City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT MEETING MINUTES

Monday, September 2, 2025 **6:30 PM** **Council Chambers, City Hall**

Members Present:
Richard Clough, Chair
Edward Guyot, Vice Chair
Tad Schrantz
Adam Burke
Zach LeRoy, Alternate

Staff Present:
Evan Clements, Planner, Deputy Zoning Administrator

Members Not Present:
All Present

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. Chair Clough invited Mr. LeRoy to be a voting member for tonight's meeting.

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

Mr. Schrantz made a motion to approve the meeting minutes of July 7, 2025. Mr. Burke seconded the motion, which passed with a vote of 4 to 0. Mr. Guyot abstained due to being absent from the July meeting.

III) Unfinished Business

Chair Clough asked if there was any unfinished business. Evan Clements, Planner, replied no.

IV) Hearings

A) CONTINUED ZBA-2025-07: Petitioner, Kevin Borella, of Colonial Theater, requests a Variance, for property located at 95 Main St., Tax Map # 575-008-000-000 and is in the Downtown Core District. The Petitioner is requesting a Variance to permit an electronically activated changeable copy sign per Article 10.3 of the Zoning Regulations.

Chair Clough introduced ZBA-2025-07 and asked to hear from staff.

Mr. Schrantz asked to recuse himself, stating that he was a participant when The Colonial Theater did renovations a few years ago, part of which was a discussion about applying for the sign change. Mr. Burke stated that he is an active Board member and needs to recuse himself as well. Chair Clough stated that it is a three-member Board now. He continued that it is up to The Colonial Theater whether they wish to continue or postpone until there are five members. Hearing The Colonial Theater's wish to continue, he asked to hear from City staff.

Mr. Clements stated that the subject property at 95 Main St. is located on the western side of Main St. across from the Modest Man Brewing. He continued that it contains The Colonial Theater with the marquee located on the building façade above the main entrance of the theater. The marquee in its current configuration is a manual, changeable copy sign as a permitted type of sign that is allowed in the Downtown Core District. The Colonial Theater was originally the site of Reverand Nathanial Sprague's home and schoolroom, and the house was sold to Samuel Dinsmoor and later to Laton Martin, who operated the Colonial Inn on this site. In 1923, Charles Baldwin constructed the present structure as a vaudeville/movie house and The Colonial Theater opened on January 29, 1924. Over the years, The Colonial Theater continues to play an important role in Keene's cultural life with movie showings, live performances, and cultural activities.

Mr. Clements continued that the purpose of this application is to seek approval to replace the manual, changeable copy sign on the marquee with an Electronically Activated Changeable Copy Sign. The Applicant originally came before the Board in January 2022 and received approval for the same Variance request that is before the Board this evening. The Variance expired, as the project could not move forward in time. The Applicant indicated that they are now prepared to move forward with the project, and they are seeking re-approval of the Variance request. The staff report includes definitions from the Land Development Code (LDC) related to changeable copy signs and what a marquee sign is. To reiterate, Electronically Activated Changeable Copy Signs are prohibited in all zoning districts in the city. If the Board is inclined to approve this request, the following condition is recommended, the same condition the previous Variance was approved upon: "*The sign shall not be used to display animated or flashing images or text*."

Chair Clough asked to hear from the Applicant.

Keith Marks stated that he is the Executive Director at The Colonial Theater and Showroom. Kevin Borella stated that he is the Facilities Manager at The Colonial Theater and Showroom.

Mr. Marks read from the application:

"*The Colonial Theatre, as part of a historic downtown district, has had a distinctive marquee sign for more than half a century. There are three major components to this marquee: the red neon channel letters spelling out the name of the venue; the back-lit copy Board with black exchangeable letters listing events and other content; and the many small incandescent bulbs*

which illuminate a classic 'chase' along the marquee's length. Of these three elements, one stands out as an opportunity for improvement: The back-lit copy Board, which displays upcoming events, sponsor recognitions, community messages, and other opportunities for our constituents.

The Colonial Performing Arts Center, owners of the establishment, propose a replacement of the back-lit copy Board with an internally illuminated, electronically changeable copy Board on both sides of our marquee. This would consist of a custom-manufactured display, utilizing full-color LED lights housed in weather-proof black panels, interconnecting to fill the same space and dimensions occupied by the existing copy Boards. This new electronic copy Board would match, and not exceed, the overall brightness of the current copy Board's back-lighting.

The intended benefits of this new copy Board are three-fold:

> *1) Replacement of outdated elements such as wiring, lamp sockets, and rusted metal within the frame of the current copy Board. This has great value in preserving the longevity of our marquee.*
> *2) Removing potential life safety hazards, especially during winter months to our employees. Currently the sign letters are changed and re-arranged manually, doing so either by climbing a ladder or with a spring-loaded extension pole. In either case, both employees and pedestrians may be at risk of injury. The new proposed copy Board requires no ·physical intervention to change copy.*
> *3) The proposed electronic copy Board is meant to be part of the greater project to revitalize the Colonial Theatre as a modern performing arts center. While nearly all of the historic elements inside and outside the building remain, the Colonial Performing Arts Center sees immense value in supplementing these elements with safer, modern, forward-thinking, and energy-efficient additions. Unlike the outdated copy Board with its very limited two lines of copy and only 23 characters per line, an upgraded Board would allow us to present more detailed and frequently updated information about our programming, more robust exposure for the businesses, individuals, and nonprofit partners that support, or are engaged in, the arts in our region, and provide a welcoming and informative billBoard for visitors who may be unfamiliar with all the theatre that the greater Keene community has to offer*."

Mr. Borella stated that he will go through the criteria. He read from the application:

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

The Colonial Theatre, and in particular the marquee on the Theatre, has been a long-standing landmark in the City of Keene. The marquee sign is an important part of the history of theatre that serves as an integral piece of Keene and its downtown streetscape. Maintaining the sign in its historic configuration while providing much needed upgrades to make it both safer for operations of the theatre as well as improved signage technology in line with today's theatre

standards will allow the Colonial and the marquee to remain the landmark it has become and a vibrant part of the Keene community. The proposed sign improvements maintain the historic configuration of the marquee while allowing for improved wayfinding for patrons and visibility for sponsors and others. It is clear that given the minor nature of the proposed improvements to the marquee and the longstanding presence of the marquee in downtown Keene, granting the variance will not alter the essential character of the neighborhood nor threaten public health, safety or welfare.

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

The Colonial Theatre marquee is a historic landmark, an integral part of the Keene streetscape and a valuable contribution to the history of Main Street. The configuration, shape and size of the marquee structure will not change. The configuration, size and shape of the lit area for signage will not change. The only change will be the technology utilized to light and create the signage area. With this change to create a safer and more energy efficient sign, the new signage area will resemble the existing sign in shape and size observing the spirit of the ordinance.

3. Granting the Variance would do substantial justice.

The Colonial Theatre marquee is in a current state of disrepair. As a good partner of the community, the Colonial believes it is important to provide the much-needed repairs at this time for several reasons. No major repairs have been done to the sign for multiple decades. The wiring is confirmed to be from the previous mid-century. The light fixtures are of the same time frame and replacement parts are no longer available. Improvements making the sign electrically safe and efficiently operational are justified. Additionally, the existing sign requires staff members to manually change letters for upcoming events. Since most of the Colonial events occur during fall, winter and spring months, this adds undue risk of a fall or injury to the employees. The new sign will eliminate the need for ladder access and will allow all employees of any mobility to change the sign remotely from controls within the theatre, in a safe and efficient manner. Given these circumstances, it's clear the Colonial Theatre and the downtown area are benefited by granting the variance."

Mr. Marks continued reading:

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

The Colonial Performing Arts Center is investing in a substantial renovation and addition project thanks to the generosity of the Keene community. This work is being done to position the Colonial to remain as an important anchor to the downtown environment for the next generation. Colonial shows 50,000+ people to downtown each year which supports restaurants, retail and other surrounding businesses. The improvement of the marquee sign will enable the

Colonial to remain highly relevant and improve its standing in the community which will in turn support the surrounding properties for decades to come.

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

Repairs and improvements to the marquee will only enhance the Colonial Theatre's positive impact on the neighborhood and community. The intent of the zoning ordinance is to encourage property owners to maintain and upgrade their properties to ensure a vibrant downtown.

And

      ii. The proposed use is a reasonable one because:

Given the unique and special conditions of this property - the last remaining historic theatre in Keene and a major local and regional landmark as well, the proposed variance is reasonable.

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

Given the unique and special conditions of this property - it is the only historic theatre in Keene and is a recognized landmark as well, the proposed variance is reasonable in seeking to upgrade the marquee to incorporate modern technology while retaining its historic charm."

Chair Clough thanked Mr. Marks and Mr. Borella and asked for questions from the Board.

Mr. Guyot stated that the original restriction in the first Variance that was granted talked about restricting animation on the marquee. He asked how "animation" was defined and how that contrasts to the intended use of the upgraded marquee now. He presumes the marquee will scroll messaging across as it changes. He asked them to describe how it will operate, in terms of its appearance for people observing it from the street.

Mr. Borella replied that they intend to have static images. He continued that perhaps the transitions between the images have some sort of movement. Obviously, they cannot put up a placard or blocker to get to the next image. The intent is not to have ongoing animation/moving

images while in use. They would be static images to promote and support business sponsors, shows, and community partnerships.

Mr. LeRoy asked how often the marquee would change. He continued that he assumes they would want to promote upcoming events. Mr. Borella replied that they have not laid out the exact timeframe, but he thinks about 30 minutes per static image. He does not see it being a rapid succession of shifting and changing icons. Mr. LeRoy replied that he is trying to get back to the definition of "animated" and "flashing images." He continued that his concern, long term, has nothing to do with The Colonial Theater. Rather, it is the precedent this might set for the rest of Keene and Main St.

Mr. Marks stated that a representative from Sousa Signs is here, and from Watchfire, the LED company. He continued that he could speak to the transitions, if the Board would like. Chair Clough replied yes.

Ed Kenny stated that he is from Watchfire Signs, based in Danville, IL. He continued that they manufacture the electronic message center. He continued that the message center is set up so that it does not blink, flash, or have long scrolling text, which is usually a municipality's concern. The change from one message to another is seamless. A static image will either change in an instant or fade out and then fade back in, whichever the municipality deems is more acceptable. The message hold time is custom, so if the municipality wants a minimum hold time, it can be adjusted to whatever they would like. Given the speed of traffic downtown, (he suggests) an 8- to 10-second hold time. The sign will automatically dim throughout the day. When it is bright and sunny out, the sign is running 100% brightness. At twilight and nighttime, it reduces to 10% of its total brightness. Thus, it is not too bright, and not an eyesore. It does not look like Las Vegas downtown. It automatically dims to ambient light. This is all controlled by Watchfire, and the settings cannot be overridden by The Colonial Theater. Thus, no one can go in and override the settings and have messages blink, flash, or scroll, or change the brightness levels at night.

Mr. Guyot stated that the automatic dimming implies, to him, that at night, the new sign will be less bright than the current marquee. He continued that he does not think the current marquee dims. Mr. Kenny replied that LED lighting is designed to always be a certain brightness. He continued that it might be that at night, the marquee with traditional lighting would look a little too bright. The message center is designed to dim throughout the day. The levels have been set through many years of research. Watchfire has been putting up electronic message centers for over 35 years. The levels have been tested and deemed appropriate. The 10% of the maximum brightness level is standard in the industry.

Chair Clough asked for further questions from the Board. Hearing none, he asked for public comments, beginning with those in opposition.

Peter Poanessa stated that he has been running Keene Sign Works for about 40 years and has made most of the signs in the downtown area. He continued that he was also a member of the

committee that re-wrote the last major revision of the Sign Code, 10 or 15 years ago. It was a two-year process with two public hearings to get input about the Sign Code. Only a handful of people came to the three public hearings, but the one consistent message from them is they did not want these electronic signs in town. That was the only public feedback the committee received, which is why there is a blanket ban on (electronic signs). He was also involved in renovating The Colonial Theater sign last time. He agrees it needs renovation. He supports the theater and their mission, and he understands their need to get their message out better. However, he also has opinions about the aesthetics downtown, the Historic District in particular, which The Colonial Theater is a big piece of.

Mr. Poanessa stated that Mr. Borella mentioned the scrolling messages and sponsors and whatnot. He continued that there is another blanket ban in the city on "off premise advertising." He wants to make sure The Colonial Theater will not be selling ad time on the marquee for other businesses, even if they are supporters, because it is like a billboard with scrolling ads, for something other than the shows. Another thing is, The Colonial Theater has a handout talking about other theaters that have done these electronic message centers in a manner that made them blend in with the marquee better, so that instead of a full-color display it was more like black and white, which is similar to what is in the theater now – a lit, white background with black letters. He thinks that would be a reasonable compromise. It would give The Colonial Theater the advantages of the electronic message center, in that they would not have to go out and change the letters; they could control it electronically and scroll their messaging. But appearance-wise, it would fit better with the downtown and the theater marquee as it is. To clarify, he is not completely in opposition to the request. He is just asking that they consider this as a possible compromise.

Chair Clough asked if anyone else wished to speak in opposition. Hearing none, he asked for public comment in support. Hearing none, he asked if the Applicant wanted to respond.

Mr. Borella stated that The Colonial Theater is making a serious investment in this technology, and yes, one of the reasons is to minimize the liability of the (manual) sign changing of these heavy letters that sit on a wire, but part of it is also to bring The Colonial Theater into a more modern footprint. There are theaters in historic districts all over the country that have these signs that allow for enhanced marketing and enhanced communication. That is also part of the nature of what they are looking to do with this Variance.

Mr. Kenny stated that he thinks that even Mr. Poanessa would agree that electronic message centers are the current technology, widely accepted. They are the easiest and safest way to get messages out to the community. Regarding the "off premise advertising" Mr. Poanessa mentioned, the theater stated that their intent would be to advertise events at the theater as well as community events, such as old homes day, a 5k race, or welcoming students back. Maybe recognizing a sponsor, thanking them for a donation, might toe the line between on premise and off premise advertising. If the municipality wants it to only advertise the events at the theater, he is sure the theater is amenable to that. Nationwide, historic theaters are moving to a digital

marquee. Paramount Theater, Majestic Theater, and the Wilbur in Boston are three examples he worked on in the last year. They (Watchfire) have dozens of case studies and testimonials from historic theaters that speak to how they went digital and maintained the historic aspect of the theater. They even have a write-up in Historical Theater Magazine. As he mentioned to Mr. Poanessa before the meeting, he would be happy to share any of that with him or with the Board. Concord does not allow electronic message Boards, either, but their exception is for performing arts centers and theaters. The historic district in Concord has a performing arts center and a theater, which both utilize electronic message centers.

Chair Clough stated that as he understands it, it is only the message area that is white right now; it is not anything above it. Nothing else is being changed out. He continued that it is just the message portion that is being addressed. Mr. Borella replied that is correct.

Chair Clough asked if there was any other public comment. Hearing none, he closed the public hearing, stating that he will reopen it as needed if the Board has further questions for the Applicant. He asked the Board to deliberate.

Mr. Clements stated that "off premise signs" are defined in the LDC as follows: "*A sign that directs attention to a development, business establishment, commodity, service, or entertainment that is conducted, sold, or offered at a location other than the premise upon which the sign is located.*" He continued that thus, advertising for events and things taking place at The Colonial Theater would not be an "off premise sign." Running a "thank you, (sponsor)" for another business in town that has donated to The Colonial Theater is moving into probably what would be considered an off premise sign. The Applicant's request tonight does not cover the allowance of off premise signage; it is merely about the electronic copy sign.

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

Chair Clough stated that he would say it would not be contrary to the public interest.

Mr. LeRoy stated that he was pushing for a (clearer) definition to work within, so that they do not have a situation where places they would not want to see these signs in start popping up downtown, such as bars or other activities. He continued that in and of itself, he does not see any concern with The Colonial Theater. His concern is what will prevent the next business or someone whom the Board or community would not want to have that kind of sign (from having it).

Per the Applicant's request, Chair Clough re-opened the public hearing to allow the Applicant to respond.

Mr. Borella stated that he thought the function of this body was to do that. He continued that The Colonial Theater is coming to the Board for a one-time Variance. If a bar came to (ask for certain signs), this body would be the one to make that assessment and judgement. He asked if that is

correct. Chair Clough replied that is correct; this Variance only applies to this property. He continued that it would not carry over or set a precedent for other properties per se, that each Variance is unique in that respect. He asked if that is correct. Mr. Clements replied yes, that is correct. He continued that the decisions this body makes are not precedent setting. A future property owner could not come and say, "*Well, you gave (this permission) to The Colonial Theater, so you have to give it to me.*" Each situation is unique in its request. Chair Clough replied that is correct, and he does not know of any other place that has an existing sign that would fall under what The Colonial Theater is asking. It would be different if someone were trying to put up a (electronically activated) sign (in a location) that did not have one at all. Mr. LeRoy replied that he just wants the Board to note that (Keene) has some "very litigious business owners" and people who might push the envelope. He continued that they should remain aware of that.

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

Chair Clough stated that this is an existing sign they (The Colonial Theater) are trying to update. He continued that they are not trying to put up a new sign, so it is not doing something contrary to the Ordinance in that respect. Certainly, a brand new sign would be a different concern. Again, this is (updating) an existing one, and with the ability of the lights to react to the outside light makes it more responsive and less literally glaring.

Mr. Guyot stated that he agrees, and would add that in his view, here they are dealing with the evolution of lighting technology, moving from fluorescent or incandescent to the latest technology of LED. He thinks it makes a lot of sense. It is more responsive to the environment that The Colonial Theater lives in, from what he heard from the Applicant. He is good with the second criteria.

Chair Clough stated that he will add, the Applicant also said it is almost impossible now to fix (the existing marquee sign), because replacement parts are not coming off any assembly line. That creates a bit of an issue.

3. Granting the Variance would do substantial justice.

Chair Clough stated that because The Colonial Theater is unable to repair or update the existing sign, something would have in to replace it. He continued that it would not make sense to put in a new fluorescent sign or something like that, because then they would be at status quo, at best, with something 60–70 years old instead of progressing forward. He would see that as (the Variance) would be doing substantial justice.

Mr. Guyot stated that he agrees. Mr. LeRoy replied that he agrees, too.

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

Chair Clough stated that this one is rather obvious. He continued that the sign is already there. (The new sign) would not have a visual impact that is different from what already exists, except for not having people out there on ladders occasionally. He does not think there is any issue in terms of property values.

Mr. Guyot stated that he agrees. Mr. LeRoy agreed as well.

5. Unnecessary Hardship

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

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

Chair Clough stated that as was stated, The Colonial Theater is the only theater in Keene of this age. He continued that it is the only sign of this type, that he knows of, for a theater in Keene. if they were to go by the letter of the law, there is no comparison. There is nothing else in town that would have this sort of challenge, so he does not see an issue with that, either.

Mr. LeRoy stated that he agrees. He continued that he would assume that the unnecessary hardship would be that The Colonial Theater has already done their due diligence, and they know the cost difference between trying to fix (the existing sign) and upgrading it to the new system. Thus, any denial would lead to an unnecessary hardship that a nonprofit in the community would not be able to withstand.

Mr. Guyot replied that he agrees.

and

ii. The proposed use is a reasonable one.

Chair Clough stated that again, it is updating something that already exists, as opposed to putting something new in. He continued that he thinks that acknowledging the fact that they know, as has been discussed here, this is only about one portion of City Code, and The Colonial Theater would not be able to do advertising for other entities. It would be (for) their events. He is not sure if it is the ZBA's purview to say anything about restrictions, in terms of things like sponsors. He asked Mr. Clements about that.

Mr. Clements replied that the original condition when the Variance was first approved was related to some of the things that an electronic copy sign can do that a manual change copy sign cannot do. He continued that it is an interesting sort of tightrope they have to walk, in regard to the Sign Code and sign law. If the Board is thinking about additional conditions on allowing the

electronic copy sign, it would be best suited to the functionality of the machine itself. They cannot really regulate things like color, if they wanted to display images, for example. But if the Board said it could only be text, that might be a restriction that could function.

Chair Clough asked for other Board members' thoughts. He continued that the restriction (with the original Variance approval) was that the sign shall not be used to display animated or flashing images or text. He continued that he would certainly include that this time. He is not sure which (City staff member) would be the one trying to check on the sign's wording. Trying to police it would be difficult.

Mr. Clements replied that his concern is that because the sign is so visible and prominent, truly an iconic part of the downtown, many people in the community will have different opinions and feelings about the sign. He continued that they might not be here this evening, even though tonight is the time to raise those concerns. There need to be reasonable conditions that the Applicant can work with, but there is also the greater community to be concerned about as well.

Mr. Guyot asked Mr. Clements for clarification on the language of the restriction: "*The sign shall not be used to display animated or flashing images or text.*" He asked if it is safe to presume that "or text" means "flashing text," because if it just meant "letters and words," that eliminates the use of the sign. Mr. Clements replied that it absolutely means "flashing text," referring to animated, flashing, attention-grabbing text; that was the concern. Mr. Guyot replied that if they place a restriction on the (approval of the Variance), they might want to clarify that. Chair Clough asked if he means saying "*flashing images or flashing text*" as opposed to "*flashing images or text.*" Mr. Guyot replied yes, to make it clean.

Chair Clough asked Mr. LeRoy for his thoughts. Mr. LeRoy replied that it can have the original marquee look. He continued that he loves the idea of them essentially creating an LED version of what they already have now.

Mr. Borella stated that he thinks part of the leap into the future is that they are not shackling (The Colonial Theater) to the past, either. He continued that he thinks part of the added benefit and impact is that they can properly market the events they have. (This is) a historic theater that has so much economic impact on businesses and restaurants downtown, and it is increasingly challenging to get people into a theater and run this business. Allowing the permit to go through yet keeping the restrictions kind of shackled the organization. They are probably dealing with, as Mr. Poanessa said, the (Sign Code Committee) had three public input sessions and only a few people came in. The Colonial Theater is trying to think about the best intent for the community, and he (asks that they) assume the best intent from The Colonial Theater's perspective as well. They are not looking to pull a fast one on the City. They are not looking to do an "*A-ha, Gotcha! Now we have flashing signs!*" Their intent is to elevate their business, elevate downtown, and elevate the region. That needs to be understood in terms of the spirit of what the Variance is being requested for.

Mr. Clements stated that an option could be to restrict how quickly the copy changes. He continued that for example; they could say no more than one change every 30 minutes. If The Colonial Theater had different events they wanted to cycle through, it would be at a duration that would work for the Applicant but also not run the risk of feeling animated, flashing, or something like that.

Chair Clough stated that what was just suggested would be to put a time limit on each message before it switches to something else. He continued that seeing something switch every eight seconds might bother him a bit, if he were on Main St. Since this has been done in Concord and other places, he asked if [unfinished sentence]. He invited a Sousa Signs representative to speak.

Casey Southwell of Sousa Signs stated that normally, there are standard hold times. She continued that she lives right outside Concord and walks that street (in Concord) all the time. The NHDOT hold time recommendation is 10 seconds. Concord put the message center in a long time ago and "did not have a bunch of people free-for-all-ing it." It is a theater that people come in. Some people come in with a package to advertise on the message center. For example, Melissa Etheridge comes with artwork for that message center. The standard hold time is a minute or maybe less, so it is not "crazy." She and Mr. Kenny can show them exactly where it is, and they are going to do classes with Watchfire. This is a big investment for them, and there are classes for them to go through and learn all the tools. She is sure there is a way to come to an agreement on hold times.

Mr. Kenny stated that regarding hold times, Ms. Southwell mentioned the NHDOT regulations. He continued that any digital message center that faces a state highway has to hold for a minimum of 10 seconds. Considering the speed of traffic driving and the pedestrian traffic, having a hold time of 10 seconds allows the pedestrian or driver to see one or two messages, if there are multiple events going on at the theater and multiple messages. If a 10-second hold time is deemed distracting, they can program the sign for a longer hold time. If the Board were looking for language to allow the Variance, he would suggest at least conforming to a NHDOT standard of a minimum of 10 seconds.

Chair Clough asked what the Board thinks about 10-second hold times.

Mr. LeRoy asked if the study Sousa was talking about is based on speed. He continued that for example, with 25 mph on Main St. versus a busier street with speeds of 35 to 50 mph, you have the chance to be distracted more if you are going slower and you see multiple changes (on the sign).

Mr. Kenny replied that regarding active driving and if a message center is more distracting than, say, just a manual reader Board, Texas A&M has done studies, as well as another institution he cannot recall now. He continued that there is no discernable difference between a changeable electronic message center versus static signage. If someone looks at a sign, someone looks at a sign. The fact that its message seamlessly changes, not flashing at a driver, not scrolling a long

line of text that someone needs to stare at to read the entire line [unfinished sentence]. It is already written in there that there is no blinking, flashing, or scrolling, so they will abide by that. Having a driver who is several hundred yards away that sees a sign, (and knowing that) it takes about six seconds to read a simple message and process it (means that) again, if there were a 10-second hold time and there were (messages about) two or three events, a pedestrian or a driver might see two messages. No studies show that at 25 mph versus 35 mph versus 45 mph there are any more distractions to a message that changes every 10 seconds versus every 10 minutes.

Chair Clough stated that he will close the (public hearing) again. He asked for a motion with the modified language. Mr. Guyot asked if they had decided on modified language. Chair Clough replied that the only part he knew they decided on was (no) flashing images or flashing text. He continued that regarding the hold time, since NHDOT dictates 10 seconds as a minimum, he would use that as a guideline. He does not think the Board needs to put that in writing, but if someone says they would like to have a minimum of a 10-second hold time, that is okay with him, too.

Mr. Guyot stated that he liked (Mr. Kenny's) description using "blinking, flashing, scrolling" as a way to help clarify what had been his concern. He continued that he suggests, then, that the restrictions say something to the effect of "*the sign shall not be used to display animated or blinking, flashing, or scrolling text.*" The Board could add the time limit, but he is not hung up on the time limit; he thinks that is a given. Chair Clough stated that "*The sign shall not be used to display animated, blinking, flashing, or scrolling images or text*" sounds good to him. He asked if someone wanted to make that motion.

Mr. Guyot made a motion to approve the applicant, 95 Main St., Keene, Tax Map #575-008-000, relative to the theater marquee sign replacement, as detailed in the application, with the following condition: the sign shall not be used to display animated, blinking, flashing, or scrolling images or text. Mr. LeRoy seconded the motion.

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

Met with a vote of 3 to 0.

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

Met with a vote of 3 to 0.

3. Granting the Variance would do substantial justice.

Met with a vote of 3 to 0.

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

Met with a vote of 3 to 0.

5. Unnecessary Hardship

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

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

Met with a vote of 3 to 0.

and

ii. The proposed use is a reasonable one.

The motion to approve ZBA-2025-07 for the Variance to allow an electronically changeable copy sign for property located at 95 Main St., Tax Map #575-008-000, as shown in application and supporting materials received on July 2, 2025, with the condition that "the sign shall not be used to display animated or blinking or scrolling or flashing images or text" passed with a vote of 3-0.

B) CONTINUED ZBA-2025-08: Petitioner, Michael Pappas, of 147-151 Main Street, LLC, represented by Timothy Sampson, of Sampson Architects, requests an Extension, for property located at 147 Main St., Tax Map # 584-060-000-000 and is in the Downtown Core District. The Petitioner is requesting an extension for a Special Exception granted on August 7, 2023, per Article 26.6.9 of the Zoning Regulations.

Chair Clough stated that Mr. Schrantz and Mr. Burke had rejoined the meeting.

Chair Clough introduced ZBA-2025-08 and asked to hear from staff.

Mr. Clements asked if anyone is here to present on ZBA-2025-08. Hearing no response, he stated that it appears that the Applicant is not present tonight. He asked if the Board wanted to continue this item to the regularly scheduled October meeting.

Mr. Burke made a motion to continue ZBA-2025-08 to the next Zoning Board of Adjustment meeting on October 6, 2025 at 6:30 PM. Mr. LeRoy seconded the motion, which passed by unanimous vote.

C) ZBA-2025-12: Petitioners, Key Road Development, LLC and Anagnost Companies, of 1662 Elm St., Manchester, NH, represented by Chad Branon, of Fieldstone Land Consultants of 206 Elm St., Milford, NH, request a Variance for property located at 109-147 Key Rd., Tax Map #110-022-000 and is in the Commerce District. The Petitioners are requesting a charitable gaming facility within the 250 feet that is required per Article 8.3.2.1.2.c.iii of the Zoning Regulations.

Chair Clough introduced ZBA-2025-12 and asked to hear from staff.

Mr. Clements stated that the subject parcel is an existing 5.8-acre lot located on the north side of Key Rd., approximately 1,300 feet from Washington St., with the Hampton Inn located directly to the south, and the Key Rd. Shopping Plaza to the east. He continued that the parcel contains an existing shopping plaza with several multi-tenant commercial buildings, parking areas, and associated site improvements. The plaza contains businesses such as Keene Cinemas, Sherwin-Williams Paints, and Toy City. The NH Department of Health and Human Services' Keene District Office is also located in the plaza. The purpose of this application is to seek a Variance from the 250-foot distance requirement from a residential use to accommodate the relocation of the Revo Casino and Social House from its current location at 172 Emerald St. to this Toy City tenant space in the shopping plaza located within the subject parcel. The northeast corner of the building where the tenant space for the charitable gaming facility is located within 170 feet from one of the adjacent apartment buildings located to the north of the subject property.

Mr. Clements continued that it is worth noting that while the charitable gaming facility use standards are extensive, there is a discrepancy between the required separation between a residential use and a charitable gaming facility and how that distance is supposed to be measured. In the subsection of the regulations that requires the 250 feet, the specific requirement says "*from a dwelling to the charitable gaming facility façade*," but the category of regulations that that specific requirement is in outlines how this measurement should be calculated, and in that it says it is from the property line of the residential dwelling to the façade of the charitable gaming facility. Thus, the Applicant is accurate in saying it is about 170 feet from the corner of the multi-family building to the rear wall of the shopping plaza. However, that measurement should be from the property line of where that multi-family building sits on to the façade of the shopping center. That distance is less than 170 feet. The Applicant's request remains unchanged. Staff believes it is appropriate to move forward with this request, and the Applicant can speak for the merits of the application.

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

Dick Anagnost stated that he is a principal in Anagnost Companies as well as Key Road Development. He continued that he is also a principal in the New Hampshire Group, which operates the Revo Casino and Social House, which has a location in Keene. He would like to

start with an overview of what they do, so the Board has a full understanding of what they are requesting tonight. They are requesting to move a charitable gaming facility from Emerald St. where it has been for several years. They (Revo Casino and Social House) have been in business for 27 years and have been serving the Keene area for more than 20 years. They started in Hinsdale at the racetrack, then moved into one of the hotels. As they expanded, they moved to the Colony Mill and ultimately to the Emerald St. casino when they consolidated with Wonder Casino. It is a charitable fundraiser. He knows people refer to it as a "casino," and "casino" is in their name, but they are not in the same category as a traditional casino people might think of in Las Vegas or Atlantic City. They hold no gambling license; they provide a facility and expertise to raise money for charities that acquire licenses through the State of NH directly. In the last 10 months, they have served multiple charities in the Keene area as they are obligated to run two charities for every 10-day period. Each qualifying charity in the state must be registered with the Charitable Trust or the Attorney General's Office and have a 501c3 status. and they have to run two charities for each 10-day period. In the last 10 months, they served the Keene Housing Kids Collaborative, the Junior SwampBats, the Knights of Columbus, the American Legion, Southwestern Community Services, Keene Rotary, Keene Lions, Keene Senior Citizens, Keene Montessori, Keene Kiwanis, and more. The list is rather exhaustive, considering there are two that run every 10 days.

Mr. Anagnost continued that the company also operates in five other locations. The one in Manchester started 27 years ago. In Lebanon, they just moved into a new facility after seven years in the older facility. The Conway one is new this year. The facility in Dover has been there for 11 or 12 years and just had renovations. In Berlin, they were in a church basement for a long time and just acquired a facility to be built out. They are by election. State law says they can serve customers 18 years and older. By election and their own volition, they serve only 21 and older, and they have their own on-site security force that patrols both interior and exterior with people checking IDs at the door, so no one under 21 enters the facility. They are governed by the Lottery Commission and must follow strict rules regarding surveillance and security procedures. In this (Key Rd.) facility, they will be able to upgrade from what they currently have at Emerald St. to full state-of-the-art. The Lottery Commission fully supports their application. Unlike traditional casinos where you can get free drinks for as long as you are gambling, which is regulated in the state of NH and they can provide no free alcohol. The State liquor laws prohibit that. All employees and owners undergo a rigorous background check conducted by the Attorney General's Office and the Lottery Commission, and they are all licensed and badged in order to work and operate there. With him tonight is his partner Brian Michael, and their engineer, Chad Branon from Fieldstone Land Consultants. He asked Mr. Branon to give the technical presentation of their request.

Chad Branon stated that he is a Civil Engineer and principal owner with Fieldstone Land Consultants. He continued that they have an office at 45 Roxbury St. in Keene. They are before the Board seeking a Variance from Section 8.3(2) of the LDC to permit a charitable gaming facility on Tax Map Parcel 110-22, which has a physical address of 133 Key Rd. This proposal would relocate Revo Casino and Social House from its current downtown location at Emerald St.

to the Key Rd. location, and more specifically, in the current location of Toy City. The subject parcel and all abutting properties to this site are in the Commerce District where charitable gaming is an approved and permittable use. The subject parcel is on Key Rd., which is one of few roads in the city that has been approved for a charitable gaming facility use. The subject property is 5.8 acres and is fully developed into a plaza with multiple tenants occupying space. The building on site consists of 61,526 square feet. The property is currently occupied by several tenants, as staff's presentation covered. It is important to point out this site and its surroundings and how the building is orientated, which will be a large part of tonight's discussion. It is surrounded by primarily commercial uses, with a hotel – formerly the Holiday Inn Express – to the west. He thinks it is now the Elm City Hotel. Brown Computer Solutions and the Hampton Inn & Suites are located to the south, as well as the Mazda Auto Dealership. The Key Rd. Plaza is situated to the east, and multi-family residential buildings are situated to the north, which is to the back of the building. The building itself is a buffer to those areas.

Mr. Branon continued that as Mr. Clements pointed out, the charitable gaming facility regulations in the City have changed and are quite restrictive currently. He thinks they changed in 2023. The Code has a lot of talk about use standards. This site meets all the use standards with one exception. He wants to touch on some of the use standards the application had to meet, because it is quite restrictive, and this is a road in the city that staff felt was an appropriate location for the use, so long as an entity meets all the criteria. One of the use standards is that you can only have one charitable gaming facility on a lot. Certainly, they would meet that standard. Another is that the lot area has to be a minimum of 1.25 acres, and at 5.8-acres, they satisfy that. The property has to be in the Commerce District, which it is, and it has to be located on one of the select few roads. Key Rd. happens to be one of them, so they meet that standard. The charitable gaming facility has to have a gaming floor area of no less than 10,000 square feet. This facility is anticipated to be approximately 15,000 square feet, so they would meet that requirement. The parking and traffic for the use exists in this location. There is ample parking on site. This project, if they are successful this evening, would need to go through a site plan review before the Planning Board. The team has already done all the parking calculations with the use breakdown, and they will satisfy all parking requirements on the site, which is an important topic for this type of use and where it is located within the city. From a traffic standpoint, the Key Rd. location, which is next to the highway, would be much better than Emerald St., which is a downtown district. He is sure that is why the City selected Key Rd. as an appropriate location for such a use. A charitable gaming facility cannot be located within 500 feet of another facility, which Revo Casino would not be. The facility cannot be located within 250 feet of a place of worship, a child daycare center, or a public or private school, and Revo Casino would meet those requirements in this location. The facility also cannot be located within 250 feet of a residential zoning district, which it would not be, but it *would* be located within 250 feet of a single-family, two-family, or multi-family dwelling, which is the section they are seeking relief from.

Mr. Branon continued that as staff pointed out, the Ordinance has some conflicting language, but the team does not think it is of much concern as it pertains to this application, primarily because of the orientation of the building and the fact that there are physical barriers between the

residential use and the charitable gaming facility location. The main entrance would be on the Key Rd. side, and the back of the building would have no entrances at all, only emergency exits. There would be no activity behind the building. Thus, the building itself creates a significant, substantial buffer from the active use on the property. In addition, there is no vehicular connectivity to the adjacent residential uses, due to natural features of the land. A drainage swale cuts through the property and fencing runs the entire length of the back portion of the site. The team thinks those are significant conditions that in many ways address the concerns and likely the goals and objectives the City was looking for when adopting this standard. Currently, the Key Rd. Plaza, 133 Key Rd. where the charitable gaming facility would be located, is approximately 170 feet from the existing multi-family residential building that is situated behind it on Lot 109-006. It is approximately 68 from the boundary line. That is what they are seeking relief from. Based on staff's recommendation, it would be the 68-foot dimension, because that would be the strictest interpretation of the Ordinance.

Mr. Anagnost stated that the dimension of 170.9 feet is to one of the buildings. It is a multi-building facility. It is more than 250 feet from all the other surrounding buildings in the development. The actual distance to the gaming floor, because the building's rear is the kitchen and loading facilities, is more than 250 feet. The distance to the front door where people come in and have their IDs checked is 317 feet. You would have to drive all the way around to get there. He wants the Board to be aware that there is significant distance between the charitable gaming facility and that residential building.

Mr. Schrantz stated that they talked about "no vehicular or pedestrian traffic at the back of the building," but they also mentioned loading for the kitchen. He asked if deliveries are occurring back there, or what sort of activity would occur in the back of the building. Mr. Anagnost replied that a loading dock in the rear of the building is where they would receive restaurant supplies, but the exits are fire exits only. He continued that they intentionally have controlled access because of the age restriction they enforce. There is no entrance through the rear of the property, only through the main entrance. Everyone enters through the main entrance. Employees log in and scan their badges there, as they all need badges from the State of NH. Thus, they know who is on site at all times. The surveillance controls force the entrance to only one, although there are cameras and alarms on all the fire exits. They are push-bar (doors), not accessible from the outside of the building.

Mr. Branon stated that an existing loading dock in the back of the building would be repurposed. He continued that in the team's opinion; there would not be increased intensity of use. That use currently exists, being a commercial building. What he meant by "no vehicular or pedestrian access" was that there is no ability for vehicles or pedestrians to cross between the commercial project and the residential project. His opinion, when he considers what the Ordinance's intended goals and objectives are, is that you want to be a certain distance from this type of facility, typically, whether it is vehicular or pedestrian traffic impact potentials. Because of this building's orientation, the way the street systems are, and the fencing, this site has no ability to have impacts on pedestrian or vehicular traffic on that residential property.

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

Mr. Branon stated that the Supreme Court has held that a Variance is contrary to the public interest when it threatens public health, safety, or welfare or materially alters a neighborhood. He continued that the team believes that granting this Variance will not threaten these, nor will it otherwise injure the public rights. They believe allowing a charitable gaming facility at this location and this far from the adjacent lot containing a residential building will not result in negative impacts to the public, for the reasons previously stated. Public interest is upheld with this application because the portion of the building that will be used for the gaming is more than 250 feet from the existing multi-family residence. Only the rear portion of the building is within 250 feet of the residential dwelling. The interior of the building's rear will be a restaurant use, kitchen and offices, and other non-gambling uses. There is no practical connection by vehicle or pedestrians from the multi-family residential building to the subject site and vice versa. Thus, there cannot be a negative impact as it relates to that. There is no access connection and there is significant buffering between that use. Existing vegetation, fencing, and a large drainage swale that would be difficult to navigate provide a natural buffer.

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

Mr. Branon stated that the spirit of the Ordinance is tied to the first criterion, as it is in the public's best interest to uphold the spirit of the Ordinance. Mr. Branon continued that the Ordinance allows charitable gaming facilities in the Commerce Zone, and more specifically, identifies Key Rd. as one of the few acceptable places in the city for it to be located. Relocating Revo Casino and Social House from downtown Keene to this approved location on Key Rd. will be in the spirit of the Ordinance. Granting this Variance will allow Revo Casino to be relocated to a district in which charitable gaming is an allowed use and increase the distance between the gaming facility and residential dwellings. In its current location, it has many residential dwellings within the 250-foot distance. The purpose of the separation from residential uses, in the team's opinion, is to provide an adequate buffer between the uses. The existing residential site on Lot 109-006 will not experience, in their opinion, any appreciable change from the current status quo. All the parking and public access for the proposed facility is in the front of the building, buffered from the residential building, not only by the building itself, but by the fencing, vegetation, and the drainage swale. Since this proposal will relocate an existing, non-conforming use to a section of the City where the use is considered permitted, without negative impacts to the City or abutting properties, they believe it will follow the spirit and intent of the Ordinance.

3. Granting the Variance would do substantial justice.

Mr. Branon stated that granting this Variance would allow for the relocation of the existing casino to a more appropriate location in the City. He continued that substantial justice would be done because both the City and the applicant would benefit from the relocation with no negative

effects, in the team's opinion, to the surrounding community. A denial of this Variance would result in no apparent gain to the public. The residents in the adjacent residential lot are potentially the most affected parties to the 250-foot encroachment, and they would still be adequately buffered from the proposed use. The change of having a charitable gaming facility in the Key Rd. Plaza, in the team's opinion, would be imperceivable to the adjacent residential abutters, because of the location and the fact that the active portion of the site would be on the other side of the building. They believe that the 170-foot separation of buildings and the 68 feet of separation to the property lines, along with the natural buffers, would be more than adequate for the separation of uses. They believe the proposal is therefore reasonable and benefits the applicant and the City because they would be bringing the use into a location that is permitted, with one exception, and they would be making the existing non-conforming condition more conforming by the move.

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

Mr. Branon stated that the proposed charitable gaming facility will not detract from the existing residential use of the abutting property and the requested separation relief between buildings will not expose the abutting properties to any noxious or deleterious use. He continued that the proposed change from a toy store to a gaming facility will stimulate the businesses in the surrounding area. As a result, they would expect this project to have positive impacts on the surrounding businesses, and because of the orientation of the site with the active uses being on the Key Rd. side with the building providing a buffer, as well as the fencing, vegetation, and drainage, they believe there would be no increase in activity behind the building and there would be no negative impacts on the adjacent residential uses and associated property values.

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

Mr. Branon stated that the general public purpose of this section is to shield and provide separation to residential buildings from potential impacts from activities associated with a charitable gaming facility. He continued that several special conditions distinguish this property from others and prohibit strict conformance to the Ordinance. The most obvious special condition is that both the Key Rd. Plaza, the 133 Key Rd. location, and the abutting multi-family residential buildings exist. This application does not propose building a new facility for charitable gaming but rather occupying an existing plaza. The two properties are buffered by buildings, a drainage swale, natural vegetation, and chain-link fence, and there is no ability for pedestrian or vehicular connection, so they are substantially buffered with none of those being a

potential impact. The existing plaza is the only actual impact to the required 250-foot buffer from the property corner. The main entrance to the site, and the active portions of the site, will all be over 250 feet from that property corner. Because of that, the team believes no fair and substantial relationship exists between this Ordinance provision and how it applies to this property. There will be no realized change to the abutting residential dwellings. There is no change in intensity to the back of the building, in the team's opinion. The loading dock that exists today will be used as a loading dock tomorrow. There will be no entrances at all to the facility from the rear of the building; only emergency exits out.

Mr. Branon continued that granting the Variance will improve the location of the existing Revo Casino. Key Rd. is a permitted site for charitable gaming facilities and will be able to accommodate the associated parking and traffic requirements generated by this change of use. The team will hopefully be addressing those before the Planning Board with the site plan review process. Moving the existing business from Emerald St. to the Key Rd. Plaza will improve an existing non-conforming use in the City and will be a benefit to both the City and the Applicant. An adequate separation of 170 feet will be maintained between the existing buildings and approximately 68 feet from the rear corner of the plaza to the property line. They believe that this does, under the circumstances, provide suitable buffering between the proposed gaming facility building and abutting residential properties and buildings. Allowing relief from the buffer requirement does not unduly frustrate the Zoning Ordinance. The team believes the general public purpose is to separate residential zones from the charitable gaming use, allowed in certain sections of the Commerce Zone. However, that is not applicable in this specific case, as all gaming-related uses will be located more than 250 feet away, because of the building's internal floor plan. There is no vehicle or pedestrian connection to the adjacent property, so there cannot be any impact from those. For these reasons, the team does not believe that a fair and substantial relationship exists between the general public purpose of the Ordinance provision and the specific application of that provision to the property.

and

ii. The proposed use is a reasonable one because:

Mr. Branon stated that the team believes the proposed buffer relief is reasonable because adequate separation will still exist between abutting uses. He continued that the proposed charitable gaming facility is a reasonable and permitted use in the Commerce Zone on Key Rd. The charitable gaming facility is situated to the front of the building while the restaurant use is situated to the rear, and the fact that there is no main entrance or activity at the rear of the building and there is no pedestrian or vehicular connection between the back of the site and the adjacent residential properties is a factor that the team hopes will be considered here. Due to these unique features, they believe a Variance from this section of the Zoning Ordinance is both reasonable and warranted.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions

of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Mr. Branon stated that several factors make this property in the Commerce Zone unique and well suited for the proposed charitable gaming facility. He continued that it abuts mostly other commercial buildings in uses and the way that this property will be used is adequate, with the main entrance on the Key Rd. side, with the building as a buffer. It will occupy an existing plaza on one of the few streets that have been deemed an area where the City permits this type of use. That is an important topic, and the fact that the (proposal) meets all the other standard use criteria. It will relocate a use from Emerald St. to Key Rd., which will make the existing use in the city more conforming, and it will provide a better venue for the city, the users, and the Applicant. The Key Rd. Plaza is already developed with substantial parking, and an appropriate traffic interface with the existing highway system. This is where this type of use will be best accessed and have the least amount of impact on all surrounding properties. That is why they feel this is an appropriate location and why they think it would be a severe hardship if they were unsuccessful in securing this Variance.

Mr. Branon continued that the plaza building on Lot 110-22 is located 170 feet from a residential building on the abutting lot and approximately 68 feet from the property boundary. Because of that, they are requesting a Variance to allow for this reasonable use of the property.

Mr. Guyot stated that they have described the proposed use, under the Applicant's ownership, of the rear of the building, with the loading dock and fire exits. He asked if there is any potential that the intended use at the beginning would need to change over time. Mr. Anagnost replied that he highly doubts that, because the way that the plaza is situated would not be conducive to putting a door in the rear. He continued that there is no parking. The major availability of parking is in the front on the Key Rd. side of the building. Most of the mechanicals are in the rear. The rear of the building contains mechanicals, the kitchen, storage, and the loading dock. All of those elements are non-public-facing. It is cut off from the main public-facing area. It would take a yeoman's job to reverse it, and it would not be a viable solution to anything because all the parking is then located in the rear of the building, not in front of the front door.

Chair Clough asked if the Board had more questions. Hearing none, he asked for public comments, beginning with opposition.

Toby Tousley of 500 Washington St. stated that he has a few concerns, all revolving around that 250 feet. He continued that he wants to draw the Board's attention to page 48, the Use Standards, and why it is important. It is a little confusing, because C. on page 48 says, "*All Charitable Gaming Facilities shall be subject to the following distance requirements*," and "shall be" means "must be" or "has to be." He continued that the sentence continues, "*measured in a straight line, without regard to intervening structures from the property of any site, to the closest exterior wall of the Charitable Gaming Facility.*" They (the Applicant) are trying to say the exterior wall does

not really count, because that is where the kitchen will be. The kitchen is an accessory use. It is still considered the charitable gaming facility. The exterior wall in the back is still the charitable gaming facility. The important thing is that the reality is, if you look at the map, the lot line to the rear of the building is 50 feet. The reason this is important is that Ashbrook Apartments might expand someday. They might put more apartments there. It is a sizable piece of property, and they could expand and be much closer to this facility. This is the reason Councilors and the lawmakers who drafted these (Use Standards) wanted it from the property line. The danger is that if they allow this Variance and then Ashbrook Apartments put (more) apartments in, children playing in their backyard would be 50 feet away from a casino. That is not the intent of the Ordinance. That is why it matters. Something else to consider is that Toy City is a low impact, daytime use, with low traffic and low noise. The casino will have high impact, nighttime use, with more traffic, and more noise. The restaurant out back will have restaurant fans. (The building) will be using much more air conditioning, because any casino uses much more air conditioning due to the large number of people inside, and air conditioners use enormous amounts of electricity. (Casinos) use even more air conditioning than restaurants.

Mr. Tousley continued that he would like to draw the Board's attention to page 56, (the first criterion). It is back to the property line. They have to consider these future improvements he talked about, which is the whole reason why he does not think "that flies for that purpose." For (criterion) two, he is amused by the Applicant using the argument that bringing (the charitable gaming facility) to (Key Rd.) will make the Emerald St. site better. The Board cannot consider 172 Emerald St. That should be completely disregarded. (It does not matter) that they are making a non-conforming use better; the Board is charged with looking at this site, solely for this site, not what is happening at 172 Emerald St. The Board should only be looking at what is non-conforming on *this* site, or what the hardship is. Regarding (the third criterion), the Applicant has not shown any evidence that substantial justice would be done. (They say) just denying a regulation is their justice, and you could deny it, then it is not doing an injustice. That is not the correct way to do that. Looking at criteria four and five, regarding hardships, he does not see any hardship here at all. A couple years ago, the Board "did a hardship" for Roosevelt School. You could not do anything else with Roosevelt School, so you had to do a Variance there. It was an empty building for decades. That is why they granted a hardship. There is no hardship here (at the Key Rd. site), which has been a viable commercial location for decades. There are no vacancies (in the plaza); it is all full. They can rent it or do all kinds of things there. It does not need a Variance. Based on what the lawmakers want out of this Ordinance, if the Applicant wanted to put a casino there, there is all that front. They could build a building out closer and be 250 feet away like they are supposed to be. There is no hardship here, because they could do other things. The (casino) is not the only thing that can go there. The space is rentable and viable for other purposes. They could conceivably relocate the building, so it became farther away from the distances. His final comment is that he would ask Ashbrook or Brookbend residents if they would rather have a casino there (in the adjacent building) or a toy store.

George Hansel of 84 Elm St. stated that he would ask the Board to pay special attention to Part B., that the proposed Variance is not contrary to the spirit of the Zoning Regulations, Part C., that

granting the Variance would do substantial justice, and obviously, the unnecessary hardship components of the application. He continued that this is not a new conversation. This is a rather recent conversation they have had in the City of Keene about charitable gaming facilities. The most recent version of the standard was enacted in 2025, so this is fresh in their thinking. This is not a case where an applicant is coming and saying, (for example), "*These regulations were put in place in the 70s, and what we're looking at today is a substantially different Keene than it was back then.*" Things have not built up around this; things have not changed. This Ordinance was put in place with the crafters looking at and thinking about exactly what is there today, since it was at the end of 2024 and into 2025. That is important when the Board is analyzing and assessing whether granting this Variance request would be in the spirit of the regulations. It is clear to him, reading the regulations, that the City was trying to keep these charitable gaming facilities away from residences. By granting this Variance, the Board would be doing the opposite. It is also key to point out that that language around the distance from the building to the property line of the residential property is important. That is only 68 feet. Granting this Variance would mean that for those living on that property, their backyard will turn from a toy store into something very different, with different hours of operation, a different level of activity, and a very different scenario for them.

Mr. Hansel continued that he also thinks this application will have a very hard time proving a hardship. He does not see anything unique about this property that would make it difficult to market, to toy stores or retail. It has been fully occupied for many decades. He does not see any characteristics of the parcel that would make it difficult for the Applicant to do something different, as the previous speaker said. He hopes the Board has some specific discussion around the hardship and the spirit of the Ordinance.

Chair Clough asked for further public comment. Hearing none, he asked if the Applicant wanted to respond.

Mr. Branon stated that the team believes they have addressed all the criteria. He continued that they met with staff and reviewed the regulations. Initially, they got an interpretation that they met the criteria, and then there was a change in the interpretation that because of some conflicts and because of the more strict interpretation of the paragraph, they should come before the Board. The undertone certainly is that this is the area the City is looking for this use to be in. He does not believe there is anyone from the residential properties speaking in opposition for this application tonight. His understanding is that Mr. Tousley is the landlord for his (Mr. Branon's) client at Emerald St., so, there is a clear advantage to him (Mr. Tousley) if this application were to be denied. He does not think there are any merits, going through the criteria, for a denial. When regulations are written, generally, they are written for the whole city. That is the reason this Board exists. It does not matter if the regulation was written last year or 25 years ago. There are always special circumstances that maybe someone did not consider when regulations were drafted and adopted. He certainly thinks that the special conditions of this property, being an existing plaza, being that the backyard of the plaza is what faces the residential property, it is a 62,000-square foot building that is acting as a buffer to the residential properties to the back. His

client is making a commitment that there will be no increase in activities to the rear of the building, and this Board certainly could make that a condition, if they felt it was necessary. The team thinks special conditions exist here that create hardship for this property as it relates to some of these dimensional standards. If it were 250 feet from property to property but one of the main roads went right through the residential development, he would guess that that would have more of an impact than the situation they have here. It would be technically conforming but would have more of an impact. He would consider that a special condition that this property does not have and therefore should be considered by this Board in supporting a Variance. There are unique circumstances here.

Mr. Anagnost stated that he has been doing this (work) for a very long time, and he believes it is in the public's good to eliminate larger non-conforming uses for smaller ones. He continued that he finds it unique that the landlords of his current facility are the ones objecting to the distance, when (the Emerald St. facility) is within distance of residential units on multiple sides. (It seems as though) it is all right (with his landlords) if the casino is in the existing non-conforming use where they are closer to residences, and it is alright for those residents, but it would not be alright for the 15 units out of 75 that they (would be) within the setback of, in order to increase all of the activity they said when all of the activity will be on the other side of the building on Key Rd. Putting that aside, he thinks the residences, as well as the other commercial areas, will benefit. Revo Casino has a private security force that patrols outside all night, providing additional security to the neighborhood. They have been in touch with both hotel owners, who support the application. They had multiple conversations with the Housing Authority that owns the property behind (the Key Rd. facility), and they invited the people from the Housing Authority to come here tonight if they had any objections. The director informed him that they did not want to come and that they would remain neutral. They are one of Revo Casino's charities. He believes the public good is served here, because Revo Casino will be going to exactly where the (crafters of the Ordinance) designed for them to be, with one small exception, and those units are in a commercial zone. This is not anywhere near a residential zone. Over and above that, they have heard about additional development, but to further develop that site, you need to consider wetland setbacks and "everything else." If there was additional density that could go there, he is surprised "they" did not put it in at the time.

Mr. Tousley stated that [inaudible]. He continued that he is not the landlord. He continued that he would like to point out that this (agenda item) is not the reason he is here tonight; he came for a different agenda item, but found this one interesting, because he does not think the Applicant has a hardship and he thinks it is not within the spirit of what has just recently been hashed out in the City, as Mr. Hansel noted, and why they put these restrictions in place. He is passionate about his feelings. (His comments) had nothing to do with money. It is interesting that the one abutter that is within 50 feet, or whatever it is, is his (the Applicant's) benefactor.

Chair Clough closed the public hearing and asked the Board to deliberate.

Mr. Guyot stated that he would like clarification on the two measurements involved. He continued that there is the 250-foot radius measurement, point to point radius, and the lot line measurement. He asked which one the Board is actually addressing. Mr. Clements replied that the strict interpretation of the Code is that there is only measurement: from the property line of the parcel that contains a residential dwelling to the building façade of where the charitable gaming facility will be located. That is the 65- or 68-foot measurement.

Mr. Guyot asked if the Code defines "façade." Mr. Clements replied that he stands corrected; the Code says, "building face," not "façade." He continued that the regulation says, "*The front of a building or structure of any of its side that faces a public right-of-way*." Mr. Guyot asked if it safe to stretch that to the actual wording in the regulation, which does not use "façade." Mr. Clements replied that he thinks the intent was to be the closest portion of the building from the property line of where the use is located. Mr. Guyot replied that in this case, that would be the rear surface of the building. Mr. Clements replied that is correct.

Mr. LeRoy asked if Mr. Clements could also elaborate on the "spirit" of the Ordinance, which might be lost in the current language as they read it. He asked what was going on in the mindset at the time it was proposed. Mr. Clements replied that the NH Supreme Court provided guidance on this, and the relationship between the first and second criteria of the five criteria (is such that they) are hand in hand, because the first criterion is related to public good, and the core spirit of any municipality's Zoning Ordinance is the preservation of life safety and well-being. For an application to fall down on "spirit," it would have to also fall down on the first criteria. Meaning, the proposed use would have to be so risky, damaging, and deleterious to the public life, safety, and welfare that it is just not appropriate.

Mr. LeRoy stated that he was hoping (to hear) about the 250 feet (issue), and what the spirit of the rule is in that regard. He continued that Mr. Branon made a great point when he said that this is not on the same road that residences are on. Mr. Clements replied that whatever interpretation he himself would make on that specific provision would ultimately be appealable to the ZBA, as the arbiter of the Zoning Ordinance, so he has to push the question back to the ZBA.

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

Mr. Schrantz stated that his initial reaction is that the 250-foot dimension, while written in the Code, does not particularly apply specifically to this location, because of a couple of factors. He continued that one is that Key. Rd. was identified as one of the locations for this use, and a few existing facilities on Key Rd. on the opposite side are 250 feet away, but everything else would be within that 250-foot dimension. Thus, if the intent was that they should have kept it 250 feet when they allowed this use there, then the thought would have been to not allow it on that side of the road. That was not the case. Thus, his interpretation is that the Key Rd. area is then a viable area to allow this type of use, and that dimension, while less than the required 250 feet, does not seem to impact or be contrary to the public interest, because all of the use will be down Key Rd. For example, the traffic, customers, and parking will all occur in the (Key Rd.) area, and while

there might be a perceived impact to the property behind them, it is hard for the ZBA to determine what that impact is, without having further study or information about noise, amount of deliveries, or hours of operation.

Mr. Burke stated that he agrees. He continued that for the first criterion, he does not see this being a threat to public health, safety, or welfare. The road itself was identified as an appropriate area for a business like this. Regarding (Mr. Tousley's) comment about the casino's need for air conditioning, he would argue that the movie theater probably has some of the same requirements and has air conditioning in the six cinemas and the projection booths. That use is probably already in place in that plaza for Keene Cinemas, which would be mirrored for the casino. He struggles more with the fifth criterion, as he tries to identify what the hardship is here.

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

Chair Clough stated that looking at all the criteria a charitable gaming facility has to go through, there is only one thing that is lacking, which is this distance. He continued that out of the 15 hoops they had to jump through; there is only one they would need special help with. He thinks the majority of the Ordinance is being observed and changing that one thing would fulfill the second criteria. It would still follow the basic spirit of the Ordinance, because as was pointed out, all Key Rd. was supposed to be (appropriate for this use).

3. Granting the Variance would do substantial justice.

Chair Clough stated that now it becomes much more of a judgement call. He continued that (whether the third criterion is met) is not so cut and dried. It would allow something like this (charitable gaming facility) to occur, but it already exists somewhere else. The existing location might not be the best, and this might be a better location, but it is hard to know whether it would be doing substantial justice.

Mr. Guyot stated that he thinks the "substantial justice" phrase becomes degrees. He continued that in the spirit of the Ordinance of having Key Rd. identified as an acceptable area for this type of facility, moving there does some measure of justice to the proposition, but again, it is a matter of degrees. That is what he is trying to balance out here with the rest of the fact pattern.

Mr. Burke stated that he agrees with that line of thinking. He continued that he thinks this does *some* justice, but (is not sure) whether it is "substantial" justice. There are degrees here. He thinks it does do justice to move this (facility) from a part of the city in which it is non-conforming to an area identified for this type of business.

Chair Clough replied yes, and again, acknowledging that technically, the Board is looking at just what this is doing, specifically. He continued that again, 14 out of 15 criteria are okay, and the only thing that is not is that distance. You do sit here and think, as Mr. Burke was saying, where do you want to put this on Key Rd., without being much more specific. Is there an error in the

zoning that it should not have included the north side of Key Rd., and it should have only been the south side? Then there would have been more hurdles. In this case, there is only the one, because it is on the north side.

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

Mr. Burke stated that he wonders if (Mr. LeRoy), who is a realtor, has an opinion on this. Mr. LeRoy replied that he does not believe the (values of the surrounding properties would be diminished).

Mr. Schrantz stated that there was discussion from the Applicant with regards to property values and the abutters. He continued that since no one has shown up to express their opinion that they are concerned about the use, it certainly seems like they do not have concern about their property values being diminished. Thus, he does not see it.

Mr. Guyot replied that he agrees.

5. Unnecessary Hardship

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

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

Chair Clough stated that this is always the hardest criterion. He continued that it is tough to say. They have to look at the property to determine what makes it unique, or whether it is unique, and whether there are other options. Often, what comes before the Board is a situation where there is not another good, viable option for a space, and someone is coming in with an outside-the-box idea and that is why they need to seek a Variance. In this case, he does not know. Toy City has been here for decades, so it is not like this is an empty spot. It is not like any of the spaces there are empty. Thus, that does not seem to make the property special in terms of not being able to do anything with it, other than putting a gaming facility there. He asked for others' thoughts.

Mr. LeRoy replied that his only thought is that the interpretation of the hardship does not particularly apply to the Applicant itself, but more to the community at large. It serves the community much better for (the charitable gaming facility) to be where it is proposed to be versus where it currently stands. Interpretation of "hardship" is still hard, but that is how he sees it.

Mr. Guyot stated that this criterion is always a struggle. He asked if Mr. Clements can help clarify it. He asked if it is the uniqueness of the building that creates the hardship, or if it is the

application of these provisions under the Zoning Ordinance that creates the hardship on that building. Mr. Clements replied that it is the property as a whole, and the property is located in space, so there is consideration for surrounding area. He continued that the Board is looking at the regulations that the Zoning Ordinance applies to this use.

Mr. Guyot replied that the Ordinance, then, is imposing a restriction or rules for the use of the property that is in existence. The property on Key Rd., they know exactly what the property is. The use is the charitable gaming operation. And the Zoning Ordinance is placing restrictions on that use of the property. Mr. Clements replied yes, and those restrictions articulate multiple areas within the City that have different characteristics. He continued that the Board is looking at the regulations that are written for multiple areas of the City, and the Board is applying the regulations to this specific piece of property, as it is proposed to be, and they need to decide—which is partially what the other criteria tease out of the Board, such as the spirit and intent, and substantial justice—what is unique about this property that warrants relief from a specific section of the Zoning Ordinance that is written for a much larger umbrella. It is the Board's responsibility to decide, through these five criteria, whether the literal interpretation of the entire Ordinance subjected to this piece of property is substantial justice.

Mr. Schrantz stated that to follow up on that thought, and reading through the words, if they try to distill it down to understand, "*i. no fair and substantial relationship between the…*" it talks about the "*general public purpose*," but it is really about the purpose of the Ordinance and the specific application. He continued that they are trying to determine if there is fair and substantial relationship between those two things, the purpose and the application, and for him, as he tries to get to the root of the question, it talks about how there is a building in space that has already been in that location. To address that specific building that was already placed there, allowed to be based on previous zoning and planning, then this dimension becomes a hardship against this application, in his opinion. It is not that easy, as someone suggested, to go and move the building or put another building in front of it or look at all the different things that could occur. They need to address the specific building that they are dealing with right now, and because of its specific location in space, the way he is reading it right now is that there is a hardship being placed on this on that one specific dimension.

Mr. Guyot replied that that is exactly what he was trying to tease out of that.

Chair Clough asked if anyone had other comments on the hardship. Hearing none, he asked if there was any other discussion on any other criteria.

Mr. Burke stated that he had a question for Mr. Clements. He asked what other roads in Keene were designated for this kind of use, besides Key Rd. Mr. Clements replied that b. of Use Standards state:

"*b. Charitable Gaming Facilities, as defined, are permitted on parcels greater than 1.25 acres in the following areas of the Commerce District:*

i. Land with frontage on West St. west of Island St. The principal entrance of such businesses shall face West St. or be in a plaza where the storefront faces the parking areas that have a common boundary with West St.
ii. Land with frontage on Winchester St. south of Island St. and north of Cornwell Dr. The storefront of such a business shall face Winchester St. or be in a plaza where the storefront faces the parking areas that have a common boundary with Winchester St.
iii. Land with frontage on Main St. south of NH Rt. 101 and north of Silent Way. The storefront of such a business shall face Main St.
iv. Land with frontage on Key Rd.
v. Land with frontage on Ashbrook Rd.
vi. Land with frontage on Kitt St."

Mr. Guyot stated that in that reading, when it names "Key Rd.," that wording about "the front of the building facing [Key Rd.]" vanishes. He asked if Mr. Clements recalls any reason given for why the language changed in that way. Mr. Clements replied that he was not specifically involved with the crafting of this regulation. He continued that it is obvious that the crafters and City Council had concerns about the orientation of this use in certain locations and not in others, apparently, based on what he (read aloud).

Mr. Schrantz asked, as a follow-up, if the 250-foot distance applies to all those locations. Mr. Clements replied yes, that is universal.

Mr. LeRoy asked when that Ordinance was put in place, with that 250-foot distance. Mr. Clements replied that the whole thing, prior to the adoption of this Ordinance, (the City) did not have a use definition for "charitable gaming facility." He continued that this was a relatively extensive process. He believes it started at the end of 2023 and final adoption and codification of this language was not until either very late 2024 or the beginning of 2025.

[Mr. LeRoy asked Mr. Anagnost when he purchased the building. Mr. Anagnost's response was inaudible. *Minute Taker's Note: the public hearing was closed at the time when Mr. LeRoy asked the question and the Applicant responded.* Mr. LeRoy stated that he assumes Mr. Anagnost purchased the building with the full intent of doing this project, and at the time, the Ordinance was not in place. Mr. Anagnost replied yes.]

Chair Clough asked if there were further questions. Hearing none, he continued that he would close the deliberations and entertain a motion.

Mr. Schrantz made a motion to approve ZBA-2025-12 for the Variance to allow a Charitable Gaming Facility to be allowed within 250 feet of a residential dwelling for property located 109-147 Key Rd., Tax Map #110-022-000-000, as shown in the application and supporting materials received on August 15, 2025 with no conditions. Mr. Guyot seconded the motion.

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

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

3. Granting the Variance would do substantial justice.

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

5. Unnecessary Hardship

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

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

Met with a vote of 4 to 1. Chair Clough was opposed.

and

ii. The proposed use is a reasonable one.

Met with a vote of 4 to 1. Chair Clough was opposed.

The motion to approve ZBA-2025-12, Petitioners Key Road Development, LLC and Anagnost Companies of 1662 Elm St., Manchester, NH, represented by Chad Branon of Fieldstone Land Consultants of 206 Elm St., Milford, NH, request for a Variance for property located at 109-147 Key Rd., Tax Map #110-022-000 in the Commerce District, for a charitable gaming facility within the 250 feet that is required per Article 8.3.2.1.2.c.iii of the Zoning Regulations, passed with a vote of 4 to 1. Chair Clough was opposed.

Chair Clough called for a five-minute recess and called the meeting back to order at 8:56 PM.

D) ZBA-2025-10: Petitioner, 295 Park Ave, owned by Alan Becker, requests an Enlargement or Expansion of a Non-Conforming Use for property located at 314 Park Ave., Tax Map #539-101-000 and is in Commerce District. The

Petitioner is requesting an expansion of an existing apartment from two bedrooms to three, adding 175 sq. ft. to a 900 sq. ft. apartment per Article 27.7.1 of the Zoning Regulations.

Chair Clough introduced ZBA-2025-10 and stated that the Board has a question about Article 27.7.1, which does not seem to be right. That looks like an appeals section. Mr. Clements replied that that does appear to be a citation error. He continued that he would look up Expansion of a Non-Conforming Use. Chair Clough stated that he thinks it is Article 26.7. Mr. Clements replied that is correct; that is the application procedure for the Expansion of a Non-Conforming Use. He continued that the Applicant is not seeking relief from a section of the LDC, they are merely petitioning to go through the process articulated in Article 26.7. Chair Clough asked if the Board is looking at three criteria. Mr. Clements replied yes.

Chair Clough stated that to clarify, they are looking at Article 26.7.6 of the LDC. He asked to hear from staff.

Mr. Clements stated that the Applicant has two separate requests before the Board tonight. He continued that for the sake of brevity, he will read the background on the subject parcel just once, which the Board can keep in their minds as they go through the second request. The subject parcel is an existing .259-acre lot on the western side of Park Ave., on the corner of Arlington Ave., and approximately 2,000 from the entrance to Wheelock Park to the south. The parcel contains an existing roughly 3,600 square foot mixed-use building with three residential uses and an office use. Two of the residential uses are located above the ground floor and the third unit is located on the ground floor behind the office use. The property also contains a garage with loft, four parking spaces behind the principal building, five parking spaces along the Park Ave. frontage, and associated site improvements.

Mr. Clements continued that the purpose of this application is to seek approval for the expansion of an existing 900-square-foot, ground-floor residential dwelling unit, into the approximately 200-square-foot office space. This would increase the bedroom count of the dwelling unit from two to three bedrooms. The office use would be eliminated from the property. The dwelling unit is considered non-conforming as only multi-family is allowed in the Commerce Zone, with the use standards that the dwellings be above the ground floor. The staff report includes the definition for “Dwelling, Multi-Family” and the use standards for multi-family use, and the three criteria for the Expansion of a Non-Conforming Use, which are:

1. Such expansion or enlargement would not reduce the value of any property within the Zoning District, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.
2. There would be no nuisance or serious hazard to vehicles or pedestrians.
3. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Chair Clough thanked Mr. Clements and asked if anyone had questions.

Mr. Burke asked if it is correct that there are single-family homes and multi-family homes with dwelling units on the ground floor close to this property. He continued that he thinks there is a house right across the street from it. Mr. Clements replied that is correct. He continued that the zoning map in the staff report shows that the subject property is in a small pocket of commerce that is almost entirely surrounded by the low density residential zoning district.

Chair Clough asked if there were any other questions for staff. Hearing none, he asked to hear from the Applicant.

Chad Becker stated that he represents 314 Park Ave. He continued that the property is currently a four-unit building, including an office. The office is very small, with a small bathroom, and it is not that attractive to anyone. It is "really just a storefront" and has became a problem, because of its size, it could not conform to being either a studio or a business. It came to the point where they wanted to merge the apartment with the office. Reducing the number of units was the easiest way to do it. The good news is there are no external changes to anything. There are no issues with parking, and no changes with water. Putting a business in there would result in more water than the addition of another person would. The only change to the site would be extending the bedroom.

Chair Clough read, "*1. Such expansion or enlargement would not reduce the value of any property within the Zoning District, nor otherwise be injurious, obnoxious, or offensive to the neighborhood.*"

Mr. Becker replied, "Absolutely not."

Chair Clough read, "*2. There would be no nuisance or serious hazard to vehicles or pedestrians.*"

Mr. Becker replied, "No." He continued that there are about 30 parking spaces, so there will not be issues in and out. It is an (unusual) parcel of land, because 310 and 314 Park Ave. are together, purchased together from Dube's Tire. About three quarters of the abutting (properties) are owned by (the owner of) Dube's Tire, who was initially going to put a store in there, which just never happened for him.

Chair Clough read, "*3. Adequate and appropriate facilities will be provided for the property operation of the proposed use*."

Mr. Becker (nodded). Chair Clough asked if it is correct that the third criterion is true. Mr. Becker replied yes.

Chair Clough asked for public comment in opposition to the application. Hearing none, he asked for public comment in support. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Chair Clough asked how the Board feels about the first criterion. He continued that it is an accurate statement. Mr. Guyot stated that it seems straightforward.

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

Chair Clough stated that it would be a decrease (in hazards), if anything, because it will not be a business.

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

Chair Clough stated that there is already a bathroom there, and plenty of parking and everything.

Mr. Burke made a motion to approve ZBA-2025-10, Expansion of a Non-Conforming Use to allow a ground floor dwelling to expand into an existing office space for property located at 314 Park Ave., Tax Map #539-101-000 as shown in the application and supporting materials received on August 13, 2025, with no conditions. Mr. Schrantz seconded the motion.

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

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

3. Adequate and appropriate facilities will be provided for the property operation of the proposed use.

Met with a vote of 5 to 0.

The motion to approve ZBA-2025-10 passed with a vote of 5 to 0.

E) ZBA-2025-11: Petitioner, 295 Park Ave, owned by Alan Becker, requests a Variance for property located at 314 Park Ave., Tax Map #539-101-000 and

is in Commerce District. The Petitioner is requesting a Variance to convert a garage into a single family home per Article 5.1.5 of the Zoning Regulations.

Chair Clough introduced ZBA-2025-11 and asked to hear from staff.

Mr. Clements stated that this is a .259-acre lot on the west side of Park Ave. He continued that the purpose of this application is to seek approval for a Variance to allow the conversion of an existing, detached garage with loft into a single dwelling unit. The Applicant intends to convert the ground floor and the loft into the unit. The single dwelling unit in a detached structure is considered single-family use, which is not normally permitted in the Commerce District. Regarding applicable definitions, a "Dwelling, single-family" is "*A free-standing building containing only one dwelling unit on a single lot which is designed, occupied, or intended for the occupancy of one family*." A "Dwelling, above floor" is *"A dwelling unit that is located on the second story or higher of a building that is above ground.*" Something to consider in tandem is that the Zoning Ordinance allows for multiple principal uses in any district in the City except the residential zoning districts. This parcel is zoned Commerce, so it is allowed to have multi-family residential use in one building as a principal use and it is allowed to have another separate, detached, principal use on the property. That is allowed. It is the specific use for the single-family that is what the Applicant is seeking relief from this evening, because the single-family use is not allowed in the Commerce District.

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

Chad Becker stated that he represents 314 Park Ave. He continued that they (he and the owner) are talking about turning it into a single-family home. The property was obtained by Gary Dubois, and it was zoned Commercial because Mr. Dubois was using it as tire storage. That is why initially, he did not try to make it an apartment. Their (his and the owner's) goal was to turn it into an apartment. They are not changing anything about the structure. They just want the second floor to become a one-bedroom. It already has water and sewage, although it is not hooked up. Everything is brought to the building. There is nothing else at this point; it is just the shell that was basically storage for both floors. It is more on Arlington Ave., faced directly at the Low-Density Zone, close enough back that they thought they would try. It is closer to the Low-Density Zone than to the Commerce Zone, which is two buildings over. They are not trying to change anything on the outside. They will keep a garage on the base floor, and the goal would be to do all the applicable (things, such as) making sure the basement and upstairs are adequately insulated and converting it to the single-family dwelling.

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

Mr. Becker stated that they try to create quality housing, knowing that there is a shortage in the area. He continued that they feel this will be a quality, nice apartment for the area.

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

Mr. Becker stated that because there were already multi-family dwellings on the site, and it is on the back side of the Commerce District, close enough to the Low-Density District, they felt it was applicable.

3. Granting the Variance would do substantial justice.

Mr. Becker stated that he read there was a lack of housing, and they felt that adding safe, quality housing would be worth it for Keene.

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

Mr. Becker stated that he is trying to invest in the property and the area. He continued that by not updating the existing footprint, all they would do is update the inside. It is unique because it now puts a quality housing (unit) on a commercial lot, which he found interesting.

5. Unnecessary Hardship

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

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

Mr. Becker stated that the intent of the garage was to house an automotive facility. He continued that the purpose now is to (create) a single-family dwelling with one bedroom and one bathroom, which would be a more realistic scenario than keeping the "tires and stuff," because it is less impact on the environment. All they want to do is add living space to the upper level. Initially they had looked at (creating) a two-bedroom, but they felt it was more attractive as a one-bedroom with a nice garage. The point of it is to keep with the uniformity of the neighborhood. They were hoping to turn the little back area into more low-density housing.

and

ii. The proposed use is a reasonable one because:

Mr. Becker stated that there is a single-family home right next to the housing, and all up and down Arlington Ave.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the

property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Mr. Becker stated that because the neighborhood is a combination of residential and commercial, surrounded by low density and single-family use, they would like to add the single-family home to match the rest of the area.

Chair Clough asked if anyone from the public had comments, beginning with those in opposition.

Toby Tousley of 500 Washington St. stated that he is not opposed to what the Applicant is trying to do, but he is opposed to how it is happening. He continued that he is here to be on record in hopes that staff will be directed to have applicants file for Zoning changes instead of all these Variances. This is in the Commerce District because it was created Commerce, because of the store that was there when he was a kid. That is the only reason it became Commerce. Clearly, this is a residential neighborhood, and it clearly should be residential use. He understands that. However, it should be changed to a residential district. That is how this should be done, and that is what should have happened with the Roosevelt School. It should have been put in for high density residential. If this were in a residential use, the Applicant could probably do a Cottage Court on this. He knows it is a bit cumbersome to do that (change to a residential district), but he hopes that he being vocal about this leads to staff guiding people to change these districts. Thus, when the next owner comes along, or he (the current owner) wants to do something in the future, it will be in the correct district, so they do not have to jump through all these hoops again.

Chair Clough asked for further comments from the public. Hearing none, he asked if the Applicant wanted to respond to public comments.

Mr. LeRoy asked the Applicant if he tried to go the route Mr. Tousley was talking about, to try to get it re-zoned. Mr. Becker replied no. He continued that this (Variance request) is the route staff recommended they take. As he understands it, the Variance is because it is a single-family, whereas a multi-family would not have needed a Variance. He asked if that is correct. Mr. Clements replied that it is correct. He continued that multi-family, which is one building with three or more units above the ground floor, is permitted in the Commerce District. That is why the previous application needed to take place, because the ground floor unit is legal non-conforming. It is the expansion from that dwelling into the office as an expansion of the non-conforming ground floor dwelling. The only option for a map amendment would be to change the whole parcel from Commerce to Low Density, where only single-family would be allowed, and the multi-tenant building would not be allowed.

Mr. LeRoy asked, as a follow-up question, if it is correct that the Applicant did not look at making it a multi-family dwelling. Mr. Becker replied that it is not that big and that it is a garage, about 20’ x 22’. Upstairs would be the apartment, and the downstairs would be significantly

more expensive to convert into another apartment, and it was not worth it, (when they considered the cost versus the benefits). Thus, they decided to just do the one.

Mr. LeRoy asked if they would have needed a Variance regardless. Mr. Clements replied yes, because even just to keep the garage and put the dwelling on the second floor, they would need two more dwellings to be multi-family and be conforming.

Mr. Clements continued that he would like to note that Mr. Tousley makes a very good point, and staff is looking at these "neighborhood nodes." This is a prime example of one of several in the city, (for them to) better figure out what the community wants to happen in these places than what is currently allowed versus not allowed. They are at the very beginning of that conversation, with the Master Plan Update being adopted soon. While it is on staff's radar, it will not happen soon, which is why they are here this evening.

Chair Clough replied that this is his fourth year on the Board, and quite often, the ZBA encounters (requests) that cause them to think, "*this shouldn't have had to come to us*," but it is the only way to get it to move in a timely manner, like this year, because things like this do take time. People (otherwise) sit on a property they cannot make any money on or cannot convert to housing. One of the (most frequent requests) is converting office space into housing. They are seeing that all over the place. Many districts were re-zoned to office space and now they are going backwards, re-zoning them or creating Variances allowing more housing in places that are houses, but they were offices. It is like doing a flip of a certain progression that occurred that is now regressing, and they are getting a different progression. As he sees it, the ZBA is trying to be quickly adaptable to situations, where it will take longer for the Code to catch up. The ZBA had been encountering requests for ADUs, and now they rarely do, because (ADUs) have been addressed (in the Code). Mr. Tousley makes a good point that they would not have to be here if everything was zoned beautifully.

Chair Clough closed the public hearing and asked the Board to deliberate.

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

Mr. Burke stated that he does not think it would be contrary to the public interest. He continued that Arlington Ave. has single-family homes up and down the street. He thinks it meets the character of the neighborhood.

Chair Clough replied yes, it is surrounded on three sides. He continued that it is an outlier.

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

Chair Clough stated that he thinks everyone is in agreement with that. Mr. Guyot replied that he agrees.

3. Granting the Variance would do substantial justice.

Mr. Schrantz stated that the Applicant's explanation about needing more housing supports the idea of substantial justice and serving a need.

Chair Clough stated that in addition, it is an existing building; they do not have to build anything else. He continued that using it for tire storage does not make sense for someone who is not selling tires.

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

Chair Clough stated that this would be a true statement.

5. Unnecessary Hardship

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

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

Chair Clough stated that the zoning area is very odd, and (the property) does not fit that. He continued that it does not fit as commercial, so what the Applicant is being asked to do would not make a lot of sense.

Mr. Schrantz stated that the hardship criterion is the hard one, and they can talk about it being weirdly zoned, but it is zoned in a certain fashion. He continued that the other four criteria "fly right by," but the hardship criterion is where they get into interesting conversations, regarding whether it is truly a hardship because the building was constructed for storage purposes. It certainly could be a storage unit, going forward. The question is whether it is a hardship to not allow it to be converted to single-family. He is not sure he knows the answer, but he has been thinking about it and would say yes, it is a hardship, because the need for housing is greater than the need for storage, especially for the investor in the property. Thus, his economic ability to recoup his investment is greater enhanced by putting in housing. There are multiple reasons that it becomes a hardship, so he thinks there is valid cause.

and

ii. The proposed use is a reasonable one.

Chair Clough stated that the proposed use seems reasonable.

Mr. Guyot made a motion to approve ZBA-2025-11, for the Variance to allow a single-family use for property located at 314 Park Ave., Tax Map #539-101-000-000, as shown in the application and supporting materials received on August 13, 2025, with no conditions. Mr. LeRoy seconded the motion.

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

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

3. Granting the Variance would do substantial justice.

Met with a vote of 5 to 0.

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

Met with a vote of 5 to 0.

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one.

Met with a vote of 5 to 0.

The motion to approve ZBA-2025-11 passed with a vote of 5 to 0.

V) New Business

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

VI) Staff Updates
- **A) Master Plan**
- **B) Annual City Council Report**

VII) Communications and Miscellaneous

VIII) Non-Public Session (if required)

IX) Adjournment

Mr. Clements stated that the next Special Meeting of the ZBA is September 15, 2025, at 6:30 PM. He continued that there are five more applications for that agenda.

There being no further business, Chair Clough adjourned the meeting at 9:39 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk