

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 3, 2025

6:30 PM

**Council Chambers,
City Hall**

Members Present:

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

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.

II) Minutes of the Previous Meeting: October 6, 2025

Mr. Burke made a motion to approve the meeting minutes of October 6, 2025. Mr. Guyot seconded the motion, which passed by unanimous vote.

III) Unfinished Business

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

IV) Hearings

- A) 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 introduced ZBA-2025-08 and asked to hear from staff.

Mr. Clements stated that the property at 147–151 Main St. is an existing vacant parcel located on the northwest corner of Main St. and Davis St. with the Cumberland Farms Gas and Convenience across the street to the east. He continued that the property used to contain a two-story, brick construction, mixed-use building known as the Cobblestone building. However, the lot is currently vacant after a fire forced the demolition of the Cobblestone building. In 2023, a boundary line adjustment was approved by the Planning Board for the subject parcel, an adjacent lot to the west at 0 West St., and the adjacent lot to the north at 143 Main St. as part of a larger plan to redevelop the site. The property also received a Special Exception from the ZBA to allow for a drive-thru as was required from Section 8.4.2.C.2 of the Land Development Code (LDC) for parcels located in the Downtown Core Zoning District. The LDC has since been amended to prohibit the drive-thru in the Downtown Core. The purpose of this application is to request an extension of the approved Special Exception from 2023. The Special Exception permitted a drive-thru use to accommodate a pickup only drive-thru lane for pre-ordered food items. The drive-thru was not proposed to have an order Board or be designed to allow for orders to be placed. The meeting minutes from that meeting were included in tonight’s agenda packet and outline the original request.

Mr. Clements continued that the only condition put on that original approval was that “*no exterior order Board be present.*” The Staff Report includes some basic terms, including the definition of “drive-thru use” as well as the use standards currently in the LDC, and the approval standards for a Special Exception. Regarding some additional considerations for the extension request, the Board will need to determine if the established findings of facts and conditions of the approved Special Exception are still applicable to the property and proposed project, and that the extension request is warranted for good cause. “Good cause” is a substantial reason or justification for why the Special Exception has not yet been acted on by the applicant, and includes a reasonable plan on how the applicant intends to act on the Special Exception within the timeframe granted by the extension. The Board will need to determine a reasonable and realistic amount of time to grant the extension for. Suggested conditions are the same as what was previously conditioned on the approval, if the Board is inclined to approve the request.

Chair Clough stated that when they get to the point of voting, they will have to go through the seven standards and vote on each. He asked if everyone has seen the Special Exception criteria, which are different from the Variance criteria. Mr. Clements replied that is correct, the same Special Exception criteria apply to this application as if it were a brand new application.

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

Eli Leino stated that he is an attorney with Bernstein Shur in Manchester, and has spent plenty of time in Keene, as his parents still live here. He continued that he thanks the Board for their patience, as Mr. Pappas, the principal of 147–151 Main St. LLC, has been working to get this extension filed. First is the piece that Mr. Clements mentioned, regarding how the Ordinance has changed. It is important to consider that because this is an extension, even though it is considered

as a new application, it should still be considered under the previous criteria, otherwise there is no reason to have extension language, which violates canons of construction when you consider a statute like the LDC. This is in the Downtown Core district. If this had lapsed without an extension request, they would need a Variance, as was discussed, but as the Chair mentioned, they are here under the same seven criteria that were considered two years ago. Section 26.6.9 of the LDC, A. says, *“A Special Exception granted by the Zoning Board of Adjustment shall be valid if exercised within two years from the date of final approval, or as further extended by the Zoning Board of Adjustment for good cause.”*

Mr. Leino continued that before he gets into the criteria, he wants to discuss the “good cause.” Everyone here knows that it has been a difficult time to build, even though there has been a huge amount of desirability for housing and mixed use as they are proposing here. However, rates had been stuck at not historically high rates, but recent historically high rates for at least the full two-year period. They are trying to redevelop a site where the building previously was from 1926 and had myriad uses ranging from a grocery store to a deli to various other commercial uses on that first floor, up through the final iteration prior to the fire, which was the Dominos, the Piazza, and the Cobblestone. It was easy enough on a nice downtown block, abutting the college and near all the downtown amenities, to put something in this building. The good cause and challenge the Applicant has had is trying to rebuild from start in a time when building input prices have been very high and tariffs have come in. They are starting from scratch to build a building where they can get an anchor tenant in that commercial space. They will not have any issue renting units to residential uses. It is great for that, right by the college, right downtown. They need to be able to build a building that is of the character required of the beautiful downtown, as this is a three-story brick building with character. They are not trying to put up a steel industrial box that looks awful; they want something that Keene can be proud of that works for the location and carries on the history of success in this location. To do so, “this needs to pencil out.” They cannot just build it and hope that anchor tenant comes. They have talked with different commercial tenants, in trying to figure out ways, along with Tim Sampson, the architect on this project, working with different end users to try to draw something/build something that makes sense so they can get a reasonable rate of return on the property in the commercial piece, which has been a challenge.

Mr. Leino continued that the drive-thru in the design is not the type where a driver stops to say their order and you hear chirping at all hours, with cars stacking in a queue every morning. This is a more modern take on the drive-thru concept, where you order food through an app on your phone, the app tells you when your food will be ready, and you plan to either walk up and pick up your order, or drive through and pick it up, understanding that your goal is not to queue there for 10, 15, or 20 minutes. Your goal is to time it as well as you can so that you can drive through. Thus, the back parking lot has a limited number of spaces, generally for employees. More parking is on Davis St. and in the front. The point is for it to open onto Davis St. and set you into a spot where you are not adding a significant amount of traffic to Main St., but you could come in from Main St. with a right turn. You cannot turn left back onto Main St. You either continue on Davis St. or turn right. Thus, in terms of traffic considerations, this is about as well-contained

as you could ask for because it is not a big draw drive-thru that people would see and want to stop at, like the ones on West St. This is not a drive-thru like McDonalds.

Mr. Leino continued that he is ready to address the criteria, unless the Board has any questions first about the good cause element. Chair Clough stated that a few Board members are realtors and are aware of the difficulty of construction and loans and things like that. He continued that to him, that is enough, but he welcomes others' thoughts.

Mr. LeRoy asked if it is correct that Mr. Leino said they do not have an anchor tenant. He asked if this is being asked for so they have the option for a potential anchor tenant. Mike Pappas, property owner, stated that Little Caesars is the business they have been working with the most, which is why the drive-thru is designed in the way Little Caesars has been operating for the past 10–12 years. It is not the type of drive-thru where people place their orders. He continued that to add to what Mr. Leino said, if you pull up to the window and your order is not ready or you have not placed an order, the employee tells you to keep going, or to go park somewhere and order with your phone app. It is a pick-up window only. They can process cars at a high rate, because they do not even have a menu board or light. That is the way Little Caesars has done it, and the way this design proposes doing it. If there were a different tenant with a different type of drive-thru, he would have to apply for something different. The only tenant they are looking for now is one that can handle that type of pick-up window. Mr. Leino added that they will go over those points as they get into the criteria, because it gets into public health, safety, and welfare, and traffic considerations.

Mr. LeRoy stated that the Board does not have any elevations or diagrams of the lot in the agenda packet. He asked if the Applicant has anything the Board can look at. Mr. Leino replied yes, he has taken notes on his copy, but he can give it to the Board now. He continued that they will see his notes, where he has drawn in some of the traffic circulation and the screening the Ordinance requires.

Chair Clough asked if these are the same elevations from two years ago, with a little bit of glass façade on the first floor. Mr. Pappas replied yes, a three-story brick building with some character designs. He continued that it theoretically looks just like the last one.

Mr. Pappas stated that Little Caesars is looking for something approximately 2,000 square feet, which leaves another couple thousand square feet for one other unit. He continued that there is not enough room with what Little Caesars needs to have their facility set up the way they do with refrigeration, drive-thru, and so on and so forth. It only leaves one other first floor commercial tenant, which he does not have yet. Mr. Leino stated that it brings them back to the point, again, that if they have an anchor tenant, they can have another tenant that is maybe more local, less of a national tenant, which gives some opportunities for the building.

Chair Clough stated that there used to be three commercial tenants on the first floor. He asked if they are just looking for two this time. Mr. Pappas replied yes, that is the plan.

Mr. Schrantz stated that the ZBA is not the Planning Board and does not review elevations or site plan layout, but in this case, the site plan is interesting in that it is the request for the drive-thru. He continued that they did not get a site plan in their agenda packet. He does not know if it was part of the previous application. He is interested in hearing more about the traffic patterns and whether a traffic study was done. He does not think that is under the ZBA's purview, but probably one of the big concerns is how much traffic would be added to Main St. and side streets like Davis St. by continuing to allow the use.

Mr. Leino replied that the potential tenant gave them information about what sort of numbers they expect at a location like this. He continued that yes, traffic is a Planning Board matter, but the third criterion for the ZBA to consider is, "*The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area,*" which gives them the foothold into asking about what the elevation looks like and whether this will be harmonious with St. Bernard's on one side and the rest of the buildings on Main St. He thinks this is a broader discussion than they would be having if they were under 674:33.

Chair Clough stated that it is only take out and there is no seating for eating. He continued that it is possible that someone would lean against a wall if they had to wait a couple moments, but that is all they are looking at. It is not a restaurant, not sit-down style. Mr. Pappas replied that is correct.

Chair Clough asked if there were further questions about good cause. Hearing none, he asked the Applicant to go through the criteria.

Mr. Leino stated that under Section 8.4.2.C.2 of the LDC, they are requesting a Special Exception for a drive-thru, based on the previous iteration of the Code. He continued that a drive-thru is permitted by Special Exception in the Growth District and the Transition District, which this is close to. The next property across the street to the south, for example, could ask for a Special Exception for a drive-thru. This property is not far outside the area the Code considers appropriate for this by Special Exception.

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

Mr. Leino stated that with the obvious caveat that they are going from the previous version of this, they believe it does still apply in that case. He continued that this is still in the Downtown Core District, right on the edge of those other two districts, and they have the opportunity to build something where high intensity mixed uses, including commercial, residential, civic, and cultural uses are expected and proposed. The Applicant is doing that in keeping with this, with a small number of residential units upstairs, which there is a clear need for in New Hampshire and in Keene. Having the opportunity to fund the construction of this building by having the

commercial tenants is the opportunity to make sure this space does not sit for a long time, which is the risk of any development property. It is worth considering even on that lot that the former gas station on the other corner of the property across from Athens is “a bit of a blight” on the downtown landscape because it has not been developed. This is an opportunity where the Board can give the Applicant the extension, and give them the opportunity to continue here with something that the Master Plan and the LDC are looking for.

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

Mr. Leino stated that the site plan will be reviewed by the Planning Board, but he wants to tell the ZBA why it is a valid site plan that will not affect public health, safety, or welfare in much the same way as if they were talking about a Variance. He continued that by separating the use so that they put the mass of the building up on the Davis St. and Main St. corner, they create the parking circulation behind it. Obviously, Main St. has much more traffic than Davis St. Again, you can only make a right onto Davis St. from Main St., and you can only make a right back onto Main St. In thinking back to the way Domino’s Pizza at this location used to work, you would pull in and pick up your pizza, which maybe you had ordered on the app or on the phone. You had to navigate the site to get there, and you were on the Main St. side of it. In terms of promoting health, safety, and welfare, the Applicant has separated that so that the uses are toward the back. You drive your car in and drive your car out, and you may never end up getting to Main St. if you are, for example, going back to Keene State College. This is a better way to do it. They had the ability on a 1926 building to rent what was there because you did not have to pay the building costs. Now, they unfortunately have the burden of building this, but with the opportunity to redesign it as something that works for this century instead of 100 years ago.

Mr. Leino stated that one point that Mr. Pappas has already raised is that there is queuing room of 145 feet, so you are not creating a tail onto Davis St. When site plan reviews were done on the other drive-thrus he worked on, the question was always how many cars they could safely have and what happens if there is overflow. Here, the point is that there will not be overflow, because if it is not your turn, you are told to go somewhere else, park, and come back when it is your turn. Thus, as people figure out the efficiency of this method, they should just go through quickly and safely, circulate the site onto Davis St., with a righthand turn onto Main St. They will not be crossing traffic, because it is not even possible, given that it is divided. Health, safety, and welfare are very much in play.

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

Mr. Leino stated that the application has a couple of things going for it regarding this criterion. He continued that one is that the same principals own the building directly next door, so they do have a buffer zone in terms of their most affected abutter. Second, as shown on that proposed elevation, the Applicant wants this to be harmonious with the neighborhood, which is part of the reason they need this extension. They are not trying to build something cheap that does not fit. They are trying to build something that *does* fit in, that they can be proud of and that will look

good on Main St. for 100 years. Building any building costs money and is challenging. The point is they need a little more time to build something harmonious, but he thinks they will do so if the Board grants this relief.

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

Mr. Leino stated that as they have already touched on, there is no customer seating here. He continued that it will be something where people come, people go; it makes the site perform well. They can think back to what this location was previously, and there certainly was noise or vibration when it was the Cobblestone. This is an opportunity to have everything built new, built to code, built to spec. It will be a nice building, for a much demurer use.

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

Mr. Leino stated that previously when this was considered, a different iteration of the ZBA found that there was not going to be an excessive burden on any of these. He continued that he would expect that to be the same. This is not a high water or sewer use, and he would expect this to have less of a municipal presence than the barroom did previously, which resulted in a five-alarm fire. That had nothing necessarily to do with the use, but the Applicant hopes to avoid that level of municipal engagement.

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

Mr. Leino stated that unfortunately, this ship has sailed, in the fact that they have a blank slate here to build from a pad. He continued that it is as close to “N/A” as they will get.

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

Mr. Leino stated that the proposed restaurant will have up to 20 employees with a maximum of four employees per shift. He continued that there is parking in the back for those employees. Customer sales are expected to average approximately 200 sales per day with approximately 60 sales during the peak hour between 5:30 PM to 6:30 PM. The intersection at Main St. is right in, right out only, as discussed, and 60 vehicle trips during peak hour will not diminish the safety or capacity of Davis St. at Main St. Those numbers, especially in the downtown corridor, are fairly reasonable. Again, they have the beauty of it already being designed so that no one will come from Davis St. and decide to, say, stop at Cumberland Farms by going across four lanes. They would have to go around the traffic circle and back down. This has been nicely designed through care of the City and the redevelopment of the downtown corridor, so this will all work. They are not adding enough traffic here that it will snare up that issue. Also, it is not like there is a rush hour this would directly add traffic into.

Mr. Leino stated that that concludes the criteria. He continued that he understands the Board's concerns about how long this has taken so far. Mr. Pappas is focused on getting this done, and it will be good for the city, good for the downtown, and a nice opportunity to replace a "missing tooth" in the downtown and have something back up. It does take hard work and a little bit of time, and they asked the Board for their consideration to that end so they hopefully can get the approval and get this built.

Chair Clough asked what, broadly speaking, is the anticipated number of residential units. Mr. Pappas replied 16 in total, eight per floor. Chair Clough asked how many parking spaces they are talking about for that. Mr. Leino replied that for properties in the Downtown Core, there is no required parking for any use.

Mr. Guyot stated that he heard mention of the "adjacent zoning areas." He asked what the closest boundary is to a zoning area that would allow a drive-thru by Special Exception, given that this drive-thru is on the Davis St. side behind Main St. Mr. Leino replied that he can show them on the document he has. He continued that next to their lot is Lot 21, then Lot 29, which is in that Downtown Transition District, which allows drive-thrus by Special Exception. The church complex across the street is the next abutter by law to the south and would be allowed a drive-thru by Special Exception.

Mr. Clements stated that the Staff Report has a zoning map.

Mr. Schrantz asked how long the extension would allow for, if the Board approves the extension. He continued that his question for the Applicant is whether this will be an ongoing process, given that Little Caesars is not imminent, it does not sound like. He asked the Applicant to help them understand, if they approve this tonight, what it means from a timing standpoint.

Mr. Clements stated that his understanding is that it would be the same as if it were a new request, which gives it a two-year extension. He continued that the LDC also implies they could give a shorter extension, if the Board thought that was appropriate. He encourages them to stick to the two-year extension. Speaking generally about development in the City, things are taking much longer than they would like. They generally would like to give applicants enough time to succeed and get things built.

Mr. Leino replied that the Applicant would appreciate a two-year extension. He continued that they understand they are at the mercy of the Board here and that coming back again would be a bad idea.

Mr. Schrantz stated that maybe it is not the Board's purview, but he was wondering where the "60 vehicle trips during peak hours" figure came from. He asked if that was based on a study, or just information provided by the potential tenant. Mr. Pappas replied they were numbers provided by the potential tenant. He continued that the man who is interested in this corner owns

about 100 of them. Mr. Leino replied that he thinks the Institute of Traffic Engineering (ITE) would bear that out, and he has no doubt the Planning Board will ask for those numbers.

Chair Clough asked if there were more questions for the Applicant. Hearing none, he asked if members of the public wished to speak in opposition or in support of the project. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Mr. Guyot stated that he is okay with the first criterion, particularly given the answer to his question about the proximity to areas that would allow a drive-thru by Special Exception, plus the fact that the Code has changed between the original application and today.

Mr. Schrantz stated that it talks about the nature of the proposed application being consistent with the Zoning regulations, and they are outside of that boundary. He continued that he appreciates that they are basically across the street from the allowable. It is important to recognize that a lot of hard work was put into Zoning; a lot of planning and consideration went into the way things were determined. Thus, while he does not disagree with the application, it is important to recognize the efforts and hard work that has gone into thinking about where those lines are drawn.

Chair Clough replied that he agrees. He continued that they probably would not draw it halfway on a street or something like that. He can see that it was more convenient or made sense to end the zone at Davis St. Many of the ZBA's applications seem to be right on edges of zones where it could be this or that, and someone would like to have something permitted that would be allowed in the next zone over. He agrees that that does seem to be what the ZBA's task often is, and to not belittle all the Zoning work that has gone before, because it is a huge amount of work.

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

Chair Clough stated that he felt that the second criterion was addressed. He continued that if they compare it to what was there previously, and the fact that there was a fire, he does not see that sort of thing happening with a new building, newly constructed, to a new Code, and a use that would have far fewer people, at least in that section.

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

Mr. Guyot stated that he thinks the use of this proposed development is consistent with what is going on in the abutting properties. He continued that he sees no issues with the third criterion.

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

Chair Clough stated that what was there before certainly produced more of almost all of those elements than this potential use would. He continued that he does not have a problem with this criterion. It looks like the Board is fine with this one.

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

Chair Clough stated that it already has all of the infrastructure in place; it just has to be hooked up again. He continued that again, it will probably use less than what was used before, at least for the anchor tenant part of it.

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

Chair Clough stated that as the Applicant stated, the fire took care of that. He continued that if there had been features of historic importance, it would have been the building that was there before, which had to be taken down. Again, this is a blank slate.

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

Chair Clough stated that this was the biggest question two years ago. He continued that part of it was the fact that Aroma Joes on West St. had to come back to the ZBA because they did have issues with traffic backing up onto West St. However, that is a different type of drive-thru. He thinks that particular scenario was weighing heavily on the ZBA because they had approved that particular Variance at that time, so the Board was a little hesitant when Mr. Pappas's application came before them a couple of years ago. As an aside, he does traffic counts for NHDOT, and usually Main St. has about 20,000 cars a day. If you just take the raw numbers projected by the potential tenant, that would happen in ten minutes or less. Thus, that is not a significant number of cars. The possibility of traffic backing up into Main St. was discussed two years ago but knowing how it would loop around onto Davis St. with 145 feet, as was stated, that would take care of that. Probably the only potential issue would be if a car or two queued up on Davis St. heading westbound, they might sort of be in the way in the exit. And at that point, people would not be traveling very fast. Based on everything the Applicant is saying, that should not happen, anyway.

Mr. Schrantz stated that it is interesting that it was the biggest issue a couple of years ago. He continued that the projected number of 60 sales in an hour is approximately one per minute, and with 140 feet, you can stack seven cars. It is possible that it would potentially back up, but he does not think it is the ZBA's purview to dive deeply into traffic count numbers. The ZBA is looking to confirm there is not a safety issue here and looking at the larger picture. The Planning Board will deal specifically with traffic issues. It is interesting for the ZBA to talk about it, but

from his perspective, he does not think it creates a traffic safety hazard. Chair Clough replied that he sees other Board members agreeing.

Mr. LeRoy stated that they are talking a lot about the Main St. part of it, but not about the Davis St. part of it, regarding how much additional traffic will go onto those back roads. He continued that it concerns him that no one is here to speak up for that neighborhood. Looking at the abutters mailing list, you can see the letters were not mailed to anyone in that neighborhood, because those are all rental properties. Many people who will be affected by this were not even notified and will not know about this unless they are paying attention. That is concerning to him, thinking about even half of those cars going back and forth on Davis St. The school is not fully affected because it will be off those hours, but there are still college students walking through and people who live in that neighborhood. He brings this up because they keep talking about Main St., but Main St. is almost irrelevant because this additional traffic will be a drop in the bucket compared to how many other cars go by. Anyone who spends time behind on Davis St. knows that cars rarely go through there, and they are talking about a tremendous uptick of cars going through there.

Chair Clough replied that he agrees that that is good to look at. He continued that at the closest intersection to the west, there is a commercial property and maybe one or two residential properties, and it is a little bit of a distance. They certainly will not get any traffic backup on Davis St. from that direction. It is hard to say what the traffic volume change would do. It is a four-way intersection.

Mr. Schrantz replied that the Planning Board will take a good, hard look at traffic. He continued that he would not be surprised if they requested a traffic study to understand the turning counts and the sort of traffic that goes to the area, and that would be another opportunity for the neighbors to come and speak to it. He continued that the ZBA is talking about it a lot, so it is obviously a concern to them.

Mr. Clements stated that to provide context for the Planning Board standards, 100 trips per day or 50 peak hour trips is a threshold for major site plan review. He continued that this project will trigger major site plan review for multiple reasons, but they are just at that cusp of additional traffic information being required for a project of this size.

Chair Clough asked for a motion. Mr. Schrantz stated that Mr. Clements recommended the motion be for the two-year extension. He continued that he is interested in hearing the Board's questions or comments on that. Chair Clough asked if two years is the default for the extension if the Board does not specify. Mr. Clements replied yes, that is his understanding. He continued that they would have to specifically, as part of the motion, reduce that amount of time, if they wanted something other than two years.

Mr. Guyot made a motion to approve ZBA-2025-08 for the extension of a drive-thru Special Exception for property located at 147 Main St., Tax Map #584-060-000-000, as shown in the

application and supporting materials received on July 17, 2025, with the following condition: that no exterior order Board be present. Mr. Schrantz seconded the motion.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 4-1. Mr. LeRoy was opposed.

The motion passed with a vote of 4-1. Mr. LeRoy was opposed.

- B) ZBA-2025-19: Petitioner, Scott and Eileen Adams, requests a Variance for property located at 509 Hurricane Rd., Tax Map #222-017-000 and is in the Rural District. The Petitioner is requesting a Variance to permit street access**

up to an approximately 18-degree slope per Article 9.3.4.C of the Zoning Regulations.

Chair Clough introduced ZBA-2025-19 and asked to hear from staff.

Mr. Clements stated that the subject parcel is an existing 5-acre lot with 781 feet of frontage, located on the eastern side of Hurricane Rd., approximately 1.5 miles southeast of the Westmoreland municipal boundary. He continued that the property contains an existing single-family residence, a barn, additional outbuildings, and associated site improvements. The property is characterized by steep slopes along the property frontage and throughout the lot area. A contour map was included with the Staff Report. The street access that serves the single-family residence is located about 430 feet to the south of the proposed agricultural street access. The Applicant had previously submitted a street access permit application to seek approval for this second agricultural street access point in their property. The application was originally denied by the City Engineer due to deficiencies in the proposal related to sight lines and material for the drive and slope. Planning staff and the City Engineer were able to resolve the issues related to sight lines and the material of the driveway. The Applicant was also able to seek a driveway exception from the Driveway Standards in Article 23 of the LDC to allow for a second street access point on a residential lot. Normally, a residential lot is only allowed one street access permit without the exception.

Mr. Clements continued that the intent of the application is to seek relief from the 15-foot slope limit for a driveway to permit the installation of a permanent, limited access agricultural street access point. The access is proposed to be used to navigate a tractor to the northern portion of the property. Regarding application analysis, Section 9.3.4 of the LDC, Grading and Drainage, says, *“Driveways and associated parking spaces shall be graded to prevent drainage across sidewalks, curb cuts, streets, or onto adjacent property, except that portion of the driveway within the public right-of-way may drain toward the street. Driveways and associated parking spaces shall not block the flow of drainage and gutters or drainage ditches or pipes.”* He continued that C. says, *“Driveways and associated parking spaces shall not have a slope greater than 15%.”* He has prepared two conditions for this application if the Board is inclined to approve the request. Both are related to a change in use of this agricultural street access. One is, *“The street access/driveway shall not be used to connect any building or structure to the public right-of-way.”* The second is, *“If the property is ever subdivided, this street access/driveway shall not be used to connect any building or structure to the public right-of-way unless it is redesigned and reconstructed to conform to all street access and driveway regulations.”*

Mr. Clements continued that the Public Street Access Standards in Article 23, and to a great extent, the Driveway Regulations in Article 9, do not really contemplate anything besides what you would imagine as a suburban/urban single-family or two-family driveway curb cut. There is one reference in the list of street accesses that the City Engineer has the purview to approve without going to the Planning Board. That references agricultural street access. The LDC does not have a definition for “agricultural street access,” nor does it have specific, different

regulations for it. It is just a one-off acknowledgement that “agricultural street access” might exist, and it might be a situation the City Engineer is confronted with, but the LDC gives no guidance on how to handle something like that differently than a paved connection point to a single-family or two-family residence. He specifically says, “single-family or two-family,” because those are allowed to be approved administratively through the City Engineer’s Office. Any other kind of new curb cut has to go to the Planning Board, and the Planning Board has some increased flexibility in making that decision. However, the slope requirement is in the Zoning Ordinance, so the Planning Board has their own hands tied for that as well.

Mr. Schrantz asked if this has to go to the Planning Board if the ZBA approves the 15% Variance. Mr. Clements replied no, it does not. He continued that this is the last hurdle. Since it is a single-family residence, they got the exception to have the second curb cut, so granting them the Variance for the slope will allow the City Engineer to issue the driveway permit for this situation.

Mr. Schrantz stated that regarding the proposed motion, the first qualification is, “*The street access shall not be used to connect any building or structure to the public right-of-way.*” He continued that he thinks that goes toward the idea that it should not serve a house, barn, or something else. The goal is to gain access so you can get to the garden and farm up on the land that is less accessible from the existing driveway. It does not talk about agriculture, and he thinks he did not put that in there because it not part of the description that he is providing. He asked if that is correct, or if there is a way to restrict it to agricultural use only.

Mr. Clements replied that this is suggested language. He continued that he encourages the Board to alter the language as they see fit. He wanted to be specific by referring to “*any building or structure,*” because if you just say, for example, “*shall only be used for an agricultural use,*” in the state of NH, “agricultural use” is extremely broad. You could easily attach a barn to this and argue that a barn is an agricultural use, and the Board said it could be used for an agricultural use. That is why he chose to recommend “*any building or structure*” as opposed to keeping it broad. If the Board thinks it is more appropriate to say, “*limited to agriculture,*” that is their decision to make. Mr. Schrantz replied that the Board does not discuss these things except in public, so the reason for his question was to understand the thought process that gets them to those words.

Mr. Schrantz stated that Mr. Clements mentioned that the City Engineer looked at this. Looking at the site plan, it looks like the driveway is very close to the north property line. He asked if there are any requirements for a distance from the property line for a secondary access or whatever they are calling this. Mr. Clements replied yes, it would be three feet, as required by Article 9. He continued that it is greater than three feet away from the property line, so it complies with that. That is the only setback requirement.

Chair Clough asked if there were any more questions for Mr. Clements. Hearing none, he asked to hear from the Applicant.

Eileen Casey introduced herself and Scott Adams. She continued that they live at and own 509 Hurricane Rd., in the Rural District. They are seeking approval for a second street access up an approximately 18-degree slope to allow safer direct access to their full five-acre property. It is a Variance requested from Article 9.3.4.C.

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

Ms. Casey stated that granting the Variance would not be contrary to the public interest because the property is located in the low-density Rural District where an access on an 18-degree slope into the lot would have minimal to no impact on the general public or the greater Keene area. The accessway is designed to minimize any issues with runoff or erosion into the roadway.

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

Ms. Casey stated that the accessway follows the natural slope of the land and will minimize cutting into the natural vegetation and ledge that occurs on the slope. She continued that the accessway will also be as short as possible to minimize disturbance to the natural vegetation. The access would be minimally or seasonally used for agricultural or gardening purposes, allowing delivery and movement of compost or mulch into the field. The accessway will occasionally be driven on by heavy vehicles such as the tractor or delivery trucks that would help maintain and compact the surface to prevent erosion. The accessway will be designed to allow proper drainage and prevent erosion running into the road, while aesthetically remaining in keeping with the rural area.

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

Ms. Casey stated that granting the Variance would do substantial justice because the accessway to the lot would allow safer access into the portion of the lot that is furthest from the current access/driveway, and this access would allow the property owners to fully utilize the property safely as they age in place.

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

Ms. Casey stated that given the rural, low-density district and that other properties along Hurricane Rd. also have accessways that traverse slopes, they do not believe that granting this Variance would diminish surrounding properties' values in any way.

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.*

Ms. Casey stated that parcel 222-017-000-000 is located on a sloping hill. She continued that the current street access is located at the southern portion of the lot. Deliveries of bulk gardening products such as mulch, dirt, and compost currently must be dropped on the driveway. Getting these products to the northern portion of the lot requires a tractor to make a hazardous traverse across the front slope of the property to avoid plumbing and septic around the residence. Access to the northern portion is further impeded by an old stone wall that runs down the middle of the property. The most direct access to the northern portion of the lot is up a slope that is greater than 15 degrees. Placing the accessway where proposed creates minimal disturbance to the hillside and maintains as much natural vegetation as possible, helping maintain the natural aesthetic of the area. The accessway design is gravel and includes a berm at the top to minimize runoff down the slope. In addition, a drainage way is alongside the slope to direct any runoff into the culvert at street level. If desired, further crowning or berms can be added along the approximate 100-foot length to further mitigate erosion or runoff into the road, should the City deem appropriate.

and

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

Ms. Casey stated that the second access is a small path that allows access into the field, over a drainage ditch on Hurricane Rd. She continued that it would allow the property owners a safe, direct way to fully access their property, with minimal impact to the abutting properties or the city of Keene.

- 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.*

Ms. Casey stated that creating an accessway that complies with the 15-degree Ordinance would require significantly more cutting into the slope and disturbance of the natural vegetation, which would likely cause more erosion issues. She continued that in addition, there is significant ledge along the slope that impedes creating a slope that complies with the Ordinance without significant excavation that would cause disturbance to the abutters and potentially impact the aesthetics of the area.

Ms. Casey stated that she thinks Mr. Clements has one picture, but she has two more, to give the Board more of an idea of what the slope really looks like and what the difference is between 15

degrees and 18 degrees. Mr. Schrantz asked, regarding the picture, if it is a picture of the access that Ms. Casey and Mr. Adams have already put in, which they are now coming to the ZBA to get approval for. Ms. Casey replied yes, they were not aware that it was too sloped.

Mr. Adams stated that last year, they put in a barn at the top of the hill. He continued that when they did that, people needed a way to get up to the barn to deliver the products, which was the start of the accessway.

Mr. Schrantz asked if the picture in the agenda packet is also of the road that has been put in place. Ms. Casey replied yes, just from a different angle.

Mr. Schrantz stated that his biggest question is about drainage. He asked who will oversee the drainage to make sure they do not create some dam or erosion that could happen in the future. Mr. Clements replied that the contractor who turned a rough, temporary access into more of a permanent access did make improvements related to drainage, to ensure that it would not erode into the street. He continued that a berm at the top before the slope starts helps to keep flow from the property itself running down the driveway. Ultimately, the Applicant is responsible for maintaining the appropriate functionality, and if it is washing out into Hurricane Rd. or causing erosion concerns, it would have to be addressed. It seems to be adequate as it is currently installed, based on the City Engineer's comments.

Chair Clough stated that on Sunday, he drove by the property while the Applicant was on the tractor in the field. He continued that also as part of his job, he does stream assessments, stream crossings, for the Planning Commission. The culvert the Applicant put in and all the variety of stone is very good. It will carry the water correctly along the road. He noticed some erosion in the driveway. That might need to be crested a little more and maybe ditched slightly. He saw the berm. He could tell that there are many things in place that mitigate much of the potential for water to come down, but they could do a little more to direct it to where they have that great culvert. That was the only thing he noticed about that. The culvert is nice; clearly someone had put some work in on that.

Chair Clough asked if there were any more questions. Hearing none, he asked if anyone from the public wanted to speak in opposition or in favor of the application. Hearing none, he closed the public hearing and asked the Board to deliberate.

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

Chair Clough asked if the Board members agree with this. [Minute Taker note: non-verbal responses].

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

Chair Clough stated that he sees nodding heads.

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

Chair Clough asked if there were any comments. He continued that he thinks everyone agrees it would do substantial justice.

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

Chair Clough stated that he believes that is an accurate statement. He asked if anyone disagrees. He continued that he sees everyone 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*

Chair Clough stated that if they asked the Applicant to try and cut three more degrees off of it, that is a lot of work for an access road. He continued that if there is ledge there, anyone who has ever dealt with ledge knows that it is difficult. He thinks this criterion is met.

Mr. Guyot stated that he would add that the lot is unique relative to its slope. He continued that it is not totally unusual along Hurricane Rd., but he has been by the property, and it is a very nice culvert. They have what they have; it is a natural environment. The slope is there, which does make that part unique. The Board always struggles with the fifth criterion about hardship conditions, but this does qualify here.

and

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

Chair Clough stated that they do not have to go through 5.B., because A. is sufficient. He asked for a motion.

Mr. Burke made a motion to approve ZBA-2025-19 for a Variance to allow a street access/driveway with a slope of 19% for property located at 509 Hurricane Rd., Tax Map #222-017-000-000, as shown in the application and supporting materials received on October 17, 2025, with the following conditions: 1) Street access/driveway shall not be used to connect any building or structure to the public right-of-way, and 2) if the property is ever subdivided, this street access/driveway shall not be used to connect any building or structure to the public right-

of-way unless it is redesigned and reconstructed to conform to all street access/driveway regulations. Mr. LeRoy seconded the motion.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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 5-0.

and

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

Met with a vote of 5-0.

The motion to approve ZBA-2025-19 with the conditions passed with a vote of 5-0.

V) New Business

VI) Staff Updates

A) Rules of Procedure Updates

Mr. Clements stated that staff are officially introducing the proposed changes to the Rules of Procedure tonight, and the Board will vote on them at the December meeting. He continued that

the changes are included in the packet. One or two minor grammatical changes not worth discussing have taken place. Applicable changes have been highlighted. Something that came up more at the Planning Board than the ZBA is a clarification under the “Quorum” section that an alternate member who has been seated in the place of a regular member will remain a voting member for the duration of the application. Thus, if an alternate member is seated due to a regular member’s absence, and an application gets continued to another meeting, if the regular member who was absent is present at that next meeting, they will not be voting. They can still deliberate and participate, but the alternate member who was seated in their stead will remain the voting member for the duration of that application. A minor, clerical change to “Order of Business” is to strike the word “*Chair*” from “*roll call by the Chair.*” Roll call will still be done, but it simplifies it to not require it to be done by the Chair.

Mr. Clements continued that under “Applications,” they have since added a Floodplain Variance process as required by FEMA, so they added a new variance application specific to relief from the floodplain regulations, along with a clarification that a motion to rehear is also relevant to that. There is further clarification to the term “abutter;” he thinks they just added the quotation marks. On page 82 of the PDF, which is page 7 of the regulations, they changed “Deadline for Filing” from 17 days to 24 days, which puts it one week earlier, which will mean that the deadline to file an application will be the Friday of the week where they hold meetings. They will hold their meeting on Monday and then the deadline for new applications will be that Friday. That will go into effect next year. In December, the ZBA will adopt the meeting schedule for 2026, so those changes will take effect then. That will give staff a little more time to work with an applicant to prepare an application, because right now, the deadline is that Friday and the packet has to go out the next Friday, so that barely gives any time for tweaks and adjustments, nor staff review.

Mr. Clements continued that regarding the “Fees” section, there are changes Citywide for all land use Boards, regarding noticing abutters. They no longer do Certified Mail, and instead use a product called Certificate of Mail. The statute requires that abutters be noticed by verified mail, and in very specific circumstances, the statute also requires certified mailings for things, in which case, staff will do certified mailings when required. Certificate of Mailing is about \$2.40 per letter, as opposed to almost \$6 per letter for Certified Mail. In addition, residents complained that they missed the Postman’s attempt to deliver the Certified Mail and received the green slip asking them to pick it up at the Post Office, but life happens, and if it takes over a week to get to the Post Office, they find out that the ZBA meeting they were noticed about already happened. The Certificate of Mailing, by contrast, will go right in a person’s mailbox. There is no need to chase the Postman.

Mr. Clements continued that regarding “Supplemental Information,” if an applicant or an applicant’s representative submits substantive additional information within 10 days prior to the public hearing, it used to be that the Board was required, by their own regulations, to stop everything to look at the new submittal and decide by a vote whether to accept it or to continue the application, if the Board felt that they needed more time to digest that new information. Staff

proposes changing the word “*shall*” to “*may*.” Thus, if the Board is in this situation, it still gives them a process to do this if they feel the need, but they are not shackled and required to do it. If new information is provided the night of the meeting, such as photos, one could use this rule to argue that the Board needs to stop its proceedings and vote to accept the photos, or to continue the application so they would have another month to look at the photos.

Mr. Schrantz stated that he thinks this change is great, because he would prefer not to be shackled. Mr. Clements replied yes, it gives them the flexibility to make the decision.

Mr. Clements stated that under “Conduct,” staff deleted the chair’s responsibility to report on how the personal notice was given, as that was rather ridiculous. Regarding the clause “*the Board will accept any evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance...*,” staff changed the word “*will*” to “*may*.” The last change, related to joint Board meetings, is to change “*the other Board shall concur in these conditions*” to “*the other Board shall concur with these conditions*.”

Chair Clough stated that the Board will vote on those changes at the December meeting.

VII) Communications and Miscellaneous

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

VIII) Non-Public Session (if required)

IX) Adjournment

There being no further business, Chair Clough adjourned the meeting at 7:57 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Board Clerk