

**Zoning Board of Adjustment
Monday, January 4, 2021, 6:30 p.m.
City Hall Council Chambers
3 Washington Street, 2nd Floor**

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – December 7 & December 15, 2020
- III. Unfinished Business
 - A. Chair and Vice-Chair voting for 2021
- IV. Hearings:

ZBA 21-01:/ Petitioner, Frank Patel of 6 Woolsack Dr., Westford, MA, represented by Adam Kossayda, of Bragdon, Baron & Kossayda of 82 Court St., Keene, requests a Variance for property located at 443 Winchester St., Tax Map #115-028-000; that is in the Industrial District. The Petitioner requests a Variance to permit an employee lounge at the existing business at 443 Winchester St., for employees may stay in the lounge overnight, as needed, during inclement weather per Section 102-632 of the Zoning Ordinance.

ZBA 21-02:/ Petitioner, DLC Spofford, LLC of Spofford, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Variance for property located at 800 Park Ave., Tax Map #227-002-000; that is in the Commerce District. The Petitioner requests a Variance to allow construction of a covered outdoor seating area within 15 feet of the property line where a 25 foot setback is required per Section 102-791 of the Zoning Ordinance.

ZBA 21-03:/ Petitioner, Angela and Adam Robinson of 17 Birch St., Keene, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Variance for property located at 17 Birch St., Tax Map #545-030-000; that is in the Low Density District. The Petitioner requests a Variance to allow the expansion of an existing one car garage by an additional two feet to allow the garage to be utilized to store two cars. The existing garage sits with four feet of the property line. The proposed garage proposes to site within two feet of the property line per Section 102-791 of the Zoning Ordinance.

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

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1 City of Keene
2 New Hampshire

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5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Monday, December 7, 2020**

6:30 PM

Remotely via Zoom

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

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

15
16 **I. Introduction of Board Members**
17

18 Chair Gorman called the meeting to order at 6:33 PM. Roll call was conducted.
19

20 **II. Minutes of the Previous Meeting – November 2, 2020**
21

22 Ms. Taylor stated that she has several corrections.
23

24 Chair Gorman made a motion to approve the meeting minutes of November 2, 2020. Mr. Welsh
25 seconded the motion.
26

27 Ms. Taylor stated that her general comments are that throughout the draft minutes of the
28 November 2, 2020 meeting, whenever the Board reviewed the individual criteria, the minutes
29 indicate that the criterion was “granted,” and she thinks that should instead say “approved,”
30 because it is the application that is granted, not the individual criteria. She continued that the
31 second correction she has is regarding something that, again, appears throughout the minutes: in
32 the voting, traditionally the Board indicates the affirmative votes first followed by the negative
33 votes. For example, if no one favored approving a particular criterion or application, that vote
34 would be “0 to 5,” and that is not how it is presented in the minutes. It would be helpful if Staff
35 went through and corrected it so the affirmative votes, even if they are 0, appear first.

Chair Gorman asked what specifically she is referencing. Ms. Taylor replied that there are several instances of this as example, on page 27 of 90, line 1051. It says “denied 4 to 1” and should say “denied 1 to 4.” On line 1054 it is the same issue. On the same page, line 1056, it says “granted” but should say “approved.”

Chair Gorman asked for Staff to review and correct.

Ms. Taylor continued with her corrections:

- Page 8 of 90, line 190: where it says “Chair Gorman agreed,” she thinks it is more accurate to say that “Chair Gorman confirmed that was correct.”
- Page 11, line 331: “Peter Starkey, on behalf of 64 Beaver St.,” should be “Peter Starkey, on behalf of Monadnock Peer Support Agency.”
- Page 21, line 774: “Mr. Hoppock replied yes” should be “Mr. Rogers replied yes.”
- Page 30, line 1162: the words “usable pallets” should be changed to “unusable pallets.”

Chair Gorman stated that his motion is to approve the minutes with changes. He asked if Mr. Welsh agreed which he replied yes. The motion to approve the minutes with changes passed by unanimous vote.

III. Unfinished Business

Chair Gorman asked if there is unfinished business. Zoning Administrator John Rogers replied no.

IV. Hearings:

a. Motion to Rehear: A Motion to Rehear petition ZBA 20-24, 850 Marlboro Rd., Petitioner, Rocky Brook Realty, LLC, has been submitted by Andrew Symington of Keene

Chair Gorman stated that this is not a public hearing so the Board can begin its deliberations. He asked for thoughts. Mr. Welsh stated that if he understands the Motion correctly, the point was the fact that the Board did not adequately appreciate the presence of the site within the floodplain. He continued that they may have seen the floodplain in some of the drawings put forth by Staff but, not appreciated it fully and it was not part of their discussions. He asked if his assessment is correct. Chair Gorman replied that he believes so. He continued that the Applicant also stated that the Board was too tired.

Ms. Taylor stated that the minutes show that the issue of the floodplain, Shore Land Protection, and the Overlay District were all discussed. She continued that one of the Applicant’s concerns appears to be that the Board deliberated in closed session, but actually, they deliberated appropriately after the public hearing and the deliberations are not part of the public hearing. She thinks the deliberations were appropriate and she did not find any new information or

79 anything else that would change the deliberations and she thinks the Board acted totally in
80 accord with the requirements of the statute and the City ordinances.

81
82 Mr. Hoppock stated that he did not see that the Applicant made any argument that the Board's
83 decision was unlawful or unreasonable in any sense, and that is the standard, so he would agree.
84 He continued that he will not support the Motion.

85
86 Chair Gorman stated that he is not inclined to support the Motion either. He continued that he
87 does not see anything new or anything indicative that the Board did not do their job.

88
89 Mr. Hoppock made a motion to grant the Motion to Rehear for ZBA 20-24. Ms. Taylor
90 seconded the motion, which failed with a vote of 0-5.

91
92 Mr. Hoppock made a motion to deny the Motion to Rehear ZBA 20-04. Ms. Taylor seconded
93 the motion, which passed with a unanimous vote of 5-0.

94
95 **b. ZBA 20-26:/ Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene,**
96 **represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester**
97 **St., Keene, requests a Change of a Nonconforming Use for property located at 15**
98 **King Ct., Tax Map #122-022-000; that is in the Low Density District. The Petitioner**
99 **requests a Change of a Nonconforming Use from a now vacant fitness center to a**
100 **lodging house (homeless shelter).**

101
102 Mr. Welsh stated that he needs to recuse himself from this hearing because his employer is an
103 abutter. Chair Gorman stated that Mr. Gaudio, as Alternate, will sit in for Mr. Welsh. Ms. Zerba
104 will be present for commentary but will not be voting.

105
106 Chair Gorman asked Staff to speak to this petition.

107
108 Mr. Rogers stated that 15 King Ct. is near the intersection of Main St. and Route 101 and is in
109 the Low Density District. There is some Commerce across the highway where Agway and a ski
110 and bike shop are, but the majority of property surrounding this property is Low Density. Prior
111 to 1981, this space was used by the State of NH's Library System. In 1981, the Board approved
112 what they then called an "Alteration of Non-conforming Use" to allow a retail and wholesale
113 picture frame business; The Indian King Framery business was there for many years. In
114 September 2018, the Board approved a change in non-conforming use from that retail use to a
115 fitness facility which is the current permitted use. The current Applicant would like another
116 change in non-conforming use to a lodging house/shelter, which is not an allowed use in this
117 district.

118
119 Chair Gorman asked if anyone had questions for Mr. Rogers. Mr. Gaudio stated that he believes
120 there are other properties nearby or adjacent that are in a Low Density District but used for
121 commercial office buildings or similar use. He asked if that is correct. Mr. Rogers replied yes,

there are other commercial businesses nearby. He believes that the building just to the east of this, are office-type businesses. The majority of the other properties are single-family homes that are to the northeast side of this property.

Mr. Gaudio asked if those commercial properties received approval from the Zoning Board for their non-conforming use or by a variance. Mr. Rogers replied that he does not know; he did not research the surrounding properties.

Chair Gorman stated that the Board has received and read over 100 letters submitted by the public regarding this topic, both in support and in opposition. He continued that those letters have been filed into the record. He opened the public hearing and explained the procedures for participation.

Chair Gorman asked Jim Phippard, representing Hundred Nights, Inc., to speak.

Mr. Phippard stated that he is representing Hundred Nights, Inc., which has filed an application for a Change in Non-conforming Use for 15 King Ct. He continued that he will address the criteria.

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

Mr. Phippard stated that he believes that this change to be true, because previous uses on this property were business uses in nature. Most recently, a fitness center occupied the building, and before that, a retail framing business. The change to the use that Hundred Nights is proposing is not exactly a homeless shelter or lodging house, per se, but it is a portion of the homeless shelter operations. That distinction is important because this will not be occupied on a full-time basis but will be used as sleeping quarters only in an attempt to replace overflow beds that the homeless shelter has lost due to COVID-19. They previously had facilities in St. James Church and the United Church of Christ (UCC) with that possibility no longer existing, primarily due to COVID-19 and the requirements to occupy those spaces under the social distancing guidelines. Mr. Phippard stated that is what is driving Hundred Nights to look for additional sites where to provide sleeping quarters. This request is to allow Hundred Nights temporary use of the property, beginning now, through this winter and next winter, ending on April 30, 2022. If the Board was inclined to approve this request, Hundred Nights would not object to conditions restricting the use to sleeping quarters only, and restricting the use to extend no further than April 30, 2022. Mr. Phippard stated that should alleviate concerns people have expressed to the Board and to him from abutters and those in opposition.

Mr. Phippard continued that the building would not be open to Hundred Nights guests until after 6:30 PM which would only be open as a sleeping facility. Anyone sleeping there would be shuttled to the property from the current Lamson Street shelter in the early evening then again in the morning when the King Court location would close at 7 AM. People would not be encouraged to go to the facility on their own. The only activities during the day would be staff cleaning or maintaining the facility. It would not be used for any of the shelter practices that

typically occur in the resource center, which will continue to be located on Lamson Street. Even though Hundred Nights can no longer use the St. James facility for overnight beds, they are allowed to use that facility as the resource center which they are currently and will continue doing for the near future.

Mr. Phippard stated that for the 15 King Court property, the use in the building is very restrictive and again, Hundred Nights would be agreeable to conditions that clearly outline that restriction. They feel that the use as sleeping quarters is a residential-type use in character, much more so than previous uses as a fitness center and a retail store. They do not feel this type of use would introduce more traffic into the area, since they are looking at transporting guests from their location on Lamson Street. Other than that, the only traffic to and from the facility are the staff who clean and maintain the facility during daylight hours. There should not be a lot of interference with local traffic and the business activities that currently exist on this property.

Mr. Phippard continued that Hundred Nights thinks this is in the best public interest and does meet the spirit and intent of this ordinance to allow the use under the conditions he has described. They think it is much more consistent with the intent of the Low Density District and the existing residential uses. As seen on the slide Mr. Rogers presented, there are Keene State College (KSC) dorms in the area, single family homes to the right of that and some rental homes, which is all exactly within the intent of the Low Density District. What Hundred Nights is proposing, is in keeping with that, more so than the previous business uses.

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

Mr. Phippard stated that Hundred Nights thinks that sleeping quarters should be much less injurious, obnoxious, or offensive to the neighborhood than the business uses allowed there previously. He does not know the exact hours the fitness center had, but typically fitness centers operate into the evening, as people tend to go after work. Hundred Nights thinks that by operating from 6:30 PM to 7:00 AM they can operate in a manner that is not injurious, obnoxious, or offensive to the neighborhood. The restrictions he described would be adequate to protect the interests long term of the neighbors and would help to solidify this representation that he is making.

Mr. Phippard continued that he knows an opinion letter was sent by Brian Underwood, a professional real estate appraiser, stating that he feels that this would contribute to devaluation of the properties adjacent to this site and in the neighborhood and he disagrees with that finding, for several reasons. Firstly, that is Mr. Underwood's opinion. Mr. Underwood is experienced, has an impressive resume, and writes well, but after stating his opinion he does not offer any examples or evidence to show that Hundred Nights has caused property devaluation in the City of Keene. Mr. Underwood's letter concluded that "*The City of Keene's Assessing Office has, in the past, made certain reductions to assessments to account for abutting parcels that have adversely impacted their value.*" Hundred Nights has been in existence in Keene for a little over ten years, at the same location on Lamson Street. Mr. Phippard stated that emailed the City's

Assessor Dan Langille, questioning if there is a negative effect on property values associated with being near the Hundred Nights shelter on Lamson Street, though this shelter is different from what Hundred Nights is proposing at 15 King Ct. The shelter on Lamson Street is a full operational shelter, with a resource center, operating 24 hours a day/seven days a week. There are reasons for homeless people to be there during the day, as they receive support services at the resource center, which currently is located at St. James Church space adjacent to the shelter, and also within the shelter itself. In his response email, Mr. Langille, pointed out that Hundred Nights has been in its Lamson Street location for ten years and that he personally found no evidence indicating devaluation of properties. In fact, when they reviewed a list of the assessed values for all of the abutting properties to the Lamson Street shelter, they found that those properties' valuations were less changed than the balance of properties in the City of Keene. Reductions in property values over a ten year period were roughly 1.8%; where city-wide they were 5.7%. Thus, they found evidence of the opposite: absolutely no diminution of property value. Mr. Langille replied to Mr. Phippard's email on December 3 stating, *"We are currently not applying any specific negative adjustment factors directly related to Hundred Nights to any properties located near their 17 Lamson St. location. It should be noted that on Lamson St. the property abuts exempt properties owned by the St. James Church as well as parking lots owned by the County and the City across the street. The other surrounding properties are mixed-use properties and primarily accessed off of Main St., West St., or Gilbo Ave. Let me know if you have any further questions."* Mr. Phippard stated that this was Mr. Langille's entire response, which he feels supports his observation that there was no diminution of property values associated with Hundred Nights or being in close proximity to them. There are properties on St. James Street, such as Sid's Furniture Store, and the Keene Sentinel building, which look directly at the resource center, and if anyone would be affected, they would be but, the valuations shows were not affected. Thus, in the absence of evidence to the contrary, he thinks you have to acknowledge that the City of Keene's Assessing Department recognizes no negative effect on property values associated with Hundred Nights on the Lamson Street location. He thinks the same would be even truer on King Court, since they only propose to use the location as sleeping quarters.

Mr. Phippard continued that he worked with Mr. Underwood before and is working with him now on another project in a different town, where Mr. Underwood was asked to give an opinion on the effect of a project on property values. Part of his report that was submitted on that project application on November 15, 2020 says: *"It is not uncommon for a property owner to claim that their property's value will decrease because of a proposed project. In the course of my 28+ year career, I have been asked many times by abutters proposing the project to opine that a proposed use will adversely impact their property values. In most cases, as in this case as well, the market data, along with researching the actions of buyers and sellers in the marketplace, result in indisputable evidence that in fact there is no diminution of value. It is easy to claim an impact; however, the supporting evidence and market data indicates otherwise."* Mr. Phippard stated that this statement further supports his claim that Hundred Nights' proposed activity at this location would not diminish property values and would not have a negative effect on the properties in the neighborhood.

251 He continued that he knows that some people are uncomfortable seeing a homeless person walk
252 by their property or walk down the street. There is a stigma our society has created for people
253 who are homeless. He understands that some homeless people have mental health issues and
254 some of them have additional issues, but today more than ever, the occupants of homeless
255 shelters are everyday people who lost their jobs or were evicted from their apartments, or for
256 other reasons are homeless. The standard here is not that people would be made uncomfortable
257 seeing these homeless people at this building, the standard is that they would be harmed or
258 would have diminished property values as a result of allowing this use. He thinks the only
259 evidence before the Board is the evidence that he has given them, nothing from Mr. Underwood
260 or the opponents indicating any negative effect on property values. He believes that this request
261 should be approved. He thinks it is appropriate for the Board to approve it with conditions
262 restricting the use on a limited basis as he described, terminating April 30, 2022, and they would
263 be willing to allow it to be restricted to Hundred Nights, Inc., for sleeping quarters only. They
264 would also be willing to restrict the number of beds in that facility to no more than 24. They are
265 not looking to expand the number of homeless beds that are available in the Keene area; they are
266 trying to maintain the same number of beds that they had a year ago. This is not an attempt to
267 grow or expand the operation.

268
269 Mr. Phippard continued that Hundred Nights recently received approval for construction of a
270 homeless shelter in what they hope will be a permanent location at 120-124 Water St. That
271 application has been appealed and the Board denied to reconsider it. He agrees that decision was
272 correct. They made no errors within that application. An appeal has been filed in the Superior
273 Court. Hundred Nights will continue fighting that appeal, believing they ultimately will prevail
274 and will be building a permanent homeless shelter in that location.

275
276 Mr. Phippard stated that he would be happy to answer questions. If this meeting had been in
277 person he would have given the Board a hard copy of Mr. Langille's email, but he did read it
278 accurately into the record.

279
280 Chair Gorman stated that the Board did receive copies of the email. He continued that he does
281 have some questions regarding Mr. Phippard's reference to this application as a "residential use".
282 Chair Gorman stated that he sees this as a commercial use similar to a lodging house. A
283 residential use is a single- or two-family home with no more than a four unrelated people in a
284 dwelling unit. This proposed use at 15 King Ct., is a commercial use which people will reside in
285 does not make it a residential use, the same as how a motel is not residential. Chair Gorman
286 asked if Mr. Phippard if he would like to explain how he thinks this view errs.

287 Mr. Phippard stated that he disagrees with how Chair Gorman is representing this. He continued
288 that people sleeping at Hundred Nights are not renting a room or paying a fee to occupy the
289 space. It is not operated as a business. This is a space that gives people a place to sleep and it is
290 a temporary use. This is not commercial in nature. The physical act of sleeping in the building,
291 even though it is more than four unrelated people, puts it into the "lodging house" category. He
292 feels that is residential in nature, much more than it is commercial in nature.

Chair Gorman stated that he thinks they will have to agree to disagree and questioned how the price of a room dictate whether or not it is commercial. He continued that Hundred Nights has a Board, and economic commitments they need to meet. Just because it is a non-profit organization does not mean it is not a business entity, needing to take money in from whatever source. Thus, regardless of whether people are paying, it is still the same type of purpose with people sleeping in one building, thus, a commercial use.

Mr. Phippard replied that he will continue to agree to disagree. He stated that if anything, it is closer to an "institutional use" than commercial. He agrees that Hundred Nights has a Board of Directors and needs to raise money for expenses, but he feels that the nature of the use, occupying a building to sleep, is more consistent with a residential use than a commercial use.

Mr. Gaudio stated that he thinks the question here is whether or not it is more in the spirit and intent of the Zoning Ordinance. He continued that as he reads the ordinance, he sees two aspects to this. This property is the Low Density District but, it has both low density and residential aspects. He heard Mr. Phippard speak to the residential aspect, but regarding the low density part, the number of people occupying the building are not similar to the number of people living in a residence elsewhere. Those are one- or two-family, or in some cases three-family occupancy but, they are not the number that Hundred Nights are proposing. This proposal is more like a hotel or motel use, with the kind of density that is there, rather than the density of a single-family or multi-family house. He asked for Mr. Phippard's comments.

Mr. Phippard stated that he maybe repetitive, but, he still feels that the use of the building for sleeping purposes makes it primarily a residential use in character. He continued that Hundred Nights is not charging for these rooms or beds and it is much different than the businesses that previously occupied the property. The fitness center had classes with multiple people, with approximately 10-15 people in a class, with several classes a day. That certainly is not consistent with a low density, residential neighborhood. King Court has two rather large office buildings, three stories with multiple offices, with occupants and visitors coming and going throughout the day. That is certainly not within the residential character, either. Thus, what Hundred Nights is proposing is appropriate and more consistent than the business uses that exist on King Court and is also more compatible with the neighborhood than those businesses. While Hundred Nights' use does not fit the low density designation as Mr. Gaudio described it, none of the previous uses did either, especially given that location. The location looks directly at Rt. 101 and a busy intersection with about 12,000 cars per day, and tractor-trailer trucks all night. It is certainly not consistent with a low density neighborhood as well. If this building were torn down, he does not think there would ever be a single-family home built on it because of the location. He thinks the use Hundred Nights is proposing is benign and low intensity in nature. For that reason they hope the Board allows it.

Mr. Greenwald stated that he is envisioning sleeping quarters with some staff members. He asked how many staff members would be there each night and what type of security measures would be taken. He continued that he is not asking because he is assuming any danger, but of

course the people coming and going with not always the same people as you might see in a tenancy or people that are known to live there. He also stated there are woods nearby and would like details on the staff count and the security planned.

Mr. Phippard stated that the Hundred Nights Director, Mindy Cambiar is a panelist as well and could elaborate more but, he thinks there would be two staff people awake all night if there are any occupants in the building. He continued that there will be flexibility during the year with colder months expecting occupancy but during the warmer summer months, they expect lower occupancy as the Lamson Street shelter could house guests. Portions of this property are fenced and they can certainly add fencing along the north side if there is concern about guests of this facility walking off into the woods heading toward KSC or the private neighborhood to the north. He does not think there would be a lot of outside activity as people going to the homeless shelter are looking for shelter for the night. They will be going to the Lamson Street building, not reporting to this facility; they will be delivered to this facility by a van if Hundred Nights does not have adequate beds at the Lamson Street facility. Other than that, they are not going to have armed guards as this is not a prison. Mr. Phippard concluded that if people want to step outside to have a cigarette, they will be allowed too and asked if Ms. Cambiar had anything to add.

Mindy Cambiar, Executive Director of Hundred Nights, of 447 Park Ave., stated that she has heard that people are afraid that guests from Hundred Nights will hang out there during the day, and she does not think that is a realistic assumption as the building will not be open during the day and questioned why anyone would be there if it wasn't available. She continued that she thinks most of the Hundred Nights guests want to go somewhere where they feel welcomed, and will be found at either the Library or Hundred Nights' resource center or someplace where they can have coffee and food. She continued that Hundred Nights can install security cameras around the perimeter of the Kings Court property and are willing to make sure that the only place where people can smoke cigarettes before lights out at 10:00 PM, would be at the back side of the building. Some abutters were worried about seeing people smoking, which she does not think will be an issue, because people will only be there overnight. Everyone will be out at 7:00 AM except for the cleaning staff.

Chair Gorman thanked Ms. Cambiar, and asked if everything else Mr. Phippard represented was pretty accurate, in terms of the staff on site. Ms. Cambiar replied yes, and stated that she agrees that there will probably be fewer than 24 people there overnight during the summer months. The numbers typically go down as it gets warmer because people have found housing or found someone to stay with, or people have decided that when it is warm outside they want to be elsewhere other than a place where there are rules and regulations to follow. But in the winter it is crucial that people have a place to be inside so that they do not freeze to death. She stated that is the whole point of this application as they do not want anyone getting sick or dying because they are outside.

Chair Gorman asked, even though he knows this has been covered, for more details about potential staff. Ms. Cambiar replied that if approved, their plan is to shuttle people to Kings

380 Court. They have been talking to some of the auto dealers in the area, about getting a passenger
381 van to transport people from and to the resource center. They have also reached out to the City
382 Express to see if they could contract with them for the transportation though there is nothing
383 confirmed as of yet. Ms. Cambiar continued that if Hundred Nights are allowed to be in this
384 location, they will have staff there at approximately 6:30 PM. There would be one staff person if
385 there are fewer than twelve guests, and two staff people if there are more guests. She continued
386 that security cameras will be installed and that staff will be awake overnight and once all the
387 guests are shuttled back to the Lamson Street shelter, staff will also leave the property.

388
389 Mr. Hoppock asked Ms. Cambiar if it is correct that the shuttle would transport guests to the
390 facility by 6:30 PM, and then they would leave at 7:00 AM. Ms. Cambiar replied yes, the shuttle
391 would begin at 7 AM and they are expecting with the number of guests they are expecting, it
392 many take two trips for everyone to be brought back to the Lamson Street shelter. Mr. Hoppock
393 asked if she said lights out is at 10:00 PM. Ms. Cambiar replied yes. Mr. Hoppock asked what
394 kind of activity is anticipated between 6:30 PM and 10:00 PM to keep people occupied. Ms.
395 Cambiar replied that in this location, 24 beds do not take up a lot of space in the building. The
396 building is laid out beautifully so that people could be spread out with less danger of COVID-19,
397 and they would also have the ability to have people play a game. She estimates that about 70%
398 of the people who come in at 6:30 PM are people who want to go to bed right away. Families
399 with kids, and people who have been outside, are cold and tired, and just want to go to bed.
400 Others may want to stay up until 10:00 PM and noted she misses the pre-COVID days with
401 volunteers and guests interacting with conversations and games being played. That is the kind of
402 thing they like to encourage. Other people like to come in and be quiet and read a book in their
403 own little corner. She does not think there is any kind of activity that would go on there that
404 would be frowned on. People do want to go outside to smoke cigarettes, and Hundred Nights
405 provides a place for people to smoke then to dispose of their cigarette butts, outside in the back
406 of the building.

407
408 Mr. Hoppock asked what steps would be taken to make sure people are not wandering out of the
409 building and coming and going as they please. Ms. Cambiar replied that her feeling is that if
410 they are that far away from any other service and people would have to walk back and forth into
411 town that is unlikely to happen. She continued that people do not like being out when it is
412 freezing cold out with bitter temperatures or when it is snowing. It has been harder to deal with
413 this issue downtown, because people might wander off to a store or a bar or whatever, but, those
414 are in walking distance. Walking distance is much more difficult when you are that far away
415 from the downtown. And certainly a family with children is not going to leave the building.
416 Chair Gorman asked if anyone else had questions for Ms. Cambiar. Hearing none, he asked if
417 anyone had further questions for Mr. Phippard. Hearing none, he thanked Ms. Cambiar and Mr.
418 Phippard then welcomed public comment. He asked for comments in support first, before
419 comments in opposition.

420
421 Reverend Elsa Worth of St. James Episcopal Church of 44 West Street stated she first wanted to
422 talk about the personal experience of having had Hundred Nights guests sleeping in the St. James

building. She thinks the objections to this are without grounding, because for St. James, they were not just a parking lot or a few blocks away from these people sleeping, they were in St. James' very own building. The guests would come in at night, after all of the ministry activities were done, were gone well before anything else began and cleaned up after themselves. St. James folks pretty much would never have known the Hundred Nights guests were there. Because she has had this experience in her own building, she cannot even imagine why abutters or nearby neighbors or neighbors a few blocks away would have opposition to this use, especially since Hundred Nights is going to delineate the use so clearly. The second issue she would like to address is whether or not it is a commercial enterprise. Rev. Worth continued that they need to look at this with the eyes that most of us do not have. Most of us, at the end of a long day, have a house to go to, with windows, a roof, and a bed to get into with blankets, changes of clothes and hot showers in the morning, and food in the fridge. Most of us, if we want to go to a hotel or a lodging house and pay rent to go there, can. But these people do not have any of that. She continued that this is their home, their residence; it is all they have. Most of us would never choose that for ourselves. Even though that is the case and they live with a number of people in one place, it is their home, for that night. She would really recommend this change of use, because this particular building is so well-suited for the use, with its new HVAC system and the showers with plenty of room to deal with pandemic spacing. It is at the end of a dead end road, and not near anyone. People will not be anywhere near as close as they were to them at St. James. She heartily supports this change in use for this temporary amount of time, to tide Hundred Nights over until they are on Water Street, and she is having a very hard time understanding why anyone would object. These people in our midst, are our brothers, sisters, coworkers, friends, classmates, and parents, and if any one of us were in their shoes, we would hope that the City would want an adequate, safe, and pleasant place for them to sleep.

Seeing no one else wishing to speak in support, Chair Gorman stated that people in opposition may speak.

Attorney Jason Reimers of 3 Maple St., Concord, stated that he is with BCM Environmental and Land Law with an office in Keene. He and Attorney Tom Hanna, represent 19 citizens who own properties that will be directly affected by this location. Most of his clients are deferring to him to speak on their behalf and he appreciates the time the Board has given. He will discuss the applicable legal criteria and then the appraiser, Brian Underwood, will give a summary of his findings, and then two clients would like to make some brief remarks; Bill Beauregard and Ken Bakke. They submitted a September 8 package of exhibits, a September 17 letter, and a September 21 letter by Mr. Underwood, and he assumes those have all been received.

Mr. Reimers continued that homelessness is a serious problem that needs to be addressed, but it needs to be addressed deliberately. As the Board knows, Keene has been working on an overhaul of the Zoning Ordinances, which might be approved as soon as March. One of the purposes was to find appropriate locations for homeless shelters. It is his clients' position that allowing a shelter at King Court, would override the thoughtful and deliberate process of revising the ordinance. It would place a shelter in a location that the new ordinance would not allow, based on his understanding of the current draft. He understands that there is federal

money available that Hundred Nights may or may not qualify for; however, this money, as well as the homelessness problem, are not relevant to the legal standards that the Board must consider to decide this case. The legal standards in Section 102-207 are high, and the applicant must satisfy every part of it. Because the proposed use is compared to the prior use, he would say that in this case, the legal standard is no less difficult to satisfy than the Variance standard, because of the prior businesses that are being compared.

Mr. Reimers continued that he listened to Mr. Phippard's presentation and does not see that the Applicant has provided any evidence, other than to talk about property values downtown around the Hundred Nights shelter, to support their application, and it is incumbent upon the Applicant to present evidence. He has not seen any evidence talking about how the Applicant satisfies the legal standards in Section 102-207 with regard to this neighborhood. There has not been a real estate expert produced. He does not understand Mr. Phippard to be so. There is no report regarding diminution in value from the Applicant.

Mr. Reimers stated that the first question in Section 102-207 is whether the shelter is more in conformity with the intent of the Low Density District than the fitness center was. Section 102-361 clearly articulates the intent of the Low Density District: "*The intent of the Low Density District is to provide low density/low intensity lots for single-family dwelling units.*" The words "low density" and "low intensity" are the key. The fitness center and frame shop were 'ordinary businesses' that were open during the day and closed at night. Those were low density and low intensity. The proposed shelter would have up to 24 people from 6:30 PM to 7:00 AM. That is not low density. This is much higher density than the fitness center, and that is the comparison the Board needs to make.

He continued that the Hundred Nights shelter is not low intensity. In his clients' September 8 filing, they submitted a summary of police responses to Lamson Street. From November 11, 2019 to May 31, 2020, the police visited Lamson Street 126 times. Often, it was for very serious matters, including theft, criminal threatening, and assault, harassment, intoxication, and noise complaints. Granted, the list also states non serious items as well, however, more than 40 of these visits occurred between the hours of 6:30 PM and 7:00 AM. Even a tiny fraction of this would be a great increase in intensity for King Court. Police activity, especially after dark, is highly intense for neighbors, and virtually nonexistent right now on King Court, as it was during both the time of the frame shop and the fitness center. The Applicant argues that the proposed use is residential in nature and therefore more compatible with this residential district than the fitness center was. Mr. Reimers continued that some of the Board members may agree that Hundred Nights is not a residential use. The Applicant, he thinks, mistakes the intent of the district as being all things residential while ignoring the low density and low intensity intent that applies to all uses, whether residential or commercial or otherwise. It is the low density/low intensity that is the key, not residential. When he says this is not a residential use, there are attributes of it that are residential, such as people sleeping, but this is not overall a residential use. The fitness center and the frame shop were more in conformity with the intent of the district even though they lacked residential characteristics.

Mr. Reimers continued that the Board also has to find that the shelter is more in conformity of the spirit of the district as the intent was clearly stated in the ordinance. Regarding the spirit, he looks in the Variance context, where the court evaluates the spirit of the Zoning Ordinance in terms of whether the proposed use will change the character of the neighborhood and a shelter with up to 24 residents will change the character of the neighborhood, much more so than the fitness center or frame shop did, and will change it for the worse. When Hundred Nights was before this Board in 2017 seeking a Variance for a location in the Central Business District, it was represented by Brickstone Masons. The minutes of that hearing state: *“Mr. Bergeron said that the best place to put the shelter would be in the Central Business Zone and not in a residential zone.”* He was right, a residential zone is not appropriate. Mr. Reimers stated how there are uses in this district that are not residential but overall it is a quiet, mixed residential and light office use zone. The shelter will change the character of the neighborhood more than the fitness center did. He further stated that a shelter is not more in conformity with the spirit of the district, so the Board must deny the application on that ground as well.

Mr. Reimers continued that the application mentions that an institutional use is allowed by Special Exception in this district and that is partly accurate. Institutional uses are allowed by Special Exception in certain parts of the Low Density District. Those are separately listed in Article 5, Division 12. King Court is not listed there so it is incorrect that a Special Exception could allow an institutional use. It is another showing of the intent of the district and the drafters of the ordinance’s consideration of where in the district more intense uses would be more appropriate, and they did not choose King Court as being one of those places.

He continued that the second criteria of Section 102-207 is “injurious, obnoxious, or offensive.” In order to approve the application, the Board has to find that the shelter is not more injurious, obnoxious, or offensive to the neighborhood. The Applicant calls this a “benign use.” The dictionary defines “benign” as “harmless.” The police were on Lamson Street 126 times in 201 days. That is evidence of injurious, obnoxious, and offensive behavior associated with the operation of this shelter, albeit in a different location, but it is the same use. Further, Ms. Cambiar described the shelter’s guests in an NHPR interview in 2017 and said: *“We have a population of homeless that includes people who have some kind of mental illness that is perhaps untreated. We have some people who are definitely just released from jail because of one thing or another. Drugs have been huge. We’ve had a lot of alcoholics this year who were drinking actively and coming in. We can’t not take everybody in because that was our mission.”* The frame shop and the fitness center were benign, and compatible with the neighbors. They were open in the day and closed at night, but here, the shelter would be open from 6:30 PM to 7:00 AM with the clientele that Ms. Cambiar described. Obviously, she is not describing the entire clientele, however, that is a part of the clientele and that is very relevant to the standards in Section 102-207. This is not a nighttime-only operation or a sleeping-only operation. For half the year or more there are significant sunlight hours after 6:30 PM. Hundred Nights cannot force people to stay inside or even stay on the property. According to neighbors he spoke with at the current location on Lamson Street, it is not uncommon to find alcohol containers, needles, and condoms in the vicinity. It is common to encounter people who are under the influence of drugs

or alcohol. The fitness center did not bring any of this activity to the neighborhood and that is the comparison the Board has to make.

Mr. Reimers continued that the proposed shuttles will not resolve the problems. First, there is no plan set up for these shuttles. He hears that there is a plan to make a plan. But even if the shuttles were lined up and ready to go, you cannot force someone into a shuttle, either to get to or leave King Court. Even if you think shuttles will lessen the impact, the shuttles will not make the shelter less injurious than the fitness center, which is, as he keeps saying, the comparison the Board is required to make under the Zoning Ordinance. People will walk to and from King Court and will walk from other parts of Keene. Ms. Cambiar suggested that they would be spending their days at the Library and other places downtown, so, they will be cutting through campus and through the KSC Pondside Dorm area to get to and from the shelter property. They will walk down Main Street as well as from other parts of Keene and cross Rt. 101, which is dangerous.

Mr. Reimers continued that in response to Mr. Hoppock's question about keeping people on site, Ms. Cambiar's stated that because there are not any other services nearby, people will stay on site. He questions whether that will happen, and his clients who live and work in the neighborhood also question that. Hundred Nights cannot force people inside or to stay on the property or into shuttles. If Hundred Nights accepts walk-ins that will encourage more walk-ins, and if they do not accept walk-ins, then the neighborhood is left with people needing a place to go. Either way, the neighborhood will be injured, more so than by the fitness center. If someone is expelled during the night, as is called for by the guidelines of the shelter, they are asked to leave. In this case, they will not be exiting into downtown, they will be exiting into the low density neighborhood of King Court. In contrast, the fitness center was not injurious to the neighborhood at all. Even if you think that the shelter would be minimally more injurious than the fitness center, you still must deny the application under Section 102-207. The new use cannot be any more injurious than the prior use.

Mr. Reimers continued that the shelter will also cause economic injury. Injury to the property values he thinks is acknowledged by the Applicant as being a relevant injury under Section 102-207. The closest neighbor is Ken Bakke, who owns 11 King Court who submitted a letter to the Board in the September 8 submission. That included photos showing the barn before Mr. Bakke invested a million dollars into the building which has currently three commercial tenants, State Farm, and two businesses of engineers, and there is one vacant office. The tenant's park in the rear of the building and the parking space is about 30 feet from the front door of the proposed shelter. These buildings are really close together with Mr. Bakke's property including some parking spaces in front of the shelter and a portion of all the rest. Mr. Reimers stated that he submitted plans along with the September 8 packet that also highlighted where Mr. Bakke's property is. He continued stating Mr. Bakke's tenants often work after hours, and that he has heard from them that they are concerned about this and would not feel safe doing so if the shelter is approved. Mr. Reimers stated that also submitted is a letter from J.R. and Marybeth Coughlin, who own the white building at 441 Main St. on the corner, on the other side of Mr. Bakke's

building. They also have commercial tenants who work in the evenings. The Coughlins' letter is built on 35 years of real estate experience and testified about the shelter reducing their property values by impacting their ability to keep tenants and to attract new tenants. This will substantially decrease the rental income of their property and others, and thus the values. Mr. Reimers requested the Board to consider the Coughlins' and the Bakke's real estate and business experiences, as these are real concerns.

Mr. Reimers stated that these concerns are supported by Brian Underwood, an experienced appraiser. He believes that Mr. Phippard said that there is a stigma towards the homeless. The definition of "stigma" is *"an adverse public perception regarding a property, the identification of a property with some type of condition which extracts a penalty on the marketability of the property and hence its value."* He thinks he just proved Mr. Underwood's and the Coughlins' point with regard to property value. Mr. Underwood will give a summary of his findings.

Mr. Reimers stated that in his letter, Mr. Underwood noted that even if Hundred Nights rents and uses this property for a couple years, which they have learned at this meeting is the plan, the change of use runs with the land. This is a permanent use that would be conferred. He has never heard of a Variance or use like this being conditioned on the length of the use. Mr. Reimers questioned what would happen if Hundred Nights returned to the Board to request an extension of the use. He further stated that an approval of this application could also be seen as a "temporary taking" for the next year and a half of his clients property. Even if the use is only until April 2022, as currently planned, the use still has to satisfy every part of Section 102-207. That section applies, regardless of the duration of the proposed use. Even a lease until April 2022 is more injurious than the prior use of the fitness center, so it still would not satisfy Section 102-207. The duration here does not change the legal analysis.

Mr. Reimers stated that in conclusion, the evidence does not support a finding that the Applicant satisfies any of the criteria, much less all of them. He disagrees with Mr. Phippard that he and his clients have not supplied evidence. They have supplied police logs, Ms. Cambiar's prior statement about disruption of the guests, and they have provided Mr. Phippard's business's prior presentation saying a residential zone is not the best spot for a homeless shelter. They have provided the actual real estate expert's opinion. Mr. Underwood can speak to the quote that Mr. Phippard quoted from Mr. Underwood's work in another case. Mr. Underwood's letter stands on its own and it is the only piece of evidence here regarding the property values and the injury to them in this neighborhood. To support this application, the Board must find that all of the criteria are satisfied and he does not think Hundred Nights satisfied any of the criteria and to define it otherwise would be a legal error.

Ms. Taylor stated that she looked over all the police reports and she does not mind them presenting that evidence, but she is a little concerned that they are not being presented as what they actually are. She continued that she cannot give exact numbers tonight but she was amazed at the number of items where there was either no police action taken, or it was the address that was given but the issue was somewhere else in town, and so on and so forth. She is a little

638 concerned that the Board is being presented with “126 visits,” but many were just welfare checks
639 or ones in which no action was taken, or unfounded. You can have those in any neighborhood in
640 Keene. She is concerned because she does not see it in relationship to anything else.

641
642 Mr. Reimers stated that he agrees with many of her comments. He continued that they put all of
643 this in because he wanted the Board to be able to see for themselves the whole range of Police
644 responses that were for Lamson Street. He could have made a list of just the really serious ones,
645 but he did not, knowing the Board members could all see for themselves that some of these were
646 not serious. However, they can also see that a lot of them *are* serious. There are 23 incidents in
647 which someone was arrested elsewhere. He thinks those are significant, because in all 23
648 incidences, it was people who gave their address as Lamson Street being arrested elsewhere. He
649 thinks that in addition to the bad conduct reported in the police reports happening at Lamson
650 Street, the fact that it was done elsewhere by someone who lives at Lamson Street. is also telling.
651 The Board can give that the weight they think it deserves. He agrees that police can and do show
652 up just about anywhere from time to time, but regarding the level of activity, he bets there is not
653 another place in Keene where there is this level of activity, and this number of police responses.

654
655 Ms. Taylor asked if he did any research into the percentage of overall calls, or looked at any
656 other place that had activity. She continued that it is hard for her to get her head around it when
657 it is such a narrow picture and not presented in relation to anything else. Mr. Reimers replied
658 that he heard someone say that this is 1% of Keene’s responses during that time period. He
659 continued that he cannot verify that. Mr. Reimers stated that 1% is not very much, but 1% is a
660 lot, if one place is garnering 1% of all Police calls, which is huge. He continued that he did not
661 go around the City looking at anywhere else, because this application is for a specific location,
662 and the criteria that the Board needs to apply are only for this location. They could look at it in
663 terms of “how many times are the police responding to the Lamson Street location” and the
664 answer is 126 times in 201 days, which is much more than, he thinks, any other location the
665 Board might get a Variance or Change in Non-conforming Use application from.

666
667 Chair Gorman stated that 126 calls in 200 days would be 1.26 calls every two days which is a lot
668 of activity. He can go weeks on end without seeing the police in his neighborhood. He asked if
669 it is correct that Mr. Reimers does not have anything statistically about the total number of police
670 calls over that period. Mr. Reimers replied that he does not, but, Chair Gorman said he could go
671 weeks on end without seeing a Police Officer, and his clients say something similar. There is not
672 much of a police presence on King Court currently because there has not needed to be and the
673 same is true of when the fitness center was there. Thus, comparing the fitness center to this
674 proposed use, regardless of what the numbers are, the numbers they have are evidence that there
675 is going to be more police presence than their used to be, and that is the important comparison
676 the Board needs to make.

677
678 Ms. Taylor stated that in a vacuum it really does not tell her much of anything. She continued
679 that she sees police around, but there are a lot of locations downtown where there is a lot of
680 activity. She is trying to understand this as it is not necessarily an accurate representation of

681 what goes on downtown, whether it is Lamson Street or Main Street or a lot of other places that
682 have issues.

683
684 Chair Gorman asked if the Board had any further questions for Mr. Reimers. Hearing none, he
685 called on Mr. Underwood.

686
687 Brian Underwood stated that he is a real estate appraiser and a consultant, and in his role as a
688 consultant on this project he was asked to review the application and determine whether or not
689 there was a diminution of value of the surrounding properties. He continued that to “take it back
690 to 10,000 feet” and keep it simple, based on the principle of substitution, all things being equal,
691 whether you are a residential property use or commercial property use, if you are looking at two
692 identical properties, one that abuts the proposed use and one that does not; Mr. Underwood
693 questions which property would be chosen. He thinks that common sense applies; they know
694 that market influences and people that are participating in the market would choose the property
695 without the adverse condition that would abut them. Mr. Underwood further questioned the
696 choice a prospective commercial tenant would make with two similar geographic locations and
697 the exact costs, but with one next to a homeless shelter with the some of the detrimental
698 conditions that have been testified to by the Applicant and acknowledged by the Applicant, the
699 prospective tenant would choose the property not abutting a shelter. He further stated that
700 situations like this it can be difficult to measure the diminution in value but the fact remains that
701 there is a diminution in value as they know that because it will take longer to find somebody to
702 accept the condition of a homeless shelter that is next to the property. Second, Mr. Underwood
703 stated that a landlord would have to lower their pricing to make the space attractive to potential
704 tenants being an abutter to a homeless shelter compared to similar rentals in other sections of
705 town. That is a diminution in value. An increased marketing period that is abnormal to the
706 market is, in effect, a diminution of value.

707
708 Mr. Underwood continued that he wants to clarify some things that Mr. Phippard talked about
709 tonight. When the Applicant acknowledges that the type of use carries with it a “stigma,” that
710 pretty much confirms that there is an impact on value. In the appraisal world, they are all bound
711 by the Uniform Standards of Professional Appraisal Practice. The definition that is commonly
712 used, found in the dictionary of real estate appraisal, is exactly what Mr. Reimers cited earlier.
713 The bottom line is that the stigma exacts a penalty on the marketability of the property and hence
714 its value. That goes right back to the principle of substitution. Mr. Underwood stated that if the
715 Board gets confused about the facts they hear as evidence and what they think is conflicting
716 testimony, they should ask themselves what property would they choose if they are sitting on the
717 curb looking at the 15 King Court property versus another one across town with the exact same
718 location for the exact same price.

719
720 Mr. Underwood continued that Mr. Phippard mentioned a project that the two of them are
721 collaborating on where a commercial use is being relocated from a location where it is
722 completely surrounded by residential property to a location on the corner of NH Rt. 101 in a
723 more appropriate location for a commercial use for a property. He continued that Mr. Phippard

suggested that his opinion in that case is not comparing apples to apples. Frankly, he was surprised that Mr. Phippard would suggest that somehow that case has any relevance to his opinion in this case. Mr. Phippard also mentioned the assessing data, and the purpose of the second to last paragraph on page 3 of his letter to the Board dated September 21, 2020, was simply to acknowledge that in other parts of town, the Assessing Office, in the past, has made certain reductions to assessments when they abut adverse conditions. Mr. Phippard took it upon himself to ask specifically about the existing location of Hundred Nights and he also mentioned that the existing Hundred Nights location abuts the church and a parking lot. The church is non-profit use which is tax-exempt, to suggest that a church would file for a tax abatement application because it is adjacent to a homeless shelter really is not the same comparison as whether or not the commercial property owner who owns a building next to the homeless shelter that would be located on this site would have a tax abatement warranted because of the stigma that the Applicant has acknowledged, and also, from just the principle of substitution.

Mr. Underwood stated that in closing, he addressed the issue of stigma in the first page of his letter, in the third paragraph. That is not to say that he personally has an opinion on homeless shelters, but his job is to tell the Board how the market reacts and to explain to them in real estate, technical terms what the diminution in value issues are related to this application. It all boils down to the principle of substitution and alternative locations and alternative uses and what do the surrounding properties have to do to either attract a buyer or a tenant where there is a commercial or residential property to either rent or purchase, when there are other, alternative locations and uses in other parts of Keene that people could buy or rent.

Chair Gorman asked if the Board had questions for Mr. Underwood. Mr. Hoppock asked for examples of other assessments in Keene where the City Assessor has made reductions for negative assumptions on property. Mr. Underwood replied that he does not recall the specifics. He continued that when he contacted the Assessing Department, not specifying the property type or use, he spoke with the Assistant Assessor. He stated he questioned that during his experience, if he was aware of other properties that have been adjusted downward because they abut properties that have an adverse condition. Mr. Underwood state the response he was given was yes. Mr. Hoppock asked which properties were affected. Mr. Underwood replied that none were cited nor did he ask specifically though he did state he wanted to know if the City had done the same for other properties. Mr. Hoppock asked if Mr. Underwood would agree that if you had a sterling view of Mt. Monadnock that would be a positive condition on the value. Mr. Underwood replied yes. Mr. Hoppock replied that then this cuts both ways. Mr. Underwood replied absolutely.

Ms. Taylor asked if Mr. Underwood is aware that the Hundred Nights shelter on Lamson Street is a direct abutter to several commercial properties. Mr. Underwood replied yes. Ms. Taylor asked if he has an opinion on the impact to them that differs with the email that was received from the City Assessor that there was not a diminution in value. Mr. Underwood replied no, he was not asked to look at the property on Lamson Street. He was asked to look at the proposed project in the proposed location. Ms. Taylor asked if Mr. Underwood is aware that the Lamson

Street shelter abuts commercial, mixed use buildings. Mr. Underwood replied yes, he is familiar with the location and the downtown area.

Chair Gorman asked if anyone else had questions. Hearing none, he asked for Bill Beauregard to speak.

Bill Beauregard stated that he and his wife own 440 Main St., which is directly across from the King Court property. He continued that the apartments in their building are four-bedroom and are occupied by families. He and his wife are exceedingly concerned about locating the Hundred Nights shelter on King Court as they cannot imagine a more inappropriate location for a homeless shelter. This is a vibrant business community and residential area and highly visible from the highway entering the City. It seems the main reason the site was selected was that it was available, and that is not a reason for the City to grant a change in non-conforming use, particularly where the City is nearing completion of its Zoning clarifications which will allow for this use elsewhere in the City. He believes everyone understands the necessity of taking care of those who are in need, and it is striking that there are four other shelters, and it seems that Hundred Nights is the only one that continues to get negative press. Perhaps it is a reflection on the operation and the rules of the organization that raise so much angst in the community. Mr. Beauregard continued that comments have been made by the Applicant publicly about the financial necessity of Hundred Nights getting this application for its needs. He wants to stress that that testimony should have no bearing on the Board's decision.

Mr. Beauregard stated that to reiterate some of Mr. Reimers' words, by the terms of the Zoning Ordinance, the proposed use must be more in conformity with the spirit and intent of the ordinance than the prior use. That is the focus of this hearing; this proposed use versus the existing use. There will be many more people staying in this building than there would be in a single-family home or duplex in the Low Density District. There has been discussion of the police logs submitted, but the numbers speak for themselves. Mr. Beauregard continued that there are approximately one visit per day to the Lamson Street site and questioned it that the King Court location would be two thirds or half of that number. It still would be a significant increase from what is on King Court right now. He thinks everyone on the Board would agree that a fitness center or frame shop is a *de minimis* use where this use is going to be very impactful on the neighborhood. The Zoning Ordinance also states the proposed use must be less injurious, obnoxious, or offensive than the current use.

Mr. Beauregard continued that regarding shuttling guests and other operational details promised, the Board should remember that when Hundred Nights started it promised, as its name states, that it would only be open for the hundred coldest nights of the year. It is now a 365-day operation. So promises made may not be kept tomorrow. For those reasons he detailed, he and his wife strongly urge the Board to deny the request.

Chair Gorman asked if anyone on the Board had questions for Mr. Beauregard. Hearing none, he continued with public comment.

Rev. Derek Scalia, Deacon at the St. James Episcopal Church, stated that he is also a Keene resident at 16 Hillside Ave. He continued that he speaks on behalf of his neighbors at the Hundred Nights shelter. Tonight the Board has heard standards of law and the market, and they keep forgetting another crucial part of social democracy, and that is morality. In the book *“Morality,”* Jonathan Sacks says, *“A free society is a moral achievement. Over the 50 years in the west this truth has been forgotten, ignored, and denied. That is why today democracy is at risk. Societal freedom cannot be sustained by market economics and law alone. It must need and have a third element: morality, a concern for welfare of others, an active commitment to justice and compassion and a willingness to ask not just ‘what is good for me?’ but ‘what is good for all of us together?’”* These people are our neighbors, neighbors he knows by name. He has heard their stories and experiences, and has literally slept overnight beside them. Reverend Scalia continued that the application in front of the Board is for a COVID-safe environment. He continued that while they were at St. James, there was not police called, there was not desecration of the building and there was not destruction around the building because it was their home, too, and they saw it as that. These are people who need out from the cold.

Rev. Scalia stated that in closing, he knows that the attorney cited a book that is the standards for which the Board’s decisions ought to be made, but he follows a different book, a book that has clear standards on how we ought to be supporting people who are impoverished and experiencing poverty. He would guess that many here tonight are also going to be taking a few of those stories in a few weeks to celebrate Christmas. Rev. Scalia concluded that he hopes everyone can find a way to come together and see each other, as opposed to continually criminalizing the poor.

Kenneth Bakke of 6 Prospect Hill Rd., Spofford stated he owns 11 King Court that literally encompasses 15 King Court. He continued that to give perspective on his opinion, and especially for the pastors who have called in, he wants them to know that you can have empathy and disagree. Mr. Bakke stated that he is a Vietnam veteran and even after 50 years he has memories that haunt him, so he can empathize with the veterans that are suffering from PTSD and how they can spiral into homelessness. He also has family members who have experienced hardships. The one thing that strikes him here is that his father, after retiring from a federal aviation career, chose to be the director of a homeless shelter in Newark, NJ. In spite of being mugged three times, he managed the mission until his death. Mr. Bakke stated that he understands and appreciates the fact that Hundred Nights is a much needed and noble service. However, for many reasons, clearly communicated by Ms. Cambiar during her radio interview, including the comment that she made that 40% of the residents suffer from mental illness, the shelter should not be located in a low density, residential area, or adjacent to KSC dormitories or a business area. It needs to be strategically placed as was previously said, in an area that is safe, safe for the area residents, and safe for the homeless people. In 1990 he came to Keene and chose to invest over \$1 million transforming the old, dilapidated barn into an attractive office facility at the gateway to Keene. He has since paid about half a million dollars in taxes in Keene. Now, due to the Hundred Nights’ proposal, his tenants who have occupied the building for 25

years expressed serious reservations about keeping an office next to a homeless shelter and are concerned about their customers coming and going.

Mr. Bakke continued that the only way to access the proposed 15 King Court homeless shelter is to drive over his property which there is a right-of-way not an easement. Mr. Bakke asked for the vision of the residents of the shelter, lounging out in front of King Court, the way they currently lounge out in front of Lamson Street. He then asked to add the incidents described in the 126 police visits to Lamson Street and above all, the comings and goings of his employees or the renters that happen from 5:30 AM until late at night, with the women and men engineers with their clients. Regarding the comments that Ms. Cambiar made, about “we hope” to have supervision, “we hope” to have this and that - 20-40% have mental illnesses. Mr. Bakke state he can relate to this as some of his family members are struggling with mental health issues. He continued that these individuals need to be treated strategically and safely. He has a family member who works in the local hospital and treats the homeless patients, lovingly but carefully.

He continued, quoting from the Manhattan Independent Budget Office who analyzed 2010-2018 real estate sales data of 6,237 properties located within 1,000 feet of 39 homeless shelters which found that property owners got 24 to 25% less compared to comparable properties farther away. Mr. Bakke stated that property located close to a homeless shelter does affect property values and he doesn’t state this because he is a hungry money-monger. They cannot stay in business if their tenants leave and they go to sell and get 20% less than what they put into the building and what the market value is. He continued that the financial losses do not happen just when they sell. He has been told by his tenants that as soon as the homeless shelter locates at the King Court location, his tenants have stated they will leave the building. If the tenants vacate his building, the loss to him starts immediately. Hundred Nights says they would only be at King Court for two years, but he loses \$91,000 per year when his tenants walk out of the building. He stated that literally, his King Court property will be out of business if it is next to the homeless shelter. Mr. Bakke stated that what he finds incredible, is now during the worst economic calamity since the 1930s, the Board is considering granting a request that would jeopardize the survival of taxable entities like his building and that of the Coughlins’ office building.

Mr. Bakke stated that he wants to close with a question to Mr. Phippard. In preparing his thoughts regarding the homeless shelter at the entrance to his property, he reviewed his project development files and noticed a letter from William Stretch, the former owner of the frame business that used to be at 15 King Court. It was a letter to the NH Department of Transportation Project Manager for the bypass roundabout project at that was planned. In the letter he complains that the invert on the city’s sewer passing under the highway from 15 King Court across to the bike shop was too shallow and was causing repeated backups and flooding the building’s lower level with raw sewage. If in fact the City’s sewer main is installed or pitched inadequately, as Mr. Stretch’s plumber claimed, he is not aware of any attempts by the City to correct that problem. He wants to know if Mr. Phippard has any knowledge about this. He asks because the first week that the fitness center opened at 15 King Court, the sewer line clogged and backed up, which suggests that the sewer main problem still exists. Mr. Stretch had a maximum

895 of five people employed at that building and now they are proposing housing 20+ people using
896 toilets and showers. He would like confirmation that the existing sewer main has the capacity
897 for the increased volume.

898
899 Chair Gorman stated that he will have Mr. Phippard answer that question when they hear from
900 him again. He asked if anyone had questions for Mr. Bakke. Hearing none, he asked if there
901 was any more public comment. Hearing none, he welcomed Mr. Phippard to speak again.

902
903 Mr. Phippard stated that he was not made aware of any problems with the sewer at that location.
904 He continued that he can certainly look into it by reaching out to the Public Works Department
905 to see if there is a problem with the capacity. If there is, there are several different ways it could
906 be addressed, and he does not need to go into all the details at this time. If that is a problem he is
907 glad Mr. Bakke made him aware of it, in event that Hundred Nights is allowed to use the
908 property. It should and can be corrected.

909
910 Mr. Phippard stated that he was expecting questions about the police calls. He was glad to hear
911 Ms. Taylor did her homework and looked into the list of calls. Most of them were related to
912 wellness checks and different activities at the property, not serious calls. To hear that only 40
913 took place in the evening hours is further evidence that as you get away from the existing shelter
914 location, they would expect fewer and fewer calls. He would like to remind the Board that
915 Hundred Nights is proposing sleeping quarters, not another homeless shelter. There is no
916 invitation for residents to hang out here and spend time here during the day. They will restrict
917 the guests to that location and the people who are allowed to sleep in that building. They heard
918 direct testimony from the Pastor at St. James Church who has dealt directly with many of the
919 residents from Lamson Street. They had no police calls at the St. James location which should
920 weigh in the Board's determination. He has been working with and volunteering for Hundred
921 Nights for about the past six months, and it really opened his eyes to what is going on. He never
922 really understood why there was such concern and hand-wringing. He knows there are some bad
923 examples, which he does not want to focus on, but that happens everywhere. He does see the
924 police on a regular basis as he lives on Arch Street right next to the high school. The
925 neighborhood gets a lot of questionable activity and the police are a daily presence in his
926 neighborhood and he is grateful for that and feels safe because of it.

927
928 Mr. Phippard continued that in dealing with homeless people, they recognize there is a stigma.
929 This has been recognized by the Hundred Nights' Board members and those who deal with
930 homeless people on a regular basis. The stigma comes from our society and our prejudice against
931 people who are less fortunate. People do not want to deal with the homeless or see them in their
932 neighborhoods and when something like this comes up, residents are quick to call their attorneys
933 and say "Make this go away. I don't want them near me; I don't want them in my
934 neighborhood." Mr. Phippard stated that prejudice is wrong. He agrees with Pastor Scalia that
935 our society needs to be educated and better informed about how to deal with homeless people
936 and they need to find ways to help, not push them out and hide them and try to make them go
937 away which he continued with stating that the Mayor is looking at the bigger picture, trying to

938 get the State involved to avoid homelessness in the first place, instead of only dealing with it
939 after the fact like Hundred Nights is being forced to do. But for now, for Keene, we have a very
940 serious problem and people are homeless for all kinds of reasons. It is not just mental health or
941 drug addiction or alcoholism, it is partly because of COVID-19 making it worse with people who
942 have lost jobs and the subsidy programs ended, and then they were found without housing.
943 Hundred Nights now deals with more families, more women with children, than they ever have
944 in the past. To him that is shocking and upsetting and he cannot believe this is Keene, NH. He
945 cannot believe the prejudice is so strong that they cannot find a way to better help these people
946 who are in trouble. It is frustrating for him and he bets it is frustrating for others.

947
948 Mr. Phippard continued that he is not going to try and respond to every issue that was brought
949 up. A lot of the points were legitimate, others are not. For the limited time period, Hundred
950 Nights is seeking to use that space, it is an overflow space, and it is not the primary shelter.
951 People keep implying that all of the problems that have been recognized at the Lamson Street
952 shelter over the years will carry on at King Court and he strongly disagrees with that. People
953 will be brought to that facility to take a shower and have a safe place to sleep overnight which is
954 badly needed and it is something that people using that the space will be very grateful for.

955
956 He continued that the Board heard the testimony from the Rev. Scalia and Rev. Worth, who both
957 testified to what good residents/visitors people were when they stayed in their space at the
958 basement at St. James Church. These guests cleaned up after themselves and did not create a
959 problem for the church. That is the type of activity and the type of behavior that Hundred Nights
960 expects would take place, if they were allowed to be in King Court. He hopes the Board can find
961 a way to allow this, on this temporary basis. Conditional approvals are allowed by the Board,
962 even though Mr. Reimers was not familiar with that. He himself has experienced conditional
963 approvals before from this Board and it is appropriate in this case. Hundred Nights is not
964 looking to expand the shelter or extend the time period beyond two years and they would be
965 willing to live with such conditions if the Board is willing to grant approval with that condition.

966
967 Mr. Hoppock asked what the Board's authority is to grant this application and have it terminate
968 by April 30, 2022. Mr. Phippard replied that as a condition of approval, he believes the Board is
969 allowed to limit the use on a property as a Special Exception. He thinks they are allowed to
970 recognize that in this particular case, there are concerns from the neighbors and one way to
971 address those concerns is to apply a condition of approval limiting the term of use of that
972 property. Hundred Nights is willing to use the property under such a condition.

973
974 Mr. Hoppock replied that he understands all that; he is looking for the Board's legal authority to
975 do that. He has been on this Board for a while and has never had an application where the
976 Applicant was willing to have the approval terminate and not run with the land. Mr. Phippard
977 replied that he cannot cite a statute. Mr. Hoppock replied that he does not think there is one. Mr.
978 Phippard replied that one he can say is that during the 43 years that he has been doing this work,
979 he has had conditions imposed by previous Zoning Boards that limited and restricted uses that he
980 and his clients were proposing on properties. Mr. Hoppock replied that is not his issue; he

981 realizes that the Board can condition the use. He continued that he is talking about a condition
982 that ends the use by a date certain, which is something he has never seen. Mr. Phippard replied
983 that he wishes he could provide better information for him, but stated that he has experienced
984 conditions being imposed in the past.

985
986 Chair Gorman questioned that he believes the problem, from his perspective as a Board member,
987 and he is not saying he is familiar with the legality of it, is that if the Board deems this property
988 to be changed to a non-conforming use which is less impactful or more conforming than the
989 previous use, as Mr. Phippard has told them he believes to be the case, what happens in two
990 years after the Hundred Nights approval expires. Chair Gorman further questioned if the
991 property would revert back to the use that Mr. Phippard says is more egregious/more non-
992 conforming which would not make sense from the perspective of the purpose of a Zoning
993 Ordinance. He asked Mr. Phippard if he agreed with that assessment. Mr. Phippard replied that
994 he thinks he understands what Chair Gorman is asking, and questioned if that would leave the
995 property owner in the position that they would come back in front of the Board and expect to be
996 allowed to put a fitness center back in that location.

997
998 Chair Gorman replied in the affirmative as well as anything else. He questioned what the
999 property status would be moving forward from there. He continued that it is one thing for the
1000 Board to put permanent conditions on an application, but to assign a time condition, he think
1001 defies all logic. Mr. Phippard replied that once again he agrees to disagree, and feels that
1002 conditions would be appropriate in this circumstance. As far as future uses on that property, this
1003 is an existing non-conforming lot, a non-conforming building, with a non-conforming use. In the
1004 future, if Hundred Nights was allowed to occupy the property for two years and then vacate it, he
1005 suspects it will still be a non-conforming building on a non-conforming property and depending
1006 on when or if the Zoning changes maybe that can be address some of these issues. Mr. Phippard
1007 continued that this is one of those buildings that, because of its location, is always going to be in
1008 a similar status. If the owner at that time wants to change the use to something else or back to
1009 what it was previously, they will have to return to the Board and gain approval.

1010
1011 Mr. Rogers asked the Board to look at Section 102-206, which addresses Chair Gorman's
1012 question. He continued that it states that "*A non-conforming use may be changed to a use of the*
1013 *same or more conforming classification,*" which is what the Applicant is asking from the Board.
1014 It goes on to state "*And such use thereafter shall not be changed to a less conforming*
1015 *classification.*" If this application were approved, the Board would be stating that this proposed
1016 use is more conforming to this district and there could not be a time limit condition that it would
1017 then go back to a fitness facility. Section 102-206 would not allow this to occur. He also agrees
1018 that the Board does not have the authority to put a time limit type of condition on this
1019 application. Mr. Phippard is correct that the Board can condition different uses and such, though
1020 Mr. Rogers stated he does not think the Board has the authority to put a time limitation on a use
1021 that then the occupant would have no use at the end of the two-year period.

Ms. Taylor stated that *Peabody v. Town of Windham*, a 1997 case, affirmed the ability of a Zoning Board to attach conditions to cases involving non-conforming uses, “*Provided the conditions are reasonable and lawful.*” That sort of clarifies the earlier question about whether or not they can add conditions. As to the time, she thinks that what had to be determined is whether or not that would be a reasonable condition, given the circumstances. She suspects the Board agrees with Mr. Rogers to the extent that if it is a non-conforming building with an expired use and another use wants to come in that it is not a permitted use in the zone, then the Board gets to look at it again.

Mr. Hoppock stated that he thinks Mr. Rogers misread Section 102-206. It provides that “*once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use.*” He continued that the use they are being asked to consider is not a conforming use, as he understands it. Thus, he does not think Section 102-206 applies. Mr. Rogers replied that before the statement Mr. Hoppock read, it says “*A non-conforming use may be changed to a use of the same or more conforming classification, and such use thereafter shall not be changed to a less conforming classification.*” Mr. Hoppock replied he understood, but also questioned that the request would still be heard by the Board. Mr. Rogers stated that regarding another non-conforming use, in there his point would be, that if the Board put a time limitation on this approval, once Hundred Nights moved out after that two-year period, there would be a property that basically has no use. He does not think that would reasonable, as Ms. Taylor mentioned. Mr. Hoppock stated that he agrees. He does not think a time limitation is a workable alternative here.

Ms. Cambiar stated that it was mentioned that people potentially looking for property could buy or rent elsewhere than at King Court if Hundred Nights were to be their neighbor. She continued that the problem is that, Hundred Nights does not have that ability. Hundred Nights does not have the ability to go anywhere in town and find a property. That is why they are asking for a Change in Non-conforming Use on this building. The other thing that is important to remember about the timeline is that the funding for this project is only available through June 2022 and Hundred Nights is offering to make end its use by April 30, 2022. Hundred Nights has no intention of being on King Ct. after that date. She continued that they really would like to be in their own home, which is why they are trying to make Water Street work. Someone else mentioned that the occupants of the building next door were opposed to Hundred Nights moving in and she would like to say, without naming names; that one of the businesses in that particular building came to Hundred Nights as a new business in Keene several months ago, offering support in any way possible. Ms. Cambiar also state that they bought Hundred Nights an entire meal for everyone who came into the shelter on a specific night and sponsored the shelter's Fall Into Brunch event by paying for masks for people who came to the event. She further stated that they also offered any kind of support possible to help Hundred Nights get into the building next door because they did not feel that Hundred Nights was going to be detrimental to their business. She does not know who they are talking about as an occupant of the building next door who is absolutely dead set against the Hundred Nights guests moving there as a nighttime-only occupant.

Chair Gorman asked if the Board had any questions for Ms. Cambiar or Mr. Phippard. Hearing none, he asked if the public had any additional commentary.

Mr. Reimers stated that Mr. Phippard might have heard him wrong. He continued that he is obviously familiar with conditional approvals. The condition he was unfamiliar with was putting a time certain, and it sounds like many Board members have never heard of that either. Neither he nor Attorney Tom Hanna have heard of an example where that has been done, and Mr. Hoppock said that he was unfamiliar with it, and when asked, Mr. Phippard could not come up with an example of it, nor could Mr. Rogers. He thinks what the Applicant is asking for is some kind of short-term exemption from satisfying Section 102-207 criteria, and that would have to be spelled out in the ordinance if there was such an exemption, otherwise the criteria apply regardless of the time that they currently say that they want.

Chair Gorman asked if Mr. Phippard had anything to add before he closed the public hearing. Mr. Phippard replied no. Chair Gorman closed the public hearing and stated that the Board will discuss then vote on this application. They will reopen the public hearing if necessary to answer any technical or procedural questions.

Chair Gorman called a five minute recess at 8:35 PM. He called the meeting back to order at 8:40 PM. The Board deliberated on the criteria for a Change in Non-conforming Use.

1. *The changed use will be more in the spirit and intent of the Zoning Ordinance.*
2. *The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.*

Ms. Taylor stated that to reiterate, the fitness center came before the Board in 2018 which she has the minutes and the application. She continued that at the time, their business plan estimated that between staff and customers they would have between 30 to 40 people at a time using the facility with their plans to open at 5:00 AM. One of the concerns of the Board at that time was the intensity of use. She is not trying to compare this to the Hundred Nights proposal; she wanted to provide background on the prior non-conforming use.

Mr. Hoppock stated that he thinks this application should be approved. He continued that he thinks the changed use will be more in the spirit and intent of the Zoning Ordinance and it will lower the density of use of this property. There will be one or two trips in the morning and one or two trips in the afternoon, as they heard the Applicant testify. He further state that there will be nobody there during the day to impact any of these businesses that abut the property. Mr. Hoppock stated he believes the most persuasive piece of evidence he heard was from Rev. Worth who stated she provided this same service in the basement of St. James church. He finds that what will likely happen if this moves forward, is what has happened already in that location.

Mr. Hoppock stated that regarding the second criteria, everything the Board has heard from the opponents, is, in his opinion, horrible, assumptive, and speculative, and he sees no basis in fact for any of it. He is glad Ms. Taylor said something about the police log evidence, because it

reminded him of Captain Renault in Casablanca saying to “*round up the usual suspects.*” He continued that he finds quite frankly, offensive. He is prepared to vote in the affirmative for each of these criteria.

Mr. Gaudio stated that he is concerned about whether or not this request is more in the spirit and intent of the Zoning Ordinance. He continued that the zone is low density. He continued that Mr. Phippard described this proposal as “sleeping quarters” though he does not think it is really a residence. Mr. Gaudio stated that a fitness center is not exactly residential either, but he is not sure that sees it as more in keeping with the spirit in that respect than a lodging house/homeless shelter. Regarding the low density, normally this is seen in a residential district with single-family or two-family homes, not usually 24 people. He realizes the fitness center’s plan was to have 30 to 40 people but, that would probably be 30 or 40 spread throughout the day, as opposed to 24 all at the same time overnight. Mr. Gaudio state that he is concerned about the first requirement but, regarding the second, he thinks similarly to Mr. Hoppock that there was a lot of speculation. Thus, he could not come to a conclusion one way or the other. He concluded state that he is not exactly expressing an opinion about the second criterion.

Mr. Greenwald stated that he’s not pleased with this but he feels compelled to look at this application as a real estate agent. He continued that he agrees with the appraiser’s statement so he does not necessarily think this would be a dangerous location and it sounds like Hundred Nights will do everything they can to keep it as quiet as possible. Mr. Greenwald stated that he finds it unreasonable that when asked, that property values will not be negatively affected by this approval, as they absolutely will be affected. Whether or not it affects it a lot or keeps somebody from renting a space because of it, Mr. Hoppock is right, that is speculative. However, it is not a selling feature for selling the building or renting the office space, and it absolutely would be the second choice to rent, being that there is a homeless shelter next door. Like it or not, it does have a stigma. He continued stating that he is not opposed to homeless shelters; he is a supporter of Hundred Nights but, in regards to answering the second question, yes, it will negatively affect the property values in his opinion as a realtor.

Ms. Taylor stated that to clarify her earlier comments, that was 30 to 40 people at a time (in the fitness center). She agrees with Mr. Hoppock that this is a lower density/intensity than the prior use would have been had it been successful, so she feels it meets that criteria. The Low Density District allows three-family homes and there are the KSC dorms right behind it, which is not necessarily apples to apples, she realizes, because as a government use it would not have to present before any Zoning Board for its use, but clearly there is a more intensive use in those buildings. There is also the fact that the two closest buildings to 15 King Ct. are both commercial uses, which are clearly not permitted in the Low Density District. Thus, she thinks the Applicant can meet the criteria that it is more in conformity than the prior use. Regarding whether it is injurious, obnoxious, or offensive to the neighborhood, she thinks the value may be open to question, but that is a very small part of whether it is injurious, obnoxious, or offensive to the neighborhood. Frankly, as long as smoking is a legal activity, people are going to smoke. Ms. Taylor continued that if the Board were to approve this application, she questions the

1152 lighting on the property. The minutes show that for the prior use, lights were to be installed and
1153 there is no way for the Board to know if that was ever completed. In a motion to approve she
1154 would like to see added a condition that there be appropriate lighting and security on the
1155 property, whether that be cameras or whatever is appropriate for that type of building.

1156
1157 Chair Gorman stated that this is a difficult situation. He continued that sometimes as a Board
1158 member, a crossroads is reached with what may be morally right and what is right strictly from a
1159 Zoning perspective. He stated that as Board members, they all do their best to keep these
1160 separate though it is difficult, particularly in these situations where his natural inclination would
1161 be to help anyone and everyone at all times, regardless of the impact it might have to himself.
1162 Unfortunately as a Board member it is important to remove that from the equation. Chair
1163 Gorman continued stating that in doing so, he is not convinced on the residential portion of Mr.
1164 Phippard's argument as he attempted to articulate. He stated that perhaps he said things that
1165 came across incorrectly when he alluded to Hundred Nights as a business though his intent was
1166 to describe it as an operation. Chair Gorman clarified that there are several staff members and
1167 this is not a house dwelling where a family lives or a few friends live. He stated that this is a
1168 lodging facility which he feels is more like a business or a commercial setting.

1169
1170 He continued that in terms of the police logs, he accepted some feedback from Ms. Taylor and
1171 Mr. Phippard about the presence of police in their neighborhoods after he stated that he was
1172 unfamiliar with that type of presence where he lives. He wants to clarify his stance that maybe
1173 the statistical data the Board received was incomplete or maybe it is skewed. He continued that
1174 maybe homeless people are targeted, though he hopes that is not the case. The fact remains for
1175 him that while Mr. Phippard and Ms. Taylor may see police officers in their neighborhoods, he
1176 does not think police officers are being called to any home in their neighborhood 1.25 times
1177 every two days. If that was the case, he thinks Mr. Phippard and Ms. Taylor would feel that was
1178 excessive. With that said, he does not admit that the police data is incomplete. Chair Gorman
1179 continued that when the substitution method that the real estate appraiser described, he has
1180 significant difficulty thinking that this type of use would not adversely impact the value of the
1181 surrounding properties. Also, when he compares a gym or a frame shop to a homeless shelter, he
1182 has a great deal of difficulty coming to grips with the fact that a shelter would be more in the
1183 spirit and intent of a low density, low intensity use. Chair Gorman concluded that regarding the
1184 second criterion, he does not think it would be more injurious, or less injurious but, primarily of
1185 the first criterion and certain facets of the second, he is inclined to oppose this.

1186 Chair Gorman asked if anyone else had comments. Hearing none, he asked for a motion.

1187
1188 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 20-26 subject
1189 to the following conditions: it be permitted no more than 24 beds in the facility, and that
1190 appropriate nighttime lighting and security are provided, for so long as the use may occur. Mr.
1191 Gaudio seconded the motion.

1192
1193 Chair Gorman asked Mr. Hoppock to re-read the proposed conditions for purposes of clarity, and
1194 he did so. Chair Gorman asked if any conditions should be imposed on daytime activity. He

1195 continued by asking if the parameters that the Applicant set forth sufficient. Mr. Hoppock stated
1196 that he would be happy to rephrase the motion to add additional condition that there will be no
1197 occupation of the building between the hours of 7:00 AM and 6:30 PM, aside from maintenance
1198 and things of that nature. Chair Gorman asked if Mr. Hoppock wants to add that to the motion.
1199 Mr. Hoppock replied yes. Ms. Taylor stated that she was going to echo what Mr. Hoppock said
1200 and make sure they could do cleaning and maintenance during the daytime hours.

1201
1202 Mr. Rogers asked if Mr. Gaudio would confirm his second on the motion, given the additional
1203 conditions added. Mr. Gaudio stated yes, he seconds the motion with the conditions.

1204
1205 *1. The changed use will be more in the spirit and intent of the Zoning Ordinance.*

1206
1207 Ms. Taylor stated that she believes that it is more consonant with the ordinance. Certainly it is
1208 closer to what the ordinance requires than the immediately prior use as a fitness center and it will
1209 have a lower intensity than what the fitness center was anticipated to be.

1210
1211 Mr. Hoppock stated that with these conditions, he thinks they make it more probable than not
1212 that everything they just said is the case that it will be more in the spirit, less intense, and more
1213 consistent with the ordinance.

1214
1215 Mr. Gaudio stated that he thinks it is not more in the spirit of the residential use possibly close to
1216 the same, but not more. Second, regarding the intensity, the use of it by the fitness center was
1217 not apparently more intense. It is going to be a constant, nightly, 24 people plus the two staff
1218 members. It will be more intense of a use, and especially now adding lighting, it will make the
1219 use even more intense.

1220
1221 *Met by a vote of 3 to 2. Chair Gorman and Mr. Gaudio were opposed.*

1222
1223 *2. The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.*
1224 Mr. Hoppock stated that he places a lot of weight on Rev Worth's observations when she ran the
1225 same operation in the bottom of the church, as she described earlier. He continued that
1226 everything they heard from the opposition is just assumptions and speculations; he does not think
1227 they really had any evidence to show that the changed use will be more injurious, obnoxious, or
1228 offensive, and in contrast to that, he thinks the Applicant has shown that it will not be. He cites
1229 again Rev. Worth's testimony with her direct observations as powerful evidence. Mr. Hoppock
1230 also stated that stigma is not evidence. Certainly there is no evidence that there is property
1231 damage or violent behavior at the Lamson Street property. He is prepared to vote "yes" for this
1232 second criterion, for those reasons among others.

1233
1234 Ms. Taylor stated that she agrees with Mr. Hoppock and does not think it is more injurious, even
1235 given all the testimony. A lot of it was frankly fear-mongering and not necessarily based in what
1236 actually has been going on in the current overflow shelter that has been housed in the churches.

1237 She continued that she thinks that is the best comparison the Board has, as Mr. Hoppock said.
1238 She agrees with this particular criterion.

1239
1240 Mr. Gaudio stated that the criterion is that it has to be more injurious, obnoxious, or offensive
1241 and making that comparison is, he does not think the evidence is all that clear and convincing
1242 and some of it is speculative. He does not think that it is more injurious.

1243
1244 Mr. Greenwald stated that he respectfully disagrees, based on his experience with renting
1245 property, commercial rentals, and commercial sales. He continued that like Mr. Gaudio stated, is
1246 it about whether it is more injurious than what it previously was, and the answer would be “yes,”
1247 unfortunately. He does not think it is right, it is just the reality of real estate. Mr. Greenwald
1248 stated that he agrees with what the appraiser stated on how properties are priced based on the
1249 abutting properties. Unfortunately, he does think that it is more injurious.

1250
1251 Chair Gorman stated that this is difficult for him to vote on as he stated before. He continued
1252 that agreed with both of the pastors’ testimony but then there is the property value issues from
1253 the appraiser he also needs to take into consideration.

1254
1255 *Met by a vote of 4 to 1. Mr. Greenwald was opposed.*

1256
1257 The motion to approve ZBA 20-26 subject to the following conditions; it be permitted no more
1258 than 24 beds in the facility; and that appropriate nighttime lighting and security are provided, for
1259 so long as the use may occur; and that there be no occupation of the building between the hours
1260 of 7:00 AM and 6:30 PM, aside from maintenance and things of that nature,

1261
1262 Motion failed by a vote of 2 to 3. Chair Gorman, Mr. Gaudio, and Mr. Greenwald were
1263 opposed.

1264
1265 Chair Gorman made a motion to deny the Change in a Non-conforming Use request for ZBA 20-
1266 26. Mr. Hoppock seconded the motion.

1267
1268 Motion passed by a vote of 3 to 2. Mr. Hoppock and Ms. Taylor were opposed.

1269
1270 **A. ZBA 20-27:/ Petitioner, Noyes Volkswagen, Inc., represented by Jim Phippard of**
1271 **Brickstone Land Use Consultants of 185 Winchester St., Keene, requests an**
1272 **Enlargement of a Nonconforming Use for property located at 18 Production**
1273 **Ave., Tax Map #110-004-000; that is in the Industrial District. The Petitioner**
1274 **requests an Enlargement of a Nonconforming Use of the existing motor vehicle**
1275 **dealership by constructing 3,690 sf building addition. The existing Volkswagen**
1276 **building is 10,490 sf plus a 740 sf mezzanine. This proposal will enlarge the**
1277 **existing building by expanding on the south side with a 30’ x 123’ addition. The**
1278 **addition will be used for storage and additional service bays**
1279

Chair Gorman asked to hear from Mr. Rogers. Mr. Rogers stated that this is on Production Ave. in an area that has multiple motor vehicle businesses. He continued that it is in the Industrial Zone and as such is a non-conforming use for this district. In doing some research, he found that this property was subdivided in 2013 which is what he believes to be the Subaru dealership. At that time, they were required to get a Variance for a pavement setback from some existing conditions that were going to create some issues.

Chair Gorman stated that Mr. Welsh is rejoining as a voting member and Mr. Gaudio will be participating in the process but will not be voting.

Chair Gorman asked if anyone had questions for Mr. Rogers. Ms. Taylor stated that maybe this is a question for the Applicant, but, none of the information the Board received showed exactly where this expansion was going to be. Mr. Rogers replied that he can show the general area and let the Applicant explain it in more detail. He continued that the lower portion of the building closer to the south is the proposed the addition.

Mr. Hoppock stated that on the back side of the plan that accompanies the application there is a proposed location for the addition, marked with a red arrow. Ms. Taylor thanked him for the information.

Chair Gorman opened the public hearing and explained how members of the public could participate. He asked Mr. Phippard to speak.

Mr. Phippard stated that he is representing Noyes Volkswagen. He continued that they are proposing to enlarge the existing motor vehicle dealership located at 18 Production Ave. This area has developed over the years and since the late 1970's, motor vehicle dealerships have been located there with the first being Keats, Inc. In the diagram Mr. Rogers displayed are the buildings adjacent to this area with the top left, labeled #11, is the Subaru of Keene dealership in both buildings currently which they have recently expanded with an approval to enlarge that non-conforming use, from this Board. Directly across the street is #14, the Hyundai of Keene, auto dealership. Below that is #18, the current location of Noyes Volkswagen dealership. The addition would be located on the south side of that building, and it would be 30' by 123', 3,690 sf. on the south end of the building. That portion of the property is part of the paved area for parking and circulation around the building, so there is no increase in runoff or lot coverage associated with this proposal. He concluded that they would be adding three additional service bays inside the building, and additional storage area, which will eliminate most of the outside storage that exists on the property currently.

Mr. Phippard addressed the criteria.

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

Mr. Phippard stated that given that three of six properties on Production Ave. are all motor vehicle dealerships, this is consistent with the uses in the area and should not create a nuisance or be injurious, obnoxious, or offensive to the neighborhood. The character of the neighborhood has been well established and this is completely consistent with that character. The new construction of the building is occurring with the future onset of electric cars. The Volkswagen brand is introducing a line of electric cars which will require the additional building space to service those cars and to provide electric charging stations at their site. This is consistent with that dealership and it will add to the value of the dealership, the building, and the property.

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

Mr. Phippard stated that Production Ave. is accessed by Route 9, which is a signalized intersection with dedicated left turn lanes so cars turning from Route 9 and going west, turning left onto Production Ave., have a dedicated turn lane and a separate signal for left turns. Cars driving east on Route 9 into Keene also have a dedicated right turn lane to enter Production Ave. Production Ave. is well supported by the road network developed by the State of NH and Production Ave. is sized appropriately to support this traffic and industrial traffic from the other uses that exist further down Production Ave. There will only be three additional employees as a result of the additional service bays with the hours of operation remaining the same and there should not be a significant increase in the intensity of the use. Given the additional service bays and the additional employees, they are anticipating about 30 additional vehicle trips per day, which can be easily accommodated by the existing road network with Route 9, the signalized intersections, and Production Ave. There are no sidewalks in this area and therefore there is not a lot of pedestrian activity and they do not feel this would introduce a new hazard to the few pedestrians that might exist.

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

Mr. Phippard stated that the third criterion calls for adequate facilities and they will be provided. This site is serviced by City water and sewer and they are adequate to serve the property even with the proposed expansion with no new bathrooms proposed. He continued that there is adequate parking on site with zoning requiring 75 parking spaces on this lot and 135 parking spaces will be provided on the property. There is more than adequate capacity to display cars and support customer and employee traffic.

Chair Gorman asked if anyone had questions for Mr. Phippard.

Mr. Welsh questioned if the addition is not in violation of any setbacks or any other dimensional requirements, as it looks extremely close to the side setback. He asked if it is consistent with what is permitted in the Industrial Zone. Mr. Phippard replied yes, the side setback is shown on the plan, and the addition will be right up to the side setback at approximately one foot away from the side setback on the south side. He continued that this does comply with the

dimensional requirements with regard to the proposed changes. They meet the lot coverage requirements and the parking requirements. The only existing nonconformities on the property are a result of the subdivision that was approved in 2013.

Mr. Rogers stated that to answer Mr. Welsh's question, when a building permit is issued when it is this close to the setback line, they will require documentation from the surveyor to indicate where the building is actually located on the property.

Ms. Taylor asked Mr. Rogers if they will not have any additional impermeable surface, so will this require any kind of site plan as she is thinking about drainage issues. Mr. Rogers replied yes, he believes Mr. Phippard has already submitted to present before the Planning Board if this is approved by the Zoning Board.

Ms. Taylor stated that this might also be a site plan question, but she knows one of the requirements of the Fire Code is to have proper circulation around buildings. She continued that seeing as how this is on the setback, she cannot read from the map and has not cross-referenced what the setback requirement is. She asked how wide it is. Mr. Rogers replied that regarding the Fire Code, there is an exception that does not necessarily require complete access all the way around the building if it is less than 150 feet and the Fire Department could get to that side of the building. This falls under that distance, so the owner does not need to meet that requirement.

Mr. Phippard stated that this building is also equipped with sprinklers for fire protection. Fire Department access is usually required on three sides of a building that has sprinklers and that is what they are providing here with the sprinkler system extended into the addition. He continued that they are scheduled to present to the Planning Board on December 21, provided the Zoning Board approval.

Chair Gorman asked for public comment and explained the procedures for members of the public to participate. Ms. Marcou stated that there are no public call-ins. Chair Gorman stated that he does not see any hands raised, either. Hearing no comments he closed the public hearing and stated that he will re-open it if necessary to ask technical or procedural questions.

The Board discussed the criteria.

1. *Such approval would not reduce the value of any property within the district, nor be injurious, obnoxious, or offensive to the neighborhood.*
2. *There will be no nuisance or serious hazard to vehicles or pedestrians.*
3. *Adequate and appropriate facilities (i.e. water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.*

Mr. Hoppock stated that he agrees with the Petitioner that the entire area is motor vehicle dealerships, so their proposed expansion is consistent with the area. He continued that he does not see any harm to the properties abutting or in the area, nor will the addition, from his perspective, impose any diminution of value on the other properties and may well enhance the

value of this one. Production Ave. is accessed off of Route 9 and there is a traffic signal there, with plenty of room to get in and out, and the roads are spacious enough to accommodate any new traffic and the three new employees. He does not see any nuisance or serious hazard to vehicles or pedestrians. There is water, sewer, and adequate streets and parking. His only question/concern is the close proximity to the setback, but as stated, there is no issue with the side setback.

Mr. Greenwald stated that he agrees with Mr. Hoppock and the Petitioner.

Mr. Welsh stated that he agrees with what Mr. Hoppock and Mr. Greenwald have said.

Ms. Taylor stated that she does not disagree with anything that was said though her concerns with the site, since it has to undergo site plan review, are more for the Planning Board. There is increased business, increased traffic, and she is a little concerned about pedestrian movement and traffic circulation on site and the closeness to the setback, but since it has to go for site plan review, those are better handled in that jurisdiction.

Chair Gorman stated that he agrees with everything the Board has said. He continued that as far as increased traffic goes, this area is suitable to the increased traffic. There is the Monadnock Marketplace Plaza, the traffic lights, and no sidewalks, which is favorable to reduce danger. Chair Gorman stated that there are a lot of pluses which make this property already in line with what is already in that area.

Mr. Hoppock stated that the minutes should reflect that it is 10:01 PM. He made a motion for the Zoning Board of Adjustment to approve ZBA 20-27. Chair Gorman seconded the motion.

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

Ms. Taylor stated that there is an old adage, “If you want to increase your business, have a competitor near you.” She thinks this will increase the value of all automobile dealers in the area. Chair Gorman agreed.

Met by a vote of 5-0.

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

Ms. Taylor stated that generally, external to the site, there are no concerns. She has some concerns with pedestrians and traffic flow on the site itself but it should be addressed by the Planning Board.

Met by a vote of 5-0.

- 1452 3. *Adequate and appropriate facilities will be provided for the proper operation of the*
1453 *proposed use.*
1454

1455 Ms. Taylor stated that they have already established that there is adequate water and sewer and
1456 the traffic is adequate. Infrastructure at least on Production Ave. should meet the requirements.
1457

1458 *Met by a vote of 5-0.*
1459

1460 The motion to approve ZBA 20-27 passed with a vote of 5-0.
1461

- 1462 **B. ZBA 20-28:Petitioner, John Pappas of 82 South Lincoln St., Keene,**
1463 **requests a Variance for property located at 18 Woodburn St., Tax Map**
1464 **#548-031-000; that is in the High Density District. The Petitioner requests**
1465 **a Variance to permit the conversion of the current two family into a three**
1466 **family residence-renovate the open space-workshop garage into a one**
1467 **bedroom or studio apartment per Section 102-791 of the Zoning**
1468 **Ordinance.**

- 1469
1470 **C. ZBA 20-29:Petitioner, Knotty Pine Antique Market Inc., of West**
1471 **Swanzy, represented by Jim Phippard, of Brickstone Land Use**
1472 **Consultants, 185 Winchester St., Keene, requests an Enlargement of a**
1473 **Nonconforming Use for property located at 96 Dunbar St., Tax Map**
1474 **#585-007-000; that is in the Central Business District. The Petitioner**
1475 **requests an Enlargement of a Nonconforming Use to expand the existing**
1476 **indoor self-storage space from 1,800 sf to as much as 6,700 sf on the**
1477 **ground floor of the existing building. The second floor of the building is**
1478 **currently 5,955 sf of self-storage. Currently the Knotty Pine Antiques**
1479 **auction gallery occupies 4,900 sf on the ground floor. Due to COVID-19,**
1480 **the owner wishes to convert the gallery space to self-storage units.**

1481
1482 Chair Gorman stated that since it is now 10:06 PM they will not be hearing any more hearings.
1483 Mr. Rogers replied that that is correct; the Rules of Procedure state that no new applications will
1484 be heard after 10:00 PM. He asked for the Board and Mr. Pappas to discuss when to hold the
1485 next meeting.
1486

1487 Chair Gorman stated that they appreciate Mr. Pappas still being here and he apologizes for not
1488 hearing his two applications. He asked Mr. Pappas his preference to present to the Board in the
1489 New Year or later this month. Mr. Pappas replied the sooner the better.
1490

1491 Mr. Greenwald asked if the rules prevent them from continuing past 10:00 PM. Chair Gorman
1492 replied that the rules allow them to continue past 10:00 PM but not to start a hearing past 10:00
1493 PM.
1494

Mr. Rogers stated that the next meeting could be Tuesday, December 15, or Tuesday, December 22. Discussion ensued about the Board members', Mr. Pappas', and Mr. Phippard's availability.

Mr. Hoppock made a motion to continue ZBA 20-28 and ZBA 20-29 to December 15 at 6:30 PM. Ms. Taylor seconded the motion, which passed by a unanimous vote of 5-0.

V. New Business

- 2021 Calendar

Chair Gorman stated that if they have new business they can take it up on December 15.

VI. Communications and Miscellaneous

VII. Non-public Session (if required)

VIII. Adjournment

There being no further business, Chair Gorman adjourned the meeting at 10:14 PM.

Respectfully submitted by,
Britta Reida, Minute Taker
Staff edits submitted by,
Corinne Marcou, Zoning Clerk
Board edits submitted by,
Jane Taylor

1 City of Keene
2 New Hampshire

3
4
5 ZONING BOARD OF ADJUSTMENT
6 MEETING MINUTES
7

8 **Tuesday, December 15, 2020**

6:30 PM

Remotely via Zoom

Members Present:

Joshua Gorman, Chair
Joseph Hoppock, Vice Chair
Jane Taylor
Joshua Greenwald
Michael Welsh
Art Gaudio, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Louise Zerba, Alternate

9
10 Chair Gorman read a prepared statement explaining how the Emergency Order #12, pursuant to
11 Executive Order #2020-04 issued by the Governor of New Hampshire, waives certain provisions
12 of RSA 91-A (which regulates the operation of public body meetings) during the declared
13 COVID-19 State of Emergency. He called the meeting to order at 6:33 PM. Roll call was
14 conducted.
15

16 **1) Unfinished Business**
17

18 Chair Gorman asked if there is any unfinished business. Zoning Administrator John Rogers
19 replied that Staff has the 2021 meeting calendar forward for the Board's approval.
20

21 Mr. Welsh made a motion to approve the 2021 meeting calendar. Ms. Taylor seconded the
22 motion, which passed by unanimous vote.
23

24 **2) Hearings**

- 25 a. **ZBA-20-28:/ Petitioner, John Pappas of 82 South Lincoln St., Keene,**
26 **requests a Variance for property located at 18 Woodburn St., Tax Map #548-**
27 **031-000; that is in the High Density District. The Petitioner requests a**
28 **Variance to permit the conversion of the current two family into a three**
29 **family residence-renovate the open space-workshop garage into a one**
30 **bedroom or studio apartment per Section 102-791 of the Zoning Ordinance.**
31

Mr. Greenwald stated that he needs to recuse himself from this application due to a conflict. Chair Gorman replied that due to Mr. Greenwald's recusal, Mr. Gaudio will become a voting member for this application.

Chair Gorman asked Staff to provide comments and history on the Petition. Mr. Rogers explained the location and stated that this property is in the Medium Density District and in 2009 the Board granted a Variance to allow for the two-family dwelling on a lot that is substandard in terms of square footage. The Medium Density District requires 8,000 sf for the first unit and 5,400 additional sf per dwelling unit. This property only has 7,552 sf so they were granted the Variance in 2009 for the second unit to be built which was created. The Petitioner requests a Variance to have a third unit on a lot that is substandard for square footage with 7,552 sf and 18,800 sf would be required.

Ms. Taylor asked if this was a substandard-sized lot even when it was a single-family home. Mr. Rogers replied yes, that 8,000 sf is required, though he does not know if there was a square footage requirement when this home was originally built. The lot is similar in size to many of the lots around it. Referencing the map, he showed two nearby properties with .17 acres and 0.14 acres. He continued that he believes a lot of properties in this neighborhood might be substandard for the 8,000 sf needed.

Ms. Taylor stated that she is confused by the fact that it is only one Variance. Mr. Rogers replied that they already have one Variance for the second dwelling unit, from 2009. Ms. Taylor asked for clarification from the application as it says it is a woodworking shop or a garage. She is not sure if a woodworking shop by itself is allowed. Mr. Rogers replied that prior to the property owner receiving the first Variance, the hobby-type woodworking shop was built; it was not being run as a business. He does not know the current condition of what is currently on the site.

Chair Gorman asked if the Board had more questions for Mr. Rogers. Hearing none, he opened the public hearing and explained the procedures for members of the public to participate. He asked to hear from the property owner, John Pappas.

John Pappas of 82 South Lincoln St. stated that the middle section of the building, which is about 800 - 900 sf, has a large open space that he is looking to convert into a studio or one-bedroom apartment. He continued that he would not be changing the footprint of the building. It is in the Medium Density District surrounded by houses that are two- and single-family homes, on River St., Portland St., Woodburn St., and so on and so forth. They are all obviously undersized in terms of the square footage requirements with similar two-unit dwellings. He also owns 25 Woodburn St., which is across the street, and is a two-unit on .2 acres. 70 Woodburn St. is .44 acres for a three-family unit. There are other two-family units on the street that have less square footage. His request for a Variance is to turn that 800 - 900 sf space into a studio apartment, not changing the footprint or appearance on the outside.

74 Mr. Pappas continued that the front of the building is a three- to four-bedroom apartment. The
75 back upstairs is already a one-bedroom apartment. This proposed new dwelling unit would be
76 below that, similar in size. There is adequate off-street parking, a yard, and so on and so forth.

77
78 Chair Gorman asked if Mr. Pappas wanted to present the five criteria. He continued that Mr.
79 Pappas does not have to, but it would be in his best interest to do so.

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

82
83 Mr. Pappas stated that the street is mostly comprised of apartment complexes, triplexes, and
84 duplexes. He continued that there is an apartment building one house down from this property
85 that has multiple units. He would not be expanding the footprint of the existing building or
86 structure. It would not affect the value of surrounding houses and apartment buildings. It is in
87 keeping with the surrounding neighborhood.

88
89 *2. If the Variance were granted, the spirit of the Ordinance would be observed because:*

90
91 Mr. Pappas stated that it would be in keeping with the duplexes in the neighborhood and would
92 utilize the space of the building instead of having a big empty space.

93
94 *3. Granting the Variance would do substantial justice because"*

95
96 Mr. Pappas stated that it fits other Variances given throughout the city. The city has a lot of
97 duplexes, triplexes, and even single-family homes that would not meet the size requirements.
98 This is probably something that has changed over time. This is the Medium Density District, not
99 Low Density or Commercial. It is in keeping with the surrounding houses. It would not
100 encroach on existing neighborhoods. The footprint would not be expanded. It would use the
101 existing structure.

102
103 *4. If the Variance were granted, the values of the surrounding properties would not be*
104 *diminished because:*

105
106 Mr. Pappas stated that it would be in keeping with the neighborhood.

107
108 *5. Unnecessary Hardship*

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

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

114 Mr. Pappas stated that it would utilize the structure that currently exists and puts no burden on
115 other properties or structures. He continued that it is obviously not feasible to not utilize 800 sf

116 in the middle of the current structure. It is obviously much more conducive to the current
117 neighbors and tenants around it.

118
119 and

120 ii. *The proposed use is a reasonable one.*
121

122 Mr. Pappas stated that it was granted as a woodworking shop and he is not sure about the noise
123 that created but that was the use with the previous owner. He continued that it fits Variances that
124 were previously given on Woodburn St. and other surrounding neighborhoods.

125
126 *B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
127 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
128 *property that distinguish it from other properties in the area, the property cannot be*
129 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
130 *necessary to enable a reasonable use of it.*
131

132 Mr. Pappas stated that it seems perfectly reasonable to utilize that space as an apartment. It fits
133 the neighborhood and surroundings as they are not all single-family homes. This proposal would
134 not bringing more traffic. This is not a commercial use though it is a multi-family dwelling. It
135 would not affect the values of houses currently surrounding the property, not on only on
136 Woodburn St., but also the condo behind it, River St., Court St., Linden St., Portland St., and so
137 on and so forth.

138
139 Mr. Welsh stated that one of the possibilities for this space that is no longer going to be used as a
140 woodshop might be to just add it to the space occupied by one of the existing dwelling units,
141 giving them another bedroom or something similar. He asked if Mr. Pappas considered that
142 option. Mr. Pappas replied that that might be feasible with the upstairs apartment. He continued
143 that at the front of the house there is kind of a barn in between the two. The front of the house
144 really does not have passage to that space except for through the basement or there is an area that
145 is basically just used as a garage/barn. Mr. Pappas directed the Board to a site plan of the
146 property labeled as “garage” with the garage on the other end of it that simply has an overhead
147 door. He stated he does not think that when the previous owner received a Variance for the
148 woodshop that they could use it as a garage. The previous owners put bollards in front of the
149 doors and he’s not sure if it was the previous owner or if the City required them to do that, but it
150 was not used as a typical garage to store a car. The other two garages have overhead doors and
151 can essentially be used as garage spaces. Mr. Pappas stated that this space could be used as a
152 second bedroom to the other current apartment, although it would make a pretty big bedroom as
153 it is approximately 36’ x 24,’ hence the idea of a studio apartment.

154
155 Chair Gorman stated that Mr. Pappas just said there was a Variance for the woodworking shop.
156 That is not what was understood, from Mr. Rogers who stated the Variance was for the second
157 unit, and during that time, that space was converted into a woodworking shop. Mr. Rogers
158 replied yes, Chair Gorman is correct that the Variance was for the second unit, because the lack

of square footage on the lot would not have allowed for a second unit at that time, or today. This was an owner-occupied structure previously and the woodworking shop was a hobby and did not require a Variance. Regarding the bollards, there were no conditions on the first Variance. He continued that he researched the 2009 meeting minutes for the Variance and did not see any conditions given. He is not sure where the bollards came from.

Chair Gorman stated that to be clear, they are looking at a space that is currently more like a garage or storage space being converted into a living space, and it currently does not really have any use, other than being just part of the building. Mr. Rogers replied that the Applicant would have to speak to that. He continued that if this was a garage space, and this Variance were to be granted, the owner would need to provide fixed parking spaces, and he does not know about the garage. The minutes from 2009 spoke to this property having five or possibly six parking spaces. He does not know if one of those is a garage space. Mr. Rogers stated that is the one item he would point to the Board is the possible parking issue, but again, that would be for the Applicant to speak to.

Ms. Taylor stated that she could not tell from any of the drawings or pictures where the current parking is and how many spaces there are and where proposed parking would be.

Mr. Pappas replied that the parking runs along the side of the house on the left. He continued that he could always extend parking that would be "piggy-back parking." There is a lawn between the building and the fence, about 22 feet, and as shown in the photo provided, where there is a white car parked, there are four on that asphalt parking (or five, depending on how you "piggy-back"), and three to the left-hand side. On the left-hand side of the garage is a strip of land that could be either hard pack, crushed asphalt or another acceptable parking surface where they would be able to have piggy-back parking. That would easily accommodate two more cars. Then there would be space for six or possibly seven cars. Mr. Pappas stated that is the only land on the property, the left-hand side of the house, which would accommodate the parking.

Ms. Taylor stated that the picture indicates three mailboxes on the front of the house. She continued that she was wondering if there are already three units in the house. Mr. Pappas replied that he has been renting the shop space as a studio apartment. Ms. Taylor asked if he is saying that he is already using the property as a three-family. Mr. Pappas replied that there was water connections already the he basically added a bathroom. Ms. Taylor replied that Mr. Pappas is using it as a third apartment, probably in violation of the Fire Code, so he is coming to the Board for an after-the-fact Variance. Mr. Pappas replied that the shop had smoke detectors and it is part of the house; the garage has smoke detectors and the basement does, too. The smoke detecting system is the same as when he bought the house. The front of the house, the basement, and the apartment upstairs are hard-wired. None of that has changed.

Ms. Taylor stated that considering the extensive holdings Mr. Pappas has, she is sure he is aware that there is more that goes into the Fire Code and Building Code than just smoke detectors. Mr. Pappas replied that it is also about windows, two points of egress, smoke detectors. He

continued that in any of the homes he has bought, the smoke detector systems were hard-wired or he put them in or changed them.

Mr. Hoppock stated that a moment ago Mr. Pappas was talking about parking and laying down some hard pack to the left of the barn in the picture. Mr. Pappas replied yes, to the left of the barn, whatever Keene requires as an acceptable parking surface. Mr. Hoppock replied that the application says that 73% of the lot is covered by existing structures and that 23% of the lot is covered by impervious surfaces, and that Mr. Pappas proposes no changes to that. But obviously, that is not correct. Mr. Pappas replied that in the left-hand side of the garage he would have to put down hard pack or crushed asphalt or whatever the Keene would accept. The asphalt part is asphalt. He asked if that is what Mr. Hoppock means. He continued that he did not put that there. Mr. Hoppock replied that he was asking about the “impervious ground covering.” Ground cover that will not let water in. Mr. Pappas replied that crushed asphalt or hard pack would let water in, but asphalt would not. He continued that his understanding was that crushed asphalt or hard pack was an acceptable surface.

Mr. Rogers stated that to clarify, in the Medium Density District the maximum percentage of lot covered by impermeable material is 60%. He continued that hard pack or crushed asphalt would be considered impermeable. It sounds like at this point in time there could not be any more lot coverage with impermeable surface because it already exceeds the number.

Chair Gorman asked Mr. Rogers whether one-, two-, or three-family homes are exempt from the sprinkler requirements. Mr. Rogers replied that he would have to verify with Captain Bates at the Fire Department, but his initial understanding is that this would probably be required to have a sprinkler system installed.

Mr. Pappas stated that he is not aware of a sprinkler system being a requirement for a three-family home. He continued that smoke detectors, hard-wired or not hard-wired, is something he is still kind of figuring out what is acceptable to Keene, but a sprinkler system would not be required. He has other three- or four-family buildings throughout the city that do not have sprinkler systems. Chair Gorman replied that he understands that existing properties would be grandfathered, but if you were to construct a new three-person unit you would have to have a sprinkler system, and when you are converting, he believes that crosses the threshold of no longer being under the residential building code and into the commercial one which this is something Captain Bates could answer. Mr. Pappas replied that he has talked with Captian Bates but he did not mention that. Chair Gorman replied that either way, it is not so pertinent to the Board as they will not be enforcing the Building Code; that would be up to City Staff, post the Board’s decision.

Mr. Gaudio asked, regarding the Unnecessary Hardship requirement, if Mr. Pappas could speak to why there is no fair and substantial relationship between the general purpose of this Ordinance (Medium Density limits) and the application to this property. Mr. Gaudio asked why this circumstance is exceptional and why is there an unnecessary hardship. Mr. Pappas replied that it

utilizes the building without having a big, empty space in the middle. It is a big, empty space underneath the unit in the back. It has no other purpose, other than to be converted into another room to an existing apartment or into a third apartment. He is agreeable to either one. He just wants to utilize the space. It does not seem feasible to have it empty.

Chair Gorman stated that Mr. Pappas mentioned other Variances that have been granted and the other buildings that are similar, surrounding this. He asked if Mr. Pappas could go into more detail. Mr. Pappas replied that he does not know when the Variances were given, he was just comparing lot sizes and number of units. He continued that when the houses were built that predates most of the people in this meeting and the Zoning Ordinances were different. 70 Woodburn St. is on .44 acres and is a three-family. 25 Woodburn is a two-family unit on .2 acres. Neither of those meet the requirements. 34 Woodburn St. has about 18 apartments and is on 5.4 acres, and it would require about 7.2 acres, by his math. 37 Woodburn St. has .15 acres and it is a two-unit. 43 Woodburn St. is .16 acres and has two units. 67 Woodburn St. has .21 acres and has two units. River St. abuts his property in the back and has multiple two-family units, approximately 12 or 14. 15 and 17 Portland St. have two units on .13 of an acre. 25 Portland St. is two units on .23 of an acre. Throughout the city you can go to other complexes, Colorado St. or other streets in that neighborhood, further down River St., Wilder St., and so on and so forth. Many of those duplexes and triplexes do not have the required square footage by today's standards, but it may have been different back then.

Chair Gorman stated that he agrees that there are a slew of substandard lots throughout the city. He continued that a lot of them probably were, as Mr. Pappas insinuated, prior to current zoning and grandfathered. Of course there are some that have probably had Variances. He did not know if Mr. Pappas had any specific Variance case.

Chair Gorman asked if the Board had any more questions for Mr. Pappas. Hearing none, he welcomed public comment and explained how members of the public could participate.

Taryn Fisher of 302 Court St. stated that she has an elderly dog that she walks around the neighborhood frequently and she probably does the Court St./Linden St./Woodburn St./Portland St./Court St. loop about six times a day. She continued that she is there morning, afternoon, rush hour, and late in the evening, so she knows this street well. She wants to first acknowledge that Mr. Pappas has done a really great job with the work on the building he owns at 25 Woodburn St. with a new roof and a completely renovated double deck structure. Any work that could potentially be done on 18 Woodburn St. would hopefully mirror the look, feel, and quality of that property, and she appreciates that. Another property on that street was just purchased, although she does not know by whom, and there is a group of people doing significant renovation there. She is really interested in the quality of life of the neighborhood and that particular street. Ms. Fisher continued that the photo of the property with the white car in the driveway shows a view she sees all the time. The photo shows one car in the driveway, but usually she sees it with multiple cars in the driveway and a small pick-up truck parked on the street. She guesses it is typically parked there during the day and in the evening because that railroad-style parking,

which Mr. Pappas calls piggy-back parking, is probably inconvenient for the tenants. The house directly next door to Mr. Pappas's is not his business or concern, but they typically have four to six cars parked in their driveway and a car parked on the street. The street does not have sidewalks, so if she and her dog are walking and there is a car passing, as well as cars parked on the side of the street, there is no shoulder or sidewalk and it does get cramped. Sometimes the folks across the street park their cars on the street as well. It is a tight little spot already, and when she heard Mr. Pappas say that it could easily fit six or seven cars, she cringed and thought about how it would go from Medium Density to High Density in that spot, and as a resident of neighborhood and an abutter she wants to express concern. She has no concern about Mr. Pappas being a good neighbor. Her concern is about "loading that property up." The photo shows that the white car is not even parked in the driveway; it is parked kind of on the lawn. In her view, the ideal is for every house to have a nice little lawn and cars in the driveway and not on the street. Her concern is the density, and the parking. She wants the ZBA to consider the tightness of the lot, the density of the residence as it stands, and potentially adding more cars. Six to seven cars would be tough.

Mr. Rogers asked if the Board received an email from another abutter and asked Chair Gorman to read it into the record. Chair Gorman replied yes, the Board received a copy of that letter, he thinks prior to last Monday's meeting. He continued that he could read it into the meeting minutes but does not have a copy. Mr. Rogers replied that he has a copy. He read:

"Dear ZBA of Keene,

Please read my letter into the record regarding the 18 Woodburn St. application.

At first I was all for the renovation, after all, John Pappas has been a good neighbor and landlord to my neighbors, he owns two buildings that abut mine.

Then I read his opposition to the Hundred Nights move to Water St. so I gave him a call. After half an hour, he assured me he cared more about the homeless than the City Council, but complained that he did not see how he could make any money off of the homeless, comparing the Hundred Nights folks to meth lab builders and accusing them of stealing his catalytic converter.(!)

Like I said we talked for a while and he convinced me that his apartment dwellers were not a problem. I wish though that John could find some place in his heart for homeless, and I suggest that there are plenty of folks who have the welfare voucher that could pad his pockets and he could easily help the homeless instead of insult them.

So, I do not oppose these changes, but, I would make the suggestion that the increased traffic and speed of traffic on Woodburn St. sometimes cars can get a little bit fast and in a hurry, endangering pedestrians, children, adult bicyclists, and small animals. I would suggest that road speed bumps be placed on Woodburn and River Streets. Another alternative would be to

331 *make Woodburn St. one way from Portland St. to Linden St. That might cut some of the shortcut*
332 *speeders.*

333
334 *Thank you,*
335 *Marcus McCarroll, 21 Woodburn St."*

336
337 Chair Gorman asked if the Board had any further questions. Hearing none, he asked Ms. Marcou
338 if she was aware of any public attendees who wanted to speak. Ms. Marcou replied no. Chair
339 Gorman closed the public hearing, stating that he will reopen it to ask technical or procedural
340 questions if needed. He continued that the Board will deliberate on the criteria.

341
342 Chair Gorman reopened the public hearing to ask Mr. Rogers that if the Board were to grant this
343 Variance, would the Applicant need an application for parking. Mr. Rogers replied that he does
344 not know, but as he stated earlier, when the Variance was granted in 2009 the owner at the time
345 made mention of "five to six parking spaces." If there are six spaces on the site, then no, the
346 Board would not need to hear another application for parking. If there are only five spaces, six
347 would be needed to meet the Zoning Code. He does not know the dimensions of everything
348 there but, the lot coverage is already exceeded. Mr. Pappas would possibly need to request a
349 Variance for lot coverage and/or parking spaces.

350
351 Mr. Pappas stated that whether it is granted or not granted, the young couple renting the back
352 apartment have two cars, and the front is a four-bedroom apartment and if each person has a car;
353 that is six cars, and that is a granted Variance for a two-family unit. He continued that the cars
354 that the woman from Court St. was referring to are non-tenants' cars. Friends and family come
355 over to visit the tenant(s). If you have two one-bedroom units, you assume it will be one car
356 each, and if you have a four-bedroom there could be as many as four cars. The people who live
357 in the front apartment only have one car now and it has been that way since he owned it. He
358 does not think there has ever been more than one car to that front apartment. Mr. Pappas
359 questioned that if the property stays at as a two-family, there could be six or seven cars. If it is a
360 three-family there could be four to seven cars. He does not understand what the different would
361 be.

362
363 Chair Gorman replied that he understands what Mr. Pappas is saying – he could rent to four
364 people, and they could own 12 cars. He understands the logic and Mr. Pappas' perspective, and
365 there is some reason there. But from a Zoning perspective, what the Board is concerned with, is
366 what the Zoning Ordinance states. Thus, the reason he just inquired of Mr. Rogers as to the fact
367 that this property meets the criteria. The criteria for a three-unit would be six parking spaces. It
368 is regardless of what actually happens on the property; it is that in order to have a three-family
369 home, there would need to be six parking spaces.

370 Mr. Pappas stated that if he were to convert the back space to a room incorporated into one of the
371 other apartments, he could convert the one in the back into a two- or three-bedroom apartment.
372 Obviously it is a large space and could even accommodate a couple bedrooms. He would then
373 have seven bedrooms in the apartments and could essentially have seven cars there, if each

roommate had their own car. He wants to make that point. He cannot tell tenants that they cannot park there and cannot tell them they cannot have friends over. Multiple families on that street, whether it is a one or two apartment complex, park on that street repeatedly – neighbors on both sides and across the street.

Chair Gorman stated that he understands all that, and these are issues for the Public Works Department. He continued that he does not know anything about the parking on Woodburn St., and even if he did, as a Board member it would not be under his purview. He does not know if on-street parking is allowed or not allowed and certainly does not know how many cars the tenants have. What the Board does have, are the parking requirements in the Zoning Code. Chair Gorman stated that this parking requirements vary from a two to three unit. What Mr. Pappas is describing, is sort of a separation between math and reality, and he understands that can exist, but the Board is weighing, specifically, is whether Mr. Pappas has adequate parking to meet the Zoning Code requirements.

Mr. Pappas asked that if it stays a two-family and he converts the back apartment to a larger apartment with two or three bedrooms, is there a parking requirement for two three-bedroom apartments or two two-bedroom apartments or is it based on the number of units. Chair Gorman replied that he believes it is based on units but will have Mr. Rogers respond. Mr. Rogers stated that the Zoning Code has parking calculations for different uses. The requirement to meet is two parking spaces per unit, so that is why six parking spaces would be required if this application were to be granted. He continued that property owners are also required to provide adequate parking for their property, too, so if there are only four parking spaces required and all of a sudden you have eight tenants and they each have a car and you do not provide enough parking, that would have to be addressed, although with the Community Development Department instead of the Zoning Board of Adjustment.

Mr. Pappas asked if that means he would have adequate parking if this stays at two apartments. He continued that obviously he has adequate parking for four cars, but questioned if the parking would be acceptable if that were converted into a larger apartment in the back. He wants to be sure he has adequate parking for either scenario. Chair Gorman replied that if he keeps it as a two-family, the Board is comfortable with four spaces. For a three-family, either there are six spaces or the Board would have to hear from Mr. Pappas again for another Variance.

Mr. Rogers stated that is correct; four spaces is what Zoning would require if this stayed as a two-unit.

Chair Gorman closed the public hearing. The Board reviewed the criteria.

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

Ms. Taylor stated that part of the public interest, along with spirit of the interest criteria is how it meets or may conflict with the purpose of the ordinance. She continued that the intent for

Medium Density District is just that, medium density. Regarding turning this particular property into three units, if it was High Density she probably would not have a problem with it, but this is a real concern to her. It is a lot that appears to already have a good deal of use. Having more intense use would not meet the spirit of the ordinance.

Mr. Hoppock stated that he agrees with Ms. Taylor. He continued that he wants to go on the record and express his extreme dissatisfaction with the accuracy of this application. Number one, “no changes” to the covered structures on the property regarding pervious or impervious structures; that is not accurate on the application. More significantly, for “present use,” Mr. Pappas wrote “currently two-family with woodshop.” The Board already heard that is not true and this really disturbs him. He agrees with Ms. Taylor’s comments on the first criterion.

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

Mr. Gaudio stated that to continue with what Ms. Taylor stated, he thinks the spirit of the Ordinance is not going to be observed. He continued that the spirit of a Medium Density ordinance is, as she said, medium density. Going to three units is pushing the number up. When Mr. Pappas went through the list of properties with two- and three-unit properties, he believes most of those, if not all of the ones that were .17-acre or .14-acre or thereabouts were all two units. The larger properties were three-unit. He is concerned about the second criterion.

3. Granting the Variance would do substantial justice.

Mr. Hoppock stated that the Board should consider whether the loss to the individual can be outweighed by a gain to the public, and his answer to that in this situation is yes. He continued that the gain to the public would be that they would not be making a precarious situation worse, in terms of the density of pedestrian and vehicular traffic, and just keeping fewer people in a small space. He does not think there is a loss to the individual, and if there is, it is outweighed by the gain to the public, in terms of safety.

Ms. Taylor stated that she agrees with Mr. Hoppock. She continued that she is quite familiar with the area and knows several people who live in the neighborhood, and it is already extremely populated. Of course, they are talking about density kind of hypothetically, because apparently the third unit is already occupied. Perhaps if it is returned to a two-unit, which has a permitted use, that would ease some of the density issues.

[Minute-taker note: the Board addressed the fourth criterion out of order, immediately after the fifth.]

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:*

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

463 and

464 ii. *The proposed use is a reasonable one.*
465

466 Mr. Gaudio stated that this was the reason for his previous question. He continued that he is not
467 sure he sees any special conditions of the property that distinguish it from others that would
468 result in an unnecessary hardship and no fair and substantial relationship exists. He does not
469 think there is an unnecessary hardship in this example.
470

471 Mr. Hoppock stated that he agrees with Mr. Gaudio. He continued that even if there were a
472 special condition to this property, there is fair and substantial relationship between the general
473 purpose of the Zoning Ordinance which is managing density and protecting public safety and the
474 application of that purpose to this property. By granting this Variance they would defeat the
475 purposes just mentioned. Thus, he thinks there is a fair and substantial relationship, assuming
476 that there is a special condition, which he does not think there is.
477

478 Mr. Welsh stated that he agrees with both Mr. Gaudio and Mr. Hoppock as well as the other
479 Board members. He continued that denial of the Variance still leaves options open for the
480 Applicant, options that allow him to utilize the property in a way that is consistent with the spirit
481 of the ordinance, and available for making rental money, too.
482

483 Ms. Taylor stated that she agrees with everything that has been said on this point already, but to
484 take it a little further; she does not think it would be reasonable to allow a third dwelling unit on
485 this property. She continued that it may be to the owner's economic benefit, but that by itself
486 does not establish hardship in any way that she is aware of. Thus, she would add that she does
487 not think this is a reasonable use.
488

489 b. *Explain how, if the criteria in subparagraph (A) are not established, an*
490 *unnecessary hardship will be deemed to exist if, and only if, owing to special conditions*
491 *of the property that distinguish it from other properties in the area, the property cannot*
492 *be reasonably used in strict conformance with the ordinance, and a variance is therefore*
493 *necessary to enable a reasonable use of it.*
494

495 Chair Gorman stated that they already discussed this, he asked if anyone had anything to add.
496

497 Ms. Taylor stated that it is clear from its use as a two-family dwelling unit that there is already
498 reasonable use established, so it is not that it cannot be used in conformity with the Zoning
499 Ordinance. It has already had one Variance which allows the two units. She does not think that
500 the alternative criteria fits either.
501

Chair Gorman stated that he tends to agree with most of what was said. He continued that he finds some comfort knowing that Mr. Pappas will be able to renovate the space to add to the unit above. That does seem like he has reasonable use, especially given the parking lot size. In comparison to a lot of the other properties he listed off, he realizes that many of them are two- or three-family units, but he agrees with Mr. Gaudio that most of the two-family ones did appear to be on .15 to .2 acres, which is fairly consistent with what Mr. Pappas has. Also, he wants to note that the previous Board has already expanded Mr. Pappas' reasonable use of the property by giving him the Variance for the second unit.

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

Chair Gorman stated that he does not believe that the values of the surrounding properties would be diminished as the outward appearance would not be greatly impacted.

Mr. Hoppock stated that he would agree with Chair Gorman, but he thinks that technically the Applicant did not meet his burden on this criteria. He is hard pressed to think that it would impact the values of surrounding properties anyway. Chair Gorman stated that he agrees with that statement.

Ms. Taylor stated that she agrees that Mr. Pappas did not provide any information on this point. She continued that she is not in the business of evaluating properties, but going with her instincts and her knowledge, it seems that adding to the density and potentially increasing the number of vehicles and the amount of traffic would have an impact on the values in the neighborhood.

Chair Gorman replied point taken.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to grant ZBA 20-28. Chair Gorman seconded the motion.

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

Not met by a vote of 0-5.

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

Not met by a vote of 0-5.

3. Granting the Variance would do substantial justice.

Not met by a vote of 0-5.

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

545 Approved 5-0.

546
547 5. *Unnecessary Hardship*

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

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

553 *and*

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

555
556 B. *Explain how, if the criteria in subparagraph (A) are not established, an unnecessary*
557 *hardship will be deemed to exist if, and only if, owing to special conditions of the*
558 *property that distinguish it from other properties in the area, the property cannot be*
559 *reasonably used in strict conformance with the ordinance, and a variance is therefore*
560 *necessary to enable a reasonable use of it.*

561
562 Not met by a vote of 0-5.

563
564 The motion to approve ZBA 20-28 failed with a unanimous vote of 0-5.

565
566 Mr. Hoppock made a motion to deny ZBA 20-28. Ms. Taylor seconded the motion, which
567 passed with a unanimous vote of 5-0.

568
569 Ms. Taylor asked if it would be appropriate to ask Mr. Rogers to refer this property to Code
570 Enforcement for the unapproved third dwelling unit. Mr. Rogers stated that Staff is already
571 working with Mr. Pappas with regards to this property.

572
573 b. **ZBA 20-29:/ Petitioner, Knotty Pine Antique Market Inc., of West**
574 **Swanzey, represented by Jim Phippard, of Brickstone Land Use**
575 **Consultants, 185 Winchester St., Keene, requests an Enlargement of**
576 **a Nonconforming Use for property located at 96 Dunbar St., Tax**
577 **Map #585-007-000; that is in the Central Business District. The**
578 **Petitioner requests an Enlargement of a Nonconforming Use to**
579 **expand the existing indoor self-storage space from 1,800 sf to as**
580 **much as 6,700 sf on the ground floor of the existing building. The**
581 **second floor of the building is currently 5,955 sf of self-storage.**
582 **Currently the Knotty Pine Antiques auction gallery occupies 4,900 sf**
583 **on the ground floor. Due to COVID-19, the owner wishes to convert**
584 **the gallery space to self-storage units.**

585 Mr. Greenwald stated that as with the last application, he will recuse himself. Chair Gorman
586 replied that due to Mr. Greenwald's recusal, Mr. Gaudio will be a voting member for this
587 application.

Chair Gorman asked Staff to give provide relevant comments and information.

Mr. Rogers stated that this property was before the Board in 2018 and was granted a Variance to allow for the self-storage in this building as it is mentioned in the application. He continued that the remaining portion of the building was to be operated as an auction house, which is an allowed use in the Central Business District where the self-storage is not an allowed use. At the time that Variance was granted, that Applicant proposed the second floor as self-storage and a portion of the bottom floor, to allow access for the self-storage to occur, and the Applicant put forth the square footage which the Board put on as a condition. Mr. Rogers continued that because of that condition, the Applicant is before the Board as an Enlargement of a Non-conforming Use. He concluded that Dunbar St. is off of Main St. and that this is the last building at the end of the street.

Mr. Gaudio stated that for clarification, this is being brought forward as an Enlargement of a Non-conforming Use, and yet, as Mr. Rogers just said, in 2018 it was given a Variance. It was not used as self-storage at that point. He is confused about why it is currently a non-conforming use and not thereby means of a Variance and therefore whether this should be a request for an Enlargement of a Non-conforming Use or a request for another Variance.

Mr. Rogers stated that in reviewing this application with the City Attorney, it is his understanding that even though it received a Variance, it still is a non-conforming use and that is why it was directed the Applicant apply for the Enlargement of a Non-conforming Use. Regardless of the Variance it still is a non-conforming use, as was his understanding.

Ms. Taylor stated that she questions square foot numbers on the application, which don't seem to add correctly. She questioned if the Variance for the self-storage facility at 7,555 sf was all on one floor. Mr. Rogers replied no, at the time it was all of the second floor and a portion of the first floor. He believes that the first floor portion was where the elevator was and it was meant to allow access for people to get through and have some self-storage on the first floor, but mostly to gain access to the second floor. The application says what the second floor is, and the remaining portion of that is what is on the first floor.

Ms. Taylor stated that what confuses her is that in the application it says "Expand the existing, indoor self-storage space from 1,800 sf to as much as 6,700 sf on the ground floor" and then it talks about the 5,955 feet on the second floor which is self-storage. She could not make the figures come out square. Mr. Rogers replied that the notice speaks to 5,955 sf on the second floor and then if you add the 1,800 sf that they are speaking of on the first floor, that gives you not the 6,700 sf figure, but rather 7,700 sf. He continued that they might want to ask the Applicant for more specific details.

Ms. Taylor stated that her second question is that the application states that there are 13 on-site parking spaces where only five are required; will this expansion of the self-storage change the parking requirements. Mr. Rogers replied that this property is in the Central Business District so there would not be any parking requirements attached.

Chair Gorman asked if there were any more questions for Mr. Rogers. Hearing none, he opened the public hearing and explained the procedures for participating. He asked to hear from Jim Phippard.

Mr. Phippard stated that he is representing Knotty Pine Antique Market, Inc. He continued that he apologizes for the confusion about the numbers, and would like to clarify. The entire second floor is utilized for self-storage, and that was identified as part of that 7,555 sf. On the first floor, 1,800 sf includes the stairwell and the elevator and the elevator lobby, which provides customers to the second floor space, especially if they have goods that they are storing. All of the self-storage space in this building is internal to the building. There are no exterior doors. This is all climate-controlled storage, completely enclosed inside the building. The square footage of 7,555 is the entire second floor, and 1,800 sf of the first floor, which is also the stairwell and elevator and elevator lobby which is why Ms. Taylor was having difficulty with the math. He probably should have clarified that better in the application. This is not altering the building space or the building footprint. It is not an expansion of the building. This is all of the existing space internal to the building that they are looking to convert to self-storage units.

Mr. Phippard stated that as Mr. Rogers explained, Knotty Pine Antique Market came before the Board in June 2018 and received approval for a Variance to allow self-storage, which is not a permitted use in the Central Business District. The building is located at the end of Dunbar St. and there are 13 existing parking spaces in the paved parking lot adjacent to the building. The building is serviced by City water and sewer. It has sprinklers and is in full compliance with the Building Code requirements for this use and for the auction gallery use.

Mr. Phippard continued that because of COVID-19 limitations have been placed on meeting spaces such as the auction gallery, the number of people permitted to attend a live auction has been limited to the degree that it is not feasible to continue auctions. The owner is proposing that if he cannot run the auction gallery any longer under these conditions, he will continue the use in the format of online auctions, thus, he does not need 4,900 sf of space in that building. Therefore he is asking to convert that space to additional self-storage, completely enclosed inside the building.

Mr. Phippard addressed the criteria.

1. *Such approval won't reduce the value of any property within the district or otherwise be injurious, obnoxious, or offensive to the neighborhood.*

Mr. Phippard stated that there is self-storage in the building which cannot be seen as it is entirely enclosed within the building. He continued that there are no windows to look into see storage that does not look appropriate in the building. It is an old warehouse building that has been cleaned up considerably and converted. The sprinkler system has been completely refurbished, is completely up to date and in compliance with Code. The addition of more self-storage units in

the building will be invisible to the neighborhood. The owner had auctions and visitors to the gallery during the week with those activities no longer to continue, there will be a decrease in traffic as there will be traffic only associated with the self-storage units. The existing space has had an average of four to six visitors per day. They think that by adding the additional 4,900 sf that traffic will not increase significantly and probably there will be less traffic than with the previous use as an auction gallery.

2. There will be no nuisance or serious hazard to vehicles or pedestrians.

Mr. Phippard stated that the existing 13 parking spaces on site are more than adequate to handle the traffic that Knotty Pine Antique Market has been experiencing for the self-storage units. For that square footage of self-storage units, Zoning would require five spaces, but 13 exist. There is a sidewalk on one side of Dunbar St. for access to pedestrians. They do not believe that creating additional, interior self-storage space will have any impact on vehicles or pedestrians on Dunbar St.

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

Mr. Phippard stated that the building has an up to date sprinkler system for fire protection. He continued that there are no additional services required by the City for the additional storage space. The on-site parking is adequate and traffic resulting from the additional storage space will be less than that generated by the auction gallery.

Mr. Phippard stated that he thinks Knotty Pine Antique Market is in full compliance with these criteria and he hopes the Board can approve the request.

Ms. Taylor asked if there is any office space. She continued that she assumes that when it was the auction gallery, there would have been some sort of office. She asked if that will continue. Mr. Phippard replied that the building is monitored. He continued that there was a small space that was part of the auction gallery that was not a formal office; it is just a corner of the room, used during business hours. This is a space that is monitored by an attendant without a key card access, which is appropriate given that it is an interior space. That office space is in the front corner of the building, closest to Dunbar St.

Ms. Taylor stated that if it is a monitored space that means there is a person there. Mr. Phippard replied yes. Ms. Taylor asked if a person is there 24/7. Mr. Phippard replied no, only during the hours of operation. He continued that he believes it closes at 9:00 PM but the owner could confirm that.

Ms. Taylor stated that individual needs a place to sit and potentially a bathroom facility. Mr. Phippard replied that there are existing bathrooms in the building. He continued that if there is a

problem with someone opening their unit, then the attendant is in the building during those hours of operation and they can help them.

Ms. Taylor stated that she takes it that it is secured with some sort of security system and/or lights. Mr. Phippard replied that there are lights inside the building and exterior lights that are required by Code at each egress door. There is an egress door on the front corner of the building closest to Dunbar St. and another entrance for customers in the location of the elevator and stairwell. There is another egress door on the east/right hand side of the building. Because of the size of the space inside the building the Building Code limits the travel distance to mandatory egress doors, with this in full compliance. The doors are all lighted and wired.

Ms. Taylor asked where the main entrance is. Mr. Phippard replied that the main entrance is the inside corner of the L shape of the building. There is an access there for someone who has boxes or materials they are putting into storage, to bring them in the door at the elevator lobby to the second floor. That is the existing customer entrance.

Mr. Pappas stated that the office is staffed Monday - Friday, 9:00 AM to 5:00 PM, and from 9:00 AM to 1:00 PM on Saturdays. He continued that the office area has a long counter that they used for the auction gallery and it is also used for when people come to rent units and have to come pick up their key cards. That space is roughly 20' by 20.' Access to the facility is 6:00 AM to 10:00 PM and this is not a 24-hour facility. It is all automated with no one can have access unless they have a full access card, which only he and an office manager have. Tenants are only allowed in between 6:00 AM and 10:00 PM when the alarms set and tenants' key cards do not work. It is a fully automated system for tenants, but their access is only from 6:00 AM to 10:00 PM, 365 days a year.

Mr. Rogers stated that he wanted to clarify for the Board that part of the condition for the 2018 Variance was the square footage and also that they stay within the existing footprint of the building, which is being proposed by Mr. Pappas. It appears that he would be meeting that portion of the Variance.

Chair Gorman asked if anyone on the Board had more questions for Mr. Phippard. Hearing none, he asked if there was any public comment.

Tom Stevens of 122 Water St. asked if the Board will still keep the condition of not allowing outside storage. He also asked if the Board would be able to put other conditions on the property, such as a hearing for the site plan. He continued that he noticed on the site plan, on the east side of the building, there are some trees indicated that he does not see are actually there. He does not know if they could put bollards on the east side as he sometimes sees people park their cars on the dirt lot. He questioned if the Board could condition this. Mr. Stevens continued that per the site plan which was earlier displayed, it showed 11 parking spaces. On the east side there seems to be four plants that he believes are trees, flowering pear, paper birch, and a few others. He is wondering if it is possible to put a condition of making sure the site plan is adhered

760 to, and also to have parking in the designated spots and not on the grass. He concluded that
761 would help the aesthetics of the property.

762
763 Chair Gorman stated that many of the items Mr. Stevens is describing, falls under the category of
764 the Community Development Department. He asked Mr. Rogers what will happen with the site
765 plan, asking if this will be approved administratively, or will it be heard by the Planning Board.
766 Mr. Rogers replied that he was not sure. He continued that this might be something that would
767 be done administratively. There is no outdoor activity being proposed, from his understanding,
768 which might not trigger a full site plan review. If Mr. Stevens had concerns with people parking
769 on the dirt lot, City Staff could address this issue as it could be a violation of the City's property
770 standards, of parking on unapproved surfaces. Mr. Rogers did notice and commented that this
771 site plan does not appear to be signed, and that he is not sure if it is the official site plan or not,
772 but Staff can review if there is landscaping missing they could have a conversation with Mr.
773 Pappas to rectify this issue.

774
775 Chair Gorman replied that if Mr. Stevens has follow-up questions perhaps they are related more
776 to the Community Development Department. Mr. Rogers replied most certainly, Mr. Stevens
777 can reach out to the Community Development Department and Staff can have a conversation
778 about it with him.

779
780 Mr. Phippard stated that Mr. Pappas does have an approved site plan for the property, which was
781 approved in 2018. He continued that at that time they were pursuing a change to the site plan
782 which would have involved that grassy area between the building and Community Way. Mr.
783 Stevens correctly pointed out that Mr. Pappas had not planted the three trees that were called for
784 on the east side of the building. The Community Development Department is on top of that, and
785 put Mr. Pappas on notice that the security he posted will not be released until those trees are in
786 fact there. So Mr. Pappas will go ahead and plant those three trees and be in compliance with the
787 approved site plan.

788
789 [Minute-taker note: The Chair and Board members stated that the meeting was experiencing poor
790 audio quality during this time of Mr. Phippard's response. Mr. Phippard state he was receiving
791 notices of his low internet connection. Mr Phippard provided this written narrative after the
792 meeting: "During the period of poor internet connection I was explaining that: Mr. Pappas had
793 not planted the trees called for in the approved site plan because he was trying to purchase the
794 land to the east of the building. His intent was to add parking in that area. That deal has since
795 fallen through so Mr. Pappas will be planting the trees as called for on the approved site plan."]

796
797 Chair Gorman asked if there were any other questions for Mr. Phippard. Hearing none, he asked
798 Ms. Marcou if there were any call-ins. Ms. Marcou replied no. Chair Gorman reiterated the
799 procedures for members of the public to participate. Hearing no members of the public wishing
800 to speak, he closed the public hearing. He continued that he will reopen the public hearing as
801 needed to ask procedural or technical questions.

803 The Board discussed the criteria.

- 804
805 *1. Such approval won't reduce the value of any property within the district or otherwise be*
806 *injurious, obnoxious, or offensive to the neighborhood.*

807
808 Ms. Taylor stated that she agrees that it would be none of the above. She continued that Mr.
809 Stevens brought up a good point and that at the time they make a motion on the application, that
810 a condition be added that there continue to be no outside storage allowed.

- 811
812 *2. There will be no nuisance or serious hazard to vehicles or pedestrians.*

813
814 Mr. Hoppock stated that given the configuration of the building and the location of the proposed
815 use within the building and the condition Ms. Taylor just talked about, which he agrees with, he
816 does not think there would be any nuisance or serious hazard to vehicles or pedestrians in the
817 area. He does not think this criterion is an issue.

818
819 Chair Gorman stated that he agrees, and he thinks that if anything, there may be less traffic than
820 there would be if there was an auction use.

- 821
822 *3. Adequate and appropriate facilities (i.e. water, sewer, streets, parking, etc.) will be*
823 *provided for the proper operation of the proposed use.*

824
825 Mr. Hoppock stated that this criterion appears to be met as well. Chair Gorman stated that he
826 agrees. He continued that Mr. Pappas has the sprinklers, more parking than needed, etc.

827
828 Chair Gorman asked for any more comment on the criteria. Hearing none, he asked for a
829 motion.

830
831 Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 20-29 on two
832 conditions: 1) that there be no outside storage, and 2) that all of the conditions approved in the
833 2018 Variance be honored. Mr. Welsh seconded the motion.

834
835 Ms. Taylor asked if Mr. Hoppock means he wants the conditions to continue and be attached to
836 this approval. Mr. Hoppock replied yes.

837
838 The Board voted on the criteria.

- 839
840 *1. Such approval won't reduce the value of any property within the district or otherwise be*
841 *injurious, obnoxious, or offensive to the neighborhood.*

842
843 Met with a vote of 5-0.

- 844
845 *2. There will be no nuisance or serious hazard to vehicles or pedestrians.*

846 Met with a vote of 5-0.

847

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

850

851 Met with a vote of 5-0.

852

853 The motion to approve ZBA 20-29 passed with a unanimous vote.

854

855 **3) New Business**

856

857 Chair Gorman asked if there was any new business. Mr. Rogers replied no. He thanked
858 everyone for participating in two meetings this month and wished everyone happy holidays.

859

860 Chair Gorman asked Mr. Greenwald if this is his last meeting. Mr. Greenwald replied yes.
861 Chair Gorman stated that he thanks Mr. Greenwald for his time and it has been a pleasure having
862 him on the Board, and the Board thanks Mr. Greenwald for his service.

863

864 Mr. Greenwald stated that he gives his sincere and heartfelt thanks to City Staff for their support
865 and professionalism and also to all of the Board members and alternates. He continued that he
866 applauds their volunteerism and their dedication to Keene. He is honored to have served with
867 them.

868

869 There being no further business, Chair Gorman adjourned the meeting at 8:24 PM.

870

871 Respectfully submitted by,
872 Britta Reida, Minute Taker
873 Staff edits submitted by,
874 Corinne Marcou, Zoning Clerk

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443 WINCHESTER ST.
ZBA 21-01



Petitioner requests a Variance to permit an employee lounge at the existing business for employees may stay overnight as needed per Section 102-632.



NOTICE OF HEARING

ZBA 21-01

A meeting of the Zoning Board of Adjustment will be held on Monday, January 4, 2021 at 6:30 PM to consider the petition of Frank Patel of 6 Woolsack Dr., Westford, MA, represented by Adam Kossayda of Bragdon, Baron & Kossayda of 82 Court St., Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 21-01: Petitioner, Frank Patel of 6 Woolsack Dr., Westford, MA, represented by Adam Kossayda, of Bragdon, Baron & Kossayda of 82 Court St., Keene, requests a Variance for property located at 443 Winchester St., Tax Map #115-028-000; that is in the Industrial District. The Petitioner requests a Variance to permit an employee lounge at the existing business at 443 Winchester St., for employees may stay in the lounge overnight, as needed, during inclement weather per Section 102-632 of the Zoning Ordinance.

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

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date December 23, 2020



**BRAGDON, BARON &
KOSSAYDA, P.C.**

Located at The Holbrook House

82 Court Street
P.O. Box 465
Keene, NH 03431
Telephone: 603-357-4800
Fax: 603-357-4825
akossayda@bragdonlaw.com

Stephen B. Bragdon
Adam P. Kossayda
Erin S. Meenan
Elana S. Baron

Peter W. Heed, *Of Counsel*

December 18, 2020

City of Keene Zoning Board of Adjustment
3 Washington Street
Keene, NH 03431

Re: Variance Application for 443 Winchester Street, Keene

To the Board:

Please be advised this Office represents Mr. Frank Patel, trustee of the Winn. Street Realty Trust. Mr. Patel operates a convenience store at 443 Winchester Street. He seeks a zoning use variance to build a small employee lounge on the store's premises. The lounge will allow the store's employees to stay on premises, as needed, after a long shift or when it is unsafe to commute home during inclement weather. No one will permanently reside in the apartment; it will only be used by employees or the store's owners occasionally, as necessary.

The store is in a commercial zone but on the line of commercial and residential zones. As noted in the attached application, this variance does not substantially change the property's current use nor alter the area's character. Instead, it will maximize the property's current business use.

Thank you for your consideration. Please contact me with any questions or concerns.

Respectfully,

Adam P. Kossayda

APK/smf
Encl: Variance App.

APPLICATION FOR APPEAL

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

For Office Use Only:

Case No. 2BA21-01
Date Filed 12/18/2020
Received By CMM
Page _____ of _____
Reviewed By _____

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Frank Patel Phone: 781-858-4478
Address 6 Woolsack Dr Westford, MA 01886
Name(s) of Owner(s) Winchester Street Realty Trust
Address 443 Winchester St. Keene, NH 03431
Location of Property 443 Winchester St. Keene, NH 03431

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 115-028-000-000 Zoning District Industrial
Lot Dimensions: Front 152' Rear 152' Side 140' Side 140'
Lot Area: Acres .49 Square Feet 21318
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 33 Proposed 33
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 35 Proposed 35
Present Use commercial
Proposed Use commercial & residential

SECTION III - AFFIDAVIT

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

Frank Patel
(Signature of Owner or Authorized Agent)

Date 11/20/20

Please Print Name Frank Patel

PROPERTY ADDRESS **443 Winchester Street Keene**

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) **102-632** of the Zoning Ordinance to permit:

**An employee lounge at the existing business at 443 Winchester Street, Keene.
Employees may stay in the lounge overnight, as needed, during inclement weather.**

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

The proposed lounge would allow long-shift, overnight workers at the existing convenience store, which is open 15 hours a day, to rest/sleep at the lounge after their shift. This would prevent tired drivers from being on Keene's roads. Further, the lounge would allow workers to stay at the apartment on occasions when the roads are unsafe to travel after shift, such as during winter storms. That, too, will improve safety on Keene's roads.

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

The lounge would not be occupied long-term and would not be leased to the public. Instead, the lounge's overnight accommodations would only be used occasionally by the existing business' employees, as needed. Further, the lounge's purpose is solely to benefit the business to which it is attached providing employees a safe place to stay when commuting home would be unsafe.

3. Granting the variance would do substantial justice because:

The variance would allow the existing business to conduct business during long hours and inclement weather, by not requiring employees to commute when traffic conditions are unsafe or after having completed a long shift. Further, the use of this area as an occasional overnight accommodation would not change the overall character of the area since this use would only be occasional, and as required by the business's employees. The proposed use will allow the best and fullest use of the property by the owner.

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

The lounge would not alter the area's character nor change the traffic to this property since only employees (who are already on premises) will use it. The apartment will only affect the second floor of one building in this area by putting that floor into occasional use by this store's employees. That occasional use does not affect surrounding businesses. There is no additional burden on city infrastructure no increased risk of harm to tenants.

5. Unnecessary Hardship

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

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The property is zoned industrial, which furthers the community's economic interests and segregates noisy industry from local residents. No one will permanently reside on the property. The lounge will benefit the existing business by providing employees a safe place to stay when commuting home after a shift would be unsafe. This use is specific to the business' on-shift employees and thus retains the property's business character. This use will facilitate the district's main uses since it will allow employees to be safely on premises to achieve those uses.

and

ii. The proposed use is a reasonable one because:

This change would not substantially change the property's business use; indeed, the change facilitates the property's business use by allowing employees to be safely on premises for an overnight shift or during inclement weather. Further, this change would not alter the overall traffic to the property, since if the apartment would only be used occasionally by employees -- who would already be present on the property in any event -- after a long shift. The lounge would not be open to the public nor leased to the public. The studio will serve as an employee lounge more than as a residence. Further, this building is adjacent a commercial zone and close to residential areas in which this use is permitted.

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

Please see attachment.

Attachment to Variance Application for 443 Winchester Street, Keene

Response to 5b:

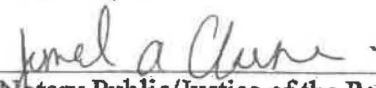
We believe the criteria in subparagraph A have been met; however, because this small, long-hour convenience store is zoned industrial, the owner faces a hardship in not being able to provide a safe place for employees to rest. This property is unique because it is a convenience store nestled into an otherwise industrial zone and on the line of an adjacent commercial district where this use would be allowed by special exception. It is also quite close to a residential area which such a use is clearly permitted.

Many employees – including the business' owner – commute from up to an hour away for their shifts. The proposed lounge would allow these employees to safely complete these long shifts without having to drive home tired and to complete shifts during inclement weather conditions without having to drive home on unsafe roads. Without this variance, that safety and protection of employees is not possible.

Signed: 

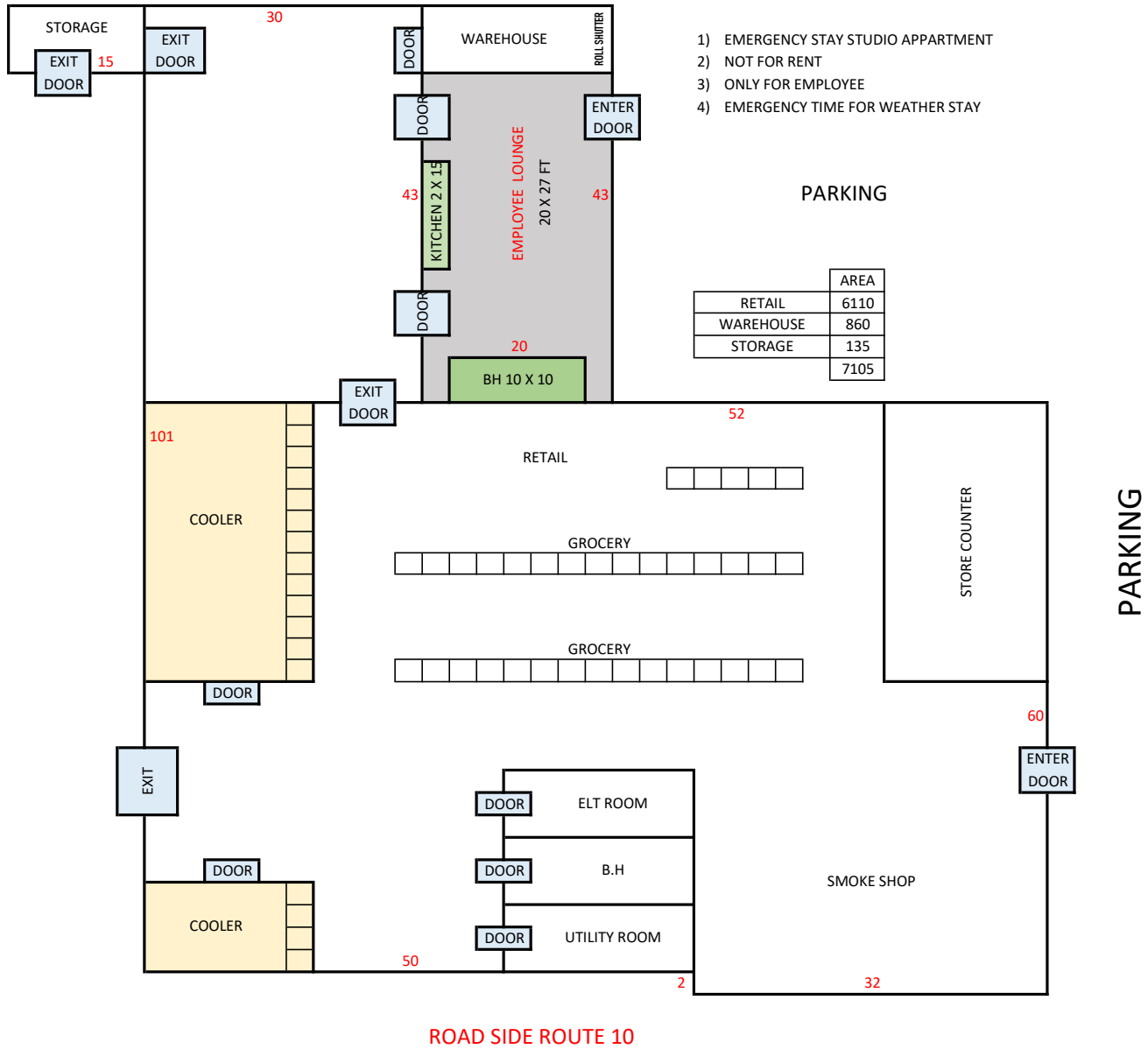
STATE OF Massachusetts
COUNTY OF Worcester.

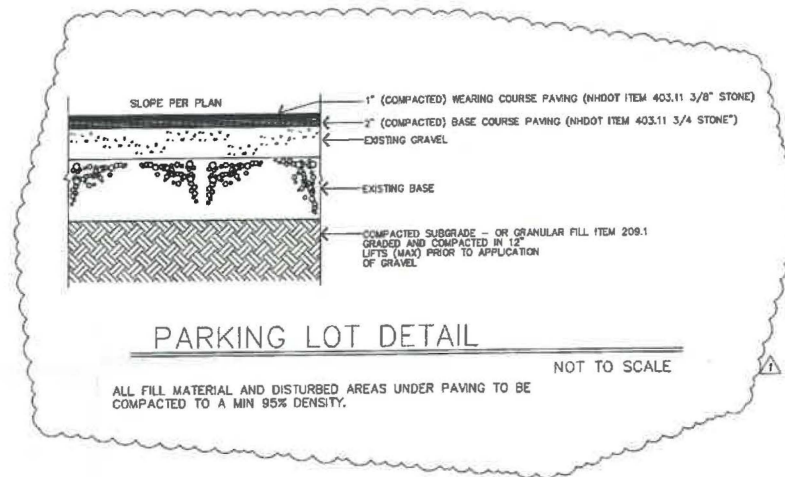
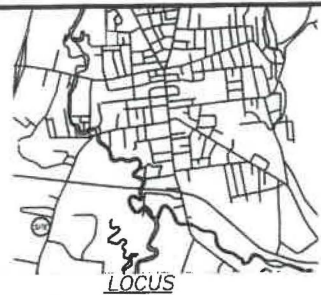
Subscribed and sworn before me this 12th day of December, 2020.


Notary Public/Justice of the Peace

My Commission Expires  JEMAL A. CLARKE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
April 5, 2024

KEENE DISCOUNT MART, 443, WINCHESTER ST. KEENE



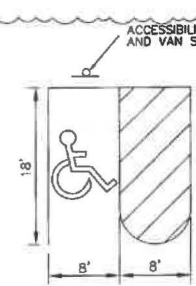


LOT DATA

ZONING	INDUSTRIAL
TAX MAP #	087-01-001-0000
LOT SIZE	21,318 SF 0.49 AC±
LOT COVERAGE	
BUILDING	7,110 SF - 33%
PAVING	7,387 SF - 35%
TOTAL	17,497 SF - 88%
PARKING (EXISTING)	14 SPACES

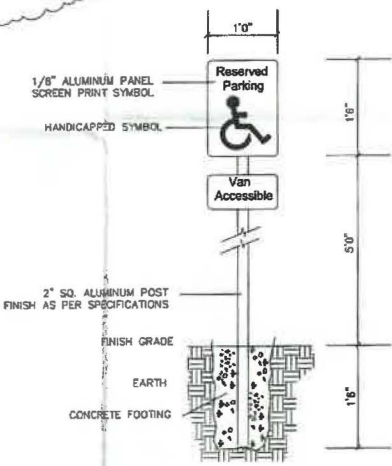
- GENERAL NOTES**
- REFERENCE PLAN: "TOPOGRAPHIC SURVEY PLAN PREPARED FOR JAY CLARK" BY DAVID A. MANN, L.L.S.
 - LOCATION OF UTILITIES IS FROM THE REFERENCE PLAN AND CITY OF KEENE ENGINEERING DEPARTMENT RECORDS. LOCATIONS ARE APPROXIMATE. CONTRACTOR TO VERIFY LOCATIONS OF ALL UTILITIES PRIOR TO EXCAVATION.
 - CONTRACTOR TO NOTIFY "DIG SAFE" AT 1-888-344-7233 A MIN. OF 72 HOURS PRIOR TO THE START OF EXCAVATION.
 - THIS PROPERTY IS LOCATED WITHIN THE 100 YEAR FLOODPLAIN FOR THE CITY OF KEENE. THE 100 YEAR FLOODPLAIN ELEVATION FOR THIS PROPERTY IS 424.00'.
 - GRADE ADA PARKING SPACE AND ADA ROUTE TO ENTRANCE PER ADA REQUIREMENTS USING ON SITE MATERIAL. NO ADDITIONAL MATERIAL TO BE ADDED TO THE SITE.

- LEGEND**
- HYDRANT
 - TELEPHONE POLE
 - CATCH BASIN
 - WATER LINE
 - SEWER LINE
 - ELECTRIC, TV, TELEPHONE
 - GAS LINE
 - EXISTING GRADE
 - PROPOSED GRADE
 - DUMPSTER WITH 6' HIGH SOLID WOOD FENCE
 - LIGHT ON POLE
 - PROPANE TANK

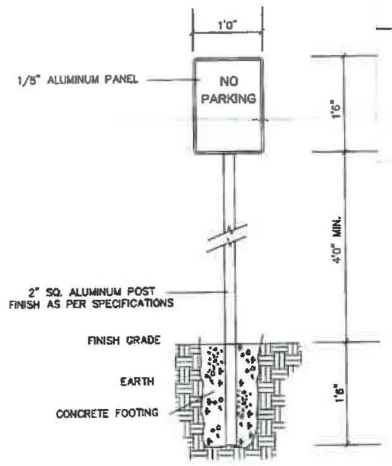


- ACCESS ISLE SHALL HAVE A FIRM NON SLIP SURFACE
- ACCESS ISLE AND PARKING SPACE MAX SLOPE OF 2%
- IF ACCESSIBLE ROUTE IS LOCATED IN FRONT OF THE PARKING SPACE, WHEELSTOPS MAY BE REQUIRED TO KEEP VEHICLE OVERHANG FROM REDUCING WIDTH BELOW 36 INCHES.

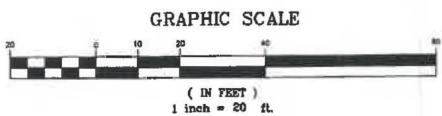
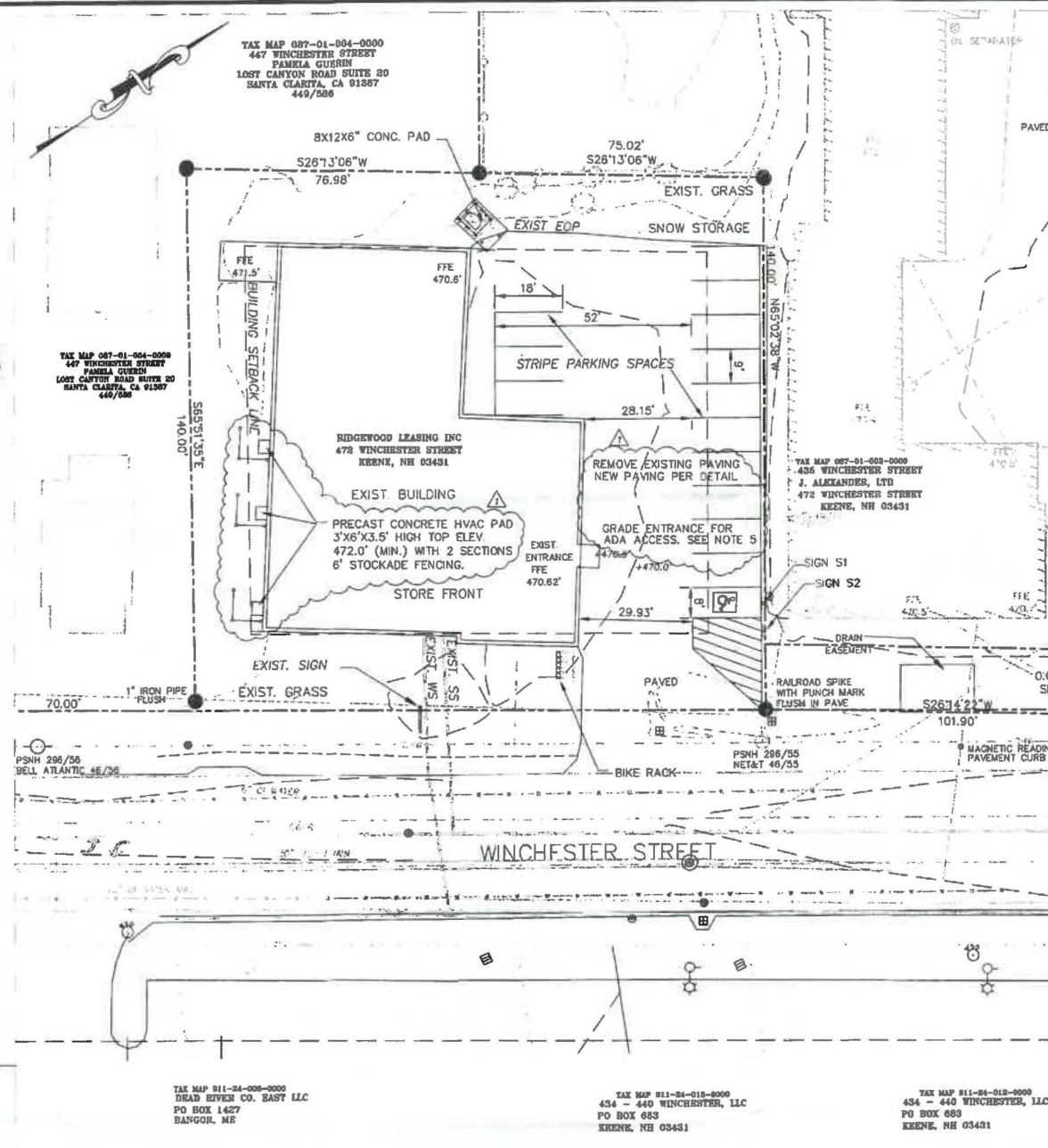
VAN ACCESSIBLE SPACE
NTS



SIGN S1 - VAN HANDICAPPED PARKING SIGN
SCALE: NOT TO SCALE



SIGN S2 - NO PARKING
SCALE: NOT TO SCALE



REVISIONS: DATE:
OCTOBER 30, 2014
REVISE PARKING LOT PAVING
ADD HVAC PAD LOCATIONS
ADD PAVING DETAIL
ADD NOTE 5 FOR ADA ACCESS.

PROPERTY OWNER:
**RIDGEWOOD LEASING
WINCHESTER ST
KEENE, NH**

Brickstone
Land Use Consultants, LLC
Site Planning, Planning and Development Consulting
185 Winchester Street, Keene, NH 03431
Phone: (603) 357-2115

PROPOSED
**SPECIALTY MARKET
443 WINCHESTER ST
KEENE, NH**

**PROPOSED
CONDITION
PLAN**



SCALE: 1"=20'

DATE: 6/18/14

SHEET 2

Planning Department
City of Keene
3 Washington Street
Keene, NH 03431

800 PARK AVE. ZBA 21-02



Petitioner requests a Variance to permit a covered outdoor seating area within 15 feet of the property line where 25 feet is required per Section 102-791.



NOTICE OF HEARING

ZBA 21-02

A meeting of the Zoning Board of Adjustment will be held on Monday, January 4, 2021 at 6:30 PM to consider the petition of DLC Spofford, LLC of Spofford, NH, represented by Tim Sampson of Sampson Architects of 103 Roxbury St., Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 21-02: Petitioner, DLC Spofford, LLC of Spofford, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Variance for property located at 800 Park Ave., Tax Map #227-002-000; that is in the Commerce District. The Petitioner requests a Variance to allow construction of a covered outdoor seating area within 15 feet of the property line where a 25 foot setback is required per Section 102-791 of the Zoning Ordinance.

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

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date December 23, 2020

APPLICATION FOR APPEAL

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

For Office Use Only:

Case No. ZBA 21-02
Date Filed 12/21/2020
Received By CM
Page _____ of _____
Reviewed By _____

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Timothy Sampson Phone: 603 769 7736
Address 103 Roxbury Street Suite 206 Keene NH 03431
Name(s) of Owner(s) D L C Spofford LLC
Address PO Box 200 Spofford NH 03462
Location of Property 830 Park Ave

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 227-002-000 Zoning District Com
Lot Dimensions: Front _____ Rear _____ Side _____ Side _____
Lot Area: Acres 5.76 Square Feet 243940 +/-
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing .053 Proposed .054
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing .430 Proposed .431
Present Use Commercial
Proposed Use Commercial

SECTION III - AFFIDAVIT

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

Tim P. Sampson Date 12/18/20
(Signature of Owner or Authorized Agent)

Please Print Name Timothy Sampson

Corinne Marcou

From: Tim Sampson <tim@sampsonarchitects.com>
Sent: Tuesday, December 22, 2020 9:19 AM
To: Corinne Marcou
Subject: RE: ZBA Apps??

Will the following work?

800 Park Ave:

Seeking relief to allow construction of a covered outdoor seating area within 15' of the front property line where a 25 foot setback is required.

Timothy P. Sampson NCARB LEED AP
Cell: (603) 769-7736

PROPERTY ADDRESS 830 Park Avenue

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 102 - 791 of the Zoning Ordinance to permit:
front setback

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

The intent of the ordinance is to prevent overdevelopment and encroachment on neighboring properties. The proposed development will not encroach on neighbors. The development will be to the front of the building towards the main road

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

The spirit of the ordinance is to prevent encroaching on adjacent properties. The development proposed will utilize a small area consisting of walkway that is between two parking areas

3. Granting the variance would do substantial justice because:

If the variance were granted it would allow the owner to fully utilize what is currently a vacant bldg

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

the proposed development is quite small compared to all the adjacent much larger developed properties. the development will not have any substantial impact on the existing commercial properties

5. Unnecessary Hardship

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

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The area that is proposed for the small development fill in an area between two parking areas that are within setbacks. The addition will not extend beyond any existing development. nor will it impact any adjacent properties.

and

ii. The proposed use is a reasonable one because:

the proposed use is a modest expansion to an existing use. It is also consistent with the commercial properties in the area.

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

Granting the variance would allow the owner to utilize a small area between two existing parking areas. It is the only area adjacent to the bldg that can be utilized as a small outdoor seating area while providing full accessibility as there is a large drop to any other easily developed area around the bldg.

Parcel Number	GIS Number	Cama Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner Address 2	Owner City	Owner State	Owner Zip
227-001-000	227-001-000-000	227-001-000-000-000	630-670 PARK AVE.	BIG DEAL REAL ESTATE LLC		50 PARK AVE.		KEENE	NH	03431
227-003-000	227-003-000-000	227-003-000-000-000	0 SUMMIT RD.	C&S WHOLESALE GROCERS INC		7 CORPORATE DR.		KEENE	NH	03431-5042
227-004-000	227-004-000-000	227-004-000-000-000	30-32 MAPLE AVE.	PRINCETON KEENE TWO LLC		1115 WESTFORD ST.		LOWELL	MA	01851
227-004-000	227-004-000-001	227-004-000-001-015	30 MAPLE AVE. #30-15	KELLY JOAN M. REV. TRUST		7 VILLAGE ST.		MILLIS	MA	02054
227-004-000	227-004-000-001	227-004-000-001-017	30 MAPLE AVE. #30-17	PRINCETON KEENE TWO LLC		1115 WESTFORD ST.		LOWELL	MA	01851
227-005-000	227-005-000-000	227-005-000-000-000	44 MAPLE AVE.	CHESHIRE FAMILY FUNERAL HOME INC		PO BOX 19		WEST SWANZEY	NH	03469
227-024-000	227-024-000-000	227-024-000-000-000	55 MAPLE AVE.	KEENE CHURCH OF THE NAZARENE		55 MAPLE AVE.		KEENE	NH	03431
227-025-000	227-025-000-000	227-025-000-000-000	51 PARK AVE.	NORTHERN NEW ENGLAND TELEPHONE OPERATION		770 ELM ST.		MANCHESTER	NH	03101
227-026-000	227-026-000-000	227-026-000-000-000	631 PARK AVE.	PPJ LTD. PARTNERSHIP		681 PARK AVE.		KEENE	NH	03431
523-001-000	523-001-000-000	523-001-000-000-000	130 SUMMIT RD.	CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS		50 E. NORTH TEMPLE ST. RM. 2225	TAX DIVISION. 22ND FL.	SALT LAKE CITY	UT	84150-0022

Parcel Number	GIS Number	Cama Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner Address 2	Owner City	Owner State	Owner Zip
523-045-000	523-045-000-000	523-045-000-000-000	18 MAPLE AVE.	BLACK BROOK LOGISTICS LLC		7 CORPORATE DR.		KEENE	NH	03431
523-046-000	523-046-000-000	523-046-000-000-000	23 MAPLE AVE.	WILSON IAN ANDREW	OJERHOLM KATHRYN ANNE	23 MAPLE AVE.		KEENE	NH	03431
523-047-000	523-047-000-000	523-047-000-000-000	15 MAPLE AVE.	BASSINGTHWAITE, DENNIS A.	BASSINGTHWAITE, CONSTANCE J.	15 MAPLE AVE.		KEENE	NH	03431
523-049-000	523-049-000-000	523-049-000-000-000	93 SUMMIT RD.	HUMPHREY, MICHAEL BARRETT	HUMPHREY, JENNIFER MARIE	93 SUMMIT RD.		KEENE	NH	03431-1543
526-030-000	526-030-000-000	526-030-000-000-000	4-52 SUMMIT RD.	PRINCETON KEENE LLC		1115 WESTFORD ST.		LOWELL	MA	01851
			PO BOX 200	DLC Spofford LLC		PO BOX 200		Spofford	NH	03462
			103 Roxbury Street,Suite 206	Timothy Sampson		103 Roxbury Street,Suite 206		Keene	NH	03431

These drawings are LIMITED SCOPE and are intended only to describe general design intent, scale, overall spatial relationships and material where indicated. These drawings shall be considered preliminary for purposes of design review, comment, or budget pricing only, unless expressly released for other purposes as indicated in the issue log. The architect assumes responsibility for errors in the information provided, and not for omissions.

Designer:
Sampson Design
103 Roxbury Street
Suite 206
Keene, NH
603 769 7736



Engineer:

© SAMPSON DESIGN
2011 WOF 11-032

Prepared For:
David Thomas
Route 9
Spofford, NH 03462

PROJECT
Kristin's Bakery - W. Keene
830 Park Avenue
Keene, NH 03431

TITLE
**Site Plan
Plan
Elevations**

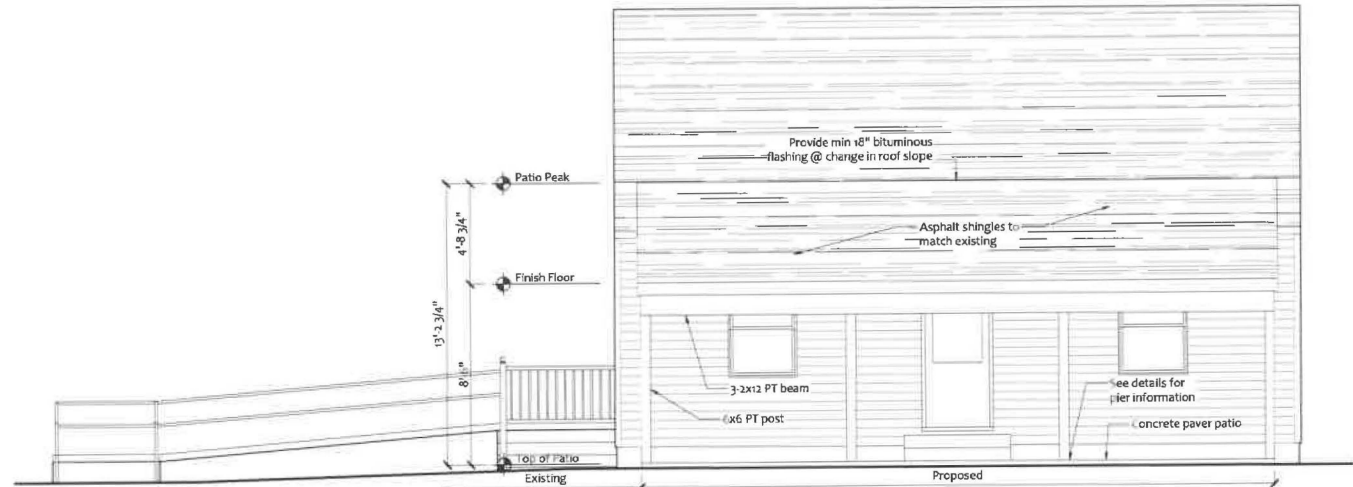
Date:	Revisions:
12.18.20	ZBA Submission

SCALE as noted

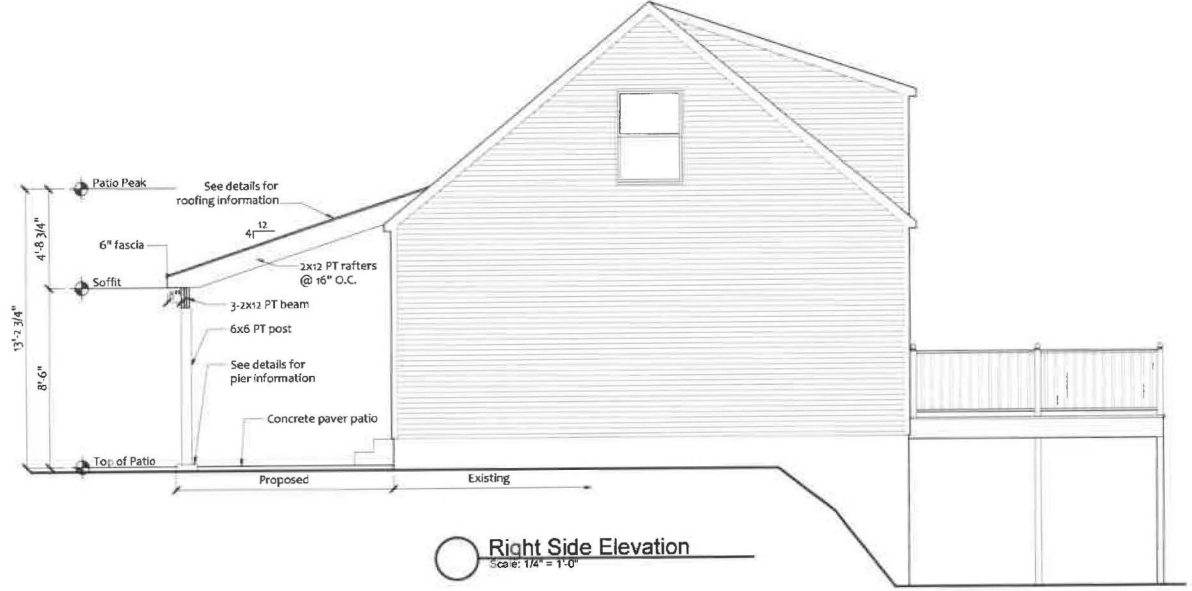
DATE 12.18.20

SHEET NUMBER

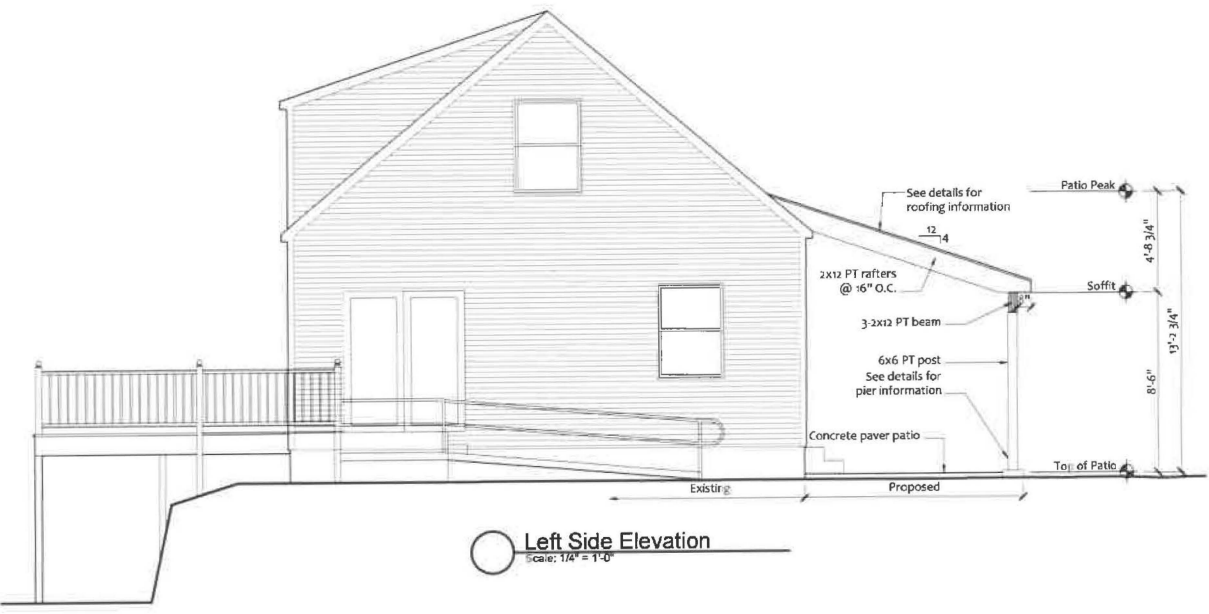
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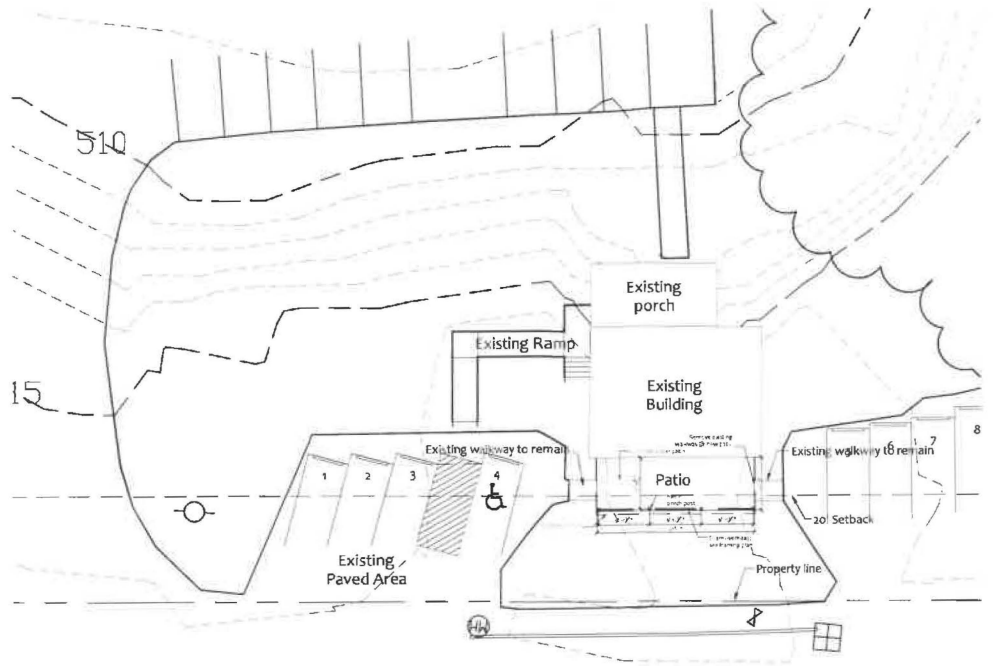
Front Elevation
Scale: 1/4" = 1'-0"



Right Side Elevation
Scale: 1/4" = 1'-0"

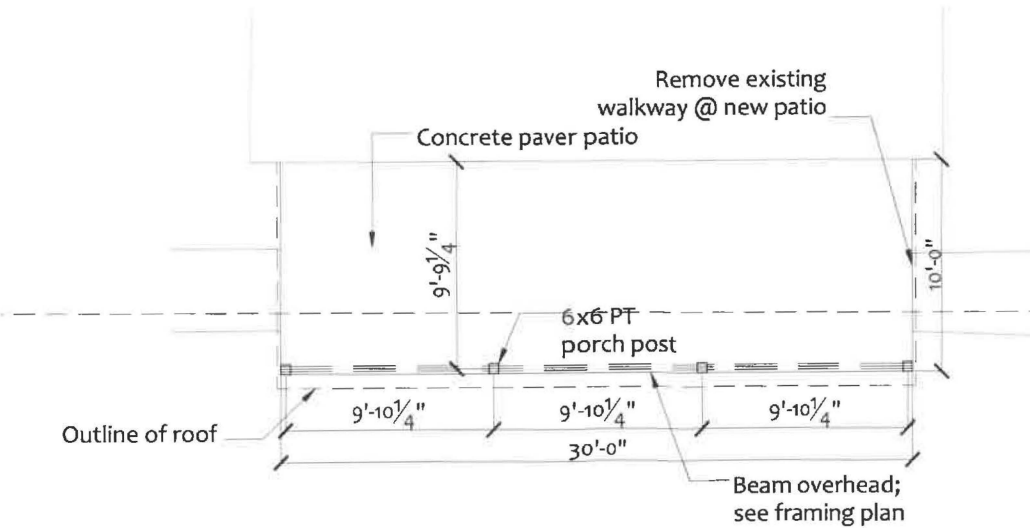


Left Side Elevation
Scale: 1/4" = 1'-0"



PARK AVENUE

Partial Site Plan
Scale: 1/16" = 1'-0"



Patio Plan
Scale: 1/4" = 1'-0"

17 BIRCH ST. ZBA 21-03



Petitioner requests a Variance to permit the expansion of an existing one car garage within two feet of the property line per Section 102-791.



NOTICE OF HEARING

ZBA 21-03

A meeting of the Zoning Board of Adjustment will be held on Monday, January 4, 2021 at 6:30 PM to consider the petition of Angela and Adam Robinson of 800 Park Ave, Keene, NH, represented by Tim Sampson of Sampson Architects of 103 Roxbury St., Keene. Due to the COVID-19 State of Emergency, this meeting will be held using the web-based platform, Zoom. The public may access/view the meeting online by visiting www.zoom.us/join or may listen to the meeting by calling (888) 475-4499. The Meeting ID is 839 9261 2795. To notify the public body of any access issues, call (603) 209-4697. More information is available at the City's Zoning Board of Adjustment webpage at www.ci.keene.nh.us/zoning-board-adjustment and on the enclosed document

ZBA 21-03: Petitioner, Angela and Adam Robinson of 17 Birch St., Keene, NH, represented by Tim Sampson, of Sampson Architects of 103 Roxbury St., Keene, requests a Variance for property located at 17 Birch St., Tax Map #545-030-000; that is in the Low Density District. The Petitioner requests a Variance to allow the expansion of an existing one car garage by an additional two feet to allow the garage to be utilized to store two cars. The existing garage sits with four feet of the property line. The proposed garage proposes to site within two feet of the property line per Section 102-791 of the Zoning Ordinance.

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

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date December 23, 2020

APPLICATION FOR APPEAL

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

For Office Use Only:

Case No. ZBA21-03
Date Filed 12/21/2020
Received By CM
Page _____ of _____
Reviewed By _____

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

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

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

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Angela and Adam Robinson Phone: 603-313-1063
Address 17 Birch Street, Keene, NH 03431
Name(s) of Owner(s) Angela and Adam Robinson
Address 17 Birch Street, Keene, NH 03431
Location of Property 17 Birch Street, Keene, NH 03431

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 545/ / 030/000 000/000 Zoning District 101 (single family use code
Lot Dimensions: Front 94.21 Rear 141.0 Side 164.81 Side 207.13
Lot Area: Acres 0.43 Square Feet 18,622
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 12.3% Proposed 12.7%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 17.7% Proposed 18.1%
Present Use Primary personal residence- house and attached garage
Proposed Use primary personal residence- house and expanded attached garage (+2 feet wide)

SECTION III - AFFIDAVIT

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

(Signature of Owner or Authorized Agent) Date 12/16/2020

Please Print Name Angela and Adam Robinson

Corinne Marcou

From: Tim Sampson <tim@sampsonarchitects.com>
Sent: Tuesday, December 22, 2020 9:19 AM
To: Corinne Marcou
Subject: RE: ZBA Apps??

Will the following work?

17 Birch Street:

Seeking relief to allow expansion of an existing one car garage by an additional 2' to allow the garage to be utilized to store two cars. The existing garage sits with 4' of the property line. The proposed garage proposes to sit within 2' of the property line.

Timothy P. Sampson NCARB LEED AP
Cell: (603) 769-7736

PROPERTY ADDRESS 17 Birch Street

APPLICATION FOR A VARIANCE

- A Variance is requested from Section (s) 102 - 791 of the Zoning Ordinance to permit:
SIDE SETBACK

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH VARIANCE CRITERIA:

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

The existing garage is already within the setbacks. Granting the variance would allow the property owner to build a garage that would allow room for modern vehicles with minor impact to neighbors by allowing a small increase to an existing non conforming condition

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

the spirit of the ordinance is to prevent encroachment of adjacent properties. The existing garage already sits within the required setbacks and would be only a minor change to a non conforming existing condition

3. Granting the variance would do substantial justice because:

Granting the variance would allow the owner to build a garage large enough to store vehicle and provide much needed space above for a growing family

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

There are a number of properties in the neighborhood with similar conditions and the non conformity is existing. The expansion of the non conformity would have negligible impact on adjacent properties.

5. Unnecessary Hardship

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

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The existing garage currently sits within the setback. Granting the variance to expand the non conformity would allow reasonable use of a new garage sized to provide storage of two vehicles and also provide additional space for a growing family. This expansion does not create a new condition and has minimal impact to neighbors and

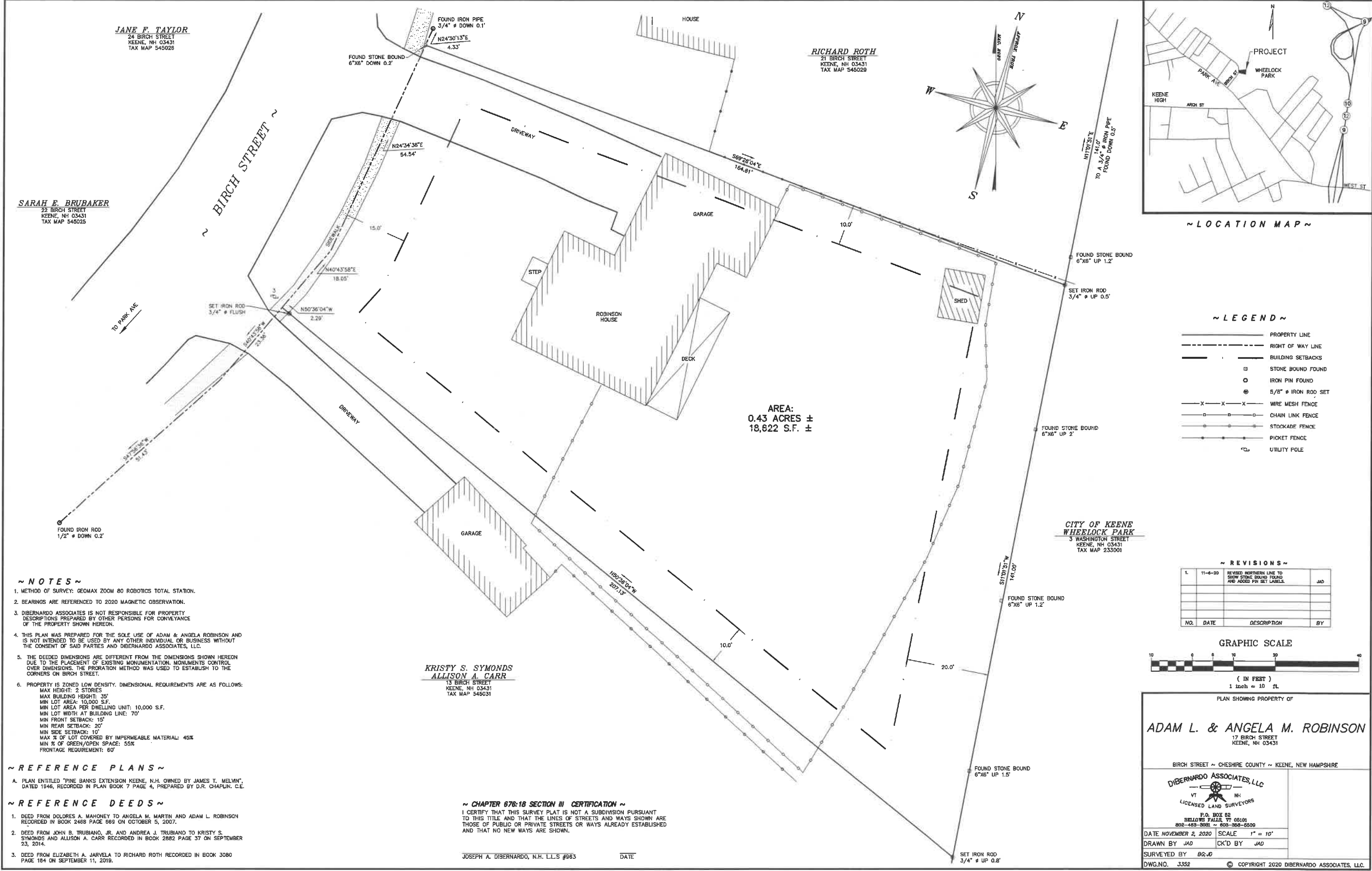
ii. The proposed use is a reasonable one because:

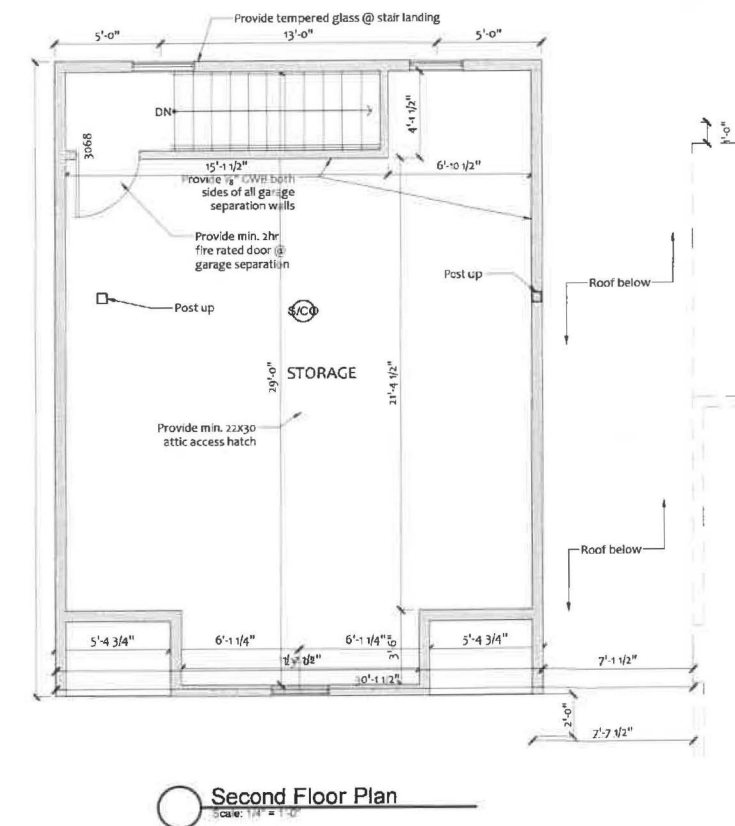
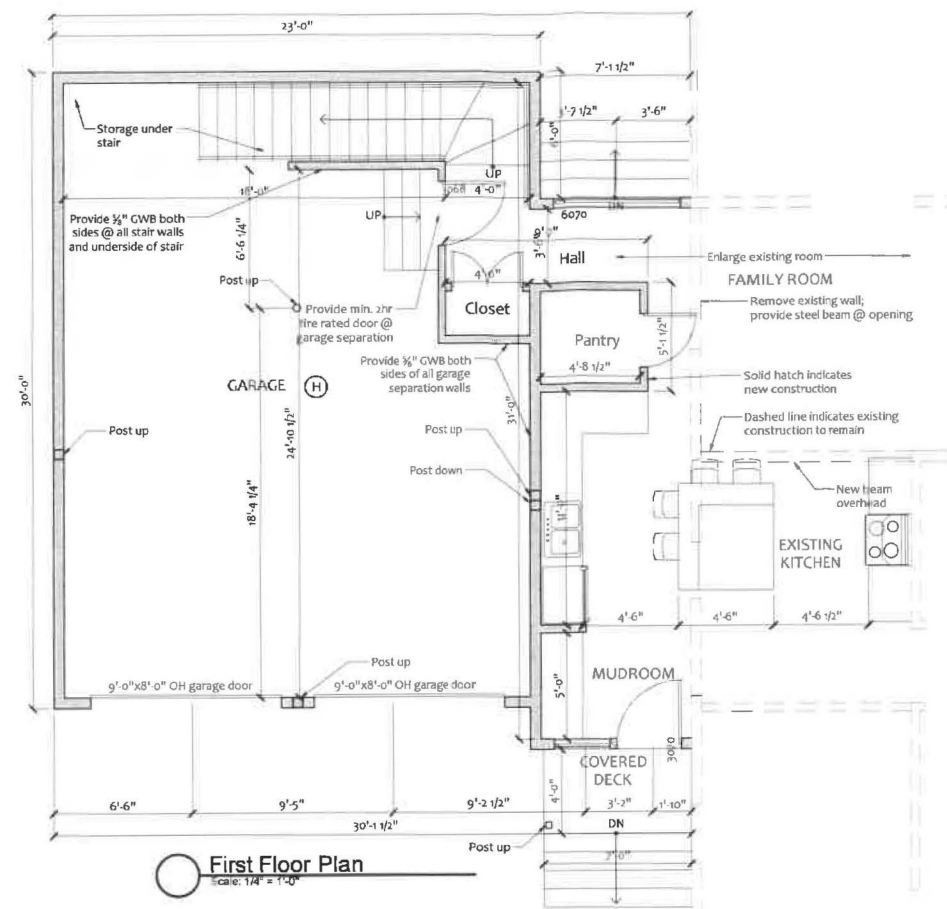
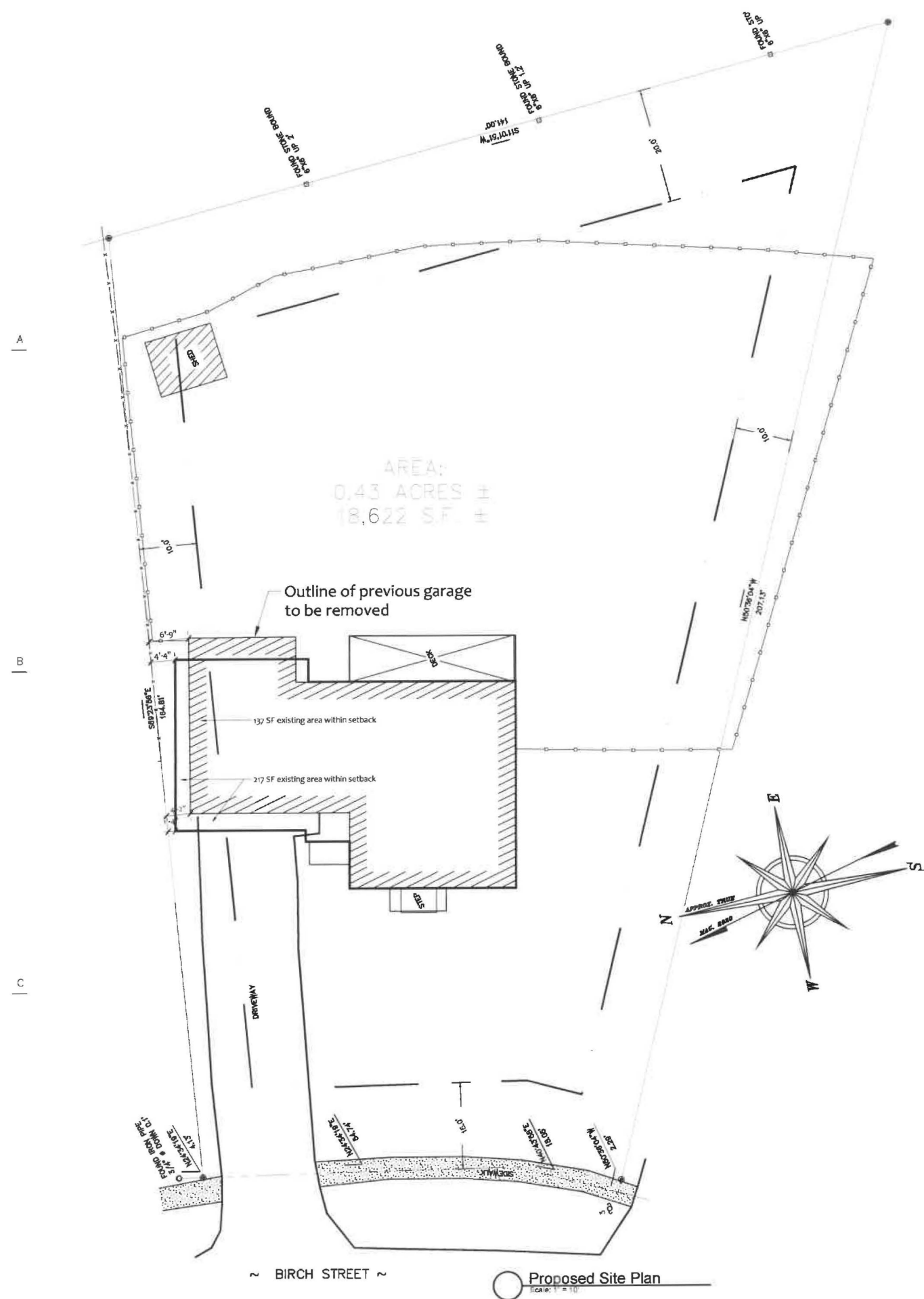
The proposed expansion has been sized to provide the minimum width required to store two vehicles. There is an existing garage and is non conforming. There is not a proposed new use or non conformity. The expansion proposed is the absolute minimum needed for proper use

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

Due to the layout of the house the proposed expansion is the only reasonable way to provide an expanded garage large enough to store two vehicle as well as provide the additional living space a growing family requires. The proposed expansion has been minimize to the extent possible while allowing the space to be properly utilized. The proposed expansion is reasonable based on an existing non conforming condition and is already being used outside the strict enforcement of the ordinance

Parcel Number	GIS Number	Cama Number	Property Address	Owner Name	Co-Owner Name	Owner Address	Owner Address 2	Owner City	Owner State	Owner Zip
545-030-000	545-030-000-000	545-030-000-000	17 Birch St	ROBINSON ANGELA M. ROBINSON ADAM L.		17 Birch St		KEENE	NH	03431
233-001-000	233-001-000-000	233-001-000-000	101 PARK AVE.	CITY OF KEENE		3 WASHINGTON ST.		KEENE	NH	03431
545-015-000	545-015-000-000	545-015-000-000	21 ASPEN ST.	LEHMAN, DAVID R.		21 ASPEN ST.		KEENE	NH	03431
545-016-000	545-016-000-000	545-016-000-000	15 ASPEN ST.	WILKINS JESSE M.	WILKINS EMILY J.	15 ASPEN ST.		KEENE	NH	03431
545-023-000	545-023-000-000	545-023-000-000	6 BIRCH ST.	BOYEA PERLEY J. JR.	BOYEA DOREEN A.	613 OLD WALPOLE RD.		SURRY	NH	03431-8001
545-024-000	545-024-000-000	545-024-000-000	12 BIRCH ST.	NOSEWORTHY JAMES G.		12 BIRCH ST.		KEENE	NH	03431
545-025-000	545-025-000-000	545-025-000-000	22 BIRCH ST.	BRUBAKER SARAH E.		22 BIRCH ST.		KEENE	NH	03431
545-026-000	545-026-000-000	545-026-000-000	24 BIRCH ST.	TAYLOR JANE F.		24 BIRCH ST.		KEENE	NH	03431
545-027-000	545-027-000-000	545-027-000-000	27 BIRCH ST.	ROSS, DAVID W.	DUHAIME, KRISTA E.	27 BIRCH ST.		KEENE	NH	03431
545-028-000	545-028-000-000	545-028-000-000	25 BIRCH ST.	MEDVIDOFSKY WILLIAM C.	MEDVIDOFSKY KATHLEEN M.	25 BIRCH ST.		KEENE	NH	03431
545-029-000	545-029-000-000	545-029-000-000	21 BIRCH ST.	ROTH RICHARD		12 HILLSIDE AVE.		KEENE	NH	03431
545-031-000	545-031-000-000	545-031-000-000	13 BIRCH ST.	SYMONDS KRISTY S.	CARR ALLISON A.	13 BIRCH ST.		KEENE	NH	03431
545-032-000	545-032-000-000	545-032-000-000	11 BIRCH ST.	PRINCE, RYAN A.	FRANK, SAMANTHA L.	11 BIRCH ST.		KEENE	NH	03431-1528
545-033-000	545-033-000-000	545-033-000-000	0 BIRCH ST.	PRINCE, RYAN A.	FRANK, SAMANTHA L.	11 BIRCH ST.		KEENE	NH	03431-1528
545-034-000	545-034-000-000	545-034-000-000	9 BIRCH ST.	PEARSON SANDRA J. REV. TRUST		9 BIRCH ST.		KEENE	NH	03431
546-001-000	546-001-000-000	546-001-000-000	111/2 BIRCH ST.	MORRISON, TONY A.	MORRISON, KRISTY L.	111/2 BIRCH ST.		KEENE	NH	03431
			103 Roxbury Street Suite 206	Timothy Sampson		103 Roxbury Street Suite 206		Keene	NH	03431





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Architect:
Timothy Sampson
NCARB, LEED AP
103 Roxbury Street
Suite 206
Keene, NH
603 769 7736



Engineer:

© SAMPSON DESIGN
2014 WO# 14-041

Prepared For
Adam and Angela Robinson
17 Birch Street
Keene, NH 03431

PROJECT
Proposed Addition
17 Birch Street
Keene, NH 03431

TITLE
**Floor Plans
Site Plans**

Date:	Revisions:
12.17.20	ZBA Submission

SCALE As Noted

DATE 12.17.20

SHEET NUMBER

A1

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Architect:
Timothy Sampson
NCARB, LEED AP
103 Roxbury Street
Suite 206
Keene, NH
603 769 7736



Engineer:

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2014 WOP# 14 041

Prepared For
Adam and Angela Robinson
17 Birch Street
Keene, NH 03431

PROJECT
Proposed Addition
17 Birch Street
Keene, NH 03431

TITLE
**Elevation
Sections
Details/Notes**

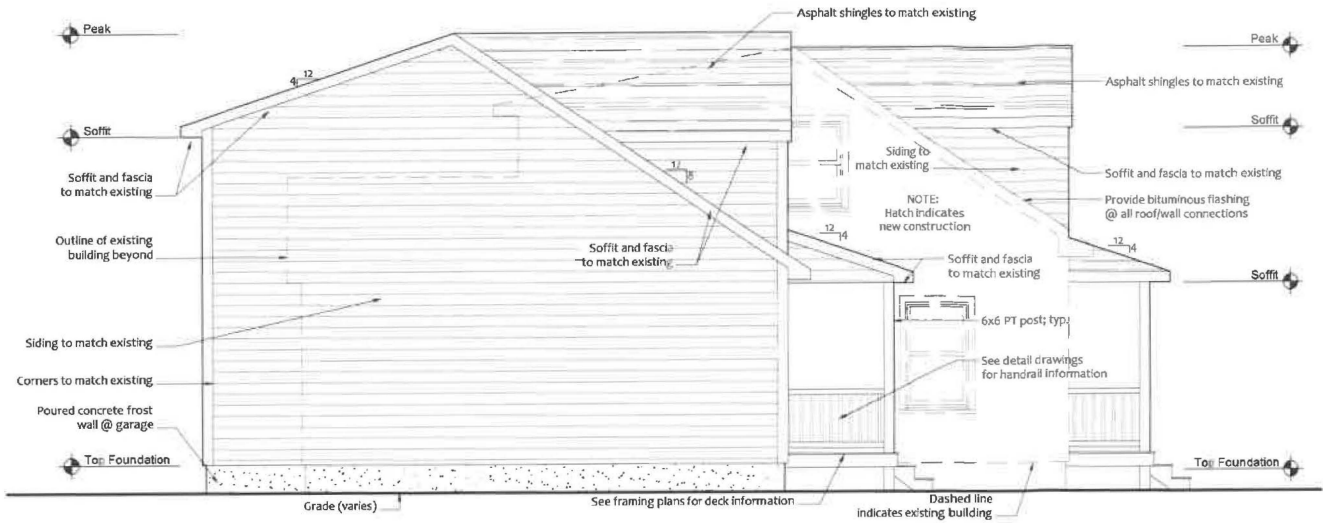
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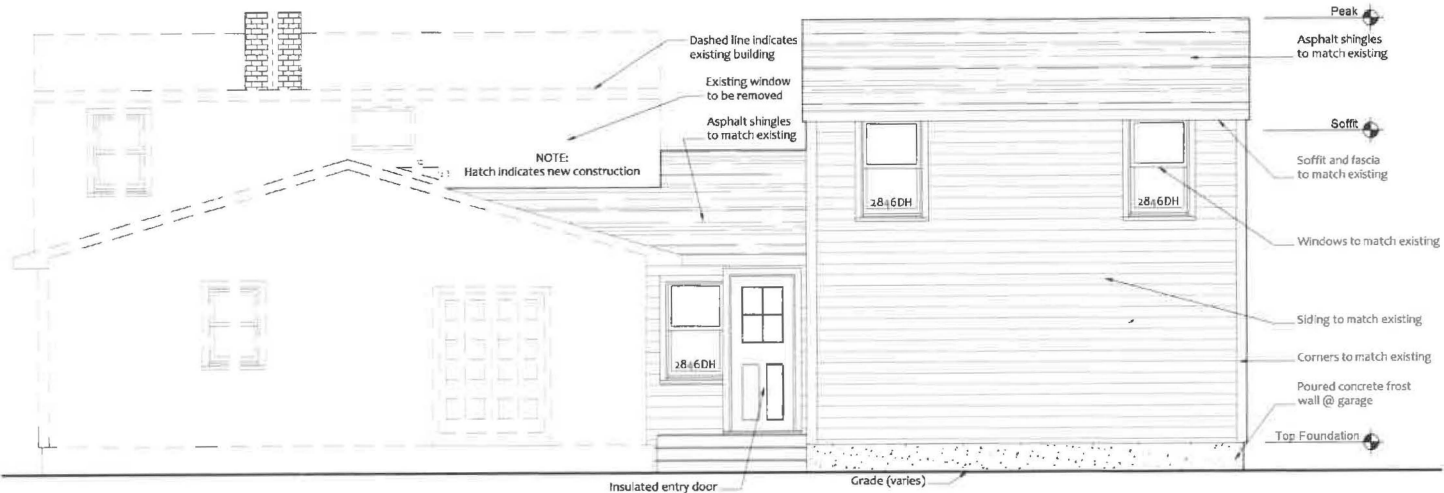
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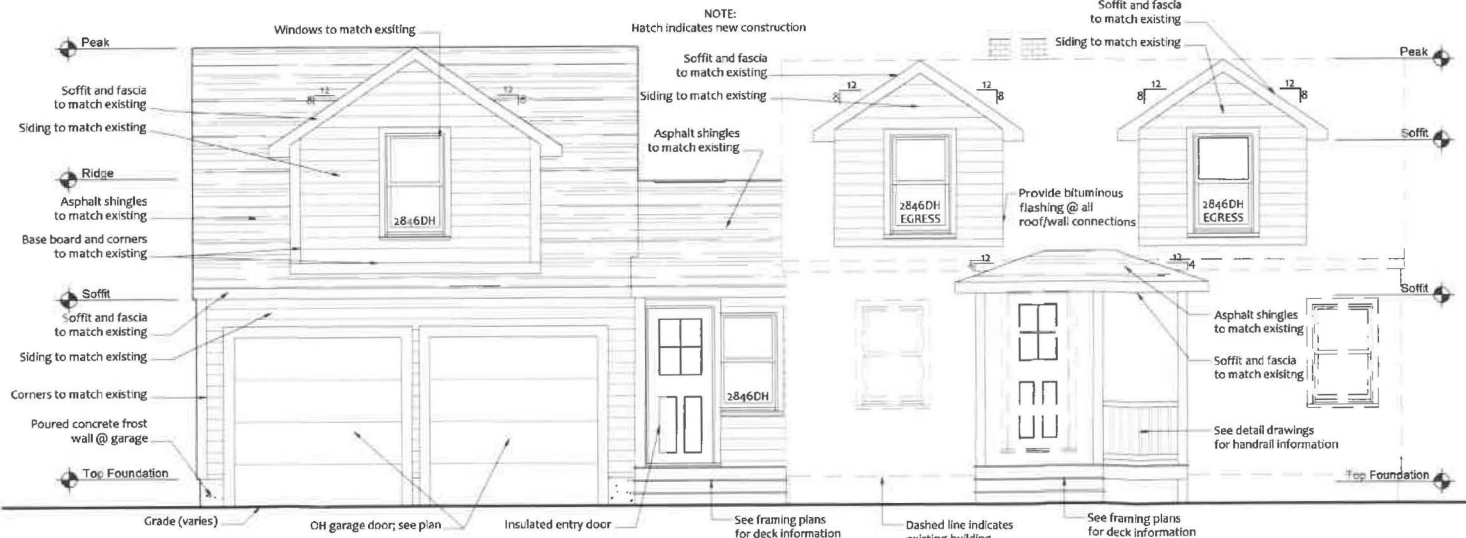
A2



Side Elevation
Scale: 1/4" = 1'-0"



Rear Elevation
Scale: 1/4" = 1'-0"



Front Elevation
Scale: 1/4" = 1'-0"