

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, September 6, 2022

6:30 PM

**Council Chambers,
City Hall**

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Michael Hagan, Plans Examiner

Members Not Present:

All Present

I) Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM and explained the procedures of the meeting. Roll call was conducted.

II) Minutes of the Previous Meeting – August 15, 2022

Ms. Taylor stated that she found some typos, and submitted corrections to Corinne Marcou, Zoning Clerk. She continued that there are two other items for the Board to consider. In line 239, the word “appeasing” should probably be “appealing.” Lines 355 through 358 say, “Given to confusion on which criteria the Board discussed, criterion 3 was not deliberated.” She continued that she took notes, and her notes indicate that the third criterion was discussed as part of the second criterion. It was not specifically mentioned that it was #3 but they were discussed together. If the Board would like, she thinks they should ask that that be changed to say that #3 was discussed as part of #2. Chair Gorman agreed and stated that he faintly recalls the Board incorporating the two into one. Mr. Hoppock replied that lines 339 to 345 show that what Ms. Taylor says is correct. He continued that he would be happy to amend it to read, “Deliberation on this factor was discussed as part of criterion #2.” Ms. Taylor agreed.

Ms. Taylor made a motion to approve the August 15, 2022 meeting minutes as amended. Mr. Hoppock seconded the motion, which passed by unanimous vote.

III) Unfinished Business

A. House Bill 1661: Notice of Decision outlining the Findings of Fact

John Rogers, Zoning Administrator, stated that the conversation the Board just had about clarifying its deliberations in the meeting minutes is a good segue to the conversation about House Bill 1661, which has made some changes to some of the requirements, mainly about the Notices of Decisions. He continued that the Board would need to be even clearer about the reasoning behind the approval or denial of a Variance or any application in front of the Board. This Board does a very good job during its deliberations of discussing each criterion, which makes staff's job easier and gives transparency to the public. That is the intent of this bill, to make it easier for people to understand the Board's decisions. The changes needed are mostly for staff when they are writing a Notice of Decision, being able to pull the information out of the Board's discussions. What he asks of the Board is that when they discuss the criteria, if there is not much discussion happening, to think about it more and delve deeper to figure out the reasoning behind the decision.

Mr. Rogers continued that also, this bill applies a time limitation to decisions. Again, he believes this Board does well with making decisions in a timely manner. The Rules of Procedure do not currently include that time limitation so they will have to include it. In the near future, staff will bring that change to the Rules of Procedure forward for the Board. The other changes needed because of this RSA, as he said, are mostly for staff as they document items; the Board does a very good job already.

Chair Gorman asked if the Board had questions for Mr. Rogers about this. Hearing none, he moved on in the agenda.

IV) Hearings

A. Continued ZBA 22-13: Petitioners, Brian & Amalia Harmon, requests a Variance for property located at 27-29 Center St., Tax Map #568-016-000-000- 000 that is in the Downtown Transition District. The Petitioners requests a Variance to permit a multi-family dwelling with three units on a lot with 3,049 sq. ft. where 18,800 sq. ft. is required, per Chapter 100, Article 4.6.1 of the Zoning Regulations.

Chair Gorman stated that he received notification that the applicants have contracted COVID-19 and cannot be here tonight. He continued that they have requested a second continuation.

Chair Gorman made a motion to continue ZBA 22-13 to the October 3, 2022 meeting of the Zoning Board of Adjustment, in Council Chambers, at 6:30 PM. Mr. Hoppock seconded the motion, which passed by unanimous vote.

- B. ZBA 22-14: Petitioner, The Home for Little Wanderers of 10 Guest St., Boston, MA, represented by BCM Environmental & Land Law, PLLC of 41 School St., Keene, requests a Variance for property located at 39 Summer St., Tax Map #568- 037-000-000-000 that is in the Downtown Transition District and owned by William K. Schofield, 27 Dublin Rd., Jaffrey, NH. The Petitioner requests a Variance to permit a large group home for youth where a large group home is not a permitted use per Chapter 100, Table 4-1 and Table 8-1 of the Zoning Regulations.**

Chair Gorman asked to hear from staff. Michael Hagan, Plans Examiner, stated that 39 Summer St. was built in 1925 and is a wood construction building. It has received two previous Variances, one is unclear whether it was a Variance, but an application to the Board on July 23, 1966 was granted. At the time, the use was a nursing home and the Board allowed an apartment above the garage. The second Variance was granted on October 3, 1994, to convert the apartments into offices only. The intent of the Downtown Transition District (DT-D) is *“to accommodate a variety of residential, open space, and other low intensity uses in a mixed-use environment of attached and detached structures. Development within the DT-D is intended to complement and transition into residential neighborhoods adjacent to downtown Keene.”*

Ms. Taylor stated that she is trying to understand the new Code. She asked if a Conditional Use Permit (CUP) would still be needed if the Variance were granted. Mr. Rogers replied yes, a CUP from the Planning Board would be required, and an annual license from the Congregate Living & Social Services Licensing Board. He continued that those are two additional steps the Petitioner would have to take if this Variance were granted.

Chair Gorman asked if the office use that the building transitioned to in 1994 is an allowed use under the new Zoning Code. Mr. Hagan replied yes. Chair Gorman asked if the building as it sits, with its current use, is a conforming use. Mr. Hagan replied yes.

Mr. Welsh asked if staff could refresh his memory about the features of a CUP. Mr. Rogers replied that the review criteria is as follows:

- “
- A. *The nature of the proposed application is consistent with the spirit and intent of the Zoning Regulations, this LDC, and the City’s Comprehensive Master Plan and all applicable standards.*
 - B. *The proposed use will be established, maintained, and operated as not to endanger the public health, safety, or welfare.*
 - C. *The proposed use will be established, maintained, and operated so as to be harmonious with the surrounding area and will not impede the development, use, or enjoyment of the adjacent property. In addition, any parking lots, outdoor activity area, or waiting area associated with the use shall be adequately screened from the adjacent properties and the public right-of-way.*
 - D. *The proposed use will be of a character that does not produce noise, odors, glare, and/or vibration that adversely affects the surrounding area.*

- E. The proposed use will not place an excessive burden on the public infrastructure, facilities, services, or utilities.*
- F. The proposed use will not result in the destruction, loss, or damage of any feature determined to be of significant natural, scenic, or historic importance.*
- G. The proposed use will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity of the use.*
- H. The proposed use will be located in proximity to pedestrian facilities (e.g. multiuse trails and sidewalks), public transportation, or offer transportation options to its client population.”*

Ms. Taylor asked what section that is. Mr. Hagan replied Article 15.2.

Chair Gorman asked if there were any more questions for staff before he called on the Applicant. Ms. Taylor stated that on their desks tonight, Board members found a packet of additional material, which she has not had a chance to look at. Chair Gorman replied that there is a copy of a deed and some other relevant items that the Applicant submitted late, and it is his understanding that the Applicant is willing to go forward without having this information submitted but would prefer the Board take a few minutes to review it, if possible. He personally would be fine with taking a short recess so the Board can review the information. He asked who on the Board is in favor of doing that. He stated that the show of hands is unanimous.

Chair Gorman called for a recess at 6:47 PM. He called the meeting back to order at 6:58 PM.

Ms. Taylor made a motion to accept the additional material that Attorney Hanna distributed this evening with regards to the request for a Variance at 39 Summer St. Mr. Welsh seconded the motion, which passed by unanimous vote.

Tom Hanna stated that he is a lawyer with BCM Environmental & Land Law, which has offices in Concord and Keene, and has been a lawyer for over 40 years. He continued that he apologizes about the materials that were not submitted with the application, but they were submitted on Thursday, not tonight. He submitted two pages this afternoon, a document called “conditions of approval,” and an email letter from a realtor for the seller. He asked if those were part of what the Board reviewed just now. Chair Gorman replied yes.

Mr. Hanna stated that he will have Matt McCall, Vice President of Community Services at The Home for Little Wanderers, speak soon, but first he will address the Variance criteria. He continued that he wants to say at the outset that although this is a “large group home,” it is a home that will be capped at 12 residential clients between the ages of 14 and 18, which is not as large as it could be under the City’s Ordinance, nor will it be. The application for a Variance includes the application and review of a CUP. That application, similarly substantial as the Variance application, was submitted at the same time to the Planning Board for a hearing later this month. The criteria that Mr. Rogers went over, in many ways, are overlapping with the Variance criteria. In addition, site plan review is required and would presumably be an

administrative process. There is a not a substantial amount of exterior work being done. Lastly, as Mr. Rogers mentioned, there is the Congregate Living & Social Services operating license to be renewed annually, and includes regulations that require submissions of an Operations and Management Plan, which address procedures for security, life safety, health, staff training, emergency response, building and site maintenance, and neighborhood relations. That is a new process with the LDC, and a fairly onerous and detailed one.

Mr. Hanna stated that The Home is here to apply for a Variance, but first, he wants to put on the record some things the Board should know. Large group homes should be permitted in the DT-T, because similar residential uses of greater density are permitted outright. The proposed use is excluded from this zone due to concerns for the people who might occupy the group home. Excluding large group homes from the district, he believes, is technically and lawfully a discriminatory practice. Additionally, the City has not provided for reasonable accommodations for large group homes in residential settings, which he will get into later in his presentation. The comments he just made relate to the Federal Fair Housing Act.

Mr. Hanna stated that the Board is familiar with RSA 674:54, regarding governmental uses of property in the city, where the governmental entity does not have to go through the same rigorous process. The statute does have requirements for presentation, but for example, the middle school had an obligation to present, give notice, and accept recommendations from the Planning Board, but those were merely recommendations and did not have to be adhered to, because that was a governmental entity. The definition of “governmental use” includes all of the subdivisions of government of County, State, City, and School District. As it relates to the State, it says, *“Or any of their agents, for any public purpose which is statutorily or traditionally governmental in nature.”* The group home they propose tonight, they suggest, is a required function of the State of NH. The State has contracted with The Home for Little Wanderers to provide a service that the State would otherwise have to do on its own. He suggests also, under RSA 674:54, that the use proposed on Summer St. should not have to go through the rigor of a Zoning application and so forth, because it is exempt under that statute.

Mr. Hanna stated that he does not normally do this, but in this instance, he thinks it would help, before they go into detail, for him to read the Conditions of Approval that he prepared and submitted today. That was prepared primarily to address the concerns that came up at a meeting The Home held on the porch of 39 Summer St. on Thursday, September 1, 2022. It was well attended by neighbors of the property and they asked many questions. Mr. McCall was the person who answered most of the questions and will talk about that tonight. Mr. Hanna read:

“The Home for Little Wanderers agrees to the following conditions, whether or not the Zoning Board imposes them as conditions of approval.

The group home at 39 Summer St. known as “Unity House” shall be limited to a maximum of 12 residents.

No resident client over 18 years old will be admitted to the Unity House program. However, a client who turns 19 during the final year of secondary school would be permitted to remain until the end of the year.

Unity House will maintain staffing at a one (staff) to four (youth) ratio during normal daytime hours, and staffing at a 1:6 ratio will be maintained overnight. There will never be fewer than two staff on site. A designated administrator of Unity House will be on call 24 hours a day, including when the Program Director is not on site. In addition, an executive will always be on call as well. A nurse is always on call for the benefit of the youth in the home.

If the program at 39 Summer St. is not viable, for any reason, and the property must be sold, The Home for Little Wanderers agrees that the Variance for a group home does not run with the land in this case and shall terminate upon sale. In the event that The Home for Little Wanderers proposes to materially change the program it agrees that such change may not occur without returning to the Zoning Board for approval. They know this condition is atypical, because Variances lawfully run with the land and would affect a subsequent owner. However, The Home for Little Wanderers is agreeing that if it decides to move on and sell the property, it will not be a group home.”

Mr. Hanna stated that that does not mean a subsequent owner could not apply to the Board, but it is not because it has the right to take advantage of the existing Variance he hopes this Board will grant. The Board may hear otherwise from some people in the audience, but he is convinced that this is a very strong organization. For a year, he has been working to find an appropriate house in the worst possible market, because many of the houses the organization has found desirable have been subject to cash offers from out of state buyers, and The Home needed a contingency to go through this Variance request process and lost several houses as a result. In the process of his getting to know this organization, he feels strongly that it will be a good neighbor, and he believes the neighbors will feel that way, too. If The Home could be guaranteed to own and be managing this property there would be some level of comfort. That is what this condition is intended to address.

Mr. Hanna continued:

“The Home will hold a meeting with neighbors at least quarterly to maintain good neighborhood communication. It will convene other meetings upon request.

The Home has approved a budget of \$250,000 for the up-front capital costs that it is going to put into this property. It has an annual budget of \$122,000 allocated, which would be a typical amount, for annual maintenance and repair.”

Mr. Hanna stated that it is an organization with wherewithal, with a substantial contract from the State, and will maintain and improve this property, which badly needs some up-front improvements.

He continued:

“The Unity House will be smoke free. Smoking will not be permitted on the property.

The residents at Unity House will not be permitted to have motor vehicles.”

Mr. Hanna continued that he thought this context would be important. It also relates to the evidence they are submitting, but now, right up front, the Board knows this is not something The Home aspires to, but something they commit to. He asked Mr. McCall to speak about the organization and the proposal for 39 Summer St.

Matthew McCall, Vice President for Community Programs for The Home for Little Wanderers, of 11 Bobcat Blvd, Windsor, NH, stated that part of what he does is help identify new business and open new programs. He continued that they have been working hard over the past year and a half to expand services in NH. Changes have occurred at the Department of Children, Youth and Families (DCYF) over the past five or six years, including a big push to bring NH youth back home. For many years, especially with the Sununu Center closing, DCYF had been sending youth out of state to receive services, which meant youth were unable to have access to their families and communities and the ability to transition home. Over the last year and a half, the State has given about 140 new beds to various providers, to open new programs in NH. The challenge for The Home is finding locations and communities to put these group homes in, so they are not sending youth out of state to receive services and are able to serve them in their home state in proximity to their families.

Mr. McCall stated that they know “The Home for Little Wanderers” is a weird name that people question. He continued that it is the oldest child welfare agency in the country, founded in 1799, where Abigail Adams was once a board member. The agency kept the name because they have been known by it, in Boston in particular, all these years. In the aftermath of the Civil War, youth in southern states were often orphaned, and many were brought to northern cities. In Boston, when these youth arrived in the train stations, largely they got off the trains to no one and were left homeless, and newspapers referred to them as “Boston’s little wanderers.” A group of philanthropists opened an orphanage, which ran for 112 years at 160 South Huntington Avenue, until The Home for Little Wanderers recently had to sell the property, mainly because it would have had a high cost to renovate.

Mr. McCall continued that currently, they serve youth and families in three states, MA (the greater Boston area), NY, and NH. They run many residential treatment programs, which are a “higher end of the pool” from what is being proposed for Keene, serving youth who live and go to school on a single piece of property due to significant behavioral or emotional needs. They also run many group homes, such as they propose for Keene, which are more for youth who are preparing for and ready to live in the community, are able to go to regular public schools, and have jobs in the community. They also have a variety of other programs, for example, they are the largest provider of mental health services for Boston public schools. The annual operating

budget is \$75 to 80 million, and they have a \$100 million endowment, which is significant for a private, non-profit organization and has a lot to do with the agency's history and how long they have been around.

Mr. McCall continued that to address why the agency proposes this program in Keene and what they want to do, as he mentioned, a number of NH youth are sent to MA for services. One of the programs The Home has operated for over 20 years is Waltham House, in Waltham, MA. It was the third LGBTQ group home in the country and the first in MA, to specifically work with youth who are involved with DCYF and identify as lesbian, gay, bisexual, or transgender. It has operated very successfully in MA, but almost every year, one to three youth from NH are sent there. When the State of NH gave out the new contracts, The Home approached the State to ask if the State would rather have The Home operate a program in NH for this population, instead of sending NH youth to MA. The overwhelming response was "yes." The Home successfully applied for the program and received a contract, and are now working hard to bring that program to fruition. Of the four programs The Home is contracted to operate in NH, this one the State is most interested in, because the State has many youth could be better served in a population and program that is specifically targeting the LGBTQ population. The Home is excited about this, as it will be the first group home of its kind in NH. In MA, they discovered that it gave them the opportunity to help change practices, and help move the way that they provide services to these youth and families to a different place. They see opportunities for that in NH, and hope to be able to continue.

Mr. McCall continued that regarding staffing in a group home, approximately three administrators work on an office schedule, such as 9 AM to 5 PM or 10 AM to 6 PM; they do the work to run the program and make sure everyone is doing the work they need to do. In addition, a few other staff members are there during the day, supporting the program's daytime needs by, for example, ordering food, providing clinical services, and doing basic tasks. For the most part, during the day there are no youth in the building – the youth are in school, unless they are sick, or there is a lockdown as there was with COVID-19. When the youth return home in the afternoon, regular daytime staff begins, and they are separate from the administrators. When youth are present and awake, the ratio is one staff person to four youth, and again, that does not include administrators or clinicians. When youth are asleep, the ratio is one staff person to six youth. Two overnight staff members would be present even if there were only five youth, for example, because there would never be a situation where one staff person was alone in the building with youth.

Mr. McCall continued that given this staffing pattern, there would not be 25 or 30 vehicles coming and going every day in the morning and afternoon; it is more like a steady flow of people coming in and out of the building throughout the day. About 20 full-time employees will be hired holding, master's degrees, special credentials, and licenses, to provide services to the youth. Residential staff are mostly bachelor's degree level as in NH, a bachelor's degree or seven years of previous experience are required to work with youth in a program like this. These staff members provide the day-to-day care of and support to youth.

Mr. McCall continued that he wanted to address some of the concerns people have raised, and give some context. One question is where The Home will get staff members from, because this is a very hard time for hiring people. What they found in Waltham, MA and are finding to be true here is that a program like this generally draws people to the community, as opposed to drawing people from the community. So far, they have hired a Program Director, Clinical Coordinator, and a Milieu Director, all three coming from out of state, specifically to work at this program. It does not mean they will not hire local people, but they cannot hire a clinician anywhere right now, and sometimes have clinician positions open for six or nine months; they advertise nationally and have 20 or 30 people applying from all over the country. That will bring clinical resources to the community, which are desperately needed. It also brings the clinician's partners. For example, one of the accompanying partners is a teacher, another resource this community needs. Regarding resource drain on the community, the youth do not receive outpatient clinical services in the community; all of their clinical care is through The Home. Thus, they are not seeking outpatient care from Monadnock Family Services or other organizations in the community. In addition, The Home historically has had a practice of providing resources within the community, as the agency has areas of expertise. They do an incredible amount of work with trauma, homeless young adults, LGBTQ youth, and more. Oftentimes when The Home comes into a community they find there is a need for services and training, and they look for ways to provide that. For example, in MA when they opened their LGBTQ group home, they trained every DCYF worker in the entire state in how to work with LGBTQ youth and families and helped to move the LGBTQ services forward across the entire state. That is certainly something they would look to do in Keene and would look to support the community.

Mr. McCall continued that the program in Walpole, MA was another concern that was raised. There are news articles about this program, which is the largest facility they operate, with about 72 youth living and attending school there and additional youth who attend day services there. This program is the highest intensity program The Home operates. Some programs on that campus have a one staff to two students ratio, due to the intensity of the youth's behavioral, emotional, and mental health issues. In addition, The Home has had a somewhat contentious relationship with the Walpole, MA, community, which has largely felt that youth from the Boston inner city should not be in Walpole, which has created challenges with some real issues at that campus. He has been with the agency since 1998, other than a 2.5-year hiatus, after which he returned to the Walpole, MA, campus to reopen it. The agency was not happy with the level of care being provided there, nor with the clientele had they slipped into. At the request of the State of MA, they had started serving a large population of youth previously involved with the Department of Youth Services and Juvenile Justice. That population was not a good fit for the campus or The Home's work. As a result, they had a lot of 51-As [reports of suspected or alleged abuse or neglect], and many youth who went on the run. At great cost to The Home, they invested about \$11.5 million to close, reiterate, then reopen the program.

Mr. McCall continued that to understand the Walpole, MA situation, it is important to understand the differences between Walpole, MA and NH, and the differences between Walpole,

MA and the kind of program The Home proposes for Keene, NH. If someone hears about, for example, “100+ phone calls to the police in a quarter,” in Walpole, MA, it is important to understand that whenever a child in the State of MA is gone from the campus for 15 minutes or longer, staff is required to file a Missing Person’s Report. If a child goes for a walk down the street for 15 minutes and then comes back, they have to file a Missing Person’s Report. The police come out then have to fill out a report, which is partially why the police in Walpole, MA did not love The Home. The Home also did not think it was a good process, because it uses an incredible amount of police resources. In comparison, the residential school in Windsor, NH, which serves a comparable number of youth and is a comparable type of program, had only six calls to the police in a six-month period. Five of those calls were to report “missing youth” who were walking around the campus and later found on the campus, and one was to have a child transported to the hospital to be evaluated for psychiatric treatment. The Waltham House, a program comparable to the one The Home plans to operate in Keene, has only made five phone calls to the police in a six-month period. Four of those calls were regarding youth who were out past their curfew. In other words, youth had the ability to be out on their own in the community, with a curfew 10:00 PM. When they were still gone at 10:30 PM, staff had to report that to the police who then had to come and verify that the youth returned to the program. Most of those youth returned within half an hour, either because they got off work late or were out “being teenagers” and should have returned. The fifth phone call was to send a child to the hospital for psychiatric evaluation.

Mr. McCall continued that he talked about the Walpole, MA program because the topic came up as one of the concerns of from the Summer St. neighborhood community, and he wants to be sure that he is addressing those concerns. In the neighborhood meeting, The Home staff chatted with abutters of 39 Summer St. about what they would like The Home to do between the buildings. Currently, the backyards have well-established arborvitae on one side that creates a bit of separation, and stockade fencing on the other side, rather overgrown, which The Home can trim. They asked the abutters what else they want to see. For example, The Home will not install 10-foot-high barbed wire fencing, but they could install fencing that looks like and is appropriate for the community. Thus far, one neighbor has said “No, thank you” to the fencing and they have not heard back from the other. They are happy to make sure The Home is creating proper screening.

Mr. McCall continued that smoking is not allowed on any of the properties that The Home operates, so it is not a big deal for The Home to say that smoking is not allowed, because that is already the case. Regarding maintenance, they will hire a half-time maintenance staff person who works 40 hours a week for The Home, 20 hours particularly at this location. In addition, The Home will have a budget for ongoing maintenance and repairs. Included in the \$120,000 annual maintenance budget is The Home’s annual capital expenditure items, which are for much larger items. In a typical year, The Home has about \$1 million in its capital budget for repairs such as a large roof replacement. Thankfully, the roof of 39 Summer St. is in good condition and The Home will not need to do a lot of work there.

Mr. McCall continued that in regards to supporting the youth staying at The Home, all staff members need to meet the minimum standards for the State of NH. They need to have a bachelor's degree in a relevant field, like social work or child development, or seven years of comparable childcare experience. All staff members receive a minimum of three weeks of new-hire training, and The Home teaches them how to intervene with the youth, how to support them when they are having a hard time, how to play with and interact with youth, connect with the schools they are enrolled in, and so on and so forth. They also train staff in, for example, CPR and first aid, blood borne pathogen safety, and emergencies. In addition, they do 24 hours of annual training to make sure staff maintain their level of education and are up to date on the most recent research and practices. The main crisis intervention curriculum The Home uses was developed by Cornell University and is one of the most nationally-recognized and widely-used curricula of child intervention strategies for youth who have experienced trauma. The Home is one of the few professionally certified organizations to provide that training, to all of their staff.

Mr. McCall continued that it is important to understand the difference between the operation of an adult group home, and a youth group home. An adult group home largely operates by having one or two staff members in the building who are mostly there to make sure that nothing terrible happens and help people when they want help. Child-serving group homes are there to raise youth, and staff act as parents to the youth. More than just providing a safe place for the youth to live, staff do what they need to do to help the youth be successful. If a child is lying in bed in the morning and does not want to get up and go to school, staff members go up, get them out of bed, and help them. It is not an option for the youth to not to go to school. If a youth is not going to school, staff intervenes with them to help them go to school, beginning with figuring out why they are not going. They are teenagers, and of course, they sometimes do things that adults wish they would not, but when they do, staff intervenes and deals with it. They work with the State if necessary, if the child no longer needs the level of care that The Home is providing, but more often than not, staff just provides replacement parenting to them, and in doing that, the behaviors reduce and go away. There are many examples he could give, but will not get into. There are teenagers who have done incredibly well with The Home and have gone on to college. For example, he worked with a person at Waltham House who came when he was 13 with many struggles, and was very successful in the program, graduated high school, and was accepted to Boston College. This person needed a place to stay for the summer, so he continued at the Waltham House after he had turned 19 until he began at Boston College. He is now in his junior year there and doing very well.

Mr. McCall continued that regarding communication and conversations with the neighbors, The Home has quarterly meetings with neighbors of all of the programs it operates. It helps them stay in communication with the neighbors and understand the challenges, some of which The Home can do something about, some of which they cannot, but they can talk about it and work through it together. It also is an opportunity to look at how the community can come together and support the youth, which makes a big difference in the youth being successful and being able to do well in the programs.

He continued that one other question that came up from the neighbors was what The Home is going to do with the house at 39 Summer St. and concerns about the house. John Davis, Director of Facilities, is excited about this building, which is a beautiful, Victorian home. The inside unfortunately has some damage, such as the kitchen has been removed. Probably in the 1960s or 1970s, the bathrooms were renovated into pink and green and will probably need to be restored and replaced. Items such as the giant server rack that was put into dining room, over the beautiful floors, will need to be addressed. The Home intends to make this building a home again, not a business, where they raise 12 youth, in a family home. They intend to restore it to make it a beautiful Victorian again. They will repaint the outside after removing probably 12 or 13 layers of paint, returning the home to its former glory, and will do the same on the inside. The beautiful built-ins that exist inside will be maintained, as well as the inlaid flooring, cove ceilings, and so on and so forth. Buildings such as these are the kinds of spaces that they want to raise youth in, not institutions or buildings that have no history. They do not want to raise youth in communities that are not for serving youth. The other places they have looked at in Keene and in surrounding towns, where large group homes are allowed, are in areas that most families would not want to move youth into if they had the choice. Downtown districts are the only place where they could put a group home of this size to serve youth, but a low- or medium-density community is where youth should be raised, living next to the school's they go to and surrounded by the youth they make friends with in the town. That is where youth should live, not next to a bunch of college students. One of the houses The Home looked at and tried to make an offer on is one that is surrounded by multi-family apartments of college students or low-income housing, and that is not where they should be raising youth. They should be raising youth in community. They hope this neighborhood can stretch a little bit towards that.

Chair Gorman thanked Mr. McCall for all of the information and asked if the Board has any questions before they review the criteria. He continued that he personally has a few for Mr. Hanna. When Mr. Hanna was first discussing the petition, he suggested that there are other, greater uses that are allowed in the DT-T, and he was hoping Mr. Hanna could elaborate as he is unfamiliar with them. Chair Gorman stated that there are 14 residents residing in this home and asked what uses were Mr. Hanna alluded to, which would be greater impacts.

Mr. Hanna replied that he would get into that in his presentation, but there will be 12 people living in the home with the two staff members will not be living there. Mr. McCall stated that they are daytime and overnight staff.

Chair Gorman stated that Mr. Hanna explained that the Zoning Ordinance itself is in violation of the Fair Housing Act. He asked him to explain specifically how it is in violation. Group homes are allowed throughout the city, just not in this zone. He asked if that is accurate. Mr. Hanna replied not entirely accurate. He continued that there are 24 zoning districts, and group homes are allowed in five, four of which are downtown, one of which is a high-density zone essentially in west Keene, mostly taken up by large apartment complexes. The five zoning districts that allow large group homes are High Density, High Density 1, Downtown Core, Downtown Growth, and Downtown Limited. Four are concentrated in the city's downtown. Chair Gorman

replied that this zone is part of the city's downtown as well. Mr. Hanna replied that it is Downtown Transitional, beginning to get away from downtown. He continued that it is very walkable to downtown, but not in downtown and not in a commercial setting. It is more appropriate for youth group homes like this one to be located in lower- to medium-density neighborhoods. Chair Gorman asked if it is correct that what Mr. Hanna is stating is that a group home is not allowed anywhere throughout the city. Mr. Hanna replied correct.

Ms. Taylor asked how the youth who live in The Home's group homes come to them, specifically, what is their background. She continued that Mr. McCall said they do not have youth from the juvenile justice system. Mr. McCall replied that youth are referred to them from DCYF. He continued that DCYF uses a process called Comprehensive Assessment Treatment (CAT), which is a leveling system they review each client with to determine what level of care they need. For example, level 1 is independent living, which is for ages 18 and over; and level 2 is group home living, which is this program. An independent assessor conducts the assessment, separate from DYCF, and then referred to The Home through DCYF. Mr. Hanna asked how Mr. McCall would characterize level 2 care. Mr. McCall replied that the idea is that these are young people, who are ready to move into the community, and if they were 18, they probably would be ready to move toward independent living, but because they are minors, they need to live in a group home setting. There is not a home for them to return to, they receive services from The Home to the live independently.

Ms. Taylor asked about building renovations, specifically, how many bedrooms and bathrooms are there, and asked for details on the proposed living arrangements. Mr. McCall replied that each child would have a roommate, which is to practice what it is like in the community. He continued that there would be six bedrooms, with three bathrooms on the second floor, for client usage, with showers and bathtubs, and an additional couple of bathrooms on the first floor. There is also an apartment over the garage/carriage house with a separate bathroom and kitchen space. He does not know what they will do with that yet. The home is big, 7,000 square feet, which in some respects is more space than The Home needs. He is not an attorney, but when you look at what you can do with a 7,000 square foot home, if you divided that into multi-family living, you could easily get over 12 if you were trying.

Chair Gorman replied that may be true, but he is fairly certain you could not divide that up into a multi-family home without a Variance. Mr. Hanna replied that three units would require a Variance, but unlike the Center St. situation, the current lot is about 17,500 square feet, and as he said earlier, you need 18,800 square feet. He continued that in light of that, he would say that it would be shocking to him if they could not get three separate dwelling units into this 17,500-square foot property, on one of the largest lots on the street. It could easily surpass the number of people in the group home.

Chair Gorman agreed, but to his point, that is not allowed without a Variance. He continued that he would not contemplate whether the Board would approve it or not, because they are not here tonight for a Variance for a three-unit building. The allowed use would be a two-family. He

asked if that is correct. Mr. Hannah replied yes, 3,000 square foot for each apartment making it a two-family home.

Ms. Taylor asked if the rest of the house would be congregate living or clinical space. Mr. McCall replied that it would be office space for the staff who work there, and probably multiple living rooms, since there is so much room in this building, so youth have space to separate and have quieter spaces. They would get the server rack out of the dining room and put a dining room table there, put a kitchen back in, and so on and so forth, to make it a house.

Ms. Taylor asked who would do the cooking. Mr. McCall replied that mostly, youth cook with staff, so they are learning how to cook and prepare meals.

Mr. Hoppock asked if, in anticipation of their renovation work, they have examined whether there is asbestos on the property. Mr. McCall replied that they were concerned with some pipe insulation in the basement, but it is unclear whether it is asbestos. He continued that is part of what they would look at in abatement.

Mr. Welsh stated that he very much likes the conditions of approval and the discussions The Home has had with the community. He continued that he has a question about the condition of having the Variance run with the land, specifically if it can be made actionable, would the Variance be surrendered and if that something commonly done.

Chair Gorman asked staff to reply. He continued that his inclination is that this is something the Board cannot even do. Mr. Rogers replied that he recommends the Board move forward with the conversation regarding the Variance criteria, and if the Board gets to the point of wanting to consider the conditions the Petitioner proposed, they could talk about it then. He continued that Mr. Welsh is correct in raising the question. Many of the proposed conditions are ones staff would not recommend.

Chair Gorman replied that regardless of whether the conditions are implemented into the Board's actions, they certainly appear to be commendable and with good intention. Mr. Hanna replied that they would be enacted one way or another, even if the Board decides they are not appropriate to impose. He continued that the purpose is two-fold – The Home wants to get a Variance, and they want The Home to be part of the neighborhood community and for the neighbors to feel comfortable. The Applicant thought these conditions would be a way to do that.

Mr. Hanna continued that while they are on the topic of renovations, he can share what those are, before they get into the Variance criteria. As a result of the facilities review, all seven bathrooms need updating, and maybe one or two would be eliminated; the number of bathrooms is due to the building's prior use as a nursing home. Some damaged roofing needs repair and as Mr. McCall said, there is some floor damage and restoration needed, as well as damaged porch posts and porch flooring. For landscaping, they will do a row of arborvitae, and The Home is prepared

to entertain the wishes of the abutting neighbors. The one to the west indicated that he does not want to have anything, but The Home has not connected with the neighbor to the east as The Home are willing to put in screening on that side of the house. There will be exterior and interior painting. The color will be reviewed, per the CUP requirements. They will replace the water heaters, oil tank, and boiler with a lot of IT work to be done. The work is extensive, but as he understands from Mr. McCall, The Home has allocated \$250,000 for the capital improvements.

Chair Gorman stated that Mr. McCall had mentioned funding The Home was getting from the State of MA, rather contrary to The Home's business model, years ago in Walpole, MA, which they have since restructured or corrected. He asked if that has improved the situation in Walpole, MA. Mr. McCall replied yes, and it continues to be a process as they moved through their new licenses in MA about a year ago and went through a process of re-contracting all of its programs. The Home is now in the process of reopening some of those programs in Walpole, MA, so some will shift and change. There continue to be challenges with The Home's relationship with the Walpole community, though in The Home's opinion, that has less to do with the population and its rightness of fit now than what it was before.

Chair Gorman stated that the second part of his question is, to be clear, The Home is not an agent of the State; they are a subcontractor. If the State changes its game, The Home would be forced to adapt. He asked if they foresee that happening, and if so, what the result would be, questioning if Keene could end up with a situation similar to what happened in Walpole. Mr. McCall replied that they are talking about two very different levels of care between youth served by Walpole, MA programs and youth served by the proposed Keene program, and two incredibly different scales. The Walpole facility is a on 150 acres of property with a large, 3-story school, and eight or nine residential buildings, compared to Keene having one house for group home care without those other elements. He has no concern that that kind of scale or issue will present itself with a program like the one proposed for Keene. Again, to the specific population The Home is targeting here, the Waltham House in MA is one of those things that the State does not mess with, because it is a unique program and provides a unique service. When The Home has talked with their colleagues in NH about that same kind of business in the state, they have the same interest. They want a group home for LGBTQ youth who are not being well served in other group homes or are being forced to be sent out of the state in order to get the care they need, to be provided here in the state of NH. He thinks the likelihood of the State trying to change that is very low, and if they did, The Home's opposition to that, with the State, would be very high. The Home does have some say as they can make decisions to return licenses, and decisions to return contracts; that is what they did in Walpole, MA, at a very high cost to The Home.

Chair Gorman asked if the program in Waltham, MA and the NH site Mr. McCall mentioned are comparable in size to what they propose for Keene. Mr. McCall replied that Waltham is, but the site in NH is comparable in size to the one in Walpole, MA.

Mr. Hoppock asked what the level of behavioral risk would be of the clients coming to the program. Mr. McCall replied that they are young people who have experienced significant trauma. He continued that oftentimes, they have received a great deal of care before they come to The Home, and are now ready to step down into a more community-oriented program or receive services within the community. For youth served by DCYF in NH, there are five levels of care – level 1 is independent living, and level 5 is locked psychiatric care, such as the Sununu Center and the new program they were opening at Hampstead Hospital. Youth at level 5 have the highest level of risk in the community of behavioral problems. Level 4 is a very small step down from that, where the doors are on 15-second delay timers but nearly everything else is the same as the locked psychiatric unit. Level 4 is a high level of care. Youth at level 3 are in residential education facilities, and have no locked doors and more freedom in the community. Level 2 is a step down to group home level, which is the level of care The Home proposes for the 39 Summer St. site. The only level lower than that is independent living, renting youth an apartment. The Home runs the only scattered site apartment program for the State of NH. Historically, the State of NH had no scattered site apartments, and provided all care within group homes and residential programs. The Home rents apartments around the state, having two in Keene that they rent for young adults. Thus, for Keene they are talking about the lowest levels of risk. They are teenagers, with teenagers sometimes do silly things, and things adults wish they would not, which they have to address and deal with. However, these are largely teenagers who attend public schools in the community, have jobs in the community, and have been given multiple hours of unsupervised access to the community because they are able to maintain themselves appropriately within the community. Youth have to earn those privileges, and they work to get to that place.

Mr. Hanna addressed the Variance criteria. He stated that with help from Tara Kessler, he submitted a comprehensive application, asking the Board to consider it in their deliberations. He will draw from that as well as other information.

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

Mr. Hanna stated that this is consistent in many ways with the second criterion regarding the spirit of the Ordinance. He continued that this is a program that will provide safety and support for youth. The youth will be coming mostly from NH, but some might come from out of state. Mr. McCall replied that that is possible but unlikely. Mr. Hanna continued that it is a State-licensed facility, and the contract is with the Department of Health and Human Services (DHHS). The Home will have to be licensed. The Home also has a long history of success, and ample resources. Those resources will manifest themselves both in the attention that staff will give to the youth and the property itself. The property will be very well maintained and the children will be very well attended to. He provided an example since it did come up at the neighborhood meeting. A facility not too far from this proposal, a large rooming house, has a number of residents who mostly sit on the sidewalk. He knows them well because they are near his office. The residents are friendly to him, though they smoke constantly, making it impossible for his building to have windows open. However, at 39 Summer St., there will not be smoking,

and at the rooming house near him, there are no staff that address the kinds of things that might annoy or interfere with the neighborhood. At 39 Summer St., there will be staff 24 hours a day, seven days a week, as this is an important issue in the context that the Variance would not be contrary to the public interest.

Mr. Hanna continued that the outdoor space is two-fold. There is a huge wrap-around porch, which faces south/the front and wraps to the west, providing space for the youth to be outside. The rear has something that is not quite a courtyard, but due to the configuration of the building and the existing hedges, there is a small lawn area shielded from the neighbors, melding into the back parking lot. There will be moderate traffic impact because of the staffing situation, it will be unlike an office situation, with two minivans owned by The Home to transport the youth. They predict that the daily, weekday trip generation is about 20-26 vehicle trips. Weekend trip generation would be down to 16-20 vehicle trips. The traffic will probably be less than what is there now. Thirteen spaces are in the rear in a parking lot, but that is accessed from 53 Summer St., a couple properties to the west. There will not be traffic going from the frontage of this property to the rear of the property and possibly bothering the neighbors on either side, because the entrance to this parking is at the office building at 53 Summer St. The driveway at 39 Summer St. has room for three parking spaces, one of which is handicapped. There is enough parking for 16 vehicles, which complies with the number of beds, one per bed, but again, the youth will not have vehicles. That is a relatively mild impact, he believes, from all perspectives.

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

Mr. Hanna stated that earlier, Mr. Hagan read the purpose of the DT-T, which says, “*to accommodate a variety of residential open space and other low intensity uses in a mixed-use environment of attached and detached structures. Development within the DT-T is intended to complement and transition into existing residential neighborhoods.*” He continued that this is an interesting property, because it is very large, in terms of square feet, probably too large for most single-family houses. As it turns out, which he will get into when explaining the fifth criterion, office use may be something of the past, too. He happens to know this from his own office building at 41 School St., which lost a couple tenants during the COVID-19 pandemic. People are not rushing back to rent office space. According to the realtor for the Summer St. property, in the four months the property has been marketed, there has been no interest by a prospective buyer to use it for offices. Even though all of it is dedicated to offices now, the realtor says only about a third of it is actively used for office space right now. He does not know what that means in terms of the tenant; the tenant has the right to use the entire thing.

Mr. Hanna continued that office use is on the decline, and the building is too large of an expense for a single family use. Even though there is one existing apartment now, converting it into apartments would not be what someone would do even if they wanted to do something without a Variance. It would be breaking up the 6,000 square feet into two or three units, at great cost, he knows from the realtor, who says that prospective buyers have looked at the cost of turning it

into apartments and it is cost-prohibitive. Given its history as a nursing home and the fact that it has 10-12 office spaces, it would fit well as the proposed use.

Mr. Hanna continued that there is a variety of uses now on Summer St. There are three two-unit apartment buildings, one two-unit apartment building, two office buildings, one or two single-family residences, and one mixed-use building with apartments and offices. The office use includes a doctor's office, tourism agency, and accountant's office. This type of use proposed by The Home, in terms of its intensity, will be more like a very large family with lots of teenagers, none of whom can drive. He suggests that it will be in the spirit of the Ordinance, in terms of level of activity and intensity of use, as it is a transitional zone.

Mr. Hanna continued that the proposal would generate 22 well-paying jobs in the Keene economy, equivalent to 18.25 full time positions. As Mr. McCall indicated, those will involve people with perhaps spouses providing other benefits to the community, buying groceries, going to restaurants, and so on and so forth, which is a benefit to the community.

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

Mr. Hanna stated that if the Variance were not granted, the Applicant would disproportionately be burdened as they have exhausted all efforts in finding a location for this use. It is The Home's belief that this location is ideal for their proposed use, as it is the intent to create a large family atmosphere with the level of staffing already discussed, and will be a welcome to the neighborhood and community.

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

Mr. Hanna stated that with the level of staffing they will provide as well as improvements to the building, both interior and exterior, in the context of the effect on value, the property will be greatly improved and aesthetics will be greatly enhanced. If there are people out there who say they do not want to be near a LGBTQ group home, then they are going to be those people, but the experiences that he and The Home thinks people will have, in light of the parenting that will occur, will be positive. The history the Board heard from Mr. McCall supports that. He will not again go into the amounts of money The Home will put into this, but that relates to the value, also. He has already indicated the kinds of contributions that will be made.

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:*

Mr. Hanna stated that the special conditions include a very large interior, close to 7,000 square feet. He continued that as he mentioned before, the fact that the access to the primary parking is not from this property but is over a property that is a straight office building, means that there is

not the activity on the front part, making this a unique situation. The tax map of this property shows an ample parking area behind this building, and there is no direct entrance from the property to that back parking, which is actually a plus. The CEO of the tourism agency is here and can address whether the fact that the deeded access over that property is a problem; he suspects it will be less of a problem with the group home than it would be with a full-scale office use, because there will not be as many vehicles. The deeded access is a special condition, and this is the second largest lot on the north side of School St. The interior contains 10 or 12 office rooms with a sizable kitchen in this section of the building, though is non-functional. Another special feature of the building is the seven bathrooms as is the wrap-around porch is extensive. Many of these properties have some level of porch, but this is a broad, large porch.

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. Hanna stated that to reiterate, the purpose of the DT-T is *“to accommodate a variety of residential open space and other low intensity uses in a mixed-use environment of attached and detached structures.”* He continued that it does say, “mixed use,” but multi-family is allowed in the DT-T, as are offices, funeral homes, and bed and breakfasts. By Special Exception, also allowed are a community center, cultural facility, daycare, or senior center. A group home use would be appropriate in that context.

Mr. Hanna continued that Keene’s Comprehensive Master Plan (CMP) is another aspect of what the overall purpose is and whether this would be a fitting use. The CMP states, *“While some would base the definition of diversity solely on race or ethnicity, the concept is much more tied to acceptance and respect. It means understanding individual differences and exploring these differences in a safe, positive, and nurturing environment. It is about moving beyond simple tolerance to embracing and celebrating diversity’s many dimensions throughout our community.”* It has been his observation that the city holds itself out as a welcoming and affirming community, and that is certainly what the CMP calls for, so the combination of the land use purpose and the diversity purpose in the CMP, are aspects that this use will be a good fit.

Mr. Hanna stated that the exchange he had with the realtor relates to the hardship standard. He continued that he had asked the realtor to characterize the interest of prospective buyers in this property, and in particular, their interest in continuing to use it as an office. Her email says, *“There has not been one single inquiry by prospective buyers interested in the property for office space. The days of need for a professional office space appear to be done. Several developers have considered the property for multi-family conversion, with the intention to maximize possible number of units. All inquiries have been for conversion to residential or multi conversion. None of these interested parties have moved forward because the costs of conversion are grossly prohibitive.”*

Mr. Hanna continued that the concept of a hardship relating to the existing building itself is an aspect of hardship that this Board has affirmed before. People in this audience are familiar with it, *Farrar v. City of Keene*, a case that made it to the Supreme Court. Clearly, the Board thought that it was a fair indicator of unnecessary hardship, where the square footage is so large that it is not conducive to a single-family home and it has to be used for some other use. He suggests that in this situation, they are dealing with a condition where the size is not conducive to single-family, and the cost is not conducive to multi-family, and the market does not indicate that office space will be a likely outcome for this property. Thus, something like the use that The Home proposes is necessary to handle that. With respect to the comments he made about the realtor, she sent him an email, which he submitted today and is in the Board's agenda packets. It is short, and he has given them more information already than what that email says.

and

ii. The proposed use is a reasonable one because:

Mr. Hanna stated that he would not go into this in detail now; he thinks he has alluded to this already. He continued that he is happy to answer questions.

Mr. Hoppock stated that he does not see how the special conditions of the property tie to the general public purposes that Mr. Hanna elaborated on, in terms of the CMP, diversity, and the intent of the zone in question. He continued that he understands what Mr. Hanna is saying, but not does not see how they tie together. Regarding "*to accommodate a variety of residential open space and other low intensity uses in a mixed-use environment of attached and detached structures,*" he thinks they agree that this would be accommodating 12 client residents in a residential building that would not be multi-family, in the sense of it being divided up into individual units. Mr. Hanna replied that is correct. Mr. Hoppock stated that he is having difficulty grasping the connection between the special conditions of a very large interior, separate access through an easement, the number of bathrooms, the building square footage, and how it makes it unfair to apply the Zoning Ordinance to this land, given the public purposes Mr. Hanna just mentioned.

Mr. Hanna replied that one of the public purposes is to provide a transitional zoning district with mixed uses, and this would be a mixed use, or would be a use that is not the typical residence, but is also not commercial in any way. He continued that it seems to him that it will be a house that will be rehabilitated to maintain the appearance of a residence, operating as a large family residence. That is the kind of low intensity, mixed-use environment the purpose of the DT-T references.

Mr. Hoppock replied that he mentioned administrative staff and clinicians, who will be visiting the house but not living there, and a nurse on call. He asked if that is correct. Mr. McCall replied that none of the adults would live there. Mr. Hoppock replied that if he looks at that as in one sense administrative/office, and that mixes with the 12 client residents who will reside there, he comes up with a mixed use. He asked if that is a fair reading of what Mr. Hanna is saying.

Mr. Hanna replied that he did not think that was the mixture of the use. Mr. Hoppock replied that that is what he sees. He asked Mr. Hanna how he is wrong, or if it matters to Mr. Hanna. Mr. Hanna replied that he thinks the mixed use being talked about is not the mixture within the building, but the type of use that mixes with the neighborhood. He continued that it is just a perspective on what is being mixed, from Mr. Hoppock's question to what his (Mr. Hanna's) view is. He is not sure it matters. Mr. Hoppock replied that he is not sure, either.

Chair Gorman replied that when he thinks of mixed use from a Zoning standpoint, he thinks of a storefront on the first floor with an apartment on the second floor. Mr. Hoppock replied that that is where he was coming from. Chair Gorman continued, or a doctor's office where the doctor lives in the unit above or below. In his mind, the definition of "mixed use" would be two separate uses that are allowed in the zone coming together under one roof. Here, in his view, there is one use: a group home. On the other hand, Mr. Hanna is saying it is a "family," a "single family residence," but by definition in Zoning, four unrelated people are the maximum you can have in a single dwelling unit. Thus, this cannot be construed as a single-family dwelling unit. He understands Mr. Hanna is trying to articulate that these youth come together and have parental structure and it is a family in that sense, but it is not a single-family home being mixed as a group home, it is a group home. It is one use, not a mixed use, in his opinion.

Mr. Hanna replied that it is not a mixed use, and he does not think it was ever indicated to be so. He continued that he does not think the intent of the DT-T is referring to mixed uses in the way that Chair Gorman is characterizing them. It does not say that mixed uses are like the building next to his office that had offices, worship activities, and residences, which are all internal mixtures. The Land Development Code says, "*low intensity uses in a mixed use environment.*" He considers the word "environment" to mean the mixture of uses within the environment, i.e. the neighborhood.

Mr. Hoppock stated that he would add the following phrase, which he is surprised Mr. Hanna did not quote "*of attached and detached structures.*" He continued that would seem to encompass the broader picture of the neighborhood. Mr. Hanna replied that he doesn't disagree. He continued that in other words, he does not think this has to be a mixed use in the standard way that Mr. Hoppock is interpreting it, to be consistent with the intent of the zone.

Chair Gorman replied that he understands what he is saying; his view is that the intent of the zoning is to call simply for a mixed number of uses within the neighborhood. Mr. Hanna replied yes. He continued that he does not think that Chair Gorman is disagreeing with him. When he said it was a "family," he did not indicate that it was a family as defined by the Zoning Ordinance. He said that it would have the impact of a large family of teenagers without cars. Chair Gorman replied that specifically, Mr. Hanna said it was a single-family home without cars. Mr. Hanna replied that if he said it was a single-family home without cars; that was not his intention to say that. He meant to say it would have the effect and impact and use, as if it were a single family; a large single family, no doubt, without vehicles.

Mr. Hoppock stated that Mr. Hanna did not spend much time talking about the values of surrounding properties and the impact of this Variance request on that. He asked if the September 1 meeting with the neighbors generated any comments about that particular criterion, and if so, if he would like to share that. Mr. McCall replied that he does not remember any comments specific to that. He continued that he thinks they had spoken extensively about the repair and maintenance The Home planned to do to make it a nicer building within the community. He does not remember any specific questions about devaluing property within the area. Although, it was a long meeting with many questions.

Chair Gorman asked his stance on the vast improvements would undoubtedly lead to a value increase to that residence and probably to the surrounding ones. Mr. Hanna replied that is his view. He continued that he does not think the neighborhood needs to worry about the negative context of group homes in this case. This is due to the heavy level of staffing as well as the educational quality of the staff, who will be present 24/7 in a residence that will be restored and maintained in a much better way than it currently is.

Chair Gorman stated that he does not hear that the Board has any more questions. He thanked Mr. Hanna and Mr. McCall. Mr. Hanna stated that he reserves the right to speak again. Chair Gorman replied yes; the Board will hear now from the public and offer Mr. Hanna the opportunity for rebuttal. He asked for public input, beginning with anyone speaking in opposition to the application.

Anthony Trombly of 67 Summer St. stated that this area of Summer St. and School St. constitutes what might be the most historic neighborhood in the city. He continued that this house was once the home of J.A. French, famous 19th century photographer. The house across the street was built by James Scholly Taft, the founder of Hampshire Pottery. The former Office District was an attempt by the City's former Planners to preserve this important historic and residential district and its architectural integrity by allowing the apartments to be incorporated in some of the large properties, and by codifying the use of small home offices, which had crept into the neighborhood during the 1950s and 1960s. There were doctors, lawyers, and other professionals with home offices. That was what the district was for 35 or 40 years. This community has been through an extensive, multi-year, public process of updating the Zoning Ordinance. During this process, many new uses were proposed as newly permitted uses in what was once the Office District, now called DT-T. Residents and property owners on Summer St. and School St. participated in many of these meetings, as he and his wife did. Large group homes were a major concern to many in attendance. The concept itself concerned the residents and homeowners, regardless of the population served by the group homes. Nevertheless, once the dust settled, nearly a dozen new uses were permitted in the DT-T. Large group homes were not included. Small group homes are allowed only by CUP. The fact that all of these new, permitted uses were introduced into the district defines what the term "mixed use" means in the Zoning Ordinance itself.

Mr. Trombly continued that despite the Petitioner's assertion that allowing a large group home in the district would not measurably impact the neighborhood, granting this Variance could. He believes will open the door to other high-impact changes that could be visited on the property owners in the area, and that are not intended for this district as detailed in the new Zoning Ordinance. To the City, this is a zoning district, but to those who live in this area it is a neighborhood. There are four single-family houses on the street, and a mixture of other residential options. One of the most notable developments in the neighborhood over the last three to four years has been an increasing number of younger families. The older residents applaud this. He and his wife enjoy the elementary school bus stopping right on the corner where they live. Thus, it is not a question of not wanting children in the neighborhood, or what kind of children; it is an issue of granting a Variance in this newly defined district for a large group home.

He continued that he prepared his remarks with the application in hand, not the conditions of approval that were presented today. The Board raised the question of whether it could accept the suggestion of allowing a Variance to not travel with the property should it be subsequently sold. A large group home could accommodate up to 16 residents. Now The Home is saying 12, but a new administration or pressure from the State could encourage them to increase it. Normally, a Variance granted with a property would travel with the property if the property were sold, so if the State backs out or The Home backs out, he is not sure what happens. Perhaps more of a concern is what happens while the group home is in operation. It would be a large group home allowed in the DT-T via a Variance. That opens the door to more requests and more changes that he would envision in the final version of the Zoning Ordinance. These are early days in the implementation of the Zoning Ordinance, and the people in the neighborhood are just beginning to live with the consequences of it. The first major thing to come up in the neighborhood since the new Zoning Ordinance has come into being is this request for a Variance. They have not even seen what the impact of all these newly permitted uses is apt to be in the neighborhood.

Mr. Trombly continued that he takes exception with some of the Petitioner's assertions. The petition calls this a "low intensity use" of this building and compares the Unity House to other uses in the area, two apartments, three apartments, and so on and so forth. However, comparing a situation where people work in offices or live in confined apartments within larger buildings is not the same. People are not in an office 24/7. The inside of 39 Summer St. may meet the physical needs of The Home, but there is almost no outdoor space, just the porch and a little area in the back. There is very little space for 12 teenagers to move outside the building, which is concerning. The petition further attempts to equate the large group home's impact to the impact of all those current uses that he said. This statement ignores the actual impact of those uses on the buildings in which they are situated in the neighborhood. The tourism agency and the doctors' offices produce very limited traffic, even less since COVID-19 and the work at home movement has taken hold. With a facility housing 12 teenagers in need of residential care and varying types of therapeutic interventions, along with the various 24-hour staff and hourly service providers needed, he cannot believe it will be the kind of minimal impact this petition

envisions, or the minimal traffic, commotion, and disruption in the neighborhood claimed in the petition.

Mr. Trombly continued that the petition asserts that granting the Variance will not negatively impact the public or the neighborhood and that failing to grant the Variance would “disproportionately burden the petitioners.” However, after more than five years of consideration, multiple public hearings, and involvement by the City’s boards and the Planners, the City enacted a Zoning Ordinance that provides, by right, the establishment of large group homes in five districts. Some may be largely commercial, but as far as he is aware, every one of them contains various types of housing, including large buildings. Due to the compact nature of the city, establishing group homes in any of those five areas - with the possible exception you might argue, of the one area in west Keene – would not leave the residence far removed from any of the amenities that the petition mentions, like the library and rail trail.

Mr. Trombly questioned the impact of property values in the neighborhood. Despite planned renovations and improvements to the building exterior, the Petitioner cannot reasonably assert that having a large group home on a street as small as Summer St. will have no impact on surrounding property values. It is the concept, the public conception of a large group home itself, being in the mix along with apartments, single-family residences, and small offices, that will impact property values. This is an unfortunate reality, given the need for this type of living arrangement, but the statement that keeping the place painted and the shrubs trimmed will protect the value of surrounding properties cannot be proven, except over time, after such a Variance is granted and they see what happens. He hopes the Board does not take that chance.

Mr. Trombly continued that regarding “unnecessary hardship,” the application makes no assertion that this building cannot be used as the Ordinance states, since it is already being used in strict conformance with the Ordinance. The petition does not successfully argue that Unity House “will have similar impacts to a two-family or three-family dwelling,” because it ignores the real dynamic of having a single housing unit as a residential facility with 12 teenagers and staff. With or without supervision, there is a different lifestyle and dynamic in any large group home that must be acknowledged. In a 3-apartment building, the apartments are compartmentalized. The way the residents interact with each other is controlled by that structure. The petition notes that the intent of the DT-T is to “*accommodate a variety of low intensity uses in a mixed-use environment.*” He finds the assertion that the Unity House constitutes a “low intensity use” unsupportable, by the likely reality of life in the Unity House. He does not believe that, as the Petitioner asserts, the use of 39 Summer St. to house the Unity House equates to any of the low intensity uses currently in place on the street. He challenges the Petitioner’s assertion that Unity House will have “commensurate or lesser impact” than the other uses currently found in the neighboring buildings. People who live on Summer St., like he and his wife, know from experiencing life on the street and in the neighborhood, how truly low intensity all the current uses in those buildings actually are. A large group home, in his opinion, “simply does not fit.”

Stephen Bragdon of 51 Railroad St. stated that his office abuts the north portion of this lot. He continued that first he would like to say that he is very impressed by the organization. He thinks they do good work and their purposes are well meaning. What they want to do in this zone is probably the best that could be done with this type of development, but he does not think it is appropriate. One of the problems with allowing submission of paperwork to the Board at the last minute is that the public does not get to see it. He does not know what is in it; it might be nothing relevant, but he thinks it is a bad precedent to allow that to occur.

Mr. Bragdon continued that there have been allegations that the City is somehow discriminating against large group homes. He can see Mr. Hanna's argument. On the other hand, he does not think it would be upheld in any court, since the City has provided many areas where large group homes could be located. In addition, there were some allegations by citing a statute that if this were a government use the City would have to allow it and it is almost a government use. No, it is not the government; it is a private, non-profit company. Those two arguments "are a waste of time."

Mr. Bragdon continued that he thinks the previous speaker hit on the main point, which is that the Petitioner continues to argue about this being a low intensity use. It is not. It is not similar to any other use in the area, no matter how hard the Petitioner would argue it. There are offices and residences, but not a large group home, and to allow a large group home would open it up to other large uses that could petition after and rely on that precedent. Further, the argument that this lot is somehow dissimilar from other lots in the area, and it is the second largest lot on that side of the street, he does not think is relevant. The other houses and lots in this area are similar to this one. They are not exactly the same, but some houses are quite large and his office is 6,000 square feet. On the other hand, the fact that it is large does not mean it cannot be used by one of the many uses allowed in this area. He would say it does not meet the hardship criteria. There is nothing unique to that lot that is not similar to other lots in the area.

Mike Forrest, Board President of the Keene Senior Center, stated that the Senior Center is within the distance to be notified of this petition. He continued that the spirit of the Ordinance is for mixed, low intensity uses. Twelve residents is not low intensity. Page 3 says, "would operate similar to a single household unit." He has never seen a single household unit with 12 teenagers. This is just too intense for the area. Regarding the hardship issue, and "owing to special conditions of the property," what they are looking for is a use Variance. The property is not much different from any other property on Summer St. He does not think this will work there. As for the materials submitted last Thursday and tonight, which no one else has seen, he thinks that is wrong.

Chair Gorman stated that since it has been brought up twice, he will take a minute to address the information submitted today was the Conditions of Approval, and Mr. Hanna read that into the minutes. He continued that so the public is aware, they have been completely familiarized with that. The other piece of paper Mr. Hanna submitted today was the email from the listing agent, which Mr. Hanna went into great depths about, so the public is also aware of that.

Chair Gorman asked if there was more public comments in opposition.

Jeananna Farrar of 59 School St. stated that she has lived in this neighborhood for most of her life, including at 39 Summer St., where her family home was for 10 years. She continued that it is a historic home in the middle of a lovely historic neighborhood. Young families are moving in and some directly about the property requesting the Variance. The Ordinance exists to protect the neighborhood from the impact of business activities that would be incompatible with the nature of the neighborhood. The proposed Variance does not comply with the spirit of the Ordinance. It will be a home for a dozen teenagers, age's 14-18, low risk, LGBTQ, and staff, right next to family homes with children. This house once had incredible architectural interior, which The Home plans to renovate to accommodate the use. The lot is narrow, closely abutting properties on either side. The back of the house was once a yard and is now mostly a parking lot.

Ms. Farrar continued that if the Variance is granted, the entire neighborhood would probably be negatively affected. Denying the Variance petition will not create any unnecessary hardship because the primary requirement for The Home is square footage. She wants to know if the square footage includes the other property which houses offices and had an apartment added when the nursing home was there. She continued that The Home needs another large building and it would be wonderful if they had an area with space for youth this age to do purposeful activities that teach responsibility and learn skills like gardening or pet care. It is strange that there is an impediment to The Home putting these group homes in outlying areas instead of "in the city where the risk on them is so much higher." She does not understand. The Home is based in Boston and will be under contract with the State of NH. This is "really big business," not a buffer that fits nicely into "one the most important, loveliest neighborhoods in Keene." She requests the Board deny this.

Tom Savastano of 75 Winter St. stated that he lives two blocks from the property in question. He continued that his concerns arise as a result of his extensive involvement with the City's changes to the Land Development Code (LDC) over the past three years and how changes to the Zoning through Variances will affect his property in the future. Over the past three years, the City worked hard to carefully update its LDC and downtown zoning. What was arrived at came from much give and take and compromise, and as he heard the Mayor say shortly afterwards, it was one of the most important processes the City has undertaken in 20+ years. He joined the process because the DT-T zone where he lives, formerly known as the Office District, has been a low intensity buffer zone between downtown and residential zones, mostly with single- and multi-family homes and offices. "Low intensity" is a key descriptor of the zone. Some of the discussion over the past three years regarding this zone was about how that term would be honored in the new zoning.

Mr. Savastano continued that early on, the possibility of various social service uses was raised. Group homes were proposed, with various maximum residents. As an example of the discussion at that time, a Joint Planning Board/Planning, Licenses, and Development (Joint PB/PLD) Committee meeting on August 10, 2020 included the following quote: "*Councilor Clark noted*

congregate living is a high density use. He added by placing high density uses in lower density districts, it reduces property values.” Ongoing discussion took place over the next months. During the September 14, 2020 meeting, former Senior Planner Tara Kessler “*reviewed with the Committee public comment received from July 13 through September 10,*” including the following entry:

“Concern for the number of residents that are permitted to reside in a group home or lodging house and the impact that increased density would have on these zoning districts - in the draft there is a cap of 16 for group homes and no cap on lodging houses. One letter suggests that Group Home and Lodging House uses should be capped at no more than five unrelated persons in these districts. Interest in the removal of these uses from these districts [was raised]. Concern for an array of negative impacts that these might have on a neighborhood, including increased density, overcrowding, traffic, overflow parking, public safety, reduced property standards, and the decrease of property values.”

Mr. Savastano continued that after citing these concerns, Ms. Kessler stated that “*based on the feedback, for group homes, staff suggests breaking it into two categories – small and large. Small Group Home (eight or fewer non-related people) be allowed in Medium District, Downtown Transition, and Office District.*” City staff themselves suggested this delineation of small group homes and large group homes and assigned small ones to the DT-T. He found that an equitable compromise. In the meeting on November 9, 2020, Ms. Kessler noted, “*Zoning is a tool used by communities to protect property rights and prevent against nuisances by making sure uses that are located near each other are compatible and the size and placement of buildings are appropriate for the areas they are located in. [...] If the use is not listed as being permitted in that district, it would not be allowed to occur as the principal use of a lot.*” This is a request for a Variance for a use that is not permitted, according to the long process of the past three years. His point to the Board is that there were more than three years of discussion, debate, and compromise about downtown zoning and a compromise by the City itself, allowing small group homes of up to eight people with a CUP. He does not know why this request for a Variance is coming forward. As Mr. Trombly said, this has been under consideration for a long time, with a lot of compromise.

Mr. Savastano continued that Mr. Hanna mentioned potential problems with the FHA and the group home delineation. He has notes from the December 14, 2020 Joint PB/PLD meeting:

“Ms. Kessler noted at the last meeting there were a number of comments from the public, regarding congregate living and social service uses, and there was a question raised as to whether the proposed Ordinances would be in compliance with the federal Fair Housing Act. While staff considered the requirements of this Act in their development of the proposed Ordinances, they have reached out to the consultant firm Camiros, who has experience working with cities on congregate living and social service ordinances, for their professional opinion on how the proposed Ordinances align with their understanding of the Fair Housing Act and their knowledge of how other communities have implemented regulations around congregate living.

Staff is also consulting with the city attorney and will follow up with the Joint Committee on this item in January.”

Mr. Savastano continued that notes from that January meeting say, *“Ms. Kessler referred back to the memo from Camiros. What Camiros noted in this memo is how the City is differentiating Group Home from Single Family Home is consistent with what other communities are doing and being in compliance with the Fair Housing Act.”* The minutes later state, *“Ms. Kessler noted that the reason for creating these categories of group homes was to provide opportunity for group homes of various sizes to be permitted in Keene, while addressing concerns that larger group homes would not be consistent with certain zoning districts that are promoting lower density development.”* Mr. Savastano continued that his point is that consultation happened, with a professional consulting firm and the city attorney, and the determination was made to go ahead with the zoning as it is today, with the delineation between small and large group homes.

He continued that the Variance request assumes the best case scenarios overall for the operation of this group home. For example, traffic estimates assume no vehicle usage connected to the resident teenagers, except for that provided by staff. Will staff not permit friends to drive up to the building to visit or pick up residents? He feels that there is potential for much more traffic. The traffic estimates also did not account for the need for emergency services.

Mr. Savastano continued that previous issues with The Home’s other facilities were brought up. These are disturbing and easily found in an online search. Live Boston 617, which supports the first responder community in the Boston area, regarding a situation in Boston on October 16, 2020 had an entry titled *“Serious Questions Raised About The Home for Little Wanderers After Child in Their Care Found Stabbed.”* The article says, *“The children’s runaway shelter is a constant hotspot for problems with staff seemingly incompetent at managing these troublesome children. These kids constantly being reported as runaways, usually hours and hours after the last time they were seen. For example, this child was last seen at 11:30 PM or so but not reported lost until after she had been stabbed.”* With regards to Walpole in 2020, WBZ News Radio reported *“Walpole’s Chief of Police has called on the State Department of Early Education and Care to take corrective action against The Home for Little Wanderers in Walpole.”* The news entry says, *“Police have been called to The Home more than 200 times this year for runaways, assaults, and emotional disturbances, with some kids even jumping out of second floor windows.”* Boston 25 News added in December 2020, *“Attorney Gregg Corbo, representing the Town of Walpole, said, ‘a young girl of 16 was missing for 24 days. She was found in a short-term rental in Boston where she was sexually abused by numerous men. Chief Carmichael from the Walpole PD said ‘The situations that we have been experiencing, we just can’t ensure their safety. They’re just not safe under the conditions they’re in.’”* Before that news report, Walpole held its Board of Health meeting. Health officials ordered a cease and desist order. The Town’s attorney said the facilities in Walpole would shut down and the residents would be relocated immediately.

Mr. Savastano continued that these experiences in other communities undermine the credibility of the Variance request's conclusion that "The Home has substantial experience with group homes generally. It is based on this experience that The Home can confidently say that the impact of this proposed group home on Keene's emergency response services, e.g. Fire, EMS, and Police, will be minimal." To avoid negligence, the City of Keene needs to do its due diligence to examine these issues carefully. His recommendation is to deny the Variance.

Jody Leach of 37 Middle St. and 24 Summer St. stated that he does not feel eloquent and appreciates everyone who has spoken before him and has said things he would not have even thought of. He continued that he appreciates their research, and appreciates the petition as well and what The Home is trying to accomplish. He raised three daughters here. He is a carpenter, and has to be in compliance when he goes to the Board. If what The Home is asking to do is a Variance, it is not in compliance with current use, and he asks that the Board not allow it. He needs people who know the research, laws, and ordinances, which he does not know a lot about. If what everyone who has spoken before him in opposition says is true, he hopes the Board listens to them, for people like him who cannot get through the minutiae of it.

Richard Emmett of 99 School St. stated that his backyard abuts the larger parking lot that extends behind 39 Summer St.. He continued that he has been in Keene three years. He came tonight with an open mind and respects The Home for Little Wanderers. He applauds their objective but does not think this is the location. The idea that the group home would be a low intensity use is not credible to him. Twelve teenagers is a lot. He thinks it would change the character of the neighborhood and he "is a little fearful of that." He knows the City has put a tremendous amount of work into the new LDC during the past three years; he and his neighbor Tony have talked about that. The City did a good job with it. These new regulations have just been put into place, after much thought and effort. Why throw it out now? Not allowing large group homes in this neighborhood is the right answer. He respectfully asks the Board to uphold that.

Susan Doyle of 69 Island St. stated that she is here because Megan and John Arruda are neighbors of 39 Summer St. and they are very excited about moving here with their two toddlers. She continued that Mr. Arruda goes out at sea for 75 days at a time but somehow reached out to her to ask her to attend these meetings because he cannot be there. He and his wife are "concerned about having the teenagers next door to their little boys," which she can understand. If The Home is interested in putting up a fence or big trees, she is not sure how that is enforced, if this comes to fruition. She also wants to say that many people grew up with five or six siblings in small houses with one bathroom, and they are okay, and have jobs and are professional people. She continued, "I'm not sure that The Little Wanderers people have to really feel that having a beautiful Victorian that has been renovated is going change the lives of these young people," because the staff that work there and the care they extend to the teenagers is what will make their lives better, not "living a fancy house, because they will get turned out to the world and probably live in a little apartment, so that is a reality check." She asks the Board to consider not giving this Variance.

Damian Wasserbauer of 45 Summer St. stated that he abuts the property. He continued that he has personal family experience with and a soft spot for orphanages and juvenile homes. It is good to have them in the downtown area, not only for the community, but also for other things. In this case, it is about a Variance. He has no opposition to people being next to him and running this type of facility. He is new to the community, having been there a year and a half. His neighbors participated in this process and there has been a compromise. Juvenile homes or orphanages could live on this street and cater to anyone under 18. He thinks the limit of eight residents is a reasonable compromise. He thinks he heard The Home's position on why they need the Variance, and it was because it did not make economic sense. That is a corporate-type thing; it has to make economic sense for the institution. Perhaps this is not the right spot, but he thinks they could have a foster home or something similar on the street to blend in, but he agrees with his neighbors that the size is something that had to be compromised on.

Frank DePippo of 43 Center St. stated that he has a number of concerns. He continued that if this were approved, there appears to be a lack of staffing, particularly in the evening. There is no mention of provision of any security or police services. He continued that he "does not know if a threat assessment was conducted, for the safety of the neighbors and the residents, at a time where people are attacking synagogues, mosques, and other specialty areas. This could possibly be an area of threat. Some deranged person could have an interest in doing harm, because of the nature of the residents, so a threat assessment should be conducted by the local police, Sheriff, or Joint Terrorism Task Force, of whether there are groups in the area." If this were approved, regarding the improvements, he recommends that all of the fire suppression and alarm systems be changed out to the state of the art ones. With a number of children, although there is a requirement that they do not smoke, that often is not followed. If upgrades will be made to the paint and other areas, he recommends that that fire suppression, alarms, and security systems be implemented. He does not know if City staff knows that.

Chair Gorman replied that would be part of the permitting process, if this Variance were granted and it went further through the Planning process. He continued that the permitting process for the building construction would likely dictate that Fire Codes are brought up to code. That is typical of a change of use. With any change of use, you have to adhere to the applicable codes.

Mr. DePippo continued that he is not necessarily objecting to the group home, but he does not think enough information has been provided, in particular, about them reducing overnight staffing instead of increasing it. There is no indication of security or police services. If this were granted, he asks that sponsors of the group home be required to provide any police or security services that are needed in the event there are any problems at the site from any outside people.

Chair Gorman called for a recess at 9:33 PM and called the meeting back to order at 9:40 PM.

Chair Gorman asked for public comment from people in favor of the application.

Robert Drumm stated that he is the owner and operator of Alexander & Roberts at 53 Summer St., a 75-year-old international travel company. He continued that he and a shareholder purchased the 53 Summer St. building in 1995 and have been there 27 years. Previously, the building had been a nursing home, an apartment building, and a doctor's office. In 1799, it was built by Dr. Blood, which he discovered when he took down a wall to create a conference room and found a quill letter Dr. Blood wrote to a patient, asking for payment. These houses have gone through many lives and have served different purposes over time, as neighborhoods evolve, as populations change, as technology changes. He thinks that is the case with 39 Summer St. His business shares a driveway with 39 Summer St. and it has a right-of-way with Alexander & Roberts. When Alexander & Roberts moved in, he noticed many questions from his neighbors, because they are a tour operator. They are not a travel agent and do not have visitors come. They have developed tours for AAA, PanAm, Delta Airlines, and so on and so forth. They were looking for a house rather than an office. Their business partners around the world would come to Keene, this pristine community, and were delighted with it, because they had never seen this part of America before, although they might have been to Boston, New York, Los Angeles, and Chicago. This particular building, in terrible repair, was appealing to Alexander & Roberts, because of the heritage it suggested.

Mr. Drumm continued that he believes The Home has a similar vision for their property at 39 Summer St. He thinks they are interested in providing a warm, welcoming environment for youth who are sorely in need of the support. He congratulates the State of NH for reaching out to The Home. In 1960, he was 11 years old, and his church group went to visit The Home for Little Wanderers so he and his peers could begin to understand how fortunate they were in their family environments, compared to the children served by The Home. The Home has developed into one of the premier social service agencies in the country. He thinks the community and the City of Keene would be blessed to have such a professional, sophisticated, well-experienced organization behind the home they propose establishing here. He supports the Variance request. He understands how difficult it is to come to these rules that cities and communities have to live by, but the Zoning Board exists because Variances are a part of life, and people can come to the Board with a different set of needs and circumstances, and that is to be applauded.

Mr. Hoppock stated that the Board has heard many opinions about the impact of the proposed use. He asked Mr. Drumm what he thinks the impact will be of 12 client resident teenagers living at this property. Mr. Drumm replied that he thinks about a movie popular in the 1950s, "Cheaper by the Dozen". He continued that it took place in Montclair, NJ, in a Victorian house very much like this one, and was about the family of 12 children who grew up there. It was rather tumultuous, but usually within the four walls of the building. He thinks there may be some adjustment issues, but he thinks it is worth it. His personal residence is on School St., and he thinks the neighborhood could stand it. The younger people coming in have a different sense of family than do prior generations. He does not know of a family that could afford to re-do this property or would be comfortable living in such a large space. He has renovated many houses for his own personal use, so he understands how difficult that process is. This could be the best

purpose for the property, and certainly, with The Home guiding the way, he thinks they should feel much more comfortable about what the future holds and the success that this could have.

Chair Gorman asked for more comments from the public in favor of the application. Hearing none, he asked Mr. Hanna for rebuttal.

Mr. McCall stated that first, regarding the question of why 12 residents and not 8, it was not The Home that requested 12. It was not The Home's financial consideration. It was the State that requested 12, because it is significantly financially more advantageous for NH to operate group homes at 12, when there are staff to youth ratios of 1:4 and 1:6. The number that comes together on those is 12, so the State has formulas they use to calculate the cost per resident, and they want that number to come in at a rate the State can afford to continue to pay. An eight-bed group home is about a quarter to a third more expensive for the State to fund; thus, the State wants numbers that are able to be well funded, and able to be operated well. This is not about The Home's need for a certain size. They operate some group homes in MA with seven residents, and some are significantly larger. Having 12 residents at Unity House is more about the State of NH than it is about The Home.

Mr. McCall stated that regarding the incidents that were mentioned, he wants to give more context. He continued that the child a speaker referred to who was trafficked was a child who ran away while on a home visit, not while she was with The Home. While on the home visit, she left the home, and unfortunately was trafficked. The Home had no way of managing or controlling that. Chief Carmichael's assertion that The Home somehow had something to do with it was factually inaccurate, and again, goes to the relationship The Home had with the previous Chief of Police. The new Chief of Police, who has been there for about a year, has a very different way of talking about The Home and the services it provides.

Mr. McCall continued that regarding the Cease and Desist order, it was issued by the Town of Walpole when the facility opened, at the request of the Governor of MA, a COVID-19 Relief Unit in March of 2020. The state had just gone into lockdown, The Home was unable to obtain PPE, and the State of MA was in a panic about what to do with COVID-19 positive children in group homes. The State of MA asked providers who could come together to open a COVID-19 Relief Unit. The Home said yes, they would do it. They did it in seven days. Normally, a group home takes anywhere from six months to a year to get off the ground and open, but they opened the COVID-19 Relief Unit in seven days and successfully ran it. They ran it so well that the Cease and Desist order was removed by the Town of Walpole because the State said, "You can't put a Cease and Desist order in for this; this is a public health need." In addition, The Home ran it so well that they were the last COVID-19 Relief Unit operated for the State of MA, because DCYF believed they were providing the best of all of the State's units.

Mr. McCall continued that regarding the incident where the child was stabbed, the adolescent left one of The Home's group homes in Boston that is funded by the Department of Mental Health (DMH). DMH does not allow The Home to prevent children from leaving a program if they

want to, and has very particular regulations around client rights. This is strictly a “no hold” program. While this adolescent was on the run and not at The Home’s program, and were actually several towns away, they were stabbed while with a group of friends. One of those friends knew The Home well enough that they called the program and requested that The Home call EMS to get that adolescent help. That shows the connection, relationship, and care that The Home provides to its youth. Even the youth’s friends know that when they are in trouble, they call The Home, and The Home will get them the help and care that they need.

Mr. Hanna stated that he has a few comments in response to the previous speakers. He continued that this Board knows that granting a Variance does not “open up the floodgates,” and that a Variance is a safety valve established by the NH RSA 674-33 to provide relief where the standards for a Variance are satisfied. The fact that the Variance is sought from an Ordinance that was recently enacted versus one that has been in effect for ten years does not change the fact that it may or may not be deserving. He provided what he considers evidence about the sustainability of the current use, that it is not sustainable. He provided information from the realtor and information about the current activity being not at full, 100% use. He testified earlier about the unlikelihood of multi-family housing or single-family housing being viable and cost-effective. Thus, there are hardship aspects, given the type of and size of this building.

Mr. Hanna continued that regarding the question of low intensity, this might be a situation where it is in the eyes of the beholder. It is subjective, and all he can say is that funeral homes, bed and breakfasts, offices, and multi-family housing are all permitted uses in this neighborhood. An 11-unit apartment building is on the corner of Summer St. and Court St., and an abutter that is a highly active CPA firm with much more frontage on Summer St. than Court St., and a three-unit apartment building immediately to the east of the subject property. Those are all uses he would say are equally or more intense than the proposed use. In addition to the types of uses, he just suggested, uses such as senior centers, community centers, cultural facilities, and daycares are all permitted by Special Exception. That is not by Variance that is by permitted use, meeting the criteria enumerated in the Ordinance.

Mr. McCall stated that regarding intensity, a new neighbor moved in next to the Waltham House, the program that is most comparable to what Unity House will be. He continued that The Home tried to reach out to that neighbor after a couple months, and he himself walked over to introduce himself. He knocked on the door, introduced himself, and explained what the program was. The neighbor said, “You know, I thought it was funny that everybody looked really different and there were a bunch of kids there, but I just figured you guys were a big, strange family!” He replied that in many respects, that is kind of, what they are. Her reply was, “That’s great; it’s nice meeting you.” That is the level of impact a group home like this has. The Home has done this work for a long time; this is not something they just started doing last week. They operated these kinds of programs for 200 years, they do have a sense of the impact it has on the community, and they are not saying it will have none. What they are saying is that the impact does not disproportionately affect the community, and they think they can be good members of the neighborhood.

Chair Gorman asked if there were any further questions. Hearing none, he closed the public hearing and asked the Board to deliberate on the five criteria.

Mr. Rogers stated that given the time, and the Board's rule of not beginning a new hearing after 10:00 PM, the remaining hearings on the agenda would be continued to the next Board meeting on October 3, at 6:30 PM. They will also be re-noticed.

Mr. Hoppock stated that he thinks it would be useful to hear what City Attorney Tom Mullins has to say about the Fair Housing Act. He continued that he thinks the Applicants have provided a powerful case for the approval of the Variance and he wants that information in front of him. He would like to continue the deliberations until the next time, after the Board has the City Attorney's opinion.

Mr. Welsh stated that he would like some details about the practicability of the conditions of agreement that had been drafted between The Home and the neighbors. Some of those provisions are important to discuss. Mr. Hoppock replied they should talk about the legality of them. Chair Gorman added that some he would be quite comfortable incorporating; others, not so much, without some guidance; and others, not at all.

Chair Gorman asked for Ms. Taylor's thoughts. Ms. Taylor replied that she agrees with what has been said. She continued that she personally does not believe there is a FHA issue or a discrimination issue, but again, she does not know if that is the City's legal position and she would like to hear it. She would also like to hear from the City Attorney regarding his perspective on limiting the length of time or the specifics of a Variance, as opposed to having it run with the land, because her understanding is that it must run with the land and cannot run with the property owner. Chair Gorman replied that he agrees wholeheartedly, specifically on number four of the conditions. He continued that he knows they can make conditions to a Variance, but he is not aware of them being able to condition it to a property owner.

Chair Gorman asked if Mr. Clough is in agreement. Mr. Clough replied absolutely.

Mr. Hoppock made a motion to continue the deliberative portion of this public meeting to the next Zoning Board of Adjustment meeting on October 3, 2022, at 6:30 PM, in order to request a legal opinion from City Attorney Tom Mullins on the subject of the conditions proposed by the applicant, and the issue of the federal Fair Housing Act. Chair Gorman seconded the motion.

Mr. Hoppock stated that he would ask the City Attorney to look at all of the conditions proposed, not just the fourth, and point out anything he finds particularly troublesome or not troublesome at all.

Chair Gorman opened the public hearing to take a question.

Anthony Trombly stated that he wants it understood that the submitted “Conditions of Approval” sheet was not drafted in consultation with the neighbors, but rather in response to questions that were raised during the public meeting held last week. Chair Gorman replied that he agrees that that seems to be the case; it was handed to the Board tonight and read aloud by Mr. Hanna.

Mr. Trombly stated that these conditions were not put before anybody for their opinion. Chair Gorman replied that his understanding is that the Applicant, based on feedback from the neighborhood and in an attempt to accommodate concerns, drafted this list of conditions that The Home was willing to set forth upon themselves. That said the Board now has to determine which ones they may or may not be able to legally input as well as ones they may prefer not to input.

Mr. Hoppock asked if City staff could post the Conditions of Approval on the website with whatever packet goes with this case, so everyone can look at them, before the next meeting. Staff replied yes, the information that was submitted to the Board members tonight can be added to the packet, and it is available to anyone in the public who wants to come into the office to look at during regular business hours.

Chair Gorman stated that the public hearing is again closed. He asked for a vote on the motion, which passed by unanimous vote.

- V) **New Business**
- VI) **Communications and Miscellaneous**
- VII) **Non-public Session (if required)**
- VIII) **Adjournment**

There being no further business, Chair Gorman adjourned the meeting at 10:06 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Reviewed and edited by,
Corinne Marcou, Zoning Clerk