record of the Board proceedings shall be the minutes after they have been approved (with corrections, if required) by the Board at a subsequent meeting.

IV. MISCELLANEOUS

- A. **Amendments:** Rules of Procedure shall be adopted or amended by a majority vote at a regular meeting of the Board provided that such rules or amendments thereto are proposed and discussed at a regularly scheduled meeting at least thirty (30) days prior to the meeting at which the vote is to be taken. and the Rules and any amendments thereto shall be placed on file with the City Clerk and made available for public inspection pursuant to RSA 676:1.

[CERTIFICATE OF ADOPTION ON NEXT PAGE]

CERTIFICATE OF ADOPTION

To the City Clerk of the City of Keene, New Hampshire

Be herby advised that the Board of Appeal of the City of Keene, New Hampshire, being duly constituted and having complies with all of the provisions and requirements of the New Hampshire Revised Statutes Annotated and the Ordinances of the City of Keene, adopt these amended Rules of Procedure.

By the Board of Appeal this _____ day of _____, 2024.

Malcolm Katz, Chair

Originally Adopted: August 26, 2002

Revised:

Page intentionally left blank

CITY OF KEENE
NEW HAMPSHIRE

HOUSING STANDARDS BOARD OF APPEAL

RULES OF PROCEDURE

I. GENERAL RULES

- A. **Authority:** These rules of procedure are adopted by the Authority of New Hampshire Revised Statutes Annotated, 48-A:1, et seq., and Chapter 18, Building Regulations of the City of Keene. The Housing Standards Board of Appeal (“Board”) shall have and shall exercise all the powers provided by State statute and City Ordinances.
- B. **Purpose:** The purpose of these rules is to provide guidance to the Board and all persons participating in proceedings held before the Board, and to allow for the orderly and efficient handling of all matters within the jurisdiction of the Board. Proceedings are not to be strictly governed by formal rules of evidence or parliamentary procedure. Instead, these rules are intended so that all parties interested in an application before the Board will be allowed a reasonable opportunity to fully participate and share their views, facts, evidence, and opinions for the Board’s consideration in reaching an appropriate decision. The Board is authorized, by a vote of two-thirds (2/3) of the five (5) member Board, to suspend, supplement, alter, or amend any specific rule or procedure, as may be appropriate in a particular matter, in order to best accomplish this purpose.
- C. **Members and Officers:** All members of the Board, including up to two (2) alternate members, shall be appointed by the Mayor of the City of Keene pursuant to applicable City Ordinance.
- a. Members must reside in the City of Keene and are expected to attend each meeting of the Board to perform their duties and responsibilities. Any member unable to attend a meeting shall notify the Clerk as soon as possible.
- b. Due to their special knowledge of building and housing issues, members of the Board shall also be appointed to serve on the Board of Appeals established under Division 6, of Chapter 2, of the City Code of Ordinances.
- c. A Chair shall be elected annually by a majority vote of the Board in the month of January. The Chair shall preside over all meetings and hearings,

appoint such committees as directed by the Board, and shall affix their signature in the name of the Board.

- d. A Vice Chair shall be elected annually by a majority vote of the Board in the month of January. The Vice Chair shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair.
 - e. A Clerk (who shall not be a Board member) shall be appointed by the City of Keene Building Official, to maintain a record of all meetings, transactions, and decisions of the Board, and perform such other duties as the Board may direct by resolution and otherwise assist the Board.
 - f. The Chair and Vice Chair shall serve for a one (1) year term and shall be eligible for re-election and shall continue to serve until annual elections are next held.
- D. **Alternates:** Two (2) alternate members may be appointed by the Mayor of the City of Keene to serve whenever a regular member of the Board is unable to fulfill that member's responsibilities.
- E. **Membership Qualifications:** Due to their special knowledge of building and housing issues, the members of the Board Of Appeal established under Division 6, of Chapter 2 of the City Code, shall be appointed to also serve on the Housing Standards Board of Appeal.
- F. **Meetings:** Regular meetings shall be held in the Council Chambers, at 3 Washington Street, Keene, New Hampshire, or another location as determined by the Chair, and duly noticed by the Clerk. Other meetings may be held on the call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.
- a. **Quorum:** A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.
 - i. The Clerk shall make every effort to ensure that all five (5) members, and one (1) or two (2) alternates, are present for the consideration of any appeal or application.
 - ii. If any regular Board member is absent from any meeting or hearing or disqualifies them self from sitting on a particular case, the Chair shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.

- iii. If there are less than five (5) members (including alternates) available, the Clerk shall give the option to the applicant to proceed or not prior to the scheduled meetings. Should the applicant choose to proceed with less than five (5) members present that shall not solely constitute grounds for a re-hearing should the application be denied. All decisions of the Board shall require the concurrence of at least three (3) members. The option to request to reschedule a meeting of less than five (5) members is not absolute, and the Board may, at its discretion, proceed to consider an application with less than a five (5) member Board.
- b. **Public Hearing Limits:** The Board shall not open a new or continued public hearing after 10:00 p.m.
- c. **Disqualification:** If any member finds it necessary to disqualify (or recuse) themselves from sitting in a particular case, they shall notify the Clerk as soon as possible so that an alternate may be requested to sit in their place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.
 - i. Either the Chair or the member disqualified before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall step down from the Board table during the public hearing and during deliberation on the case.
 - ii. Any interested person appearing in a proceeding, having any information or reason to believe that a Board member should be disqualified, shall notify the Chair as soon as possible and in any event before the commencement of such public hearing.
 - iii. Any Board member or other interested party may, prior to the commencement of any public hearing, request the Board make the determination as to whether such Board member should be disqualified.
 - iv. In deciding issues of disqualification, the Board shall be guided by the City of Keene Code of Ordinances §2-1111, et seq. (“Conflict of Interest”).
- d. **Order of Business:** The order of business for regular meetings shall be as follows:
 - i. Call to order by the Chair

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

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

- e. **Nonpublic Sessions:** All deliberations of the Board shall be held in public. Nonpublic sessions shall be held only as necessary and in strict compliance with the provisions of RSA 91-A:3. The Board may also adjourn, as needed, to meet with its attorney or to consider legal advice in accordance with RSA chapter 91-A.

II. PROCEDURES FOR FILING APPEALS

A. Appeal/Decision:

- a. The original appeal forms may be obtained from either the Clerk or the Community Development Department. Each appeal to the Board shall be made on forms provided by the Board and shall be presented to the Clerk who shall record the date of receipt over their signature. The forms provided by the City must be used; correctness of the information supplied shall be the responsibility of the appealing party at all times.
- b. Regular meetings of the Board shall be held not more than sixty (60) days after the date of the filing of an appeal of an action or decision unless otherwise extended by agreement of the parties to the appeal.
- c. Notice of all meetings shall be given to the public per RSA 91-A:2, II. The appellant shall be provided with notice of the date and the time of the meeting at which the appeal is to be heard at least seven (7) days prior to the meeting date, excluding the mailing date and the date of the meeting, by means of first-class mail sent to the address provided by the appellant.

B. Manner of Taking Appeal:

- a. Any person aggrieved by an order or decision arising under the building code, or arising under the fire code, may, within fifteen (15) days of the date of the order, appeal to the Board.

- b. The applicant shall provide the Clerk with all information requested on the form provided by the Board and any such additional information and data as may be required to advise the Board fully with reference to the application for appeal. Appeals must be made on the proper form.
- c. The appropriate Code Official shall transmit to the Clerk of the Board all documents or relevant information constituting the record of action taken by the Official upon which the appeal is based.
- d. An appeal filed according to the above shall be assigned an appeal number within five (5) days of receipt by the Clerk. Appeals will be heard in the order they are received.
- e. The Clerk of the Board shall schedule the hearing; shall notify all interested parties of the hearing; and shall give notice including the time, date, and place of the meeting, to the interested parties, and to anyone requesting such information. Notice of the meeting will be posted in a public place pursuant to RSA 91-A:2, II.
- f. The appellant may appear on their own behalf at the hearing or may be represented by counsel or by an agent. Both the appellant and the Code Official may speak to the appeal. The Chair may allow other individuals to speak on any appeal before the Board if the Chair determines that it would assist the Board in making its decision. The appellant shall be given an opportunity for final rebuttal.
- g. The Board shall provide written notice to the appellant and to the Code Official of the Board's decision within fourteen (14) days after the hearing decision date.

III. CONDUCT OF PUBLIC HEARINGS

- A. **Conduct:** The conduct of public hearings shall be governed by the following rules unless otherwise directed by the Chair:
 - a. The Chair shall call the meeting to order, introduce the Board members, and review the previous meeting's minutes for corrections and for a motion for adoption.
 - b. The Chair shall read the appeal application and report on how public notice and personal notice were provided and, where appropriate, summarize the legal requirements that must be met by the applicant to obtain the relief being requested.
 - c. Members of the Board may ask questions at any point during testimony.

- d. Each person who appears before the Board shall be required to state their name, address, and indicate if the person is a party to the appeal or an agent or counsel of a party to the appeal.
 - e. Any member of the Board, through the Chair, may request any party to the appeal to speak a second time. The Chair may impose reasonable time restrictions on individuals who wish to speak.
 - f. Any party to the appeal who wants to ask a question of another party to the appeal must do so through the Chair.
 - g. The appellant shall be called first to present the appeal.
 - h. The strict rules of evidence shall not apply, however, the Board may accept any evidence that pertains to the facts of the appeal or how the facts relate to the provisions of the relevant State Code under the appeal.
 - i. After all parties have been afforded a reasonable opportunity to testify, the public hearing shall be declared closed by the Chair and no further testimony will be received from the appellant or any other parties (other than minor technical or procedural information as may be needed from City staff), unless the Board, on its own motion, shall reopen the public hearing to receive additional testimony or information. If the hearing is reopened, all interested parties shall be given the opportunity to speak to the issue requiring the reopening. All deliberations and decisions made by the Board shall continue to be conducted in public. The Board shall, when appropriate, render findings of fact.
 - j. The Board may continue a public hearing to a place, date, and time certain announced at the meeting by the Chair without further public notice.
- B. **Right of Floor:** Board members shall require recognition by the Chair before referring any questions or providing any comment to the appellants, representatives or agents of appellants or others appearing before the Board. Upon being recognized by the Chair, said Board member shall confine his or her questions or comments to the issue at hand, avoid personalities, and refrain from impugning the motives of any other Board member's argument, comment, or vote. All participants in Board hearings shall act respectfully.
- C. **Recess:** The Chair may call a recess for a brief period during any meeting.
- D. **Standard of Review:** Per City Ordinance, §18-316, The Board may affirm, reverse, or modify such order, decision or requirement when in the opinion of the Board, the enforcement of the order, decision or requirement would do manifest injustice and would be contrary to the spirit and purpose of the ordinance and the public interest. The Board may waive the requirements of subsection 18-241 (10)

and (11), when it has been shown that the requirements create a hardship due to the unique characteristics of the site.

- E. **Re-Hearing Procedures.** Within thirty (30) days after the Board has made a decision on an appeal, any party to the appeal may request a re-hearing before the Board. The Board may order a re-hearing, if, in the Board's sole discretion, it determines that information or evidence submitted to it with the request for re-hearing was not reasonably available at the time of the appeal; and determines that such information and/or evidence has, or may have had, a material impact on the decision by the Board. The Board will determine whether or not to grant a re-hearing within thirty (30) days of the filing of the request. There shall be no further appeal from a final decision of the Board.
- F. **Records:** The records of the Board shall be kept by the Clerk and made available for public inspection from the Clerk at City Hall, 4th floor, Community Development Department.
 - a. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made.
 - b. Minutes of all meetings including names of Board members, people appearing before the Board, a brief description of the subject matter, and decisions made by the Board shall be open to public inspection within five (5) business days of the public meeting. RSA 91-A:2, II.
 - c. The official record of the Board proceedings shall be the minutes after they have been approved (with corrections, if required) by the Board at a subsequent meeting.

IV. MISCELLANEOUS

- A. **Amendments:** Rules of Procedure shall be adopted or amended by a majority vote at a regular meeting of the Board provided that such rules or amendments thereto are proposed and discussed at a regularly scheduled meeting at least thirty (30) days prior to the meeting at which the vote is to be taken. and the Rules and any amendments thereto shall be placed on file with the City Clerk and made available for public inspection pursuant.

[CERTIFICATE OF ADOPTION ON NEXT PAGE]

CERTIFICATE OF ADOPTION

To the City Clerk of the City of Keene, New Hampshire

Be herby advised that the Housing Standard Board of Appeal of the City of Keene, New Hampshire, being duly constituted and having complies with all of the provisions and requirements of the New Hampshire Revised Statutes Annotated and the Ordinances of the City of Keene, adopt these amended Rules of Procedure.

By the Board of Appeal this ____ day of _____, 2024.

Malcolm Katz, Chair

Originally Adopted: August 26, 2002
Revised: