

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, December 20, 2017

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Jeffrey Stevens, Vice Chair
Joshua Gorman
Thomas Plenda
Louise Zerba, Alternate

Staff Present:

Gary Schneider, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

John Rab, Alternate

I. Introduction of Board Members

Chair Stout called the meeting to order at 6:31PM introduced members of the Board and welcomed everyone to the meeting.

Chair Stout explained that the Board would consist of four members and that it was the practice of the City to ask the applicant if four members would be appropriate. Mr. Rogers stated that Chair Stout was correct but the Board could move forward with the meeting at this point. He recommended that the Board move forward with a four member Board. Mr. Rogers noted that this decision could be made by the Board.

Chair Stout asked those that come to the microphone to state their name, address and to spell their last name. In addition, he asked that comments not be repetitive and are relevant to the issue at hand. Chair Stout also asked for everyone to be courteous and respectful to others.

Chair Stout stated that the Board has received a lot of information and the Board will discuss how to give all of the information justice. Therefore, the decision will be delayed for another meeting in order to absorb the information. Chair Stout stated that he hopes to take all public comment and written comment at tonight's meeting in order to have Board deliberation at the next meeting.

Mr. Hoppock asked for the status of ZBA 17-16. Chair Stout replied that ZBA 17-16 would continue depending on decision of ZBA 17-20.

In addition, Attorney Hoppock requested that the Board wait for ZBA Board member, Mr. Plenda before beginning with the hearing.

Chair Stout stated that the Board would wait a few minutes for Mr. Plenda before hearing public comment.

After a brief delay, Chair Stout apologized to the audience and stated that they have postponed the meeting long enough.

II. Hearings

ZBA 17-20/ Petitioners, Prospect House, LLC of 35 Keene Rd., Winchester, NH, requests a Special Exception for property located at 361 Court St., Tax Map Parcel #008-02-001, which is in the Medium Density, and is owned by The Prospect Hill Home of 361 Court St. The Petitioners requests a Special Exception from Section 102-37(b)(1) and Section 102-392 to increase the number of beds from 16 to 26 within the same area/footprint.

Chair Stout opened the public hearing to those that wanted to speak in opposition of the application.

Janet Cleary, Keene, NH, stated that she had lived in Keene for 32 years before moving to her current home in Swanzey, NH. Ms. Cleary stated that she has worked in Keene as a psychotherapist, specializing in trauma and addiction. She stated that she has worked in this field for the last 19 years and has testified locally in various court proceedings related to substance abuse disorders and mental health issues. In addition, she stated that based on her experience she will be able to explain to the Board that even though the Boisvert's will guarantee there will be professionally trained staff to run such a facility, she could guarantee that there will be problems in the neighborhood as a direct result of the sheer nature of addiction and recovery. She stated that the Boisvert's seem to believe that if a resident is stable upon arrival they will be cooperative, compliant and eager to stay with the recovery program. She stated that this is unrealistic and naïve. Ms. Cleary stated that through evidence based research it takes the brain of an addict two years to heal. During this recovery period she stated that addicts can experience poor impulse control, depression, trouble concentration, agitation and more. Ms. Cleary stated that because of the nature of the disease is unpredictable and incurable the person seeking help deserves professional help. She said that the Boisvert's will not be providing this level of best practice.

Ms. Cleary explained that a residential treatment facility that has a well trained staff would be best located in a rural area rather than in a Medium Density neighborhood. She stated that if things go array, which she stated will occur, it helps people in recovery from being more stigmatized and helps keep the neighborhood safe.

Mr. Plenda joined the meeting at 6:45 PM.

Ms. Cleary said that some of the problems that she has experienced and witnessed include a resident who left treatment and stole a neighbor's car, a resident that started an argument with another resident that needed police presence, a resident that stole from another resident, and a

resident that work outside the facility scored drugs and brought them back into the facility. She stated that she has experienced people in recovery have significant problems even after six months of being clean. She noted that this is even with a well trained staff.

Ms. Cleary stated that she attended the informational meeting at Stonewall Farm and expected to not only hear about the business plan but to also hear their clinical plan. She noted that neither was offered. She stated that Attorney Davis mentioned that the Boisvert's plan is to have licensed councilors and asked if they will they hire licensed clinical mental health councilors, licensed social workers, and a master's level drug and alcohol councilors. She asked if the Board understands the training differences between a LADC (Licensed Alcohol and Drug Counselor) and a recovery support person. In addition, she asked if the Board was aware that there is a shortage of LADC's in the area and questioned who they would hire. She stated if they hire specialists in dual diagnosis there will be residents with mental illness. Ms. Cleary explained that they still cannot guarantee that this facility will run without incidence and will put the neighborhood at risk for crime, police presence and a decline in property value. She has stated that she has empathy and compassion for those struggling to recover. However, she does not support any treatment program, group home, half-way house or transitional living facility in a Medium Density neighborhood. Ms. Cleary said that she understands that the Second Chance transitional living facility that has been run by Southwestern Community Service has failed miserably and is now empty. She suggested that the Boisvert's look at this property which is located on the outskirts of Keene. Ms. Cleary thanked the Board for their time.

Cathleen Gagnon, a property owner at 203 North Street, Keene, stated that she has resided at this address for 40 years and that her property is directly across street from 361 Court Street on the North Street side. She stated that in 1990 this non-conforming use was enlarged to add more rooms and she is opposed to additional enlargement of this nonconforming use to increase room compacity to 16 beds to 26 beds. Ms. Gagnon stated that she wanted to address the criteria in the application for a Special Exception as follows.

- She disagrees a proposed use constitutes a group home per the Zoning Ordinance definitions and referred to the supplemental memorandum in opposition.
- Ms. Gagnon stated that the petitioners did not address, "such approval will not reduce the value of any properties within the district". The applicants request for findings and rulings states, "there is no persuasive evidence that the value of properties with the Medium Density District would be reduced". She stated that it is her understanding that it is up to the Petitioner to provide the evidence. Ms. Gagnon said that condition has not been satisfactorily completed.
- She stated that the Petitioner states that there will be no nuisance or serious hazard to vehicles or pedestrians. In addition, she said that the Petitioner stated there are no external changes except for installation of video monitoring at the door for the parking lot. Ms. Gagnon asked that if this statement is true, what was their purpose of submitting the site plan that showed a proposed second curb cut? She said if there are such plans for the exterior of the building than this statement is false and will constituent a hazard to vehicles and pedestrians.
- She said in regards to adequate parking, the petitioners state that the residents will not be allowed to have vehicles and therefore no need to increase the amount of parking. She

said that it is her understanding that City parking standards require one space per unit or two beds. Ms. Gagnon noted that with nine additional beds, the facility would be lacking the required parking spaces according to City Code. It is also her understanding that based on NH law; the Petitioners must provide the Board with evidence that the criteria have been met for an approval. In addition, she said the law states that all four conditions must be completed and satisfied. The Petitioners have the burden to provide the evidence to support their statements that there will be no adverse effect to the neighborhood that would be injurious, obnoxious or offensive. She further stated that the Petitioners would also have to prove that property values would not be affected. Ms. Gagnon said based on parking alone the application should be denied.

Michelle Green, 36 Prospect Street, Keene stated she is an abutter and is in opposition to the application. She stated that she has owned her home on Prospect Street for almost 20 years. Ms. Green referred to the academic studies that showed this transitional living facility would cause property values in the surrounding neighborhood to fall by 17%. In the time she has lived in her home she has put as much money as she could into improvements and knows that the vast majority of neighbors have done the same. She stated that it is not fair to decrease everyone's property values. Ms. Green stated that she cannot afford to take a hit on her investment and it was unjust to ask a small group of neighbors to do so as well. She stated that if some entrepreneur came to her door, asking for \$25,000.00 to start their business, she would not hand over that check. Ms. Green stated that she would lose \$25,228 if the application is approved and asked the Board to vote against the application.

Barbara Sovik, 46 Prospect Street, Keene, stated that the Keene Zoning Regulations stipulate that an approval for a Special Exception request may be granted if certain conditions are met. She stated that the proposal is similar to one or more uses already authorized in that specified district which is a more appropriate location for such a use. Ms. Sovik stated that the petitioners have described their planned transitional living facility as being similar to the former Prospect Place. She stated that Prospect Place was established to be a home for elderly individuals who are no longer able to care for themselves. The transitional living facility that is being proposed will house clients for undefined short periods of times, which means there will be a continual random turnover. Ms. Sovik stated that there are no reasonable similarities between the group home being proposed and the former Prospect Place.

Ms. Sovik also referenced the study conducted by Professor Bernie Wallard at Longwood University in Farmville, Virginia. She stated that this study concluded properties in the neighborhood of such a facility would see a 17% decrease in property value. She stated she will lose \$31,000.00 if the application is approved. Ms. Sovik said that the applicants proposal for a transitional living facility will be classified as a for profit business, while neighbors can anticipate seeing the value of their property decrease by substantial amounts.

Ms. Sovik stated that in regards to there will be no nuisance or serious hazard to vehicles and pedestrians she wanted to tell the Board to be aware that due to the steep hill on Prospect Street it is impossible to see vehicles approaching from the opposite directions. She explained that it was sometimes necessary to use the side of the road to avoid potential unseen vehicles approaching, while at the same time navigating around parked cars. Ms. Sovik noted the lack of sidewalks on Prospect Street increases the hazards to pedestrians. She stated that there were times when

Prospect Place had special events and meetings that would cause lines of cars to be parked half way down the street.

Ms. Sovik stated that one of the goals of the proposed transitional living facility is to have clients re-enter society to establish social connections. She said those clients will need transportation and it is unreasonable that one van would meet the needs of 26 individuals going in different directions at different times. Ms. Sovik stated that the increase in parking would cause a daily hazard for insufficient capacity to accommodate residents and school aged children. In addition, she noted the winter parking ban in the City would also cause an issue due to the lack of parking.

She stated for the reasons she discussed the application for a Special Exception does not meet criteria needed to approve the request and should be denied. Ms. Sovik thanked the Board for their time.

James Knight, 26 Prospect Street, Keene, stated that he has resided at his home on Prospect Street for nearly 44 years and is also a 67 year resident of Keene.

He stated that he wanted to address the criteria as follows:

- He stated that in regards to property values, there have been extensive studies conducted across the country concerning the diminishing values of homes that are located near rehabilitation treatment centers. He stated that he is retired and the equity in his home is a large part of his retirement plan. Mr. Knight noted that he would lose \$34,544 in property value.
- As to injurious, obnoxious and offensive he stated that when the Boisvert's were asked if smoking would be allowed they answered, "yes, but not inside building". He stated that the Boisvert's were also asked if the residents would be allowed to smoke and they answered, "outback". Mr. Knight stated that outback is located right next to his property and noted that his foundation is five feet from property line of 361 Court Street. He explained that the prevailing winds come from a westerly direction and the smoke will come straight into their home. In addition, he noted the effects of second hand smoke are well documented.
- He stated as to nuisance or serious hazard to vehicles or pedestrians he stated that Prospect Street is not a commercial street and not designed to be one. He noted that Court Street is an extremely busy street and there are bus stops close to the intersections of Court Street and Prospect Street. In addition, he noted that there was not a sidewalk past 361 Court Street.
- He stated as to adequate and appropriate facilities there is no way near enough space for 12 parking spaces. Mr. Knight said when employee shift change occurs there will be chaos and that people loiter and talk.

Mr. Knight said concerning several issues documented from the applicants by Attorney Davis in regards to ZBA 17-20 there are 70 +/- statements of fact. He said that he wanted to address items 62 and 73.

Mr. Knight stated that in reference to item 62, Mr. Schneider received a letter on

November 13, 2017 from the Boisvert's that contained a copy of an article entitled, "The Fair Housing Act Amendments of 1988 in Group Homes for the Handicap". He said this article was reprinted from the journal of the section on legal governmental law of Virginia State Bar Volume III, Number I, dated September 1997. He explained that the Boisvert's highlighted the opinion of the writer and not the law in an attempt to place under the definition of addiction under handicap and protected under The Fair Housing Acts Amendments of 1988. The article contained only a small fragment of the law HR 1158 Fair Housing Amendments Act of 1988. Mr. Knight stated the he could provide the Board a copy of the full law. He read the first four sentences, "The Fair Housing Amendments Act of 1988 establishes statutorily (1) the Civil Rights Act of 1968 as the short title of P.L. 90-284; and (2) Title VIII of such Act as the Fair Housing Act. Amends the Civil Rights Act of 1968 to include within the definition of discriminatory housing practice new prohibitions against coercion, intimidation, threats, or interference because of a handicap. Defines handicap as: (1) a substantially limiting physical or mental impairment; (2) a record of having such an impairment; or (3) being regarded as having such an impairment. Stipulates that the following shall not be considered a handicap: (1) current illegal use of or addiction to a controlled substance; and (2) transvestism".

Mr. Knight then referred to item 73 and also addressed the statement in item 74 in the latest paperwork that was submitted to the Board by the Boisverts. He referred to the statement in the January/February edition of the Monadnock Business Journal published on February 4, 2016. Mr. Knight read as follows, "The Woodward Home and Prospect Place both on Court Street are merging. The Prospect Place is closing this summer and the combined entity Prospect-Woodward Home is the developer of the project Hillside Village". Mr. Knight stated that on July 1, 2016 Prospect Place filed with the State of New Hampshire a change of name Prospect-Woodward in place of business at 194-202 Court Street, Keene. He noted that was when Prospect Place merged with the Woodward Home and this was reported in The Keene Sentinel on July 3, 2016. Mr. Knight said that on November 28, 2016 the Keene Planning Board approved the proposal to allow construction of Hillside Village on Wyman Road. The next day on November 29, 2016, Mr. Knight said that The Keene Sentinel reported this news and based on this information proved how apparent it was they never intended to return.

Mr. Knight stated that he had copies of these articles and asked Board if they would accept for review. The Board accepted the documents for review.

Angela Trubiano, 185 North Street, Keene, stated that her father-in-law owns 181-183 Prospect Place, that is a duplex. Ms. Trubiano stated that her family intends to inherit this someday which will be her and her husband's retirement. She said if the application is approved her family would lose \$55,000.00 in property value for both properties. Ms. Trubiano said that her family cannot stand to lose that amount in retirement.

Ms. Trubiano stated that she had written a letter to the Board and wanted to make sure this letter was received. The Board confirmed receipt of the letter. Ms. Trubiano thanked the Board for their time.

Karen Johnson, 100 Forrest Street, Keene, stated that she lives in a multi-family that they will not be able to rent out if the Boisvert's plans are approved. In addition, she noted that her family would lose up to \$29,000.00, which they cannot afford. She said that she keeps hearing that those

in opposition of the application are opposed because they are afraid to have people recovering from addiction in their neighborhood. Ms. Johnson stated that this is not true. She said they all have sympathy for those that are recovering from drug addiction. Ms. Johnson said that what they are afraid of are the repercussions of a small and congested community with 26 unhealthy, unstable individuals that are early in the recovery stage.

Ms. Johnson said that her son walks to the bus stop located next to 361 Court Street and has fears about what the children may be exposed to. In addition, she stated that she also has a concern in the increase of traffic which is already a concern in the neighborhood. Ms. Johnson stated that she is opposed to the plan and thanked the Board for their time.

Jen Knight, 26 Prospect Street, Keene, stated that her family has resided in Keene for several generations and her family's home has been in their family for well over a century. She stated that six generations of her family have lived in her family home. She stated that what she brings to the table is that her family is deeply invested in the neighborhood and community. Ms. Knight stated that those that are seeking to obtain the property at 361 Court Street have no vested interest in the neighborhood.

Ms. Knight stated that there have been many people that have brought to light the discrepancies in the ever changing business plan being proposed. She said that there are enough holes and ambiguity contained within it that she does not feel remotely comfortable with the proposal let alone having the proposed plan adjacent to her home. She stated that her biggest concern regarding zoning changes after a decision is made is the impact that it will have whether it be positive or negative. Ms. Knight reported that she has colleagues that work in the field of addiction and recovery and they have expressed their concern in the business plan presented. She reported that she has worked with recovering addicts in her own practice and the collective concern is for those that would be receiving this service and also for those residing in neighborhood. Ms. Knight reiterated that the services need to be provided by qualified licensed practitioners. She noted that it was not only dangerous for the residents but also for the staff and those that are residing near the facility. She stated that there have been numerous studies that echo these concerns.

She stated that the property the across street known as the Minerva Apartments, is located on the corner of Prospect and Court Street. Ms. Knight stated there is already concern amongst the neighborhood about this residence as it has regular police visits that range from drugs to domestic issues. She explained that having the proposed facility located next to these apartments is akin to holding an AA meeting next door to a bar.

Ms. Knight then presented photos of the Minvera Apartments noting that there are only 4-6 parking spots for this property. The photos depicted how cars are parked illegally. She noted the location of the City's Friendly Bus parking spot that is next to the lane of traffic that would be turning onto Court Street onto Prospect Street. Ms. Knight noted how the photo showed how it impedes the oncoming traffic coming down the hill on Prospect Street.

Ms. Knight pointed out that there was a 50 acre parcel of property that the Boisvert's walked away from and she questioned why they walked away from a far more suitable place for their business plan. She stated that the proposal does not support the proposed business plan nor is it a

large enough facility for recreational activities. In addition, she stated that the property was not zoned for a medical facility or institution.

Ms. Knight concluded by stating that her family would lose \$34,544 in property value. She thanked the Board for their time.

John Washer, 97 Forrest Street, Keene, stated that he and his wife are in opposition for a number of reasons. He stated most of the reasons have already been stated. Mr. Washer stated that he wanted to make sure he discussed property values. He stated that property values have been on the rise in this neighborhood over the last five years and have continued to increase each year. Mr. Washer said that he would lost \$25,000.00 in property value and wanted to make sure the Board was aware of the importance of the issue. He thanked the Board for their time and asked them to deny the application.

Janet Baug, 55 Court St, Keene, referred to the studies that indicate a 17% decline in property value and noted that this would occur for all properties within a 1/8 of a mile of the facility. She stated that her property value would decrease by \$35,000.00 and that she did not want to contribute this donation to allow Boisvert's's to have a for profit business. Ms. Baug stated that she is not against drug rehabilitation center but feels that this is not right location.

Michael Hagan, 296 Court Street, Keene, stated that he has recently renovated his home and that he was going to stay out of the issue because he has his own feelings on addiction and recovery. He stated that it is a good idea to have a recovery center in the area. Mr. Hagan said that he thinks about what he does for a job, the impact of the proposed use and how the traffic is terrible on the corner of Prospect Street and Court Street.

Mr. Hagan said that increasing the beds to 26 is not the only problem because when it comes to addiction part of the recovery process is getting family involved. He noted that this would increase the amount of traffic and the need of additional parking would impact the neighborhood severely. Mr. Hagan stated that he was conflicted both ways but in the end he considers this a bad location for the proposed location.

Michael Luciani, 374 Court Street, Keene, stated that he has resided in Keene for 20 years. He stated that the request from 16 beds to 26 beds is only part of the issues because the proposal seeks to place a high concentration of a high risk population in the middle of a residential neighborhood. He said that this request asks the City to increase the occupancy of the building by 61% and was reasonable to assume that this increase in residency of high risk population will have a detrimental impact on surrounding neighborhoods.

He stated that the risks inherent to this facility at the proposed level as opposed to its prior use are clear. He stated that a member of the Prospect House Advisory Board at a public meeting stated 18 out of 23 participants in programs such as the proposed are successful, which meant 23% are unsuccessful. He stated that this facility will be required to be a locked facility with alarms and security cameras. Mr. Luciani said that with these restrictions it will not prohibit residents from walking out if they want to leave the program against the advice of the program. He said as stated by the petitioner on a local radio station, the facility will have a contingency plan to maintain a supply of Narcan on the premise to administer to residents in case of an opioid

overdose. In addition, he stated that the Petitioner also stated that many of the residents would likely have criminal backgrounds and only a few of the most violent criminals would be excluded from the program. He said that the Petitioners have stated that non-compliant residents will be required to leave the program and those that are not compliant will be asked to leave. In addition, those that cause further problems will be taken by police to a local shelter or another location within the community.

Mr. Luciani said for these reasons a high concentration of a high risk population in the middle of residential neighborhood, in addition to the inexperience of the Petitioner in managing such a facility is a major concern. He noted that he would lose up to \$27,000.00 in property value if the application is approved.

Mr. Luciani stated that he feels the rejection is consistent with the previous decision of the Board for the proposed location of Hundred Nights Shelter in downtown Keene. He explained that he and wife looked for a home with specific qualities to raise their sons and that he feels that living across the street from an assisted living elderly is a much different dynamic than the proposed.

Mr. Luciani asked the Board if they would consider purchasing a home across the street from a rehabilitation center or advise their children to purchase a home in such a location. He thanked the Board for their time and submitted his remarks to the Board.

Terry Clark, 14 Barrett Avenue, Keene, stated that he is a licensed Realtor, City Councilor and a Board member of the Monadnock Alcohol and Drug Abuse Coalition. He stated that there was only one proposal before the Board and that is should a 26 bed drug rehabilitation center be located at 361 Court Street. Councilor Clark said that the one deciding question is whether granting the application would cause damage to the abutters.

He stated that the scientific nature of the study of Dr. Greenwood on property values is a highly technical academic statically analysis that the Board does not have sufficient expertise to understand on its own without additional assistance. He said that they have presented a summary of those damages in the form of a report by the American Real Estate Society. The report by Dr. Greenwood states that opioid treatment centers located in residential zones reduces as much as 17% in property values. He stated that this information is not anecdotal and is scientific and fact.

He said as a City Councilor he can attest to the fact that the tax payers of Keene already think they are being subjected to high taxes. Councilor Clark stated that this is about damage to the neighborhood. He stated that the Petitioners could have opened a center in another location and he questioned their business plan. Councilor Clark said that their financial position is evidence based on the fact that the Petitioner's proposal in Winchester was approved but they had no money to put in a sprinkler system and they abandoned the project.

He said that if there is a center such as the proposed it needs to be on good standing and done by people who know what they are doing to do a good job. He said that the proposal has been put together half hazardley. Councilor Clark said that the abutters under City Code are given certain protections and the City needs to protect them from this proposal.

Tim Murphy, 397 Court Street, Keene, stated that he was conflicted because there is no doubt there is a crisis in the community and society. He stated that everyone needs to come to grips with substance misuse. Mr. Murphy stated that he has thought about the proposal and the importance to the community for this type of facility. He stated that he is very confident that the applicant is honorable and well-intended.

Mr. Murphy said that as he has learned about the specifics and attended the informational sessions at Stonewall Farm and he was surprised at the lack of detail for the proposal. He noted that this concerned him. Mr. Murphy asked how one can understand the impact of the proposal if there are no details in which to measure them. He said he sees the need as a community to deal with crisis but that the proposal does not make this particular property the right answer. He asked the Board to think about the cumulative impact on neighborhood when making their decision. Mr. Murphy thanked the Board for their time.

Chair Stout invited those in favor of the application rebuttal time to come forward to speak and for those that oppose the application rebuttal time to speak.

Attorney Hoppock asked Chair Stout to define what rebuttal means for everyone. He explained that this is not an opportunity for new evidence. Attorney Davis stated that this was still a public hearing and new evidence could still be taken. Chair Stout stated that the window is not closed to any new evidence and that the Board would not be restricting new evidence.

Chair Stout invited those in favor of the application to speak.

Tom Hanna, Attorney with Thomas Hanna and Associates, 41 School Street, Keene, stated that he represents the owner of the Prospect-Woodward Home. He stated that as the Board is aware there is a contract to sell the property to the applicant and the owners are eager to have the property sold. Attorney Hanna stated that he is present at the meeting to talk about one issue and that has to do with the abandonment argument. He said that the abandonment issue in his legal opinion does not apply to the property because in 1989 it so happens he obtained a Special Exception for Prospect Place. He noted that there was also a record of the Special Exception.

Attorney Hanna said that in 1989 the Board determined that the property deserved a Special Exception as a group home. He said that a Special Exception is different from a Variance and also different from a non-conforming use. Attorney Hanna said that a Special Exception once granted and once implemented is exactly the same as a permitted use. He explained that in a Medium Density District, such a use is permitted outright once a Special Exception is granted and once the Special Exception is implemented. Attorney Hanna said that it is a permitted use and it is not possible to abandon a permitted use because a permitted use runs with the property. Therefore, the Special Exception needs to be distinguished from a non-conforming use and a non-conforming use under law, once abandoned the rights can be lost. He said that again, it is not a non-conforming use. Attorney Hanna stated that he wanted to explain this to the Board because someone may claim that this is a non-conforming use. He explained that in New Hampshire, municipalities are allowed to set a timeframe if a use is abandoned for a certain period of time. He noted that in the City of Keene, the Zoning Ordinance states one year according to Section

102-202. Attorney Hanna said that Section 102-202 in addition to the one year provision, states the following criteria apply, *“the intent of the owner to abandon the use is apparent, the equipment and furnishings characteristic of a non-conforming use have been removed”*.

He said that with this property residents moved out of Prospect Place on July 1, 2016 to the Woodward Home. He said prior to that occurring the property was listed for sale and was actively marketed for a variety of uses. Attorney Hanna reported that a variety of prospects looked at the property for assisted living, boarding school, hospice, drug and alcohol facility, home for pregnant teens, a group home for veterans and one or two other homes. He stated that it is not a question of whether residents moved out or are not moving back but that the proposed use as group home was not abandoned and has been actively marketed for that use.

Mr. Plenda stated that he was confused about the use being abandoned at its current use and understands that under a Variance there is no abandonment issue. Mr. Plenda asked why Attorney Hanna would bring up abandonment. Attorney Hanna replied that it was brought up by the neighborhood. Mr. Plenda asked what the current zoning for the property was as proposed. Attorney Hannah replied Special Exception for a group home as a permitted use.

James Romeyn Davis, an Attorney with Sheldon, Davis, Wells & Hockensmith, P.C, 28 Middle Street, Keene stated that he represents the Petitioners Susan and David Boisvert. Susan Boisvert stated that she lived at 401 Keene Road, Winchester, NH and David Boisvert stated that he resided at 401 Keene Road, Winchester, NH.

Attorney Davis stated that he wanted to go through a couple of things to clear up factual confusions. The first is that he wanted to go over factual assertions so that the Board is clear that the application is relative to the proposed expansion. He said that the application before the Board is for an expansion of a Special Exception that was allowed in 1989, ZBA 89-20. Attorney Davis stated that the Board has a copy of the minutes and Notice of Decision. He said that a review of ZBA 89-20 shows that the applicant at the time applied for approval of this use and it was identified that it was requesting a Special Exception. In addition, the use was identified in the in the very first paragraph of the application. In the minutes of that meeting it is clear that the discussion was an approval for a group home. Attorney Davis said that in the decision of the Board approved this Special Exception for this use and according to the minutes it was for a group home.

He said that they have provided to the Board the table of uses for the Medium Density District and in 1989 it shows group homes were permitted uses via Special Exception. He said that the Board in ZBA 89-20 also approved an expansion from 14 to 16 beds with a small addition to the building relating to a new entrance and an elevator. Attorney Davis noted all of which were built, approved and occupied.

He stated that they had confirmation from the previous Chief of Nursing at Prospect Place now working at Prospect-Woodward, that there were times that they had 16 residents. He stated that the Board has to make a determination of what this use meant in ZBA 89-20. Attorney Davis said that they were respectfully submitting that the evidence before the Board is clear and not reasonably subject to dispute.

He stated that the abutters are attempting to argue that this is not what the Board decided in 1989. Attorney Davis reiterated that this decision was final and is binding. He referred the Board to the application, the minutes and the decision as to whether or not the Board approved the use as group home. Attorney Davis stated that as early as 1976, the City Council adopted a definition of a healthcare facility and that definition has also been provided in their supplemental requests for Findings of Fact. He apologized to the Board for getting this information to them the day before the meeting but wanted the Board to know that they received this information from the City Clerk's Office the day before this meeting.

Attorney Davis stated that healthcare facilities were a defined term as early as 1976 and the opponents in the case are arguing that this is a healthcare facility. However, he stated that in 1989 this Board approved the use as a group home and a healthcare facility was not an allowed use within this zone under the table of uses. Attorney Davis stated that old age homes and nursing homes were allowed by Special Exception in this district. He stated that the application submitted by Attorney Hanna on behalf of Prospect Place was for a group home and that was approved.

Secondly, Attorney Davis stated they have represented as a result of the concerns of the abutters regarding the issues of health associated with smoking. He reported that they will be implementing a no smoking policy on the premises of lit cigarettes or cigars but will allow e-cigarettes or vapors to be use. He noted that this was included in their proposal. He stated that there was no objection if this was a condition of approval for the application.

Attorney Davis stated that the opposition addresses if the business plan will work. He stated that matter is not before the Board and that the Board needs to base its decision on the applicable Zoning Ordinance and the proposed use. He stated that whether the Board thinks it is or is not a good business plan is totally irrelevant. Attorney Davis stated that this Board does not have the expertise but more importantly as a matter of constitutional law, does not make everyone an expert on the best way to run the operation.

The second type of opposition that they have heard it is not a group home. He stated that he cannot understand any logical argument to state that the proposed use is not a group home while looking at the constituent requirements of the Zoning Ordinance. He stated that this is the same definition that existed in 1989 when the Board approved ZBA 89-20. He noted that this was stipulated by Attorney Hoppock at the last meeting so there would be no dispute of the definition that was submitted to the Board in the supplemental request.

He stated that there is nothing in the definition of group home under the Keene City Ordinance that distinguishes between long term and short term care. Attorney Davis said that the abutters are claiming it is not a group home because of the people who used to live at Prospect Place. He stated that the legal phrase is a group home as determined by this Board. He said the fact that some of these individuals may have lived there for a long period of time is irrelevant and noted that there is nothing in the definition that says it can only be long term or short term care.

Attorney Davis stated that the applicants are proposing transitional housing as a group home to assist the residents in social rehabilitation.

Attorney Davis stated that the other issue noted by the abutters was that their property values would decrease. First, he stated that they would submit that the decreased property values are not a matter before the Board. Attorney Davis stated that if someone is seeking a new Special Exception for a matter that has not been previously allowed, a review of the Zoning Ordinances has certain findings that the Board must make. He explained that one of them addresses no definition of property values. He stated that is for a new Special Exception. Attorney Davis stated that the use as a group home has already been approved and implemented and as such is now a permitted use forever. He stated that there is no statutory provision or New Hampshire case law that addresses the so-called abandonment of a permitted Special Exception that was put into implementation. He stated with that in mind this is not a new application for a new use. This is an application to expand the number of beds.

He said that Board would recall, at the previous meeting that the actual approval of the Board did not contain a numerical limitation. Attorney Davis stated that for purposes of the application, they were treating the approval as if it had a numerical limitation of 16 residents because there had been a representation made in the minutes by Attorney Hanna that they wanted to go from 14 to 16 beds. Attorney Davis stated that under the Keene Ordinance a new Special Exception is only required for an expansion of a Special Exception if the new expanded Special Exception either involves a new area or a percentage increase. He stated that their proposal does not propose to increase the size of the building or the area that was used as a group home. He said that all of the buildings formally used as one part of the group home will be used whether it is for meeting rooms, private rooms, office space or storage. Attorney Davis stated that they are not proposing new areas or expanding the area of the building. He stated that the Board does have jurisdiction because the decision must be made if this is an appropriate location and are there appropriate facilities for the proposed expansion from 16 to 26 beds. He said that this is a factual based determination.

Attorney Davis stated that they have represented that the number of parking spaces that were used when it was Prospect Place was for up to 16 beds. He explained that the staffing requirement was at the former Prospect Place was for more than 16 or 26 residents compared to what his clients are proposing. Attorney Davis said that the question before the Board is what impact will be if there is an increase of 16 to 26 beds on parking.

Attorney Davis addressed the fact that some residents would occasionally have their own cars. He explained that this would only be on a case by case basis and would be an earned privilege for residents at the end of their time at the facility. He stated that this was an operational detail that is not subject to purview of the Board. Attorney Davis stated that they looked at other facilities in New Hampshire, Massachusetts and other states with transitional facilities that have a similar population and need of service. He explained that a majority of these facilities do not allow residents to have vehicles. He reiterated that this is a non-issue.

He stated that there is no evidence that parking was inadequate with the possible exception when there were large events or board meetings. They do not anticipate large group events at the facility or visitors on a regular basis. He noted that visitors are only allowed on a pre-approved basis at a pre-approved time. Attorney Davis stated that they will have the control of how many cars are on the parking lot.

Attorney Davis addressed that they will not be allowing third parties to receive services at the facility and that the services will only be for the residents. He stated that there would be 24 hour monitoring, onsite counseling through an employee. In addition, all medications will be secure and employees will watch as medications are taken by each resident as a precautionary method. Attorney Davis stated that because of this, they have to have to state licensure. He stated that the Board and opponents need to be aware that if they were not seeking those additional safe guards of on-site counseling of the residents and making sure all medications are under lock and taking of them is monitored, they do not need this Board's approval. He stated that his client or anyone else looking to purchase the property could put in a 16 person group home for the exact same population with no services. Attorney Davis said that the question for the abutters and the Board is if the proposal is in the best interest of community. He said a facility locked and controlled 24 hours a day seven days a week with trained staff, with onsite counseling, with mandatory drug testing is far better for the community and neighborhood.

Attorney Davis said that the diminishing of property values is not within the purview of the Board. He explained that if a new application for a new Special Exception this issue of decreased property values would need to be addressed by the Board. He stated based on that reason, they submit for the same reason as the issue of expansion of the area, this is not a new Special Exception.

Attorney Davis said that the issue before the Board is public health and safety and if this is an adequate facility. He stated that there is no evidence that the facility is not adequate from the stand point of fire safety, access, it has two separate egresses for all three floors, operating fire sprinklers and safety code. In addition, he noted that more than 26 people could live in the existing building without converting anything. He stated that the facility is adequate; it has a commercial kitchen, has plenty of meeting space and according to City records it has over 10,000 square feet of approved surface area.

Attorney Davis stated that there has not been any evidence of what impact 26 people will have as opposed to 16 people that are already allowed. He re-iterated that there is no evidence on that issue. He said if the Board choses to review the NIMBY (Not in My Backyard) study, that this so technical that the Board cannot review this without assistance. He said nowhere does the study report to say what impact a larger facility has as opposed to a smaller facility. In addition, the study recognizes that there at least three different models of drug rehabilitation and does not report on the impact of the different types of facilities. Attorney Davis stated that the people opposed to the application figure a 17% property diminishing value according to the study. He stated that the study focuses on opiate substance abuse rehabilitation facilities. Attorney Davis noted that is not the type of facility his clients are seeking. He noted that it the proposal was for a transitional living facility and that it was true some residents will have opiate issues.

Attorney Davis stated that the study also goes on to define that class of so-called drug rehabilitation as one in which methadone is used with services to third parties. He explained that they have no trouble if a condition of approval is set not to dispense methadone. Attorney Davis stated that they will not be dispensing methadone. The only services to third parties will be on a case by case basis.

Attorney Davis stated that people are misusing the study. He stated that if the Board decides it has to go through the study they will need to determine the appropriate area for comparison by zip code analysis. Attorney Davis stated that the Board has to decide if that is meaningful.

He stated that the issue of The Fair Housing Act and The Fair Act Amendments that have been submitted to the Board are case law and that the federal statute is clear. The people actively engaged in recovery for substance abuse issues whether it is alcohol or drugs and are not actively using are covered as handicap persons and protected by statutes. He stated that the Board runs afoul not by intentional discrimination but because the Board failed to make a reasonable accommodation or cause that could cause a desperate impact on the protected class for handicap people who will be residents at the facility.

Vice Chair Stevens stated that what he had before him was an application for a Special Exception. He stated that his understanding of expanding the number of beds inside the building does in fact change the use. Vice Chair Stevens asked City staff to clarify. Mr. Rogers stated that Attorney Davis was correct that there is an existing Special Exception that is in place and that they were contending that there was an applied condition for 16 beds. He said that the Board would not be looking at one through four on the Special Exception application. Mr. Rogers stated that the Board would want to make sure that the protection of the public health, safety and welfare is being met. He noted that this application was being put forth as a request for an expansion of a Special Exception.

Vice Chair Stevens stated that there has been a lot of testimony about addiction being a medical condition. He asked if that would qualify as a medical condition. Mr. Rogers reminded Vice Chair Stevens that he was starting to cross over into deliberations. Vice Chair Stevens asked if it is a medical condition, how can this be classified as a social rehabilitation under the healthcare meaning it specifically addresses medical conditions. Attorney Davis stated that the Keene Zoning Ordinance looks at its primary use and when the Board reviewed the application in 1989 the Board knew this was a group home even though Prospect Place provided certain medical services.

Ms. Boisvert stated that there are different types of group homes run through a social model, clinical model or a medical model. She said Prospect Home was a medical model and that she would like to do a social model. She stated that a clinical model is something that she would like to eventually work towards in order to have licensed clinicians do counseling on the property. She stated that social rehabilitation is the main focus and the ultimate goal to help these individuals get back into society.

Vice Chair Stevens stated that the burden of proof is on the applicant to prove that property values would not be affected. He noted that there was nothing to prove that the proposed application would not harm property values. Attorney Davis stated that if that issue is even before the Board, based on fact the way that the Keene Ordinance is written it only requires a new Special Exception if there is an expansion of 500 square feet or 20% of the area of the former use.

Mr. Gorman stated that in regards to the administering of medicine, Attorney Davis gave testimony that it were not for administering medicine the Petitioner would not need to be in front

of the Board. Attorney Davis replied that they are proposing to do that as part of the model for transitional housing. One there needs to be state approval to provide counseling and that they would not be in front of the Board if it were not for the increase of beds as they already have approval as group home. Mr. Gorman further questioned on the previous group home as to the former residents of the property, were these residents simply aged, needing the occasional aspirin or were they administered medical treatment. Attorney Davis replied that his fellow attorney, who represented the home, it was a nursing facility.

Mr. Plenda left the meeting then returned 10 minutes later.

Ms. Zerba stated that when the residents go out to find a job, a van would transport them back and forth. She asked what if a resident chooses to use their car because they are working away from the facility. Mrs. Boisvert stated that residents could walk or could car pool. She noted that was also the importance of the proposed location, so residents would have available jobs within walking distance.

Ms. Zerba asked if there was a plan to increase the area to have specific activities outside based on the plan to increase from 16 to 26 beds. Mrs. Boisvert replied that they would use the Keene Recreation Center and the YMCA for activities.

Ms. Zerba stated that they refer to the ZBA decision in 1989 and one of the items included was an increase of 14 to 16 beds and the addition of two parking spaces. She stated that they were requesting to go from 16 to 26 with no additional parking spaces. Ms. Zerba asked if there is room to add additional parking. Ms. Boisvert replied in the affirmative. Ms. Zerba asked if that was there intent. Ms. Boisvert replied that there was no plan or wish to add additional parking.

Mr. Gorman asked in regards to the staff parking requirement, it is his understanding a group home does not have any requirements. Mr. Rogers stated that the Table in the Zoning Code that dictates the number of parking spaces required for a group home is not listed as a use. He stated that there is a different section of the Zoning Code that would apply where the zoning administrator working with the property, would determine a number. He said that in this situation the Board could apply a condition speaking to the tenants not having vehicles in order to move forward with an approval.

Ms. Boisvert stated that the site plan that was done by an architect was pulled from City records. She noted that there were no outstanding site plans. Attorney Davis stated that a portico and new entrance are not being proposed.

Chair Stout announced a five minute break.

Chair Stout reconvened the meeting.

Attorney Hoppock began by presenting what he thought the issues are before the Board. He stated that he does not dispute the ZBA 89-20 decision for an established group home for the elderly. Secondly, he stated that they disagree that the application before the Board now is not a group home and is a healthcare facility and that the Board cannot give a Special Exception for that reason.

The other point Attorney Hoppock wanted to point out, was that due to the various statements that the applicants have made to the public and to the Board with the intent of trying to please everyone, he stated that there is a huge credibility problem. He said point one was that the Board just heard Ms. Boisvert explain that site plan was something that they picked up from the City and submitted it without looking at the site plan. He explained that is hard to believe date. He stated that the site plan reads September 15, 2017 and was the date of their first application for ZBA 17-16. Attorney Hoppock said that it not true and that the site plan was recently made. He explained that Ms. Boisvert heard the opposition and she back filled.

Attorney Hoppock explained that this case is going to turn on the definition of group home verses healthcare facility. He said that they believe this is a healthcare facility and therefore a healthcare facility cannot have a Special Exception in the Medium Density District. He said that the key elements for a group home are as followings: they provide board and supervision to five or more persons not related to the owner, and social rehabilitation and/or residential care. He said that it was not hard to imagine elderly providing services for social rehabilitation and long term residential care. He noted that some of these residents may leave the home and return to their own home because there is no definite term to stay there. He said they either die or get too sick to be cared for. Attorney Hoppock said that in the paperwork titled Prospect House Operation Information the Petitioner submitted more detail about Prospect House Phase I, II III. A transitional living facility is a term that suggests short term care. Attorney Hoppock said that the first thing to do is to determine in framework of the material that they suggest that program “could last from 30 to 180 days” he stated that in his book that is short term and not even remotely comparable to a long term old age home.

He said the second reason is that a social rehabilitation facility is not a drug rehabilitation facility. Attorney Hoppock said that a drug rehabilitation facility is a medical rehabilitation where counseling services are provided to treat a disease. He said that a social rehabilitation facility are things such as half way houses that are working toward releasing convicts back into society and that kind of a home meets the definition of social rehabilitation. Another example he provided for social rehabilitation would be a home for delinquent children or a home for veterans that are not well. He said those are the kind of homes could give examples as social rehabilitation and not a home for alcohol dependence or opioid dependence. He asked the Board to look at Phase I, where Ms. Boisvert suggests that her clients and patients will receive counseling and expects to deal with PAWS (Post-Acute Withdrawal Symptoms). Attorney Hoppock noted that this was a psychological term and a medical issue that requires treatment from a medical professional. He referred to the clinical model Ms. Boisvert describe and that fits well within the definition of a healthcare facility which is an institution such as a nursing home, a convalescent home, a home for sick patients or a home for patients with incurable diseases. Attorney Hoppock stated that the Board heard testimony that alcoholism is not curable but is treatable. He said that what the Board has before them is a healthcare facility and under the Ordinance the Board is not allowed to approve a Special Exception for a healthcare facility.

Another issue of creditability he finds horribly lacking is request 39 that Attorney Davis submitted about smoking. He said that it was stated in the Stonewall Farm presentation that there will be smoking permitted outside and then the applicants heard a lot of opposition to this. He then stated the applicants changed to having the facility be a smoke free environment. Attorney

Hoppock stated that people in rehabilitation that are smokers are going to have a hard time to quit smoking on top of the drug rehabilitation of drug addiction. In addition, he stated that the online petition created by the applicant with signatures from Bosnia, Slovakia, and Australia have no standing before the Board and is a waste of time.

He then referred that Board to item 37 which states as follows, “*applicant will not dispense any drugs at the Prospect premises*”, He stated that they will dispense medication because in the material provided it talked about Vivitrol and having outsiders bring this to them. He stated that this is a drug used to treat alcohol abuse and to aid in prevention of opioid relapse. He said that the point about 37 is that the talk about the applicant not dispensing drugs but their material suggests they will dispense by a vendor. Attorney Hoppock stated that the applicants are not being candid with the ZBA.

He said that Phase II of the recovery program suggests that there will be meetings and that the Board heard tonight that family members will create a parking problem. He noted that 12 parking spaces is not sufficient based on the need. He said that the three phases and description of the program state that it will last 30-180 days and is a treatment for a disease and falls under the category of a healthcare facility under the Ordinance.

Attorney Hoppock referred back to 1989 and the same type of definitions existed then as it does today that the permitted use in a Medium Density District is the same. He stated that the Board will see that an institutional use is not listed. Attorney Hoppock stated that single family and multifamily structure are there listed in addition to home occupations. He explained that a group home is there by Special Exception.

Attorney Hoppock stated that what has changed since 1989 is that an institutional use is committed by Special Exception subject to certain conditions. He referenced Section 102.1111 that have to do with the definition of an institutional use which includes a healthcare facility and it is clear that when the City amended the Zoning Ordinance that they did not want institutional uses in most of the Medium Density District. Attorney Hoppock stated that the nature of their proposed use is more consistent with a convalescent than a group home.

Attorney Hoppock asked if the first part of his memorandum that he submitted for ZBA17-16 would be treated as part of the record. Chair Stout replied that everything will be part of record. Mr. Rogers stated that is for the other application and not part of this packet. Attorney Hoppock asked for this to be a part of this record. Attorney Davis had no objection that this should be part of that record for this application. Attorney Hoppock thanked Attorney Davis.

Attorney Hoppock directed the Board to Section 102.37, the Special Exception Ordinance, Sub B states “*any expansion of an existing use*” he explained that the phrase expansion of an existing use needs to be isolated “*for which a Special Exception has been granted must receive a new Special Exception*”. He said that the word expansion is modified by the phrase of an existing use. Attorney Hoppock stated that since it will be a new Special Exception they need to meet the criteria of Section 102.37a 1-4. He stated that the applicants have not offered a thing on the issue.

Chair Stout asked if the proposed use is determined a healthcare facility verses a group home then is the Special Exception even relevant. Attorney Hoppock stated that it is not relevant and

that if the Board decides that this is a healthcare facility it is the end of the Board's inquiry and would deny the application. He noted that the correct remedy is for the applicant to come before the Board for a Variance.

Attorney Hoppock reviewed the criteria. He stated that the Board has heard a lot of information from the opponent's side that approval would reduce the values in the district and some by significant margins. In addition, he stated that expanding the use from 16 to 26 beds will increase traffic cars, noting the photos that were shown showed cars parked two feet out into the road.

He stated that they think there is a lot of opportunity for injurious, obnoxious and offensive characteristics to the neighborhood which has nothing to do with proposed use and has to do with their volume. The character of the neighborhood consists of all the houses along Prospect Street and he noted that there were a lot of multifamily and one and three family homes in the area. He noted that the Boisvert's analysis of the neighborhood consists of a page with a map only showing the immediate abutters. Attorney Hoppock stated that the neighborhood consists of the people who the Board heard from tonight, who live there and come up and down Prospect Street.

Attorney Hoppock noted that this is not an appropriate location based on parking and 12 parking spots is not enough for ten patients and staff councilors to come in and do group therapy. In addition, he stated that it was simply inconceivable to suggest they are going to transition patients back into society without vehicles. He said that one van is not going to transport people all over the city. In addition, he noted that the increase of traffic will also increase the risks of accidents and injuries will increase.

Attorney Hoppock said that there is no claim under the Fair Housing Act if the Board denies the application based on the fact that this is a healthcare facility and not a group home. He explained that a reasonable accommodation in that context. He referred the Board to their zoning chart that a group home is permitted by a Special Exception. Attorney Hoppock stated that the request comes in the form of a Variance.

Attorney Hoppock stated that the abutter analysis made by the applicant is incomplete and ignores the density of the neighborhood of Prospect Street. He asked that the Board consider this with the application and at the end of day the Board is concerned about the protection of public health and welfare. He said that phrase is broad enough to encompass the four factors of a Special Exception, including diminishing of property values. He asked if the government cannot protect property values by reasonable regulation what good is it.

Attorney Hoppock concluded by asking the Board to deny ZBA 17-20.

Chair Stout asked about Attorney Hoppock's definition of a healthcare facility where he cited several examples of a group home. Attorney Hoppock stated that he was trying to review examples of a social rehabilitation facility and was his opinion.

Chair Stout asked if there is a Keene Ordinance that refers to social rehabilitation. Attorney Hoppock replied that he was unaware.

Mr. Gorman said that it was Attorney Hoppock's contention that the fundamental difference between the group home that existed and existed through ZBA 89-20 is different from this proposed use solely from medical treatment being administered. Attorney Hoppock replied yes in the treatment for a disease. Attorney Hoppock stated that the Boisvert's website appears to state medical and healthcare in Keene. He noted that they even promote themselves as that.

Attorney Hoppock stated that by Ms. Boisvert's own admission in the applications that the proposal is for a healthcare facility.

Mr. Gorman asked if the proposed could be both a group home and a healthcare facility. Attorney Hoppock replied no based on the Ordinance. Chair Stout asked City staff for clarification on the same question. Mr. Rogers stated that he was not sure that certain healthcare could not be defined as a group home without knowing all of the circumstances. Chair Stout asked if one qualified under both categories would that same entity be excluded from either. Mr. Rogers replied that the healthcare would be a more restrictive zone and if someone determined it to be a group home as well as a healthcare institution that section would apply for zoning requirements.

Attorney Hoppock noted that the applicant submitted an application for HE-P 807 for their facility. He noted that this application is for a healthcare facility and not a group home.

Attorney Hoppock asked the Board what their process would be from now until next month. Chair Stout stated that the Board will deliberate.

Chair Stout asked if there was any further comment.

Loretta Simonds, 79 Woodburn Street, Keene, stated she has already submitted into evidence a document called "Prospective Depreciating Property Values" and on page 2 of that document, lists a description of the differences between a group home and a medical facility under the license numbers. She stated that a group home is He-P 804 for three or less and He-P 805 for more than three. In addition, she stated that she checked the NH Secretary of State website for Prospect Place and how they were licensed. She noted that they were licensed as He-P 805 group home. Ms. Simonds stated that this meant that they were only allowed to assist in daily activities, making appointments, laundry, cleaning and cooking.

She stated that on the front of the application it states HE-P 807 under NH licensing, this is a medical facility for treatment. In addition, she submitted into evidence web page print outs that the Boisvert's put out publicly that claim the proposal is for a transitional medical facility.

Mr. Gorman said to clarify that the HP 807 application was in reference to the application for ZBA 17-16. Ms. Simonds stated that this was listed as a healthcare facility on both applications for ZBA 17-20 and ZBA 17-16.

Jen Knight, 26 Prospect Street, Keene, referred back to the business plan and that it was disconcerting what information might not be shared but what ends up as the proposed business. She stated that there has been a lot of changing of information on the fly and some of the things presented are of great concern.

Chair Stout closed public comment and allowed rebuttal from legal counsel.

Attorney Davis addressed the comments of Attorney Hoppock. First, he stated that the decision of the Board has to be based on the Ordinance of the City of Keene and not the regulations of the State of New Hampshire or the definitions used in third party manuals. He stated that if the Board turns to those definitions and looks at the way the Ordinance is to be interpreted, that the Ordinance is to be interpreted as permitted uses regarding the Table of Uses in what is an allowed use which states, “permitted use means the primary uses. Where a zoning use fits into the various defined pigeonholes of healthcare facility, group home or a nursing home, the Ordinance says to look to primary use. He further stated this property had already been determined to be a group home in the past.

Attorney Davis stated in determining the zoning use to determine if it is a permitted use they submit that the evidence of a primary use of the former Prospect Place was for a group home. He noted that it was determined by the Board that it was a group home. In addition, he stated that the use could either be for social rehabilitation and/or for the purpose of long term care. He explained that the length part of the definition only relates to the other part of the definition. In addition, he stated that the Ordinance does not define what long term means. Attorney Davis stated that in all difference to the opponents, he submits that the primary use of this housing is for transitional housing so there will be safe, secure housing for people who are going through recovery in order for them to have a successful recovery. The primary purpose is not to provide counseling, though that will assist in the recovery process, the primary purpose is to provide a safe secure housing, place where residents are monitored and a place where unwanted people are not allowed in. Also for there to be a place where people are participating in good faith as well as providing mandatory random weekly drug testing.

He stated that the Board asked the question what happens when it is more than one use; the Board has to determine the primary use because that is what governs. To the extent there are accessory uses and extent any attributes of healthcare facility, nursing home they are accessories use and not the primary use.

Secondly, Attorney Davis stated that his client’s credibility and integrity has been continually trashed by the opponents, including Attorney Hoppock. He stated that they have not responded to it and want to state that they have been consistent in the application and does not see where the application says that they think for purposes of Keene Zoning that this is a healthcare facility. He said when his client filed her original application for ZBA 17-20 some of the opponents have said the current application claims for purposes of a Keene Zoning Ordinance a healthcare facility. Ms. Zerba stated that this was listed there twice. Attorney Davis replied yes and where did that come from. He stated that when his client prepared ZBA 17-16 she was unrepresented and went to the City staff for purposes of zoning what is Prospect Place. She was told they considered this a healthcare facility that was before City staff was aware that ZBA 89-20 had been granted. He noted that only became aware after they searched the City file and the City had to back into its file room and was an apart of jacket and his client used that definition because she was told by City staff.

Mr. Gorman asked why Ms. Boisvert would submit an application for a Variance if another use had been instructed. Attorney Davis replied that he ZBA 17-16 was a request for an expansion of a Non-Conforming Use and was not a Variance application.

Mr. Plenda stated that Attorney Davis stated earlier that this was a permitted use under Special Exception not a Non-Conforming Use. Attorney Davis stated that he would absolutely agree, his client filled out original application ZBA 17-16 and was unaware as was the City staff of the Board's approval of ZBA 89-20.

Mr. Rogers clarified that the applicant originally came in to review the zoning code and the City made an assumption that Prospect Place had been a healthcare facility. He said as such this would have been a nonconforming use in that district. Mr. Rogers said based on that information the applicant filed for the original Variance for ZBA 17-16 for an expansion of a Non-Conforming Use. He stated that during the applicant's research, they retained Attorney Davis and that it came to light there was a Special Exception granted in 1989. Mr. Rogers explained that is when the second application came forward.

Vice Chair Stevens stated that he understands the confusion where the City may have thought it was a healthcare facility however, the applicant presented that it fit with a healthcare facility. He asked if this was due to faulty advice from the City. Attorney Davis stated that he was not part of the initial conversation and stated that it was a mutual mistake. He said that he wanted to address this because he has heard his client's credibility questioned numerous times and this was not something dreamed up out of the air.

Attorney Davis stated that as far as exterior improvements are concerned to the extent that this has not been made clear, they do not intend to add a portico nor an extra or extend the parking. He stated that they have been clear in their application that they are not changing the exterior with the exception of a video camera.

Mr. Gorman said specific to the primary use being a social rehabilitation, he asked if Attorney Davis was indicating that he does not believe that these people are being treated for disease. Attorney Davis replied not primarily and that the primary use was for safe and secure housing. He explained that those in recovery need a safe place to live when they are going through their recovery process so they will have a much higher rate of success. Attorney Davis said that according to literature the chances of relapse are much higher if people in recovery go back to the same living circumstances. He stated that the proposed facility will provide safe secure housing as well as yoga, cooking and other activities that will keep the mind busy in order for them to be successful in their recovery. Mr. Gorman said that these individuals did not have to be addicts but could also be seeking social rehabilitation. Attorney Davis said they are primary focused on drug or alcohol issues due to the need. Mr. Gorman asked if this was primarily or solely. Davis replied primarily because that was the reason for the transitional housing.

Attorney Hoppock stated that he heard that Attorney Davis state that the site plan that was submitted was prepared for someone else. He stated that he finds it baffling that on the very same plan that he pointed out to the ZBA the plan states that it is prepared for Susan Boisvert of Winchester, NH. Attorney Hoppock said that they want the Board to decide the case by the Ordinance in the City of Keene by the definition of a group home verses the definition of a

healthcare facility. He said he heard Ms. Boisvert discuss the treatment that would be provided and that social rehabilitation is their primary focus. Attorney Hoppock said that what they are proposing is to provide medical treatment. In conclusion, he said that nature of that use will create a greater density in that neighborhood that is already beyond non-conforming.

With no further comment, Chair Stout closed the public hearing.

The Board deliberated on the next available date the ZBA would continue for deliberations. Chair Stout explained that there will be no corroboration between ZBA members on this matter and any deliberation will occur in public session.

Attorney Hoppock stated that he was not available on January 2, 2017 at 6:30 PM.

Attorney Davis stated that since the public meeting will be canceled and the hearing will be just for Board deliberation than it is not a reason not to hold the meeting on January 2, 2018. Attorney Hoppock stated that on more than one occasion where the public hearing was reopened because questions were raised. Chair Stout stated that both arguments are valid. Attorney Davis stated that for whatever procedural purposes that the Board has to name a date, time and location.

Chair Stout stated the meeting will continue on Tuesday, January 9th 2018 at 6:30 PM in Council Chambers, where there will be deliberations but the public hearing is closed. In addition, ZBA17-16 and ZBA 17-20 will be continued.

V. New Business:

None

VI. Communications and Miscellaneous

Ms. Zerba made a motion to adopt the draft of the 2018 ZBA calendar. The motion was seconded by Mr. Gorman, which carried unanimously.

Chair Stout stated that the discussion of the Rules of Procedure would be put on more time and scheduled for another meeting.

VII. Adjournment

Hearing no further business, Chair Stout adjourned the meeting at 9:56PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker