

**City of Keene**  
**New Hampshire**

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

**Monday, August 7, 2023**

**6:30 PM**

**Council Chambers,  
City Hall**

**Members Present:**

Joseph Hoppock, Chair  
Jane Taylor, Vice Chair  
Joshua Gorman  
Michael Welsh  
Richard Clough

**Staff Present:**

Corinne Marcou, Zoning Clerk  
Michael Hagan, Plans Examiner

**Members Not Present:**

*All Present*

**I) Introduction of Board Members**

Chair Hoppock 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 – July 3, 2023**

Ms. Taylor stated that lines 174 to 189 in the meeting minutes of July 3, 2023 have references to “344 Chapman Rd.,” and her question is whether it should be 334 Chapman Rd. She is not sure if that was a typo or if the speaker said “344.” Zoning Clerk Corinne Marcou replied that she and the minute taker will listen to the audio to determine the answer and make corrections if needed. Mr. Gorman stated that he recalls the owner also referring to the property as “344.” Ms. Taylor replied that it is confusing, because the application was 334.

Mr. Gorman made a motion to approve the minutes of July 3, 2023, subject to the address correction. Mr. Welsh seconded the motion, which passed by unanimous vote.

**III) Unfinished Business**

Chair Hoppock asked if there was unfinished business. Staff replied no.

**IV) Hearings**

- A) Continued ZBA 23-16: Petitioner, 147-151 Main Street, LLC and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a Special Exception for property located at 147 Main St., Tax Map #584-060-000-and is in the Downtown Core District. The Petitioner requests to permit a drive-through use in the Downtown Core District at this property, per Chapter 100, Article 8.4.2.C.2 of the Zoning Regulations.**

Plans Examiner Michael Hagan stated that the ZBA continued this petition from the last meeting. He further stated that staff did some research and found there was a Variance on the abutting property, which was in question, at 143 Main St. It will now be subdivided and reduce the parking area for that. The Variance was granted in 2020 and has now expired. If they want to do the use, or another use, they will have to come back and comply with those requirements. The Variance expired because it was not executed with the building permit.

Chair Hoppock asked if anyone had questions about that. Hearing none, he asked to hear from Jim Phippard of Brickstone Land Use Consultants, LLC.

Jim Phippard stated that in June, this was continued, because the Board felt the information (about 143 Main St.) was necessary before they deliberated. He continued that at the July meeting, there were only four Board members present and the applicant requested a full Board of five, which brings them to tonight.

Mr. Phippard stated that since it has been two months, he will briefly review the Special Exception criteria. He indicated 147 Main St. on an image, and Davis St., and stated that the colored-in area is the land in the property that is included in this request. He continued that in this location, the building burned and has been razed, filled and is ready to be redeveloped. The owner, 147-151 Main St., LLC, proposes constructing a new three-story building on this property that would have mixed uses on the ground floor and apartments on the upper two floors. He showed a drawing of the proposed building and stated that it matches the footprint of the previous building and is essentially lot line to lot line. He continued that they propose a boundary line adjustment with the adjacent property at the rear, which will enable them to lengthen the lot. Today the lot is 63 feet wide and 130 feet long. With the proposed boundary line adjustment, it will be 63 feet wide but 176 feet long. That enables them to add on-site parking and a proposed drive-through lane. The drive-through lane is permitted in the Downtown Core District by Special Exception

Mr. Phippard continued that the drive-through use will be a restaurant located in half of the building with a pick-up window. It will not be a typical drive-through like the others in Keene as there is no order board when you drive in. It is just an access for cars to come in and pick up their order, which they either phoned in or placed online, and paid for remotely. They will be coming to the drive-through just to pick the order up. It is a relatively new development in the food industry because of the pandemic and is becoming more popular. It is a shorter drive-

through lane than one at McDonalds or Dunkin in town, because the lack of order board means they do not need the queuing lane. People will have already placed their orders and paid for their food and will just be coming through to pick it up. If a person is told their order will be ready in 20 minutes and arrives at the site after 15 minutes and the order is not ready, (an employee) will tell the person to come back in five minutes, and to not sit there and form a queue on the property. It is no secret that the restaurant proposing to go here is Little Caesars. There are thousands of Little Caesars across the country and this is how they do (business) today; they know what they are doing, having done it over and over in many locations, and it works. It is an idea that has finally come to Keene.

Mr. Phippard stated that he will go through the criteria.

- 1. 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. Phippard stated that the drive-through use is permitted by Special Exception, so (the City) contemplated that this type of use might be proposed. He continued that this is a good location for it. The mixed-use building will add to the vibrancy of downtown because there will be apartments as well as businesses. They feel that complies with the recommendations of the Comprehensive Master Plan (CMP) and it will provide a convenient operation for customers to order food and come through to pick it up. There are no outside seats, like there used to be for Cobblestone (the former business). There are no seats inside; it is not a sit-down restaurant; this is a take-out only restaurant.

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

Mr. Phippard stated that he explained how the drive-through lane works, and that is what makes it work – no order board, no stopping to pay, no waiting for your food to be prepared while you are sitting in line. He continued that he thinks it will operate safely in this location with access to the site from Davis St. There is a one-way entrance, with cars traveling through to a one-way exit, and then they can go right or left on Davis St. The intersection at Main St., because there is a median on that section, has a right-turn-only in and right-turn-only out. The intersection operates efficiently and safely. They avoid the safety issues that can be created by long queues.

- 3. 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. Phippard stated that the preliminary drawing gives the Board an idea of the architecture. He continued that it is a brick building. The drawing shows the windows for the apartments on the upper two floors. The ground floor will have the storefront glass one would expect to see on Main St. The architecture is similar to and harmonious with the downtown architecture, thus, he and his client think it fits in very well with the downtown businesses, and they think it will be a complement to the nearby buildings and businesses. Since there is no indoor or outdoor seating,

there is very little noise associated with this use. There are no fumes or vibrations that could disturb abutting properties. An enclosed dumpster will be located at the back corner of the property where it is easily accessible for the trash company to get in and out. They think it fits the site very well. They have also added five on-site parking spaces, which will either be available to employees or assigned to residents on the upper floors. Parking is not required in the Downtown Core, though there is public parking available on Davis St. and Main St. The Commercial St. lot is a short walk away from this property as well. They think the (drive-through) can operate efficiently in this location and not cause a problem for any adjacent properties.

4. *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. Phippard stated that he has already covered why he believes this (criterion) is (met) – there will be no outdoor seating and no order board. He continued that the hours of operation will be 10:30 AM to 9:00 PM, seven days a week. Since they are not open late at night, they will not be generating a lot of noise after hours. Since they do not open until 10:30 AM, that misses the peak hours of traffic in the morning. They anticipate having 200 sales per day. Little Caesars knows their business, and for this type of location and this size of facility, they can accurately predict what their sales will be. They anticipate 60 sales during the peak hour of 5:30 to 6:30 PM. Sixty vehicle trips with cars entering and exiting on Davis St. and then either continuing to Main St. or down toward Wilson St. Sixty vehicle trips in an hour is not a lot of traffic. The Planning Board does not require applicants to do a traffic report unless there are 100 cars or more; this is under that threshold. He does not anticipate any problems with traffic, especially with Main St. as a right-in-only/right-out-only.

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

[Mr. Phippard did not speak to this criterion, moving from #4 to #6, though the applicants written narrative is discussed in response for #4.]

6. *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. Phippard stated that the old building is already gone. He continued that it burned quite badly and could not be saved. It has been completely removed from the property, which is now a vacant lot. Thus, there are no features for which this (criterion) would (apply).

7. *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. Phippard stated that they will have up to 20 employees, who will work different shifts during the day. He continued that there will be up to four employees, at a maximum, during any one shift with on-site parking for employees. In addition, as he described, the intersection will have right-in/right-out turns, and thus should not create a safety hazard at all.

Mr. Welsh stated that he has a few areas of question. He continued that one is the application's consistency with the CMP. Mr. Phippard makes the argument that the upstairs, and the varied uses of the building, is consistent with the CMP, and he agrees. However, throughout the CMP is an emphasis on (development that is) human-scale, walkable, (with) pedestrian access, and things like that. A case could be made that this applicant is more consistent with the CMP if it were not solely a car drive-through facility. He asked if it is possible to have no seating or (space for) consumption on the premises, but pick-up of an order that does not involve a car.

Mr. Phippard replied yes, they anticipate a large part of the market will be college students, and because the college is within walking distance, they think that a lot of their traffic in that area will be foot traffic.

Mr. Welsh stated that his second question is in regard to the impact on the surrounding properties. He continued that he likes the idea that people whose food is not ready may agree to leave and drive around for two minutes, but he can also see the possibility that they would want to just stick around if it will only be a couple minutes. He can see both sides and will take that as a wash. The surrounding properties include a bar immediately to the west, which has outdoor seating and presumably wants to preserve an atmosphere that is conducive to people hanging out there. He thinks another restaurant is going in immediately to the west as well. He asked what Mr. Phippard would say to someone who says that (the drive-through use) will create glare, vibration, and possibly odors that would be offensive to the people in those facilities.

Mr. Phippard replied that there is already another pizza place close by, two properties over. He continued that there will be a commercial vent from the commercial kitchen, so he imagines there will be the smell of pizzas cooking. There are no windows on the west side of the building, just the pick-up window. There are doors, then apartments upstairs. He does not think that (creates) excessive glare that will affect the operations of the business to the west. Mr. Welsh replied that he is thinking about the headlights from the cars that roll through to pick up their food. Mr. Phippard replied that the Land Development Code (LDC) requires screening for drive-through lanes, which means there will be a six-foot high solid fence along the westerly boundary, screening the headlights of the cars turning in. He continued that there is also a six-foot high fence in (another) area, and then cars are back on the street. Ways to address that type of situation are thus built into the regulations.

Mr. Welsh stated that his last area of concern is the potential for congestion on Davis St., a side street that does not get a lot of traffic. He continued that he could see people wanting to come into this property from both lanes, and getting into situations where there is already a queue and waiting perhaps on the street. He knows a traffic study is not required, but he wonders if Mr. Phippard foresees, given the number of spaces or amount of space on the property, that there will be times during peak hour when people will be waiting in the street to enter the property to do their pick-up.

Mr. Phippard replied that he does not anticipate people would be waiting in the streets unless they are using one of the parallel parking spaces available on the opposite side of the street. He continued that people are likely to wander into the large parking lot at St. Bernard's Church, which is always rather empty except for Sunday mornings. Even when the church has evening events and activities, hundreds of parking spaces are still available. People will park there, as he himself has when he was unable to find parking downtown when Dominos was here. He thinks people are much more likely to park at the church and walk over, than to park in the road or obstruct traffic. Davis St. has a low level of traffic, which is good. It has enough capacity to easily take on 60 additional vehicle trips over a one-hour period. That is one car per minute, which is not a tremendously high volume, and below the threshold for traffic studies.

Mr. Gorman stated that going back to Mr. Welsh's question about the CMP, he understands that the mixed use is a perfect use and in the spirit of the CMP. That is inarguable, however, the reason they are here tonight is the drive-through, not the mixed use. He asked if Mr. Phippard could say more about how the drive-through is in the spirit of the CMP or the LDC.

Mr. Phippard replied that mostly it relates to customer experience and customer satisfaction. He continued that customers today want that convenience; they do not want to have to park and get out of their car. That is why (Little Caesars) has gone in this direction across the country, and he thinks it will hold true here as well. Providing a business downtown that meets customers' requirements and satisfies customers is good economically for downtown Keene. It brings people back to this area and meets their needs.

Mr. Gorman stated that regarding the traffic, he noticed that in the drawing the lane is much wider on the entrance side as opposed to the exit side, and out of curiosity, wondering what the purpose is. He asked if there would be two lanes to enter and one to exit, or if it is just the placement. Mr. Phippard replied that part of developing a site plan is looking at turning radiuses, and a garbage truck coming into the property from either direction to access the dumpsters needs the wider lane.

Mr. Gorman stated that it is hard to see in the drawing how many cars would fit in line during the peak hour of business. Mr. Phippard replied that it would be five or six, depending on how close (they are to each other). He continued that typically they allow 24 feet per car in a drive-through lane. Depending on the use, the most common size is a ten-car queue. That did not work for the business that he will be talking about in the next hearing on tonight's agenda. However, this type of drive-through lane is much quicker since it is just for pick-up and not ordering, paying, or waiting, since ordering and paying have already been done.

Ms. Taylor stated that she, too, has traffic concerns. She continued that Mr. Phippard mentioned the next application. When that came before the ZBA, (Mr. Phippard said) they (the business) would be able to service a car in about a minute, so they could have sixty cars in an hour. Obviously, that did not work, because the ZBA has the next application (for a Variance). And that (business) could, as Mr. Phippard said, stack ten cars. Now, the ZBA has this application for

a drive-through (for Little Caesars), and the theory is that each car will take about a minute to get through the drive-through, but only five or six cars can be stacked. She is very concerned. St. Joseph's is a school and there are many children running around when school is in session. There is considerable traffic on Davis St., stating that when she has been there, the parking spaces are usually full. She is concerned about creating another issue, even though Davis St. is a secondary street and West St. (where the business in the next application is) is a primary street. She asked Mr. Phippard to address that.

Mr. Phippard stated that he is sorry he brought up the next application, because he does not want to mix the two. Ms. Taylor replied that she is not trying to; she is just talking about the idea of "a minute per car," and questioning whether that actually works. Mr. Phippard replied that the school across the street is open in daylight hours, Monday through Friday, whereas (Little Caesars) peak hour is 5:30 to 6:30 PM when the school is closed, when the children are gone and the school's parking lot is mostly empty. He continued, that adding that amount of traffic at that time of day is safe and does not interfere with the school's operation or the children's safety. Regarding the 60 vehicle trips, if you are just driving in to pick up your order when it is ready, it takes less than a minute for you to say who you are and give your order number, take your pizza, and drive away. When he asked the Little Caesars representative about it, saying that only five cars will fit in the queue, he said, "That is more than we need." The Little Caesar's representative explained to Mr. Phippard in detail how the operation works. He (Mr. Phippard) believes him. He will go into far more detail in the next application to help the Board understand what happened (with the other business with the ten-car queue), but this is a completely different operation for a drive-through lane as it is pick-up only; that is what makes all the difference. Little Caesars has about 4,000 restaurants across the country, and they are doing this (drive-through) in as many of them as they can. They already have hundreds and hundreds (of drive-throughs) they were able to give Mr. Phippard information about, regarding their needs for the queue. They will not have an order board and will not have any seating. There is no reason for customers to linger there unless they come too early and are trying to linger because their order is not ready. (Little Caesars') operation teaches them to leave; (employees tell) them to come back in five minutes and their order will be ready. When he (Mr. Phippard) submitted this application (to the Community Development Department), John Rogers tested him on this, saying that he is one of those people who will call in an order then go right down and wait ten minutes at the site. You will not wait ten minutes here, because (Little Caesars) will not let you. As you would be blocking the drive-through and other customers coming to pick up their orders. (Employees) will say, 'John Rogers, you were told to come at 7:00 when your order would be ready, and here it is 6:50, so please come back.' (In that situation) they would already have Mr. Rogers's money. He does not know if they would lose repeat business from it; a customer may get angry, but probably he will (leave the queue) and not cause a problem.

Ms. Taylor asked how it is supposed to be handled if there are, say, four cars waiting to pick up their orders and someone wants to back out of one of those parking spaces. Mr. Phippard replied that there is a chance that could happen. He continued that she might have noticed the width. They will paint a line in the parking lot so that when they go to the pick-up window, they are on

the outside of that lane, and if someone must get out of a space, there is enough room for them to back out. They might have to wiggle a couple times to get out, but it is doable. They looked at that with their turning templates, just to make sure. It works unless someone is driving an extended cab pick-up truck, four-door, 24-feet long, but usually those (drivers) would know better than to put themselves in that type of situation. The parking spaces are 18 feet long.

Chair Hoppock stated that he has a couple questions about traffic and noise. He continued that regarding the peak hour of 5:30 to 6:30 PM, from roughly September to March, it will be dark. He asked what kind of lighting would be there. Mr. Phippard replied that wall-mounted lights on the west side of the building, a pole-mounted light marking the entrance curb cut and the sign. Chair Hoppock asked if the lights will be taller than the fence. Mr. Phippard replied yes, they will be 15 feet tall, and the fence is 6 feet tall. He continued that the lights will be full cut off LED fixtures, so they shine straight down.

Chair Hoppock asked if there will be an area on the street that (employees) can direct customers to if customers show up too early, telling them to go to park for five minutes. Mr. Phippard replied that he does not know where (employees) will direct people to. He continued that they could suggest people go across the street to the church parking lot, or people could drive around to the roundabout, do a drive around the beautiful Main St. and then come back in five minutes. It is up to the customer. (Little Caesars employees) are instructed to tell customers to please move and come back in five or ten minutes.

Chair Hoppock asked if the Board had further questions for the applicant. Hearing none, he asked for public comment, beginning with anyone wishing to speak in opposition. Hearing none, he stated that the Board received an email from Jason Frost on August 7, 2023. He read it into the record:

*“Good Morning,*

*I am unable to attend tonight's meeting in regards to the variance request by Pappas for the former Cornerstone [sic] building on the corner of Main Street and Davis Street. Please accept this note in my absence.*

*I own the property at 29 Davis Street, which is one building down (adjacent to the old Anderson Florist building) and I have reviewed the proposal by Mr. Hanna and Mr. Pappas.*

*There are numerous issues with the proposal but I will highlight here what I believe to be the most problematic.*

*Mr. Hanna has stated that 100-200 additional cars will be entering in/out of the back lot of the new building. He indicated that this will not adversely affect the area and I don't believe this to be true. Davis Street is a side street and is not designed or set up to handle that level of additional traffic. This increase in traffic will not be harmonious to the street with an increase in*



*lights and noise affecting the quality of life for residents. It will also decrease the safety of the residents and the school directly across the street with the added volume of vehicles.*

*When their customers' orders are not ready because they invariably showed up early, where will they go? Will they continue to drive around Davis and Wilson adding to the congestion?*

*This proposal flies in the face of what the core district is intended to be. Which is an area to promote walking, shopping and generally enjoying the beautiful downtown that we have. It can and will decrease my property value, as who wants to live next to a Little Caesars?*

*If this variance is approved, who is to say we won't end up with yet another Dunkin Donuts? Arbys? Drive thrus should be in districts currently operating in a like kind situation similar to Key Road, Walmart Plaza and West Street.*

*I humbly ask that you deny this request. Thank you for your time and attention.*

*Regards,*

*Jason Frost”*

Chair Hoppock stated that he does not see anyone present wishing to speak in opposition. He asked if anyone wanted to speak in favor. Hearing none, he asked if Mr. Phippard wanted to respond to Mr. Frost's comments, although he thinks he has answered much of it already.

Mr. Phippard stated that he does not think he needs to repeat it all, but he thinks that when Mr. Frost is referring to drive-throughs, he is thinking of something like a McDonald's drive-through or other fast food drive-throughs, and he agrees that that would not be appropriate in this location. He continued that this (Little Caesars drive-through) will be very specifically controlled, with no order board, no paying, just driving through and picking up your order. That is the major difference, and that is why it can work here.

Mr. Gorman asked if the applicant would be open to the idea of putting that into any type of approval. He continued that the Board is really approving a drive-through. If the property were to ever change hands or be leased by someone else, Mr. Gorman asked, would the stipulation of "no order board" be appropriate for the applicant? Mr. Phippard replied absolutely, that is fine. He continued that if it changes hands and someone wants to come in and change the operation, his understanding is that John Rogers would say they have to go back to the ZBA and redo the Special Exception for such a significant change. Mr. Gorman replied that he thinks if the Board approved it as a drive-through and Little Caesars bailed, then Dunkin came in, he disagrees; he thinks it would just become a Dunkin. He continued that he thinks the lack of order board addresses that, and if the applicant wanted to come in later to change that, they certainly could.

Chair Hoppock asked if there was any further comment. Hearing none, he closed the public hearing and asked the Board to deliberate.

*1. 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.*

Ms. Taylor stated that she disagrees that the application is consistent with the spirit and intent of the Zoning regulations. She continued that everyone who has been living in Keene for the last eight or ten months, with the back and forth over the redesign of Main St., knows that the one thing that was hammered by both sides was the CMP concept of reducing the number of vehicles that are just cruising through the downtown to get to one place or another, and making it more walkable. She has a real issue with the representation that (this application) is consistent with the CMP.

Mr. Welsh stated that he concurs, but his concern has been pushed some distance toward acceptance by the idea – which he is not sure will be a condition – that there will be a walk-in feature to this restaurant. He continued that before, he was under the impression that there would not be an option for people to walk in and pick up, and that a pedestrian would have to go elbow in between the cars and pick up at the window in the back. That would be very non-walkable. He is a little less concerned regarding the first criterion, perhaps on the edge of being sold.

Chair Hoppock stated that he thinks Ms. Taylor is right that the whole idea behind the planning of Central Square was to reduce traffic downtown overall. That goes to spirit and intent.

Mr. Gorman stated that his stance was a little different from Ms. Taylor's. He continued that he agrees that this is likely to have some traffic involved with it, but he thinks that any use that ends up occurring here will have some degree of intensity, as it should, since it is a building on Main St. When he contemplates the level of intensity, culminating with the fact that it is a mixed use and will provide more housing and a couple more businesses in the downtown area, (he thinks) yes, they want Main St. to be walkable, but the reality is that to support business it needs to be both. He thinks that is where they landed, with the whole Main St. (plan) – both things (walkability and vehicle access) need to be supported, because that is what supports the businesses. When he looks at 200 cars, compared to the overall traffic count on Main St., he thinks that any successful pair of businesses there is going to generate at least that much activity, hopefully, or they likely will not survive. His concern is more with the queuing, which falls into some of the other categories, but he also is able to contemplate that this is more of a pick-up window than a drive-through. He compares it to the difference between waiting at the drive-through teller window and going through the ATM. There is a big difference. He thinks allowing this business to be on Main St. does fit the CMP and the spirit, and he thinks they probably will have more walk-in customers than you would think, because of the college and all of the other things going on around here. It would not surprise him if half of those 200 customers a day were walk-in.

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

Chair Hoppock stated that with most of these factors, traffic, and noise factor in. He continued that he wishes the Board had something before them that showed a bit more confirmation that Little Caesars' model actually works, so they do not have "another Aroma Joes problem" on their hands. That is what gives him pause, because all of these well-laid plans may or may not work. As Mr. Phippard said, customers are going to do what they are going to do – they might show up early and want to wait around, and he realizes they cannot wait in the line because there will be someone behind them laying on the horn. However, he wishes he saw more objective evidence that this model works. He is concerned that it be maintained and operated so as not to endanger public health, safety, or welfare because of the traffic.

Ms. Taylor stated that she agrees with Chair Hoppock, and the only other concern she has is for people who may walk up and pick up their pizza, decide to eat it in the area, and then just dump their trash. She continued that she does not know if the model provides for Little Caesars to provide trash receptacles in the area.

3. *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.*

Chair Hoppock stated that they have one abutter concern from Mr. Frost, and to an extent, he shares Mr. Frost's concerns about Davis St.'s capacity. He continued that it is not a wide road. He appreciates the fact that the school across the street will not be in full operation at the hour of 5:30 PM, but he does not know what sort of extracurricular or night activities the school has going on, although that is of lesser concern. He appreciates that there will be a fence to reduce the lighting problems and the noise. He is concerned about the model working, regarding traffic management.

Ms. Taylor stated that she wants to note that the screening is required by the LDC. She asked if this would need to go before the Planning Board. Mr. Hagan replied yes. Ms. Taylor replied that in that case, the Planning Board will have something to say about lighting, screening, and other issues. She echoes Chair Hoppock's comments regarding the capacity of Davis St. Maybe there are not 60 cars in an hour; maybe it is only 30 or 40, but that is still a lot of traffic on Davis St.

4. *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 Hoppock stated that there is a lot of overlap in these criteria, and he does not have anything else to add.

Mr. Gorman stated that for anyone who can answer, his question is whether all of the students at the school are dropped off, and if it is true that there is not a bus. Mr. Hagan replied that the school has a drop-off queue that starts off of Main St., at the school's main entrance, and exits off Wilson St. He continued that cars come off Main St., go through the lot, and then go out on Wilson St.

Mr. Gorman asked if he knows what enrollment is. Mr. Hagan replied no. Mr. Gorman replied that his point is that if they do not know, but they do know that students are dropped off, assuming it is not a problem, because they would know if it was. He guesses that the number of students is in the triple digits, and he has never noticed, in all his years traveling Davis St., that that was a point of congestion. He thinks that type of queuing for student drop-off is very similar to what is here (for Little Caesars). It is difficult for him, too, to think that everyone will comply and keep moving along, but he thinks it would be a one-off event for someone to just decide they were going to plant themselves (in the queue) and not move. Regarding intensity, this use, compared to Cobblestone and Piazza, is not very intense. Previously, there was a bar that was rowdy and loud until about 2:00 AM, and an ice cream place that was rather busy back in the day, with cars and people. He thinks that no matter what they put in this location, it will have a degree of intensity that could raise a flag about Davis St., but the reality is that that street has been used that way, short of the last couple years when the building was gone due to fire. It has served intense uses on that corner as well as the intense use of a school, without problem.

Mr. Gorman continued that criteria two through four seem to blend together. He does not see a hugely excessive burden on a couple hundred cars coming in to grab a pizza that they called in ahead. Athens (Pizza) probably does that, and they (the Board) just do not know it. He thinks people will circle around, park somewhere else, or show up on time.

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

Chair Hoppock stated, “Out of all these that we have here, certainly traffic is not an issue here. It should not be, anyway.” In terms of utilities, facilities, or services, he does not see that this proposed use has any impact whatsoever on public services. He asked if anyone has a different perspective.

Ms. Taylor stated that she thinks the only issue, again, goes back to the traffic issue. She continued that a street is a public improvement. (Traffic) would be her only concern.

6. *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 Hoppock stated that he does not think this criterion is applicable. Mr. Gorman replied that he thinks the loss of feature already occurred when the fire happened. He continued that the fact that it will be brick and sort of blend in with the historic elements of downtown is favorable, but this criterion is tough to apply to this application.

7. *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 Hoppock stated that this is what the Board has been talking about throughout the hearing.

Ms. Taylor stated that she agrees and thinks this is the key issue for this application. Chair Hoppock agreed.

Mr. Clough stated that he would add that technically, if there was a traffic counter and someone was asked to go around the block again, that would count as another trip. He continued that there would thus be a little more traffic than 60 (vehicles per hour) if someone is asked to drive around the block again. However, he is not sure of the exact figures, but he believes Main St. has somewhere between 8,000 to 10,000 vehicles per day, so the impact (this application) would have on Main St. is still rather small. It just comes down to the impact to Davis St.

Chair Hoppock replied that that is where he is coming from, too. He continued that when you leave the facility you have to go right or left. Left takes you to Main St. then you have to go right. Right takes you through the neighborhood and down to Ralston St.

Chair Hoppock asked if anyone had more to add for deliberations. Hearing none, he asked for a motion.

Mr. Gorman made a motion to approve ZBA 23-16 with the condition of no exterior order board.

Mr. Welsh stated that he does not believe that in the application materials the Board has for the facility described as having a walk-in component, but it has been discussed that way in this hearing. He asked if the Board wants to include a condition that there needs to be a walk-in option for people picking up, especially if they are thinking that two thirds or half of the people might be walk-ins. Chair Hoppock replied that given the configuration of the building and its layout on Main St., he does not think they need that, because people will walk in there anyway. He continued that with what the Board is hearing tonight, (Little Caesars) will not turn away business; if someone (walks in) for a pizza, fine. He is not personally concerned about that part of it. He thinks Mr. Gorman's condition is appropriate, especially if (the property) changes hands down the road and it is a Dunkin, Arby's, or something else like that.

Mr. Welsh stated that he then wants to ask the applicant a question. He continued that regarding the configuration that the Board saw that had a door for customers to go in, he is under the impression that it will just be a glass front with no doors.

Chair Hoppock opened the public hearing and asked the applicant to address Mr. Welsh's question. Mr. Phippard showed the drawing and indicated the front elevation, facing on Main St. He stated that there are three entry doors planned – one for this business; one for the other half of the building, which there is no tenant for currently, but which could be an office or another restaurant; and one in the center, which is the lobby for access to the apartments upstairs. Mr. Welsh asked which door is the one a customer would go in to pick up a pizza on foot. Mr. Phippard replied to the southernmost door.

Mr. Gorman stated that in theory, someone who did not want to be in the queuing lane or showed up early could simply circle around, park on Main St., go in the front entrance, and hang out until their order was ready. Mr. Phippard replied that is correct. Mr. Gorman replied that that means the ability to pick up the food exists in several ways. He continued that you could park down by

the Colonial (Theater), and go for a walk to pick up your food, as so many people do when they do business on Main St. They do not necessarily park in front of the entrance of their destination. In theory, these 200 customers a day would be using Main St. parking, Davis St. parking, the queuing lane, or walking in, not solely using the queuing lane.

Mr. Phippard replied that he agrees that it is all the above. He continued that he thinks he turned it in with the application, but there is a floor plan of the ground floor. Chair Hoppock replied that the Board's packet has the lot plan, but not the floor plan. Mr. Phippard replied that he thinks this (floor plan) should make it clear to Mr. Welsh that there is a public entrance on Main St.

Chair Hoppock stated that that addresses the question. He closed the public hearing.

Mr. Welsh seconded the motion.

*1. 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.

*2. 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.

*3. 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.

*4. 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 4-1. Ms. Taylor was opposed.

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

Met with a vote of 5-0.

*6. 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.

7. *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 3-2. Chair Hoppock and Ms. Taylor were opposed.

The motion passed with a vote of 3-2. Chair Hoppock and Ms. Taylor were opposed.

- B) **ZBA 23-19: Petitioner, Aaron Wiswell of West St. AJ's, LLC, Berwick, ME, and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a Variance for property located at 348 West St., Tax Map #577-025-000-and is in the Commerce District. The Petitioner requests to permit a side pavement setback of 1.5 feet where eight feet is required per Chapter 100, Article 9.4.2, Table 9-2 of the Zoning Regulations.**
- C) **ZBA 23-20: Petitioner, Aaron Wiswell of A & B, LLC, Berwick, ME, and represented by Jim Phippard, of Brickstone Land Use Consultants, LLC, requests a Variance for properties located at 364 West St. and 12 Pearl St., Tax Map #577-026-000 & 577-027-000 and is in the Commerce District. The Petitioner requests to permit a side pavement setback of two feet where eight feet is required per Chapter 100, Article 9.4.2, Table 9-2 of the Zoning Regulations.**

Chair Hoppock stated that the Board will hear ZBA 23-19 and 23-20 together, then vote on each separately. He read them each aloud and asked to hear from staff.

Mr. Hagan stated that 348 West St. is zoned Commerce. He continued that it is on .23 acres and was built in 2022. It is a one-story, 819 square foot drive-through coffee shop. A Variance was granted in April of 2022 to permit a lot size smaller than the minimum requirement of 15,000 square feet. The other property, 364 West St., also zoned Commerce, is on .48 acres, one story currently with a canopy. It is a repair garage and office or retail space. There was no further information at the time in the file for this property.

Ms. Taylor asked about 12 Pearl St., which is involved in the second Variance as well. Mr. Hagan replied that 12 Pearl St. is not a part of it. Chair Hoppock replied that it is a part of ZBA 23-20. Mr. Hagan replied once it is combined, yes, though regarding the application for the two Variances, it currently has not been merged at this time. He asked Mr. Phippard if that was correct; Mr. Phippard replied that it was. Chair Hoppock asked for confirmation that there are no outstanding Variances for 12 Pearl St. Mr. Hagan replied that that is correct.

Chair Hoppock asked to hear from the applicant.

Jim Phippard (of Brickstone Land Use Consultants, LLC) stated that he is here representing both properties tonight. He continued that Aroma Joes is existing and operating, indicating it on the right-hand side of the drawing. He continued that on the left-hand side of the drawing is the old gas station property at the corner of Pearl St. and West St. The gas station is still there, waiting to be torn down. They (he and his client) have a conditional site plan approval to construct a car wash on this property, and it would be configured as he is showing here. Twelve Pearl St. is affected by the site plan but not by this request tonight. Twelve Pearl St. is an existing, single-family house, and would be removed along with the old gas station. These lots are being merged to create one property for the car wash. Before the Board tonight are applications for two Variances, because it affects two different properties. The same people, under different legal entities, own the properties.

Mr. Phippard continued that when they applied for and received approvals, they got a Variance to construct on an undersized lot in the Commerce District, believing this plan would work. It (Aroma Joes) opened in April of this year and to their surprise, the queue lengths were longer than ten cars at least once a day and sometimes twice a day. When they developed the plan, he himself was concerned about the length of the queue. They could provide a 10-car queue that wraps around the building. (The owners) provided him with information from over 100 operating Aroma Joes up and down the east coast that they are involved in, all quite similar in size, operating exactly the same, with no seats. You drive in, place your order at an order board, drive around the building, pay for your order, and pick up your order and leave. The 10-car length queues were adequate on every one of those sites. Then they come to Keene, NH, and for some reason, in Keene is “off the charts.” They sold 40% more product over the first two months than they have ever sold in any Aroma Joes that they are involved in, with no explanation. He asked (the owners) what is selling the most, and they replied it is not coffee, but energy drinks. The teenagers and the college students come in two to three times a day to get these energy drinks of all different flavors, loaded with caffeine. (The owners) could not keep it in the store and bought a van just to bring more supplies from their other stores to the Keene store, three times a week. It does not fit their model, and they think the reason why is, they knew they would get a big draw from the college students.

Mr. Phippard continued that he thinks the problem is that most college students will not walk to Aroma Joes from the college; they drive. Once that started, there were problems with the queues. He himself would go to the site in the morning and sit there for an hour, watching the cars coming in. One day when he was there, he saw four cars backed up into West St. One car was waiting to turn left from West St. into the site when a police officer showed up. He wishes he had written down the officer’s name, because he did a great job handling these people. The people were young, and a couple of them were quite angry and aggressive. The officer told them to move along because they were blocking traffic. The young man at the head of the line of four cars said, “No, I’m next in. I’m not moving.” The officer was firm with him and told him he had to move right then, or get out of the car, and he had his hand on his handcuffs, calling the man’s bluff. The man went tearing out. Then the officer waved the next cars along, and they moved along. Mr. Phippard continued that it was scary. He himself was very nervous after



watching that, and felt partly responsible, because he did the site plan, and it was not working properly. He was then tasked with coming up with a solution. (The owners) had recently purchased this property, and they were standing there watching those incidents happen. It happened again while they were there. The Police Officer was there for an hour, and said to him (Mr. Phippard), “Fix this. This is not part of my job; I don’t want to be here every day.” He took that seriously, and approached the owners, saying, “We have to do something.”

Mr. Phippard continued that immediately, they stopped using the parking spaces, which gave them room for two more cars (in the queue). They put up cones and made the queue line longer, giving them a temporary solution. The LDC does not require them to have those four parking spaces, since there are no seats (at Aroma Joes), so they could get away with it, but the owner did not want to do that – he wanted his employees to be able to park there. With the (other) site being redeveloped, they talked about how to add another entry lane. A couple other Aroma Joes that these owners have do have double entry lanes. He (Mr. Phippard) looked at how they did it and came up with the concept (the Board is seeing tonight). They could still use the same curb cut, cut a little wider, and add a second drive-through lane. (Drivers) are forced to merge when they get to a certain point, but it adds five more cars to the queue. He thinks they can fix the problem as it would give them a 15-car queuing distance, but to accomplish this, they need to do a boundary line adjustment. Thus, they will take a strip of land from the larger lot and add it to the other one. Then, he needed pavement setback Variances, which is why he is here tonight, to build this plan. He can still provide separation between the drive-throughs, and still provide an area for a fence in there to meet some of those Zoning requirements, but he needs the Variance for the paving setback. He thinks it will work, and it will greatly improve the situation that is happening on West St.

He continued that when the college students went home for the summer, this issue went away. He thinks his theory is correct that (the queuing problem is due to) the college crowd that is driving instead of walking. There is a walk-up window, which is now used regularly, he thinks because of the queuing issue. People have been parking at the gas station and walking up to the window, placing an order, then going back to their car and leaving, instead of in the queue. They have been trying to work it out, but a permanent solution is what he thinks is best. He talked with the owners and said, you must have experience with higher peaks when your other stores first opened and then it dies down as people get more accustomed to it. The owner said that is true, but they are afraid that when the college students come back, this will start all over again. If it does not, then maybe he does not have to do this and they will not use the Variances, but this gives a permanent solution and gets it up to 15 in the queue lane, which is unheard of for Aroma Joes.

Mr. Phippard stated that he will go through the criteria, which are almost identical for both properties, because it is the same property line that they share where this pavement encroachment occurs. He showed a plan sheet and stated that the shaded areas represent the area where the pavement is encroaching into the side setbacks. He continued that this is a pavement setback, not a building setback. They are okay with lot coverage, okay with drainage, and okay

with all the other dimensional requirements, except for the lot size for Aroma Joes. This will affect only the indicated area between the two properties. Both are commercial uses, both with the same owners.

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

Mr. Phippard stated that he thinks it is in the public interest to correct the safety problem that they have inadvertently created, and that it is a serious safety problem. He would be afraid to see more incidents like the one that occurred that day when the young man was very disrespectful to the police officer. The police officer handled the situation well and nothing came of it. He (Mr. Phippard) would be afraid to have another incident like that. It is in the public interest to allow them to correct the queuing problem, on (the owners') own property at their own expense.

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

Mr. Phippard stated that the spirit of the Ordinance, other than addressing public health, safety, and welfare – which is important, and which this application does do – relates to green space between these properties. Since both properties have the same owners, no one else is affected by this. Both uses are drive-throughs, with a 6 foot high solid fencing required to screen them from each other and from adjacent properties. Placing a fence there, there will be one and a half to two feet away from the fence with a strip with landscaped stone. They can fit a little bit of greenery in there, but that is a Planning Board issue. This has to go to the Planning Board, if the ZBA grants the Variances. If the ZBA does not grant the Variances, he does not know what they (he and the owners) are going to do.

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

Mr. Phippard stated that he believes this is true. He continued that the owners of this restaurant do not have an explanation for why it is so successful, but it is, and that is good for Keene in that regard. He and the owners want it to comply and to operate safely. Granting the Variance will allow them to accomplish that, and he thinks that accomplishes substantial justice.

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

Mr. Phippard stated that this is the common boundary line between the two business properties with the same owners. He continued that the Zoning requirements in the LDC require a six-foot high solid fence to be erected between them. Thus, it does not relate to any other property. It has no effect on any other property, and therefore, he does not believe it diminishes 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. Phippard stated that the very small size of the commercial lot is something the Board did recognize was a limiting factor on this property. He continued that Ms. Taylor had expressed concern about whether it could support this use, and he admits that she was right. He thinks that creates a situation that results in a hardship for the landowner. They do not have any width to work with, so they are doing the best they can by buying the adjacent property, doing the lot line adjustment, and then creating the barrier between the two uses. He thinks it works, because of where the Variances are located, it does not have any impact on anyone else on the site. They (the owners) are willing to do this at great expense to them. They recognize how serious this issue is in the street and do not want that to continue happening.

*and*

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

Mr. Phippard stated that the addition of the second drive-through lane is a use he thinks is reasonable and necessary, because of the success of the business. He continued that it is permitted by Zoning. The modifications to the site plan will require them to screen these areas, so he thinks that makes it 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.*

Mr. Phippard stated that they went through this with the development of the Aroma Joes, and the Board granted the Variance to allow that to be redeveloped commercially. He continued that he did not anticipate this problem and thinks this is a necessary Variance to allow them (him and the owners) to fix it.

Mr. Welsh stated that he has a couple of questions, beginning with regarding these periods of congestion and possible queuing of people in the street. He continued that he drives by there twice a day, and except for during the first week, he did not see cars backed up into the street. He asked what time of day this happens.

Mr. Phippard replied that it varies. He continued that when he witnessed it, it was between 8:00 and 9:00 AM on a weekday, noontime on a Saturday, and several times between 5:00 and 6:00

PM. It depends on the day of the week and the weather. On a rainy day, he went between 8:00 and 9:00 AM and only saw three cars on the lot. He does not have an explanation for that. But it happened way too frequently.

Mr. Welsh stated that his second question is regarding the solid fence proposed between the two properties and the two opposing lanes. He continued that he is mildly concerned that they could have, in theory, two lanes of traffic going against each other in a configuration in which you will be passing cars on a side you are not used to, "British-style." He asked if the solid fencing will be such that you will not really notice the cars on the other side. Mr. Phippard replied that it is six feet high, so if you are sitting in a car, you cannot see over the fence.

Ms. Taylor stated that maybe they have looked into this already, but her question is how the two lanes of traffic would merge. She asked if Mr. Phippard had any information on how safe an event that is. Mr. Phippard replied that he asked (the owner) about how this works at the other Aroma Joes, and (was told that) people work well. They respect each other, in their cars, and take turns, allowing someone who arrived before them to go ahead of them. He has seen this (type of configuration) operate at Dunkin on West St., which he frequents almost every day, and sees a car coming in from Avon St. and a car in the lot letting that car in. Maybe it is because we live in a small town like Keene, but he thinks the merger will work. Customers will recognize that it is a necessary evil, because it gets them off the street, and they do not get in trouble with the police. The police officer made it clear; the second time he saw the police officer there, he went up and down the line, telling each person that he would not put up with any backups in the street, and anyone who finds themselves in the street needs to move along and come back.

Mr. Phippard continued that they also took another measure that he wants the Board to be aware of. They lengthened the queue by eliminating the temporary use of the parking spaces, and (Aroma Joes) also had an employee come out with a tablet to take orders. Thus, they were taking orders ahead and taking payment ahead, which sped up the queue, because it was more like the Little Caesars (model). By the time people got to the window, all they did was pick up their order, which was helping move the customers through the queue. They would probably revert to that if they cannot do the two-entry-lane solution.

Ms. Taylor stated that she has seen the backup even when the students are not at the college. She continued that it is not as frequent, but it still happens, so she is rather glad to see this (application). Her other question is, she wants to make sure that this does not impact the travel lanes at all on the lot of what is going to be the carwash.

Mr. Phippard replied that this does not change the carwash plan at all. He continued that he looked at trying to shift it over closer to the street, but he would have needed a Variance for a pavement setback at Pearl St. They felt that was too important of a green space and buffer area, because the vacuums are on the Pearl St. side. They ended up not changing the approved carwash plan at all.

Ms. Taylor asked if the shaded gray area is not a change in the pavement, but just how close it will be to the property line. Mr. Phippard replied that is correct. He continued that because they moved the property line, not the pavement, this ends up within the pavement setback.

Chair Hoppock asked Mr. Phippard to remind him of when Aroma Joes opened. Mr. Phippard replied April of this year. Chair Hoppock asked if there has been a noticeable slackening off the street backup since then. Mr. Phippard replied that since the college students went home at the end of May, he has only witnessed one incident of backing into the street, and it was brief, with just two cars. He continued that he thinks it has greatly diminished, but the fear is that when the college reopens next month, it will start all over again.

Chair Hoppock asked when they expect these corrective measures to be taken if the Variances are approved. Mr. Phippard replied that they will try to get in front of the Planning Board in September, which is the next available meeting with the changes to be constructed right away in October. They are putting fencing up now, and getting ready to demolish the old buildings and you can see how far they stayed away from the Aroma Joes side of the lot. That is to allow this to happen as quickly as possible, if they get the approvals.

Chair Hoppock asked if the Board had further questions. Hearing none, he asked for public comment, beginning with anyone wishing to speak in opposition. Hearing none, he asked for public comment in support. Hearing none, he (closed the public hearing and) asked the Board to deliberate on ZBA 23-19.

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

Chair Hoppock stated that it is always nice when they see something that is consistent with the public interest. He continued that in all the years he has been sitting here, he does not think he has ever seen a Variance requested to cure a Variance that was premature. Having said that, he thinks this is not contrary to the public interest. He agrees with Mr. Phippard that this would correct the safety problem he spoke of.

Mr. Welsh stated that he agrees with Chair Hoppock and those would be his comments for ZBA 23-20, also. Mr. Gorman replied that he thinks the Board can deliberate on ZBA 23-19 and then make their deliberations inclusive when they open ZBA 23-20. Chair Hoppock replied that they will get to that when they get to that.

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

Ms. Taylor stated that she has witnessed a few close calls, not just people getting angry, but also given the fact that West St. is notable for people (not) observing the speed limit. She continued that she has seen people slamming on their brakes, so they do not hit a car when there have been cars queuing out into West St. She continued that she thinks this will help the public health, safety, and welfare.

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

Chair Hoppock stated that the Variance will do substantial justice in his view because of the safety problems, and the gain to the public is significant, in terms of the amelioration of those safety problems. The loss to the individual, if this were denied, would be considerable, because (the owner) would be without reasonable means to correct this problem. He believes the third criterion is satisfied in that regard. He continued that he sees other Board members nodding.

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

Chair Hoppock stated that as Mr. Phippard mentioned, the two properties are owned by the same people, although as different corporations, with the same purpose going on here. He continued that given that, he does not see that this proposal affects the values of either of those properties or any other property in the area.

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*

and

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

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.*

Chair Hoppock stated that he agrees that the small lot size is a factor here, especially for ZBA 23-19. He continued that they could talk about ZBA 23-20 separately, if they want. It does make the application of the setback requirement to the ZBA 23-19 lot more difficult.

Ms. Taylor stated that the issue here, again, is the small lot size as it was with the first Variance for this property. She continued that there is an issue, clearly, and she is not aware of any other way to resolve the problem, linking it back to the public health, safety, or welfare issue. If it is going to be corrected, she thinks the hardship is that there does not appear to be any other way to fix it. Chair Hoppock replied yes, and at the same time, it appears that it needs a fix.

Mr. Gorman stated that he agrees with all the commentary leading up to this, and he echoes that the real hardship here is the situation that has been created by this undersized property with a

heavy amount of business, and this offers a solution. He continued that it is seemingly the only solution.

Ms. Taylor stated that she wants to add that because the ZBA had granted the first Variance, she thinks this takes it out of the situation where you would have a property owner self-creating a hardship. She continued that she thinks the ZBA had a part in creating a hardship by approving (the first Variance).

Chair Hoppock asked if there were any further comments from the Board regarding ZBA 23-19. Mr. Gorman replied that Ms. Taylor was right.

Mr. Hagan stated that Section 20.6.2 B. of the LDC states, “*Where allowed, drive-through lanes shall be screened away from any adjacent public rights-of-way (not including alleys), existing residential property, or residential zoning districts.*” He continued that thus, a fence is not required between (the two properties). He thought he would mention that, in case the ZBA wants to make it a condition. They (the Aroma Joes owners) are proposing it, but if it makes a difference to the Board, it could go with either Variance, if the Board feels it is necessary.

Chair Hoppock stated that it seems to him that just separating the two, having the carwash lanes away from the coffee lanes, (is enough). He continued that he doubts there is any prospect of cars getting the lanes mixed up, but still, it makes sense to him to have a barrier of some kind, a fence. He asked if anyone wanted to make a motion with that condition in mind.

Mr. Gorman made a motion to approve ZBA 23-19 with the stipulation of having a six-foot tall, stockade-style fence along the boundary of the two properties. Ms. Taylor 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 23-19 with the condition passed with a vote of 5-0.

Chair Hoppock asked if there was anything specific Mr. Phippard wanted to add regarding ZBA 23-20. Mr. Phippard replied no. Chair Hoppock asked if there was any public comment for ZBA 23-20, in opposition or in favor. Hearing none, he (closed the public hearing and) asked the Board to deliberate.

Chair Hoppock asked if it is correct that Mr. Gorman proposes going straight to voting on the criteria. Mr. Gorman replied that he would be comfortable saying that his sentiments regarding ZBA 23-19, on items 1 to 5, are the same regarding ZBA 23-20.

Ms. Taylor asked to see the plan again. She stated that her understanding is that the Pearl St. lot does not come as far back as the Aroma Joes. She continued that if that is correct, then she does not think they need to consider that at all, but the question she has is whether they should equally condition any approval on requiring a six-foot tall solid fence between the carwash property and the Aroma Joes property. That is a general discussion question.

Chair Hoppock replied that you would not have two fences back-to-back with each other. Ms. Taylor replied no, but she just wants to make sure it is clear that (one of the two) would build it. Mr. Gorman asked if Ms. Taylor means she wants to be clear that the fence will continue out past the Aroma Joes property to the end point of the carwash property. Ms. Taylor replied yes, that is a better way of expressing it. She continued that she would like to see that solid fence all the way along. She does not recall what is behind the Aroma Joes, but she just thinks that it would be appropriate. Mr. Gorman replied that probably it would be appropriate for it to go along the entire rear boundary, too, if they could call it the “rear” – off the carwash property where the residential property sits. Ms. Taylor replied that that is not a question before the ZBA; the only question before the ZBA is the paving setback. Mr. Gorman agreed and stated that the motion should include a continuous fence on the easterly boundary of the carwash.



Chair Hoppock opened the public hearing and asked Mr. Phippard to speak to this. Mr. Phippard stated that to clarify on the conditionally approved site plan for the carwash, the six-foot fence starts at Pearl St. and wraps around the property all the way up to the front of Aroma Joes. It is already on the conditionally approved site plan, so that is a requirement.

Ms. Taylor stated that she thinks her concern was sort of expressed in their consideration of the Little Caesars lot. She continued that if either property were to be sold to some new entity, whether they remained carwashes and Aroma Joes or not, if the Board includes it as a condition in the Special Exception, then it is likely the fence will remain. Chair Hoppock replied that he has no opposition to that being a condition in this application. Mr. Gorman replied that neither does he. He continued that it sounds like they want to build a fence there anyway. Chair Hoppock replied that it sounds like they have to.

Mr. Gorman made a motion to approve ZBA 23-20, provided there is a six-foot high, stockade-style fence along the entire easterly boundary. Mr. Welsh 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 23-20, with the condition, passed with a vote of 5-0.

Chair Hoppock recessed the meeting at 8:15 PM and called it back to order at 8:21 PM.

**D) ZBA 23-21: Petitioner, Christine Salema of SS Baker’s Realty Co., Inc., Keene requests a Variance for property located at 428 Main St., Tax Map #112-004-000 and is in the Low Density District. The Petitioner requests a personal service establishment where it is not currently a permitted use per Chapter 100, Article 3.3.5 of the Zoning Regulations.**

Chair Hoppock asked to hear from staff.

Mr. Hagan stated that the property is in the Low Density District, located on a half-acre. He continued that currently there is a three-story structure, an office building that is 5,518 square feet with the third floor unused at the moment. The property has four different Variances dating back to 1971 when it was being used as Monadnock Nursing Home. There was an application for a daycare at one point, which was pulled from application. In 1987 it was kind of a cleanup of an unpermitted use, which is what the letter said, requiring two Variances in 1987 – ZBA 87-81 and ZBA 87-82. One was for the lot coverage requirement and an addition, and a change of use to an office with conditions. He gave the Board members copies of those conditions tonight.

Chair Hoppock asked if this is the one saying the use would be limited to professional offices only. Mr. Hagan replied that is correct.

Ms. Taylor stated that her first question is procedural. With this Variance, are they amending the prior Variance, or is this just sandwiched on top of it? Mr. Hagan replied that it is a separate Variance application, and he would treat it as such, to include this additional use. They can take it as a whole as applied for personal care services, which include multiple services under that category. He can read the Board what those are under the “personal care services” since it is defined differently than in the past. It used to be that the proposed use would be included under “office,” as there was no real definition. With the LDC change, they included this as “personal services” and gave a definition of what those are.

Chair Hoppock asked Mr. Hagan to read what those other potential uses are. He continued that if the ZBA approves this, they are opening up the door for those uses. Mr. Hagan stated that the LDC says, in section 8.0.3 W. Personal Service Establishment, *“Defined [as] an establishment that provides services of a personal nature including, but not limited to, barbershops or hair salons, spas, nail salons, laundromats, dry cleaners, tailors, tattoo or body piercing parlors.”*

Ms. Taylor stated that if she recalls correctly, this is very similar to what they had for 441 Main St. as well – it was personal services but also had this kind of limitation. She continued that she does not remember if they incorporated the earlier Variance or uses into the new one. That is what her concern is. Since this is the second time the Board has had this in a year, she wonders if the (Community Development) Department has ever thought about looking at this issue a little more closely. Mr. Hagan replied that not that he is aware of, but John Rogers is not here tonight, and he would defer to him. He continued that that is certainly something they can bring up after this meeting.

Chair Hoppock asked if there were any further questions for staff. Hearing none, he asked to hear from the applicant.

Christine Salema stated that she is the managing member of SS Baker's Realty, LLC. She continued that this was her first time (presenting to the ZBA). As Mr. Hagan mentioned, the building has been used for quite a few things over the years, including a nursing home, realtors, construction, and currently offices of various businesses. She has owned the building since 2007, so those uses she mentioned have been within her experience. Of late, she has been approached for some of the open spaces she has for these types of services, a hairdresser, and an esthetician. She thought it wise to look into this and see whether she could get the Variance to accommodate these businesses. Ironically, she used to work in the building at 441 Main St. that Ms. Taylor referenced, and Ms. Taylor is correct, they did change, and now they provide these services. That is another reason she thought this was something she should pursue.

Ms. Salema continued that she could go through the criteria.

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

Ms. Salema stated that she believes that the (potential) tenants request would be in keeping with what is already in the building. She continued that there would be no change to the building and no change to the lot, and therefore, from the outside there would be very little difference. The habits and hours these (new tenants) would be professional, just as they are now.

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

Ms. Salema stated that she does not think this Variance would diminish the public health, safety, or welfare, nor the character of the neighborhood. She continued that they are not changing the building or parking lot at all. From the outside, it looks the same.

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

Ms. Salema stated that if the Variance were denied, the public would not gain anything from that, but on the flip side, the landlord, herself, would lose substantially the opportunity to fill some open spaces.

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

Ms. Salema stated that they are not changing the building at all, and it does not diminish or change the surrounding homes and businesses. She continued that most of the street is a mix of quite a few different things. She thinks Low Density was intended to maintain some of the single-family homes, but as Mr. Hagan described the history of this, this has not been a single-family home or residence throughout all the years. Thus, it is a rather special condition here that she is requesting.

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*

*and*

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

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. Salema stated that this criterion is a bit more subjective, but she thinks that the current zoning restriction for the Low Density District interferes with the reasonable use of this particular building, and therefore provides the hardship. She continued that as she said, it has not been a residence for decades, maybe not even ever. She could not find any evidence in the history she looked up that it was ever a single-family home. As Mr. Hagan said, it is a little over 5,500 square feet, which is very large. In order to provide financial return on that property and to maintain it to the standard it is at now, she hopes the Board considers this so that she could open it to other businesses. Post-COVID, as the Board might have already learned from other businesses or know in general, many people are working at home, and therefore, the need for an office outside of the home is not as popular as it used to be. Again, she does not think this (Variance) would affect anyone in a negative way, and therefore, it is a reasonable request.

Mr. Welsh stated that he has a few questions, beginning with the post-COVID rental market. He continued that he was wondering if, maybe in some detail with respect to this particular building, Ms. Salema could describe quantitatively or qualitatively the difficulty of filling these spaces.

Ms. Salema stated that currently, in her building, there are different businesses occupying offices as opposed to just (one company), and when they lose an employee, they have not replaced the

employee, and therefore, there is a vacant office. The company is still there, but the amount of people and the amount of space they are taking is less. That has been her experience post-COVID.

Mr. Welsh stated that he has another question that involves a comparison to the other Variance that was granted across the street. He continued that the description of “personal service establishment” is so broad that it includes things like tattoo parlors and dry-cleaning businesses and whatnot, some less consistent with the Low Density District than others. He thinks one of the ways around that last time was to place conditions on the approval of the Variance that restricted it to the more amenable kinds of uses. Specifically, he read the previous meeting minutes from this past Variance application, “*The personal service shall be restricted to one professional personal service provider per unit, who schedules by appointment only, and is licensed by the State for their particular professional personal service [...].*” He asked if Ms. Salema or the tenant would be agreeable to the attachment of conditions of that sort to this Variance.

Ms. Salema replied that she cannot speak for the tenant she referenced in the application, because she has not discussed that with her. She continued that she and that (prospective) tenant had not proceeded to the next step yet, because she did not know if it was going to be possible. Submitting the application, she really thought that it was more of a broader request, in the sense that it is not just about that one particular woman who approached her to do her hairstyle business. To answer Mr. Welsh’s question from her own perspective, yes, she would be amenable to that.

Chair Hoppock asked if Ms. Salema could tell the Board more about the fifth criterion. He continued that he wants to try to flesh that out a bit, because that is the hardest criterion. He is looking for the special conditions of the property. He noticed that it is a large building on a large lot. Ms. Salema replied yes, the building is quite large. She continued that it is not set up as a home, as she mentioned, and does not think it was ever a home, although she could be wrong. If it were ever a single-family home, it would have to be at least 50 years ago. The only other thing to do is office space, and in order to do that and fill the space and maintain the building, given its size, its taxes, and all of that, it leans itself towards opening those offices to different tenants.

Mr. Gorman stated that along with the fact that the building is large and unique in stature and lot size, it is safe to say that the impact of COVID, too, on office spaces in general (is a factor). He continued that they do read about it, on a national level as well as locally. He is familiar with the fact that there is a lessening need for offices, and it is important to repurpose these buildings to keep them, as Ms. Salema says, able to be maintained and kept up nicely the way Ms. Salema does keep that building. It is safe to say that the change has created somewhat of a hardship for the property as well. He asked if it is correct that in a perfect world, she would still be renting this as offices, if the market would allow. Ms. Salema replied yes, she thinks Mr. Gorman’s point is valid and true. She continued that as she said, she personally has not lost a business that was using office space in her building, but when the (business) has lost employees, either

through attrition or termination, they are not taking as much space in the building, creating that void. She has not seen many people come in. She has a sign outside and they do advertise a little bit, but she has not seen as many people calling or needing office space as she has in the past.

Ms. Taylor stated that she is not clear about whether Ms. Salema has a specific tenant in mind, or if it is just the category that she wants to be able to use. Ms. Salema replied that originally, she was approached by a hair stylist who saw the (rental) sign and wanted to know about renting some space. She continued that she showed her the space and told her that she needs to check, because she did not think she could have (a hairstylist) there. When she checked, she found out that that was true, and therefore, she proceeded with the application. After she submitted the application, she received a phone call from an esthetician, which would be under the same category. She could not go any further with the hair stylist or the esthetician, because she does not have the ability to actually say to them, “Yes, I can rent this space to you; let’s put a lease together,” until she goes through this process (with the ZBA).

Ms. Taylor stated that she has a question about parking. She continued that it is not clear to her whether this is a space that was occupied, and thus maybe Ms. Salema did have adequate parking, or whether it has been vacant for a long time, which means they would have to consider whether she needs parking. Ms. Salema replied that there are 23 parking spaces, and that is not an issue for them at any time. She continued that this space was previously occupied by her own business, and she does not need as much space any longer.

Ms. Taylor stated that her final question is, in addition to the list of conditions that Mr. Welsh suggested – and she does not remember if this was near the end of the list or not – would she have any objection to a possible condition that would restrict retail sales? Ms. Salema asked Ms. Taylor to define that. Ms. Taylor replied that there are personal service providers who sell products that are ancillary to their trade, such as hair stylists selling shampoo. She asked if Ms. Salema had any concerns about that. Ms. Salema replied that she would rather tenants be allowed to sell shampoos and (similar products) right within their shop. She continued that she would be fine with saying that she does not want a retail shop, such as a clothing shop or something like that that is more in the commercial line, but she thinks most (hairstylists and estheticians) do sell a “little bit of this and that,” and she would like to be able to allow. Ms. Taylor asked if she means retail that would be ancillary to that specific business. Ms. Salema replied that was correct.

Mr. Gorman stated that he thinks the stipulation of “by appointment only” assists with that, too, because it would be very difficult to run a full-blown retail operation by appointment only, but it does still allow for the ancillary selling of a shampoo to someone whose hair you just cut. He continued that it could be a chiropractor selling supplements, or things of that nature.

Chair Hoppock stated that he has a follow-up to Ms. Taylor’s question about parking. He asked how many tenants Ms. Salema has, and how many people currently rely on the lot for parking.

Ms. Salema replied that not everyone is there every day; they come and go when they choose. She continued that she has a CPA tenant, a business owner who employs three people, so that is four. Another tenant is a bookkeeper, mostly there during tax season but not the rest of the year. Another tenant is a real estate group that uses the office for paperwork and things like that; they have one office. She does not know how many realtors they have and does not see many people going in and out of the office. There is also a tile company, with one full-time employee. She herself is in the office as well. There are 23 parking spaces and on an average day, approximately six spots are taken. Chair Hoppock replied that it does not seem like they are using even half of the parking spaces. Ms. Salema agreed.

Ms. Taylor asked Mr. Hagan what the parking requirements are. Mr. Hagan replied that the requirement is four parking spaces for both office and personal care services – four (parking spaces) per (one) thousand (square feet). This is 5,500 square feet but that does not include bathrooms. He gave them an overall square footage and (staff) would have to look at it completely, but it sounds like it meets the minimum requirements for 5,500 square feet, which would be 22 spaces.

Mr. Gorman replied that the likelihood is that if you really calculate it, the square footage would be diminutive by stairways and bathrooms, so it is very safe to say that it exceeds the parking requirements. Mr. Hagan replied that what he can say is that it meets the minimum.

Chair Hoppock asked if the Board had further questions for the applicant. Hearing none, he asked if Ms. Salema wanted to add anything, based on the Board's questions. Ms. Salema replied no.

Chair Hoppock asked for public comment, beginning with people in opposition. Hearing none, he asked for public comment in favor. He continued that the Board has an email from William Beauregard, which he will read into the record:

*"I write to express my support for ZBA 23-21, a request for a variance submitted by SS Baker's Realty Co. LLC, for the property they own at 428 Main Street. My wife and I own 440 Main Street which abuts 428 Main Street immediately to the south. We are currently out of town and will be unable to attend the Zoning Board of Adjustment meeting today, Monday, August 7, 2023.*

*The use proposed by the applicant, a personal service establishment, is very similar in nature to the other uses currently allowed in their building. These uses have been utilized for many years at this location. The site has ample parking and access to Main Street is very good. The use proposed is also similar to the use currently permitted at 441 Main Street, the large white office building on the corner of Main Street and King Court, which is virtually across the street from the subject property. 441 Main Street causes no adverse impact on the neighborhood so I believe it will work well at the subject property and no adverse impact will be caused by the granting of this variance.*

*Regarding the specific criteria required for the Zoning Board of Adjustment to grant a variance:*

*Criteria #1 Granting the variance would not be contrary to the public interest because the proposed use is currently allowed in a building across the street. The proposed use is in demand and easy access is required, particularly for elderly clients or those clients with disabilities. The traffic pattern for the proposed use would be very similar to the existing uses allowed.*

*Criteria #2 As mentioned above, the traffic generated by the proposed use would be very similar to the existing uses so there would be no greater impact on the neighborhood so the spirit of the ordinance would be observed.*

*Criteria #3 With the difficulty renting office space due to the impact of the Covid-19 epidemic, the proposed use would do substantial justice by allowing the owner to rent space currently difficult to tenant.*

*Criteria #4 As mentioned above, the proposed use would have a pattern of traffic which would be very similar to the existing allowed uses and any impact would be de minimis. Hence, the values of surrounding properties would not be diminished.*

*Criteria #5 Regarding "Unnecessary Hardship", this building had been set up for office rentals and for many years had been rented as such. As the owner Colonial Rental Management and the owner of Edgewood Real Estate Agency, I am very familiar with rental trends in Keene. When the Covid-19 epidemic struck, many offices closed and employees worked remotely. As the epidemic waned and employees continued to work remotely, it was difficult if not impossible to rent office space and the demand for office space dropped precipitously. That demand has not rebounded and it will likely not ever fully rebound. This is an issue impacting not just this office building but many other office buildings and office uses throughout the community. By allowing similar uses in the building, this hardship will, to a degree, be addressed.*

*All this said and to reiterate, the proposed use will fit well into this building and into this part of Keene and I would urge the Zoning Board of Adjustment to approve the request.*

*Yours, respectfully,  
William A. Beauregard"*

Chair Hoppock stated that this is the only written correspondence he is aware of the Board having received for this application, and he does not see anyone present from the public wishing to speak, so he will close the public hearing. He asked the Board to deliberate.

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

Chair Hoppock stated that he does not see anything in the application that would be contrary to the public interest. He continued that it is a use that is consistent with the area.

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



Chair Hoppock stated that nothing in the application strikes him as being a threat to public health, safety, or welfare. He continued that it will not impact the character of the neighborhood in any way that he can see.

Mr. Welsh stated that he agrees, in particular if the Board was able to add the condition that they added in the prior application (for the property) across the street, 441 Main St. He read (from the meeting minutes), *“The personal service uses shall be restricted to one professional service provider per unit, who schedules by appointment only, and is licensed by the State for their particular professional personal service.”* He continued that in his thinking, that limits away from things like dry cleaners and laundromats, which he thinks would not be in the character of a residential neighborhood. Chair Hoppock replied that he is on board with that condition.

Ms. Taylor stated that she would add that the Board has been cautioned on occasion to take applications individually, and one approval does not necessarily set a precedent to approve another. She continued that in this case; however, she thinks those conditions are applicable to this application. Chair Hoppock asked if that is because of the proximity of the two properties, or the similarity of the neighborhood. Ms. Taylor replied that it is more about the nature of the buildings, because 441 Main St., if her recollection is correct, is a large, older building that has been divided up into several offices. In addition, the owner has also had the same issue as Ms. Salema, with the post-COVID lack of demand for office space, but there seems to be a demand for this type of use. She thinks it is more the nature of the building than the location.

Mr. Gorman stated that he agrees with Mr. Welsh and Ms. Taylor that these stipulations would be, to him, imperative to approving this Variance. He continued that he does not see a dry cleaning facility the same as a hairdresser. These contingencies shrink it back down to what they would intend it to be, a single tenant who is performing a direct service to customers by appointment only. Chair Hoppock agreed.

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

Chair Hoppock stated that he does not see any gain to the public by denying the Variance, and he sees harm to the applicant by denying it. He continued that people like the applicant are struggling with lots of availability and little demand, in terms of some spaces, and need to tailor their business approach to meet the demand that is out there for the type of space where it can go. Personal service seems to be one way to do it. He agrees that there is no harm to the public or the neighborhood.

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

Chair Hoppock sees no prospect of diminished property values in the neighborhood by virtue of this application.

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 Hoppock stated that he is having a hard time with the special conditions of the property.

Mr. Gorman stated that whenever he looks at an older building that was constructed in a time when things were completely different, it is these large buildings stuck in residential areas that really have no hope of ever becoming single-family homes again. He continued that they made perfect office buildings for the longest time, but things change. It is important to stay fluid when things do change, and repurposing a building because it no longer has a true, viable use based on the current state of things compared to how they were, he thinks that embodies hardship. You need the ability to have reasonable use of your property. If you have a very large property with a lot of parking and a big lot that functioned well for many years as offices, but is no longer functioning because of things beyond your control, that is a hardship for the property, and repurposing the use is the solution. The ZBA is part of the repurposing process, and actually, the CMP even speaks to finding repurpose for historic buildings, older buildings that have fallen out of favorable use. He can get his head around the hardship based on the societal shift away from office use as well as the size of the building and the size of the lot being an anomaly within its neighborhood. It is very similar to the Coughlin building across the street.

Chair Hoppock replied that that was very helpful.

Ms. Taylor stated that this is one of the classic situations where actually the special condition of the property is the building. She continued that it may not be distinguishable from its immediate neighbors, but it is still in a Low Density District and she would say that there is no fair and substantial relationship between the public purpose of the Ordinance and how it is applied to this particular building. Chair Hoppock asked if she means because of the size. Ms. Taylor replied yes, because of the size, the nature, and its long-standing use.

Mr. Gorman made a motion to approve ZBA 23-21 with the following conditions: the personal service uses shall be restricted to one professional service provider per unit, who schedules by appointment only, and is licensed by the State for their particular professional personal service. Mr. Welsh 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 because:*

*and*

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

Met with a vote of 5-0.

The motion to approve ZBA 23-21 with conditions passed with a vote of 5-0.

**E) ZBA 23-22: Petitioner, Casey Cota of Cota & Cota, Inc. of Bellows Falls, VT, requests a Special Exception for property located at 455 Winchester St., Tax Map #115-025-000, is owned by Donald E. Barnes and is in the Industrial District. The Petitioner requests to permit an office use in the Industrial District at this property, per Chapter 100, Table 8-1, Permitted Principal Uses, of the Zoning Regulations.**

Chair Hoppock asked to hear from staff.

Mr. Hagan stated that 455 Winchester St. is in the Industrial District on .95 acres. He continued that it is a one-story building of 1,368 square feet. Its last permitted use was a car rental business. That was under ZBA 99-13, that was granted on August 2, 1999 for a vehicle rental condition. A Variance from July 6, 1998, was for a modular home business with a display model, limited to a certain size. There were five additional ZBA applications in the 1970s but not pertinent to (this), and obviously, the Ordinance has changed since then anyway, so he did not write them all down.

Chair Hoppock asked if the Board had questions for Mr. Hagan. Hearing none, he asked to hear from the applicant.

Casey Cota, President of Cota & Cota, stated that it is a family business, 82 years long, started by his grandparents. He continued that they deliver heating oil, propane, and kerosene, and do furnace service and plumbing services as their main course of business. Mostly the work is office in nature, or someone coming in to get parts to go out to fix a furnace or a plumbing issue, or a manager being there (preparing) to go look at code checks for a customer's home. The office nature would be someone coming in to set up a new account or to pay a bill. With this type of business, there is not a lot of customer traffic or interaction. Many people mail their bills, but if they have questions about bills, sometimes they will come in to get better clarification, or to get questions answered on an estimate for a new heating system or air conditioning, or things of that nature. It is not a highly busy location from that standpoint and is relatively small staffed to start with.

*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. Cota stated that he feels the nature of the application is consistent with the spirit of the zoning. (It is about) being able to have a viable business, which is very similar to the other businesses that are around there, like Dead River Oil across the street, and F.W. Webb, which is down (the street) and both are heating in nature.

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

Mr. Cota stated that the property will be maintained in accordance with making sure that public health and safety are there. He continued that Cota & Cota takes good care of all of its properties as they take pride in what they have.

*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. Cota stated that Cota & Cota would not do that, (would not cause) any harm to any of the neighbors. He thinks Cota & Cota being there will allow the property to be better maintained than it has been since it currently is very overgrown. Cota & Cota will make sure to clean up the building to hopefully last for the next 50 years.

*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. Cota stated that the nature of what Cota & Cota is doing should not cause any of those issues. He continued that the noise will be people talking on the phone, and cars coming in and out; it should not be an issue.

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

Mr. Cota stated that he does not feel that Cota & Cota would cause an issue this way. He continued that again, being a small office with just a couple of staff members inside, it should not have any adverse effect to town services.

*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. Cota stated that they are not changing how it looks from the outside, except for cleaning up some bushes and that kind of (work). Nothing really should be disturbed. The landowner, Donald Barns, had fixed all the potholes around the building and that (sort of issue) already.

*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. Cota stated that he does not feel this will be a safety hazard with traffic. He continued that he does not think there will be an increase of traffic coming in and out of his property that will have any significant impact or noticeable impact. In fact, it should cut down on the trips of vehicles going in and out of F.W. Webb if Cota & Cota has their own parts in their own facility as well.

Chair Hoppock asked if it is correct that no oil or parts will be stored on the property. Mr. Cota replied no oil, but there will be service parts, plumbing parts, and parts of that nature.

Chair Hoppock asked if the left side of the picture is the parking area. Mr. Cota replied yes. Chair Hoppock asked if he knows how many parking spaces there are. Mr. Cota replied several. He continued that he would say there is enough parking for probably 10 to 15 vehicles, and it goes further out back as well.

Chair Hoppock replied that he saw that; it seems like a dogleg left. Mr. Cota replied yes. He continued that they could probably accommodate 15 to 20 vehicles easily. Chair Hoppock asked if it is correct that they do not expect to have that kind of volume there. Mr. Cota replied that is correct, he would expect a maximum of about four vehicles.

Ms. Taylor stated that she was curious about the storage of parts. She continued that she knows the “office” definition says that an office “is not materially involved in the fabricating, assembling, warehousing, or on-site sale, etc., etc.” She was curious as to warehousing. There is

a difference, obviously, between a warehouse and storing parts in a room. She asked about the basic scope of what Mr. Cota thinks they might have.

Mr. Cota replied that usually what they try to have is the inventory that is consistent with one service van. He continued that it is expensive for parts to be on the shelf, so they do not want to hold on to too much, but they also want to cut down on the amount of times that a service technician has to go back and forth to a warehouse. Whatever they use that day, they turn it in, and then they will have whatever the technician used that day on the shelf tomorrow. This is just to maintain a normal, working inventory; it is not excessive.

Ms. Taylor asked if Cota & Cota keeps the company truck on the property and the technicians and delivery people drive their own cars and take them home. Mr. Cota replied that (the technicians) take their own vehicles home. It cuts down on running around, so if there is a call early in the morning, the technicians can go directly to the call from their home instead of coming to the office and then leaving and going back. He continued that many of Cota & Cota's service technicians are dispatched from their homes, going to their first call.

Ms. Taylor asked if they keep oil delivery trucks (at this office). Mr. Cota replied no, they do not have vehicles there.

Chair Hoppock asked if the Board had further questions. Hearing none, he asked for public comment, beginning with anyone opposed. Hearing none, he asked for anyone who wished to speak in favor. 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.*

Ms. Taylor stated that as they can tell from her questions, her concern mostly was whether this would be used as an actual office, or if it would also be used for storage, servicing, and things like that. She continued that Mr. Cota's responses did somewhat allay her concerns and this does not look like it will be used for storage of vehicles or equipment or anything else of that nature.

Chair Hoppock replied that he agrees.

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

Chair Hoppock stated that from the definition he heard, he does not think this proposed use will be maintained or operated in a manner to endanger the health, safety, or welfare of anyone in the area or the people who work there.

Ms. Taylor stated that if the building is used and the lot is cleaned it up it might actually be safer than it is now, with the way people cut across lots out there when they can.

Mr. Gorman stated that he agrees with everything they said.

*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. Gorman stated that he thinks that the proposed use will be harmonious with the surrounding properties as it will fit right in. He thinks it is a great use for this formerly decrepit building, being cleaned up and being used well.

*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. Welsh stated that it seems like the proposed use would actually emit less noise, less odors, and less glare than the prior use, and increase property values. Chair Hoppock asked if he means the prior use as a rental car facility. Mr. Welsh replied yes.

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

Mr. Gorman stated that there will not be an excessive burden on public improvements or facilities. He continued that this will not be a high volume use. Water, sewer, and things of that nature should be intact and adequate, as well as parking. He does not see any increased burden. As Mr. Welsh said, it is probably a step down from what was there, in terms of activity and burden.

*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.*

Ms. Taylor stated that they do not have any topographic map and she did not have a chance to look it up, but there are many wet areas around there, so her only concern would be if they expand pavement or redo something and it is a wet area. She continued that however, she is sure the Community Development Department will take care of that.

Mr. Hagan replied that it is in the floodplain, and that is something staff would process as part of this permitted change of use application. He continued that there have been many significant changes in those buildings up and down the street, bringing them up to the requirements.

*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 Hoppock stated that there is nothing about this proposed use that would create a traffic safety hazard or increase traffic levels in the area. He continued that he believes it is the area past Krif Rd., past the car dealerships. Mr. Hagan replied that it is just before Krif Rd.

Mr. Gorman made a motion to approve ZBA 23-22. Ms. Taylor 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.

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

Met with a vote of 5-0.

- E. *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 5-0.

The motion passed with a vote of 5-0.

**V) New Business**

Chair Hoppock asked about the abutters list (issue). He asked Ms. Marcou to tell the Board about what the people in Concord said about not providing the abutters list.



Ms. Marcou replied that from what she can remember from the training several weeks ago, it was suggested by the NHMA (New Hampshire Municipal Association) not to include the abutters list in the publication of the (agenda) packet. She continued that if the Board would like, she can add it to the Board members' packets when she mails them.

Chair Hoppock replied that his concern is checking for conflicts. Ms. Marcou replied that that is why she could continue to mail it to the Board.

Ms. Taylor stated that abutters lists are public information, so she does not understand. She continued that unless there has been a change in law, case law, or statute, she would tend to ignore the NHMA's advice. Anyone can go on the website, press the "abutters" button, and get the list. She was saying to Ms. Marcou earlier that the Board's general practice has been that if (a Board member) sees they have a business relationship or a familiar relationship (with a property), they announce it, and the assembled multitude decides whether there is a conflict. It just does not make any sense (to not have the lists). Chair Hoppock replied that he has recused himself in cases when he has seen something on a list that caused him to realize he should not do it.

Ms. Marcou stated that she thinks the training was taped and will review for anything specifically that was cited, or if it was just a recommendation. If it was just a recommendation, she would continue to add the abutters list.

Chair Hoppock stated that he does not care what the recommendation is. It is that useful. Mr. Gorman replied that he thinks the question is whether it is a mandate or a recommendation. Ms. Marcou replied yes, that is what she will check; she believes it was a recommendation. Ms. Taylor replied that she would love to know the reasoning (for the recommendation).

Chair Hoppock asked if there was any other new business. Ms. Marcou replied that she, Mr. Rogers, and Mr. Hagan have been holding off because there have been such full agendas these past few months, but they want to bring forward a couple items regarding the rules of procedure. She continued that there are minor changes they want to suggest. However, they want to have enough time to discuss it, not at 9:30 PM. Chair Hoppock replied that he completely agrees. Ms. Marcou replied that at some point, they will be bringing those forth.

## **VI) Adjournment**

There being no further business, Chair Hoppock adjourned the meeting at 9:25 PM.

Respectfully submitted by,  
Britta Reid, Minute Taker

Reviewed and edited by,  
Corinne Marcou, Board Clerk