



Zoning Board of Adjustment - Monday, November 2, 2020, 6:30 p.m.

- This meeting will be conducted using the online meeting platform, Zoom. The public may view the meeting online by visiting www.zoom.us/join and enter the Meeting ID: 839 9261 2795.*
- If you are unable to attend the meeting online, you may call the toll-free # (888) 475-4499 and enter Meeting ID: 839 9261 2795 to listen to the meeting.*
- More info on how to access this meeting is available on the Zoning Board of Adjustment webpage at ci.keene.nh.us/zoning-board-adjustment.
- If you encounter any issues accessing this meeting, please call 603-209-4697.

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – September 15, September 22, and October 5, 2020
- III. Unfinished Business
- IV. Hearings:

Motion to Rehear: A Motion to Rehear petition ZBA 20-11, 122 & 124 Water St., Petitioner, Hundred Nights, Inc., has been submitted by Stephen Bragdon of 51 Railroad St., Kevin Beal of Dunbar St., and John Pappas of 69 Dunbar St.

Continued: ZBA 20-16: Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester St., Keene, requests a Change of a Nonconforming Use for property located at 15 King Ct., Tax Map #122-022-000; that is in the Low Density District. The Petitioner requests a Change of a Nonconforming Use from a now vacant fitness center to a lodging house (homeless shelter).

ZBA 20-20: Petitioner, Maureen Baxley Murray Trust of 195 Columbia Turnpike, Suite 125, Florham Park, NJ, represented by Joseph Murray of requests a Variance for property located at 0 Chapman Rd., Tax Map #241-017-000; that is in the Rural District. The Petitioner requests a Variance to permit the construction of a single family residential dwelling and garage on an irregularly shaped lot where lot width at the building line would be less than the required 200 feet in the Rural District per Section 102-791 of the Zoning Ordinance.

ZBA 20-21: Petitioner, Timothy Russett of 40 Bryant Rd, Jaffrey, requests an Enlargement of a Nonconforming Use for property located at 686 Court St, Tax Map #228-008-000; that is in the High Density District. The Petitioner requests an Enlargement of a Nonconforming Use in order to increase size of hospital to accommodate growing clients and staff.

ZBA 20-22: Petitioner, Monadnock Area Peer Support Agency of Keene, represented by Peter Starkey, of Keene, requests a Special Exception for property located at 194-202 Court Street, Tax Map #554-012-000; that is in the Medium Density District. The

Petitioner requests a Special Exception to permit a group home and wellness center per Section 102-392 of the Zoning Ordinance.

ZBA 20-23:/ Petitioner, Rocky Brook Realty, LLC of 850 Marlboro Road, Keene, represented by Andrew Symington of Keene, requests a Variance for property located at 850 Marlboro Road, Tax Map #240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a mixed use in the Rural District per Section 102-332 of the Zoning Ordinance.

ZBA 20-24:/ Petitioner, Rocky Brook Realty, LLC of 850 Marlboro Road, Keene, represented by Andrew Symington of Keene, requests a Variance for property located at 850 Marlboro Road, Tax Map # 240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a commercial retail business and/or light manufacturing business in a Rural District per Section 102-332 of the Zoning Ordinance.

ZBA 20-25:/ Petitioner, Rocky Brook Realty, LLC of 850 Marlboro Road, Keene, represented by Andrew Symington of Keene, requests a Variance for property located at 850 Marlboro Road, Tax Map #240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a free standing sign for a retail/manufacturing business where free standing signs are not listed as a permitted use in a Rural District per Article VIII. Sign Regulations, Division 7, District Regulations of the Zoning Ordinance.

- V. New Business:
- VI. Communications and Miscellaneous:
- VII. Non Public Session: (if required)
- VIII. Adjournment:

**In Emergency Order #12, issued by the Governor pursuant to Executive Order #2020-04, which declared a COVID-19 State of Emergency, the requirement that a quorum of a public body be physically present at the meeting location under RSA 91-A:2, III(b), and the requirement that each part of a meeting of a public body be audible or otherwise discernible to the public at the meeting location under RSA 91-A:2, III(c), have been waived. Public participation may be provided through telephonic and other electronic means.*

The Board chair will provide instructions during the meeting for how the public can provide comment.

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1 **City of Keene**
2 **New Hampshire**

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4
5 **ZONING BOARD OF ADJUSTMENT**
6 **MEETING MINUTES**
7

8 **Tuesday, September 15, 2020**

6:30 PM

Remotely via Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Joshua Greenwald
Jane Taylor
Arthur Gaudio, Alternate
Louise Zerba, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Michael Welsh

9
10 Chair Gorman began by announcing the Board will hear petitions for Belmont Ave., Church St.
11 and Wyman Rd. He further stated the two petitions for Hundred Nights, Inc. will be heard on
12 Tuesday, September 22, 2020 at 6:30 PM. Any questions for these petitions can be directed to
13 the Community Development Department, City Hall.

14
15 **I. Introduction of Board Members**

16
17 Roll call was conducted. Chair Gorman stated that alternate member Arthur Gaudio will be a
18 voting member tonight. He continued that alternate member Louise Zerba will participate in
19 discussions but abstain her vote.

20
21 **II. Minutes of the Previous Meeting**

22
23 Chair Gorman stated that the Board adopted the minutes from June 1, 2020 at their September 8,
24 2020 meeting.

25
26 Chair Gorman called the meeting to order at 6:30 PM. He read a prepared statement explaining
27 how the Emergency Order #12, pursuant to Executive Order #2020-04 issued by the Governor of
28 New Hampshire, waives certain provisions of RSA 91-A (which regulates the operation of public
29 body meetings) during the declared COVID-19 State of Emergency. He explained the procedures
30 of the meeting and how the public can participate.
31

32 **III. Unfinished Business**

33

34 None

35

36 **IV. Hearings**

37 a) **ZBA 20-12:**/ Petitioner, Janis Manwaring of 50 Belmont Ave., Keene,
38 requests a Variance for property located at 50 Belmont Ave., Tax Map
39 #598-034-000; that is in the Low Density District. The Petitioner
40 requests a Variance to permit a change to a detached garage into an
41 Accessory Dwelling Unit (ADU) where a detached ADU is not a
42 permitted use in the Low Density District per Section 102-896 of the
43 Zoning Ordinance.

44 Chair Gorman opened ZBA 20-12 and asked Mr. Rogers to present comments. Mr.
45 Rogers stated this property is in the Low Density District where an attached
46 Accessory Dwelling Unit (ADU) would be allowed under the current Zoning Code,
47 but detached ADU's are not allowed. This is an Ordinance change that occurred in
48 2017 when the State changed its RSAs about ADUs and required municipalities to
49 allow for ADUs in all districts that allow single-family homes, where previously the
50 City of Keene only allowed ADU's in the Low Density District. The City of Keene
51 now allows ADUs in all districts that allow single-family homes, but only attached.
52 Detached ADUs are allowed only in the Rural District as well as a few other districts.

53 Mr. Greenwald asked what the rationale was for allowing only attached ADUs versus
54 detached ones. Mr. Rogers replied that the State separated them out into the
55 categories of attached versus detached, but the City had not. He continued that the
56 City then changed its Ordinance to align with State requirements. Staff's thoughts
57 for having attached ADUs was to try and maintain the single-family dwelling look.

58 Ms. Taylor asked Mr. Rogers what the intended square footage is of this proposed
59 ADU. She continued that the Ordinance states ADU's can be between 400 and 1000
60 square feet and she was curious where this one fits in. Mr. Rogers replied that 576
61 square feet is the proposed size for this ADU. He continued that the Ordinance for
62 the attached ADU is a minimum of 400 square feet and a maximum of 800, so this
63 petition would fit in that category.

64 Mr. Hoppock asked if there are any parking restrictions. Mr. Rogers replied they do
65 require two additional spaces.

66 Chair Gorman opened the public hearing and explained how the public can
67 participate.

68 Chair Gorman recognized Daniel Manwaring, son of Janis Manwaring, co-owner of
69 50 Belmont Avenue.

70 Mr. Manwaring stated that he, his wife Cindy Qu, and his mother Janis Manwaring
71 are at 50 Belmont Avenue. He continued that they are asking to be granted a
72 Variance on a detached ADU because they fit all the other requirements for an ADU
73 except for the fact that they have a detached garage that was on the property before

74 they acquired the property. Granting the Variance would not require any structural
75 changes to the property, especially as far as the actual building or parking.
76 Everything is in place and would fit the requirements and the Ordinance for the
77 ADU.

78 Chair Gorman asked him to elaborate on the five criteria.

79

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

81 Mr. Manwaring stated that an ADU is permitted in the Low Density District if it is
82 attached to the residence. He continued that his proposed ADU is in a detached
83 garage but it is a similar size to the Ordinance's size requirements. He and his wife
84 will live in the ADU and his mother will remain in the house, meeting the requirement
85 that the owner live in the primary residence. It is similar in size to what is proposed
86 by the Ordinance. Finally, it is consistent with the residences and values in the
87 neighborhood.

88

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

90

91 Mr. Manwaring stated that the Spirit of the Ordinance will be observed because he and his wife
92 will be living there. He continued that the original concept of the ADU was to offer a senior
93 family member privacy and independence with close family support and this is the case as his
94 mother is getting older and he and his wife would like to be there to support her. The garage is
95 576 square feet and will have one bedroom, one bathroom, a kitchen, and a living area, as
96 required in the Ordinance.

97 *3. Granting the Variance would do substantial justice because:*

98 Mr. Manwaring stated that no new structure is required to create this ADU. He
99 continued that the garage has stood on the property for over 25 years and has been
100 well-maintained and is in good shape. The garage and house together take up a small
101 fraction of the lot, only 18%. None of the neighbors will be impacted by having this
102 structure too close to their boundaries, which was an original concern of the
103 Ordinance.

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

106 Mr. Manwaring stated that if the Variance were granted, the values of the
107 surrounding properties would not be diminished because the property values would
108 actually be increased. The current garage is assessed at \$7,200. The ADU with its
109 living features will mean the taxes will increase for this property despite little exterior
110 changes to the garage. It is doubtful that the property values in the neighborhood will
111 be affected. He and his wife will only have one car so traffic will be minimal. It is
112 most likely that neighbors and visitors will notice little difference in the exterior of
113 the property, as most single-family homes in this area have two to three cars.

114 *5. Unnecessary Hardship*

115 A. *Owing to special conditions of the property that distinguish it from other*
116 *properties in the area, denial of the Variance would result in unnecessary*
117 *hardship because:*

118 i. *No fair and substantial relationship exists between the general public*
119 *purposes of the Ordinance provision and the specific application of*
120 *that provision to the property because:*

121 Mr. Manwaring stated that there is significant hardship in meeting the requirements
122 because the house is at a four foot higher value than the door to enter the house,
123 therefore it is not possible to build a breezeway to attach the garage to the house
124 which would make it possible to turn the garage into an attached ADU in normal
125 circumstances. It is probable that the previous owner built the garage separate from
126 the house.

127 ii. *The proposed use is a reasonable one because:*

128 Mr. Manwaring stated that ADUs are permitted in the Low Density District
129 supporting the need for families to have a family member close by. This garage,
130 though detached, has been present on the property for over 25 years and is now
131 needed to be converted to an ADU. In the neighborhood there are many detached
132 garages – for example, on Belmont Avenue, half of the garages are detached, as is
133 true on Colby Street, and one in three on Brown Street. All the homes have steps to
134 the homes higher than the garage. Most of the original homes were built for workers
135 of Kingsbury and other manufacturing companies in the 1930s. It is possible that
136 garages were built later as cars became part of our way of living. When his mother
137 bought the home 25 years ago the garage was already detached. It is not possible to
138 build a breezeway to connect the garage to the house. Because they can meet all other
139 requirements in the Ordinance, they are asking that the Variance be granted to waive
140 that the ADU be attached to the house. Again, no building needs to be added to
141 facilitate this ADU and the percentage of the house and garage size in relation to the
142 lot will remain small, at 18%.

143 Chair Gorman asked if there were any questions from the Board.

144 Ms. Taylor asked if Mr. Manwaring could clarify that the proposed ADU is the entire
145 garage. Mr. Manwaring replied that is correct. Ms. Taylor stated that she lives in a
146 house where the garage is about 5.5 feet lower than her house, so she knows from
147 personal experience that it is not impossible to connect the two with a breezeway.
148 She continued that she has concerns about what the Special Conditions of the
149 property are. She referenced Mr. Rogers who had stated earlier that two parking
150 spaces were required for the ADU and she believes that there are probably two
151 required for the primary residence, so she wants to make sure that even if the
152 applicant only has one car currently, that there are four off-street parking spaces at
153 this location.

154 Mr. Rogers replied that that is correct; they would have to provide information for
155 four parking spots during building permit process. Cars parked stacked one behind
156 the other in the driveway might be a possibility. Previously the garage itself was
157 providing the two parking spaces for the house. Mr. Greenwald asked if expanding

158 the driveway is a possibility. Mr. Rogers replied that the parking area on the lot is a
159 possibility as there seems to be space available to add additional parking to the side
160 of the garage. Mr. Greenwald asked if it would meet appropriate setbacks. Mr.
161 Rogers replied that this drawing indicates that it would.

162 Chair Gorman asked if Mr. Manwaring wants to add anything relative to Ms.
163 Taylor's comments relative to the breezeway idea and her struggle to see that there is
164 a hardship there. Ms. Taylor clarified that she was asking because the Board needs to
165 find some sort of special condition of the property. She continued that she is
166 struggling with whether or not the statement in the application that they are unable to
167 build a breezeway is correct, because her own garage is about 5.5 feet lower than her
168 house and she was able to build a breezeway between the two. There were a few
169 steps involved but this house already has steps. She would like clarification because
170 she does not understand the hardship.

171 Mr. Manwaring stated that he first wanted to answer the parking question; there is
172 definite room for more than four cars in the driveway. He continued that, when the
173 house was built, the driveway was paved extra wide, extending a little beyond the
174 garage and is more than deep enough to permit about three cars. Regardless of how
175 many cars he and his wife currently have the driveway could support four to six cars.

176 Mrs. Manwaring stated that she and her family explored briefly with a contractor,
177 should this Variance be granted, the idea of building a breezeway. She continued that
178 it is not that she does not believe Ms. Taylor but she does not see how they would do
179 a breezeway. It is a two-story house and a one-story garage and it did not make sense
180 and seemed very expensive, so they decided to ask for this Variance since the garage
181 meets all the other criteria for an ADU.

182 Mr. Hoppock asked if it is correct that they will have one bedroom and one bathroom
183 in the ADU. Mr. Manwaring replied yes. Mr. Hoppock asked if they have plans to
184 expand the number of bedrooms or bathrooms. Mr. Manwaring replied no, he and
185 his wife are accustomed to small spaces and know they can work well if designed well.
186 Mr. Hoppock asked if it would be connected to City water and sewer and if that is
187 part of the building permit. Mr. Manwaring replied yes.

188 Mr. Gaudio asked how they will heat it. Mr. Manwaring replied that they will adhere
189 to the Code regarding insulation and spray foam, and cellulose on the ceiling. He
190 continued that since it is such a small space they plan to do a mini split, which is
191 energy efficient and more than enough for that small space.

192 Chair Gorman opened the hearing to public comment and explained how members of
193 the public could ask questions via Zoom or telephone. Chair Gorman asked staff if
194 there are any members of the public wishing to speak. Ms. Marcou replied no. Chair
195 Gorman stated that hearing no public input, the public hearing is now closed. He
196 continued that the Board will now deliberate.

197
198 *1. Granting the Variance would not be contrary to the public interest because:*

199 Mr. Gaudio stated that he thinks it would not be contrary to the public interest for a

200 few reasons, but mainly because it would not change the size or the nature of the
201 property and it would still have the same general appearance. That point probably
202 goes with the second criteria also. There is nothing about the application that would
203 give evidence that is a threat to public safety, welfare, or health. There is nothing
204 there to be concerned about. It passes those two.

205 *2. If the Variance were granted, the spirit of the Ordinance would be*
206 *observed because:*

207 Chair Gorman stated that he agrees with Mr. Gaudio's point relative to this. He
208 asked for other comments.

209 Ms. Taylor stated that she has some concerns about this point. She continued that
210 after hearing Mr. Rogers' explanation, there was clearly a reason, although she does
211 not know what it was, when the zoning was changed, that it would be changed
212 specifically in the Low Density District so she has concerns about that. She is not
213 sure if her concerns rise to the level of voting against the petition, but she has
214 concerns, if the Low Density District allowed ADUs previously and that was
215 narrowed to only attached ADUs.

216 Mr. Greenwald stated that he agrees with Ms. Taylor that it is somewhat of a concern,
217 but for him it does not rise to the level of voting no. He continued that in this case, in
218 creating a breezeway, the Ordinance would operate in a vacuum because it is not
219 realistic to do that, even though it *could* be done; anything can be done with money.
220 It is his opinion that aesthetically it would destroy the character of the neighborhood
221 and the house just to satisfy the need for an attached ADU to get approved.

222 Chair Gorman opened the public hearing to ask Mr. Rogers to weigh in on the
223 reasoning to the Ordinance and give any relevant information. Mr. Rogers stated that
224 when the State changed the RSA, a lot of other municipalities did not allow ADUs.
225 The City already did and were thus ahead of the curve. With the changes from the
226 State, the City staff went through the process to change the Ordinance through City
227 Council vote. This change was about trying to maintain the single-family home
228 aesthetics, whether in low, medium, or high density zones. Maintaining the single-
229 family home aesthetic was the main purpose of the change.

230 Chair Gorman asked if the idea was that the breezeway would make it appear like a
231 single-family home, because it was all connected. Mr. Rogers replied that it could be
232 that, and they have to also think about all the different styles of houses in the City.
233 There are many larger houses, such as the Victorian homes on Court Street and
234 Washington Street where converting a garage to an ADU may not happen but
235 creating an ADU within the existing footprint of the house itself could. The general
236 purpose of the change was to maintain the aesthetic of the single-family lot.

237 Mr. Gaudio stated that it is the same aesthetic difference between an attached garage
238 and a detached garage. He continued that it could said that attached and detached
239 dwelling units are the same thing, as far as the aesthetics go. Mr. Rogers replied that
240 that is a decision for the Board to determine.

241 Chair Gorman thanked Mr. Rogers and closed the public hearing again. He asked for

242 further comment on Criteria #2. Hearing none, he moved on to Criteria #3.

243 3. *Granting the Variance would do substantial justice because:*

244 Mr. Hoppock stated that he does not see a public gain achieved by denying this
245 request, and weighs that against the loss to the home owner, which would be
246 significant. He stated granting the Variance would do substantial justice for that
247 reason. He does not see a gain to the public by denying the petition. It would not
248 impact density; it would not hurt parking; it would not weigh against the
249 neighborhood or create a safety issue or block air or light. None of those factors
250 apply. And the structure will not change size.

251 Chair Gorman stated that he agrees with Mr. Hoppock. He continued that he thinks
252 the only thing missing, to keep the Applicant from being here, is the breezeway, and
253 he is not sure that adding one would change things much. It has been fairly well
254 documented that it will be a family-living situation, which is what ADUs are geared
255 toward; and that it would have minimal impact on the exterior aesthetics for the
256 neighborhood appearance.

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

259 Mr. Greenwald stated that is accurate. He continued that he does not think it will
260 have any sort of impact; it will neither improve nor diminish any of the neighborhood
261 property values. He further stated the change will improve the property while also
262 providing some negatives as the property will no longer have a garage. But it will
263 have an ADU, and from what the applicants are describing, it will be very well
264 renovated. It is his opinion that granting the Variance would not negatively impact
265 the neighborhood.

266 5. *Unnecessary Hardship*

267 A. *Owing to special conditions of the property that distinguish it from*
268 *other properties in the area, denial of the Variance would result in*
269 *unnecessary hardship because:*

270 i. *No fair and substantial relationship exists between the general public*
271 *purposes of the Ordinance provision and the specific application of*
272 *that provision to the property because:*

273 *and*

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

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

281 Mr. Hoppock stated that he would rely on subparagraph (B). Chair Gorman stated

282 that he agrees. Mr. Hoppock stated that the Special Conditions are demonstrated by
283 the size of the property. The size of the garage has not changed. Its footprint has not
284 changed. The configuration of the topography of the land has not changed. The
285 difficulty they will have, and what it will do to the character of the neighborhood if
286 they put a breezeway in as discussed before, is it might not be conforming to the
287 other houses in the neighborhood. If you recognize the hardship and try to correct the
288 hardship you will impact the other factors they have been discussing. That is the
289 point about Special Conditions; it could affect the essential character of the
290 neighborhood if drastically altered. He thinks that under subparagraph B, there is a
291 Special Condition of the property that distinguishes it from others in the area and the
292 property cannot be reasonably used in the fashion they would like. A Variance is
293 necessary to enable the use they are proposing, and Mr. Hoppock stated he does not
294 think the Board should deny a reasonable use that is not going to affect the
295 neighborhood.

296 Ms. Taylor stated that she suspects that if there is unreasonable hardship it should be
297 determined under subparagraph A, because subparagraph B requires that if you were
298 to deny the Variance the property could not be used for the purpose for which it is
299 zoned, and it is clear that this property can be used as a single-family residence. She
300 does not think it is a matter of the property not being able to be used in strict
301 conformance with the Ordinance. It is more that if there is a hardship it is due to the
302 relationship between the garage and the house. Although economics cannot be the
303 sole factor in determining hardship, it can be a consideration.

304 Mr. Gaudio stated that he thinks it falls under subparagraph A and he proposes a
305 discussion. He continued that regarding subparagraph Ai, “*No fair and substantial*
306 *relationship exists between the general public purpose,*” that is having a single-
307 family house with an ADU and insisting that it be attached versus detached. There is
308 no fair and substantial relationship between the public purpose of the Ordinance and
309 the specific application. Regarding subparagraph Aii, the proposed use is a
310 reasonable one, with a family member to live in the ADU, to give assistance to other
311 family members.

312 With Chair Gorman asking for a motion to grant a Variance for ZBA 20-12, Mr.
313 Greenwald made a motion. Mr. Hoppock seconded the motion.

314 The Board reviewed the Findings of Fact.

315

316 *Granting the Variance would not be contrary to the public interest. Granted 5-0.*

317

318 *If the Variance were granted, the spirit of the Ordinance would be observed. Granted 5-0.*

319

320 *Granting the Variance would do substantial justice. Granted 5-0.*

321

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

323 *Granted 5-0.*

324

325 *Unnecessary Hardship*

326 A. *Owing to special conditions of the property that distinguish it from other properties in the*
327 *area, denial of the Variance would result in unnecessary hardship.* Granted 5-0.

328 With a vote of 5-0, the Zoning Board of Adjustment approved ZBA 20-12.
329

330 b) **ZBA 20-13:**/ Petitioner, Theodore Chabott of 245 Church St., Keene,
331 requests a Variance for property located at 245 Church St., Tax Map
332 #573-060-000; that is in the Medium Density District. The Petitioner
333 requests a Variance to permit the construction of a three car garage
334 within five foot setback where ten feet is required per Section 102-
335 791 of the Zoning Ordinance.
336

337 Chair Gorman opened ZBA 20-13 and asked Mr. Rogers to present comments. Mr. Rogers
338 stated that this property is in the Medium Density District and the Applicant is requesting to
339 create a three car garage with only a five foot setback, where ten feet is required per the Zoning
340 Ordinance. He continued that the Applicant will further explain, that the he has purchased the lot
341 right behind his which is on Kirk Court. The Applicant's intention is to move his existing garage
342 to the other lot after merging the two lots into one. The map in the Board's packets shows it in
343 an L shape lot with frontage on Kirk Court, as well. The intent is to move the small one car
344 garage to the new section and behind the house, build a three-car garage with a setback of five
345 feet instead of ten.

346 Chair Gorman asked if the Applicant has merged the lots. Mr. Rogers replied yes, he will be
347 merging the lots. He continued that the garage would not be allowed on the other property
348 unless the two properties were merged, because a garage is not an allowed primary use on its
349 own lot. Chair Gorman asked if it was currently a residential, building lot. Mr. Rogers replied
350 yes. Chair Gorman asked if it is correct that it will not be conforming, if the Applicant chooses
351 to subdivide the two lots at a later time. Mr. Rogers replied that he assumes the Applicant would
352 have to re-draw and pull that lot off, with the new garage if the Variance were granted, the side
353 setback would be conforming but the rear setback would not be, unless he re-drew the property
354 line to match the setbacks required.

355 Ms. Taylor stated that she sees an outline of the property with the additional lot. She continued
356 that it looks like the one-car garage is still pictured as being on the original lot and there is a new,
357 large building behind the residence. She asked for clarification. Mr. Rogers replied that the
358 small building on the right-hand side is the one-car garage. He continued that the larger structure
359 behind the house he believes is a swimming pool. He is not sure if it is active. His
360 understanding is that it would be filled in and removed. Ms. Taylor replied that she is still
361 confused as to what is where. Mr. Rogers showed the main house, the swimming pool, and the
362 one-car garage just to the right that would be moved to the south on the new portion of the lots
363 that would be merged. Where the swimming pool is currently is the location of the proposed
364 new three car garage. Ms. Taylor asked where the garage is going to be moved to, is that the
365 side line they have under consideration. Mr. Rogers replied that the existing garage that is being
366 relocated will meet the side setback. It will be moved a little toward the southwest, and from

367 what is shown on the proposal, it meets all the setbacks. Ms. Taylor stated that she still does not
368 understand.

369 Mr. Gaudio asked if the new garage will be on the east or west side of that lot. Mr. Rogers
370 replied that the new garage will go just about where the pool is shown currently, the side setback
371 on the left-hand side, which is what they are seeking a Variance from.

372 Mr. Greenwald asked if the proposed garage will be accessed from the Church St. side. Mr.
373 Rogers replied yes, from the existing curb cut on the Church St. side. Mr. Rogers stated that if
374 the applicant desired a second curb cut there would be an allowance but he would have to go
375 through the Public Works Department, the City Engineer, and with the process for a single-
376 family home to have a second curb cut. Chair Gorman stated that he thinks applying for a
377 second curb cut is a Planning Board issue as well. Mr. Rogers replied that the rules have
378 changed; curb cuts can now be approved administratively.

379 Chair Gorman opened the public hearing and explained how members of the public can
380 participate, via Zoom or telephone.

381 Chair Gorman recognized the homeowner, Ted Chabott.

382 Mr. Chabott stated that his proposal is to move the one-car garage onto the back property. He
383 continued that those two pieces of property have already been merged. He wants to build a
384 three-car garage basically in the pool area within five feet of the side setback in order to have
385 ample room to swing into the garage from his property as his property is narrow. Moving the
386 garage five feet back is what the Variance request is for.

387 Chair Gorman asked him to go through the five criteria and why he believes his property is
388 suitable to be granted this Variance.

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

390

391 Mr. Chabott stated that the garage would be behind the house, barely visible from the street. He
392 is requesting the setback so the vehicles would have proper room to swing into the garage.

393

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

395

396 Mr. Chabott stated that the garage would sit five feet from the property line instead of ten feet,
397 which his neighbor has no objection to.

398

399 *3. Granting the Variance would do substantial justice because:*

400 Mr. Chabott stated that it adds value to the neighborhood.

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

403 Mr. Chabott stated that he is spending several thousand dollars to build this garage so it should
404 be an asset to the neighborhood.

405 5. *Unnecessary Hardship*

406 A. *Unnecessary Hardship Owing to special conditions of the property that*
407 *distinguish it from other properties in the area, denial of the Variance would*
408 *result in unnecessary hardship because:*

409 i. *No fair and substantial relationship exists between the general public*
410 *purposes of the Ordinance provision and the specific application of that*
411 *provision to the property because:*

412 Mr. Chabott stated that the reason for the Variance is that his property is only 57.5 feet wide, and
413 he wishes to build a garage on the same footprint as the swimming pool except five feet toward
414 the west so he can have ample room to swing his vehicles into the garage.

415 ii. *The proposed use is a reasonable one because:*

416 Mr. Chabott stated that he is 77 years old and is finding it more difficult to work on his classic
417 cars in alternate locations and would like to work on them in his own house in his senior years.

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

423 Chair Gorman asked if Mr. Chabott wants to elaborate on subparagraph B.

424 Mr. Chabott stated that it will be barely visible from the street. He continued that he will vinyl
425 side the garage to match his house so it will blend right in.

426 Chair Gorman asked if the Board has questions.

427 Mr. Gaudio asked if is there any reason why Mr. Chabott, instead of moving the one-car garage
428 back to the rear lot, could not build the three-car garage where there is plenty of space. He
429 continued that he could even use the same driveway and swing around to it, or as mentioned
430 earlier, get another curb cut to get to it directly from Kirk Court without invoking the need for a
431 Variance.

432 Mr. Chabott replied that he thought the Board might ask that, and he has multiple reasons. He
433 continued that firstly, on the Kirk Court lot; he has gardens and blueberry and raspberry bushes.
434 If he put the garage there he would have to remove those. If he were to build a garage on that
435 property he would have to set it way back so that if anyone ever wanted to build a house in front
436 they could. That would need a curb cut and new driveway. But the main reason is the Kirk Court
437 property is about four feet lower than the main property and is in the flood plain. He would have
438 to spend a lot of money to do a lot of filling, to be able to put the garage in that location.

439 Mr. Gaudio replied that he would have to do that for the single car garage, too. Mr. Chabott
440 replied that he is planning on raising it three feet off the ground instead of one foot like it is right
441 now.

442 Mr. Greenwald stated that he had a question for Staff, asking for clarification on the two lots
443 having been merged. Mr. Rogers replied that was correct. Mr. Greenwald asked if that it means
444 the Kirk Court lot is no longer a building lot, nor could it be, being only .2 acres. Mr. Rogers
445 replied that is correct. Mr. Greenwald stated that he was not sure if the applicant knew that.

446 Mr. Chabott stated that lot was never considered a building lot because of its size. He continued
447 that about five years ago the City raised his taxes because they came up with new rules saying
448 that size lot is a viable building lot.

449 Chair Gorman asked Mr. Chabott if it is correct that he has already merged the two lots. Mr.
450 Chabott replied yes, he did that on the advice of the City because they said he would not be able
451 to move the one-car garage onto that property without merging the properties first. Chair
452 Gorman stated that the reason for the merger was because you cannot have a use separate lot that
453 is just a garage; that is not an allowable use, so by merging the lots Mr. Chabott was able to have
454 the garage there, so that is accurate, but he thinks now it is no longer a building lot since it has
455 been merged. Mr. Chabott mentioned the thought of someone putting a single-family home there
456 down the road, which he thinks is what led Mr. Greenwald to his question. Chair Gorman asked
457 if Mr. Chabott understands that the Kirk Court lot is no longer an independent, buildable lot. Mr.
458 Chabott replied no, he did not have that understanding. Chair Gorman asked if that affects or
459 impacts Mr. Chabott's stance here tonight. Mr. Chabott replied no, he does not think it will. He
460 continued that he was not ever planning on using it as another building lot.

461 Chair Gorman asked if that would impact Mr. Chabott's stance on Mr. Gaudio's previous
462 question about building the garage more in a location that is indifferent to these setback
463 restrictions that actually met the restrictions. Mr. Chabott replied that he does not know how to
464 answer that, other than to say he would rather have the garage closer to his house than out on that
465 back lot. Chair Gorman replied that is fair. He stated he wanted to make sure Mr. Chabott
466 wanted to proceed with this process and that that is his first preference, knowing now what he
467 knows about the lots being merged. Mr. Chabott replied yes, this is his preference.

468 Ms. Taylor stated that her understanding is that you cannot have an accessory building on a
469 separate lot and that is why there was advice to merge the two lots. She continued that she thinks
470 what would have to happen, whether or not there is enough size there to be a buildable lot, is
471 there would have to be a re-subdivision, which is not the simple on merged lots. Mr. Gaudio had
472 raised the question she was going to ask, because once the lots are all one after a merger, the
473 question is whether the three-car garage can be fit somewhere on the lot. She thinks personal
474 preference is not adequate.

475 Ms. Taylor stated that her remaining question is probably for Mr. Rogers, and maybe it is not a
476 factor because after merger it is essentially one lot. She questions whether the addition of the
477 garage and extra pavement cause any permeable surface issues, or are those requirements still
478 met now that the two lots have been combined? Mr. Rogers replied that when the building

479 permit is applied for the garage, that is for a criteria to be reviewed, to make sure those
480 requirements are met. He assumes that they would be taking something that might not be
481 conforming at the moment and making it better by merging these two lots, where you have that
482 whole second lot that is green space and adding it to a lot that might be non-conforming and not
483 have enough green space. So Mr. Chabott would possibly be taking a condition and making it
484 better, because he is also taking an area that was covered by a swimming pool and replacing it
485 with a garage.

486 Chair Gorman asked Mr. Rogers for clarification about Ms. Taylor's comment that you cannot
487 have an accessory use on a building lot. Mr. Rogers replied not in this district. He continued
488 that in certain districts you could have a parking lot or storage, but that is not an allowed primary
489 use in the Low Density District.

490 Mr. Hoppock stated that he is looking at the picture of 0 Kirk Court. He asked how close the
491 propose three-car garage is to an abutter. Mr. Rogers replied that the second structure, the
492 swimming pool, is the ballpark area for where the garage would go, and that is the property line
493 where Mr. Chabott is looking for the Variance for the five feet to the left. It looks like the house
494 is close to Church Street, not on Kirk Court. Mr. Hoppock asked Mr. Rogers to show the
495 location of the driveway on the map. Mr. Rogers showed how the driveway goes right to the
496 current one-car garage.

497 Mr. Hoppock asked Mr. Chabott why it could not be a two-car garage and serve his needs,
498 without encroaching on any setbacks. Mr. Chabott replied that he would still want it five feet
499 from the property line so he would have ample space to swing into it, because his property is
500 narrow at only 57.5 feet. He continued that he has three classic cars and thus would like a three-
501 car garage. He is also planning to add a lift in the garage to be able to work on his cars during his
502 senior years. The Variance would be to set the three-car garage toward the west, toward Main
503 St., five feet instead of ten feet, so he can have ample room to swing into the garage on his
504 narrow piece of property.

505 Ms. Taylor stated that she is still troubled by why he cannot put the garage on the back portion of
506 the merged lot, because it looks like it is 115 feet by 75 feet. Mr. Chabott replied that he could,
507 but it is lower and he would have to do a lot of filling and do another curb cut, and it would be
508 further away from his house and he would need to put in a new driveway. He continued that
509 right now he has a driveway and would just have to add a few feet onto it. He further stated he
510 would prefer the three car garage behind his house.

511 Chair Gorman asked if there were any more questions from Board members. Hearing none, he
512 asked if there were questions from members of the public. He called on Patricia Allen.

513 Patricia Allen, of 95 Wyman Rd., asked if there are noise concerns about having work done on
514 classic cars in a residential neighborhood. Chair Gorman asked if she is asking about zoning
515 restrictions placed on such activities. Ms. Allen stated that she is new to Keene and not familiar
516 with the Zoning Code or the City's Ordinances. Chair Gorman stated that Mr. Chabott works on
517 his own cars in his home, not as a business. Mr. Rogers replied that is correct, Mr. Chabott
518 would not be allowed to build a garage in this location to run a business working on other

519 people's cars. He continued that the City's noise ordinance would apply if needed, such as if Mr.
520 Chabott was using loud equipment late at night, or out in the driveway, but he assumes that
521 would not happen.

522 Andrew Weglinski, of 28 Valley St., stated that Mr. Chabott takes good care of his property.
523 He continued that he is a good neighborhood and he has seen Mr. Chabott's property, cars, and
524 blueberry bushes, which Mr. Chabott generously shares with neighbors. He appreciates that
525 there are no other neighbors that have issues with this proposal, and neither does he, but he
526 prefers the new garage to be on the Kirk Court. With that being said, he understands Mr.
527 Chabott's reasoning's for wanting the new garage behind his home. He finished by stating Mr.
528 Chabott is a great neighbor and he defers to his reasoning about this.

529 Chair Gorman closed the public hearing for the Board to deliberate. He continued that he will
530 re-open the public hearing if needed to ask questions of staff, the petitioner, or the public.

531 The Board reviewed the Findings of Fact.

532 Mr. Hoppock stated that he is not sure the fifth criterion is met. He continued that they do not
533 have enough information about the project's potential to alter the essential character of the
534 neighborhood. He doubts it would threaten health, safety, or welfare. He is not convinced the
535 fifth criterion is met and is not sure if the Board should spend time on the other criteria if that is
536 not met, because it is necessary to meet all the criteria.

537 Chair Gorman stated that they will thus start with the fifth criterion and move backwards through
538 the others.

539 *5 Unnecessary Hardship*

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

542 *i. No fair and substantial relationship exists between the general public purposes of*
543 *the Ordinance provision and the specific application of that provision to the*
544 *property because:*

545 *and*

546 *ii. The proposed use is a reasonable one because:*

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

552 Mr. Hoppock stated that the only Special Condition he heard was the narrow driveway and that
553 is obviated by the fact that Kirk Court would be an alternative, so the width of the lot is not
554 really a Special Condition of the property. Mr. Chabott has other options, so he does not see
555 how the width or location of the driveway is a Special cCondition that distinguishes it from other

556 properties. The general purpose of the Ordinance is to decrease density and congestion and he
557 thinks this could impact that. There is a fair and substantial relationship between that general
558 purpose and the application to this property. It is clear to him that there are other options
559 available. That is indicative of that fair and substantial relationship exists, as opposed to not
560 existing. He has a hard time convincing himself that this application meets the fifth criterion.

561 Mr. Greenwald stated that he has a question for Staff, stating that he will assume, that the garage
562 Mr. Chabott is proposing will have direct entry into the home. Chair Gorman stated that he will
563 briefly reopen the public hearing and asked Mr. Chabott to respond. Mr. Chabott stated that the
564 garage will be separate from the house, sitting approximately six to seven feet away from the
565 back of his house. Mr. Greenwald asked if Mr. Chabott would still have to walk outside of his
566 house to access the garage. Mr. Chabott replied that is correct. Chair Gorman closed the public
567 hearing again.

568 Mr. Greenwald stated that the hardship he is focused on is what Mr. Chabott was alluding to, the
569 fact that he is 77 years old and his “commute” to his garage, where he does the activity that is his
570 main passion right now. If that commute to his garage was “just” an extra 20 feet, that 20 feet
571 might be more of a hardship to Mr. Chabott at his age than it would be to someone younger. He
572 sees a hardship if Mr. Chabott is forced to put the garage further away from his home. His
573 accessibility to it would be a hardship, even though yes, he could still access it, but not in the
574 manner he wants or needs.

575 Chair Gorman stated that he sees what Mr. Greenwald is saying, but from his vantage point, the
576 hardship needs to be a hardship of the property. He continued that as much as he wants Mr.
577 Chabott to be able to enjoy his later years on his passion, which is very reasonable, the hardship
578 needs to go with the property. The Board is not considering whether to give Mr. Chabott a
579 Variance, they are considering whether to give 242 Church Street a Variance. He understands
580 what Mr. Greenwald is saying and shares some of that same sentiment and would love for Mr.
581 Chabott to be able to do this project the way he wants to do it, but unfortunately, he does not
582 think it fits within the parameters of the hardship.

583 Ms. Taylor stated that unfortunately, age is not a Special Condition of the property, although
584 there are times when she wishes it was. She continued that she is also having concerns, because
585 the front part of the lot may be narrow but there is still ample space on the property to have a
586 three-car garage without violating any of the setbacks. Having a garage is reasonable, but having
587 a three-car garage on the front of this lot may not be reasonable. She thinks the project could be
588 accomplished within the boundaries of the property without violating setbacks.

589 Mr. Gaudio stated that he agreed. He continued that the issue is with the property, and like Chair
590 Gorman said, the property is not the hardship. He certainly understands Mr. Chabott’s personal
591 issue with this.

592 Mr. Greenwald stated that he speculates that had Mr. Chabott known the details about his
593 allowable use for that property, his whole plan would have been different, even though Mr.
594 Chabott stated it is not going to affect his decision. He continued that the fact that Mr. Chabott is
595 moving his one-car garage back onto the merged property because potentially in the future

596 someone might want to build a house there, and now he knows they cannot, Mr. Greenwald
597 wonders, if the Applicant would have applied for a Variance This bothers him. He is not saying
598 it amounts to Mr. Chabott's property having a hardship. Mr. Greenwald does not think Mr.
599 Chabott had an adequate chance to think through other alternatives for his three-car garage
600 because he thought probably that other portion of the lot was going to be used. He goes back and
601 forth on whether he thinks there is a hardship, because Mr. Chabott could in fact put the three car
602 garage on the merged lot.

603 Chair Gorman asked if the Board has suggestions for how they may move forward. He
604 continued that this does not leave a great feeling with him, either, but he just does not think the
605 criteria have been met. He asked if, for general discussion purposes, the Board sees any merit to
606 giving Mr. Chabott a chance to expound on any hardship, though they have given him ample
607 opportunity to do so. He has essentially admitted that this is more of a want than a need.
608 According to Chair Gorman, it seems like the Applicant could still accomplish his mission of
609 having a three-car garage directly where he lives, so that he can still have generally what he
610 wants, just not exactly or specifically and with maybe a little more cost.

611 Ms. Taylor stated that she has concerns with opening the public hearing once they are in
612 deliberations, but she sees two options: one, complete creating a record on all criteria and then
613 vote, or two, Mr. Chabott could potentially, if he chose to, withdraw his application and not have
614 a negative vote on the application which could, potentially, preclude him from bringing forward
615 a reconfigured application.

616 Mr. Greenwald stated that for the record, he completely agrees with Ms. Taylor and he thinks
617 option two would be most advisable because he thinks there is a lot of new information that has
618 come to the applicant's attention and he might need more time to rethink what he needs to
619 accomplish.

620 Chair Gorman replied agreement and stated why he specifically asked Mr. Chabott if he wanted
621 to carry forward with this petition. He continued that he does not agree with Ms. Taylor that he
622 cannot reopen the hearing, nor was he suggesting that. He was suggesting some sort of
623 alternative, like she mentioned, a withdrawal of sort from the Applicant if he is interested, so he
624 could take another reapply with a new application. That could be no Variance application at all,
625 or Mr. Chabott coming back with a new version of the application.

626 Mr. Greenwald stated that he thinks Mr. Chabott needs to fully understand what his allowable
627 uses are for the property now that he has merged them and what he can and cannot do. He might
628 have thought that moving the one-car garage onto the Kirk Court property meant something else.
629 It sounds like there was some misunderstanding between the Petitioner and the City or whoever
630 he worked with to merge the properties. He personally would like Chair Gorman to reopen the
631 public hearing to give Mr. Chabott the opportunity to withdraw his application.

632 Chair Gorman asked if Ms. Taylor agrees that that is a viable option. Ms. Taylor asked if he
633 means withdrawing. Chair Gorman replied that he means giving the Applicant the opportunity,
634 should he choose to do so. Ms. Taylor replied yes.

635 Chair Gorman asked if other Board members agree. Mr. Hoppock replied yes, but he shares Ms.
636 Taylor's concern about reopening the public hearing for further fact-finding after deliberations
637 commenced. He continued that it is sort of analogous to having the jury deliberate and then
638 having the trial resume in the middle; it makes him uncomfortable. Chair Gorman reminded the
639 Board of the language: "*the Board will deliberate and decisions will be conducted in public, and*
640 *if needed, the Chair will reopen the public hearing to ask any technical or procedural questions*
641 *of the staff, the petitioner, or the public.*" Mr. Hoppock replied that it is opinion that the Board
642 can ask technical or procedural questions, but not substantive ones and asking Mr. Chabott if he
643 would like to continue would be a procedural question.

644 Chair Gorman opened the public hearing to ask Mr. Chabott what his preference would be, to
645 continue with the current application or to withdraw. Mr. Chabott stated that his preference is
646 still to put the new garage where the swimming pool is now. He continued that if the Board does
647 not approve the Variance, he guesses he could put it on the back property but he would rather
648 not. He is not worried about building a house out there; that does not bother him a bit because he
649 was not ever planning on selling it as a buildable lot or putting anything else out there.

650 Chair Gorman stated that in its deliberations the Board has come to a certain level of conclusion.
651 He asked if Mr. Chabott would still like to continue with his current application. Mr. Chabott
652 replied yes. Chair Gorman closed the public hearing. He asked the Board to continue to
653 deliberate, moving on to criterion four.

654 *If the Variance were granted, the values of the surrounding properties would not be diminished*
655 *because:*

656 Mr. Hoppock stated that he does not believe there is any evidence that this would impair
657 surrounding property values. Chair Gorman stated that he does not think it would diminish
658 surrounding property values, either. Mr. Greenwald agreed.

659 *Granting the Variance would do substantial justice because:*

660 Mr. Hoppock stated that he is having a hard time with whether the loss of personal preference is
661 a loss that is outweighed by the gain to the general public. He continued that he is not sure this is
662 met, either. Ms. Taylor stated that she agrees with Mr. Hoppock.

663 *If the Variance were granted, the spirit of the Ordinance would be observed because:*

664 Mr. Gaudio stated that he disagrees; he does not think the Spirit of the Ordinance would be
665 observed, because it could be complied with by using another approach.

666 *Granting the Variance would not be contrary to the public interest because:*

667
668 Chair Gorman stated that he thinks Mr. Hoppock already covered this one a little bit, but
669 generally speaking, this application does not appear to be contrary to the public interest. Mr.
670 Hoppock stated that he does not think they have enough information about whether it would alter
671 the character of the neighborhood to any degree and with the option that the garage be
672 constructed on the Kirk Court lot, it is difficult for him to agree. He is not sure this criterion is

673 met, but erring on the side of caution, he would say that it is, even though there is not enough
674 information to really say.

675 Chair Gorman asked if there were any other comments from the Board on any of the criteria.
676 Hearing none, he made a motion for the Zoning Board of Adjustment to approve ZBA 20-13.
677 Mr. Hoppock seconded the motion.

678
679 *Granting the Variance would not be contrary to the public interest.* Granted 3-2. Ms. Taylor
680 and Mr. Hoppock were opposed.

681
682 *If the Variance were granted, the spirit of the Ordinance would be observed.* Denied 5-0.

683
684 *Granting the Variance would do substantial justice.* Denied 5-0.

685
686 *If the Variance were granted, the values of the surrounding properties would not be diminished.*
687 Granted 4-1. Ms. Taylor was opposed.

688
689 5. *Unnecessary Hardship*

690
691 A. *Owing to special conditions of the property that distinguish it from other properties in the*
692 *area, denial of the Variance would result in unnecessary hardship.*
693 Denied 5-0.

694
695 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
696 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
697 *property that distinguish it from other properties in the area, the property cannot b be*
698 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
699 *necessary to enable a reasonable use of it.*
700 Denied 5-0.

701
702 The motion to approve ZBA 20-13 failed with a vote of 5-0.

703
704 Chair Gorman made a motion for the Zoning Board of Adjustment to deny ZBA 20-13. Mr.
705 Hoppock seconded the motion, which passed by a unanimous vote of 5-0.

706
707 c) **ZBA 20-14:** Petitioner, David Borden of 55 Langley Rd., Keene,
708 requests a Variance for property located at 173 Wyman Rd., Keene,
709 owned by the Bruce L. and Phyllis R. Borden Revocable Trust, of 173
710 Wyman Rd., Keene, Tax Map #210-048-000 that is in the Rural
711 District. The Petitioner requests a Variance to permit a three +/- acre
712 lot with 2.85+/- acres of upland and 0.15+/- acres of delineated
713 wetlands, where five acres are required per Section 102-791 of the
714 Zoning Ordinance.

715 Chair Gorman asked Staff to present comments. Mr. Rogers stated that this is a

716 property located in the Rural District, with frontage on Wyman Rd. and Abbott Rd.
717 He continued that there is a discrepancy between what the Assessor's database has
718 for this lot's acreage and what the owner's survey shows. The survey is correct. It
719 is a 26.5-acre lot. The applicant wants to be able to create two lots, with one lot
720 where the existing house is, on the upper portion of the map, and the other lot would
721 have five acres of upland. The Applicant had a second Variance application
722 submitted but has since withdrawn it as their surveyor was able to find enough
723 upland to create a required acreage lot. The Applicant is asking for a lot to be
724 created that has three acres where 2.85+/- acres is upland (dry land) and .15+/- acres
725 is delineated wetlands.

726 Mr. Hoppock asked if it is correct that that is one of the two lots. Mr. Rogers replied
727 yes, the second lot would be created if the Variance were approved; the Applicant
728 would have to go through the process with the Planning Board to subdivide the 23.5
729 acres with approximately six acres of upland scattered throughout.

730 Ms. Taylor asked if additional upland acreage on the remaining portion of the parcel
731 was found, why some of that acreage could not be added to make five acres,
732 eliminating this request. She continued that might be a question for the Applicant
733 and not Mr. Rogers. Chair Gorman replied that Mr. Rogers is nodding his head that
734 yes, this is a question for the applicant.

735 Ms. Taylor stated that there is such a significant discrepancy between what the
736 Assessor's database and the survey show, so she hopes the City is following some
737 procedure to correct that. It looks like, according to the survey, that the abutter to
738 the southeast gained some property. She does not know what the process is to have
739 the maps corrected but hopefully the Community Development Department is
740 talking with the Assessor's Department so this is corrected. Mr. Rogers replied yes,
741 the Assessing Department will be making corrections though it will not be reflected
742 until April 1 of next year, however.

743 Chair Gorman asked if there were any more questions for Staff. Hearing none, he
744 opened the public hearing and shared information about how the public could
745 participate via phone or the Zoom platform.

746 Chair Gorman asked to hear from David Borden, representing 173 Wyman Rd.

747 Mr. Borden stated that as a family member of the owners, he would review the
748 criteria and then answer questions.

749

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

751 Mr. Borden stated that his request on a smaller than required lot size fits in with the
752 current neighborhood characteristics. He continued that many lots in the area are
753 much smaller than this request which he feels is reasonable.

754 *2. If the Variance were granted, the spirit of the Ordinance would be observed*
755 *because:*

756 Mr. Borden stated that the neighborhood would still be very rural in nature. He

757 continued that wetlands would not be disturbed or built upon. The property will still
758 have the required Rural District 50-foot setbacks.

759 *3. Granting the Variance would do substantial justice because:*

760 Mr. Borden stated that this Variance would allow an additional building lot that
761 exceeds the size of many in the neighborhood.

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

764 Mr. Borden stated that the proposed 3-acre lot fits in nicely with the existing
765 neighbors with no new building proposed. He continued that their survey map
766 shows the proposed line noting that there is a stone wall that is a natural divider of
767 that piece of property. His Uncle Bruce Borden maintained the property from the
768 house down to the stone wall, always maintaining it as a well-kept and well-mowed
769 property. A proposed buyer would like to farm the land and raise herbs, which is
770 natural for that location. He further stated that this stone wall was chosen as the
771 property line as the northern part is the best farmland.

772

773 *5. Unnecessary Hardship*

774 *A. Owing to special conditions of the property that distinguish it from other*
775 *properties in the area, denial of the Variance would result in*
776 *unnecessary hardship because:*

777 *i. No fair and substantial relationship exists between the general*
778 *public purposes of the Ordinance provision and the specific*
779 *application of that provision to the property because:*

780 Mr. Borden stated that due to the fact that there is over 31 acres it does not appear to
781 be unreasonable to have two building lots. He continued that a 3-acre division with
782 existing buildings allows an affordable sale to take place and a second lot to be
783 defined to conform to standards.

784 *and*

785 *ii. The proposed use is a reasonable one because:*

786

787 Mr. Borden stated that this subdivision fits nicely with the existing character of the
788 neighborhood. Being finished with his presentation, he asked if anyone had
789 questions.

790

791 Ms. Taylor asked if the property currently has City water and sewer or if it is well and septic.
792 Mr. Borden replied the property has a well and septic. Ms. Taylor asked if there would be room
793 on this proposed three acres, considering the wetlands, in the event that the septic failed. Mr.
794 Borden replied that the septic will be brand new within the month, as a condition of the sale. He
795 continued that it has a State-approved design and to be installed before the sale of the property.

796

797 Mr. Hoppock stated that on the map, north of Abbott Rd. there is a well site with a question
798 mark. He asked if that is where the well will be. Mr. Borden replied no, that is an old well that
799 was discontinued years ago. He continued that his Uncle had a new well drilled that is on the
800 house side of Abbott Road which is marked on the map though the label is small.

801
802 Mr. Hoppock asked if there is a reason why they cannot move the proposed line south two acres.
803 Mr. Borden replied that that is where they started in their thinking. He continued that as you can
804 see from the upland delineation, it would take two acres of “prime upland,” so it was hard to find
805 enough upland to get five acres for the south, larger lot. Since the family was asking for a
806 Variance, they thought cutting the lot size down would be a smart move to save the upland for
807 the calculation of the other lot. His Uncle wanted to build a house there one time so he is
808 familiar with the area. He continued explaining that if the boundary line were to be moved down
809 to include the two acres for the northern proposed lot, the southern larger lot would not be as
810 well configured. Not adding the two acres to the house lot does not affect it at all; it is a still
811 very nice lot. The division of the stone wall really frames the property well. As the family
812 discussed the best solutions for a subdivision, they evolved with this application believing it to
813 be the best of their ideas. It made sense that the house is well suited for that three acre lot while
814 saving the upland for the southern larger lot, giving that lot plenty of design opportunities for
815 whoever purchases it.

816
817 Mr. Gaudio asked if Mr. Borden is saying that if they added the two acres south it would not
818 leave enough for the other property to be used as a building lot, asking if this was an upland
819 issue. Mr. Borden replied that the majority of the lot is wetlands. He continued that when they
820 had it delineated, they found X amount of upland and it did not give a lot to work with on the
821 second lot and the first lot has an approved septic system that is to be installed, and so by moving
822 the line north, the two acres, it just made a lot of sense with the upland issue on the other one.

823
824 Mr. Gaudio asked for further explanation on the map. Mr. Borden replied that between the two
825 pieces on this proposed line division they end up with six acres of upland. Mr. Gaudio asked if it
826 is accurate to say that moving the property line two acres south would leave possibly leave one
827 acre of upland on the southern larger lot, which does not meet the requirements. Further, Mr.
828 Gaudio stated that if the boundary line was moved to split the property to make three acre lots
829 which would make for two nonconforming lots. Mr. Borden replied that it is a little better than
830 that. You end up with the 3-acre upland lot above with the house, and about six acres of upland
831 on the second lot. Mr. Borden stated the family did not know there was six acres of upland on
832 the second lot until the surveyor went back and delineated further upland. He continued stating
833 there may be more upland on the southern larger lot, down along the border with Hillside Village
834 but it is expensive to have the delineation done. He was under the impression at first that the
835 upland had to be contiguous and then learned that it does not, hence the reason for the surveyor
836 to return. Once there was more upland discovered, the second Variance application was
837 withdrawn. He did state that there is a lot of wetland that is unbuildable. He is trying to make a
838 marketable piece that someone could build upon and meet all the regulations. The logical thing
839 to do to accomplish that was to shrink the house lot.

840
841 Mr. Gaudio asked if his understanding is correct that there is the three acre northern lot and six
842 or so acres in the south, maybe somewhat non-contiguous, but putting them together makes nine
843 acres. You cannot make ten acres to split the whole lot into two qualifying lots. Mr. Borden
844 replied that if they had kept the property line at the five acres they would have kept the second
845 Variance request in for the lot that did not contain five acres of upland. Once they found that
846 they had more upland, and that even though it was not contiguous it qualified within the Rural
847 District requirements, they moved the line to make a smaller lot at the upper end. The house is
848 quite old, needing a lot of work, and the Applicant stated a lot of concessions on the property had
849 to be made to sell it. The prospective buyers had no problem with the size of the property
850 reducing as they saw the prime acreage was north of the stone wall. As what is proposed this
851 evening, they hope the Board will find their application in favor.

852
853 Ms. Taylor stated that she is confused now. She continued that she does not know if this is a
854 question for Mr. Rogers, but asks if the upland has to be contiguous or not to qualify for the five
855 acres. Mr. Rogers replied that under Section 102-1494 of the Zoning Code, the calculation of
856 minimum lot size states *“For purpose of calculating the minimum lot size for the subdivision of*
857 *land, there is a surface water resources defined in this article shall be excluded from the area*
858 *used to calculate the minimum lot size.”* He continued that it does not speak to anything along
859 the contiguous portion of this. The Planning Board rules and regulations would address, and he
860 believes this that is what the Applicant is attempting. For a subdivision to occur, the Applicant
861 will want to try and create a buildable lot. He thinks that is what the Applicant is doing by
862 seeking this Variance for the one lot at three acres and leaving possibly four acres of upland that
863 someone would be able to develop. He thinks that is why they are asking for this one Variance
864 with this one property and the second lot will have the five acres or maybe six, which although
865 not contiguous, does meet the Zoning Code.

866
867 Ms. Taylor stated that it is hard to figure this out when the map the Board has been given does
868 not show the entirety of the upland versus wetland because it is a prior map and there has been
869 additional work done. She continued that is a reason she is having a hard time figuring this out.
870 She asked if it is correct that the southern portion of the lot has about 6 acres of upland. Mr.
871 Rogers replied in the affirmative that is what the stamped survey plan is showing. Ms. Taylor
872 asked if he means the one the Board has been given or the subsequent one. Mr. Borden replied
873 the subsequent one. Mr. Rogers stated that the application states, *“The existing house will have*
874 *3 acres, of 2.85 +/- acres of upland and 0.15 acres of delineated wetlands. The remainder of the*
875 *land will have delineated uplands of 6.1 +/- acres and a total of 23.5 acres.”* That is stamped by
876 a licensed land surveyor and the City received on September 11. Ms. Taylor stated that the
877 Board does not have that map in front of them. Mr. Rogers replied that it came in after the
878 agenda packets were sent to the Board.

879
880 Ms. Taylor asked Mr. Rogers, if the three acre lot is what is requested, is it relevant how much is
881 upland or wetland. Mr. Rogers replied that the City did ask the Applicant to make sure to
882 delineate what there was for upland and wetland, but since they are already asking for a Variance

883 from the five acres required, at that time it would be a decision of the Board, if the Board feels
884 that the 2.85 acres of upland and .15 acres of wetlands is an adequate size for a lot in this district.
885 Ms. Taylor replied that it sounds like the split of upland versus wetland is not necessarily a
886 function of the Zoning Ordinance, it is more for the Board's information. Mr. Rogers replied that
887 is correct. He continued that it is also for the future when the applicant goes to the Planning
888 Board to request the subdivision. Staff felt it was important for both the Zoning Board of
889 Adjustment and the Planning Board to have that information.

890
891 Ms. Zerba stated that she thinks Mr. Borden mentioned that there are adjacent properties of about
892 three acres or equivalent to what he is proposing, and she would like to hear more about that.
893 Mr. Borden replied that he did not have that specific information with him though he did discuss
894 this application with the consultant David Bergeron who is very familiar with the area. He
895 continued that Mr. Bergeron stated that 90% of existing properties in this area did not meet the
896 five acre requirement.

897
898 Chair Gorman asked for public comment. Walter Mess, of 95 Wyman Rd., Apt. 2305, stated that
899 he lives in Hillside Village, abutting the property. He continued that he speaks only for himself
900 as a resident, not any of his neighbors or Hillside Village management or ownership. He looks
901 out onto this property, which abuts the Hillside Village's meadow area. He is confused by a
902 couple of things, particularly the maps, though some of it has been addressed. The application
903 states that there are 31 acres. There is the Ash Brook Swamp of 5.2 acres, which really does not
904 abut the Borden Farm, which he thinks is not part of the discussion. He does question the septic
905 tank asking if this was for the new proposed lot or the old lot. Another question relates to the
906 shaded area on the map, stating that it is quite irregular. Is it a correct assumption that the
907 irregularity is to make up acreage. . He wonders if that is really the intent of the Zoning Board
908 to look at it that way. He continued that he is not sure what the section of the map that says
909 "upland not delineated" means. Is that a Zoning category? Or does that mean it is up for sale?
910 Or to be used for somebody else?

911
912 Chair Gorman asked Mr. Borden to reply. Mr. Borden stated that the lot is a very irregular lot.
913 He continued that the surveyor did his best to define a separate, 5.2-acre piece; that is closest to
914 Hillside Village. The only explanation he has is that section of property was used as a haying
915 field. Historically, people owned haying fields and would get the permission from the neighbors
916 to across their land once a year to cut the hay. The haying field portion of the lot, and the rest of
917 the southern portion of the lot, is all wetlands and it will remain so. He inquired at the
918 Monadnock Conservancy and this section of the land is a "supported wildlife corridor". The
919 possibility exists that new owners could possibly build a house then add the remaining wetlands
920 into conservation or in current use; either way it would stay conservation land. People from
921 Hillside Village should not see any difference to the property with the subdivision. It will be the
922 same woods that have always been there. The probable house location would be on the shaded
923 area, the designated upland area. Regarding the "upland not delineated" note seen on this map,
924 there has been a map submitted after that the first map, which does have the upland delineated.
925 This second map does show another location that might contribute to the eventual design of a

926 house. Upland is the dry land, and the plant symbols designate wetlands. It is a very interesting
927 site, full of possibilities for wildlife and conservation. He continued stating that the northern end
928 close to the proposed line would be where there would be a building lot available. They have
929 found six acres of upland, making it a conforming lot within the Rural District. Mr. Borden
930 continued that that the new septic system is to go with the old house, on the three acre lot. He
931 continued that it is all approved and will be brand new within the next month.

932
933 Chair Gorman called on Mr. Mess again. Mr. Mess stated that the only other confusion he had
934 was the “upland not delineated” section. He state that it may not be relevant to the Zoning
935 question but asked if this section was considered a building lot, and if the Applicant is thinking
936 of it in those terms? Where it says “upland not delineated,” that was an earlier drawing. The
937 final drawing, which the Board does not have in its slide show tonight, will show more cross-
938 hatching in that area. Theoretically, yes, that area where the note is and the cross-hatched area to
939 the north of it are building areas. There is a wetland “brook” of sorts going through there, so
940 whoever builds in that area needs to stay a certain distance away. The subsequent map he
941 submitted to the City has a 75-foot setback from the wetlands. This provides a future architect
942 the information needed to site a house foundation, a septic system, driveways, etc. Mr. Borden
943 did apologize for not having the second map in to Staff in time prior to the packets being sent to
944 the Board. He further stated that this is a nice area having been raised on the land. He concluded
945 that this property is pretty remote from Hillside Village and he feels it will not have any negative
946 impact on their residents.

947
948 Chair Gorman asked if Mr. Mess’s inquiries are satisfied. Mr. Mess replied that he has no
949 further questions.

950
951 Mr. Hoppock stated that he heard Mr. Borden say earlier that the thatched area south of the
952 proposed line is 6.1 acres. He asked if that is correct. Mr. Borden replied that the drawing
953 submitted to the Board does not show a cross-hatched area of six acres. Mr. Hoppock replied
954 that he has been taking notes during this meeting, and wrote down earlier that the thatched area
955 south of the proposed line is 6.1 acres. He continued that however, what Mr. Borden stated
956 earlier is that the “upland not delineated” area is 5.2 acres and that they are both considered
957 buildable lots. Mr. Borden replied no, there is only six acres, total south of the proposed
958 property line. Mr. Hoppock asked how many acres, then, are in the “upland not delineated” area.
959 Mr. Borden replied that in the drawing submitted to the Board, there are 4.1 acres of upland
960 shown. That is the delineated, cross-hatched area. He continued that south of the proposed line,
961 the cross-hatched area down to the curved line where the cross-hatches stop, is 4.1 acres. The
962 surveyor and wetlands scientist formed a triangular area right around the surveyor’s earlier note
963 and that added two more acres of upland, and it is shown exactly delineated. Mr. Borden stated
964 that the reason he had this earlier map is from the surveyors providing only contiguous upland.
965 He continued, that when he learned that non-contiguous areas could be counted as upland, the
966 surveyor and the wetland scientist delineated that triangular area of two more acres. So what is
967 shown on that drawing south of the proposed line is about 4.1 acres, and then there was an

968 additional two acres found right where that note is. Mr. Hoppock thanked him and said that was
969 what he was trying to get clarified.

970 Mr. Greenwald stated that the Board and Mr. Borden are here to discuss 173 Wyman Rd. and the
971 creation of a three acre lot where five acres are necessary, not what is going to happen to the
972 remaining land. Ms. Taylor replied that may be true, but they still have to look at the entire lot
973 as it currently exists, before they can make a decision about a portion of it.

974
975 Ms. Taylor asked if the “additional two acres” Mr. Borden just referenced is in the “upland not
976 delineated” area, or the area that is near the southern boundary of the entire lot. Mr. Borden
977 replied that it is where the “upland not delineated” note is. At the time the drawing was done,
978 the surveyor knew that was upland but it was not delineated until later. The surveyor sketched it
979 in a subsequent drawing.

980
981 Ms. Taylor stated that earlier, she thought Mr. Borden said there was additional upland at the
982 southern end of the lot. Mr. Borden replied that there may be. He continued that he did not hire
983 the soil scientist for that area. Once the six acres were found, and knowing five acres are
984 required in the Rural District, they discontinued the survey. He continued stating that most of
985 that southern area is swampland, which is great for the aquifer and animals and birds but
986 definitely nothing to build on.

987
988 Chair Gorman stated that the public hearing is now closed for the Board to deliberate. He
989 continued that if needed, he will re-open the public hearing to ask technical or procedural
990 questions of Staff, the petitioner, or the public.

991
992 The Board went through the Findings of Fact.

993
994 *1. Granting the Variance would not be contrary to the public interest.*

995
996 Mr. Gaudio stated that he does not think that this application would be contrary to the public
997 interest. He continued that he thinks it is in the public interest, because there are other three acre
998 lots in the area, and because it is prime residential land that will be developed.

999
1000 Mr. Greenwald replied that they are not talking about allowing a three acre lot to be developed
1001 on, they are talking about the creation of a three acre building lot. He asked for clarification on
1002 the distinction. Mr. Gaudio replied that his first reason is still true. Mr. Greenwald replied that
1003 his concern is of the confusion with the proposed lot as a building lot not the creation of a
1004 building lot.

1005
1006 Mr. Hoppock stated that it is consistent with the rural area where there are many lots that are
1007 three acres and developed with single-family homes, which is the purpose of this lot in the
1008 future, which he thinks they should consider as well. He does not think it is contrary to the
1009 public interest.

1010

1011 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1012

1013 Ms. Taylor stated that she has some concerns with this criteria because of what Mr. Greenwald
1014 just referenced, which is that this is a conforming, historic lot, and they want to make it less
1015 conforming by making it smaller, which is the opposite of the Spirit of the Ordinance. Mr.
1016 Greenwald stated that he agrees.

1017

1018 Mr. Gaudio stated that he does not think it would alter the essential character of the
1019 neighborhood. It is going to be a rural lot in a rural district and nothing he has seen is going to
1020 change that, and the correlate to that is there is nothing about the application that would threaten
1021 public health, safety, or welfare. There will not be any congestion issues, the septic is designed
1022 and approved, there is a well in front of the house, and he believes Mr. Borden testified about an
1023 approved plan, so he is satisfied that those criteria are met.

1024

1025 3. *Granting the Variance would do substantial justice.*

1026

1027 Mr. Gaudio stated that he believes it would do substantial justice because he does not see
1028 anything that would be an injustice, regarding the Zoning Ordinance. Chair Gorman stated that
1029 in other words, the fact that it is not creating a substantial injustice makes it justifiable. Mr.
1030 Hoppock replied that the other way to say that is there is no gain to the public that outweighs the
1031 loss to the individual.

1032

1033 Chair Gorman stated that he leans that way on this as well, especially given the size of the
1034 overall chunk of land, albeit mostly wet. It does not seem like it will have a severe impact on the
1035 general public.

1036

1037 4. *If the Variance were granted, the values of the surrounding properties would not be
1038 diminished.*

1039

1040 Mr. Hoppock stated that there is no indication of any concern there. The values of the
1041 surrounding properties are not going to be hampered in any way. Chair Gorman stated that he
1042 does not imagine they would either.

1043

1044 5. *Unnecessary Hardship*

1045

1046 A. *Owing to special conditions of the property that distinguish it from other properties in the
1047 area, denial of the Variance would result in unnecessary hardship because:*

1048 i. *No fair and substantial relationship exists between the general public purposes of the
1049 Ordinance provision and the specific application of that provision to the property
1050 because:*

1051 *and*

1052 ii. *The proposed use is a reasonable one.*

1053

1054 Mr. Greenwald stated that he disagrees with this. He continued that there is a house on a lot. It
1055 is a big lot. It can continue to be as such. The only hardship he hears is that the petitioner does
1056 not have an extra lot to sell. That is a financial hardship, and that is not a hardship.

1057
1058 Ms. Taylor stated that she agrees with Mr. Greenwald. She continued that if the Petitioner
1059 wanted to make this a five acre lot and then he could apply for a Variance for the southern larger
1060 lot because they did not have a full five acres of dry land. Ms. Taylor continued stating she had
1061 concerns with the Spirit of the Ordinance question as there is a lot that has plenty of acreage and
1062 the Petitioner wants to turn it into a substandard lot. She stated she does not see the hardship as
1063 it pertains to the request that is before the Board.

1064
1065 Mr. Hoppock stated that he sees it a little differently. He continued that the main purpose of the
1066 Ordinance is to maintain a rural setting, which means regulating congestion and density. He
1067 continued that what he sees is a large piece of land that is mostly wetland is proposed to be
1068 subdivided. He does take into account both parcels. He initially thought the Petitioner could
1069 move that proposed line two acres south, but he is persuaded that due to the condition of the lot
1070 and the degree of wetlands, what they are trying to do is get two lots that are similar to most of
1071 the other lots in the neighborhood. He thinks that because of the land makeup that is a special
1072 condition of the property and he does not think it changes the rural nature. Therefore, no fair and
1073 substantial relationship exists between the idea of preventing congestion and density and the
1074 application of that rule to this property. He thinks the standard is met.

1075
1076 Mr. Greenwald questioned what happens to this property if the Board insists on five acres. Mr.
1077 Hoppock stated that the Applicant has nine acres total that are upland, three to the north of the
1078 line, four to the south, and two in the "upland not delineated" area. Mr. Greenwald stated that
1079 the result would be that another building lot cannot be created, if the Board insists on five acres.
1080 Mr. Hoppock stated that the Board should not have to insist on five acres. Mr. Greenwald
1081 replied that he understands, but is proposing what the result would be if the Board did insist on
1082 five acres. He continued that it would mean another building lot could not be created, which is a
1083 financial hardship. Mr. Hoppock replied that he does not see it that way stating it is a land-based
1084 hardship because on the amount of wetland available in relation to what the Petitioner is trying to
1085 do with this proposal along with the number of acres of wetland to the south.

1086
1087 Mr. Greenwald replied that they are talking about 173 Wyman Rd., not the southern larger lot.
1088 Mr. Hoppock stated that he is talking about and looking at the property as a whole. Mr.
1089 Greenwald questioned if the application ZBA 20-15 was withdrawn. Mr. Hoppock replied that is
1090 not the question they are asking. He continued that the question is there a Variance appropriate
1091 for the three acre piece to the north of the line that is marked "proposed." Mr. Hoppock
1092 continued that in evaluating the application, the Board should look at the special conditions of
1093 the land. He further stated that the Petitioner proposes boundary line for the proposed three acre
1094 lot by evaluating the surrounding properties. In seeing other three acre parcels, and keeping the
1095 line to the south is consistent with the line to the north because the Petitioner can. He thinks that
1096 all the Special Conditions are relevant, and that allows for an unnecessary hardship finding

1097 because the density rules are going to be less appropriate. Mr. Hoppock continued that there is
1098 no fair and substantial relationship where those rules apply to this property because it is not
1099 going to be densely populated. It is going to be one house on the northern lot, and they will get
1100 no more than one house on the southern lot. He state that the southern larger lot cannot
1101 subdivide any further and is satisfied that those objectives are met.

1102
1103 Mr. Greenwald replied that for the purposes of this discussion, it is irrelevant to the Board what
1104 else can be created from granting the three acres. Mr. Hoppock replied that he disagreed. Mr.
1105 Greenwald clarified that it is irrelevant to the Board's decision of whether or not to say five acres
1106 is needed. He continued that he wants to ask the question of why it needs to be three acres, when
1107 it could be five. Mr. Hoppock replied that if this petition was five acres, then the other southern
1108 larger lot would not be five acres. Mr. Greenwald replied that about it is not the Board's concern
1109 of the other property for this discussion, the Board only cares about 173 Wyman Rd.

1110
1111 Ms. Taylor stated that she thinks the question before the Board is exactly as Mr. Greenwald
1112 phrased it; why can't the lot be five acres; what happens with the remainder is not before the
1113 Board. She continued that as Mr. Rogers said earlier, it is a matter of the size of the lot. Ms.
1114 Taylor continued that the question of whether it is upland or wetland is basically informational
1115 purposes. Therefore, if they have 4.1 acres and add two acres back to the north, they still have a
1116 buildable lot. But as Mr. Greenwald said, that question is not really in front of the Board.

1117
1118 Mr. Gaudio stated that he understands that the remainder of the whole lot is not before the Board,
1119 but they have to look at it, to see the whole picture. He continued stating the Board could say
1120 that the northern lot has to be five acres, which would mean the southern lot would be 4.1 acres.
1121 It would be two lots. They could grant the Variance for three acres, and the southern lot would
1122 have six acres, which is now conforming, so it does not have to return to the Board but will still
1123 have two lots. His opinion on the big picture, which helps him make a decision on the small
1124 picture here, is he thinks it is a viable answer to say a three acre lot fits, because it is in the same
1125 density. There is no fair and substantial relationship between the general purpose to keep the
1126 density for the two lots and the application of this Ordinance. Mr. Gaudio believes the Board
1127 would come to the same conclusion. He would say that there is an unnecessary hardship.

1128
1129 Chair Gorman stated that for clarity, if the Board were to hear a Variance for two lots, it is
1130 regardless of what size either lot is in terms of upland.

1131
1132 Ms. Taylor replied that she does not think that is correct. She continued that what she
1133 understood from the earlier testimony is that the acreage of the upland was for the Board's
1134 information. It was not necessarily the required lot size.

1135
1136 Chair Gorman stated that he needs to interrupt Ms. Taylor to let Mr. Rogers speak to this issue.
1137 Mr. Rogers stated that for clarity, for the substandard three acre lot, the City asked for the
1138 delineations of upland and wetland to be given as informational. Overall, though, the amount of
1139 wetland does have a matter of calculation. Mr. Rogers continued stating that if the Board were to

1140 deny this Variance, the lot that currently has a house on it would actually have to be more than
1141 five acres since the .15 acres of wetlands would have to be removed to create a five acre lot,
1142 rendering the wetlands not useable with the calculation. The first lot would have to be 5.15 acres
1143 to create the one lot as stated, and then the second lot would not have enough upland per the
1144 Zoning Code which removes the wetlands out of calculation. Mr. Rogers continued that the
1145 second lot, if it were to be subdivided, would have to return to the Board seeking a Variance for
1146 this section of the Ordinance since there would have a 20+ acre lot, but as Mr. Hoppock
1147 mentioned, they would only have a four acre abutment.
1148 Mr. Greenwald questioned that if the Board did not approve this Variance, if it puts the creation
1149 of a second lot in jeopardy. Chair Gorman replied absolutely.

1150
1151 Ms. Taylor asked Mr. Rogers for clarification in saying that in the Rural District, five acres of
1152 dry/upland are needed for a house lot. Mr. Rogers replied yes. Ms. Taylor replied that her
1153 understanding was incorrect and she apologizes.

1154
1155 Chair Gorman stated that the Board would need to hear from the Applicant in either scenario to
1156 subdivide the property. He continued that what Mr. Borden did, he suspects, seek two Variances
1157 because he did not have enough upland on either portion, which is what the Board initially was
1158 presented with. When Mr. Borden found enough upland he eliminated the one Variance request
1159 because he was able to have enough upland for it to be a conforming lot. Chair Gorman stated
1160 that now the Applicant is before the Board for one Variance on a property that has pretty vast
1161 acreage, especially considering its location in Keene, and it is surrounded by properties that are
1162 primarily dissimilar, in that they are much smaller. He can see a hardship there for this property,
1163 in that there is a large amount of land that is restrictive in nature and he does not see it as
1164 adversely impacting the neighborhood in general, because he believes there are plenty of the
1165 other lots in the vicinity of three acres.

1166
1167 Ms. Taylor stated that she's struggling with the idea of creating a three acre lot, it not only does
1168 not have the five acres; it does not have five dry acres either. She asked if the Board considers
1169 either issues, or just the one that the Applicant requests a three acre lot instead of a five acre lot
1170 whether it is wet or dry. Chair Gorman replied that the Variance is to create a 3+/- acre lot
1171 where 2.85 acres is upland and .15 acres is wetland, which can be considered a 2.85-acre lot. He
1172 continued that .15 is about 6% of the cumulative acreage.

1173
1174 He asked if Mr. Rogers had any comment on this. Mr. Rogers stated that since the Applicant is
1175 seeking a Variance for a less than five acre lot to begin with, he does not think the section of the
1176 Zoning Ordinance that speaks to the wetlands not being allowed to be part of the calculation
1177 comes into play. Hence the request from Staff for the delineation of upland and wetland as
1178 informational for the Board. Staff's advice to the Applicant was that since they were seeking a
1179 Variance for a substandard size lot anyway, that section of the Zoning Ordinance did not apply.
1180 Chair Gorman clarified that the size of the upland and wetland is in front of the Board as relative
1181 in terms of being informational of what portion is, in fact, upland. Mr. Rogers replied yes, and to

1182 get the size of the upland and wetland on the record with the Board and with the Planning Board.
1183 Chair Gorman asked if that satisfies Ms. Taylor’s inquiry. Ms. Taylor replied yes.

1184
1185 Chair Gorman asked if there is any more deliberation on criterion five or any of the others.
1186 Hearing none, he asked for a motion.

1187
1188 Mr. Hoppock made a motion to approve ZBA 20-14. Mr. Gaudio seconded the motion.

1189
1190 *Granting the Variance would not be contrary to the public interest. Granted 5-0.*

1191
1192 *If the Variance were granted, the spirit of the Ordinance would be observed. Granted 4-1. Ms.*
1193 *Taylor was opposed.*

1194
1195 *Granting the Variance would do substantial justice. Granted 5-0.*

1196
1197 *If the Variance were granted, the values of the surrounding properties would not be diminished.*
1198 *Granted 5-0.*

1199
1200 *Unnecessary Hardship*

1201 *A. Owing to special conditions of the property that distinguish it from other properties in the*
1202 *area, denial of the Variance would result in unnecessary hardship because:*

1203 *i. No fair and substantial relationship exists between the general public purposes of the*
1204 *Ordinance provision and the specific application of that provision to the property*
1205 *because:*

1206 *And*

1207 *ii. The proposed use is a reasonable one.*

1208
1209 *Granted 3-2. Ms. Taylor and Mr. Greenwald were opposed.*

1210
1211 *With a vote of 3-2, the Zoning Board of Adjustment approved ZBA 20-14. Ms. Taylor and Mr.*
1212 *Greenwald were opposed.*

1213
1214 **V. New Business**

1215
1216 Mr. Rogers stated that the next meeting is Tuesday, September 22, 2020 at 6:30 PM.

1217
1218 **VI. Communications and Miscellaneous**

1219
1220 Ms. Taylor stated that it would be very helpful if staff could get any updated agenda packet
1221 materials to the Board ahead of the meeting. Brief discussion ensued about the timing and
1222 logistics.

1223

1224 Ms. Zerba brought up difficulties she had with the hybrid Zoom/in-person meeting format they
1225 tried tonight. Brief discussion ensued about this and the format of the next meeting.

1226

1227 **VII. Non-public Session (if required)**

1228

1229 **VIII. Adjournment**

1230

1231 There being no further business, Chair Gorman adjourned the meeting at 9:28 PM.

1232

1233 Respectfully submitted by,

1234 Britta Reida, Minute Taker

1235 Edits done by Corinne Marcou, Zoning Clerk

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1 City of Keene
2 New Hampshire

3
4
5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Tuesday, September 22, 2020**

6:30 PM

Council Chambers/Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Michael Welsh
Joshua Greenwald
Arthur Gaudio, Alternate
Louise Zerba, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Mari Brunner, Planner

9
10 Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to
11 Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions
12 of RSA 91-A (which regulates the operation of public body meetings) during the declared Covid-
13 19 State of Emergency.
14

15 **I. Introduction of Board Members**

16
17 Chair Gorman called the meeting to order at 6:38 PM. Roll call was conducted.
18

19 **II. Minutes of Previous Meeting – September 8, 2020**

20
21 Mr. Hoppock made a motion to approve the meeting minutes of September 8, 2020. Ms. Taylor
22 seconded the motion, which passed by unanimous vote.
23

24 Mr. Rogers stated that that Mr. Gaudio is not a voting member tonight.
25

26 **III. Unfinished Business**

27
28 None.
29

30 **IV. Hearings**

31
32 **a. ZBA 20-11:/ Petitioner, Hundred Nights, Inc. of 17 Lamson St.,**
33 **Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, 185**
34 **Winchester St., Keene, requests a Variance for property located at 122 & 124 Water**

35 **St., Tax Map #585-027-000 & 585-028-000; that is in the Business Growth and Re-**
36 **Use District. The Petitioner requests a Variance to permit a homeless shelter**
37 **(lodging house) and resource center in the BGR District where a homeless shelter**
38 **and resource center are not listed as permitted uses per Section 102-771.1 of the**
39 **Zoning Ordinance.**
40

41 Chair Gorman opened ZBA 20-11. Mr. Greenwald stated that he needs to recuse himself due to
42 a conflict of interest. Chair Gorman replied that they will be asking Mr. Gaudio to sit in on this
43 hearing as a voting member in place of Mr. Greenwald. He continued that alternate member Ms.
44 Zerba will participate in the discussion but not vote. He asked Mr. Rogers to speak.
45

46 John Rogers, Zoning Administrator stated that this property is currently being used as an auto
47 repair garage, which is allowed here in the Business Growth and Reuse (BGR) District. He
48 continued that the applicant is asking for a Variance for a non-permitted use in this district. The
49 BGR District is relatively new, from 2017, and the intent as stated in the Zoning Code is “to
50 create an additional downtown district to enhance the economic vitality of the area by
51 redevelopment with new technology companies, as well as clean manufacturing, processing,
52 assembly, and wholesale businesses within walkable, human-scale place.” This property is on
53 the very northern edge of this district. This is the only piece of property on the north side of
54 Water St. and the zone carries on down toward Marlboro St. The Kingsbury properties are a big
55 chunk of this and older, more industrial lands. He showed the two parcels on the screen are that
56 are being used as the auto repair facility. He continued that just south of that is the rest of this
57 district. Abutting this district to the north is the Central Business District (CB) and directly
58 across from Water St. is the Residential Preservation District (RP). There is one sliver of
59 Industrial Zone left to the northeast to this property. Just above that is the Central Business
60 Limited (CBL) District. The property in question is a peninsula of the BGR district.
61

62 Mr. Hoppock asked for history or background for why this peninsula sticks out like this. Mr.
63 Rogers replied that he believes at the time of the rezoning, the owner requested these properties
64 be included in the BGR since the list of permitted uses was far wider in range than the previous
65 Industrial District, some by right others by Special Exception.. In 2017 when the City was re-
66 doing these areas and developing different districts in the Marlboro St. area, the property owner
67 requested to be part of the BGR District.
68

69 Mr. Hoppock stated that according to the materials, this is going forward as a lodging house. He
70 continued that this may be a question for the applicant but he would rather get an answer directly
71 from Mr. Rogers if possible. A lodging house is defined as “Any dwelling for more than four
72 unrelated persons which lets sleeping accommodations on a transient or permanent basis.” He
73 asked, if there is no rental aspect contemplated here. Mr. Rogers replied no and asked for a
74 moment so he could verify the definition. He thinks the word “lets” has been removed. Mr.
75 Hoppock replied that it is not removed in his copy. Mr. Rogers looked and replied that he does
76 see it. He continued that there would be no rental as part of this. Mr. Hoppock asked why it
77 would not be a “group home,” defined on page 21 of the Zoning Code. Mr. Rogers replied that

78 the Zoning Administrator at the time that Hundred Nights started characterized it as a Lodging
79 House and that is what they are categorized as on Lamson St. Mr. Hoppock asked if he means
80 that the nomenclature carried over. Mr. Rogers replied yes.

81

82 Chair Gorman stated that the Board received notice that the toll free numbers are not working
83 tonight. He listed a different phone number members of the public can call to listen in and/or
84 participate.

85

86 Mr. Welsh stated that when this property was zoned prior, it was Industrial. He asked Mr.
87 Rogers if a lodging house is a permitted use in an Industrial Zone. Mr. Rogers replied no, the
88 lodging house is a permitted use within the High Density District (HD), with a special exception,
89 and CBL, by right. Mr. Welsh stated that he noted the possibility of a rezoning to the BGR
90 District where the applicant asserts that a homeless shelter is a permissible use. Is that because
91 the words “homeless shelter” have been inserted into the new Zoning Code, or is it because a
92 lodging house will be a permitted use? Mr. Rogers replied that the current land use re-write is in
93 the draft form and still has to go through the whole process with public workshops and public
94 meetings and the City Council, so he/staff has ultimately no idea where this might end up if the
95 land use re-write gets adopted at all. Part of the reason for the re-write is to take care of some of
96 these issues and situations such as this, where a “homeless shelter” is not really defined.
97 Previous Zoning Administrators have tried to find a place to put it.

98

99 Chair Gorman asked about the RP District. Mr. Rogers stated that across from Water St. is the
100 RP District, which is mostly single-family homes, and some duplexes and rental units. Further
101 down the street, right across Community Way, is the workforce housing project that went on, and
102 a block or two further is the HD District. Some residential neighborhoods are on both sides of
103 this property.

104

105 Chair Gorman asked if there were any other questions for City staff. Hearing none, he opened
106 the public hearing. He shared instructions and guidelines relative to public comment for this
107 Variance request. He stated that the Board has received over 100 letters and those have been
108 read and filed into the record. Tonight they would like to hear comments from people who have
109 not already submitted letters.

110

111 Mr. Rogers stated that Community Development Department Director Rhett Lamb was a large
112 part of the rezoning of the area so he might have a better background of why that property was
113 pulled into the BGR. Mr. Lamb stated that to clarify the answer to Mr. Hoppock’s question
114 about the origin of the BGR district: he agrees with Mr. Rogers’ answer and wants to add that
115 there were two parts that were changed when that property came into the district to be added to
116 the BGR. One was the zoning map change. Second was the amendment to the text of the new
117 BGR District to allow auto repair uses to continue. Initially it was not a use contemplated for the
118 BGR, and in the process of rezoning and adding the property on Water St. they also amended the
119 language to allow those uses to continue. He does not recall if it was by special exception or by
120 right.

121 Chair Gorman asked Jim Phippard of Brickstone Land Use Consultants, representing Hundred
122 Nights, to speak. Mr. Phippard stated that present with him is Mindy Cambiar, the Director of
123 Hundred Nights, and Jan Peterson, President of the Board of Directors for Hundred Nights. He
124 asked Ms. Cambiar to give a statement to share the background.

125

126 Mindy Cambiar, of 447 Park Ave., stated that she has been the Executive Director of Hundred
127 Nights in Keene since 2013. She read the following statement:

128 *“Hundred Nights was founded in 2010 in response to an existing need in the local community:
129 individuals and families were being left out in the cold when local emergency shelters reached
130 capacity or individuals were deemed ineligible for services. Hundred Nights’ vision is that every
131 individual in the Cheshire County area will have access to appropriate, stable housing so they
132 can live safe, productive, and satisfying lives and be respected members of their community. In
133 other words, our vision is for our organization to one day become obsolete because our
134 community does a better job of working together to address complex issues that affect the
135 community at large. Until then, Hundred Nights will continue its mission of providing temporary
136 shelter and crisis-related services to those experiencing or at risk of homelessness. Hundred
137 Nights has been planning for a larger, more appropriate facility to not only consolidate services
138 in one location, under one roof, but to offer a solution to a growing need, that need being an
139 increase in the number of families experiencing homelessness and requiring shelter throughout
140 the year. Between 2016 and 2019, Hundred Nights recorded a 280% increase in homeless
141 families using its services -- from 5 families with 7 children in 2016 to 14 families with 26
142 children in 2019. This past winter, Hundred Nights had as many as 16 children under the age of
143 18 in the shelter at one time. The facility that Hundred Nights leases at 17 Lamson Street has a
144 capacity of 24 shelter beds, plus two staff beds. Sixteen of those were taken by children.*

145 *The two petitions before you are part of a larger short-term strategy to mitigate the community
146 spread of the novel coronavirus and keep clients safe during the pandemic. The physical
147 separation required to keep residents safe and to avoid the spread of the coronavirus has
148 resulted in a loss of beds previously provided by the United Church of Christ and St. James
149 Church in Keene. Hundred Nights has not been successful in identifying apartments or
150 alternative space to rent other than 15 King Court to meet the anticipated demand for shelter
151 this coming winter. Our grateful thanks go out to the owner of 15 King Ct., Raette Trombly, for
152 her kind offer to work with Hundred Nights and those experiencing homelessness. Apartments
153 were already difficult to rent prior to the pandemic -- Cheshire County recording a vacancy rate
154 of less than 1% in 2019 compared to a normal market of 4-5% vacancy.*

155 *One of the petitions, 122-124 Water Street, is also the proposed future site of Hundred Nights
156 emergency shelter and resource center, a facility that will be designed to accommodate families
157 in private rooms and better serve those with disabilities, provide the community with public
158 restrooms including shower facilities, and outdoor grounds and a larger resource center space
159 to give clients a place to go during the day. The temporary COVID-19 decompression plan and
160 new facility do not seek to increase the current number of shelter beds operated by Hundred*

161 *Nights, which, as of this past winter, totals 48 shelter-beds including the Lamson St. facility and*
162 *the UCC and St. James overflow locations.*

163 *In closing I would like to quote Ruth Bader Ginsburg, 'If you want to be a professional, you will*
164 *do something outside yourself. Something that repairs tears in your community. Something to*
165 *make life a little better for people less fortunate than you. That's what I think a meaningful life is*
166 *– living not for oneself, but for one's community.' I would add – the entire community."*

167 Mr. Phippard referred to a map of the properties and stated that these two are owned by Green
168 Diamond Group LLC, currently the site where the auto repair business is located. He continued
169 that the property shaded in yellow is 0.33 acres and the one to the right in white is 0.29 acres. If
170 Hundred Nights receives approval and purchases the property, they want to merge the two into
171 one property. The underlying zone is the BGR District, which is relatively new. Back when this
172 discussion started about rezoning the industrial area, the owner, Tom Stevens, wanted to be re-
173 zoned to the CB, which is what surrounded him on three sides. Auto repair was not permitted in
174 the CB and the City was uncomfortable bringing that in as a non-conforming use. He then
175 wanted to be in the CBL but staff did not do that, so auto repair use was included in the BGR
176 District. Today those three buildings you see are existing on the property. The one on the left is
177 about 2000 square feet. The smaller one on the right is a storage building. Behind that is a
178 larger, oddly-configured building, also a storage building. If Hundred Nights acquires this
179 property they would most likely tear down the oddly-shaped one and may or may not keep and
180 renovate the other two for uses associated with Hundred Nights.

181

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

183

184 Mr. Phippard stated that Hundred Nights is getting into a situation that could become an
185 emergency with the inability to provide the necessary beds. This property in particular is a large
186 enough site. They think it is in the correct location, to offer a safe location for the Hundred
187 Nights shelter. They think the property is large enough to accommodate a two-story building,
188 which would fit in with the Zoning requirements. Hundred Nights could provide not only the
189 sleeping quarters but also the resource center on the same property. That is important for
190 Hundred Nights. Rather than being spread out in three different locations, with staff and
191 volunteers, they would be together in one location in a larger building, with not a larger number
192 of beds, but a larger resource center, and an outdoor area for seating and small gathering places,
193 to give residents a place to be instead of forcing them out onto the street. Which is the situation
194 they are in today on Lamson St. The additional space is important to better organize this facility
195 and allow a clearer, more well-defined operation, and it will be much safer for all parties. They
196 believe that because this will greatly improve the ability to provide for the needs of homeless
197 people in one location, it is in the public interest to grant a Variance for this address.

198

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

200

201 Mr. Phippard stated that the spirit of all Zoning ordinances is to protect the health, safety, and
202 general welfare of the public. He continued that it is easy to recognize that for the most

203 vulnerable population in our community, this type of facility is necessary, to protect their health
204 and safety and improve their general welfare. Being in a facility that offers a larger, better-
205 operated resource center will give these individuals help to find their way back into a productive
206 life in our community. Many homeless people have used this facility and they are not all
207 mentally ill or addicted. Many have lost their jobs and are just economically not able to get back
208 on their feet. The resource center and programs that can be available to them can dramatically
209 reduce the likelihood of homelessness happening in the future. This can help to meet that need
210 and does meet that portion of the spirit of the ordinance.

211
212 He continued that secondly, the intent of the BGR District is, in part, to encourage the
213 redevelopment of properties near the urban core, using the existing infrastructure, buildings, and
214 services, as well as access to public trails like the Cheshire Rail Trail (CRT). A portion of the
215 intent statement for this zone talks about encouraging high tech jobs to improve economic
216 development activity and new technology companies, but that is only a portion of that intent
217 statement. The other portion focuses on reuse, and that is where Hundred Nights fits in. The
218 intent statement, under Division 22 of the Zoning Ordinance, gives 13 intentions identified under
219 the BGR District as the proper direction for development and redevelopment of these properties,
220 especially with new buildings being constructed. Hundred Nights feels they can meet this intent.

221
222 Mr. Phippard went through the 13 intentions:
223

224 **1) To create conditions suitable to co-exist adjacent to residential neighborhoods.**

225
226 He stated that as seen on the map, the auto service business is located right at the corner.
227 Extending along Community Way, behind that building, is a 6-foot high, solid fence that extends
228 the length of the property (with the exception of one curb cut opening) then turns the corner and
229 at the rear of the property it turns to chain link fencing that winds around to the easterly side of
230 the property. The area located to the rear is forested. He showed an aerial photograph. He
231 continued that there is a green area of thickly grown trees and shrubs, which buffers this property
232 and provides effective screening between this and the CRT. The 6-foot high solid fencing along
233 Community Way and vegetation and chain-link fencing in the rear and on the east side, all the
234 way back to the small building that exists next to Water St., provide sufficient buffering from the
235 adjacent residential use across Community Way and the other uses on the railroad property to the
236 rear. The buildings themselves also provide a visual buffer from Water St.

237
238 **2) Create conditions which support that of a high quality, walkable community.**

239
240 He stated that the CRT is open to the public at the rear of the north side of the property. There is
241 a public sidewalk that runs the length of Community Way all the way up to the Monadnock Food
242 Coop and back to Main St. Both sides of Water St. have public sidewalks. This location is
243 supported by the Friendly Bus and City Express.

244

245 **3) Create a sense of place through enhancing public access, providing landscape**
246 **amenities, ensuring proper lighting, and promoting an aesthetically-pleasing**
247 **streetscape.**
248

249 Mr. Phippard stated that if granted the Variance, after purposing and merging the properties
250 Hundred Nights proposes constructing a new, 2-story building, probably to the rear of the
251 existing auto service building, unless that building ends up getting torn down. They have
252 different versions, where they are saving that building and repurposing it as the resource center,
253 or removing it in order to fit this building in. They envision a 2-story building with architecture
254 compatible with buildings across Community Way, with new lighting and new landscaping,
255 including trees along this property. They think it would be an aesthetically-pleasing streetscape.
256

257 **4) Connect uses and buildings while prioritizing pedestrian and bicycle access separate**
258 **from vehicular access.**
259

260 Mr. Phippard stated that they would be maintaining vehicular access from Water St. with a one-
261 way in, and a one-way exit out to Community Way. They do not anticipate a lot of traffic; it will
262 mostly be staff and volunteers. Most of the residents do not have cars. They do not see a big
263 need for adding parking spaces. They are very close in proximity to public sidewalks and the
264 bicycle path.
265

266 **5) Utilize the construction of new and adaptive re-use of existing buildings as**
267 **opportunities to create “outdoor rooms,” a critical element of “place making”;**
268 **aiming for ratios of building facades to roadway widths from 1:2 to 3:2.**
269

270 Mr. Phippard stated that this ratio they are talking about is the height of the building compared to
271 the width of the street it fronts on. The two-story building would fit those ratios. It would
272 accommodate the type of design feature this paragraph is recommending.
273

274 **6) Recognize the role of large street trees, which plays an important role in creating a**
275 **pedestrian scale. Pedestrian comfort being another critical element to the vitality of**
276 **these new places being created.**
277

278 Mr. Phippard stated that there are existing street trees on Community Way on the east side of the
279 road. He continued that they would propose to add to those trees to further enhance the
280 appearance of landscaping and shading along that area. They would also be adding trees within
281 the site area, especially in the courtyard area where they want to encourage residents to sit and be
282 comfortable and be in the shade in the warmer months.
283

284 **7) Reduce the impacts of parking through its placement behind or alongside buildings.**
285

286 Mr. Phippard stated that Hundred Nights would maintain that pattern. There are about 30
287 parking spaces today and that is more than is needed by the homeless shelter so they would
288 reduce that. Primarily they would be located on the easterly side of the site.

289

290 **8) Provide open space and landscaping to create small, public spaces for social**
291 **interaction, enhancing the visual appearance and appeal of the individual properties**
292 **along Marlboro St. and into the connecting streets and neighborhoods.**

293

294 Mr. Phippard stated that this is several hundred feet away from Marlboro St. but it is a
295 connecting street. He continued that Hundred Nights thinks they will do a good job enhancing
296 the appearance. They want a courtyard area with outdoor seating, an outside garden area, and
297 more landscaping, which is something they cannot do today in the downtown location; the
298 building on Lamson St. is right up to the sidewalk. When they own a facility like this they can
299 add features like that which will encourage guests to remain on the property rather than looking
300 for a place to go downtown. The resource center is very small on Lamson St. This property
301 would give the ability to enlarge the resource center, which means increasing the programs.

302

303 **9) Provide trails for pedestrians and bicyclists to be sure Keene's walkable and**
304 **pedestrian-friendly environment is extended along Marlboro St. and into the**
305 **connecting streets and neighborhoods.**

306

307 Mr. Phippard stated that Hundred Nights will be taking advantage of the public sidewalks here
308 and the access to the rail trail. They are maintaining this pedestrian link.

309

310 **10) Provide pedestrian amenities such as kiosks, stands, street furniture, drinking**
311 **fountains, trash and recycling receptacles.**

312

313 Mr. Phippard stated that on the site they will provide trash and recycling receptacles and
314 encourage the use of those. They would not be providing public trails through the property,
315 however, but they are nearby through the public sidewalks and the CRT.

316

317 Mr. Rogers stated that just to be clear, Community Way is a private road. He continued that in
318 any of these improvements or activities would have to receive permission of the property owner
319 that owns Community Way. Mr. Phippard stated that he understands it is a private road, but the
320 sidewalk is open to the public for use through that area, as well as travel along Community Way
321 and access to the CRT over that property.

322

323 **11) Enhance the visual appearance of the individual properties, Marlboro St., and**
324 **connecting streets.**

325

326 Mr. Phippard stated that Hundred Nights thinks by redeveloping the property and constructing a
327 new building using similar architectural features that will be compatible with the residential
328 facility across Community Way, that will help enhance the visual appearance of this area, and

329 they think that is a positive step forward. Right now there is a large parking area partially visible
330 at the back of the site. That will be greatly reduced in size and screened by the fencing, most of
331 which will remain, and the new building they are proposing.

332

333 **12) Provide the location-sensitive transition between neighborhoods and uses along**
334 **Marlboro St.**

335

336 Mr. Phippard stated that that again, this site is not located along on Marlboro St., but they think it
337 is a transition site between Water St. and the downtown CB District. The property is surrounded
338 by the CB but this remains in the BGR District. By building a residential building as they are
339 proposing, and maintaining the fencing and screening, they think it creates a very effective
340 transition from the downtown area through partially residential and commercial area to the Water
341 St. area.

342

343 **13) Provide shade and public spaces for social interaction.**

344

345 Mr. Phippard stated that Hundred Nights is proposing to do that on the site with the courtyard
346 area and garden area, and they will be providing shade trees and benches for residents and
347 visitors.

348

349 He continued that if you look at all of these design requirements that are recommended under the
350 intent statement of the BGR District, Hundred Nights will do a very good job of meeting exactly
351 the intent as described. If it becomes a different zone in the future, they think it will still be a site
352 that can enhance the neighborhood and be a safe, positive contribution to the community.

353

354 *3. Granting the Variance would do substantial justice because:*

355

356 Mr. Phippard stated that the owner of the property needs to sell his now-vacant building, since he
357 found it too difficult to operate under the COVID-19 requirements and conditions, and vacant
358 buildings are not good for anyone, especially for the downtown area. He continued that granting
359 the Variance would allow Mr. Stevens to sell the property for a use that is reasonable and safe in
360 this location. It would improve the appearance of the site and add to the property's value. There
361 would not be any benefit to the public by denying the Variance. The homeless shelter will
362 remain in the situation they are in. They are not homeless themselves, but many of the people
363 who may need this facility this coming winter may be homeless if they cannot find a place to
364 expand the footprint of Hundred Nights – not add beds, but expand the footprint to provide safe
365 occupancy to people through this pandemic. It would be an unnecessary injustice to the owner to
366 deny the Variance, and to the residents needing shelter and crisis-related services. Hundred
367 Nights has heard of complaints of downtown merchants, who say that people who are not
368 customers are trying to come in to use bathrooms, and this could help alleviate that problem as
369 well, by providing additional restrooms on site in the resource center. This means that Hundred
370 Nights residents and guests will not have to go into stores in downtown to use the restroom.

371

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

374
375 Mr. Phippard stated that this is something that over the years Hundred Nights has monitored and
376 they have done an examination of how Hundred Nights affects property values, being in the
377 location they are in. They looked at the values from 2011 to 2016 of abutting properties in the
378 Lamson St. area. During that time period the abutting property assessments went down by about
379 1.31%. During that same period of time, citywide, property assessments decreased by an
380 average of 5.9%. That is solid evidence that Hundred Night’s occupancy of that location by
381 itself did not cause a diminishment of property values in that area. If the Variance is granted
382 Hundred Nights will be creating a new building on the proposed site, as described, including a
383 resource center, and it will enhance the appearance and value of this property and it will not
384 diminish the value of surrounding properties. It will not increase traffic or noise from the
385 previous uses. Surrounding properties will not be negatively affected.

386
387 5. *Unnecessary Hardship*

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

390
391 i. *No fair and substantial relationship exists between the general public*
392 *purposes of the Ordinance provision and the specific application of that provision*
393 *to the property because:*

394
395 Mr. Phippard stated that this property is unique. He continued that it is not only in the BGR
396 District. Also, the easterly lot is in the Historical District and the Downtown Railroad Property
397 Redevelopment Overlay District. Thus, this becomes one of the most regulated properties in the
398 City, in so many different zones and overlays. It creates a very unique situation. Also, where it
399 is physically located. He showed a copy of the zoning map and stated that the area in light blue
400 is BGR. He showed the location of site – a “peninsula” of BGR, surrounded by CB District. He
401 continued that the characteristics of these districts are very different from each other. For
402 example, CB does not require on-site parking, and the BGR does. CB does not have setbacks for
403 buildings, and the BGR does. To be this peninsula of land creates a very unique situation.

404
405 Mr. Phippard continued that as described earlier in Mr. Rogers’s comments, there is a draft of an
406 ordinance being discussed, that would re-zone this area to Downtown Growth. In the current
407 draft form, a homeless shelter is now defined. Hundred Nights would no longer be a lodging
408 house. It would have its own definition, to be clear and accurate. A homeless shelter would be a
409 permitted use, probably with a conditional use permit, which means getting Planning Board
410 approval to locate on that site. If they were granted a variance today under the BGR District they
411 would still have to be reviewed by the Planning Board for the change in use for the property, so
412 that additional review would be required. He gives staff credit; they have been knocking
413 themselves out trying to accomplish this massive rezoning of the downtown area, and he is all
414 for it. He is on one of the committees that has been reviewing this, volunteering his time, trying

415 to make this happen. It is a complicated, time-consuming change. The process is the process
416 and he knows staff does not want to interfere with the process by granting a Variance, and he
417 does not feel this is an interference. It has been over two years since he got involved in working
418 on the draft changes, and staff has said it is not likely to be finalized by the end of this year.
419 Hundred Nights has tried to be patient and find other sites. But they are still not defined and still
420 not a permitted use anywhere in the city with a couple exceptions. It has become untenable and
421 they have to do something. They went to him for assistance, and he suggested they seek a
422 Variance for this site. He looked at the site, the surrounding uses, and Hundred Nights' needs
423 (program needs, access needs, and the needs of the residents), and this made sense to him. He
424 feels, given his background and in looking what the possible impacts could be, that this could
425 work. Hundred Nights being on a single site, operating much more efficiently and successfully,
426 will be a big improvement. Given the uncertainty of the proposed rezoning, Hundred Nights just
427 cannot wait. They are facing an emergency to a degree they just do not fully understand yet, if
428 evictions are allowed again. They are already aware of many more families who are going to
429 lose their housing. There is not a lot of low-income housing available for families in Keene, as
430 everyone knows. This is a legitimate hardship, for the proposed use, and for this property, given
431 its unique conditions and unique location and unique zoning circumstances.

432

433 *And*

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

435

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

441

442 Mr. Phippard stated that he has already described the unique location and zoning characteristics
443 and will not repeat all that again. He continued that he did describe the different zoning, being
444 partially in the Historic District, partially in Downtown Railroad, and the rest in the BGR
445 District. That creates a very unique situation. "Homeless shelter" not being defined in the
446 ordinance is another hardship that is created. This Variance would go a long way to solving all
447 of these problems. Since this is an area that has been recommended by staff to be rezoned and it
448 would include "homeless shelter" in that district they think it is reasonable to get the Variance
449 and allow Hundred Nights to get started on making that happen. The Planning Board will review
450 what they are proposing for a building, to make sure it is aesthetically appropriate in the area,
451 and the Planning Board will look at everything from driveway to landscaping to parking. Thus,
452 this is not over with the granting of the Variance. They think this property in particular can
453 support this use and can be done in a reasonable manner that will enhance the property value, be
454 safe, and not diminish property values in the neighborhood.

455

456 Mr. Phippard stated that he will answer questions, or turn it over to Jan Peterson from the
457 Hundred Nights Board of Directors.

458 Chair Gorman stated that he would like Mr. Phippard to take questions first.

459
460 Mr. Welsh asked if it is correct that a few years ago when it was rezoned to BGR, there was
461 some consideration of applying the CBL category to this piece of land. Mr. Phippard replied
462 yes, and Mr. Stevens is an attendee tonight and may want to speak to that. He continued that
463 originally it was zoned Industrial. Many years ago this was a fuel storage area. Over the years
464 the buildings and uses changed to end up as an auto repair business. When Mr. Stevens was first
465 approached he wanted his property to be in CB and he explained why that did not happen. It was
466 reasonable of City staff to take that approach. Mr. Stevens felt that CBL would be the next best
467 thing for him, but being the only piece of property being designated CBL, or “spot zoning,”
468 would have been inappropriate. BGR was the next available option and staff agreed to make Mr.
469 Stevens’s use an allowable use so it did not immediately become nonconforming by the
470 rezoning.

471
472 Mr. Welsh asked if “homeless shelter” is, in the current draft, a permissible use of the BGR
473 specifically. Mr. Phippard replied yes, that is his understanding. Mr. Welsh asked based on Mr.
474 Phippard’s recollection of this district in its draft form, would this parcel be on the edge of that
475 district, in the center, an island, or what? Would it fit very well? Mr. Phippard replied that his
476 understanding is that unless they change the proposed district lines it would be well within the
477 BGR and no longer be a peninsula.

478
479 Mr. Welsh asked/stated for it not to be permissible to have a homeless shelter at this site if it
480 were this new designation that would make it an unusual situation for the other properties within
481 that area. Mr. Phippard asked if he means if it is not permitted in BGR and gets rezoned to BGR
482 after Hundred Nights has constructed a new building. Mr. Welsh replied yes, if this not
483 permissible as a homeless shelter at that time, that would be an unusual circumstance for this
484 property, in BGR. Mr. Phippard replied the way it is currently proposed, yes, if they removed
485 that as a permitted use after Hundred Nights had already purchased the property and built the
486 facility, it would become non-conforming, like it is now, only now it is in CB, located there by
487 Variance.

488
489 Chair Gorman stated that he has a comment about the future zoning. He wants to caution the
490 board about looking into the future, relative to decisions today. They are using the current
491 Zoning Ordinance today.

492
493 Chair Gorman asked Mr. Rogers which zones lodging houses are allowed in. Mr. Rogers replied
494 CBL and High Density. He continued that High Density does require a special exception from
495 this board.

496
497 Chair Gorman asked, as far as Mr. Steven’s auto repair property being in limbo as a result of the
498 lack of a new ordinance and its current position, what uses are allowed in the zone that it sits in
499 right now? Mr. Rogers replied: assembly; bed and breakfast/tourist home; bulk storage and
500 distribution of goods, accessory to the main manufacturing use; college - undergraduate,

501 graduate, or industrial training programs; health and fitness center; historic site; home offices;
502 insurance, publishing, and manufacturing firms; manufacturing and processing; mixed-use
503 development; multi-dwelling structures; neighborhood grocery stores; nursery or greenhouse;
504 office for a small-scale corporate business; repair garage; research and development laboratory;
505 restaurant; warehouse; and wholesaling.

506

507 Chair Gorman stated that Mr. Phippard made several references to the coronavirus and the state
508 of the affairs it has put Hundred Nights in. He continued that it is his understanding that they are
509 proposing the same number of beds as the existing facility but they will have everything under
510 one roof, with the resource center and so on and so forth and will be all inclusive in this proposed
511 location, but with the same number of beds. That, coupled with the fact that he assumes this is a
512 pretty extensive construction process, with building a new building and renovating existing
513 buildings and all of the other elements he mentioned, and his reference to an emergency in this
514 fall and winter, makes him wonder how Mr. Phippard feels this proposal alleviates any of those
515 imminent concerns with the coronavirus. By the time this project is done, the distancing
516 measures and coronavirus guidelines may not even be relevant.

517

518 Mr. Phippard replied that Hundred Nights feels that because this property would allow them to
519 construct a larger building next year, it would provide a better solution to possibly get them
520 through another year of this pandemic. In the meantime they are looking at other options. One
521 is to renovate the 2,000 square foot building that is there, to provide the overflow bed spaces that
522 are needed. They would continue to have beds at Lamson St. and then through a renovated space
523 - they would have a couple of months to make that existing space usable for the beds needed
524 during the critical time, especially if they are not available at the United Church of Christ (UCC)
525 or St. James Church. They are looking at this property to provide both a short-term solution to
526 get through this winter and a longer-term solution, to get approval to construct a new building,
527 which is the ultimate solution to provide everything they need to provide on one site, maintaining
528 that maximum number of 48 beds. If in future years the pandemic is not an issue and it became
529 necessary for whatever reasons, due to numbers [of homeless people] exceeding the number of
530 beds available, perhaps the UCC and St. James Church could make their sites available again
531 temporarily. The Hundred Nights board and volunteers are constantly looking for ways to
532 address these needs. They have been very creative in using different solutions. There are trailers
533 that can be rented temporarily to provide bathrooms and showers, for example. They think that
534 if they are granted permission to use this site they can get through the immediate needs of this
535 winter and then work on the plan for the long-term needs, starting construction next year on a
536 new facility.

537

538 He continued that he wants to mention to the Board that Hundred Nights have looked long and
539 hard at this. Several of the board members have put in an incredible amount of time into looking
540 at different option for how to make it work on Lamson St. They feel that if they are granted a
541 Variance tonight, they can make it work and meet the immediate needs through this winter. If
542 they get the Variance granted tonight they would withdraw the request for the change in non-

543 conforming use for Kings Ct. It is inefficient to be on three sites and difficult to do it safely.
544 Therefore, they are putting all of their eggs in the Water St. basket.

545
546 Mr. Hoppock stated that Mr. Phippard spoke of the re-use intent for this district and the 13
547 factors. But he did not give a preliminary plan for the development of the property. Is there
548 one? Mr. Phippard replied that there are several options that they have looked at, such as a
549 single large building, saving the 2,000 square foot building and creating a second building, or a
550 U-shaped building to create courtyards, or a different-shaped building. He continued that he felt
551 that since they have to go to the Planning Board, if they get granted a Variance, that would be the
552 place to focus on the site design and City staff and the Planning Board would have adequate
553 input into what would be permissible. Mr. Hoppock replied that he understands, but what
554 disappoints him is they are looking at whether or not this is in the public interest, and there are
555 the 13 factors, which are relevant to that analysis, and then there is the question about the general
556 public purpose of the ordinance and its application to this specific property, and renewal of this
557 property is a significant component of that, and Mr. Phippard is telling them all about factors 1 to
558 13 and he (Mr. Hoppock) cannot visualize any of it and is skeptical of how it would work on this
559 site. For example, “Recognize the role of large street trees, which plays an important role in
560 creating a pedestrian scale.” He does not even know what ‘pedestrian scale’ is. And regarding
561 “Pedestrian comfort being another critical element to the vitality of these new places being
562 created,” he does not know what these new places being created are. He has a problem with that
563 piece of the application.

564
565 Mr. Phippard replied that it was his decision to not submit a concept plan for the property
566 because he did not want to distract the ZBA from the Variance criteria and felt it was primarily a
567 Planning Board issue. He continued that when he talks about pedestrian scale and designing a
568 site plan, they look for a building to be articulated – maybe jogs in the building or a recessed
569 portion of the building; they look for windows down at the street level so for pedestrians walking
570 by it is not a blank wall. This is not a large site. They are looking at creating a 6,000 square foot
571 footprint, 60 feet wide by 100 feet long, with windows on the ground floor and second floor.
572 Those are the types of features the Planning Board would be looking at in determining whether
573 or not they had done a good job at providing pedestrian scale. They also will provide on-site
574 sidewalks for circulation on the property, separate from the driveway and parking areas;
575 landscaped areas; and green lawn areas that can support benches and sitting under shade trees.
576 They have an area designated as a garden space, and at the north end of the property there is a
577 place for snow storage. There were a lot of site features he could have shown the ZBA on a site
578 plan, but he was hoping the narrative and his verbal presentation would be enough to convince
579 the Board that he knows what he is doing with designing site plans. If that is not enough, they
580 can let him know, and he is sorry now that he did not include a site plan. He thinks they can
581 provide safe circulation through the site by providing the one-way driveway in from Water St.
582 and circling out on Community Way. The building he visualizes would be in line with the
583 existing 2,000 square foot building, but extending further back on the property, and the driveway
584 would go around it. There would be landscaping on both sides of the building and the courtyard
585 area. It will be an attractive, two-story building, in a nice setting. They are comfortable that it

586 can balance nicely opposite the low-income housing that is on the opposite side of Community
587 Way. Redoing the existing 2,000 square foot building, which is just block painted red, they can
588 give it new siding and a pitched roof, and it can be a whole different appearance on that property
589 and be attractive.

590
591 Mr. Hoppock stated that he did not mean to suggest by his question that Mr. Phippard does not
592 know what he is doing; he knows Mr. Phippard knows what he is doing. That is not his concern.
593 He asked if Mr. Phippard said earlier that there would be 48 beds. Mr. Phippard replied that
594 would be the maximum. Mr. Hoppock asked what the “resource center” and its purpose is.
595 What activities will be there? How many people will use it? Mr. Phippard replied that the
596 current one is about 600 square feet. He continued that his understanding is that it is an area
597 where Hundred Nights can provide clothing, counseling (to a degree), a meal, and some
598 programs to help with resume writing and employment skills to help residents find new jobs. It
599 is a way to help people access the welfare programs that the City provides. The idea is not just
600 to give people a place to sleep, but to help people get back on their feet and become contributing
601 members of the community once again.

602
603 Mr. Gaudio stated that he has questions about the several different sites that are involved. He
604 continued that he takes it that this year they would use a facility with some renovation, along
605 with the Lamson St. property, to accommodate the homeless people this year. He asked if that
606 would be sufficient. Mr. Phippard replied yes, that is the plan – they would renovate one or two
607 of the buildings on this property. He continued that they plan to have 16 beds available at
608 Lamson St. and meet the COVID-19 requirements. If they could have additional beds here, that
609 would hopefully get them to the number they need and get them through the most current
610 emergency they see coming, which might not be all 48 beds. Mr. Gaudio asked if the plan is to
611 do the construction of a new facility next summer. If so, do they plan to continue the Lamson St.
612 property, or would they be discontinuing that? Mr. Phippard replied that they would keep the
613 Lamson St. property as long as it is needed, but if they are granted the Variance for this site, they
614 would close the Lamson St. facility and relocate entirely to this new one.

615
616 Mr. Welsh asked about the language of the BGR and the 13 items. He continued that it was
617 unfamiliar to him, and he is more familiar with seeing that (kiosks, drinking fountains, and so on
618 and so forth) in planning regulations. That level of specificity is usually for when you are
619 analyzing a site plan. When the ZBA gets that type of information it gets confusing because it
620 has not been approved by the Planning Board, because the Planning Board application comes
621 next. If Hundred Nights is granted a Variance and if this language is in the ordinance they will
622 be moving forward with, are these standards something that will apply and that Hundred Nights
623 will adhere to, and will Mr. Phippard be showing that to the Planning Board? Mr. Phippard
624 replied this is in the Zoning Ordinance and they have to do their best to comply. He continued
625 that this would be the basis for the initial design and it would then go through the 19 Planning
626 Board development standards. He agrees with Mr. Welsh - this is different language. This is a
627 step in the direction of form-based zoning, but not really clear, and that is why he thinks some of
628 this may be changed with the re-zoning in the future.

629 Chair Gorman asked: how would these interim, pre-construction but post-approval plans look?
630 He continued that Hundred Nights is proposing the possibility of quickly renovating the existing
631 building that has most recently been Mr. Stevens's auto repair building, 2,000 square feet in size,
632 to accommodate the immediate need for shelter as a result of the pandemic and the basic need to
633 shelter an increasing number of homeless people. How would he propose to meet these Zoning
634 criteria, go in front of the Planning Board, and renovate a building, all for a temporary use for
635 one winter? Is he understanding that accurately?

636
637 Mr. Phippard replied that that is not exactly correct. He continued that if they decide to renovate
638 the existing building they do not want to waste money by doing it twice. They would create a
639 new vision for the existing building. It would no longer be red. He would like it to have new
640 siding, or if they do not have time due to the weather, at least re-paint it, maybe white. If they
641 are going to use that structure it would be necessary to provide handicapped accessibility,
642 address some fire safety issues, upgrade electrical and plumbing, and install new bathrooms.
643 Hundred Nights is counting on getting grant money that is out there and can be used for all of
644 those purposes, which they could get on right away if they get approval from the City. They
645 would have to go to the [Community Development Department] to talk about the change in use,
646 and the Community Development Department might require Hundred Nights to go to the
647 Planning Board. They might end up with a phased plan, where phase one is the redevelopment
648 of the existing building and removal of the warehouse building in the back, and phase two would
649 be the construction of a new building, which they would want to start as soon as possible in the
650 spring, to get it up in place before winter of 2021. If they cannot get enough bathroom space in
651 the building, they would lease an accessible trailer with adequate bathroom space. All of that
652 would have to go through the Planning Board and the Code Enforcement Department.

653
654 Ms. Taylor asked Mr. Phippard to fill her in on the intended hours of operation. She continued
655 that there is a bit of a dichotomy between shelter times and resource center times. Also, how
656 many people would be non-residents (volunteers or employees) onsite, and for which functions?

657
658 Mr. Phippard asked Mindy Cambiar to reply. Ms. Cambiar stated that right now the shelter part
659 of the operation is open from 6:30 PM to 7:00 AM. She continued that in the past when the
660 Community Kitchen and breakfast program were running they would provide breakfast on site at
661 7:00 AM. That had to stop because of COVID-19, so Hundred Nights started opening the
662 resource center at 7:00 AM in March and it is open until 6:00 PM because the Community
663 Kitchen is no longer serving dinner. They just hand out bagged dinners to go, but people who
664 are homeless have nowhere to eat, so they eat those bagged dinners in the resource center. Only
665 6 to 8 people at a time can be inside the resource center because it is so small. The plan is that
666 people who stay in the shelter (unless they are families with children, who they hope to keep in
667 their own spaces) would have to leave the shelter during the day so [staff] can clean and do
668 laundry, and the resource center would be large enough to allow 24 people inside this winter
669 with social distancing. They hope to use their own resource center and possibly St. James Church
670 as a possible accessory resource center, to keep people spread apart this winter. This gives

671 people a place to be inside, because since March, until recently, everything else was closed, like
672 the Library.

673
674 Ms. Taylor asked how many non-guests would be in there at any one time, for either the shelter
675 or the resource center. Ms. Cambiar replied that since March they have had no volunteers in the
676 evenings, when they used to have 2 to 3, mostly because the volunteers are retired or at-risk
677 people who have not felt safe coming in. She continued that they have also asked anyone staying
678 at another shelter in town to not come in for the past 6 months and they plan to keep it that way
679 for now. Only Hundred Nights people and unsheltered people can come into the resource center.
680 The shelter has a staff member at all times, and in the resource center there are two staff people
681 for most of the day, and while the resource center is open, two to three staff members are upstairs
682 cleaning the building, currently, and that would continue.

683
684 Ms. Taylor asked: if Hundred Nights got a Variance and moved to the new site fully, would there
685 be the same number of staff members, or more? Ms. Cambiar replied that they would actually
686 have fewer staff members in the one location than they would have in three locations. She
687 continued that it would be nice to have two people overnight, and two people there to clean every
688 day. Right now they are so short of space that their Shelter Manager and Operations Director
689 have to share an office and she shares an office with storage for the whole facility as well as an
690 administrative person. They are not planning on increasing anything, other than having their
691 case manager be full-time instead of part-time as the position is currently. A housing case
692 manager is extremely important to helping people get out of the shelter and into housing. They
693 had a housing case manager for the past five months. She just recently left and they are looking
694 for another. In the past year they have gotten 54 people into housing, which is a significant
695 increase from years past when they have not had a case manager who was able to work one on
696 one with shelter guests.

697
698 Ms. Taylor stated that she was trying to get a handle on the actual people count Ms. Cambiar
699 anticipates, to anticipate how intensely-used the site would be. Ms. Cambiar replied that they
700 would have up to 48 overnight guests, and during the winter there are not many unsheltered
701 homeless. She knows of five people who just do not want to come in. The children are in school
702 or doing remote learning. Hopefully the Library will also accommodate them. Many Hundred
703 Nights guests enjoy being able to go to the Library to use computers and look for jobs, be in a
704 quite space, or read a book. She does not think people who are not people Hundred Nights is
705 providing shelter for would be in the resource center, other than staff and a volunteer or two, but
706 only one or two at a time, especially right now.

707
708 Ms. Zerba stated that they have talked about the 600 square feet they currently have. She asked
709 what they anticipate for the size of the new resource center. Ms. Cambiar replied that she does
710 not have a number right now because there are so many different estimations for how many
711 square feet you need per person to be six feet apart at all times. Ms. Zerba asked for an estimate.
712 Ms. Cambiar replied that when they were on Main St. for a couple months, when Monadnock

713 Family Services donated space, that space was ideal. She thinks it was about 2,400 square feet.
714 Ms. Zerba replied that she will not hold her to that; she was just curious.

715
716 Mr. Rogers stated that to answer Mr. Welsh's question from earlier, the draft map shows the
717 property in the southern edge of the proposed district, with still having the RP across the street as
718 well as BGR across the street.

719
720 Chair Gorman stated that Mr. Phippard can continue his presentation. Mr. Phippard asked Jan
721 Peterson to speak.

722
723 Jan Peterson, of 27 South Shore Rd., Spofford, stated that she has been Hundred Nights' Board
724 President for about a year and has been on the board since 2017. She continued that she spent 24
725 years as a public defender in an office across the street that used to be the District Court, and
726 dealt with a high risk population, which is partially why she was attracted to Hundred Nights.
727 There is a lot of intersection with the folks at Hundred Nights. Her clients back in the day
728 struggled with homelessness and housing insecurity. Hundred Nights is once again reaching out
729 to the community to help address a problem that concerns everyone, those who support the
730 relocation efforts as well as those who oppose it. Everyone knows the problems: lack of
731 affordable housing, poverty and unemployment, rising eviction rates with dire consequences for
732 the tenants and the landlords, mental and physical health challenges, unexpected life challenges,
733 and as Chief Russo so eloquently stated in her conversation with him, "these are issues of quality
734 of life." That summarizes the whole thing. Hundred Nights is not naïve about the challenges
735 facing their guests, and they are not naïve about who the guests are and what they need. They
736 are not naïve in assuming success is always just around the corner, even with a robust resource
737 center.

738
739 Ms. Peterson continued that since we are in New England and since she once saved a client who
740 had trespassed at a homeless shelter from some jail time by tapping into quintessential New
741 England, by quoting Robert Frost, she will do so again now: "Home is the place where when
742 you have to go there, they have to take you in." To paraphrase that: they have to take you in,
743 even if you do not deserve it. Hundred Nights is not naïve about who the clients are, and they
744 know the public is not naïve about it, either. The clients are a large spectrum of people in the
745 community. We are all in this together. This phrase is used a lot, but it is not trite, because it is
746 true. We all want safety and security; we all want to protect the general public welfare; and we
747 all want the underlying issues to be addressed. Hundred Nights has been very patient, but as she
748 wrote in her letter of support for these applications: if not now, when? We are in a national
749 emergency with protocols necessary to control this viral spread. There is an urgency to having
750 this location to help the community cope with the imminent issues as well as long-term issues.
751 Hundred Nights does not offer a panacea; everyone knows that. It is one part, one building block
752 of the community solution to the problem of homelessness. Closing our eyes will not help.
753 Putting it off again and again will not help. The dialogue around hoping another town will step
754 up and welcome them will not help. Stalling so that the problem continues and exacerbates our

755 ability to address social services does not help. Stalling the problem to have refrigerator boxes
756 behind Hannaford's, which her clients used to call their 'home,' will not help.

757
758 Ms. Peterson stated that she wants to address the issue of how we deal with social services issues
759 in our society when we fail to take a deep dive into the solutions. She did this work for so many
760 decades, in social service agencies to help people get their feet on the ground, and avoid
761 criminogenic thinking and criminogenic life. It is her fear – and it is a real fear - that for the last
762 several decades with community mental health and mental health hospitals closing, the
763 community has let Police and Corrections deal with substance use disorders. That is a legal
764 issue. She was on the drug court, and the mental health court, and went down to Washington
765 regarding veterans' issues, and has done many sit-downs with people in trying to solve these
766 problems. It is not a solution to say to someone "You'll get a cot and 3 hots." It is not a solution
767 for mental health challenges or life challenges. Having no place to put your head for the night
768 and be warm are not problems that will be solved by bigger jails, more minor criminal arrests,
769 and more court alternative programs. These problems are solved by finding the community
770 services in the first instance. She gave a graduation speech at the Hillsborough County South
771 Drug Court graduation in Nashua. It was full of family members of participants and graduates.
772 She went out on a limb and said, "How would you feel if we had community services that could
773 have addressed your child's addiction issues and drug use issues when they were 14, instead of
774 now that they are criminals, and there had been robust community services to help your child?"
775 She almost got a standing ovation from those families.

776
777 She continued that she has hope that the Keene community will step up to address this one issue,
778 emergency needs for homeless individuals and families, to direct the money to the community to
779 help solve these issues. Oscar Wilde once said, "All saints have a past, and all sinners have a
780 future." They want to address the future efforts to help folks get on their feet, have a place in
781 society, and have hope for a better tomorrow. Both the saints and the sinners, because that is the
782 continuum of who we have to help. By doing that, they are one piece of the foundation to make
783 the community safer and more secure, and more humane. If not now, when? Let's go down this
784 path together and solve this problem for a better future. She continued that she wants to thank
785 Mr. Rogers, Mr. Lamb, Ms. Kessler, and Mr. Phippard, who has done enormous pro bono work
786 for Hundred Nights, and Ms. Cambiar, who is a champion of social issues in the community.
787 Everyone needs to keep in mind what they are trying to solve here, as well as the deep dive into
788 the regulations.

789
790 Chair Gorman opened the meeting to public comment and asked for people in support of the
791 Variance request to speak first.

792
793 Ben Albert, of 380 Main St., stated that he is 100% in favor of what Hundred Nights is doing.
794 He continued that they have been in business for ten years. They do a great job taking care of
795 people that need to be taken care of. Tom Stevens was his former mechanic before he closed up
796 his shop, and his father's mechanic for 17 years before that. If Mr. Stevens could sell his
797 property to Hundred Nights that would be great. It is greatly located, right next to Community

798 Way, which has a lot of apartment buildings, and close to downtown. Hundred Nights could do
799 a wonderful job with that property and he is in full support of giving them the Variance they
800 need to A) take the emergency steps they need to take to get people in housing this winter and B)
801 develop that property into a support property for disadvantaged people.

802

803 Chair Gorman again gave the phone number people can call to participate.

804

805 Sarah Harpster, of 32 Old Walpole Rd., stated that she meant to write a letter but did not. She
806 continued that there is not much she could say that would be more convincing than that great
807 wrap-up by Ms. Peterson, but she wants to voice her support for this Variance. Our public
808 interest is served when people who are facing any kind of instability can be made more stable.
809 She likes that Hundred Nights is not being too innocent about what it takes. If the community is
810 not doing anything to hold people's lives together and help them take the next steps, it is a
811 disservice to the public. Hundred Nights has been taking a long and patient journey in their
812 efforts to build these foundations under people who are experiencing homelessness, and now is
813 really the time the community needs to step forward and put this together. She supports the
814 Variance and hopes that after the Variance is supported by the [Board] the community can
815 continue to come together and support Hundred Nights in being able to build this new facility
816 and providing the services that people really need.

817

818 Derek Scalia, of 16 Hillside Ave., stated that he serves as the Deacon at St. James Episcopal
819 Church and the Archdeacon of the Episcopal Church of NH. He continued that these individuals
820 experiencing homelessness are one of us. As we look around the beautiful city and see signs
821 throughout the community that claim that we are a "welcoming community" and that all are
822 welcome here, we must recognize that that is also for those experiencing homelessness. He has
823 slept over at the UCC to help their operation, many nights last year, and has welcomed guests
824 that have stayed overnight at St. James this past year. The fact is that this site is no longer a safe
825 place for them because of COVID-19. This Water St. site provides them an opportunity. He
826 hopes the Board finds this is the right and just place for them. He continued that he wants to
827 close with Proverbs: "If you close your ear to the cry of the poor, you will cry out, and not be
828 heard, remembering that we are connected with them through thick and thin."

829

830 Tom Julius, of 3 Tannery Rd., Gilsum, stated that he is speaking as the chair of the Monadnock
831 Interfaith Project, speaking for many people of faith throughout the region. He continued that it
832 is a basic, human value to care for one another as we ourselves would want to be cared for if we
833 were in need. Monadnock Interfaith Project believes this proposal by Hundred Nights fits the
834 spirit and requirements of the Zoning law and represents an opportunity to fulfill a civic
835 responsibility that would lift us all.

836

837 Elsa Worth, Rector of the Episcopal Church in Keene, stated that as it might be expected for her
838 to say: "Do unto others as you would expect them to do unto you." She continued that that is
839 certainly the case when it comes to our homeless neighbors. She does think this request from
840 Hundred Nights meets the Zoning criteria for a Variance and it is a good location and a good

841 solution for Hundred Nights in the long run. We all know this is absolutely the right thing to do,
842 to finally find a place for Hundred Nights to have warm, safe, adequate facilities for our
843 homeless neighbors. How we treat the least of us is how we treat each other, and no different.
844 She firmly and strongly suggests passing the Variance tonight.

845
846 Julia Floodpage, of 44 Mountain Rd., Rindge, stated that she is on the board of the Monadnock
847 Area Transitional Shelter that transitions families and occasionally individuals in Peterborough.
848 They are facing more and more people needing shelter and are unable to meet the need, due to
849 the limitations of their building. They are looking at buildings and hoping to find more places
850 where people can get shelter this year. We cannot have people dying on the streets of Cheshire
851 County or Hillsborough County. We must have adequate temporary shelter for people until this
852 country can come to the point of promoting housing that people can afford.

853
854 Erin Hoy, of 389 Main St., stated that she sees the need for a place to stay where people can
855 preserve their dignity, and a central property within walking distance. She continued that she has
856 walked by the location many times and thought it was a deteriorating place and it would be nice
857 to do something with it. She was concerned, though, about its size. It sounds like they are
858 saying they can fit everyone in it, but she is worried about the impact of multiple locations on
859 neighborhoods and decreasing property values. If this could be a single place, with everything
860 happening in one location, she would support it.

861
862 Michael Mattel, of 19 Salisbury Rd., stated that the Zoning, as was pointed out perfectly on the
863 pictures, shows that this will be a good thing for the city. It will be a good thing for Hundred
864 Nights as well as the city, with bathrooms that will solve many issues for Hundred Nights
865 residents, and it will take a lot of folks off of Main St. It will be good for the City because it
866 fulfills the City's responsibility. He has previously worked with Ms. Cambiar and thinks her
867 care and dedication will be a benefit and make this facility a go. She did that with the
868 Community Kitchen and is well on her way to doing it here.

869
870 Dave Curran, of 16 Prescott St., stated that he will stick to the Zoning questions. He continued
871 that as for the hardship for the property, the property can be sold and used for multiple uses. It is
872 currently an auto repair and could stay as an auto repair. Regarding the BGR District, that
873 chapter was created not too long ago, and along with that came the RP District. The intent was
874 to restore the neighborhoods that have been "beat down" for quite some time. The hope is that
875 as Kingsbury moves forward at some point the BGR District will start to look like something.
876 The residents that abut it will have something really nice. They need to keep in mind that the RP
877 District sits right up against this proposed use. He also wants to mention that Mr. Phippard said
878 that Community Way residents are low-income, but they are not. It is a workforce housing
879 program. Finally, that has been created; it has been needed. They are residents and they are very
880 close. Also, up against or in the BGR District is American Home assisted living: a huge user of
881 the pedestrian path. One more thing that got him was: Mr. Phippard said the Kings Ct. problem
882 will go away if this is approved on Water St., and that sounds like he is using the ZBA as

883 pawns/leveraging and threatening the ZBA, saying, “If you give us what we want, Kings Ct. and
884 lower Main St. will go away.” That is not fair.

885
886 Charles Redfern, of 9 Colby St., stated that he was appointed by the Mayor to be on the Ad Hoc
887 Marlboro St. Rezoning Committee, back in about 2013. He continued that it was composed of
888 various folks with City staff support. It was a long process, and basically the concern is to make
889 improvements to Ward 1 and Ward 2 areas, to improve housing stock, to improve economic
890 viability, and specifically, it resulted in millions of dollars being poured into both the Water St.
891 area and soon to be in the area of Marlboro St. Between Water St. and on Community Way,
892 millions of dollars in a TIF district was created. A hotel was built with the purpose of that area
893 being a nice area for businesses; they had a nice restaurant there, Nicola’s. The committee’s
894 findings were to make improvements to this area, with substantial investment from the City and
895 taxpayers. His concern is that if this Variance is granted, Hundred Nights is allowed up to seven
896 floors for a building there. He is not saying that is what they are going to do. But they would be
897 allowed to. There is drug use in that area already; granted, it is on a much smaller scale than
898 what he thinks it would be with a homeless shelter there. There are syringes on the path and on
899 the basketball courts, and empty alcohol bottles. Some people are very concerned about what the
900 City is planning to do and what the City has done. He thinks a Variance would be counter to
901 where the neighborhood needs to go.

902
903 Krishni Pahl, of 84 Valley St., stated that her family’s property is about 300 feet from the Water
904 St. property and she wants to talk about the second criterion. What the Board needs to
905 understand is that Water St. abuts many residential streets, such as Valley St., Kingsbury St.,
906 Myrtle St., Grove St., Prescott Ct., Douglas St., and Eastern Ave. These are all streets that have
907 young families. She understands that Hundred Nights is an essential component in the
908 community but they have been here ten years, and unfortunately, Hundred Nights clientele have
909 not been good neighbors in the downtown. Now they are proposing to bring that use and put it
910 right in the middle of a residential neighborhood. The clientele have been known to have drug
911 issues, and other similar issues. They are going to be .09 miles from Wheelock School. Grove
912 St. is already a challenging street with college use. These two uses together are going to cause
913 such a detriment to her family’s property. She and her husband have been good taxpayers for 25
914 years. They live in a two-family house; they live on the second and third floors and rent the first.
915 When her tenant of seven years heard of this change coming in they got agitated. If she loses her
916 tenant she loses her home. That is not something the City should be encouraging. She is also
917 supporting the homeless and always has and always will, but now, it is affecting her and her
918 safety. And her children will have to walk by this site to go to school. This use downtown has
919 not been controlled or managed; they have had ten years to correct it, and they have not. Now
920 they want [the neighborhood] to take this on? East Keene is a declining residential area and they
921 do not need anything more. She asks the Board to not approve this Variance.

922
923 Kay Kendall-Georgina, of 41 Douglas St., stated that she is a lifelong resident of Keene and a
924 taxpaying homeowner. She thinks that is important because she hears people phoning in who are
925 not taxpaying residents of Keene, so she hopes the Board listens to the voices of her and other

926 people who live in this area of the city. Her concerns for the Variance are: the site is near family
927 public housing, near family homes, and near a basketball court that the public should be able to
928 use, and Pat Russel Park is a few feet away and the City is looking to upgrade that. She
929 continued that “those of us who live in Keene know what Hundred Nights is and who it attracts,”
930 and they know Hundred Nights is looking to grow more beds and are bringing “more outside
931 people” here. She questions whether they are “our” homeless [people]. These people are drug
932 users. She banks at Citizens Bank and sees what goes on firsthand. She sees the Police cars
933 there and people passed out on the sidewalk. As Ms. Pahl pointed out, these are not good
934 neighbors. It is a step in the right direction that Hundred Nights found a site with a footprint so
935 they might be able to manage their people better. But they have no authority to manage the
936 people better, so she does not know how that can be changed. She is concerned because
937 Hundred Nights brings in sex offenders and they are too close to Wheelock School and to
938 America House where she is taking care of people, and people want to go out and walk and be
939 safe. She is concerned about this property being converted in that way, and where would the
940 number of people end? She asks the Board to consider that this would not be a good location,
941 and to not [give the Variance.] She would rather see a business there that is bringing in money to
942 the community, not taking something off of the tax rolls, and keeping the neighborhoods a little
943 safer.

944
945 Angeline Pahl, of 84 Valley St., stated that she is opposed to the [Variance being given to] the
946 Hundred Nights shelter. She continued that she does not have anything against the homeless
947 [people] and she has seen shelters that can make that kind of thing work but she does not think
948 that Keene is a place where they could make that work, unless a lot of changes were to be made.
949 She also does not think the neighborhood is big enough to give a safe or comfortable distance
950 from the American House. There are a lot of kids in her neighborhood who run around and play,
951 and she would hate to have that stop. There is a basketball court there, too, and the bike path,
952 and she feels like those would not be able to be used as much as well, if Hundred Nights [is
953 given a Variance] for that location.

954
955 Chair Gorman called on Mr. Phippard to give him the chance to respond to public comments.
956 Mr. Phippard stated that Mr. Redfern mentioned that if this Variance is approved Hundred
957 Nights can build up to a 7-story building; he is not sure where that is coming from. Seven stories
958 are not permitted in BGR. They are allowed to go higher than two stories if they do parking
959 under the building, but they certainly will not be doing that. He continued that that is unfounded.
960 Regarding the other comments, he understands the concerns people expressed about drugs and
961 alcohol, but these are problems that exist throughout the community, not just on Lamson St. and
962 not just at the homeless shelter. It is not fair to categorize this particular use as the central focus
963 for those negative activities. Something they are trying to accomplish by centralizing the shelter
964 and resource center on one site is to cut down on those negative activities. When people have a
965 place they can go do during the day, and get help, using the resource center activities as
966 described, Hundred Nights thinks it will cut down on those types of activities. If residents will
967 have access to bathrooms, computers, and programs in a large enough resource room, in one
968 location, it has to have a positive impact.

969 Chair Gorman asked Mr. Phippard about the fourth Variance criterion, not diminishing
970 surrounding property values – Mr. Phippard referenced statistical data and he did not pick up on
971 who/where that data came from. Mr. Phippard replied that Hundred Nights staff and volunteers
972 collected the City tax card records, public information from the Assessor’s Department, and
973 looked at the properties that abut the Lamson St. property, for the years 2011 to 2016. He
974 continued that they determined that the property values over that time period were decreased by
975 approximately 1.13%, and then they looked at the entire citywide database for property
976 assessments and found that the value decreased by an average of 5.9% over that same time
977 period. Thus, this is solid evidence that the location of Hundred Nights on Lamson St. did not
978 diminish surrounding property values because they diminished less in value than the average
979 value citywide.

980
981 Chair Gorman asked Ms. Cambiar – there was reference made to the fact that perhaps these
982 homeless folks are not from the local community. He asked if that is accurate or not. Ms.
983 Cambiar replied that almost 80% of the bed nights provided at the shelter in 2019 were for
984 people with Cheshire County IDs and their children, and about 20% of people had no ID.

985
986 Chair Gorman asked if Board members had more questions for Ms. Cambiar or Mr. Phippard.
987 Hearing none, he welcomed more public comment.

988
989 Krishni Pahl stated that her neighborhood has started a petition “to oppose the rezoning from
990 BGR to Downtown Growth and to take this property off of tax rolls, and for the location of
991 Hundred Nights” and so far there are 26 signatures. She continued that she has also filed a Right
992 to Know request for call logs of Police calls to Lamson St., Federal St., Ashuelot Park, and is
993 working with a detective who is in charge of sex offenders. She wants to see if anyone from the
994 Lamson St. shelter is on the sex offender list and she will make that available to the ZBA. She
995 found it very interesting that one of the callers who favored this Variance said it would be nice to
996 not have Hundred Nights in various locations and just keep it in one place so other property
997 values do not decline. That is exactly her point. Do not bring this facility to Water St. It already
998 has two shelters. Do not bring a third one into her neighborhood. They are trying really hard to
999 revitalize east Keene. If they really need to put the Hundred Nights facility somewhere, there are
1000 so many other vacant properties, like the one behind Joann Fabrics, or the one on Ashuelot St.
1001 She asks that they please take their focus off of east Keene.

1002
1003 Elsa Worth stated that she wanted to respond to the comments she has heard about Hundred
1004 Nights being “poor neighbors,” because she has experience about that. She lives on School St.
1005 and right around the corner from St. James and Hundred Nights is literally the next-door
1006 neighbor. Her church has had Hundred Nights guests in the building seven nights a week last
1007 winter as overflow guests and she sees them and knows them by name. To have her neighbors
1008 disparaged as though they are not as decent as other people in the city is really distressing to her.
1009 She feels that people are losing a sense of humanity by making comments in this way. Hundred
1010 Nights has been a fine neighbor. There are always sometimes problems in homeless shelters, as
1011 there are everywhere, but she has experienced the Hundred Nights staff being very effective in

1012 addressing them. They have never had any serious problems at St. James even with guests in
1013 their building, and they have developed very fine relationships with their neighbors, including a
1014 great deal of gratitude from their neighbors who are suffering with homelessness. It does not
1015 matter if they have addictions or not or mental illness or not – they have still been gracious, and
1016 they have still been responsible as guests. She has no qualms about having them as her neighbor,
1017 as has been the case for many years. The property on Water St. is large enough for a facility to
1018 be created that makes a courtyard and space for [Hundred Nights’ residents] to be outside in a
1019 comfortable and private way instead of where they are now in front of the whole world, which is
1020 not comfortable for [the residents themselves]. Just going to a local business and seeing
1021 [homeless people] is not an assault. They are people and neighbors like anyone else in town.
1022 She felt that as a literal neighbor of Hundred Nights she had to speak up after hearing those
1023 comments.

1024
1025 Nikki Sauber, of 34A Royal Ave., stated that she agrees with everything that has been said in
1026 favor of the Variance. She continued that she wanted to respond to Ms. Pahl’s comments about
1027 looking at the Police log data and calls to Lamson St. She is on the Hundred Nights board and a
1028 member of the Advocacy Committee, and they actually looked into this. She wants to share
1029 some data they collected from public records. They looked at the Police calls from November
1030 12, 2019 to May 31, 2020. There were a total of 14,183 calls made to the KPD. Of those calls,
1031 149 of them were about Lamson St., which is 1.05%. That is a very small number. There were
1032 186 assaults reported to the KPD, out of those 14,183 calls, and none were on Lamson St. There
1033 were no reports of property destruction on Lamson St., or of sex offenses, larceny, or theft.

1034
1035 Chair Gorman asked if Mr. Phippard wanted to make a rebuttal to any of these recent comments.
1036 Mr. Phippard replied that the last caller did a good job, and he has nothing to add. He continued
1037 that he thanks the Board.

1038
1039 At 9:15 PM, Chair Gorman announced a five minute break. He called the meeting back to order
1040 at 9:20 PM.

1041
1042 Mr. Phippard stated that something he meant to reply to earlier is that Mr. Curran felt Mr.
1043 Phippard was somehow threatening the ZBA by saying Hundred Nights would withdraw the
1044 King Ct. application if they received the approval for the Variance on Water St. He continued
1045 that he is not sure how that is a threat. The Water St. Variance is Hundred Nights’ first choice
1046 and they feel that operating in one location is the best, safest, most efficient way to operate a
1047 homeless shelter. They do not want to spread out over more and more locations. If they are at
1048 Lamson St. and using UCC and St. James Church for overflow and then using King Ct. that
1049 creates a staffing nightmare for Ms. Cambiar and that is the last thing they want. He wanted to
1050 be honest, open, and clear with the Board: Hundred Nights feels they can make it work at Water
1051 St., in one location, and operate safely and appropriately. If they receive the Variance request
1052 they will withdraw the King Ct. request and not waste the Board’s time with that.

1053

1054 Mr. Hoppock stated that for the record, he himself did not hear anything Mr. Phippard said as a
1055 threat. Two other Board members replied “likewise.”

1056
1057 Chair Gorman stated that he will give Mr. Curran the opportunity to respond. Mr. Curran stated
1058 that he did not state that Mr. Phippard was threatening the ZBA. He continued that what he said
1059 was that it sounded to him like Mr. Phippard was using the residents of Water St. as some sort of
1060 pawn, and he will leave it at that.

1061
1062 Chair Gorman stated that the public hearing is closed. He continued that the Board will
1063 deliberate on the Findings of Fact.

1064
1065 1. *Granting the Variance would not be contrary to the public interest.*

1066
1067 Mr. Hoppock stated that the phrase “public interest” does not mean what most of tonight’s
1068 speakers think it means. He continued that the requirement that the Variance “not be contrary to
1069 the public interest” is related to the requirement that the Variance be consistent with the spirit of
1070 the ordinance. It has nothing to do with the public good/social service/proposed use. With that
1071 said, to him the public spirit of this ordinance is the uses related to the environmentally
1072 progressive planning policies and adaptive reuse traditions that the ordinance lays out. Mr.
1073 Phippard went into great detail on Section 107-771, numbers 1-13, and he is satisfied that Mr.
1074 Phippard met those 13 criteria and this Variance would serve the public interest, for that reason
1075 only. He continued that he pressed Mr. Phippard on that – he did not think Mr. Phippard had a
1076 plan, and Mr. Phippard convinced him that he did. That is why he believes the first criterion is
1077 satisfied in that regard.

1078
1079 Mr. Gaudio stated that he agrees. Mr. Welsh stated that he adds his concurrence. He continued
1080 that if he had any question at all about the public interest, it is the portion of the ordinance that
1081 states a preference for technology or new kinds of industry. But permissible uses include many
1082 other things, so these are preferences but not exclusive, and he does think that items 1-13
1083 specifically were laid out very carefully and an argument was made for them.

1084
1085 Ms. Taylor stated that she also agrees that this not contrary to the public interest, along the lines
1086 as stated by Mr. Hoppock. She continued that she thinks it is consonant with the basic objectives
1087 of the Zoning Ordinance of this district. It is perhaps closer to those objectives than it is
1088 currently located on Lamson St.

1089
1090 2. *If the Variance were granted, the spirit of the Ordinance would be observed.*

1091
1092 Mr. Hoppock asked: would granting the Variance alter the essential character of the
1093 neighborhood in question? He continued that here, he thinks the applicant failed to meet his
1094 burden of proof on this point. Second, would granting the Variance threaten the public health,
1095 safety, or welfare? Again, he thinks the applicant failed to meet his burden of proof on this
1096 point. The Board heard only about the guests at the proposed site, not any impact of the guests

1097 on the neighborhood. The applicant did not talk about the essential character of the
1098 neighborhood and he is not satisfied the burden was met. He will vote 'no' on this criterion.

1099
1100 Mr. Gaudio stated that he believes contrary. He continued that he thinks the burden was met,
1101 and the spirit of the ordinance would be observed. The spirit of the ordinance is not such that it
1102 is a requirement that it be the specific list of the uses, as already mentioned, but rather that it be
1103 in accordance with the general types of uses that are permitted there, and a number of them are
1104 uses that have a certain amount of intensity to their use and can be not as accommodating, for
1105 example, to single-family housing as in some other situations, so he does not think this use
1106 would be in violation of or contrary to the general spirit of the ordinance.

1107
1108 Mr. Welsh stated that he concurs with Mr. Gaudio, and in his view the spirit of the ordinance
1109 would be observed.

1110
1111 Ms. Taylor stated that she agrees with Mr. Welsh and Mr. Gaudio that the spirit of the ordinance
1112 would be met. She continued that it seems to be consonant with residential uses that are allowed
1113 as well as commercial uses, such as a health and fitness center or a training program. It is clear
1114 that the ordinance did not expressly contemplate a homeless shelter but then again, there really is
1115 not much in the ordinance as it stands today that *does* contemplate a homeless shelter. When you
1116 look at the objectives of this ordinance, she definitely thinks it is in accord with the spirit of the
1117 ordinance.

1118
1119 3. *Granting the Variance would do substantial justice.*

1120
1121 Mr. Hoppock stated that the only fact he heard cited to support this criterion is the owner of the
1122 properties would be able to sell the properties. He continued that the applicant offered no
1123 substantive comment to support any other loss to himself. A loss of this nature to the individual
1124 is not a loss that creates an injustice, in his opinion. Therefore he will vote 'no' on the third
1125 criterion.

1126
1127 Ms. Taylor stated that she disagrees. She continued that she thinks that as part of the balancing
1128 test, it is not necessarily loss to the individual owner. She looks at this as loss to the applicant
1129 and whether or not there is an injustice to the general public, and based on the information they
1130 heard tonight, she thinks the scale is tipped in favor of the applicant and that there is no general
1131 injustice to the general public.

1132
1133 Mr. Gaudio stated that he agrees with Ms. Taylor. He continued that the point here is that it
1134 would do substantial justice because there is no showing of an injustice to the public.

1135
1136 Mr. Welsh stated that he concurs with the past three. He continued that as he evaluates the
1137 substantial justice issue, he sees it as a balancing act. He sees that the weight of the various pros
1138 and cons moves toward approving the Variance.

1139

1140 4. *If the Variance were granted, the values of the surrounding properties would not be*
1141 *diminished.*

1142
1143 Mr. Hoppock stated that here, he heard the evidence was that the Lamson St. property tax cards
1144 were evaluated over a course of time when the homeless shelter was there and compared against
1145 citywide property taxes, and that the slight diminution at Lamson St., in relation to the value of
1146 properties citywide, is indicative of no loss of property values. He continued that however, the
1147 test should be: what is the diminution of the property values to the surrounding properties at the
1148 site in question. Here, again, he has to say the applicant offered insufficient evidence to the point
1149 and failed to meet his burden of proof. He cannot vote 'yes' on this criterion for this reason.

1150
1151 Mr. Welsh said that he was fairly persuaded by the evidence that was presented, because it was
1152 evidence, and that is in contrast to impulse or reflexive assumption about one would think would
1153 happen. He continued that what he finds compelling is: it is the strongest, single piece of hard
1154 evidence the Board has received on this issue, and that is the evidence the applicant provided.
1155 He would be supporting the argument that they would not be as diminished as surrounding
1156 properties.

1157
1158 Ms. Taylor stated that she thinks that at worst it would be a break even on surrounding
1159 properties. She continued that the site is something badly in need of redevelopment and if you
1160 were to weigh the auto repair shop that was there, as opposed to construction of a new shelter
1161 that is contained within the site, she does not see that there is any reduction in value on the
1162 impact of the neighbors. The objections the Board heard were not from the immediate
1163 neighbors, they were from people several streets away, which does make a difference.

1164
1165 Chair Gorman stated that for the record, they did get some letters from people who are opposed
1166 to this who are abutters and located relatively closely. He continued that those people did not
1167 speak tonight but they did issue public statements. Ms. Taylor replied yes, she did read those
1168 letters.

1169
1170 Mr. Gaudio stated that he agrees, too. He continued that he does not think the evidence carries
1171 that there will be a decrease in the values. Whether or not there would be an increase or stasis
1172 they cannot be sure about, but he is not convinced that there is evidence to say there would be a
1173 decrease.

1174
1175 Chair Gorman stated that this is a difficult one for him. He continued that the burden of proof
1176 does lie on the applicant. They did give some statistical data, however, it is not very deep data.
1177 Without speaking to the Assessing Department, he could not give much credibility to it because
1178 he does not know if there is the potential that a citywide, commercial evaluation was done in that
1179 timeframe that might have juiced the numbers in favor of certain districts while other
1180 revaluations might not have been performed. It is his understanding that the City did do a big
1181 commercial revaluation at some point during that timeframe and that Lamson St. would have
1182 fallen probably into that category. While the burden of proof does remain on the applicant, if

1183 this statistical data is accurate, he thinks there would have to be a lot more provisions to it for
1184 him to be sold on it being proof or hard data.

1185
1186 Ms. Taylor stated that for informational purposes, the City does undertake a revaluation of the
1187 entire city every five years as required by statute. She continued that there is one coming up in
1188 2021, so it would make sense that there would have been one in the 2015 or 2016 timeframe. It
1189 is done every five years for the whole city, not just commercial or just residential. Chair Gorman
1190 replied that he understands that, from a statewide perspective. He continued that he does not
1191 claim to have an understanding of the inner workings of the Assessing Department. He does not
1192 know what other forms of revaluation or specific to what areas or districts may be performed, but
1193 he is aware that that is performed every five years.

- 1194
1195 5. *Unnecessary Hardship*
1196 A. *Owing to special conditions of the property that distinguish it from other properties*
1197 *in the area, denial of the Variance would result in unnecessary hardship because:*
1198 i. *No fair and substantial relationship exists between the general public*
1199 *purposes of the Ordinance provision and the specific application of that*
1200 *provision to the property*

1201
1202 Mr. Hoppock stated that he does agree that, as Mr. Phippard explained, the peculiar zoning of
1203 this property in its various divisions and the fingerlike structure of it, and so on and so forth, does
1204 create a special condition of the property that is relevant to the Zoning inquiry. He continued
1205 that the general public purpose of the permitted uses in this section, as he understands them,
1206 would be to regulate and control density and population, protect health and safety and welfare,
1207 and in this particular zone, deal with the reuse of an old industrial zone. With those general
1208 purposes in mind, he finds that there is a fair and substantial relationship for those purposes to
1209 this site. He is not satisfied that an unnecessary hardship exists.

1210
1211 Mr. Welsh stated that his impression, from the applicant's presentation, is that this is as Mr.
1212 Hoppock stated: a very complicated piece of property with some very complicated layers and
1213 divisions. That could lead to difficulties with various uses and selling it for various purposes.
1214 He would have liked a bigger sketch of the likely, approvable uses. One of the other impressions
1215 he gets is that the proposed use they are dealing with is a very difficult one to locate anywhere
1216 within the current Zoning in the City. This is, from among the various types of Zoning the City
1217 has and situations they are presented with, one that is (one could decently argue) acceptable and
1218 within the realm of what is likely to be planned based on past and future considerations of
1219 Zoning. The complexity trips him up but he would vote that this has been satisfied and the
1220 applicant has made their case.

1221
1222 Mr. Gaudio stated that he agrees with Mr. Welsh's comments. He continued that the relationship
1223 between the general public purpose of the ordinance and the application to this property he
1224 thinks is such that there are multiple possible purposes here that can be applied both within the
1225 BGR and right across the line in the CB District. These multiple uses really should

1226 accommodate somewhere a homeless shelter or a group home, and this is a difficult situation but
1227 he thinks there is no fair and substantial relationship between the general public purpose and the
1228 specific application to this property.

1229
1230 Ms. Taylor stated that she was going to say something very similar to Mr. Gaudio but in the
1231 interests of time she will just say: she is in full agreement with it.

1232
1233 *And*

1234 *ii. The proposed use is a reasonable one.*

1235
1236 Ms. Taylor stated that she thinks the use is reasonable. She asked: if they treat this application
1237 under 5.A., do they need to treat it under 5.B.? Chair Gorman stated the only reason they would
1238 need to cover 5.B. is they had one board member who did not feel that it met 5.A. and that might
1239 not be the case with 5.B.

1240
1241 Mr. Hoppock stated that he does not think 5.B. is applicable to this Variance. He continued that
1242 he agrees with Ms. Taylor that the use is reasonable, but he still does not think it meets the
1243 unnecessary hardship test.

1244
1245 Mr. Welsh and Mr. Gaudio stated that they agree that it is a reasonable use.

1246
1247 Chair Gorman stated that given Mr. Hoppock's statement that he does not think it is worth
1248 talking about 5.B., he will not spend the time on that. He continued that the Board is done with
1249 deliberations and he will ask for a motion.

1250
1251 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 20-11 without
1252 condition. Mr. Welsh seconded the motion.

- 1253
1254 1. *Granting the Variance would not be contrary to the public interest.* Granted 5-0.
1255
1256 2. *If the Variance were granted, the spirit of the Ordinance would be observed.* Granted 4-
1257 1. Mr. Hoppock was opposed.
1258
1259 3. *Granting the Variance would do substantial justice.* Granted 4-1. Mr. Hoppock was
1260 opposed.
1261
1262 4. *If the Variance were granted, the values of the surrounding properties would not be*
1263 *diminished.* Granted 3-2. Chair Gorman and Mr. Hoppock were opposed.
1264
1265
1266 5. *Unnecessary Hardship*
1267 *A. Owing to special conditions of the property that distinguish it from other properties*
1268 *in the area, denial of the Variance would result in unnecessary hardship because:*

1269 *i. No fair and substantial relationship exists between the general public purposes of*
1270 *the Ordinance provision and the specific application of that provision to the*
1271 *property.*

1272 *And*

1273 *ii. The proposed use is a reasonable one.*

1274 Granted 4-1. Mr. Hoppock was opposed.

1275

1276 By a vote of 3-2, the Zoning Board of Adjustment approved ZBA 20-11. Chair Gorman and Mr.
1277 Hoppock were opposed.

1278

1279 **b. ZBA 20-16: Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene,**
1280 **represented by Jim Phippard, of Brickstone Land Use Consultants, 185**
1281 **Winchester St., Keene, requests a Change of a Nonconforming Use for**
1282 **property located at 15 King Ct., Tax Map #122-022-000; that is in the**
1283 **Low Density District. The Petitioner requests a Change of a**
1284 **Nonconforming Use from a now vacant fitness center to a lodging**
1285 **house (homeless shelter).**

1286

1287 Chair Gorman opened ZBA 20-16. Mr. Welsh stated that he needs to recuse himself. Chair
1288 Gorman stated that Mr. Gaudio and Ms. Zerba are both alternate, voting members, standing in
1289 for Mr. Welsh and Mr. Greenwald.

1290

1291 Mr. Rogers stated that there is an appeal period for this Variance that was just granted and Mr.
1292 Phippard (Hundred Nights) has the option to continue this application until the appeal period is
1293 over. He continued that if he (they) withdraw(s) it tonight he (they) would have to go through
1294 the whole process to re-file it, if he (they) choose(s) to continue this application, if something
1295 happens during the appeal process.

1296

1297 Mr. Gaudio asked if there is a time limit for the continuances. Ms. Taylor replied that she
1298 believes they have to continue to a time and date certain but there is no limit on the number of
1299 continuances; probably only a limit on the ZBA's patience. She continued that if no one
1300 objects, she would like to make a motion to continue. Chair Gorman replied that they should
1301 hear from Mr. Phippard first.

1302

1303 Mr. Phippard stated that he requests on behalf of Hundred Nights that they continue this hearing
1304 until the next ZBA meeting. He continued that in the event that an appeal is not filed, his intent
1305 at the next hearing would be to withdraw this application.

1306

1307 Mr. Rogers stated that he recommends that instead of continuing this to the October meeting,
1308 that they continue it to the November meeting, so they do not have to continue it twice.

1309

1310 Mr. Hoppock made a motion for the Zoning Board of Adjustment to continue ZBA 20-16 to the
1311 regularly-scheduled November meeting of the ZBA. Ms. Taylor seconded the motion.

1312

1313 Mr. Rogers stated that the meeting is November 2, at 6:30 PM.

1314

1315 The motion passed unanimously.

1316

1317 Mr. Phippard thanked the Board. Chair Gorman closed the public hearing.

1318

1319 **V. New Business**

1320

1321 Mr. Rogers stated that there is no new business. Chair Gorman asked if the Board members had
1322 any new business and there was no response.

1323

1324 **VI. Communications and Miscellaneous**

1325

1326 **VII. Non-Public Session (if required)**

1327

1328 **VIII. Adjournment**

1329

1330 There being no further business, Chair Gorman adjourned the meeting at 9:59 PM.

1331

1332 Respectfully submitted by,

1333 Britta Reida, Minute Taker

1334 Staffed edits submitted by,

1335 Corinne Marcou, Zoning Clerk

1336 Board edits submitted by,

1337 Jane Taylor

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1 City of Keene
2 New Hampshire

3
4
5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Monday, October 5, 2020**

6:30 PM

Remotely via Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Michael Welsh
Jane Taylor
Joshua Greenwald
Arthur Gaudio, Alternate
Louise Zerba, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

9
10
11 Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to
12 Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions
13 of RSA 91-A (which regulates the operation of public body meetings) during the declared
14 COVID-19 State of Emergency. He called the meeting to order at 6:34 PM.
15

16 **I. Introduction of Board Members**

17
18 Roll call was conducted.
19

20 **II. Minutes of the Previous Meeting – September 15, 2020**

21
22 Chair Gorman asked for comments on the minutes.
23

24 Ms. Taylor made a motion to postpone the minute's approval until the next meeting. She
25 continued that the minutes are extensive. There are a few typos and other things and she would
26 like to be able to alert staff to those and not take up meeting time with that right now. Chair
27 Gorman seconded the motion.
28

29 Ms. Taylor stated that she would like to compliment the minute-taker and Ms. Marcou for
30 getting the minutes out timely, especially when there were three separate meetings in a month.
31 Chair Gorman stated that he would second that.
32

33 The motion passed by unanimous vote.

34

35 **III. Unfinished Business**

36

37 Mr. Rogers stated that Staff does not have any unfinished business to address.

38

39 **IV. Hearings**

40

41 **a. ZBA 20-17: Petitioner, Flyboy Realty, LLC of Keene, represented by**
42 **Jim Phippard, of Brickstone Land Use Consultants, of 185 Winchester St.,**
43 **Keene, requests a Variance for property located at 166 West Street, Tax Map**
44 **#576-002-000; that is in the Central Business Limited District. The Petitioner**
45 **requests a Variance for a new building on a lot that abuts Gilbo Avenue with**
46 **a principal building façade which does not face Gilbo Avenue. Two principal**
47 **building facades are proposed which will face the public parking areas on the**
48 **east and north sides of the proposed new building per Section 102-1473.4 of**
49 **the Zoning Ordinance where the principal building façade orients toward**
50 **Gilbo Avenue.**

51

52 Chair Gorman opened ZBA 20-17 and asked Mr. Rogers to give comments.

53

54 Zoning Administrator Mr. Rogers stated that this property is located in Central Business Limited
55 (CBL) District. He continued that the lot has frontage on West St. and Gilbo Ave. It previously
56 was Friendly's Restaurant. The Applicant is proposing to renovate the building and construct a
57 new building closer to the Gilbo Ave. frontage that will house apartments and business offices on
58 the first floor, which are allowed uses in this district. This property is also within the Gilbo Ave.
59 Overlay District, which does have more site-plan type criteria to address. Through the Purpose
60 Statement of this overlay, the intent was to expand the "downtown feel" to this area. That is one
61 of the reasons why the setbacks are much narrower in this area and they are looking to have
62 buildings closer up to the streets and parking in the rear. The Applicant will speak to some of the
63 issues by doing that in this situation both on this lot and in this location, since the City
64 infrastructure has not been extended out to this area yet.

65

66 Mr. Hoppock asked Mr. Rogers to speak to the purpose of Section 102-1473.4. Mr. Rogers
67 stated that these are the general regulations that have been put into place with this Overlay
68 District, which states "*Lots with property boundaries that abut Gilbo Ave. shall orient new*
69 *buildings such that the principal façades are oriented toward Gilbo Ave.*" He continued that the
70 purpose of the Overlay District has a lot to do with pedestrians. The purpose of having the
71 façade facing the street and the building being so close to the street is for pedestrians to be able
72 to walk right into the building. Mr. Rogers will let the Applicant speak to why there is a
73 hardship and to the details of the general regulations.

74

75 Mr. Welsh stated that Mr. Rogers discussed the fact that there was more infrastructure to the east
76 of this block on Gilbo Ave, specifically sidewalks. He asked if there are any plans for expanding
77 that infrastructure to this location. Mr. Rogers replied that he would need to confirm this with
78 the Public Works Director, though he guesses that it would not be anytime soon. He knows there
79 is construction in the Gilbo Ave. area closer to Main St. but he does not know if there is anything
80 in the Capital Improvement Projects closer to this area.

81
82 Ms. Taylor asked Mr. Rogers if it is allowable to have more than one primary building on a
83 parcel in this zone, either the underlying or the overlay. Mr. Rogers replied yes, it is acceptable
84 to have mixed-use and a couple buildings on the same lot. There are other buildings in this area
85 similar to this. Ms. Taylor replied that she does not know if the other parcels are preexisting to
86 the current zoning. She continued that “mixed use” can mean having mixed uses in the same
87 building. She could not find anything in the Ordinance that permitted two primary uses on one
88 parcel. Mr. Rogers replied that the mixed uses could be in the same building or on the same lot.
89 He continued that this is seen quite often in the Commerce District. Ms. Taylor replied that this
90 is CBL. Mr. Rogers stated that a previous Zoning Administrator made the determination that
91 mixed use was allowed in this district, whether in the same building or the same lot, as long as
92 they are permitted uses within that district. Ms. Taylor stated that she has a real concern about
93 that because with Keene’s Zoning, if something is not expressly permitted, it is not permitted.
94 Mr. Rogers replied that he agrees but in this situation, if they are meeting all the other setbacks,
95 and are meeting the lot coverage, and between having multiple buildings on the same lot, then
96 the Building Code comes into play which then there needs to be certain separations met and the
97 such. Ms. Taylor replied that perhaps the Applicant can explain it, but she does not find
98 anything that allows two primary buildings on one parcel in this zone, although she could have
99 missed something. Mr. Rogers replied that he does not think she will find anywhere that states
100 that about any zone, but in the Commerce District where there are multiple primary use buildings
101 on one lot, and he doesn’t believe this is specifically called out either. But if they are meeting all
102 the other Zoning requirements for setbacks and coverage, it would be allowed.

103
104 Ms. Taylor stated that in Section 102-1473 there are 15 requirements that need to be met. She
105 asked if all the other requirements appear to be met. She continued that she assumes there is a
106 parallel site plan application that needs to be applied to the Planning Board. She would like to
107 know if criteria #4 is the only criteria with an issue for the project, because she would hate to
108 need the Applicant back a second time. Mr. Rogers replied that she is correct; they do have an
109 application submitted to the Planning Board. He continued that a lot of the 15 requirements in
110 Section 102-1473 would not apply to this lot at all because some of them are also associated to
111 the West St. frontage where the building already exists, and will only see interior renovations not
112 structural changes. Yes, the Applicant does have a plan which will have to meet the rest of the
113 requirements that do apply in this situation.

114
115 Ms. Taylor asked if Staff has determined if there is adequate parking once the project is
116 complete. Mr. Rogers replied yes; Staff spoke with Mr. Phippard, and the owners were going to
117 make adjustments to meet the correct requirements.

118 Ms. Zerba stated that her question relates to Mr. Welsh's, regarding the Arts Corridor and if
119 there is a design that would include a sidewalk along Gilbo Ave. Mr. Rogers replied that he does
120 not think the Arts Corridor was planned to come down to this property.

121
122 Chair Gorman asked if Board members had more questions. Hearing none, he opened the public
123 hearing and explained how the public could participate. He asked James Phippard of Brickstone
124 Land Use Consultants to speak, representing Flyboy Realty, LLC.

125
126 Mr. Phippard stated that Flyboy Realty purchased this property which is the former Friendly's
127 Restaurant at 166 West St. The property is 1.03 acres in size. Describing from a displayed aerial
128 photo, he explained this property is the CBL District with Historic and the Gilbo Avenue Design
129 Overlay Districts. There are several conflicts that are created between the Zoning, Historic
130 District, and Overlay requirements. They have sorted through most of these with some waivers
131 still needed from the Historic District Commission for parking, which they only allow in the rear,
132 and also a waiver for some of the building materials they are proposing. Regarding the Gilbo
133 Ave. frontage, there is TD Bank to the left, and another bank, then an Armed Services
134 recruitment center next door, also owned by the same owner of Flyboy Realty listed under a
135 different name. There is no public sidewalk on either side of Gilbo Ave., and no public parking
136 spaces on either side. The property line falls within three feet of the curb on the north side of
137 Gilbo Ave. The Overlay District requires that they have a building with a front on Gilbo Ave.
138 within five feet of the property line. Five feet is the maximum setback, not the minimum. They
139 can comply with that but they feel that it creates an unsafe situation if they make that the main
140 entrance into the building, since there is traffic and no public sidewalks. That is why they are
141 applying for this Variance.

142
143 Mr. Phippard went through the five criteria.

144
145 *1. Granting the Variance would not be contrary to the public interest because:*

146
147 Mr. Phippard stated that the Friendly's Restaurant has been closed for several months and then
148 the property was sold where it still is sits vacant. He continued that a vacant building is not a
149 positive influence on anything in the downtown area. To reutilize this property is definitely in
150 the public interest. It is also in the public interest to make sure that ingress and egress can be
151 done safely. If the building is located five feet from the property line, it is eight feet from the
152 curb line, with no public sidewalk and people can walk out of the building and directly into the
153 street, into traffic. That is an unacceptable, unsafe situation. He has been doing site plans in
154 Keene for a very long time. Mr. Phippard stated that when he looked at this provision, it was
155 difficult to construct this building safely. They would have to propose narrowing Gilbo Ave. in
156 order to create room since the three-foot strip that the City owns is not enough room for a
157 sidewalk. To fully comply with this Overlay, this project could not be done appropriately on this
158 property and allow a reasonable use of the site. It is in the best public interest to not have the
159 principal façade/main entry in and out directly on the street. Mr. Phippard stated they would
160 relocate the façade on the north or east side of the property where it faces the public parking

161 areas on the property. That is in the best public interest, rather than following the criteria under
162 102-1473.4.

163
164 *2. If the Variance were granted, the spirit of the Ordinance would be observed because:*

165
166 Mr. Phippard stated that the spirit of all Zoning Ordinances is to provide for the public health,
167 safety, and welfare. He continued that creating a situation by a Zoning requirement that they feel
168 is an unsafe situation is not meeting the Spirit of Ordinances in general. The Overlay District
169 was adopted in 2011 with Keene’s first real attempt at form-based zoning. The City wanted to
170 dictate to a large degree how a building would look and be oriented on a property. In this
171 particular case, because of the situation on Gilbo Ave., it did not work and it resulted in an
172 unsafe situation. The rest of the general regulations under that Overlay District are ones the
173 owner feels they do comply with and they do meet the intent of the Ordinance, especially under
174 the “purpose” discussion under Section 102-1471. They are restoring the red brick on the former
175 Friendly’s building, which was painted white when the restaurant opened in the 1970s. Red
176 brick is much more in keeping with the historic appearance of buildings in the downtown area.
177 The architectural features of the building, like the pitched roof and the windows, create a
178 pedestrian scale that is appropriate and with the red brick it will fit much better. The new
179 building they are proposing will also use red brick on the first floor. The ground floor will be a
180 single office user with the building design is just over 6,000 square feet. The second floor will
181 be eight one-bedroom apartments, and that is where the mixed uses comes in.

182
183 Mr. Phippard continued that the former Friendly’s building will also be office space for a single
184 user. Offices and residential uses in the downtown area are completely in keeping with the uses
185 in the Zoning in this area which the Applicant believes it fits very well. As the site gets
186 developed they will be maintaining pedestrian access from West St. They are extending the
187 existing sidewalk that crossed in front of the former restaurant building into the site to provide
188 safe pedestrian access into the property and to both buildings. They will be changing the lighting
189 to be more consistent with the current standards, full cut-off LED fixtures, very energy efficient
190 lighting with low glare/light pollution. They will be adding landscaping, both internally in the
191 parking lot, along the perimeters and adjacent to the new building. They think they do meet the
192 spirit and intent of the Ordinance in this case.

193
194 *3. Granting the Variance would do substantial justice because:*

195
196 Mr. Phippard stated that they feel strongly that this project will do substantial justice because the
197 owner can redevelop the property and utilize the vacant building to a productive office use. The
198 owner is investing over \$3 million into this property so it will greatly improve the value the
199 property. It will enhance the appearance of the property and that will help preserve the value of
200 adjacent properties. There is no public benefit in denying this Variance, because this Variance
201 would allow them to alleviate what would be a dangerous situation for the occupants and
202 visitors.

203

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

206
207 Mr. Phippard stated that they are restoring the brick veneer on the former restaurant building,
208 and it will be more compatible with the other buildings in downtown Keene. He continued that
209 the investment of over \$3 million will add tremendously to this value and help enhance the value
210 of adjacent properties. They think the mixed use of offices and apartments is compatible with
211 other uses in the immediate vicinity and in the downtown area. Creating residences along with
212 the offices brings more people to downtown, which will help continue to support the downtown
213 economy.

214
215 5. *Unnecessary Hardship*

216 A. *Owing to special conditions of the property that distinguish it from other*
217 *properties in the area, denial of the Variance would result in unnecessary*
218 *hardship because:*

219 i. *No fair and substantial relationship exists between the general public*
220 *purposes of the Ordinance provision and the specific application of that*
221 *provision to the property because:*

222
223 Mr. Phippard stated that the hardship was created inadvertently when the City adopted the Gilbo
224 Avenue Overlay District. He continued that he participated in several meetings during the time
225 when the City was proposing this overlay, and he thinks they were looking at extending the
226 downtown theme along Gilbo Ave., with the wide sidewalks so people could stroll along looking
227 at storefronts and visiting businesses up and down the street, with public parking on the street for
228 the convenience of visiting those businesses. He thinks they (and he) did not anticipate the
229 impact of the overlay to a property like 166 West St. and the situation that would result creates a
230 legitimate safety issue which was not the intent of this Overlay. He could not come up with a
231 way to meet that design intent and still fully utilize the property. They provide 60 parking spaces
232 on the property, and that is what exists today. They had to reconfigure slightly to maintain that
233 number, but they do meet the Zoning requirements for both the residential units and the office
234 spaces, as they are proposing. Gilbo Ave. is a pretty wide street. There is a turning lane adjacent
235 to the bank and this property, which is why the street is so wide here. It does not leave any right-
236 of-way to add parking or add a sidewalk. This has created this unique situation in this portion of
237 Gilbo Ave. that justifies the grounds as a hardship to justify the Variance they are proposing.

238
239 ii. *The proposed use is a reasonable one.*

240
241 Mr. Phippard stated that they think this use is a reasonable one as it is a use permitted in the CBL
242 Zone. It is a use of office spaces and apartments, which exist throughout the downtown area.
243 They are providing adequate onsite parking and using City services. This is safe and reasonable
244 for both pedestrians and vehicles.

246 B. *Explain how, if the criteria in subparagraph (A) are not established, an*
247 *unnecessary hardship will be deemed to exist if, and only if, owing to special*
248 *conditions of the property that distinguish it from other properties in the area, the*
249 *property cannot be reasonably used in strict conformance with the ordinance, and*
250 *a variance is therefore necessary to enable a reasonable use of it.*
251

252 Mr. Phippard stated that it is unreasonable to require this configuration as described under
253 Section 102-1473, paragraph 4, that the primary facade be on Gilbo Ave frontage, because of the
254 width of the right-of-way and the inability to provide a sidewalk and no buffer to prevent
255 pedestrians and visitors to the building to walk out onto the street.
256

257 Mr. Phippard showed a slide of proposed elevations. He stated that the east elevation would be
258 facing People’s Bank. The main entry would be in the middle into the single office use on the
259 entire ground floor. The two smaller depictions are the north and south elevations. The south
260 elevation would face Gilbo Ave. which will have windows, a doorway, and a covered entry
261 element; serving as an egress door, not a main entry into the apartments or the office. They did
262 not want to encourage this in that location as it is too close to the street with no protection for
263 pedestrians and occupants. The north elevation is the main entrance to an elevator lobby to the
264 second floor and a stairwell to gain access to the eight apartments on the second floor. It is the
265 rear of the building if you are looking at it from Gilbo Ave. The west elevation faces TD Bank.
266 There are no doors, but there are several windows that reinforce that pedestrian scale. The larger
267 windows on the second floor provide natural light to the apartments.
268

269 Mr. Phippard stated that the final slide is the proposed site plan. The building shaded in
270 grey is on the Gilbo Ave. frontage. The building to the left is the former Friendly’s. West St. is
271 on the left and Gilbo Ave. is on the right. They oriented the building to be no more than five feet
272 from the right-of-way, eight feet from the curb which does not leave enough space for a safe
273 access on that side of the building. This site plan also depicts the parking area they are
274 maintaining with a few more spaces added to get remain at 60 spaces. Landscaping will be
275 added to the interior areas to provide shade and plantings adjacent to the buildings with the large
276 trees along the property lines being preserved though two trees, planted in 1975, would be
277 removed where the new building would be constructed. They are replacing those with four trees,
278 two interior to the parking lot, one on the island by the curb cut at West St., and one on the island
279 by the curb cut at Gilbo Ave.
280

281 Mr. Welsh asked Mr. Phippard to explain the difference between principal façade and another
282 kind of façade. Mr. Phippard replied that a principal façade is the main entrance to a business or
283 for a multi-unit residential property, the main entrance leading to a central corridor, as in this
284 case, an elevator lobby. They are proposing two principal facades: the entrance to the office
285 space on the ground floor, and the main entry to the apartments, on the left side of the building
286 facing the former Friendly’s which will be a handicapped accessible entry to an elevator lobby
287 and a stairwell leading to the second floor. The façade facing Gilbo Ave. is a secondary façade;
288 it does provide egress that is required from the office space and the residential units. It is not

289 intended to be a primary entry. He supposes someone could let a person in that way, but in
290 general, that door would be locked from the outside, opened from the inside, and would not be
291 intended to be a public entry.

292

293 Mr. Welsh asked if the Gilbo Ave. side were to be reconfigured with the sidewalk and other
294 amenities that were imagined in the Overlay District, would it then be possible to revert that
295 secondary nature of the façade on Gilbo Ave. into a principal façade? Mr. Phippard replied yes,
296 and this was discussed the architect, Dan Bartlett. Their decision is this can then be identified as
297 an entry to the apartments to the second floor, and it could also provide an entry to the offices on
298 the ground floor. Mr. Welsh replied that externally, both sides look very similar to him. Mr.
299 Phippard replied that is intentional. He continued that they are matching the architectural
300 treatment for the entries in all three locations, even though this one is an egress, to allow for the
301 conversion when it happens in the future.

302

303 Chair Gorman stated that Mr. Phippard said “when” it happens. He asked if Mr. Phippard knows
304 something the Board does not, or if he is just speculating. Mr. Phippard replied that he is just
305 speculating. He continued that the Public Works Department did not have a definitive answer
306 for why there is no sidewalk in this area. He is speculating that it has to do with the width of the
307 roadway, and that because of the turn lanes that were added, there was not enough space
308 remaining of the right-of-way. The Center of Keene used to have a railroad track there and the
309 railroad corridor occupied a lot of that area. The right-of-way to the north is not wide enough
310 with only left three feet after they built the road. The Arts Corridor was intended to stop at
311 School St. Other than that, Public Works did not have a plan (or at least, not a public plan) to
312 extend the sidewalk. There is no sidewalk essentially from School St. all the way to West St.
313 Everyone walks on the Center of Keene property to get through that area, then cross through the
314 parking lots of the former Colony Mill Marketplace.

315

316 Chair Gorman stated that Mr. Phippard mentioned safety when talking about the first criterion,
317 regarding the egress for exit/emergencies only. He asked if that exit will be labeled “Emergency
318 Use Only” to prevent the very circumstance he described, of someone lunging out into traffic.
319 Mr. Phippard replied that if you look at the southern building elevation you can see a guardrail
320 across between the brick columns that prevents people from walking straight out. He continued
321 that they purposefully did that and put the stairs to the right, which lead to a walkway back to the
322 parking area on site. It will lead back to the sidewalk to the main entrance to the building.

323

324 Ms. Taylor thanked Chair Gorman for asking this as it answered a question she had and the
325 concern of residents of the building to walk down stairs and directly into traffic. She continued
326 that when she looked at the information in the agenda packet, she thought that the entrance on
327 the long side that looks to be opposite handicapped spaces was the primary entrance. Her
328 question is about the parking and accessibility. Mr. Phippard replied that the entry on the north
329 is handicapped accessible, and right opposite those two handicapped spaces. The entry on the
330 west, facing the former Friendly’s, has a ramp providing handicapped access to the elevator.

331 Those are the two primary entry points. They are allowed multiple primary facades in the
332 Overlay District.

333
334 Ms. Taylor stated that Mr. Phippard referenced in his presentation that they were adding
335 sidewalks internally to the parcel and maybe there is a subsequent plan that shows them. She
336 asked if he can explain the location of where these would be. Mr. Phippard replied that there is a
337 sidewalk proposed along the north side of the new building that extends from Gilbo Ave., going
338 left, across the front of the building, wrapping around the end of the building, internal to the
339 parking lot. There is a proposed sidewalk in front of the former Friendly's from West St. all the
340 way to the main parking area, which is also a handicapped accessible area opposite those
341 handicapped spaces.

342
343 Ms. Taylor stated that he mentioned that the basic pedestrian access would be from West St. She
344 asked if people would then have to walk without any designated pedestrian area between the
345 buildings through the parking lot. Mr. Phippard replied yes. He continued that West St. is where
346 the only public sidewalk exists, so they wanted to maintain that length to get people safely into
347 the site. He continued that they also realized that because the Center of Keene is directly across
348 the street, occupants in these two buildings would most likely walk across Gilbo Ave. to get to
349 the Center of Keene and their multiple and inviting uses. Mr. Phippard stated they felt the need
350 to connect that sidewalk at the new building at least to Gilbo Ave. to lead people to a point where
351 they can cross the street. Ms. Taylor stated her concerned about the safety for pedestrians,
352 internally on the parcel. Mr. Phippard replied that they are maintaining the two speedbumps that
353 exist in the parking lot currently since it is a straight drive from West St. to Gilbo Ave.; it is used
354 as a cut-through by drivers trying to avoid the traffic light on School St. They are maintaining
355 the speedbumps to help slow people down. They have also narrowed the width of the curb cut at
356 West St. so people have to drive in much slower than they do currently. Also, the curb cut at
357 Gilbo Ave. is being narrowed slightly with the hope this improves parking lot safety as well.

358
359 Ms. Taylor asked Mr. Phippard to elaborate on the question posed earlier to Mr. Rogers
360 pertaining to the reference in the Ordinance which states there can be two primary buildings on
361 the same parcel. She continued that she is not talking about pre-existing sites. Mr. Phippard
362 replied that he does not think it is specifically listed in the Ordinance. He continued that there
363 are a lot of similar issues throughout the City's Ordinances and it is probably one of the reasons
364 why Staff is proposing the major re-draft of the regulations, to make things clearer and more
365 consistent. In the past, Mr. Rogers is correct, the previous Zoning Administrators have all made
366 this interpretation that where mixed uses are allowed; there is no restrictions to a single building
367 on the property. With a proposed multi-use building, zoning criteria still have to comply such as
368 all of the dimensional requirements, lot coverage, number of parking spaces, green space, and so
369 on and so forth. Mr. Phippard stated this has been a consistent interpretation for as long as he
370 can remember.

371
372 Ms. Zerba asked about the south-facing building, which looks like it is almost on the end of the
373 property, specifically, she asked what are the setbacks. Mr. Phippard replied that the maximum

374 setback that the Overlay District allows is five feet. He continued that the entry element on that
375 south façade is part of the structure, and it is five feet from the property line, eight feet from the
376 curb line. Ms. Zerba asked if they proposed moving the building a bit to the north, so the cars on
377 Gilbo Ave. would have a more visually appealing green space.

378
379 Mr. Phippard replied that a lot of options were proposed, including moving the building to the
380 north and moving the curb cut on Gilbo Ave. to the south to create the zigzag pattern through the
381 property, thinking that could help slow people down, but too many parking spaces would be lost.
382 Since the plan proposed to the Board meets the parking requirements, and not wanting to apply
383 for a second Variance, this idea was discarded. Another option was moving the building back
384 from Gilbo Ave., to leave enough room to create a principal entry there, even though there was
385 no parking nearby to support it as a principal entry, with the thought of add in a sidewalk. He
386 continued that this is another conflict within the Overlay District, because paragraph five of
387 Section 102-1474 states creating a sidewalk that “*shall be no less than 10 feet and no greater*
388 *than 20 feet, depending on the highest volume of usage.*” In one instance it needs to be within
389 five feet of the right-of-way and then if a sidewalk is put in, they cannot have the building within
390 five feet because they have to have a ten-foot sidewalk. With this conflict, and that of the
391 proposed plan they are discussing, Mr. Phippard chose to request a Variance with the proposed
392 plan as he feels this would be best for the site. He continued that not many people are familiar
393 with this Overlay District and to his knowledge, it has never been used. When he pointed it out
394 to Staff they told him no one has ever used it. They told him they would have to look at it and
395 call him back, before they could even talk with him about it. In the draft regulations that are
396 coming, this Overlay District is being eliminated. So the inconsistencies that exist are being
397 eliminated, and the provisions he now looks at as form-based zoning will appear in the new zone,
398 Downtown Growth. He did look at many different configurations to try and comply as best as
399 possible to meet the intent of the Ordinance. He thinks what the Board is looking at does the
400 best job.

401
402 Mr. Gaudio asked what the existing building will be used for after the renovation. Mr. Phippard
403 replied a single office user. Mr. Gaudio asked for clarification that the use would be retail. Mr.
404 Phippard replied no.

405
406 Chair Gorman asked if Board members had more questions. Hearing none, he asked if there were
407 questions from members of the public. He gave the information for how to participate via Zoom
408 or phone. He asked if there was anyone calling in. Ms. Marcou replied no. Hearing no public
409 input, Chair Gorman closed the public hearing. He stated that he will reopen the public hearing
410 if needed to ask procedural or technical questions. The Board will now deliberate.

411
412 Mr. Greenwald made a motion to approve ZBA 20-17. Mr. Hoppock seconded.

413
414 The Board reviewed the five criteria.

415
416 *1. Granting the Variance would not be contrary to the public interest.*

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

418

419 Mr. Hoppock stated that the requirement that the Variance not be contrary to the public interest
420 is related to the requirement that it be consistent with the Spirit of the Ordinance, so he will
421 address criteria 1 and 2 together. He continued that regarding the Spirit of the Ordinance you
422 have to see if the proposed Variance alters the essential character of the neighborhood. He finds
423 that it does not. It is consistent with the uses around it to the south on Gilbo Ave. and to the
424 north on West St. and on both sides. They also have to ask if the proposed Variance threatens
425 public health, safety, and welfare, and he thinks it enhances public health, safety, and welfare, by
426 virtue of what Mr. Phippard presented. A zoning requirement creates an unsafe situation due to
427 the lack of sidewalks and parking on Gilbo Ave. He thinks Mr. Phippard is exactly right that
428 people pulling out of the south side of the building, seven feet away from that relatively busy
429 strip, is a safety hazard and this situation does create a situation that alleviates that safety hazard.
430 He is in favor of the first two criteria.

431

432 Chair Gorman stated that he agrees. He continued that the stringency placed on this property are
433 sort of collateral damage in terms of the intent of the Arts District and the walkability and the
434 wish to expand the downtown feel. He does not think that applies very well to this property. Mr.
435 Phippard articulated very well that it would actually create a dangerous situation.

436

437 Ms. Taylor stated that her concern is primarily a safety issue. She continued that it is a concern
438 related to the internal flow of pedestrian traffic in the parcel in relationship to the buildings. She
439 agrees that this Variance helps resolve one of the issues caused by the Overlay District, but she
440 has safety concerns.

441

442 Mr. Welsh stated that he thinks about the public interest of Zoning, and the overarching phrase
443 they keep in mind is “public health and safety,” and when various features of the Zoning
444 Ordinances are contrary to that, they weigh which one is preeminent, and he says public health
445 and safety in this instance is. He is comfortable in this case with the Variance for that measure,
446 for the first criterion. He also thinks that Mr. Hoppock has eloquently made clear that the Spirit
447 of the Ordinance, helping them place buildings that are consistent with the downtown character,
448 is preserved.

449

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

451

452 Mr. Hoppock stated that he thinks the gain to the public is enhanced safety when this building is
453 repurposed to its new use. He continued that it will be used for something, and whoever is using
454 this building, entering from Gilbo Ave., will be deterred under this design from doing so, and the
455 people who are living or working there will presumably be used to the idea at some point and not
456 be crossing Gilbo Ave. on a regular basis. Thus, he thinks for reasons noted in regards to criteria
457 1 and 2, the gain to the public is increased safety. And there is no loss to the owner for doing it
458 this way, so he think substantial justice is done.

459

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

462
463 Mr. Welsh stated that much as he might miss the Friendly's Restaurant, the site has become less
464 and less nice to look at and walk across since its closing. This redevelopment will improve the
465 property while adding value to the surrounding properties. He thinks it is fairly clear that this is
466 a plus.

467
468 Mr. Greenwald stated that he welcomes any development of Gilbo Ave. and it will improve the
469 value of the entire area. Chair Gorman stated that he agrees.

470
471 5. *Unnecessary Hardship*

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

474 i. *No fair and substantial relationship exists between the general public*
475 *purposes of the Ordinance provision and the specific application of that*
476 *provision to the property.*

477 *and*

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

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

484
485 Mr. Hoppock stated that he finds in this situation the general purpose of Section 102-1473.4 is to
486 protect the safety of pedestrian traffic along Gilbo Ave. and as such, has no substantial or direct
487 relationship to the application of this Ordinance to this specific site. He does think the special
488 conditions of the property, namely the lack of sidewalk or parking on Gilbo Ave. and the
489 remarks Mr. Phippard made about the southern piece of the building being eight feet from the
490 curb line and four or five feet from the property line, create a special condition that allows for the
491 Board to analyze the connection of the relationship between general purpose and specific
492 application, and that increases the likelihood that this is an unnecessary hardship. He would
493 favor criterion five.

494
495 Ms. Taylor stated that she agrees. She continued that it is very strange to find that the Zoning
496 Ordinance itself really creates the hardship, not just with this property, but all the properties
497 along that stretch of Gilbo Ave. The special condition is simply that the Zoning Ordinance does
498 not really allow the property to be used. She agrees that there is not any fair and substantial
499 relationship between the public purpose of the Ordinance and this particular application.

500
501 Chair Gorman stated that he agrees; perhaps there is unintended consequence there.

502

503 Chair Gorman asked if anyone had anything more to add. Hearing none, he called for a vote.

- 504
- 505 1. *Granting the Variance would not be contrary to the public interest.* Granted 5-0.
 - 506
 - 507 2. *If the Variance were granted, the spirit of the Ordinance would be observed.* Granted 5-
 - 508 0.
 - 509
 - 510 3. *Granting the Variance would do substantial justice.* Granted 5-0.
 - 511
 - 512 4. *If the Variance were granted, the values of the surrounding properties would not be*
 - 513 *diminished.* Granted 5-0.
 - 514
 - 515 5. *Unnecessary Hardship*
 - 516 A. *Owing to special conditions of the property that distinguish it from other properties*
 - 517 *in the area, denial of the Variance would result in unnecessary hardship because*
 - 518 i. *No fair and substantial relationship exists between the general public*
 - 519 *purposes of the Ordinance provision and the specific application of that*
 - 520 *provision to the property because:*
 - 521 *and*
 - 522 ii. *The proposed use is a reasonable one.* Granted 5-0.
 - 523

524 By a vote of 5-0, the Zoning Board of Adjustment approved ZBA 20-17.

- 525
- 526 b. **ZBA 20-18: Petitioner, Ryan Gagne of 119 Clear Creek Way, Manchester, NH**
 - 527 **requests a Special Exception for property located at 15 Kit Street, Tax Map #110-**
 - 528 **017-000; that is in the Industrial District. The Petitioner requests a Special**
 - 529 **Exception per Section 102-632 to allow Office for professional purposes.**
 - 530

531 Chair Gorman opened ZBA 20-18. He asked for Mr. Rogers's comments.

532

533 Mr. Rogers stated that this property is in the Industrial Zone, at the end of Kit St., behind the

534 Best Western Hotel. He continued that permitted uses in the Industrial Zone, under Section 102-

535 632, include office uses, by right, if it is part of a home office for insurance or publishing

536 companies, or manufacturing firms. He continued that these offices were originally developed as

537 part of what was once Concord Laboratories. Filtrine now owns and operates out of that

538 building. C&S Wholesalers had been using the office space that is now currently vacant. The

539 Applicant is proposing to occupy the first floor of this section, which would be allowed with a

540 Special Exception under Section 102-632, which states "*offices for corporate, business, or*

541 *professional purposes, provided that the office building occupied by a single office entity must be*

542 *a minimum of 10,000 square feet; or a building that includes one or more occupants which is*

543 *primarily office in nature must be a minimum of 20,000 square feet in size, and each other*

544 *occupant must be a minimum of 5,000 square feet in size.*" He continued that his understanding

545 is that they are going to be occupying the first floor, which has close to 8,000 square feet,

546 meeting that criteria though it does require a Special Exception. Mr. Rogers stated that since the
547 previous use was a corporate-type office and the proposed new use will be a professional-type
548 use, Staff felt that the Applicant needed to obtain a Special Exception. He continued that other
549 criteria that needs to be met is that the proposed office use is non-retail and will not have
550 customers or clients entering or leaving in large numbers during business hours. The Applicant
551 will need to provide documentation to this criteria.

552
553 Chair Gorman thanked Mr. Rogers and asked if Board members had questions.

554
555 Ms. Taylor stated that she is confused by all the numbers in this section. She asked, how many
556 square feet is the entire facility, and how many square feet is the proposed use. Mr. Rogers
557 replied that he would have the applicant speak to the overall size of the building. He continued
558 that his understanding is that they intend to occupy close to 8,000 square feet which still leaves a
559 little over 5,000 square feet of existing office space in that building.

560
561 Ms. Taylor asked if the application is then for a Special Exception for a portion of the building,
562 or for the entire building. She continued that she does not understand how you can have a
563 Special Exception for just a portion of a building. Mr. Rogers replied that the Special Exception
564 portion is really dealing with the traffic portion of the Ordinance. The Applicant will need to
565 meet the requirement of not having a large volume of clients coming onto the site. If another
566 tenant wanted to occupy the remaining 5,000 square feet of office space they could very well be
567 required to come before the Board again for a Special Exception for that portion of the building.
568 Ms. Taylor replied that now she is really confused and stated that maybe the Applicant can
569 clarify. She stated her confusion to a Special Exception being granted for only a portion of a
570 building. Meeting the criteria is a separate question. She further stated her confusion for the rest
571 of the building and asked if in granting this petition, the rest of the building would revert to
572 Industrial District uses. Mr. Rogers replied that he would say the remaining office space could
573 revert back to the home office for the manufacturing company that is there, Filtrine, and/or if a
574 different company that met the criteria allowed by right in that district, moved in, that would be
575 allowed. He continued that if another company moved in that was corporate, business, or
576 professional, they would be required to obtain a Special Exception. A lot of the criteria for a
577 Special Exception lends itself to this additional requirement that the Applicant must submit the
578 documentation regarding the number of pedestrian and vehicle trips as well make the Board
579 aware that they are not a retail-type office that would have lots of customers entering and exiting.
580 It would be based on the applicant looking to move into the vacant space for what the course of
581 action would be for that portion of the building.

582
583 Ms. Taylor asked if what he is saying is that the building is partially occupied and this Special
584 Exception request is for the unoccupied portion of the building. Mr. Rogers replied yes.

585
586 Mr. Gaudio stated that the materials say that the amount of vehicular traffic coming in was going
587 to be substantially less than the former uses. He continued that now Mr. Rogers is pointing out
588 that there are continuing uses. His question is whether “substantially less than” means less than

589 the 8,000 square feet usage or the entire building usage. If it is the latter, it would sort of be
590 “piling on.” Mr. Rogers replied that that is a great question but it is one to ask the applicant and
591 he suggested the Board to ask the Applicant for clarification on the traffic numbers they
592 submitted. He continued that he thinks the Applicant used the Institute of Transportation and
593 Engineers table, which provides the calculated trips for different types of uses in square footage.
594 Mr. Rogers assumes they based that off of the proposed use but the applicant can speak to that.

595
596 Chair Gorman asked if Board members had more questions for Mr. Rogers. Hearing none, he
597 opened the public hearing, and gave information about how members of the public could
598 participate via Zoom or phone. He asked Ryan Gagne to speak.

599
600 Ryan Gagne, of 119 Clear Creek Way, Manchester, NH went through the five criteria.

601

602 *1. The proposed use is similar to one or more of the uses already authorized in that district*
603 *and is an appropriate location for such a use.*

604

605 Mr. Gagne stated that as a professional office use, this is similar to the authorized use of the
606 home offices of insurance, publishing, and manufacturing companies. He continued that the
607 location within the building has been used as office space by the owners and by tenants. They
608 would use approximately 8,000 square feet on the first floor which is completely up fitted as
609 office space with offices, a conference room, cubicles, and bathrooms.

610

611 *2. Such approval would not reduce the value of any property within the district, nor*
612 *otherwise be injurious, obnoxious, or offensive to the neighborhood.*

613

614 Mr. Gagne stated that the space would continue to be used as an office. He continued that there
615 are no developed abutting parcels in the Industrial District which would be impacted by the
616 proposed use, so property values would not be impacted. The proposed use is similar to previous
617 uses and is indoors so their use will not be injurious, obnoxious, or offensive to the
618 neighborhood.

619

620 *3. There will be no nuisance or serious hazard to vehicles or pedestrians.*

621

622 Mr. Gagne stated that they will have five to six employees which is considerably lower, to his
623 knowledge, than the previous tenant which had more than 50. He continued that vehicle trips per
624 day will be substantially lower than the previous tenant. As their use is less impactful than
625 previous ones, there will be no nuisance or serious hazard to vehicles or pedestrians.

626

627 *4. Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be*
628 *provided for the proper operation of the proposed use.*

629

630 Mr. Gagne stated that the site is serviced by public water and sewer. He continued that Kit St. is
631 a City maintained road. There is ample parking on site to accommodate the use.

632 Chair Gorman asked if Mr. Gagne wanted him to read the traffic information into the record.
633 Mr. Gagne replied that he defers to him. Chair Gorman read for the record:

634
635 *“There will be five or six employees who will arrive for work in the morning and leave at the end*
636 *of the day. Our employees do not leave the property as their work is contained within the office*
637 *space. On occasion they may leave for lunch or to do an errand. Most employees have lunch in*
638 *the work space as we will provide a complete break room for them. Clients will come to us via*
639 *van and we anticipate one to two van trips in the morning and one to two van trips in the*
640 *afternoon. Our trip generation will be five to six trips in the morning between 7:00 and 9:00 as*
641 *employees arrive and then five to six exits at the end of the work day as employees exit. One to*
642 *two van entrances and exits in the morning and one to two exits in the early afternoon and one to*
643 *two exits at the end of the afternoon. As you can see from the provided data our use is not as*
644 *varied as any of the supplied data sheets: General office building, small office building, or*
645 *Medical/Dental Office Building. We do not have traffic coming and going consistently during*
646 *the course of a 12 or 24 hour period. Our traffic is minimal and in tune with specific time*
647 *periods.”*

648
649 Chair Gorman asked if the Board had questions for Mr. Gagne. Mr. Hoppock asked what the
650 scope of the business’s use is proposed to be and if it will encompass all of the first floor, and
651 part of the second floor. Mr. Gagne replied that they are looking to occupy just the first floor of
652 the current unoccupied space. Mr. Hoppock asked if it is all unused on the first floor. Mr.
653 Gagne replied that the 8,000 square feet that is not being occupied by Filtrine is all unused. He
654 continued that he does not know the exact square footage that Filtrine occupies. Mr. Hoppock
655 asked what the prior use was. Mr. Gagne replied that he thinks it was a distribution and sales
656 company. Mr. Hoppock asked if Mr. Gagne is comparing his use to insurance, manufacturing,
657 and publishing use. Mr. Gagne replied yes, that was the closest comparison he could find. Mr.
658 Hoppock stated that one allowable use in this district is research and development. He asked if
659 Mr. Gagne imagines there would be offices associated with that, and if this would be similar to
660 that as well. Mr. Gagne replied that he assumes there would be offices for a research and
661 development use but he would not know specifically.

662
663 Ms. Taylor stated that it is hard to judge some of these criteria without knowing more about the
664 proposed use. She asked if Mr. Gagne could explain it more. Mr. Gagne replied that the
665 proposed use is to provide substance abuse counseling to outside residents of the community.
666 Ms. Taylor asked if he means outpatient treatment not necessarily connected with a medical
667 facility. Mr. Gagne replied that statement is correct. Ms. Taylor asked about the trip traffic as
668 this is a busy road. Ms. Taylor stated that this data looks like generalized trip information by
669 hour, out of a manual and asked Mr. Gagne for any specific trip information or impact
670 information for this location in particular, the intersection of Kit St. and South Winchester St.
671 Mr. Gagne replied no. Ms. Taylor asked if it is true then that this is general information out of a
672 manual, not site-specific. Mr. Gagne replied that is correct.
673

674 Mr. Hoppock asked what kind of control Mr. Gagne has to make sure his clients come only by
675 van. Mr. Gagne replied that his business provides transportation. Mr. Hoppock asked if he
676 means no one will show up in a different car. Mr. Gagne replied that is correct.
677

678 Mr. Gaudio asked what Mr. Gagne means when he says there will be fewer vehicle trips per day
679 than the previous tenant, does he mean compared to that 8,000 square feet, or the whole building.
680 Mr. Gagne replied for the 8,000 square feet. The number he had been given was “about 40 to 50
681 trips” in and out when the previous tenant was there.
682

683 Chair Gorman asked if Board members had further questions. Hearing none, he thanked Mr.
684 Gagne and asked if there were questions from members of the public. He again gave
685 information about how members of the public could participate via phone or Zoom. Ms. Marcou
686 stated that she does not see anyone trying to call in. Hearing no public comment, Chair Gorman
687 closed the public hearing. He stated that if necessary he will reopen the public hearing to ask
688 procedural or technical questions.
689

690 The Board deliberated on the criteria.
691

692 *1. The proposed use is similar to one or more of the uses already authorized in that district*
693 *and is an appropriate location for such a use.*
694

695 Mr. Hoppock stated that he thinks the proposed use is similar to one or more of the uses already
696 authorized in the district and the applicant cites one, home offices of insurance, publishing, and
697 manufacturing companies; and incidental warehouses and wholesale and retail offices. There
698 was a prior use there involving C&S Wholesale Grocers, so that is consistent with history. He
699 does not think it is a stretch to say that office use associated with research and development,
700 which is a permitted use, would fit the category as well. A research and development use would
701 probably have an office to go with it. He thinks the first criterion is met.
702

703 Ms. Taylor stated that she agrees with Mr. Hoppock. She continued that for the time she has
704 lived in Keene, there has been always been office use in this building, sometimes as part of the
705 primary function, sometimes with the immediately preceding use, separate from the primary
706 function. She thinks it may not be exactly authorized but it very similar to both the historic use
707 of this portion of the building as well as very similar to the authorized office-related uses.
708

709 Chair Gorman stated that he agrees.
710

711 *2. Such approval would not reduce the value of any property within the district, nor*
712 *otherwise be injurious, obnoxious, or offensive to the neighborhood.*
713

714 Ms. Taylor stated that certainly she does not think this petition would reduce any property
715 values. She continued that it is her understanding there will not be external changes to the

716 building, and it is similar to the prior use for that portion of the building. The value is always
717 increased when a building is occupied instead of vacant.

718
719 Mr. Hoppock stated that he does not see information, nor does common sense dictate otherwise,
720 that it would reduce the value of any property within the district and the proposed use is not
721 injurious, obnoxious, or offensive to anyone or the neighborhood. He thinks this criterion is met.

722
723 Chair Gorman stated that he agrees. He continued that he is fairly certain surrounding properties
724 might not even know the difference.

725
726 *3. There will be no nuisance or serious hazard to vehicles or pedestrians.*

727
728 Mr. Hoppock stated that his only concern is if the applicant loses control over access to the
729 building by his clients. He continued that he does not have any reason to doubt that the clients
730 will come to them by van, as Mr. Gagne states. One thought he had, which may make him feel
731 better but may be unnecessary, is to condition the approval on that promise, that the clients only
732 access the facility via vans provided by the Applicant. He does not want to see the place
733 inundated. There could be a use that overwhelms what the prior use was, in terms of volume.
734 That is his only reservation but other than that he thinks that this meets the third criteria.

735
736 Chair Gorman stated that he agrees and has a similar concern, about people attending this
737 treatment by foot or by car. He does not think they know about the Applicant's business model
738 to know if that is something well within their control. It sounds like they want it to be in their
739 control, though, so maybe a condition would assist them. Mr. Hoppock stated that he agrees.

740
741 Ms. Taylor stated that her primary concern is traffic-related; however, she does not think she
742 would support such a condition. She continued that she thinks there are too many uncertainties
743 and it is way too restrictive on the applicant to require that the clients only come by van. She has
744 a serious issue with that.

745
746 Chair Gorman replied that his opinion is that it may not be restrictive; in fact, it is probably very
747 difficult for the City to even police such a condition, however, it would give the Applicant means
748 to control clients arriving at the site themselves if need be. He continued that he could look at it
749 either way and sees Ms. Taylor's perspective as well.

750
751 Ms. Taylor stated that she could support some form of condition that required that there be
752 supervision. She questioned the wording of the condition if a different vehicle is used than a van,
753 as well as how it is workable to have that kind of condition.

754
755 Chair Gorman stated that he does not think they could condition that it must be a van, because
756 they could transport people in a pick-up truck if they wanted to. The condition would be more
757 relative to transportation being provided by the service, not by the clients. Wanting to provide
758 more time to think about a condition, the Board continued.

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4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.*

Chair Gorman stated that he these utilities exist currently on the property. Mr. Hoppock stated that he agrees.

Mr. Greenwald made a motion to accept ZBA 20-18. Mr. Welsh seconded the motion.

1. *The proposed use is similar to one or more of the uses already authorized in that district and is an appropriate location for such a use. Granted 5-0.*
2. *Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious, or offensive to the neighborhood. Granted 5-0.*
3. *There will be no nuisance or serious hazard to vehicles or pedestrians. Granted 5-0.*
4. *Adequate and appropriate facilities (i.e. sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use. Granted 5-0.*

The Board approved the Special Exception request for ZBA 20-18 by unanimous vote.

- c. **ZBA 20-19: Petitioner, Brett Cooke of 40 Brook Street, Keene requests a Variance for property located at 40 Brook Street, Tax Map #553-084-000; that is in the High Density District. The Petitioner requests a Variance for a side setback of five feet on the north side of the property to build a garage with an apartment per Section 102-791 of the Zoning Ordinance where ten feet is required.**

Chair Gorman opened ZBA 20-19 and asked Mr. Rogers to provide some background.

Mr. Rogers stated that this property is in the High Density District, located on Brook St., which is off of Beaver St. and connects to the street beside the old middle school. He continued that this is a neighborhood with a lot of single-family homes and also some two-family homes. The setback is a ten-foot setback. The Applicant is proposing to build a garage with an apartment above it, so it would be a three-family dwelling. It appears, from the Assessor's database, that the property owner has just enough square footage to have this third unit in the High Density District, where the first unit requires 6,000 square feet and each additional unit requires 5,000, which puts this at 16,000 square feet and Assessing shows 16,100 square feet. The house currently is non-conforming to the side setback with the house at about seven feet from the property line. The applicant is asking for this addition to have a five-foot setback instead of the ten-foot setback that is required.

801 Ms. Taylor asked if it is correct that the current house is seven feet from the sideline. Mr. Rogers
802 replied yes, the drawing the Applicant provided shows the house is about 20 feet long and seven
803 feet from the setback, where the addition they are proposing to attach to the existing house is 50
804 feet, plus a portion that attaches, of 13 feet.

805
806 Ms. Taylor stated that she found the houses in this area interesting. She continued that this was
807 built in about 1894, which is similar to other houses in the area. Mr. Rogers replied yes, it is one
808 of the older neighborhoods, close to the downtown area.

809
810 Mr. Greenwald asked about the proposed garage/apartment, requesting drawings of what the
811 interior layout will look like, in terms of room dimensions. He also questioned what type of
812 roofing will be used. Mr. Rogers replied no, that the drawings requested was not part of the
813 application. He continued that the Applicant might have already applied for a building permit
814 and then was told he needed to apply for this Variance.

815
816 Chair Gorman asked for clarification if this petition is for a third unit. Mr. Rogers replied yes,
817 the existing house is a two-unit and this would be a third, the apartment being built over the
818 garage. Chair Gorman replied that he then assumes that the permitting process would cover all
819 necessary life safety code issues. Mr. Rogers replied yes, with the third unit being added, it
820 brings in fire code issues that the Applicant would have to address with the building permit.

821
822 Ms. Taylor stated that Assessing shows that it is a single-family home and not a two-family
823 home currently. She wonders how that discrepancy is resolved. Mr. Rogers replied that
824 sometimes the Assessor's Department information is based on what they see on the ground, but
825 the actual, official determination of what a residence has for units is the Community
826 Development Department (CDD)'s files. He continued that the CDD has several building
827 permits from over the years that have been issued, listing this house as a two-family. That is the
828 legal determination of what the property has.

829
830 Ms. Taylor replied that she does not necessarily agree. She continued that that is an interesting
831 description, listed as a single-family with the Community Development Department records
832 showing it as a two-family. Mr. Rogers replied that many times this happens that the City
833 Assessor cannot get into the building to see what the actual use is. He continued that it works the
834 other way sometimes, too – sometimes the Department's records show that it is a single-family
835 home but the City Assessor gets into the building and sees that it is a two-family home, which
836 would mean that the homeowner did not get proper permits to make the conversion. In this case
837 the Department does have some documentation where inspectors have been in the building from
838 previous projects over the years.

839
840 Chair Gorman thanked Mr. Rogers for the clarification. He continued that he is familiar with
841 that, too, and typically the Code documents are used over the Assessing documents. Mr.
842 Greenwald agreed.

843

844 Chair Gorman asked if Board members had more questions. Hearing none, he thanked Mr.
845 Rogers. He opened the public hearing and explained how members of the public could
846 participate. He asked to hear from Brett Cooke.

847
848 Brett Cooke, of 40 Brooke St., stated that this is a single-family home. He continued that when
849 he purchased it five years ago there was a small apartment upstairs but thought that was an
850 illegal apartment, so he converted it back to a single-family home. Chair Gorman replied that
851 that could be handled either way. He asked if what Mr. Cooke is saying alters his application in
852 any way. Mr. Cooke replied no. Chair Gorman stated that his take on that is that Mr. Cooke has
853 a legal two-family home right now that he opted to turn back into a single-family. He continued
854 that Mr. Cooke could correct that with the Community Development Department during the
855 permitting process, in which case Mr. Cooke would be held to the one- to two-family dwelling
856 unit life safety code. With this revelation, the property would back down on the commercial
857 representation of the property. He asked to hear from City Staff to make sure that is accurate.

858
859 Mr. Rogers replied yes, that is something that could be taken care of during the building permit
860 process, however the outcome of the Variance. The Department would work with the Applicant
861 to confirm that the property will remain a two-family home, the apartment being the second unit.

862
863 Ms. Taylor stated that she brought up the point because she was trying to understand the
864 property. Whether it is a one- or two-family home is not really the issue before the Board, it is
865 the dimensional requirements.

866
867 Chair Gorman asked Mr. Cooke to continue. Mr. Cooke went through the criteria.

868
869 *1. Granting the Variance would not be contrary to the public interest because:*

870
871 Mr. Cooke stated that a garage apartment would partially be replacing the existing barn on site,
872 which is somewhat of an eyesore and would be taken down upon completion of the garage. He
873 continued that his addition would only bring value to his home and he assumes to surrounding
874 homes, as it would enhance the property.

875
876 *2. If the Variance were granted, the spirit of the Ordinance would be observed because:*

877
878 Mr. Cooke stated that the Spirit of the Ordinance would be observed as a setback Variance is
879 consistent with most other buildings in the area. Many other buildings in the area have a similar
880 or less of a setback. This would not be out of place.

881
882 *3. Granting the Variance would do substantial justice because:*

883
884 Mr. Cooke stated that the apartment is for his father to live in. He is getting on in age and it
885 would be good to have him close by. This will allow him and his family to park in the garage
886 and have access to the home from within.

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

Mr. Cooke stated that granting this Variance for a five foot setback for the garage/apartment will not diminish surrounding property values but would further enhance their values. The construction of the garage adds value to the neighborhood and upon completion of the garage the barn would be taken down.

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. Cooke stated that he is asking for this Variance because the property is only 66 feet wide. He continued that having enough room for a driveway and parking in front of the garage would require the five-foot setback. Also, the existing house is just five feet from the property line. The garage would only be two feet closer.

ii. *The proposed use is a reasonable one*

Mr. Cooke stated that the garage will have an apartment above it and this is the only place it can go because it has to be attached to the existing house because the narrow front part of the lot makes it difficult.

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. Cooke stated that this is the only place the garage/apartment can be placed, as it needs to be attached to the existing house. There are many multi-family homes in the area so this would not look out of place. A five-foot setback would be further back than many other buildings in this area.

Chair Gorman stated that he mentioned a lot of the homes in the area are multi-family. He asked for more information. Mr. Cooke replied that there are 17 homes on the street with nine single family, three are two-family, two are three-family, and there is a commercial apartment with five to eight units. Two of the single-family homes are college student rentals.

930 Chair Gorman stated that to be clear, the lot allows him to have a two-family home. That is not
931 really why they are here tonight. He could even have a three-family unit if he wants. They need
932 to stay focused on the fact that they are here about the setback.

933
934 Mr. Greenwald stated that he noticed the dimensions are 30 feet wide on one angle, which is
935 creating the need for a five-foot setback. He question as to why not do 25 feet and have the
936 necessary 10-foot setback. Mr. Cooke replied that they want to be able to park in the garage as
937 well as have some space on the back wall for storage and hobbies – he does woodworking and
938 works on cars, and needs room for that. Mr. Greenwald asked if it is accurate to say the extra
939 space needed is more for the garage than the apartment. Mr. Cooke replied that he already had
940 plans drawn up, when he thought the side setback was five feet. He continued that they thought
941 about making it narrower but it made it more difficult for the one-bedroom apartment above with
942 its open concept. Having it that narrow, with a stairway coming up, made it a lot more cramped,
943 even though it was only a five foot difference making the interior much smaller.

944
945 Mr. Greenwald asked about the roofing materials because his main concern is the snow load that
946 could fall onto the abutting property's cars. He asked the Applicant to explain. Mr. Cooke
947 replied that they plan on standing seam roofing, except for the small portion that attaches to the
948 house, which will be shingled roofing matching the house. They thought about the snow load
949 and plan to put snow guard all along that side, to slow down the snow. It would go about a third
950 of the way up the roof.

951
952 Mr. Welsh stated that he has a similar dimensional question regarding the 22-foot parking space
953 length. He asked where does that parking space dimension come from and could that be reduced
954 so the building could be moved to the left and away from the setback. Mr. Cooke replied that he
955 thought about that; he does not know what the exact parking rule is, whether it is 18 feet or 20
956 feet. He continued that he put 22 feet down so there is a little bit of extra space. He did state
957 that he has a big truck, about 21 feet long, and did not want it to be in the way of others parked in
958 the yard. The five foot setback would allow the 22 feet. It could be less than 22 feet but the
959 driveway could be a little wider. The driveway is currently eleven feet and this would make it
960 nine feet, which gives him the 22 feet. The extra foot or so could go on either side.

961
962 Mr. Welsh asked how many bays they anticipate putting in the garage. Mr. Cooke replied four,
963 two double doors. Mr. Welsh asked about the timing of the barn removal, questioning why it
964 would be removed after the completion of the garage. Mr. Cooke replied that he would not have
965 anywhere to store his classic cars, which he currently has in the barn and does not want out in the
966 weather, so the demolition of the barn would be after the garage is finished.

967
968 Mr. Gaudio stated that Mr. Cooke put the 22 feet - or rather 17 feet, because he mentioned 17
969 feet in the application - in front of the garage. Mr. Gaudio then questioned why does the parking
970 need to be there, why not across the driveway or at the end of the driveway on the left side of the
971 lot. Mr. Cooke replied that like anyone, if you have a garage with garage doors, you would want
972 to park in front of it. That is typical. Mr. Gaudio replied but that would relieve the issue of the

973 setback by putting the cars over there or using 17 feet as the alternate. Mr. Cooke replied that he
974 does not know what the mandatory length is for a parking space; he was not able to find that in
975 the Building Code. When he put down 17 feet that was without the Variance.

976
977 Chair Gorman asked Staff to speak to this. Mr. Rogers stated that the Zoning Code spells it out
978 the requirement of 18 feet by 18 feet for non-retail parking spaces.

979
980 Mr. Cooke stated that at 17 feet, if he had that at the 10-foot setback, he would have to take the
981 fence between his house and 34 Brook St. out, to have enough space on the driveway for 18 feet.
982 Because he is a foot away from his property line and would need to take that extra foot to make it
983 18 feet and also have a nine foot driveway.

984
985 Mr. Gaudio stated that he can park the cars on the left side instead of the right side and that
986 would not impact that at all. Mr. Cooke stated that he has parking for three vehicles on the left
987 side. He continued that they have two trailers they were going to put in that area. Mr. Gaudio
988 replied that that is fair bit of parking. Mr. Cooke replied yes, but most of it is driveway; from the
989 road in it is probably 80 feet. But he cannot really park there; nobody would be able to get out.
990 He has seven parking spaces, total.

991
992 Chair Gorman asked if Mr. Cooke could, with the elimination of the barn, put some more spaces
993 pointing the other direction. Mr. Cooke replied possibly. He continued that once the barn is
994 gone, that section of the property would become lawn. He continued that another reasoning for
995 the request for the setback Variance is the height of the first floor of the existing building.
996 Obviously the garage will be lower. And there is the ceiling height in the garage. In order to
997 have the doorway into the transition room, the small attaching area would have to be five feet
998 farther to the south, five feet longer, in order for it to meet up with the landing in the garage, in
999 order to make it the height requirement of six feet by eight feet. It adds a whole lot more
1000 building than what they wanted.

1001
1002 Ms. Taylor asked if he has antique cars in the barn, stating that it looks like the barn is partially
1003 collapsed. Mr. Cooke replied no, it is on granite tiers. He continued that it is not in the greatest
1004 shape. It is currently the only place he has to put his cars and it is not ideal. Ms. Taylor stated
1005 that this is an interesting discussion, and what it boils down to is that where he is proposing to
1006 build this addition is a preference. She continued that it is not that he cannot build it in the
1007 setback, it is that he prefers not to. Mr. Cooke replied that he prefers not to, because instead of
1008 having seven parking spaces he would have three, because he cannot have 16-foot parking
1009 spaces. It would not work. It would be useless space. Ms. Taylor replied that he would be
1010 gaining a four-bay garage. She imagines he would keep at least a couple of cars in it. Mr.
1011 Cooke replied that he would not want the garage door to be opening and closing all day.
1012 Typically they park outside and then bring the cars in at night. Ms. Taylor asked if he is
1013 operating a business there. Mr. Cooke replied no, not at all. He continued that his father has an
1014 enclosed trailer for his motorcycle, which would be coming to the house once he moves in, and
1015 he himself has a utility trailer.

1016 Ms. Taylor stated that it goes back to her original question that this is what Mr. Cooke really
1017 wants to do. It is not that he cannot build within the setback, it just would not be as convenient.
1018 Mr. Cooke replied that it would not be as convenient, and it would not make sense to kind of
1019 have parking space in front of a garage but not be able to park in front of it. It seems like space
1020 not well-used.

1021
1022 Ms. Taylor stated that she has a question for Mr. Rogers. Assuming for today that this is a
1023 single-family home and there is an addition with a living space, does that turn it into a two-
1024 family home, or does that make it an Attached Dwelling Unit (ADU). Mr. Rogers replied that
1025 the way the Applicant is proposing it, it would be a two-family home. He continued that if he
1026 decided to do an ADU, there would be additional paperwork because an ADU is required to be
1027 owner-occupied. The applicant would be meeting that criterion currently but the deed for future
1028 sales would have to indicate that one of the units be owner occupied. He does not know where
1029 the setbacks would have any play. At this point it would be considered a two-family home, as
1030 that is what the Applicant is applying for.

1031
1032 Chair Gorman asked if it would be too large for an ADU. Mr. Rogers replied that the living
1033 portion would be restricted to 800 square feet if it were an ADU.

1034
1035 Chair Gorman welcomed members of the public to speak. He continued that the Board has
1036 received some letters and has had time to review them.

1037
1038 Judy Russell, of 34 Brook St., stated that she sent a letter. She continued that when she counts,
1039 she only gets eleven houses on Brook St; she does not know where Mr. Cooke is getting 17. A
1040 lot of them are single-family homes, which is something to consider. The condition of his
1041 property has already brought down the value of the neighborhood. Her questions are, who is
1042 going to build this garage and how long will it take. She also questions who will live there after
1043 his father passes.

1044
1045 Chair Gorman stated that relative to this application, Mr. Cooke is allowed to have a two- or
1046 three-family home. He continued that Mr. Cooke would not have to say who will live there; it is
1047 simply a rental unit. Ms. Russell stated that he is asking for it as an in-law apartment and that is
1048 not what it would continue to be. Chair Gorman replied that he is actually just asking for an
1049 apartment. He continued that that is what the Board was just discussing – an ADU is a dwelling
1050 that the owner occupies and typically that is more of an in-law type setting. Mr. Cooke is
1051 requesting just a second unit, which he is allowed to have, so that is not why he is before the
1052 Board – he is before the Board because he is requesting to encroach on setbacks. That is
1053 primarily what the Board is focused on, as to whether the five criteria are met for the request.

1054
1055 Chair Gorman asked if Mr. Cooke wants to respond to Ms. Russell's comments and concerns.
1056 Mr. Cooke stated that Ms. Russell is his direct neighbor. He continued that the purpose of this
1057 meeting is to apply for a Variance, not to ask permission to build something. He and Ms. Russell
1058 have not seen eye to eye on things and he has not talked with her for quite some time. He does

1059 not know where her comments are coming from. Chair Gorman replied that the Board wishes
1060 the two of them well in resolving their issues, but they will now stay focused on the application
1061 request.

1062
1063 Chair Gorman stated that he does not see any other members of the public wishing to speak. Ms.
1064 Marcou stated that she does not see anyone else calling in. Chair Gorman closed the public
1065 hearing. He stated that the Board will discuss and vote upon ZBA 20-19. If necessary he will
1066 reopen the public hearing to ask technical or procedural questions.

1067
1068 The Board deliberated on the findings of fact.

1069
1070 *1. Granting the Variance would not be contrary to the public interest.*

1071
1072 Mr. Hoppock stated that his first observation is that the neighborhood has a lot of structures in it,
1073 and there may be some disagreement about how many are single-family homes, but they are
1074 packed pretty close together. He continued that does not necessarily mean there is a lot of
1075 population density, but there are a lot of structures together. One of the purposes of the setback
1076 is to create some space between them for public safety reasons, such as fire containment and
1077 things of that nature. This application therefore does violate the basic Zoning objectives by
1078 creating safety issues, in terms of the space between properties. There is no reason why the
1079 proposed garage and apartment cannot be, as Mr. Gaudio suggested, a foot or two to the left. He
1080 does not think it satisfies the first criterion.

1081
1082 Mr. Greenwald stated that he agrees. He continued that he is very concerned about the snow
1083 load. He has dealt with properties that are right on top of the abutting property, and although
1084 snow guards do help, with standing seam metal, it is not enough. He has significant concerns
1085 about the proximity of the structure being only five feet, that it will not create enough space. He
1086 does not have a problem with the actual location of the addition, although the Applicant would
1087 like to have a substantial-sized garage, having it a couple more feet in could make it more
1088 compliant with the Ordinance and provide additional safety for the neighboring property, which
1089 is a two-family unit and probably has multiple cars.

1090
1091 *2. If the Variance were granted, the spirit of the Ordinance would be observed.*

1092
1093 Ms. Taylor stated that she would like to consider criteria one and two together. She continued
1094 that for the reasons Mr. Hoppock expressed, she believes this is contrary to the public interest,
1095 and it is not, in her opinion, within the Spirit of the Ordinance. It is in a compact and dense
1096 neighborhood of structures and the purpose of setbacks is, for a variety of reasons including
1097 density, to provide some separation. She does not think it meets the standards of criteria 1 or 2.

1098
1099 Chair Gorman stated that he agrees with Mr. Hoppock and Ms. Taylor, and Mr. Greenwald made
1100 some great points about the snow load. He continued, agreeing with tying these two criteria
1101 together, which leads into criterion 3.

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

Ms. Taylor stated that she does not think the private benefit outweighs the public interest in this particular circumstance. Chair Gorman agreed.

Mr. Hoppock agreed. He stated that buildings that close together do increase the risk of fire, so he does not think the gain to the public would be justified. Rather, there would be no benefit to the public; there would be a danger to the public.

Chair Gorman stated that he agrees and thinks that Mr. Cooke can reconfigure his plan to get the greater good for himself without having as much impact to his neighbors.

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

Chair Gorman stated that he does not agree. He thinks they actually could be, for the reasons stated in criteria 1 to 3. It is a big building; the footprint is a 15,000 square foot addition, but two stories, which has a square footage almost bigger than the existing house. Mr. Cooke is able to build that but he does not think he needs to build it so close to the boundaries. He thinks it may adversely impact the values, being that close to the property line.

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.*

Mr. Hoppock stated that he does not find that there is any special condition for the property that affects the general purpose of the Ordinance and its application to the specific property. He continued that the width of the entrance to the property is, by design and choice, not necessarily by a special condition of the property. He does not find that this criterion is met.

Chair Gorman agreed and stated that Ms. Taylor touched on that when she asked the applicant if this is more of a wish list than a necessity.

1145 Ms. Taylor stated that she echoes that she does not see a special condition of the property. If
1146 anything, it appears that this parcel is a larger square footage than many of the surrounding
1147 parcels. Just because all of the houses are close together and all of the parcels are small, that
1148 speaks to her that if there is a special condition to this it is just that it is bigger than the other
1149 parcels. This goes along the lines of, if he wants to build what he wants to build, he can still
1150 build it, just build it within the sideline setbacks.

1151
1152 Ms. Taylor made a motion to approve ZBA 20-19 at 40 Brook St. for a Variance to build on a
1153 side setback of five feet where ten feet are required on the north side of the property. Mr.
1154 Hoppock seconded the motion.

- 1155
1156 1. *Granting the Variance would not be contrary to the public interest.* Denied 5-0.
1157
1158 2. *If the Variance were granted, the spirit of the Ordinance would be observed.* Denied 5-0.
1159
1160 3. *Granting the Variance would do substantial justice.* Denied 5-0.
1161
1162 4. *If the Variance were granted, the values of the surrounding properties would not be*
1163 *diminished.* Denied 4-1. Mr. Greenwald voted in favor.
1164
1165 5. *Unnecessary Hardship*
1166 A. *Owing to special conditions of the property that distinguish it from other properties*
1167 *in the area, denial of the Variance would result in unnecessary hardship because:*
1168 i. *No fair and substantial relationship exists between the general public*
1169 *purposes of the Ordinance provision and the specific application of that*
1170 *provision to the property.*
1171 *and*
1172 ii. *The proposed use is a reasonable one.* Denied 5-0.
1173 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
1174 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
1175 *property that distinguish it from other properties in the area, the property cannot be*
1176 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
1177 *necessary to enable a reasonable use of it.* Denied 5-0.

1178
1179 The motion to approve ZBA 20-19 failed with a vote of 5-0.
1180

1181 Chair Gorman made a motion to deny ZBA 20-19. Mr. Hoppock seconded the motion, which
1182 passed by unanimous vote.
1183

1184 Chair Gorman wished Mr. Cooke good luck with his project. He stated that he hopes Mr. Cooke
1185 can find a way to make it work for himself.
1186

1187 d. **CONTINUED NOVEMBER 2, 2020 ZBA 20-16: Petitioner, Hundred Nights, Inc.**
1188 **of 17 Lamson St., Keene, represented by Jim Phippard, of Brickstone Land Use**
1189 **Consultants, 185 Winchester St., Keene, requests a Change of a Nonconforming Use**
1190 **for property located at 15 King Ct., Tax Map #122-022-000; that is in the Low**
1191 **Density District. The Petitioner requests a Change of a Nonconforming Use from a**
1192 **now vacant fitness center to a lodging house (homeless shelter).**
1193

1194 Ms. Marcou stated that this agenda item is a reminder that this petition will be continued on
1195 November 2. Mr. Hoppock asked if there has been a reconsideration in connection with any of
1196 the Hundred Nights applications. Ms. Marcou replied no, not yet. Mr. Hoppock asked if the
1197 deadline had passed. Ms. Marcou replied no, the 30 days started the day after the September 22
1198 meeting and will end October 22, for a Motion to Rehear.
1199

1200 **V. New Business**

1201
1202 a. Board Member Term Expiration Dates and Term Limits
1203

1204 Mr. Rogers stated that so everyone knows where they stand with their terms for Board
1205 membership, Staff provided a list of term status's and expiration dates. He continued that
1206 hopefully Board members who are eligible for a second term will want to stay on. Brief
1207 discussion ensued.
1208

1209 **VI. Communications and Miscellaneous**

1210
1211 **VII. Non-public Session (if required)**

1212
1213 **VIII. Adjournment**
1214

1215 There being no further business, Chair Gorman adjourned the meeting at 9:16 PM.
1216

1217 Respectfully submitted by,
1218 Britta Reida, Minute Taker
1219 Staff edits submitted by,
1220 Corinne Marcou

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CHESHIRE, SS.

CITY OF KEENE NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT

MOTION FOR RE-HEARING PURSUANT TO RSA 677:2

**RE: Petitioner Hundred Nights, Inc
ZBA 20-11**

1. Green Diamond Group, LLC is the owner of land and buildings located at 122 and 124 Water St., Keene, NH
2. The parties aggrieved are:
 - Stephen Bragdon of 51 Railroad St., Keene, NH
 - Kevin Beal of Dunbar Street
 - John Pappas, Knotty Pine Antique of 69 Dunbar Street
3. On September 22, 2020, the Keene Zoning Board of Adjustment considered an application for a variance for approval of a Homeless Shelter and Resource Center at 122 and 124 Water Street in the BGR district.
4. On September 22, 2020, the Keene Zoning Board of Adjustment issued a decision that such a variance was allowed by a 3 to 2 decision.
5. The action of the Keene Zoning Board of Adjustment is unlawful and unreasonable, and applicants respectfully request that the board grant a rehearing on this matter.
6. **LACK OF NOTICE:**
 - A. The state statutes require that. "Every abutter... Shall be notified of the hearing by certified mail not less than five days before the Hearing".
 - B. The Keene City Ordinance requires that everybody "within 200 feet exclusive of rights ways be notified".

C. Some property owners/taxpayers were not notified as required above. No individual owners at 51 Railroad St. received written notice of the hearing. The notice to Railroad Land Development, LLC was insufficient to notify the property owners of the building. It appears that direct notice to other companies and individuals in the Railroad Land Development were not made. This lack of notice makes the present hearing illegal under the statute. Proper notice must be made to give the Zoning Board of Adjustment standing to make decisions.

7. GRANTING THE VARIANCE WOULD BE CONTRARY TO PUBLIC INTEREST:

- A. The petitioner argues that the public interest is served because this proposal would care for the homeless. This is a one-sided argument.
- B. The public interest is a concept that includes all the public, the homeless, the residents with homes, the businesses, etc. It is in the public interest to separate various uses into separate districts. Public interest is served when all segments of society are protected.
- C. The thirteen (13) intentions that were outlined by petitioner were not met. Several criteria as they relate to the ability of the proposed use to co-exist adjacent to the neighborhood, support a walkable community and provision of creating public space for the purpose of social interactions in particular were not met.
- D. The placing of a homeless shelter and resource center in this area does not serve the surrounding area in that there are many elderly in the area and work force housing is across the street and the area is close to downtown. There are schools in this area as well as a head start program. There was no testimony as to any policy Hundred Nights had as regards to portions of their population that may be dangerous.
- E. There was testimony that only 149 calls required police response in 2019. Police intervention every 2 to 3 days is not in the public interest.
- F. Having 20% of the clients be from out of the area does not appear to be in the public interest.

8. THE SPIRIT OF THE ORDINANCE WOULD NOT BE OBSERVED IF THE VARIANCE WERE GRANTED:

- A. The spirit of the zoning ordinance is to protect the health, safety, and general welfare of all the public, not just part of the public. The placing of a homeless shelter in this position does not encourage the redevelopment of the properties near the area.
- B. The homeless shelter as it is presently located has resulted in numerous no trespass orders for its residents from the businesses in this area and the removal of a bench located on Cypress Street because it became a hangout for the clients of Hundred Nights. There is no rationale that this would improve if the location of Hundred Nights were moved closer.
- C. The use would alter the essential character of the neighborhood to a degree greater than it already has.
- D. The contention that the proposed use is like other uses in this area is not the criteria but whether the proposed use would alter the essential character of the neighborhood and threaten public health, safety, and welfare. The petitioner did not offer any proof that this use would not be contrary to the public health, safety and welfare and not alter the essential character of the neighborhood.

9. GRANTING THE VARIANCE WOULD NOT DO SUBSTANTIAL JUSTICE:

- A. There was no evidence to support this criterion. A board member argued that this criterion is met because it would be a loss to the applicant (Hundred Nights). This is clearly not the law.
- B. It is not the proposed use which should meet this criterion but the uniqueness of the land that would justify a variance. There was no indication that the land was unique and could not be used for uses allowed in the zone.

10. THE VALUES OF SURROUNDING PROPERTIES WOULD BE DIMINISHED IF THE VARIANCE WERE GRANTED:

- A. The board can consider its personal knowledge and experiences. It is obvious the location of a homeless shelter in this area will decrease the value of surrounding property.
- B. The review done of tax assessment cards and revaluations does not apply to this criterion except to a minor extent and is not dispositive. The analysis was prepared by the petitioner not an expert and the reasoning on which it was based is faulty.
- C. There was no expert evidence that the value of the surrounding properties would not be diminished if this variance is allowed and common knowledge would indicate that it would be diminished.

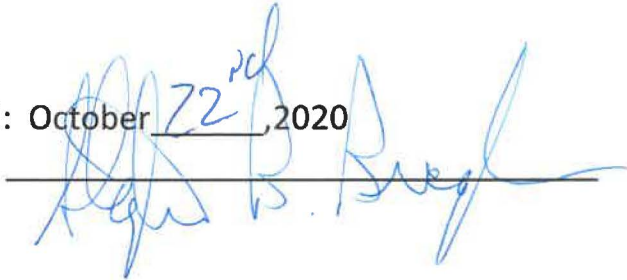
11. UNNECESSARY HARDSHIP:

- A. The requirement that the property in question be subject to an "unnecessary hardship" if the variance is not granted was not met. The land in question is in the DGR district. Many uses are allowed in this district including but not limited to storage, manufacturing, multi-dwellings, and office use.
- B. There is nothing unique about this property that requires it to be used for a homeless shelter. The zoning restriction as applied does not interfere with the reasonable use of the property.
- C. The separation of uses is a public purpose of the zoning ordinance and as it now exists does not allow a homeless shelter in this area.
- D. The board relied on a proposed change to the zoning ordinance which has not yet occurred, been approved, or formally presented to the public. Because the zoning ordinance might change in the future does not allow the board to act now and allow this use. The board must interpret the law as it now exists not how it might exist in the future. Further, a homeless shelter is not appropriate in a "Growth and Investment" zone.
- E. The Board allowed this use with no restrictions or conditions. If the proposed zoning law were followed the use would have required licensing and been subject to reasonable restrictions on the use.

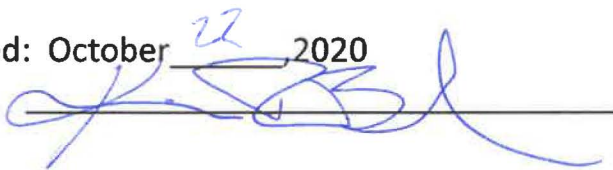
F. Petitioner's argument for a variance is a major stretch of the statute and case law. Petitioner should be aware of this given its earlier petitions and resultant extensive use of the public resources. This petition and the petitioner's other petition use public resources seemingly without a concrete plan or reasonable expectation of success. This is indicative of the way it would run its operations.

WHEREFORE, the Aggrieved Parties oppose this petition and respectfully request that Keene Zoning Board of Adjustment grant a rehearing.

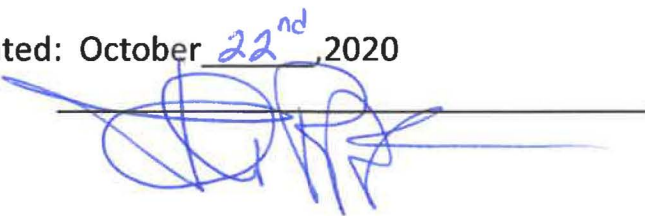
Respectfully submitted,
Parties Aggrieved

Dated: October 22nd, 2020


Stephen B. Bragdon

Dated: October 22, 2020


Kevin Beal

Dated: October 22nd, 2020


John Pappas

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15 KINGS CT.
ZBA 20-16



Petitioner requests a Change of a Nonconforming Use from a now vacant fitness center to a lodging house (homeless shelter)



NOTICE OF HEARING

ZBA 20-16

A meeting of the Zoning Board of Adjustment will be held on Tuesday, September 8, 2020 at 6:30 PM to consider the petition of Hundred Nights, Inc., of 17 Lamson St., Keene, NH. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 857 2267 5504. To notify the public body of any access issues, call (603) 757-0622. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-16: The Petitioner requests a Change of a Nonconforming Use for property located at 15 King Ct., owned by Raette F. Trombly Living Trust, of Keene, Tax Map #122-022-000 that is in the Low Density District. The Petitioner requests a Change of a Nonconforming Use from a now vacant fitness center to a lodging house (homeless shelter).

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date August 27, 2020



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ZONING BOARD OF ADJUSTMENT

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APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:	
Case No.	<u>ZBA 20-110</u>
Date Filed	<u>8/25/2020</u>
Received By	<u>CMU</u>
Page	<u>1</u> of <u>7</u>
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) HUNDRED NIGHTS INC Phone: 603-352-5197
Address PO BOX 833 KEENE NH
Name(s) of Owner(s) RAETTE F TROMBLY LIVING TRUST
Address PO BOX 1117 KEENE NH 03431
Location of Property 15 KING CT

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 122-022-000 Zoning District LD
Lot Dimensions: Front 124.13' Rear 106.55' Side 218.00' Side 218.00'
Lot Area: Acres 0.28 Square Feet 12,268
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 20.1% Proposed 20.1%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 59% Proposed 59%
Present Use FITNESS CENTER NOW VACANT
Proposed Use LODGING HOUSE (HOMELESS SHELTER)

SECTION III - AFFIDAVIT

I hereby certify that I am the owner in fee or the authorized agent of the owner in fee of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Raette Trombly Date 8-25-20
(Signature of Owner or Authorized Agent)
Please Print Name RAETTE TROMBLY

PROPERTY ADDRESS 15 KING CT

APPLICATION FOR CHANGE OF A NONCONFORMING USE

The Zoning Board of Adjustment may, in appropriate circumstances and with appropriate safeguards, permit a nonconforming use to be changed to another nonconforming use provided that the following criteria are met.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

1. The changed use will be more in the spirit and intent of the Zoning Ordinance.

SEE ATTACHED

2. The changed use will not be more injurious, obnoxious or offensive to the neighborhood.

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The existing building is currently a vacant building which was previously used as a commercial fitness center and prior to that it was used as Indian King Framery, a retail use. To the west and north of the property are dormitories at Keene State College; also to the north are a mix of single family homes and rental properties on Appleton Street; to the east are office buildings; and to the south is Rt. 101. The proposed use as a homeless shelter (lodging house) is a residential use.

The existing building will be used as sleeping quarters. It will be open at 6:30 PM every evening and closed at 7:00 AM. Guests will be shuttled to this facility from Lamson Street, and then shuttled back to Lamson Street every morning. The facility will be closed during the day other than workers performing cleaning and maintenance.

The spirit and intent of the zoning ordinance is to protect the health, safety and general welfare of the public. In the Low Density district, the intent is to primarily allow single family residences. However, the LD district also allows Group Homes and Institutional uses by Special Exception. This location on King Court is a mix of business uses and housing adjacent to the State highway. It is not a good location for a single family house.

The proposed use will not generate significant traffic; it will not generate excessive noise. The use as a residential sleeping quarters for homeless individuals and families will help to protect the health, safety and general welfare for these people.

It is in the public interest to allow a change in use which is more compatible with the existing residential uses in the LD district than the previous business uses.

2. The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.

The use as sleeping quarters for homeless individuals and families is a benign use which will not be injurious, obnoxious, or offensive to the neighborhood. The facility will operate only at night, opening at 6:30 PM and closing at 7:00 AM. Guests will be shuttled to this facility from the homeless shelter at Lamson Street and then shuttled back to Lamson Street every morning. The only activity at this facility during the day will be cleaning and maintenance activities. There will be less traffic from the proposed use than the prior use as a fitness center. There will be no significant noise generated by this proposed use. The site is served by city water and city sewer. There is on-site parking for the support staff. Granting this application will not result in excess traffic, will not reduce the safety or the capacity of Main Street, and will not pose a threat to public health, safety or welfare.

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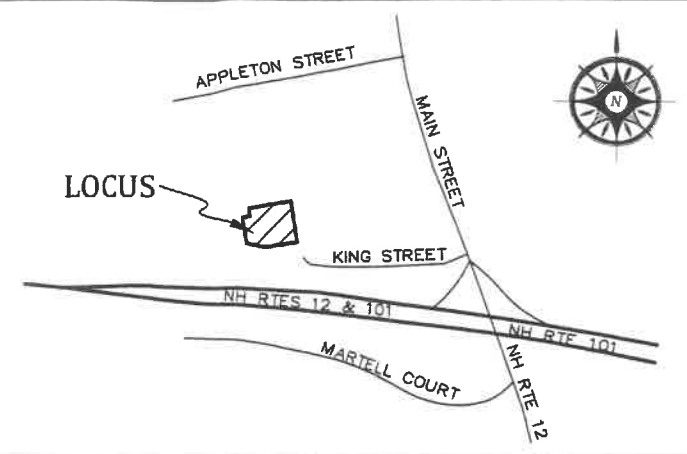


112-028-000
 UNIVERSITY SYSTEM OF NH
 KEENE STATE COLLEGE
 C/O JAY KAHN
 229 MAIN STREET
 KEENE, NH 03431
 VOL 1762 PG 289

REFERENCE PLANS

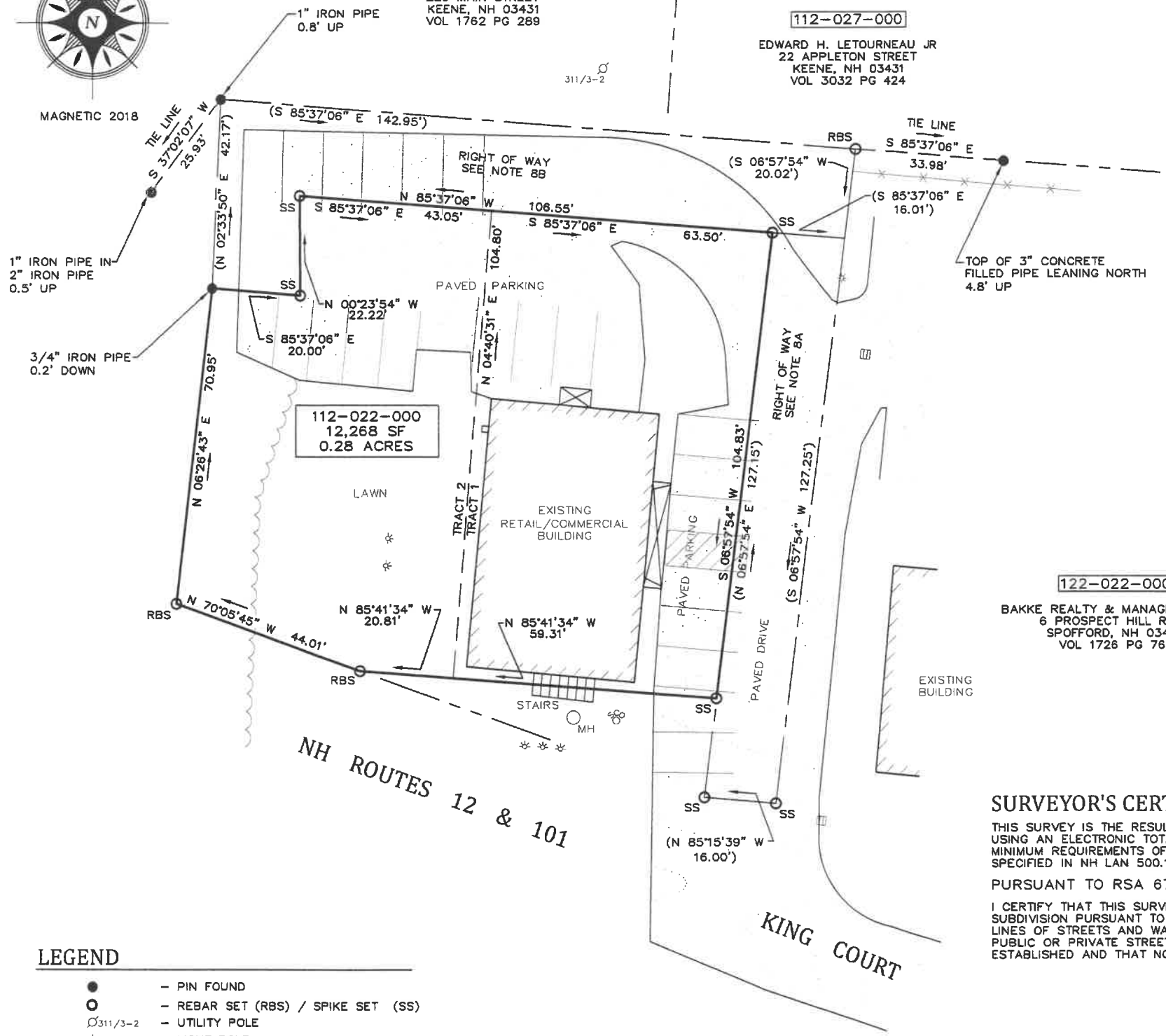
- 1) "BUILDING & LAND OFF KING COURT, OWNED BY HARRY E. KENNEY, UNDER PURCHASE AGREEMENT TO WILLIAM A. STRETCH, JR. DBA INDIAN KING FRAMERY/NEW ENGLAND FRAME CRAFTERS"; DATED 6-22-81; SCALE 1"=20'; ON FILE AT THE CITY OF KEENE DEPARTMENT OF PUBLIC WORKS.
- 2) "STATE OF NEW HAMPSHIRE, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, PLAN OF PROPOSED FEDERAL AID URBAN PROJECT, U 013-1(14), N.H. PROJECT NO. P-3435-A, CITY OF KEENE, COUNTY OF CHESHIRE"; SHEET NUMBER 19; DATED 12/13/60; ON FILE AT NH DEPARTMENT OF TRANSPORTATION.

112-027-000
 EDWARD H. LETOURNEAU JR
 22 APPLETON STREET
 KEENE, NH 03431
 VOL 3032 PG 424



NOTES

- 1) THE PURPOSE OF THIS PLAN IS TO DEFINE THE BOUNDARY OF LOT 112-022-000.
- 2) OWNER OF RECORD:
 WILLIAM A. STRETCH JR
 485 COLUMBUS ROAD
 WEST RR #1
 OSHAWA, ON L1H7K-4
 VOLUME 2082 PAGE 1
- 3) AREA OF LOT 112-022-000: 12,268 SF OR 0.28 ACRES
- 4) LOT NUMBERS REFER TO THE CITY OF KEENE PROPERTY MAPS.
- 5) CURRENT ZONING: LOW DENSITY
 MIN. LOT AREA - 10,000 SF
 MIN. FRONTAGE - 60 FEET
 MIN. WIDTH AT BUILDING LINE - 70 FEET
 SETBACKS:
 FRONT - 15 FEET
 SIDE - 10 FEET
 REAR - 20 FEET
- 6) KING COURT IS WITHIN THE BY-PASS RIGHT OF WAY. SEE REFERENCE PLAN 2.
- 7) LOT 112-022-000 IS WITHIN THE 100 YEAR FLOOD PLAIN.
- 8) EASEMENTS
 A. LOT 112-022-000 BENEFITS FROM A 16' WIDE RIGHT OF WAY RUNNING NORTHERLY FROM THE NORTHERLY BOUND OF KING COURT. SEE VOLUME 2082 PAGE 1.
 B. LOT 112-022-000 BENEFITS FROM A 20' WIDE RIGHT OF WAY RUNNING WESTERLY FROM AN EXTENSION OF THE 16' RIGHT OF WAY. SEE VOLUME 2082 PAGE 1.
 C. LOT 112-022-000 BENEFITS FROM EASEMENTS FOR WATER, SEWER AND UTILITY LINES. SEE VOLUME 620 PAGE 281, VOLUME 620 PAGE 286 AND VOLUME 620 PAGE 309.
 THE PARCEL MAY BE SUBJECT TO OTHER EASEMENTS AS THEY EXIST OF RECORD OR IN FACT. CARDINAL SURVEYING AND LAND PLANNING DOES NOT INTEND OR REPRESENT THAT ALL RIGHTS AND EASEMENTS AFFECTING THE SUBJECT PROPERTY ARE SHOWN. A SPECIFIC TITLE EXAMINATION IS SUGGESTED TO DETERMINE THE NATURE AND EXTENT OF RIGHTS AND EASEMENTS AFFECTING THE SUBJECT PROPERTY.
- 9) THE LOCATION OF ANY UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. CARDINAL SURVEYING & LAND PLANNING MAKES NO CLAIMS TO THE ACCURACY OR COMPLETENESS OF THE UTILITIES SHOWN. FIELD VERIFICATION IS REQUIRED PRIOR TO ANY EXCAVATION ON THE SITE.



112-022-000
 12,268 SF
 0.28 ACRES

112-022-000
 BAKKE REALTY & MANAGEMENT CO
 6 PROSPECT HILL ROAD
 SPOFFORD, NH 03462
 VOL 1726 PG 762

SURVEYOR'S CERTIFICATION

THIS SURVEY IS THE RESULT OF A RANDOM TRAVERSE USING AN ELECTRONIC TOTAL STATION AND MEETS THE MINIMUM REQUIREMENTS OF AN URBAN SURVEY AS SPECIFIED IN NH LAN 500.1.

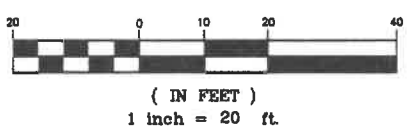
PURSUANT TO RSA 676:18

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

LEGEND

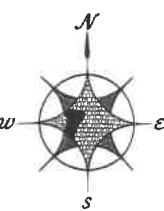
- - PIN FOUND
- - REBAR SET (RBS) / SPIKE SET (SS)
- _{311/3-2} - UTILITY POLE
- * - LIGHT POLE
- * - SPOT LIGHT
- ▣ - CATCH BASIN
- _{MH} - MANHOLE
- ⊗ - SEWER CLEAN OUT
- ~~~~~ - TREE LINE
- - - - - EASEMENT LINE
- · - - - - APPROXIMATE ABUTTER LINE
- (N 85°15'39" W 16.00') - EASEMENT DIMENSION

GRAPHIC SCALE



JOB NO: 461 SURVEY DATE: 7/25/18 FB: 7/1

NO.	DATE	REVISION	BY
BOUNDARY PLAN			
LOT 112-022-000			
15 KING COURT			
KEENE, NH 03431			
DATE: AUGUST 20, 2018		SCALE: 1"=20'	
PREPARED FOR:			
WILLIAM A. STRETCH JR			
485 COLUMBUS ROAD			
WEST RR#1			
OSHAWA, ON L1H7K-4			
CARDINAL SURVEYING & LAND PLANNING			
Keene, New Hampshire 03431			
Tel. (603) 499-6151			
SHT 1/1			



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112-022-000
RAETTE F TROMBLY LIVING TRUST
PO BOX 1117
KEENE NH 03431

112-020-000
WHITE HOUSE GROUP
441 MAIN STREET
KEENE NH 03431

112-021-000
BAKKE REALTY & MANAGEMENT CO
PROSPECT HILL ROAD
SPOFFORD NH 03462

112-023-000
SELMA XANTHOPOULOS LIVING TRUST
297 MARLBORO STREET
KEENE NH 03431

112-024-000
STEPHEN L ROGERS
LYNDA L ROGERS
425 MAIN STREET
KEENE NH 03431

112-025-000
JANICE R D'ALESSIO LIVING TRUST
PO BOX 1806
KEENE NH 03431

112-026-000
JOHN PAPPAS
PO BOX 96
WEST SWNZEY NH 03469

112-027-000
EDWARD H LETOURNEAU JR
22 APPLETON ST
KEENE NH 03431

112-028-000, 112-029-000
UNIVERSITY SYSTEM OF NH210
Holdings LLC
PO Box 164
Marlow NH 03456

594-081-000
DAVID MCQUAID HINDERAKER
ANNA CARMELA HINDERAKER
409 MAIN STREET
KEENE NH 03431

HUNDRED NIGHTS INC
PO BOX 833
17 LAMSON STREET
KEENE NH 03431

BRICKSTONE LAND USE
CONSULTANTS LLC
185 WINCHESTER STREET
KEENE NH 03431

112-011-000
JOHN E CLARK
PATRICIA L CLARK
59 DICKINSON RD
KEENE NH 03431

112-012-000
GEORGE P ACHILLE JR
PO BOX 87
PETERBOROUGH NH 03458

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0 CHAPMAN RD. ZBA 20-20



Petitioner requests a Variance to construct a single family home with garage where lot width at the building line would be less than the required 200' per Section 102-791 of the Zoning Ordinance.



NOTICE OF HEARING

ZBA 20-20

A meeting of the Zoning Board of Adjustment will be held on Monday, November 2, 2020 at 6:30 PM to consider the petition of Maureen Baxley Murray Trust of 195 Columbia Turnpike, Suite 125, Florham Park, NJ, represented by Joseph Murray. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. **The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795.** To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-20/ The Petitioner requests a Variance for property located at 0 Chapman Road, Tax Map #241-017-000; that is in the Rural District. The Petitioner requests a Variance to permit the construction of a single family residential dwelling and garage on an irregularly shaped lot where lot width at the building line would be less than the required 200 feet in the Rural District per Section 102-791 of the Zoning Ordinance where ten feet is required.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date October 23, 2020

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:	
Case No.	<u>ZBA 20-20</u>
Date Filed	<u>10/14/2020</u>
Received By	<u>CWH</u>
Page	<u>1</u> of <u>7</u>
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) MAUREEN BAXLEY MURRAY TRUST Phone: 908-273-0685
Address 195 Columbia Turnpike - Suite 125
Name(s) of Owner(s) _____
Address _____
Location of Property 0 Chapman Road, Keene, NH 03431 (approx. #44 Chapman Rd. on Google maps)

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 241-017 Zoning District Rural
Lot Dimensions: Front 72' Rear 400' Side 520.70' Side 390'+395'
Lot Area: Acres 5.09 ac Square Feet 221,720
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 0 Proposed 0.0072
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 0 Proposed 0.0162
Present Use vacant land
Proposed Use single family residential

SECTION III - AFFIDAVIT

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Maureen B. Murray Date 10/13/2020
(Signature of Owner or Authorized Agent)

Please Print Name Maureen B. Murray, Trustee of Maureen Baxley Murray Trust

Corinne Marcou

From: Joseph Murray <jtm@twillmurray.com>
Sent: Wednesday, October 14, 2020 6:10 PM
To: Corinne Marcou
Subject: RE: Baxley Murray property Chapman Rd.

Dear Ms. Marcou,

I also realized that Section II of the application requested percentages of lot coverages and my calculations were not percentages. After recalculating the square footages the numbers 0.0072 and 0.0162 should be 1.25% (structures) and 1.92% (structures + driveways, etc.).

I apologize for the mistakes.

Best regards,
Joseph Murray

From: Corinne Marcou [mailto:cmarcou@ci.keene.nh.us]
Sent: Wednesday, October 14, 2020 4:31 PM
To: Joseph Murray <jtm@twillmurray.com>
Subject: RE: Baxley Murray property Chapman Rd.

Hi,

One more item that I just noticed on your application. Would you mind sharing your city and state for the 195 Columbia Turnpike-Suite 125 address? It's missing on the application.

Thank you,

From: Joseph Murray <jtm@twillmurray.com>
Sent: Wednesday, October 14, 2020 3:21 PM
To: Corinne Marcou <cmarcou@ci.keene.nh.us>
Subject: Re: Baxley Murray property Chapman Rd.

Yes, please change application as you suggested.

Best regards,
Joseph Murray

Get [Outlook for iOS](#)

From: Corinne Marcou <cmarcou@ci.keene.nh.us>
Sent: Wednesday, October 14, 2020 2:37:35 PM
To: Joseph Murray <jtm@twillmurray.com>
Subject: RE: Baxley Murray property Chapman Rd.

Hi,

Thank you for sending this so quickly.

I have discussed your application with John Rogers who does agree this would be a Variance request not an Equitable Waiver of Dimensional Requirements. Do I have your permission to make the change on your application? With your approval, I'll make the change and add this email to your file.

Thank you,

Corinne

From: Joseph Murray <jtm@twillmurray.com>
Sent: Wednesday, October 14, 2020 1:19 PM
To: Corinne Marcou <cmarcou@ci.keene.nh.us>; Corinne Marcou <cmarcou@ci.keene.nh.us>
Subject: Baxley Murray property Chapman Rd.

Hello,

Here is my email.

Joseph Murray
908-273-0685

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CONFIDENTIALITY NOTICE

The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential, privileged or exempt information in accordance with NH RSA 91-A and other applicable laws or regulations. If you are not the intended recipient, please reply to the City of Keene sender or notify the City of Keene immediately at (603) 357-9802 and delete or destroy all copies of this message and any attachments. Any unauthorized use, disclosure, or distribution of this message and any attachments is strictly prohibited. Thank you for your assistance.

CONFIDENTIALITY NOTICE

The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential, privileged or exempt information in accordance with NH RSA 91-A and other applicable laws or regulations. If you are not the intended recipient, please reply to the City of Keene sender or notify the City of Keene immediately at (603) 357-9802 and delete or destroy all copies of this message and any attachments. Any unauthorized use, disclosure, or distribution of this message and any attachments is strictly prohibited. Thank you for your assistance.

PROPERTY ADDRESS 0 Chapman Road, Keene, NH

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 102-791 of the Zoning Ordinance to permit:
construction of a single family residential dwelling & garage on an irregularly-shaped lot where lot width at the building line would be less than required 200 feet of rural district.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

1. Granting the variance would not be contrary to the public interest because:

The proposed variance from the required 200-ft building line and 50-ft side yard dimensional requirements would permit construction of a residential dwelling unit that is a permitted use within a rural district under the Keene Zoning Ordinance and also permit a land use that would not alter the essential character of the Chapman Road neighborhood. The approximately 42-ft building width of the proposed dwelling would fall partially in an area of the lot that is approximately ^{144'}_{162'} wide at its narrowest distance.

2. If the variance were granted, the spirit of the ordinance would be observed because:

the applicant's 5.09 acre lot is dominated by slopes and natural drainage areas of Beech Hill and the irregular lot shape creates a limited buildable area that is practically difficult for siting a residential dwelling unit and garage consistent with the character of similar residential properties in the neighborhood and which preserves the natural beauty and natural course of drainage of slopes of the surrounding hillside as well as permitting sufficient solar gain for an energy-efficient home that doesn't rely on fossil fuels.

3. Granting the variance would do substantial justice because:

the applicant would be permitted to site its residential dwelling unit and garage on a level portion of its lot within a rural zoning district without adversely affecting the surrounding hillside slopes and natural drainage courses with sufficient solar gain. A variance from the 200-ft minimum building line lot width and 50-ft side yard requirements would also permit the applicant to maximize solar gain without excessive removal of trees from the hillside while maintaining a reasonable distance from structures of adjacent landowners.

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

Granting of the variance would permit construction of a high-quality single-family residential home consistent with other homes in the neighborhood while protecting natural beauty of the surrounding hillside and the existing courses of hillside drainage.

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:

The proposed variance from the zoning dimensional requirements would permit applicant to construct a single-family dwelling on the primary buildable portion of the lot without negatively impacting slopes and woods of the surrounding hillside, enable construction of a residential dwelling consistent in type/quality of the adjacent residential landowners, and permit construction of a permitted use on an irregularly-shaped building lot that was created by an approved subdivision of a larger tract in 1985. The proposed location of structures would be reasonably distant from residential structures of adjacent landowners

and

ii. The proposed use is a reasonable one because:

The proposed building lot was originally created by a subdivision of a larger tract in 1985 that was approved by the Keene Zoning Board for purposes of creating buildable residential dwelling lots within a rural district. The variance would enable the applicant to construct a residential dwelling unit consistent with the permitted and intended uses of property within the rural district.

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.

The buildable portion applicant's 5.09 acre lot is circumscribed by steep hillside slopes regulated under Keene's Hillside Protection Ordinance which make siting of a residential dwelling unit and attached garage difficult. The proposed variance would permit construction of a single family residential structure and garage without disturbing the natural hillside slopes of the surrounding area and thereby preserve the natural beauty of the hillside without detrimentally affecting either the hillside or the natural courses of drainage from the hillside. Siting the residential structure further back from Chapman Rd. on the lot within a 200-ft lot width likely would interfere with the natural course of drainage of the hillside and require removal of trees within sloped areas to provide sufficient solar gain to the proposed residential structure. Placing the structures further back also would interrupt access to northerly portions of applicant's property via an existing logging road. Applicant intends to construct a home without reliance on use of fossil fuels as a heating source and instead will rely, in part, upon passive solar energy. Siting of the buildings require strategic positioning of the home to maximize solar gain and deeper portions of the building lot are constrained by sun obstruction by the hillside and existing wooded areas.



ZBA ABUTTERS LIST

ADDRESS: 0 Chapman Road, Keene, NH

Owner Name	TMP NO.	Mailing Address
City of Keene, NH	241-018	3 Washington Street, Keene NH 03431
Edward J. & Kathleen K. Burke	241-019	56 Chapman Road, Keene, NH 03431
Marc D. & Anita T. Koolen	241-016	32 Chapman Road, Keene, NH 03432
State of New Hampshire	596-015	P.O. Box 483, Concord, NH 03302
Todd P. Bradford	597-002	468 Marlboro Street, Keene, NH 03431
Thomas A. & Kelly A. Baldwin	597.001	456 Marlboro Street, Keene NH 03431
Michael H. & Lisa W. Secore	596-014	28 Chapman Road, Keene, NH 03431

Notarized Statement

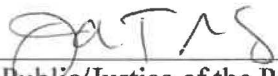
I, the undersigned Maura B. Murray, swear that to the best of my knowledge, the above is an accurate and complete abutters list.



 Signature

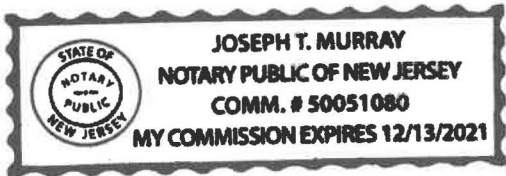
JERSEY
 STATE OF NEW HAMPSHIRE
 CHESHIRE, SS
 MORRIS COUNTY

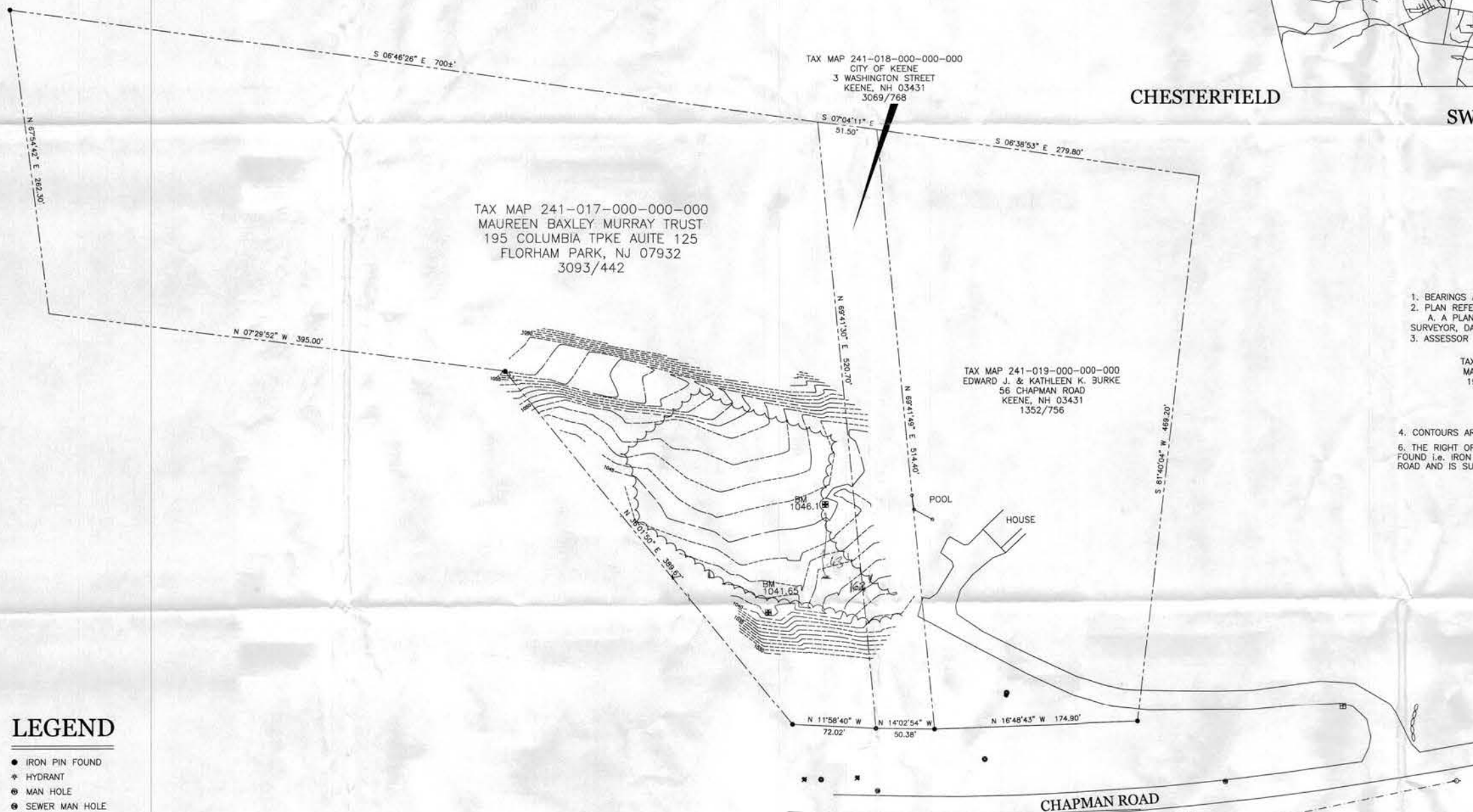
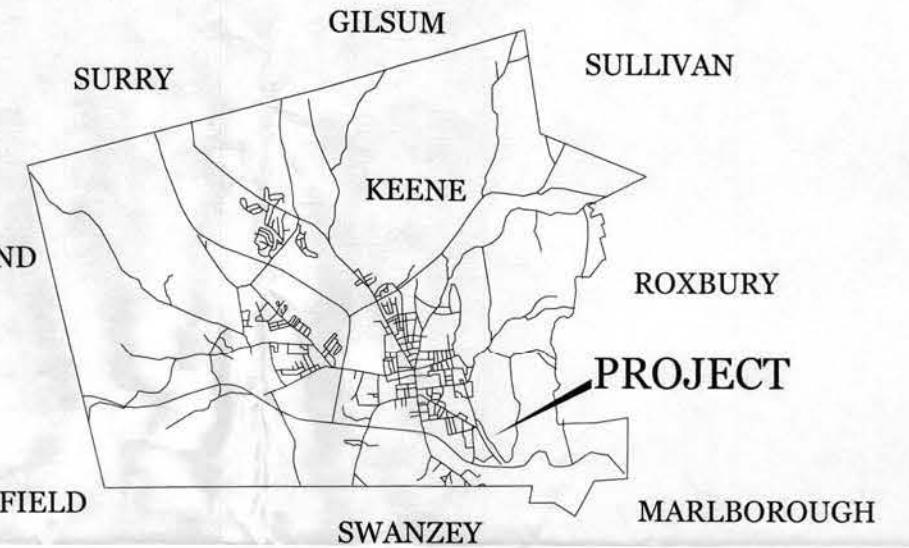
Subscribed and sworn before me this 13th day of OCTOBER, 20 20.



 Notary Public/Justice of the Peace

My Commission Expires 12/13/2021





- NOTES**
1. BEARINGS ARE BASED ON THE PLAN IN NOTE 2A.
 2. PLAN REFERENCES:
A. A PLAN TITLED SUBDIVISION OF TRACT 4, BY ROY K. PIPER SURVEYOR, DATED DEC. 11, 1985.
 3. ASSESSOR INFORMATION BASED ON TOWN RECORDS:
TAX MAP 241-017-000-000-000
MAUREEN BAXLEY MURRAY TRUST
195 COLUMBIA TPKE AUTE 125
FLORHAM PARK, NJ 07932
3093/442
 4. CONTOURS ARE BASED ON ASSUMED DATUM.
 6. THE RIGHT OF WAY OF CHAPMAN ROAD IS BASED ON PHYSICAL EVIDENCE FOUND i.e. IRON PINS/STONEWALLS AND IS PRESUMED TO BE A 150 FOOT ROAD AND IS SUBJECT TO AND BENEFITTED BY THE LAYOUT.

TOPOGRAPHIC SURVEY PLAN
PREPARED FOR
MAUREEN BAXLEY MURRAY TRUST
CHAPMAN ROAD
CITY OF KEENE
COUNTY OF CHESHIRE
STATE OF NEW HAMPSHIRE
SCALE: 1 INCH = 50 FEET
OCTOBER 13, 2020

LEGEND

- IRON PIN FOUND
- ⊕ HYDRANT
- ⊙ MAN HOLE
- ⊙ SEWER MAN HOLE
- ▣ CATCH BASIN
- UTILITY POLE
- CLEAN OUT
- ✱ CONIFEROUS TREE
- BENCH MARK
- PROPERTY LINE
- - - - - CONTOURS
- - - - - INDEX CONTOURS
- - - - - OVER HEAD WIRE
- - - - - TREE LINES

TAX MAP 596-015-000-000-000
STATE OF NEW HAMPSHIRE
PO BOX 483
CONCORD, NH 03302
1530/715

THIS SURVEY AND PLAT WERE PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION FROM A TOTAL STATION RANDOM OFFSET CONTROL TRAVERSE. THIS IS A RURAL STANDARD PROPERTY SURVEY. DIMENSIONS SHOWN HEREON ARE SUBJECT TO THE CLOSURE WITH RESPECT TO THE SURVEY CLASSIFICATION. THIS SURVEY AND PLAT ARE INVALID WITHOUT AN ORIGINAL SIGNATURE AND SEAL. THIS SURVEY AND PLAT ARE SUBJECT TO ANY ITEMS THAT A TRUE AND ACCURATE TITLE ABSTRACT AND OPINION MAY REVEAL. CONSULT LEGAL COUNSEL FOR ALL MATTERS REGARDING TITLE.

DAVID A. MANN LLS 641



DAVID A. MANN SURVEY
A DIVISION OF D&D AND SONS INC.
3 GREENBRIAR ROAD
KEENE, N.H. 03431
603 357 5904

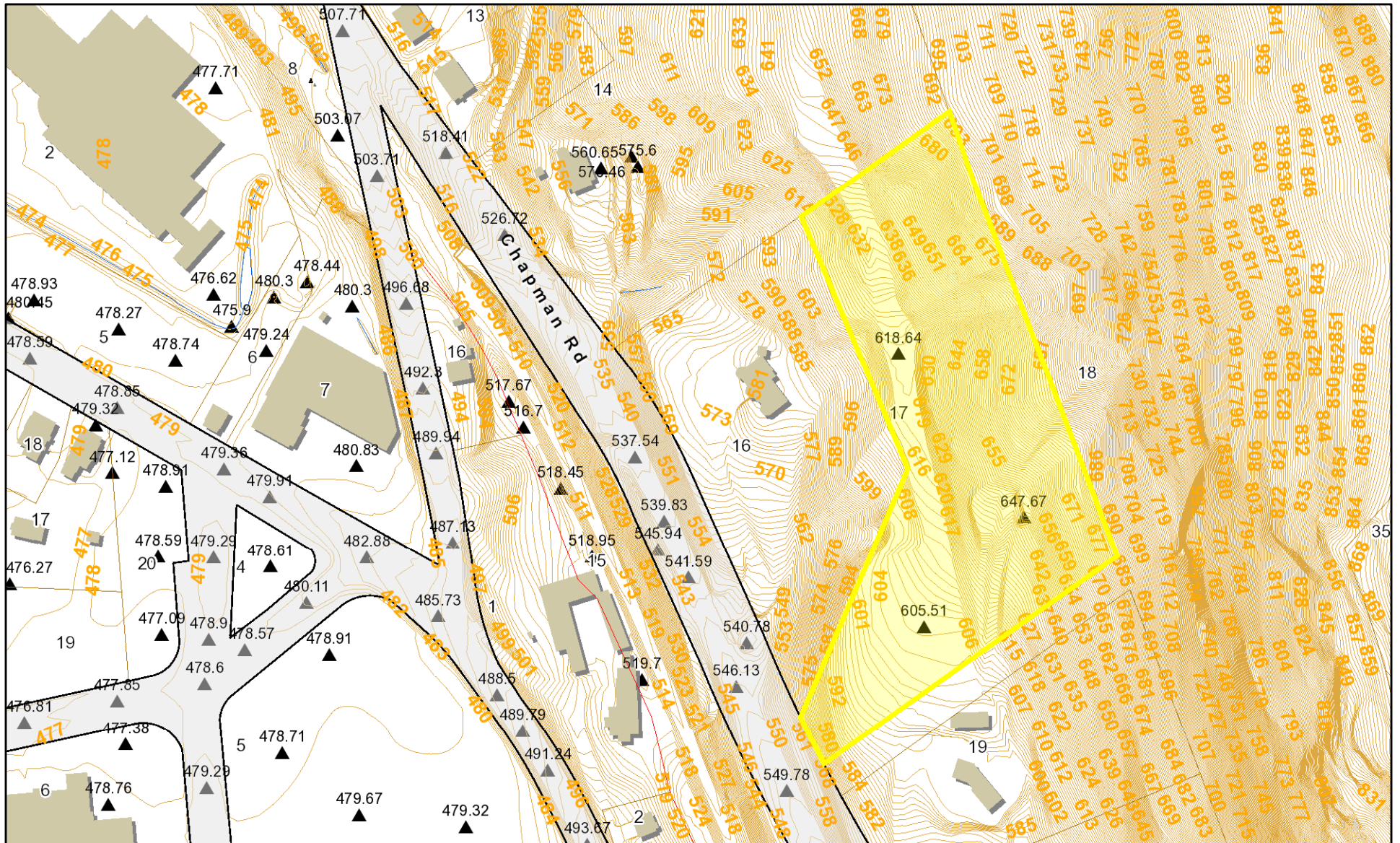


Keene, NH

1 inch = 200 Feet



October 23, 2020



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686 COURT ST.
ZBA 20-21



Petitioner requests an Enlargement of a Nonconforming Use in order to increase the size of the hospital to accommodate the growing clients and staff.



NOTICE OF HEARING

ZBA 20-21

A meeting of the Zoning Board of Adjustment will be held on Monday, November 2, 2020 at 6:30 PM to consider the petition of Timothy Russett of 40 Bryant Rd., Jaffrey. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-21/ The Petitioner requests an Enlargement of a Nonconforming Use for property located at 686 Court St., Tax Map #228-008-000; that is in the High Density District. The Petitioner requests an Enlargement of a Nonconforming Use in order to increase the size of the hospital to accommodate growing clients and staff.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date October 23, 2020

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:

Case No. ZBA 20-21
Date Filed 10/14/20
Received By CSM
Page 1 of 6
Reviewed By _____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

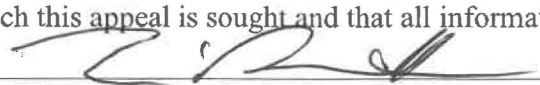
Name(s) of Applicant(s) Timothy Russett Phone: 907-251-1548
Address 40 Bryant Road Jeffrey, NH 03452
Name(s) of Owner(s) Ser Real Estate LLC
Address 686 Court Street
Location of Property Keene, NH 03431
Email: timothy.russett@gmail.com

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 228-008-000-000-000 Zoning District HD
Lot Dimensions: Front 314' Rear _____ Side 360' Side 598.12'
Lot Area: Acres 4.2 Square Feet 182,952
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 4.28 Proposed 4.28
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 11.51 Proposed 11.51
Present Use Veterinary Hospital and dog grooming
Proposed Use Veterinary Hospital and dog grooming

SECTION III - AFFIDAVIT

I hereby certify that I am the owner in fee or the authorized agent of the owner in fee of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.


(Signature of Owner or Authorized Agent)

Date 10/14/20

Please Print Name Timothy Russett

PROPERTY ADDRESS 686 Court Street

APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE

A nonconforming use may be enlarged and/or expanded, provided such enlargement and/or expansion does not violate any of the basic zone dimensional requirements set forth in the Zoning Ordinance. Such enlargement and/or expansion must receive permission from the Zoning Board of Adjustment, which must find that the enlargement and/or expansion meets the conditions listed below.

- An enlargement and/or expansion of a nonconforming use is requested in order to:
increase size of Hospital to accomadate growing clients and staff.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

1. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood. This is true as we are just renovating existing structures to help with our growing needs
2. There will be no nuisance or serious hazard to vehicles or pedestrians.
That is true as again we are not adding any new structures and simply expanding into unused existing structures
3. Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use. Yes. All water, sewer and parking are all in place already as business has been around for 30+ years.

10
26 AcC





ZBA ABUTTERS LIST

ADDRESS: 686 Court Street

Owner Name	TMP NO.	Mailing Address
Tanglewood Park Coop Inc		10 Sparrow street Keene, NH 03431
Sophias Heavrin Family Ctr		700 Court Street Keene, NH 03431
Cielinski Matthew		650 Court Street #1 Keene, NH 03431
Peter A Wolnak		86 Captains Walk Laconia, NH 03246
CBW Keene Props LLC		4500 Dorr Street Toledo, OH 43615
Wright Estate Goods Assn		21 Windsor Ct Keene, NH 03431
Eric T Tucker		695 Court Street Keene, NH 03431
Graig F McBeth		650 Court Street #7 Keene, NH 03431

Notarized Statement

I, the undersigned Timothy Russell, swear that to the best of my knowledge, the above is an accurate and complete abutters list.



 Signature

New Hampshire;
 Cheshire County:

Subscribed and sworn before me this 14th day of October, 2020



 Notary Public

My Commission Expires _____

HEATHER M. PAIGHT, Notary Public
 State of New Hampshire
 My Commission Expires February 6, 2024

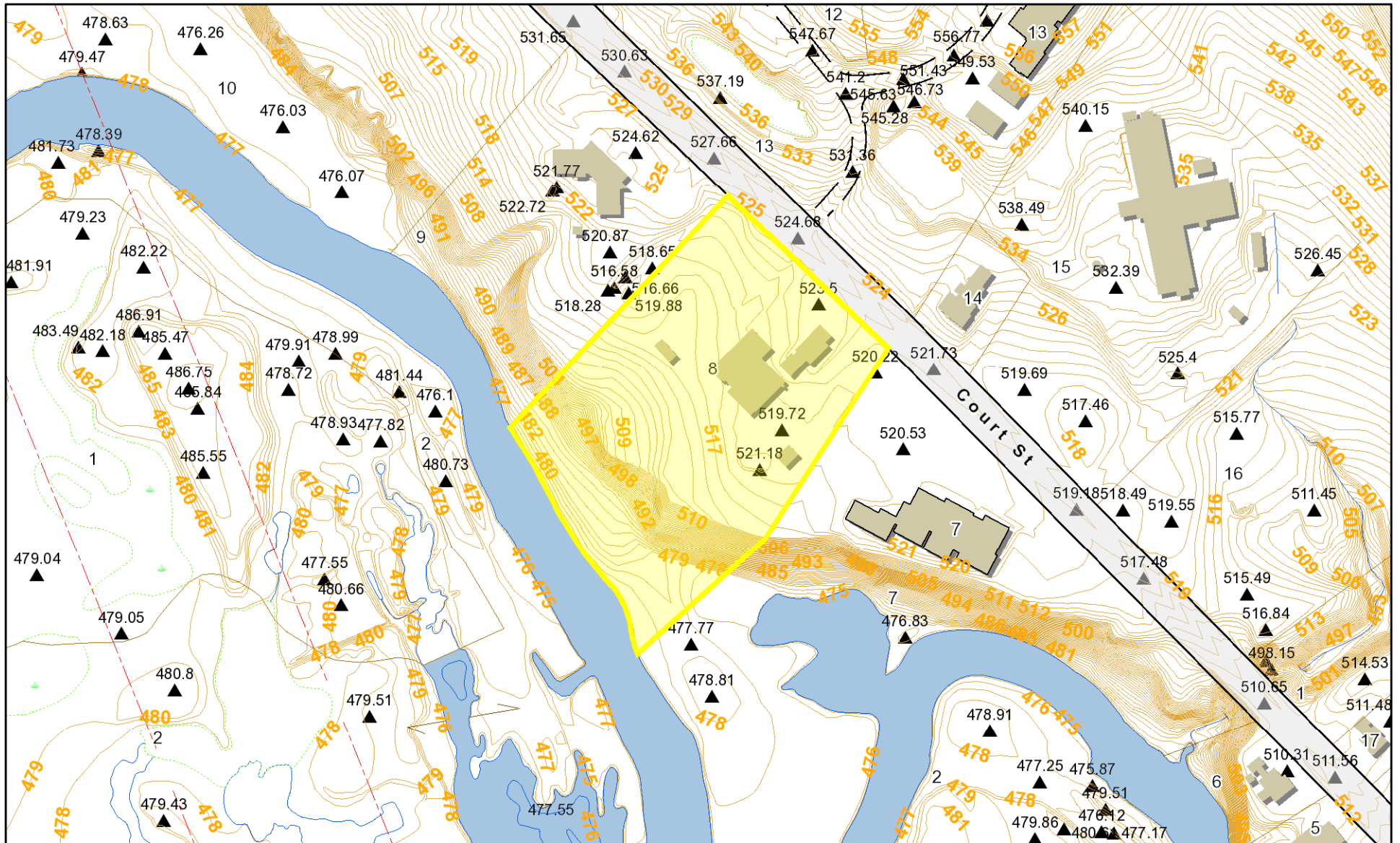


Keene, NH

1 inch = 200 Feet



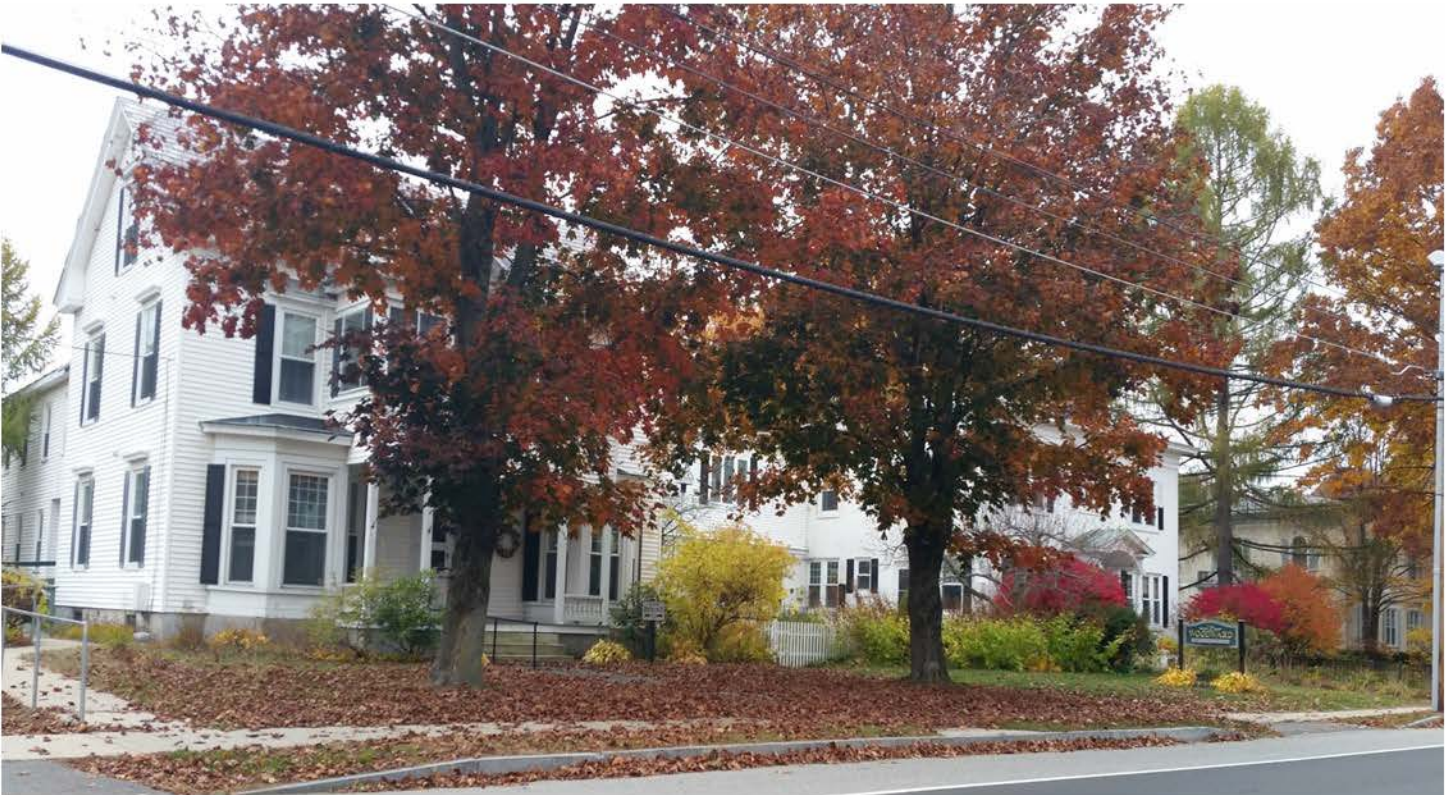
October 23, 2020



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194-202 COURT ST.
ZBA 20-22



Petitioner request a Special Exception to permit a group home and wellness center per Section 102-392 of the Zoning Ordinance.



NOTICE OF HEARING

ZBA 20-22

A meeting of the Zoning Board of Adjustment will be held on Monday, November 2, 2020 at 6:30 PM to consider the petition of Monadnock Area Peer Support Agency of Keene, represented by Peter Starkey of Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. **The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795.** To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-21/ The Petitioner requests a Special Exception for property located at 194-202 Court St., Tax Map #554-012-000; that is in the Medium Density District. The Petitioner requests a Special Exception to permit a group home and wellness center per Section 102-392 of the Zoning Ordinance.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date October 23, 2020

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:	
Case No.	<u>ZBA 20-22</u>
Date Filed	<u>10/16/2020</u>
Received By	<u>CSM</u>
Page	<u>1</u> of <u>11</u>
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Monadnock Area Peer Support Agency Phone: 603-352-5093
Address Attn: Peter Starkey PO Box 258 Keene, NH 03431
Name(s) of Owner(s) GABHALTAIS TEAGHLAIGH LLC
Address PO BOX 88 Winchester, MA 01890
Location of Property 194-202- Court St. Keene

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 554-012-000 Zoning District Medium
Lot Dimensions: Front 162 Rear 168.61 Side 207 Side 162.2
Lot Area: Acres 0.71 Square Feet 30,927.60
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 58% Proposed 58%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 21% Proposed 21%
Present Use Unoccupied (former institution, elderly living)
Proposed Use Group Home

SECTION III - AFFIDAVIT

I hereby certify that I am the owner in fee or the authorized agent of the owner in fee of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

(Signature of Owner or Authorized Agent)

Date 10/15/20

Please Print Name

William Gately

PROPERTY ADDRESS _____

APPLICATION FOR A SPECIAL EXCEPTION

- Section of the Zoning Ordinance under which the Special Exception is sought:

The Zoning Board of Adjustment shall have the power to hear and decide Special Exceptions to the terms of the Zoning Ordinance, and in doing so, may grant approval in appropriate cases and subject to appropriate conditions and safeguards for the protection of the public health, safety and welfare. Special Exceptions may be approved if the Board can make the following findings. All four conditions must be completed and satisfied.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION.

1. The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use.

See attached

2. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.

See attached

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

See attached

4. Adequate and appropriate facilities (i.e., sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.

See attached

Property Address: 194-202 Court St.

Application for Special Exception

A special exception is requested from **Section 102-392. - Permitted uses** of the Zoning Ordinance to permit: a group home and wellness center

Background: Monadnock Peer Support (MPS) was established in 1995 to provide non-medical, non-clinical peer support mental health services for social rehabilitation. MPS is available to everyone at no cost and requirement for proof of insurance. In 1999 MPS purchased our current location at 64 Beaver St. Over the past 25 years the investment and need for mental health services has dramatically increased in the state and region. MPS has an average daily attendance of 20 unique individuals. With the closure of the psychiatric unit at Cheshire medical center in 2017 the region lost critical mental health services, which are now outsourced to New Hampshire Hospital in Concord and Brattleboro Retreat in Vermont. The primary focus of MPS is to provide low impact mental health services that keep individuals in mental health wellness, and attempt to reduce the instances of crisis turning into hospitalization. MPS has operated 2 short stay peer respite beds for 5 years, providing a space to avoid hospitalization during a crisis for an individual. MPS sees around 30-35 individuals per year in our weeklong respite program. The state of NH has started allocating funds to increase our bed capacity by 3 longer term beds for step-up/step-down services to catch individuals before entering hospitalization, or provide a warm hand off and community integration after hospitalization for a 2 month period. We are not able to accomodate this increase at our current location.

Describe Briefly your response to each condition

1. The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use.

Although there are no group homes in the district, the proposed use is similar to other uses already authorized and by special exception in this area which includes offices and institutional use. The property was already classified as an institutional use for elder care, in addition to another elder care facility at 361 Court Street (Prospect Home). These institutional elder care facilities had 24 and 15-18 residents respectively, which is significantly above MPS' proposed uses. MPS is proposing 5 total individuals overnight, 2 for our week long program and 3 for our 2 month program. There are several multi-family, or mixed office/single family use properties in the district, and MPS would be providing supportive housing uses at similar or decreased amounts to these properties. The Surry Village Charter school operates institutional use in two locations nearby. MPS is also currently located in a medium density district. The 194-202 Court St. property also neighbors high and low density areas which have a multitude of special exceptions for institutional use. As mentioned above, the location is an appropriate one because MPS' proposal represents a significant decrease in the amount of people living and

interacting with the location. The location is appropriate for our programming because it is the same distance from necessary facilities and needs of members, staff, and residents as our 64 Beaver location.

2. Such approval would not reduce the value of any property within the district, nor otherwise be injurious, obnoxious or offensive to the neighborhood.

MPS has existed at our current 64 Beaver St. property for 21 years, and has not had a negative impact on the value of any property in the district. The value of properties on the street have increased in value over this time. MPS has made exterior improvements to our current property including exterior upgrades, paint, and gardening. The proposed property is currently not being used, and maintenance/upkeep has been minimal. MPS' occupancy of the facility would add value in our maintenance and upkeep of the building's exterior. MPS also is looking to make significant renovations to the interior and exterior of the building in the coming years, allowing for increased value to surrounding properties. MPS will be ensuring the historic preservation of the buildings exterior, which is well regarded nationally as a primary way to increase property values. MPS would not increase traffic and will not increase noise from the previous use when upwards of 24 residents and associated care staff utilized the building.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

The property at 194-202 Court St. is appealing to MPS because of its ample onsite parking. Court street also has ample street parking and other parking lots within easy walking distance. MPS programming is always facilitated on property, and would not pose a hazard to vehicles or pedestrians.

4. Adequate and appropriate facilities (i.e., sewer, water, street, parking, etc.) will be provided for the proper operation of the proposed use.

MPS would not increase use of facilities from the previous use when upwards of 24 residents and associated care staff utilized the building daily. The facilities are more than necessary.



12

0.71 AcC

11

0.90 AcC



200 foot Abutters List Report

Keene, NH
October 07, 2020

Subject Property:

Parcel Number: 554-012-000
CAMA Number: 554-012-000-000-000
Property Address: 194-202 COURT ST.

Mailing Address: GABHALTAIS TEAGHLAIGH LLC
PO BOX 88
WINCHESTER, MA 01890

Abutters:

Parcel Number: 548-004-000
CAMA Number: 548-004-000-000-000
Property Address: 214 COURT ST.

Mailing Address: WARD PETER & JAYNE LIVING TRUST
214 COURT ST.
KEENE, NH 03431

Parcel Number: 548-005-000
CAMA Number: 548-005-000-000-000
Property Address: 228 COURT ST.

Mailing Address: WILMETH JUDY E.
228 COURT ST.
KEENE, NH 03431-3450

Parcel Number: 549-110-000
CAMA Number: 549-110-000-000-000
Property Address: 7 MYSTIC PL.

Mailing Address: MCGRAVEY RICHARD MCGRAVEY
SUSANNE
129 ALDRICH ST.
GRANBY, MA 01033

Parcel Number: 549-111-000
CAMA Number: 549-111-000-000-000
Property Address: 158 HIGH ST.

Mailing Address: MATTHEWS, JOHN MATTHEWS, SUSAN
158 HIGH ST.
KEENE, NH 03431

Parcel Number: 549-112-000
CAMA Number: 549-112-000-000-000
Property Address: 209 COURT ST.

Mailing Address: EMINETH TROY J. JUNILLA REBECCA
209 COURT ST.
KEENE, NH 03431

Parcel Number: 549-113-000
CAMA Number: 549-113-000-000-000
Property Address: 201-203 COURT ST.

Mailing Address: RICHARDS DAVID C. RICHARDS
KATHLEEN M.
201-203 COURT ST.
KEENE, NH 03431

Parcel Number: 549-114-000
CAMA Number: 549-114-000-000-000
Property Address: 217 COURT ST.

Mailing Address: MCLELLAN & MCMAHON HOLDINGS
730 MILFORD RD.
MERRIMACK, NH 03054

Parcel Number: 554-010-000
CAMA Number: 554-010-000-000-000
Property Address: 168 COURT ST.

Mailing Address: PUTNAM JAMES A. TRUST
168 COURT ST.
KEENE, NH 03431

Parcel Number: 554-011-000
CAMA Number: 554-011-000-000-000
Property Address: 180 COURT ST.

Mailing Address: TILDEN PROPERTIES LLC
PO BOX 323
KEENE, NH 03431

Parcel Number: 554-013-000
CAMA Number: 554-013-000-000-000
Property Address: 195 COURT ST.

Mailing Address: PATEL ALPESH R. PATEL, SHIVKUMAR
56 MONADNOCK HWY.
NORTH SWANZEY, NH 03431



www.cai-tech.com

Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.



200 foot Abutters List Report

Keene, NH
October 07, 2020

Subject Property:

Parcel Number: 554-012-000
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PO BOX 88
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KEENE, NH 03431

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CAMA Number: 548-005-000-000-000
Property Address: 228 COURT ST.

Mailing Address: WILMETH JUDY E.
228 COURT ST.
KEENE, NH 03431-3450

Parcel Number: 549-110-000
CAMA Number: 549-110-000-000-000
Property Address: 7 MYSTIC PL.

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SUSANNE
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GRANBY, MA 01033

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Parcel Number: 554-013-000
CAMA Number: 554-013-000-000-000
Property Address: 195 COURT ST.

Mailing Address: PATEL ALPESH R. PATEL, SHIVKUMAR
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NORTH SWANZEY, NH 03431



www.cai-tech.com

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850 MARLBORO RD.
ZBA 20-23



Petitioner request a Variance to permit a mixed use in the Rural District per Section 102-332 of the Zoning Ordinance.



NOTICE OF HEARING

ZBA 20-23

A meeting of the Zoning Board of Adjustment will be held on Monday, November 2, 2020 at 6:30 PM to consider the petition of Rocky Brook Realty, LCC, owned by Andrew Symington of Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-23/ The Petitioner requests a Variance for property located at 850 Marlboro Rd., Tax Map #240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a mixed use in the Rural District per Section 102-332 of the Zoning Ordinance.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date October 23, 2020

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:	
Case No.	<u>ZBA 20-23</u>
Date Filed	_____
Received By	_____
Page	_____ of _____
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Rocky Brook Realty, LLC Phone: (603) 499-1316
Address 850 Marlboro Road, Keene NH 03431
Name(s) of Owner(s) Rocky Brook Realty, LLC
Address 850 Marlboro Road
Location of Property 850 Marlboro Road

aesymington@gmail.com

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 240-025-000 Zoning District Rural
Lot Dimensions: Front 1,415.5 +/- Rear 1,589.6 +/- Side 62.9 +/- Side 154.5 +/-
Lot Area: Acres 7.12 +/- Square Feet 310,147.2
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 10 Proposed 10
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 15 Proposed 15
Present Use Mixed ...residential, retail sales (commercial), outdoor recreation activity as a business
Proposed Use Mixed ...residential, retail sales (commercial), outdoor recreation activity as a business, light manufacturing

SECTION III - AFFIDAVIT

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

ASymington RBR LLC Date 10/14/20
(Signature of Owner or Authorized Agent)

Please Print Name ROCKY BROOK REALTY LLC BY ANDREW E. SYMINGTON
MANAGER - MEMBER

10
4
850 MARLBORO ROAD, KEENE NH

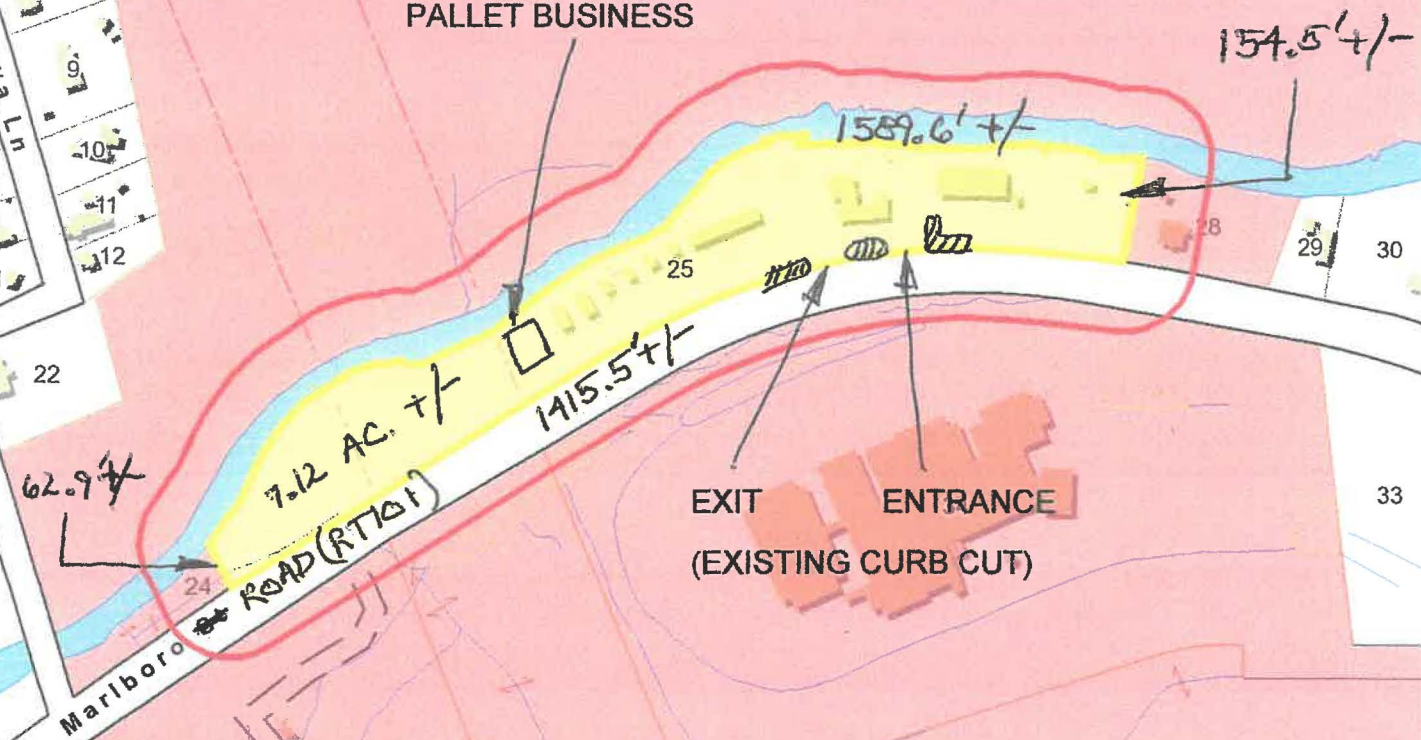
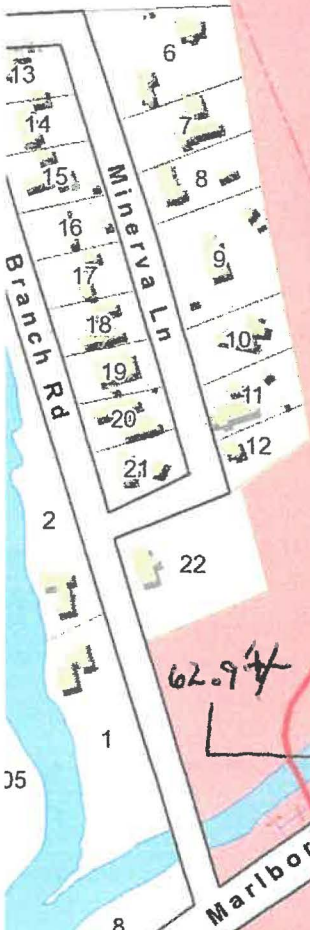
TAX MAP 240

LOT # 25

3 SCALE: 1/4" = 70.66'

23
26
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33
35

LOCATION OF PROPOSED
PALLET BUSINESS



BUILDING DIMENSIONS

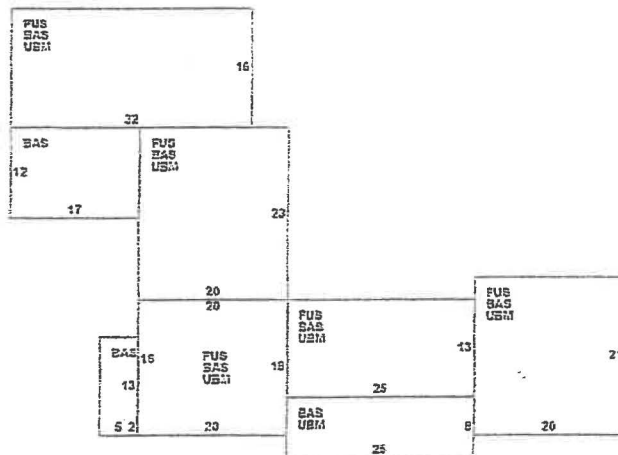
- LARGE CABINS 16' X 26' (2)
- SMALL CABINS 12' X 18' (4)
- MOTEL 18' X 106' (1)
- HUMDINGERS 40' X 78' (1)
- APARTMENT (IRREGULAR ... SEE ATTACHED CARD)

Building Photo



(<http://images.vgsi.com/photos2/KeeneNHPhotos/0010\180.jpg>)

Building Layout



Background Information:

850 Marlboro Road is a 7.12 acre parcel of land situated in the southeast corner of the City of Keene. The property has over 1000 feet of frontage on Route 101 and is located next to the Cheshire County House of Corrections (CCHoC). The property is situated within a Rural District, however, the following non-conforming businesses already exist and operate on this property:

- **The Rocky Brook Motel** ®
Structures: 1 apartment building, 1 motel building, 4 small cabins, 2 large cabins
Type of Activity: Real estate rental
- **Humdingers Mini-golf** ® ⁽¹⁾⁽²⁾
Structures: 1 shared building, miniature golf course
Type of Activity: Leisure sport
- **Humdingers Grille** ® ⁽¹⁾⁽²⁾
Structures: 1 shared building
Type of Activity: Retail sales of food, ice cream, and other products

(1) *Enlargement of a Non-conforming Use (ZBA 05-05)*

(2) *Area Variance (ZBA 05-06)*

It is important to note that the activities conducted at the miniature golf business (a leisure sport activity) is different in nature compared to the snack bar business (retail sales of ice cream and hot food, etc.) which in turn is different in nature compared to the motel business (rental of living space). Consequently, the property by default can be classified as a “mixed use” property.

The property owner (Rocky Brook Realty, LLC, i.e. the “applicant” and parent company) is in the real estate rental business. The applicant is proposing renting the field, or portion thereof, located on the westerly end of the property to persons or businesses who might be engaged in light manufacturing of products and subsequent retail sale of those or other products.

Following is a brief description of the current business candidate:

The current candidate operates a wood pallet reclamation business. This person obtains used pallets from sources off site, repairs the broken portions of the pallets on site using cannibalized pieces of unusable pallets, then resells the repaired pallets to local industries and businesses. This operation can be classified as a retail sales business. The business can also be classified as a light manufacturing operation because the pallets are physically repaired on site using typical activities associated with manufacturing such as sawing and hammering. Most of the work is performed using hand tools. The broken or unusable pieces of wood are carried off site and are properly disposed of. The business only operates during daylight hours. The business does not require electrical, water, telephone, or sewage hook ups. The only vehicle allowed in the field is a pick-up truck and small trailer which are used to transport the pallets back and forth. Access to the property is via the state approved curb cut for the existing Rocky Brook Realty, LLC businesses. Pallet customers conduct business over the phone therefore there is no need for the customers to visit the 850 Marlboro Road campus.

Following is a brief review of the pallet business owner himself...

The pallet business owner is disabled. This individual was involved in an automobile accident as a young adult. Upon information and belief, this individual suffered severe brain trauma as a consequence of the accident and has limited cognitive functionality. Allowing this individual to conduct this type of business facilitates his independence and allows him the opportunity to be a productive member of society.

PROPERTY ADDRESS: 850 Marlboro Road, Keene NH

APPLICATION FOR A VARIANCE

A variance is requested from Section (s) 102-332 Permitted Uses in the Rural District of the Zoning Ordinance to permit:

A mixed use in a Rural District.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

The 850 Marlboro Road property is physically a mixed use property. The following businesses are currently located on this property:

- a. Rocky Brook Motel ® Residential Use
- b. Humdingers Grille ® Retail Sales Use
- c. Humdingers Mini-golf ® Outdoor recreational activity as a business

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.

Granting the variance will also allow a commercial retail sales/light manufacturing business to also operate on the property (Ref: Skilling’s Pallets).

2. If a variance were granted, the spirit of the ordinance would be observed because:

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.

3. Granting the variance will do substantial justice because:

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.

No change in property value is anticipated as a consequence of this administrative change.

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:**

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.

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

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.

ii. The proposed use is a reasonable one because:

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.

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.

Granting the variance is an administrative action, i.e. amending the paperwork will more accurately reflect the physical reality that currently exists.



200 foot Abutters List Report

Keene, NH
October 16, 2020

Subject Property:

Parcel Number: 240-025-000
CAMA Number: 240-025-000-000-000
Property Address: 850 MARLBORO RD.

Mailing Address: ROCKY BROOK REALTY LLC
PO BOX 627
KEENE, NH 03431-0627

Abutters:

Parcel Number: 240-023-000
CAMA Number: 240-023-000-000-000
Property Address: 0 BRANCH RD.

Mailing Address: CITY OF KEENE
3 WASHINGTON ST.
KEENE, NH 03431

Parcel Number: 240-024-000
CAMA Number: 240-024-000-000-000
Property Address: 0 MARLBORO RD.

Mailing Address: CITY OF KEENE
3 WASHINGTON ST.
KEENE, NH 03431

Parcel Number: 240-028-000
CAMA Number: 240-028-000-000-000
Property Address: 854 MARLBORO RD.

Mailing Address: ROKES, DOROTHY J. ROKES, RUSSELL
E. JR.
854 MARLBORO RD.
KEENE, NH 03431

Parcel Number: 240-034-000
CAMA Number: 240-034-000-000-000
Property Address: 825 MARLBORO RD.

Mailing Address: CHESHIRE COUNTY
12 COURT ST. RM 155
KEENE, NH 03431-3414

Parcel Number: 240-035-000
CAMA Number: 240-035-000-000-000
Property Address: 0 MARLBORO RD.

Mailing Address: NEW ENGLAND POWER COMPANY
40 SYLVAN RD.
WALTHAM, MA 02451-2286

Parcel Number: 249-006-000
CAMA Number: 249-006-000-000-000
Property Address: 797 MARLBORO RD.

Mailing Address: FLMSP LLC
272 ROUTE 12A
SURRY, NH 03431



www.cai-tech.com

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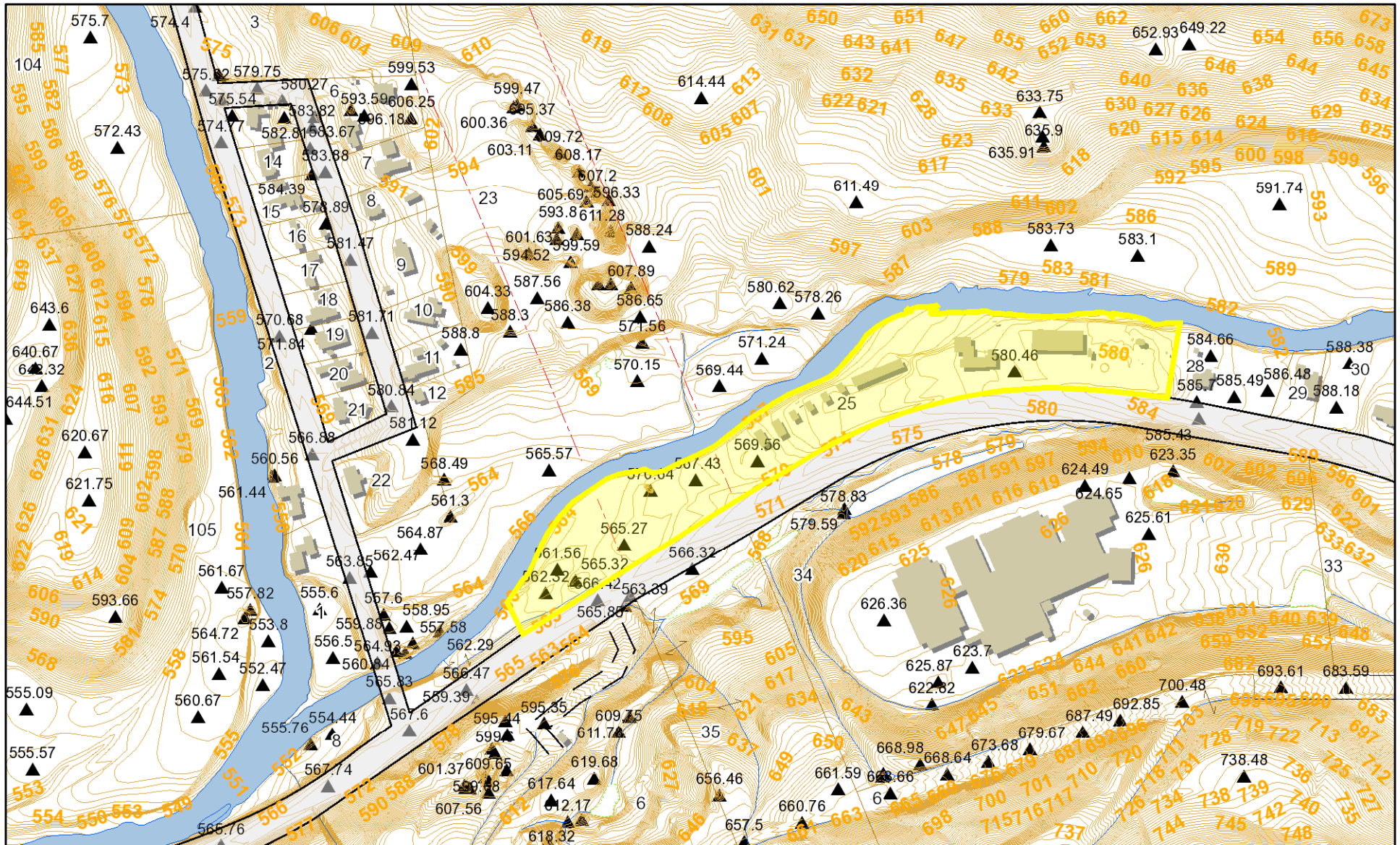


Keene, NH

1 inch = 275 Feet



October 23, 2020



Data shown on this map is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this map.

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850 MARLBORO RD.
ZBA 20-24



Petitioner request a Variance to permit a commercial retail business and/or light manufacturing business in the Rural District per Section 102-332 of the Zoning Ordinance.



NOTICE OF HEARING

ZBA 20-24

A meeting of the Zoning Board of Adjustment will be held on Monday, November 2, 2020 at 6:30 PM to consider the petition of Rocky Brook Realty, LCC, owned by Andrew Symington of Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-24/ The Petitioner requests a Variance for property located at 850 Marlboro Rd., Tax Map #240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a commercial retail business and/or light manufacturing business in a Rural District per Section 102-332 of the Zoning Ordinance.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date October 23, 2020

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:	
Case No.	<u>ZBA 20-24</u>
Date Filed	_____
Received By	_____
Page	_____ of _____
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Rocky Brook Realty, LLC Phone: (603) 499-1316
Address 850 Marlboro Road, Keene NH 03431
Name(s) of Owner(s) Rocky Brook Realty, LLC
Address 850 Marlboro Road
Location of Property 850 Marlboro Road

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 240-025-000 Zoning District Rural
Lot Dimensions: Front 1,415.5 +/- Rear 1,589.6 +/- Side 62.9 +/- Side 154.5 +/-
Lot Area: Acres 7.12 +/- Square Feet 310,147.2
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 10 Proposed 10
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 15 Proposed 15
Present Use Mixed ...residential, retail sales (commercial), outdoor recreation activity as a business
Proposed Use Mixed ...residential, retail sales (commercial), outdoor recreation activity as a business, light manufacturing

SECTION III - AFFIDAVIT

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

[Signature] RBR LLC Date 10/14/20
(Signature of Owner or Authorized Agent)

Please Print Name ROCKY BROOK REALTY LLC BY ANDREW E. SYMINGTON
MANAGER - MEMBER

PROPERTY ADDRESS: 850 Marlboro Road, Keene NH

APPLICATION FOR A VARIANCE

A variance is requested from Section (s) 102-332 Permitted Uses in the Rural District of the Zoning Ordinance to permit:

A commercial retail business and/or light manufacturing business in a Rural District.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

The proposed business is similar to the type of businesses currently permitted in the same rural district and in the same neighborhood. Following is a list of retail sales and/or light manufacturing businesses permitted to operate in the same district and same neighborhood:

- Cordwood **manufacturing** is permitted to occur at 717 Marlboro Road (Ref: ZBA 13-08). Cordwood manufacturing consists of cutting logs to length, splitting the cut log pieces, loading the split pieces onto a conveyor belt, placing a predetermined amount of cut pieces into an appropriately sized vehicle bed (sizing the load), and transporting the finished product to customers. All of these operations can be classified as “light manufacturing operations” and all occur on the 717 Marlboro Road property.

Important Note:

ZBA Meeting Minutes, April 1, 2013, Paragraph 4, line 3 recites as follows:

“The applicant also clarified that there is no harvesting done on this property. The firewood is trucked in to the property.”

The City of Keene code enforcement office has interpreted this statement to mean the following:

- a. Trees are felled (“harvested”, i.e. cut from the stump), limbed, and cut to log length **off site**. In this instance, “firewood” means the actual bulk logs.
- b. The cut logs are subsequently transported to 717 Marlboro Road.
- c. Cordwood is **manufactured on site**, i.e. the logs are subsequently cut, the cut pieces are split, the split pieces are placed on a conveyor belt, the split pieces on the conveyor are loaded into an appropriately sized truck bed (the load is sized), the finished product is subsequently transported from the 717 Marlboro Road Property. Cutting, splitting, transport by conveyor belt, sizing of the load, etc. can all be classified as light manufacturing operations.

The Applicant (MSP Industries, Mr. Patnaude ... ZBA 13-08) has been allowed to produce cordwood at this site unmolested since April of 2013, i.e. the applicant has been allowed to perform light manufacturing operations at this site. Consequently, other potential applicants

should also be allowed to conduct similar light manufacturing operations within the same district in accordance with the Doctrine of Administrative Gloss.

- Cordwood **retail sales** are permitted to occur at 717 Marlboro Road (Ref: MSP Industries, Mr. Patenaude... ZBA 13-08)
- Landscaping material **retail sales** are permitted to occur at 717 Marlboro Road (Ref: MSP Industries, Mr. Patenaude... ZBA-13-08)
- Fast food, ice cream, and **retail sales** of other products (Humdingers Jail Ale ® beverages, boxed campfire wood, etc.) occur at 850 Marlboro Road (Ref: Rocky Brook Realty, LLC, ZBA 05-05 & ZBA 05-06)
- Radiator and radiator component **retail sales** occur at 711 Marlboro Road (Ref: Radiator Express)

There is currently a viable and healthy market for these wood pallets-these pallets support local businesses or industries. Consequently, there is a substantial public interest or need for these products.

2. **If a variance were granted, the spirit of the ordinance would be observed because:**

On April 1, 2013, the ZBA approved ZBA 13-08 (Ref: MSP Industries, Mr. Patenaude), i.e. the ZBA has already determined that light manufacturing of cordwood and retail sales of cordwood are in accordance with the spirit of the ordinance as written and therefore have granted a variance.

In this instance, the applicant is stating that the mechanical principles employed by the Skilling's Pallets business is similar in nature to that employed by MSP Industries. Following is a comparison of the mechanical principles governing each operation:

MSP Industries (717 Marlboro Road)

As previously stated, manufacturing activities such as **cutting** the wood and splitting the wood with a wedge, i.e. **piercing the wood with a piece of metal** already occur at this location.

Skilling's Pallets (850 Marlboro Road)

Light manufacturing (**cutting** wood and hammering in nails , i.e. **piercing the wood with a piece of metal**) and retail sales (re-sale of refurbished wood pallets) is consistent with the types of light manufacturing and retail sales already occurring and approved in the same zoning district and in the same neighborhood.

Because both operations work with the same base material (wood) and both operations use the same mechanical principles, both operations must therefore be consistent with the spirit of the ordinance as written.

3. **Granting the variance will do substantial justice because:**

The property (lot) in question has limited commercial/manufacturing/retail potential because of its size, proximity to the highway, proximity to the Minnewawa Brook, overhead utility lines, etc. This property is however ideal for a certain type of small, craft-like light manufacturing and/or commercial retail applications.

From Rocky Brook Realty, LLC's (the applicants) perspective...

Granting the variance will allow the applicant to utilize the property in a manner consistent with its current commercial application. Potential income from this lot rental will help stabilize rent prices for a poor, disadvantaged tenant community (Rocky Brook Motel ®... apartments, rooms, cabins).

From Skilling's Pallets perspective...

As previously stated, the proprietor of the proposed business was involved in an automobile accident as a young adult. Upon information and belief, he suffered traumatic brain injury and has limited cognitive functionality. Allowing this individual or persons like him to start and maintain their own business is in the public's interest. We as a society need to facilitate the success and self-reliance of those less fortunate.

Granting the variance will do substantial justice because it will allow this individual to be a productive and self-reliant member of our society. Furthermore, it will potentially allow others having the same challenges to also become productive and self-reliant in the future should the lot or portion of the lot become available to another similarly situated individual or business.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The value of the surrounding properties will not be diminished because the proposed business has no physical structure or permanent features. Everything is transportable or removable. If the proposed pallet business is not successful, the stack of pallets can easily be removed thereby returning the property to its previous vacant condition.

The pallet reclamation business requires no chemicals and does not produce any waste products harmful to the environment.

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 or substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The current zoning designation is completely arbitrary and not representative of the type of structures and businesses currently located within the area. Following is a list of businesses and institutions located in the immediate vicinity:

- a. Cheshire County House of Corrections (CCHoC)
- b. Second Chance for Success (SCFS)... Drug rehab housing
- c. PB& J... Automobile Garage/Automobile Sales/Junk Yard
- d. Rocky Brook Motel ®
- e. Humdingers Grille ®

- f. Humdingers Mini-golf ®
- g. City of Keene Water Pumping Station
- h. Glad Wags
- i. Radiator Express
- k. Etc.

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

From Rocky Brook Realty, LLC's (the applicant) perspective...

The proposed lot rental is reasonable because it is an extension of the existing real estate rental business.

From Skilling's Pallets (the proposed business) perspective...

The proposed use is reasonable because the lot is ideally suited for the type of proposed business... the lot is flat, there is high visibility on Route 101, there is plenty of workable area, the work area is located away from any residential area, the hours of operation do not interfere with the quiet enjoyment of surrounding tenancies, there is an existing curb cut, etc.

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.

Although the 850 Marlboro Road campus is located in a rural zone, it is almost exclusively used for business purposes. The campus currently hosts a miniature golf course, a seasonal restaurant/snack bar, an apartment building, a motel building, plus several small and large cabins. The owner of the property (applicant) is predominately in the real estate rental business.

The existing field or vacant lot is unproductive from a revenue generating standpoint.

The existing business (RBR LLC) is under constant economic pressure. Business expenses such as insurance premiums, electricity, fuel costs continually increase year-to-year. The business must develop a new income stream to remain viable.

The applicant (RBR LLC) currently provides affordable housing to an economically disadvantaged market segment. Disallowing a variance will create an unnecessary financial hardship for the low income residents since their rents will most likely need to be raised to make up for any anticipated shortfalls.

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850 MARLBORO RD.
ZBA 20-25



Petitioner request a Variance to permit a a free standing sign for a retail/ manufacturing business in the Rural District per Article VIII, Division 7, District Regulations of the Zoning Ordinance.



NOTICE OF HEARING

ZBA 20-25

A meeting of the Zoning Board of Adjustment will be held on Monday, November 2, 2020 at 6:30 PM to consider the petition of Rocky Brook Realty, LCC, owned by Andrew Symington of Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 20-25/ The Petitioner requests a Variance for property located at 850 Marlboro Rd., Tax Map #240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a free standing sign for a retail/manufacturing business where free standing signs are not listed as a permitted use in a Rural District per Article VIII. Sign Regulations, Division 7, District Regulations of the Zoning Ordinance.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm by appointment only or online at <https://ci.keene.nh.us/zoning-board-adjustment>. Please call (603) 352-5440 to make an appointment or to speak with a staff person.

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date October 23, 2020

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:	
Case No.	<u>ZBA 20-25</u>
Date Filed	_____
Received By	_____
Page	_____ of _____
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Rocky Brook Realty, LLC Phone: (603) 499-1316
Address 850 Marlboro Road, Keene NH 03431
Name(s) of Owner(s) Rocky Brook Realty, LLC
Address 850 Marlboro Road
Location of Property 850 Marlboro Road

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 240-025-000 Zoning District Rural
Lot Dimensions: Front 1,415.5 +/- Rear 1,589.6 +/- Side 62.9 +/- Side 154.5 +/-
Lot Area: Acres 7.12 +/- Square Feet 310,147.2
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 10 Proposed 10
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 15 Proposed 15
Present Use Mixed ...residential, retail sales (commercial), outdoor recreation activity as a business
Proposed Use Mixed ...residential, retail sales (commercial), outdoor recreation activity as a business, light manufacturing

SECTION III - AFFIDAVIT

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Andrew E. Symington RBR LLC Date 10/14/20
(Signature of Owner or Authorized Agent)

Please Print Name ROCKY BROOK REALTY LLC BY ANDREW E. SYMINGTON
MANAGER - MEMBER

PROPERTY ADDRESS: 850 Marlboro Road, Keene NH

APPLICATION FOR A VARIANCE

A variance is requested from Article VIII. Sign Regulations, Division 7, District Regulations of the zoning ordinance to permit:

A free standing sign for a retail/manufacturing business where free standing signs are not listed as a permitted use in a Rural District.

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

The 850 Marlboro Road campus has over 1000 feet of unobstructed frontage on Route 101-a major east-west byway. The speed limit along this corridor at this location is 40 MPH. Passer's by will easily be able to discern the name of the proposed business and the applicable telephone number posted on a commercial retail/manufacturing business sign.

Any traffic entering and existing the 850 Marlboro Road campus has the potential to impede or interfere with traffic flow thereby creating a higher risk for traffic accidents. Permitting a sign in this area will alleviate the need for unnecessary vehicular traffic entering and exiting the 850 Marlboro Road campus and is therefore beneficial to the public interest and public safety.

The proposed business will **NOT** necessitate the need for customers to physically enter the 850 Marlboro Road Campus. Potential customers typically conduct business (make inquiries, place orders) by telephone or the proprietor of the proposed 850 Marlboro Road business will visit the customer's place of business, in situ-off campus. Consequently, no additional traffic is anticipated other than that of the pallet business owner himself. As previously stated, less vehicular traffic will facilitate the uninterrupted flow of traffic along Route 101 which is a safety concern and is in the public's interest.

Important Note: The Pallet business owner is a resident of the Rocky Brook Motel ®. He routinely enters and exists the 850 Marlboro Road campus for personal reasons, i.e. goes to the grocery store, laundromat, etc.

2. If a variance were granted, the spirit of the ordinance would be observed because:

Although commercial signs are **NOT** technically permitted in this area because of the Rural designation, there is an existing grandfathered commercial sign ("The Rocky Brook Motel") and an existing municipal sign ("Welcome to Keene") in the same general area. There are also smaller sign such as the Rotary international and the Lions Club in the same vicinity. The proposed sign would be less conspicuous than these existing signs already permitted in the same general vicinity.

The proposed sign will be consistent with the type of signs already permitted and in existence in the same general vicinity and therefore consistent with the spirit of the existing ordinance as it is currently applied and/or administered.

3. Granting the variance will do substantial justice because:

The property in question has limited commercial/manufacturing/retail potential because of its size, proximity to the highway, proximity to the Minnewawa Brook, and overhead utility lines. This property is however ideal for a certain type of small, craft-like manufacturing and/or commercial retail applications.

The proprietor of the proposed business was involved in an automobile accident as a young adult. He suffered traumatic brain injury and is functionally limited. Allowing this individual or persons like him to post a sign and start their own business is in the public's interest. We as a society need to facilitate the success and self-reliance of those less fortunate.

Granting the variance will do substantial justice because it will allow this individual to be a productive and self-reliant member of our society. Furthermore, it will potentially allow others having the same challenges to also become productive and self-reliant in the future should the lot or portion of the lot become available to another similarly situated individual or business.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The value of the surrounding properties will not be diminished because the proposed sign will not detract from the general appearance of the surrounding area. Furthermore, the proposed sign will be located a significant distance away from any abutting building or property.

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 or substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

As previously stated, the existing rural designation does not permit commercial signage in the area in question; however, commercial as well as municipal signage already exist in the immediate vicinity. Not allowing the current applicant to post a sign in the same area is not consistent with the current application of the existing ordinance and therefore no fair or substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the 850 Marlboro Road property, and,

ii. The proposed use is a reasonable one because:

Posting the name of a business and contact information on a sign is reasonable and consistent with generally accepted business practice.

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.

From Rocky Brook Realty, LLC's (the applicant) perspective...

Although the 850 Marlboro Road campus is located in a rural zone, it is almost exclusively used for business purposes. The campus currently hosts a miniature golf course, a seasonal restaurant/snack bar, an apartment building, a motel building, plus several small and large cabins. The owner of the property (applicant) is predominately in the real estate rental business. The existing field or vacant lot is unproductive from a revenue generating standpoint.

The existing business (RBR LLC) is under constant economic pressure. Business expenses such as insurance premiums, electricity, fuel costs continually increase year-to-year. The business must develop a new income stream to remain viable.

The applicant (RBR LLC) currently provides affordable housing to an economically disadvantaged market segment. Disallowing a variance will create an unnecessary financial hardship for the low income residents of the rental business since rents will most likely need to be raised to make up any anticipated shortfalls.

From Skilling's Pallets (the proposed business) perspective...

If a variance is granted to permit a commercial /light manufacturing operation to exist and operate on the property, then an unnecessary hardship would exist for that business owner (Skilling's Pallets) if that business was not permitted to advertise its existence with a posted business sign in accordance with standard business practice.