

Board of Adjustment
Canterbury, NH
Minutes of Meeting DRAFT
26 August 2026

Present were: Vice Chair Web Stout (via zoom call), Gary Spaulding, Sean O'Brien, Randi Johnson (Alternate), Lisa Carlson (Alternate). Chairman Jim Wieck and Scott Herrick not attending due to travel.

Also present were: Kal McKay, Al Edelstein, Calvin Todd, Beryl Boisvert, Chris Drobat, Kevin Bragg, Jim Moir, Joe Halla, Beth Blair.

Web announced the board will address the minutes of the previous month at the end of this meeting. He advised the board will discuss the Canterbury Community Market, LLC letter. He stated it would be best if Lisa recused herself. Kal provided copies of the letter to the board and those present. Web requested Kal read the letter aloud into the record which she did (a copy of the letter will be in the file). Web advised there is also a letter from the LLC asking a couple of members of the board to recuse themselves. He asked Kal to read that into the minutes (a copy of the letter will be in the file). Web stated he did not believe the board recused Randi Johnson. Web asked Randi to verify this. Randi advised, not yet. Not prior to this public meeting. She attended the first non-public session, was unable to attend the second one. Web asked Gary to comment. Gary stated "So, I am not going to recuse myself. I don't feel there is a conflict of interest. I was contacted by the town administrator as a zoning board member just for clarification and asked for my input which I did as a member of the ZBA, so there is no conflict of interest". Web stated, "I am the same. I am not going to recuse myself from this meeting. Yes, I did do the original design for the three entities mentioned. As stated in the letter, there was nothing discussed about the septic system at all directly or indirectly. Basically, stated that it is a restaurant. That's what was discussed at the meeting. So, therefore, I am not going to recuse myself". Now, that being said, there are two board members. Do you have anything to say? Sean replied, no. I don't understand what the septic system... how would you have any interest or bias in any way because of a septic system design. I don't know. I don't think you should recuse yourself, unless there is an argument beyond it. Randi stated she is not overly sure why she was having to recuse herself. Mine is over donuts. The first week the store was open, I was there late in the day on Friday and overheard them talking about how the number one thing that everybody talked about that week was donuts and they were closed and I volunteered to pick them up early in the morning and I was told that could potentially be a conflict of interest to them, I should recuse myself from this going forward. Web thanked her. He went on, I guess that being said we've got to discuss this letter. I don't know if there's any discussion needed. The only other thing that did come to mind to me I guess, that I've been having negotiations with DES regarding the use and protecting this for the church. I believe the only discussion that I had was with Ken Folsom asking if there was a grease trap to that building. That is all the involvement that I've had negotiations with the church. That being said, I think we can move on to the letter from the ZBA and see if there are any revisions. We can make revisions if you want at this meeting if there are like an if or a but if there is a major revision we would need to go into another non-public session for that. I have no problem with this letter. I think it is good. The only thing that I can see is in the third paragraph where it states, "If you would like to move forward with the proposed used"... It should be use. That's the only thing that I can see that I would make revisions to this letter. Sean added, in paragraph two "...and evidence that was presented in the June 24 2026...", I believe it should say meeting. Gary added and the last thing if we vote to accept this, the date should be revised to the current date and not August 11th. Web concurred. It would be today's date, the 26th....somehow get Jim to sign it. Web asked if there was any other discussion from board members? Gary advised he had none. Randi advised since no one else is recusing themselves, neither is she. The only thing she has issue with is this doesn't say what happens in the interim. So, it says if they want to continue, they must contact to schedule a new hearing. It doesn't say by when. There are no dates on this. I am concerned about what happens in limbo, if that makes sense. So, from now if they do it, what if tomorrow... there's

no deadline. Web replied you're saying if they continue the use prior to them coming before the board, the use that was there prior, they can still do that. They can still do that. What you're saying is there is a time frame that we should put on this. Yes. Web, a deadline. Randi stated the business is already operating; their tenant is already operating. So, whereas there is confusion about what it is and what it should be and clearly disagreement based on all the letters received, there's no time frame on this. Kal asked to speak to this. My interpretation of this letter is that there is no time limit because it's kind of, the LLC can do whatever it's doing as long as it's but if it is does decide to do what exactly what was proposed, then they should come back for a special exception. So that could be like....next week, that could be three years from now. Randi responded, my only concern is that after the first hearing, the next morning, I believe it was the inspector went in and shut them down because there was some confusion about the interim, so I just want to make sure it's clear what happens in the interim while this is going on. Gary added if they are operating the store and the café outside of what was originally approved under the pre prior approval to the previous operator.....Randi asked that is Dave and Jane? Gary....then they'd be in violation. Web stated, yes. Gary added that is going to be a code enforcement issue, not our issue. Randi, OK, they can operate as they did. Gary....as long as they don't exceed the number of seats that were originally approved and the food prep is what it was then they wouldn't have to be here for a variance anyway or a special exception anyways. But if they're outside then it would be a code enforcement issue. Web spoke, and I believe that was stated in the first meeting we had that there was no need as long as they went back to what they were, they could operate. Web asked, does that help you, Randi? Randi replied, "I understand it. Yes, I just don't know if you should put that in here, where it states the number of seats, just to make it crystal clear. Web responded that it's not just the seats though because it was a grocery store or country store also. I know there was discussion on the square footage, what was what, what was where. Again, I think as long as they go back to what was and it does state that, the prior use any additional is a code enforcement issue. Randi, thank you. Web asked if there were any other questions or concerns. Seeing none.....Lisa asked is this an opportunity for public input or is this a closed discussion? Web stated it is closed. Al we're doing is whether we're going to send this letter to you folks or not. Whether we accept this letter to send to the LLC. Lisa, as written? Web, with the minor changes. Lisa, okay but not specifying....it's not clear. The letter is not clear to the receiver who doesn't understand what the prior use understanding is of the ZBA. So, when Randi alluded to putting in a detailed description of what is allowed, I think that that would go a long way to help people understand what it is that you are asking for. Web, I think if they went to the previous store owners they would know what was in there. Gary asked, "isn't it a matter of record as well? Isn't there prior approvals that are on record"? Randi asked did they come before the ZBA when they....Web interceded, I don't believe they did. I think it was water quote unquote under the bridge, Randi, yeah. Randi, so there is no clear previous use? Web, it was my recollection, it was based on the septic use, the number of seats, Randi, what the gallons per day would support for the leach field. I don't remember those numbers, but between six and eight, maybe six and nine seats. But that is on the state approved septic design. So, there is existing information that's out there that could be looked up and found what this previous use was. Gary added so if they have more than seven seats, they're in violation. It's pretty simple. Web asked where did you find that information Gary? Gary replied that it's under the June 13, 2023 approval number ECA 202361313 NH DES. Web asked, that would be the septic design? Yea, approval for 2,040 square foot country store with a seven-seat coffee shop, paper service only, post office with two employees, and a two-bedroom apartment. Web, ok, thank you. In fact, I think the LLC did come forward with that septic plan or said that they did send it to the state at the last meeting. So, I think there is enough information out there existing as to what was allowed. I don't know if we need to put that into this letter. I'll entertain any thoughts from the board. Gary stated, I think this letter is pretty self-explanatory and very straightforward, if they're withdrawing their application and we've got a letter back to them stating that we're accepting it and as long as they stay within the original use, they don't need to be here, but if they exceed it, they have to come back to us. Web, I agree. Yes. Other board members because we're going to need to vote. You have anything to say? Sean. I believe it's self-evident as well, although I don't understand. It would not hurt to clarify. I mean, but you know, I could go either way really. I don't understand why there is a reluctance to just clarify further. Web said, "I have a question for Kal. Could we make that revision to this letter and the revision I'm thinking of is just stating the approval number, the state septic design with the date on it, the approval number. That would show

all that information without going into a non-public session. Kal responded yeah, the non-public session was just if we were, if you were going to discuss more about legal counsel's advice. So, you can discuss this in public. As for making that edit, we can make whatever edits you want. I think, honestly, the only thing that was just getting something out there, was the time issue. But if you want to make more edits and then we can make the edits tonight and you can approve them or if you have larger edits that you want me to make, then I can bring it to the next meeting and you can approve them. So, at this point it's just the document that you are editing. Sean added that Gary made that septic reference, why can't we just insert that and so it's clear as to what it is we are referencing for the approved, for the use that is approved there. Web, I agree Sean. I don't think that's an issue, I just wanted to make sure. I think we can add that, I don't believe Jim would have a problem with it, but we could run it by him too. And because he's signing it, we're going to have to have him take a look at it. So, it looks like it won't get voted on tonight without Jim's input. Web asked Randi are you all set? Do you have anything? Randi stated it does help. When you put it down, it's very clear what you can cannot do. And I think getting everyone on the same page with some sort of document is the best in this situation because it keeps creating confusion and frustration. Web, alright, very good. Randi continued the last paragraph where it says if you do not intend to move forward with the proposed use no action is required. It could be if you do intend to go beyond the current use as referenced in that DES document no action is required. Web, that sounds good. I don't have a problem with that. Board members? Gary added to Randi's point; it has to be specific. It should be worded in a way that states if the country store is reduced below 2,040 square feet and exceed more than seven seats and serve more than a coffee shop and if there is a change in employees in the post office and a reduction in number of bedrooms, they have to seek a new approval. Web responded, I guess instead of adding all that, I guess it does explain everything instead of looking at the state approved septic design. It is in the letter. It does state that no more seats, this that and the other thing. Do you need something tonight, Kal? Some verbiage? Kal replied, "I think I can make both options. I can make a couple drafts, and I can show them to Jim and then at the next meeting you as a board can discuss the draft options and pick one out. I can write it both ways and then you can decide at the next meeting what you prefer. I'll just need the number for the document so I can go look at it. Web asked, Gary, can you be more specific on that that. We have the public here, so they know. If we can get that into this letter without any major changes.... Discussion ensued about use of immediate time while Gary drafting some wording. He not able to say how long it will take him. Kal offered that he could send it to her later. Web noted he thinks the public has some general idea of what is going to be added to this letter. Gary concurred. Web announced the floor is yours Randi.

Randi advised she has taken a job in Boston. While excited about it, she will be in office Monday, Tuesday and Wednesdays. It is a struggle to get home by seven pm. She was able to move some things to get here tonight but will not be able to do that going forward. This is her last ZBA meeting. She is submitting her resignation tonight. She is not parting without bearing gifts and introduced Chris Drobat, her neighbor, recently retired who lives on Morrill Road and expressed interest in being a board alternate. Chris introduced himself saying he has retired from 30 years of architecture practice both residential and commercial and is familiar with local, municipal and state regulations and practices. Web suggested Chris talk with Lisa about how to go about the appointment process. Web said he will miss Randi. Randi stated this past year has been educational.

Web went on, that being said we will move on to any new business. Kal was not certain, but she has something that might be considered "other" business. It is the Planning Board(PB) application she advised the board about at 141 New Road, there was a special exception the ZBA granted in February of 2025 on the condition that it went to the PB for a site plan approval. It went to the PB last night and got approved, but one of their conditions was ZBA confirmation that the as approved site plan meets the existing special exception or obtained and amended special exception. This is based upon a line in the ZBA minutes from February 2025 approval based on provided testimony and if any changes are made, they will need to come back to the Board. So, what was approved was a multi-purpose educational facility under the Table of Uses Educational Facilities which requires a special exception in the rural zone. Thirty students was discussed, but no maximum was set when it was before the ZBA. Last night the PB approved a maximum of fifteen students and staff per day. The way the application has changed since it came before the ZBA was it has been scaled down a lot. Mercedes Martinez is the applicant, and she presented a full

scale this is a school she wants to build and that's the use that was approved. When she came to the PB she only got approval for a small scale, but it's a starting place for it with the understanding that if she wants to expand to the full proposal, she will have to return to the PB. I need confirmation from the ZBA that she does not need to come back to the ZBA for a whole special exception hearing. Gary, so you said she came in January of 2025. It expired one year from the date it was approved. Is that correct? Kal, it's two years and it's February. Sean stated as far as I'm aware if the approval sought was not to exceed the maximum stated and she's making it smaller, I don't know, in my opinion, we should not have to rehear for that. Web concurred. The use hasn't changed and that's basically what it was. It was a use and he agrees with Sean, the number of students. But this is kind of a startup and she may expand. Kal restated, what she got approval for last night at the PB is what she is allowed to do. She would like to expand the business as time goes on but will have to return to the PB for another site plan approval if she wants to do that. Right now, there are 15 total students and staff. She might increase her size incrementally as time goes on but must go back to the PB each time for a site plan approval. Randi asked why she got set on the number 15 when the ZBA approved her for 30. Curious to know why they would ask the business owner to come back so many times. When she initially met with the PM she said starting this year she wanted to start with 8 kids, but one day she would like to get up to the 30 kids. The PB said at the first meeting she would need a much more detailed site plan than what she provided if she wanted to have approval for 30 students. She was not wanting to do that immediately. She was willing to negotiate down to a number the PB would feel comfortable with the information she provided. Two hearings were held for this, one in July, and continued as they asked for her to provide more information about wetlands and what the fire chief had to say about it and there were a few things needed to add to the site plan. The PB received those things last night, so the application was complete and they discussed it on the merits. She advised she needs in a public meeting the ZBA to say this doesn't need to come back to us. Gary asked who were the original ZBA members who heard the case? Kal advised it was three different hearings and the composition of the board changed over the hearings. The final approval included Chris Evans, Sean O'Brien, Calvin Todd, Jim Wieck. Gary, so there are only two present members remaining who were there then, Jim and Sean. Kal concurred, in terms of who voted on it in the end. She thinks Lisa was an alternate during that time. Scott Herrick attended the first and third hearings, but he chose not to vote at the final hearing because he missed the second hearing. Brandon O'Donnell was an alternate at the time, but he did not vote. Gary, it seems you need to wait for Jim to get back because there is only one member present tonight who knows what was said and what the conditions were. I can't have an opinion on this because I wasn't part of it. Kal offered she has all the minutes here tonight which the board can review. She would very much like an opinion tonight because the school year starts next week or the week after, so we are trying to get her this answer before your next meeting in September. I did not have an opportunity to send the Board this information beforehand because it was just last night the PB said this was going to be a condition. Gary advised the file is pretty thick; he is not comfortable because he wasn't involved and the PB was not specific on why they are sending it back. Kal differed with the PB decision to send it back. It is the same use just scaled down, but one of the PB members brought it up and by the end of the meeting it ended up on the list of conditions. She reviewed the video to confirm a discussion about it and there was none. They said yes, it has changed since it came to the ZBA so we should check our box and have it go back to the ZBA. But they didn't get into any specifics. Calvin spoke saying he believes it is in the notes. She has two businesses. One is the school LLC; the other is her Wild Kids. She is only doing the Wild Kid non-profit right now which is why they wanted to kick it back, just to confirm it doesn't get to get reheard since it's she is not doing what was approved for the school. Gary asked, was the original application for both or for one or the other? Web advised it was for both. He is in agreement the use itself has not changed. Sean advised he thinks this is a no brainer. Web concurred. The use itself has not changed. Sean asked how many people do we need to vote? Web advised we need a minimum of three. Gary, having reviewed the file, said he saw the number of students nowhere in the minutes. He asked if he is missing that in the final approval. Kal advised she read the minutes earlier today. The ZBA did not name the number of students. It is implied only by her application. Gary restated, so there is nothing in the minutes that states a minimum or maximum number of students. Kal, no. Web concurred. Gary, then I don't have an issue. Randi asked if the original application said 30 students. Kal said she thinks one of the supporting documents says 30 students. Sean, it's got to be in one of the minutes because we did multiple hearings. Web concurred with Sean saying there was nothing stating there would be more than 30. We never gave

her a number. Gary, looking at the motion to grant the application, said there is no reference about the number of students, so if the issue is students being 15 or less, he does not see why they would have to come back. There is nothing in the final approval that states the difference between two different entities that may be operating out of the school or Wild Kids. He does not think she needs to come back. Web asked for a motion. Sean made a motion stating we do not need to rehear that. Gary seconded the motion. The board vote was a unanimous decision Mercedes Martinez does not need to come back before the ZBA.

Web went on getting back to the time frame on our approvals, whether it be a special exception or a variance, he thinks....it's kind of quiet, not really quiet in our zoning reg. It does state special exceptions, the only place that it comes up is in general conditions. It states a permit granted under a special exception shall expire if such use shall cease for more than one year. An example is a gas station that sits idle or goes out of business. If it sits idle for more than a year, the use granted is null and void and they must come back. I think we need something where, and this is a good example, if an applicant "sits on it". Rules and regulations change in a year or two. If they haven't done anything, it could make changes to what we approved difficult. This would have to be voted upon by the town in a warrant article. He is thinking we need to add something to the zoning. It could be a year, year and a half, two years, but if it expires, they must return to the ZBA for the special exception or a variance. Randi, we need to be cognizant of the time and impact to the PB. So, if a special exception is secured from the ZBA and they have to go to the PB and it takes them over a year to get through that, I feel that's not on the applicant. Web concurred, but there are circumstances in which that could happen. Most of our hearing are for home occupations, etc., where we rarely send them to the PB for site plan. We usually approve them and they are on their way. I just think we need to add something in there. It could be two or one years. Gary, I just looked it up under RSA 67433. Special exceptions authorized under the paragraph shall be valid if exercised within two years. If they don't exercise it after a two-year period, it voids it. So, to move forward we need to look at RSA 67433 to make sure we are complying if it is going to be added. Web, we can be more restrictive, but not less. We cannot say three years. Gary, to Randi's point, if the applicant is actively seeking approval either from the PB or the State of New Hampshire during this period, and it exceeds that, the clock would not start until they got all their approvals in place. But if they waited two years to go to the PB, if they waited two and a half years, under the RSA to go to the PB, they would have to come back to the ZBA to do it. So, we just have to be sure we are in compliance with RSA 67433, however it is worded in the rules.

Kal advised Tuesday, 15 September there is a land use boards meeting scheduled in the Meeting House. One of the items on the agenda is things to include for land use warrant articles. This could be added to the agenda. She offered to create a draft to present. Gary, added in a subsection 4B2. Gary asked Web then do we even need a warrant article because despite what our ordinance says, we have to follow the state's RSA. Web would like to see it added so everyone is put on notice and keep it clarified for everybody. There could be revisions to a zoning ordinance of a plan that went through and they would have to come back to make a change to a setback, square footage or lot coverage. It remains to discussion by the board and perhaps town counsel has to weigh in if it has to go to a warrant article. Kal, my understanding was that any changes in the ordinance that aren't clerical like typos, etc. Last year we had to go to a warrant article to bring into compliance with a bunch of new RSAs. This will likely be the case going forward to keep up with compliances of RSAs. Web asked does the board think it should be less or that two years is enough. Sean, I think anything less than two years is too quick. Gary agreed, he would not want to make it any more restrictive considering the regulatory climate that we are in. Randi, I concur. Kal will make certain it still has to go to a warrant article. It should be written so we don't have to come back every year to make revisions. It would be good to write it, so it is future proof. Kal will look into it.

Web, Kal in reviewing the Rules of Procedure. On page 4 there is a clerical typo that needs correcting. The ZBA meets on the fourth Wednesday of the month, not the third Wednesday of the month.

Sean made a motion to accept the Minutes of Meeting from 22 July as written. Gary seconded the motion. The board voted to unanimously approve the minutes as written. The meeting adjourned at 8:23 pm.

Respectfully submitted, Lisa Carlson, Clerk
Board of Adjustment

DRAFT