

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, May 1, 2017

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Jeffrey Stevens, Vice Chair
Elena Brander
Josh Gorman
Thomas Plenda

Staff Present:

Gary Schneider, Plan Examiner
Thomas Mullins, City Attorney
John Rogers, Acting Health Director

Members Not Present:

John Rab, Alternate
Louise Zerba

I. Introduction of Board Members

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

II. Minutes of the Previous Meeting

Vice Chair Stevens made a motion to accept the minutes from April 3, 2017. The motion was seconded by Mr. Gorman, which carried unanimously. Mr. Plenda, a new member of the ZBA, refrained from voting.

III. Unfinished Business: None

IV. Hearings

ZBA 17-0:8/ Petitioner, Hundred Nights Inc. of 17 Lamson Street, Keene, NH, requests a Variance for property located at 32-34 Washington Street, Keene, Tax Map Parcel #003-01-012, which is in the Central Business District and owned by Monadnock Community Service Center, Inc. of 17 Ninety-Third Street, Keene. The Petitioner requests a Variance to permit a lodging house in the Central Business District where lodging house is not listed as a permitted use per Section 102-482 of the Zoning Ordinance.

Chair Stout and Ms. Brander both were recused from the hearing. Vice Chair Stevens was appointed as Chair Pro Tem.

Chair Pro Tem Stevens explained to the applicant that the City Attorney stated that they had the option to postpone the hearing in order to have a full five member Board. He stated that the applicant requested to move forward with the hearing.

Attorney Sam Bradley and City Attorney Thomas Mullins briefly discussed how the petitioner was entitled to a five member Board and how the voting would proceed with three members.

Chair Pro Tem Stevens explained the ground rules of the meeting. He asked that due to the number of attendees, that everyone try to keep their comments brief and to also act in a civil manner.

Mindy Cambiar of 574 North Shore Road, Munsonville, NH, Executive Director of Hundred Nights Inc. stated that she was sad that there were only three ZBA members present for the meeting but further explained that timing was crucial as the reason to move forward with the hearing.

Ms. Cambiar explained that the Hundred Nights Shelter has been in its current location of 17 Lamson St. since 2009, for which they also had to obtain a Variance. She stated that there are only 26 approved beds at the facility and that there were several nights this past year where 48 people were looking for shelter. Ms. Cambiar said that not only was the Hundred Nights location full but the overflow shelter located at the United Church of Christ (UCC) was also full. She noted that the UCC was located in the Central Business District and that they did not need a Variance in order to provide shelter just a lodging license.

She went on to explain that the rent at their current location increased at the beginning of 2016 from \$2,500 to \$4,000 a month with a second increase scheduled for 2017 to \$4,200 per month. Ms. Cambiar stated that at the beginning of this year, the owners of the building decided that the rent would remain at the 2016 price. She further stated the increase is a significant amount of money for a non-profit organization.

Ms. Cambiar said that this year the Shelter had eight families with a total of fifteen children who stayed at the shelter. For the first time, extended stays were offered to the families and accepted. She explained that the current location at one time had one bathroom with two toilets and one sink. Ms. Cambiar said they put a second bathroom in with a shower and sink that was also available for the live-in staff for overnight stays. She stated that they did allow guests to use this bathroom in the case of an emergency. Ms. Cambiar said that it would be nice to have enough space for everyone to have access to a shower and also to have a place to sleep. She said that the current location contains a small multi-purpose resource center that is located on the first floor. Ms. Cambiar said that they serve lunch in this space as well as provide a washer and dryer for guests to use.

The resource center is also used to assist guests' complete applications for other housing resources in the area.

Ms. Cambiar said that they decided over a year ago to look into a bigger space and looked at several properties within the City. Ms. Cambiar said the first property they considered was owned by Monadnock Family Services on Victoria Street. She stated that this property went under contract before they had a chance to look at it. The next property was located at 87 Carpenter Street, which was a large warehouse with 6,000 square feet. She said that it was listed at \$269,000, had little land and a small paved parking lot. They also felt that Carpenter Field was detrimental to their use. She stated that they looked at 809 Court Street, which has 29,000 square feet and was listed at almost \$1,000,000.

Ms. Cambiar stated that they were approved for a \$300,000 mortgage and decided to pursue tax credits. She said that they looked at the Grace United Methodist Church before this was sold. The work that needed to be done to the building was out of their scope. She said they looked at the building located next door to their current location that was owned by St. James Church. Ms. Cambiar said that they looked at the building that was once the location of Tony Clamato's and that was listed at \$850,000.

She explained that they were looking for a property that was closer to their budget that would be in move-in condition without a lot of work.

Ms. Cambiar stated that the proposed location would be ideal for them since its proximity to The Community Kitchen and the UCC. Ms. Cambiar stated that people already walk by this location throughout the day. She noted that the building was 6,000 square feet on the bottom floor and would almost double their current space. Ms. Cambiar said this amount of space would allow 40 individual beds and also provide a couple of family rooms. She explained that one of the reasons their numbers have increased was due to the fact that the year round shelters in the state have been full consistently for the last two years. She stated that this was not solely a Keene problem but was a national problem.

Ms. Cambiar explained that they started pursing the project and wrote a proposal to get tax credits from the State of New Hampshire. She stated they received a lot of support in the form of commitment letters from businesses that were interested in purchasing tax credits. Ms. Cambiar stated that they felt positive about the property and then started to approach the abutters to the property.

Ms. Cambiar reviewed the criteria.

- She stated granting the Variance would not be contrary to the public interest because there is a need for emergency shelter in the City of Keene. The Southwest Community Service shelters are consistently full, and the number of people served by Hundred Nights has grown over the last several years.
- She believes that the Spirit of the Ordinance would be observed because the location and proximity of the proposed shelter to other resources such as The Community Kitchen, and the breakfast program at the UCC make the location ideal for guests. The Spirit of the Ordinance is to protect the health, safety and

welfare of the public. She said that granting this Variance will allow a much-needed resource center and shelter in a location that is centrally located, but much more out of the way than that of the current location. She stated that the Hundred Nights Shelter would make use only of the entrance on the Vernon Street side of the building, unless there was a person in need of wheelchair ramp accessibility, which is found on the Washington Street side. Ms. Cambiar stated allowing this use of an otherwise vacant 6,000 square feet of space will improve and maintain the value of the property, and thus the public welfare. She stated that Keene Housing owns the alley on Washington Street and that it was not an option for Hundred Nights Shelter to use that space.

- She said that granting the Variance would do substantial justice because the homeless population needs a safe and warm place to sleep, as well as a day shelter that helps connect them to resources which may improve their living situation. She stated that she did not feel there would be a significant impact to the abutters if Hundred Nights Shelter moved to this location.
- She stated that if the Variance were granted, the values would not be diminished because it is valuable to have a place for the homeless and displaced to go that is inside, where there are beds and bathrooms so that they are not sleeping on the streets or needing to use the outdoors as a restroom.
- She stated that granting the Variance would remove or alleviate the current uneasiness with Hundred Nights having such close proximity to Main Street, while also bringing the clients/guests closer to the needed services like The Community Kitchen and the UCC breakfast program. Ms. Cambiar stated that Hundred Nights Shelter would not be interfering with any of the neighboring businesses on Washington or Vernon Streets.

David Bergeron, 185 Winchester Street, Keene, NH, Brickstone Land Use Consultants, stated that they helped Ms. Cambiar with the information on the application. He presented a site plan to the Board that was submitted along with the application. He indicated that the building that the Hundred Nights Shelter was seeking to purchase was located on Vernon Street, which is off of Washington Street. He indicated the parking area outside of the building that the Shelter would occupy, was the area where people would be able to go outside. He indicated the area of entry and exit of the building is on to Vernon Street. He explained that there was also an entrance to the building from the alley and that the land was owned by Keene Housing Inc.

Mr. Bergeron said that he wanted to clarify that he was on the Board of Monadnock Community Service Center, which is the owner of the proposed location for Hundred Nights Shelter. Mr. Plenda asked who currently occupied the building. Mr. Bergeron replied that it was Monadnock Family Services and Monadnock Community Service Center (MCSC). Mr. Plenda stated that there was confusion of who owned the building. He stated that there seemed to be three different ownership entities for the building. Mr. Bergeron replied that the building was owned by MCSC which is a part of MFS.

Mr. Plenda stated that MCSC was the owner according to the tax record. He said that according to the copy of the deed it stated Keene Housing Inc. was the owner. Mr. Plenda

stated that they may be owned by the same individuals but as an entity they are different. Mr. Bergeron stated that it was confusing because the building in question and the adjacent building were at one time one building. He explained that this building was divided and Keene Housing purchased the front portion of the building and MFS purchased the back portion of the building. Mr. Bergeron stated both were separate entities, separate buildings and had separate deeds for the two properties. Mr. Plenda stated that was very important to discuss the easement because the easement leads to what would be a grade-level door to the MFS building. Mr. Plenda asked if Hundred Nights Shelter would continue to use that door. Mr. Bergeron replied that the usage of the door would continue to happen because the Shelter would occupy the bottom floor of the building. He explained that as part of the deal, MFS has agreed to lease the upper floor of the building from the Hundred Nights Shelter. Mr. Bergeron stated that they would also continue to use the entrance. As part of the sale, MFS would agree to a three-year lease with the Shelter.

Mr. Plenda stated the easement became relevant because there are occupants that would continue to use that easement. Mr. Bergeron replied that it was a deeded easement and was recorded with deed for the property. Mr. Plenda stated that he would be very surprised if the easement applied to only one of the buildings that are affected by that easement. He said it would effectively block the entrance to the MFS building, and he did not see how it could be an easement that was only utilized by the Keene Housing building. Mr. Plenda said the property would be land locked.

Mr. Bergeron stated that MFS put in an ADA wheelchair lift to get people to the upper and lower levels of the building. He said that there is also a stairway to get to the upper level. Mr. Plenda asked if it was relevant that the correct owner was not listed on 32-34 Washington Street. Mr. Bergeron replied that the ownership was not incorrect. Mr. Schneider stated that the City would be able to determine the owner of the property. Mr. Plenda stated that without this information he felt the application may not be approved. Mr. Schneider stated that he would agree if that was the case. He explained that he did not have the information to answer that question at this time. Mr. Bergeron stated that the tax record for 32-34 Washington Street was owned by MCSC.

Mr. Bergeron explained that the current Hundred Nights Shelter location was using the UCC as an overflow shelter. He stated that people were also taking meals at the Unitarian Church and The Community Kitchen. Mr. Bergeron referenced a map indicating the current location on Lamson Street. He then indicated the location of the Unitarian Church and The Community Kitchen; emphasizing how clients of the Shelter were already in the area of the proposed location. He stated that there would not be any change to the area because most of the people were already in that area on a daily basis getting their meals.

Mr. Bergeron researched where a lodging and boarding house was allowed according to the Keene Zoning Ordinances. He explained that there was only one zone where lodging and boarding houses are allowed. Mr. Bergeron stated that they are allowed by Special Exception in the High Density Zone and the Central Business Limited Zone. He said that out of the approximate 6,000 properties in the City of Keene there are 39 properties

located in the Central Business Limited Zone. He said that there were approximately 39 properties in the City that the Hundred Nights Shelter could go into directly without coming to the ZBA. He said in looking at those 39 properties, none of those properties are for sale and were all occupied. Mr. Bergeron stated that this was not a matter of the Hundred Nights Shelter not searching for properties. He explained that there was a lack of available places to locate the organization where it is allowed. Mr. Bergeron said that is the reason why the Shelter is asking for a Variance.

Chair Pro Tem Stevens asked how the Shelter would enforce people from going in and out of the side entrance door into the alleyway. Mr. Bergeron replied that Ms. Cambiar would agree to interior monitoring of the space so people are not using the door. Mr. Plenda asked if Mr. Bergeron was familiar with any of the uses of the abutters to the proposed location. Mr. Bergeron stated that Kristin Bakery and Bistro, some apartments, a music shop, hair salon and other business were located in that area. Mr. Plenda stated that the building that housed Tony Clamato's restaurant had 16 apartment units and the only parking besides the street, is the alley where the MCSC building is located. Mr. Bergeron stated that the land is not owned by anyone besides MFS and no one else had the right to park at that location. Mr. Plenda asked who had the right to park there. Mr. Bergeron replied that the owner of the land only had the right to park there. Mr. Plenda asked who owned the area in the back of the MCSC building. Mr. Bergeron replied that it was all owned by MCSC. Chair Pro-Tem Stevens clarified to Mr. Plenda that if the other building owners were not allowed to park there that it could not be considered a loss.

Mr. Gorman stated that Mr. Bergeron mentioned 39 properties that were allowed this use and that he also mentioned the High Density District in terms of a Special Exception. He said that it was his understanding that the High Density District is almost encompassing of the area. Mr. Bergeron stated that the area going up towards West Street was the Central Business District, the area past Mechanic Street was located in the Central Business District and the area past Mechanic Street was in the High Density Zone. Mr. Gorman asked if the impact of broadening their search to the High Density District would be significant. Mr. Bergeron replied in the affirmative. He said that the same issue of property values as well as appropriateness of the use would be brought before the ZBA again.

Mr. Plenda asked if the property values would be higher in a Business District or in a Residential District. Mr. Bergeron replied that it would depend on the area of the Business and Residential District.

Chair Pro Tem Stevens asked if the proposal for the new location was forty beds. Mr. Bergeron replied in the affirmative.

Chair Pro Tem Stevens read a statement from the application as follows, "The parking lot is surrounded by the back of buildings that face Washington Street. Further, Hundred Nights would actively discourage lingering in the alleyway on Washington Street by Hundred Nights guests". He asked what the proposal was to discourage lingering. Chair Pro Tem Stevens stated that he had driven by the current location of the Hundred Nights

Shelter on several occasions and noticed that there are crowds. Ms. Cambiar replied that one of things she noticed was that several people who have been gathering in the alleyway were people who were asked not to come back to the Hundred Nights Shelter. She stated that these people have no place to go. Ms. Cambiar said that a majority of the people who use the resources at the Shelter will enter the designated door and will obey the rules. She explained that if they do not obey the rules they are issued a no trespassing order.

Ms. Cambiar said that people loitered throughout the City and that it was not a problem just for the Shelter and its alleyway. She stated that it was a problem the entire City must deal with at some level. Chair Pro Tem Stevens asked if there was a policy in place to achieve the no loitering. Ms. Cambiar replied that they could enforce what door people use as well as designate an area for smoking. Chair Pro Tem Stevens said that the unique thing with the new location was that parking lot in the back of the building would be owned by the Hundred Nights Shelter. He said that the Shelter would then have the ability to enforce no loitering. Ms. Cambiar explained that there was not a written policy at this point and that the Variance was the first step in a series of steps. She said that they were aware that there were people hanging out in the City and being obnoxious. Ms. Cambiar reiterated that this was a problem all over the City.

Mr. Plenda stated that he had reviewed previous minutes from a meeting that took place on October 4, 2010, where the current location of the Shelter was approved. He said that the work that was done to establish the Hundred Nights Shelter was admirable and found that no one did not want the Shelter to not operate. Mr. Plenda stated that he was in favor of the work of the Shelter. He said that it is appropriate at this time, with this property to approve the usage that had already been determined by the zoning law.

Chair Pro Tem Stevens asked if there were plans to add additional staff due to the increase in size, if the new location was approved. Ms. Cambiar stated that if the project was approved at the price negotiated in addition to the tax credits, the Shelter would potentially be rent and mortgage free. She stated that they would have additional income from renting the second floor to MFS. She noted they would find out in June if the tax credits were approved. Ms. Cambiar explained that with this additional income they would be able to hire a case manager. She said that most of the fundraising efforts had been used to pay for the increase of rent at their current location. Chair Pro Tem Stevens stated that the Hundred Nights Shelter stood for operating for 100 nights in the winter for shelter and that it was operating as a lodging center. He asked if the 100 nights was stopped after the 100th night. Ms. Cambiar replied that the lodging license is granted on a year-round basis and must be renewed once a year. She explained that the original intent was 100 nights from the solstice in December to the equinox in March. Ms. Cambiar said that when she became the Executive Director in 2013, she started speaking at civic groups and churches. She said that many of questions were directed toward the low temperatures in November and the beginning of December and how the shelter would not be able to help people in need at these times.

ADOPTED

Ms. Cambiar stated that a subcommittee was formed of Board members, clergy and civic groups to research how they could afford to stay open longer during these cold months. Ms. Cambiar reported that this worked for the first two years and then the numbers of guests increased. She stated this was when the need of the overflow shelter at UCC came into place. Ms. Cambiar said costs began to rise when a second overnight person was added to cover the shift at the UCC and when their rent increased. Mr. Plenda asked if the Shelter was interfaced with any of the state agencies that are charged with helping services such as the Hundred Nights Shelter. Ms. Cambiar replied that they work closely and collaboratively with Southwestern Community Services and speaks with them on a daily basis for space availability. Mr. Plenda asked if the surrounding towns had any shelters. Ms. Cambiar replied that Keene was the closest shelter. Mr. Plenda asked if it was possible to have the county and state help share resources with the Shelter. Ms. Cambiar replied that the NH Department of Health and Human Services (DHHS) asked if their numbers for January 2017 were accurate because the numbers were in the forties. She reported that numbers in January 2016 were around twenty five. She reported that DHHS said that all of the year round shelters have been consistently full. Ms. Cambiar continued that the increase in number of homeless families is falling on the responsibility emergency shelters and no one knows what to do because it is a new issue. She said that the Hundred Nights Shelter needs a bigger location that is affordable to provide enough beds. Ms. Cambiar stated she does not want to be shut down by the Keene Fire Department for being over capacity. She said that she does not like having to ask people to leave. She said that the new location would provide the Shelter with the opportunity to meet community needs for the next several years.

Chair Pro Tem Stevens read a list of letters in support of the application as follows:

Philip Wyzik, Monadnock Family Services

Joshua Meehan, Executive Director of Keene Housing Association

Tony Marcotti, Senior Project Manager of MVP Development

Douglas Iosue, Social Worker at the Cheshire County Department of Corrections

Reverend Sandra Whipple, Monadnock Interfaith Project

Jeff Firestone, 23 Sawmill Road, Acworth, NH, presented two letters that were accepted by the Board.

Chair Pro Tem Stevens read a list of letters against the application as follows:

Maria Bradshaw, Resident of Keene

Seth Haveman, Eigentum, LLC

Mike Hickey, Mike Hickey Music

Kammie Greene, Style Lounge Salon

Pro Chair Tem Stevens opened the meeting for public comment and asked for those in support of the application to come forward.

Doug Iosue, 10 Scott Circle, Spofford, NH, stated that he was a Social Worker at the Cheshire County Department of Corrections and that he was in support of the Variance. He stated that the connection between homelessness and the correctional population is well documented. He said without a doubt the homeless population is increasing. Mr. Iosue stated that he sees between 300-350 people a year and assists them with release and reentry planning. He reported that 22% of the releases in 2014 were homeless, in 2015 it increased to 24% and last year saw an increase to 28%. Mr. Iosue said that in a number of cases those that are released find other housing through Southwestern Community Services or through the Hundred Nights Shelter. He reported that there were 28 people released last year that went into these shelters. Mr. Iosue said that the first quarter of this year was up to 35 people. He said that sadly, the homeless-based population is not lessening and that there is a need for people to stay in shelters. Mr. Iosue said homelessness is a risk factor for reoffending and anything they can do to support local agencies was important. He urged the Board to support the request for a Variance.

Mr. Plenda asked how many shelter facilities were available in the area. Mr. Iosue replied that there was the Men's Shelter on Roxbury Street and Southwestern Community Services on Water Street. He noted that almost every time that he called these facilities they said that they were full, especially during the winter months. Mr. Iosue said that the only place these people can go is the Hundred Nights Shelter. He reported that 90% of the releases are people who live and reside in Keene.

Mr. Gorman asked if there were fewer homeless people spending more nights in shelters or if there were more homeless people spending fewer nights. Mr. Iosue replied that outreach workers would be best at answering that question.

Tim Peloquin, 974 Old Walpole Road, Surry, NH, stated that he was a Police Officer in Keene and the Chairman of the Board for the Hundred Nights Shelter. Officer Peloquin said the Shelter does not own the alleyway at the current location and that it is City property. Officer Peloquin said that the ability for enforcement ends at the door of the Hundred Nights Shelter. He said that the new property that comes with a parking lot will be under the control of the Shelter, and they will be able to impose their will. He said that when people misbehave in the parking lot, they will be moved along. Officer Peloquin said that the issue is that there are more people which include more families spending more nights. He noted that the fastest growing population was 18-25 year old women with children. Officer Peloquin stated that the Southwestern Community Services Shelters run totally differently than the Hundred Nights Shelter. He said, with the those Shelters, people are given an assignment and have the freedom to come and go like an apartment. Officer Peloquin said that the Hundred Nights Shelter is not designed right now to house families, and that it was currently a dormitory setting with temporary walls. He noted that the temporary walls are used so families would have privacy, but the space is not designed for children.

Officer Peloquin said the public sees a small percentage of people that use the resources at the Hundred Nights Shelter misbehave in the alleyway. He said that a majority of people hanging in the alleyway come from the other shelters to visit friends. He said that

the Shelter personnel try very hard to teach their clients social responsibility and self-respect. Officer Peloquin stated that the Shelter is not curing these people but is giving them a place to stay so that they are not out in the cold dying somewhere.

He said that they have paid overnight staff and who respond to any and all issues needing to be dealt with immediately. Officer Peloquin stated that the Board may at one point hear about police responses in the Lamson Street area. It should be kept in mind, he said, that police go there for a site check, to serve subpoenas as well as for a number of other reasons. Officer Peloquin stated that information about actual issues to which police respond would be eye opening to the general public; adding that these people are unable to survive on their own, and that it was unfortunate.

Elsa Worth, 44 West Street, Keene, NH, stated that she was a priest at St. James Church. She said that she was speaking in favor of the Variance because this Shelter needs more space. She said that the Shelter has searched and has found a property to have more room that is only a few yards away from their current location. The Rev. Worth stated that the people of the Hundred Nights Shelter are her neighbors and that she has never had any problem with them. She said they are her neighbors when they are next door on the park benches on Main Street and are also her neighbors when she sees groups of families waiting to get into the shelter when they have no place to go. The Rev. Worth said these are people who have nothing, are cold and hungry. She said these people are all of our neighbors. The Rev. Worth said that the new location of the Hundred Nights Shelter was a viable option and was close to the resources that people who need and use.

Sara Harpster, 32 Old Walpole Road, Keene, NH, stated that she works for The Keene Community Kitchen. She said that she has had the opportunity to work with a new and growing group called the Monadnock Interfaith Project (MIP). She said that the Hundred Nights Shelter was a community benefit and that a community is stronger when all of the people are stable, socially connected and able to access resources. Ms. Harpster stated that the benefits to the community are greater public wealth, trust and security. She said that MIP wants all people housed and making positive social contributions.

She stated that over the past nine months, they have heard people talk about the need of bathrooms, so people in the community do not see people urinating in public spaces. Ms. Harpster said that people who are elderly have no place to rest in the middle of the day. She said that from her understanding the new space would have the space for families and would be a great reassurance for families. Ms. Harpster stated that she wanted to come out in support of the Variance because the Hundred Night Shelter had done their due diligence. She said that they have done a great job with their current space but need more space to connect people with more resources.

Eleanor Vander Haegen, 11 Riverview Street, Keene, NH stated that she is a retired Sociology Professor at Keene State College and was also a member of St. James Church. She stated that she has volunteered to serve meals at the Hundred Nights Shelter and has experienced the fellowship of wonderful human beings who have experienced various life circumstances. She said these people are doing the best they can do to raise their

children under incredible circumstances. Dr. Vander Haegen stated that these people have also used the resources at the Shelter to help improve their life. She said that homelessness was unfortunate but given the reality of the economy and our society the people who are getting these services fully deserve them. Dr. Vander Haegen stated that the City should support these services in every way possible.

Therese Siebert, 636 Old Homestead Hwy, Swanzey, NH, stated that she is a Professor of Sociology at Keene State College and that she teaches a course on homelessness. She explained that part of the course requires the students to volunteer at the Hundred Nights Shelter. She stated that the students' biggest complaint this year was that they were bored because they had to stay up all night to watch people sleep. Ms. Siebert continued that when and if there was an issue there was always someone there to assist. She continued that she was responsible for her students and that she would never put them in an unsafe situation. Ms. Siebert said that the Shelter trains her students in detail and that for the most part; people just go there to sleep. She stated that it is a lot cheaper for people to sleep at the Hundred Nights Shelter compared to people sleeping out in the cold at risk. She said that this was cheaper to the City and it was also putting these individuals at risk for jail time, which is also costly. Ms. Siebert stated that she supported the Variance because, aside from compassion, it is also cost effective

Judy Rogers, 50 Woodbury Street, Keene, NH, stated that she was a downtown merchant. Mrs. Rogers stated she opens at 7 AM every morning at the same time the shelter lets out and in all the years of her owning her business, there have been few problems and nothing that she could not handle with a few words. She thought this was something that the potential new neighbors would want to know.

Hilda de Moya, 47 Pine Avenue, Keene, NH, stated that she was a member of the UCC. She stated that she was involved with the overflow shelter that is held in the dining room of the church. She explained that this space is a large room where they set up canvas cots to house the guests.

Ms. de Moya said that the UCC received a housing license from the City for 16 cots and that the UCC limits the number to 10 cots. She noted that occasionally they went up as high as 12 cots.

She said that the UCC overflow shelter was open 9 PM until 7 AM because of the other activities that occur at the church. Ms. de Moya said she has gotten to know the people that stay at the shelter and that there has been very little trouble. She said the guests do complain that they have to wait until 9 PM to get in to the shelter, especially during the cold. Ms. de Moya described how respectful the guests have been and how they have followed the rules.

She explained that the overflow shelter closed at the end of March because the Hundred Nights Shelter would no longer need the space for overflow.

Ms. de Moya said she could not speak on behalf of UCC, but as a member, she wanted to discuss the possibility of the new location for the Shelter. She described how, on three sides of the church, there are alleys. Ms. de Moya stated that there have always been problems with the apartments on Court Street but, with new owners, these are being addressed. She said that when she had worked in the evenings, she felt secure with the fire department next door, and the one time she needed to call the police, they were there within minutes.

Ms. de Moya stated that she has mixed feelings about always having the same crowd and that it is the younger generation which seems to give them the most issues. She explained how she has never felt threatened when she has worked at the shelter or at times when the overflow has gone to the UCC.

Ms. de Moya said that she has seen a lot of activity in the UCC parking lot that has not included shelter guests. Ms. de Moya said that the Shelter needs additional space for more activities. She said the City did a disservice when they didn't take advantage of the former Keene Middle School to be used as a shelter, with individual rooms to help encourage responsibility and accountability. She said most of these people are trying to pick themselves up out of their situation.

Nancy Gillard, 72 Reservoir Street, Keene, NH, stated that she was part of a group called Friends of Hundred Nights. She described how the group worked with Ms. Cambiar in a supportive kind of role by preparing lunches once a month and helped with any other additional needs. Ms. Gillard said that she has gotten to know some of the homeless people personally, and when she sees them downtown, she is able to call them by their name and have a conversation.

She stated that most people have been grateful for the breakfast or lunch that is provided at the Shelter. Ms. Gillard described the room where the food is served as small and that people are unable to sit due to the cramped space. She noted that some people have to go outside to eat.

Ms. Gillard said that she was in support of the Variance because she felt the time is now and that the Hundred Nights Board has spent enough time looking for a property. She said how the Shelter had spent a lot of time applying for grants and funding. She said if the Variance were denied they would have to go back to the drawing board to look for another place. Ms. Gillard asked how many times Ms. Cambiar, without an administrative assistant, could apply for grants or funding sources that were so uncertain. She said Ms. Cambiar would also have to come back before the ZBA for another Variance with the chance of being turned away. In addition, she stated that Ms. Cambiar would have to search within an area where there were limited properties.

Ms. Gillard said that this was an opportunity for the City and suggested that the ZBA approve the Variance as requested. She said that she wanted to address how some people have stated that the Hundred Night Shelter is unable to control their clients' behavior. She said it was inappropriate to suggest that a social service agency can or should control

their clients when they leave their premises. Ms. Gillard stated that it was not the mission of the Shelter to control people. She stated that the agencies should help empower clients, find services for those with addiction problems, secure affordable housing and develop job skills. Ms. Gillard stated that this was what the Hundred Nights Shelter was hoping to better accomplish with a larger facility at the proposed location.

Virginia Brooks, 103 South Road, Harrisville, NH, stated she was the Chair of the Faith Community Committee that also works in support of the Hundred Nights Shelter. She explained that their committee's role was to serve as the liaison to the churches in the Monadnock Region. Ms. Brooks stated that they would like the City of Keene to know that members of their committee are from Harrisville, Hancock, Fitzwilliam and Keene. She said that they realize that homelessness is a regional problem and wanted the City of Keene to know that people throughout the region are happy with the resources provided by the Hundred Nights Shelter. Ms. Brooks stated that the Faith Community Committee could not move forward with their fundraising efforts without the approval of the Variance and asks for the ZBA support with the approval.

Branwen Gregory, 831 Mountain Road, Jaffrey, NH, Vice Chair of the Board of Hundred Nights, stated that as a member, the Board is extremely mindful of the concerns of the abutters. She explained that it was something that they have struggled with and was something that they have plans for in terms of services and case management. She stated that the Shelter wants to work with the abutting neighbors to help make the Hundred Nights Shelter the best it can possibly be. Ms. Gregory reiterated that the will of the Board is there and they were very aware of the concerns.

Elizabeth Kurowski, 6 Thornton Way, Keene, NH, stated that she was in support of the Variance. Ms. Kurowski stated that it was not the responsibility of the Hundred Nights Shelter to ask everyone to stop loitering. She said that she thinks that everyone has a social and moral responsibility to help those that are less fortunate. Ms. Kurowski stated that she has devoted that last four years to helping organizations such as the Hundred Nights Shelter. She stated that no one should treat these people like rocks or dirt. Ms. Kurowski said that some of these people have issues such as drug use, no education and no social skills. She said that some of the people are just less fortunate and have fallen on hard times. Ms. Kurowski stated that is it not up to anyone to judge these people and that it is our responsibility to help them. She said if these people do not accept help, they are then asked to move along.

She explained how a larger facility would allow them to cook meals. She said that everything has to be prepared outside of the Shelter and brought in using crock pots. Ms. Kurowski stated that some of these men and women want to learn how to cook their own meals, should they one day have their own apartment.

Ms. Kurowski asked why the Hundred Nights Shelter should not have a better facility to help these people in need. She said that the City of Keene should be thankful that there are groups such as Friends of Hundred Nights that have come forward to help these people.

She described how there was no privacy at the current location of Hundred Nights, and even if there were, social workers available they could not talk one-on-one with clients. Ms. Kurowski stated that the City of Keene has a moral and social obligation to help as much as possible.

Councilor Terry Clark, 14 Barrett Avenue, Keene, NH, stated that the ZBA was charged with answering five questions in order to make a decision. He stated that granting the request would not diminish the property values according to the tax evaluations. He stated that he found it interesting that the building on Lamson Street is now valued higher than it was prior to Hundred Nights moving into the location. Councilor Clark noted that this information was public record.

He said he had spoken to one merchant located next to the Shelter who said there have been no negative problems with their business. Councilor Clark stated that people still eat at Lindy's and Timoleon's and that he did not believe Hundred Nights Shelter prevented people from coming downtown. He said that whether or not it is our moral obligation to society to provide for people who are left out of the system is secondary to what is being asked of the Board. Councilor Clark stated that he will continue to go to Brewtopia and also to the guitar shop if the Hundred Nights Shelter was moved to that location.

He said that he did not think it was a difficult decision because there is clear evidence that the Shelter has not diminished any property value, the quality of life downtown or moved people away from coming downtown. Councilor Clark said for that reason he believed that the ZBA had no choice but to grant the Variance. Mr. Plenda asked if the Variance was contrary to public interest. Councilor Clark replied that it was in our interest to deal with the problems in our society and for people to say that they do not want to see the negative effects of society are short-sighted. He stated that the Hundred Nights Shelter has served the community well.

Chris Hanson, 34 Pleasant Street, Alstead, NH, stated that he was in support of the Variance, and that the Variance would serve the public good. He said that he was a volunteer at the Hundred Nights Shelter and that he has never had any trouble. Mr. Hanson stated that he was also a volunteer carpenter who assisted in making improvements.

He said that prior to the Hundred Nights Shelter opening, the public harm was in having people getting sick from exposure and occasionally dying from the cold weather. Mr. Hanson stated that the public harm was remedied by having the Hundred Nights facility available. He said the current facility is limited for bathrooms and he felt that this was a public harm. Mr. Hanson stated the fact that there is an overflow shelter indicates there is a need to continue to remedy those harms. Mr. Plenda asked if he saw any harm to the public. Mr. Hanson replied no.

Richard Newton, 318 Hurricane Road Keene, NH, stated that he was the Treasurer for the Hundred Nights. He said he was in support of the application and wanted to clarify a few

things. First, he said, there were two entrances to the building including one door that goes up the stairs to the upper floor that is used by MFS. He said the second door is the entrance to the lower level that has handicap access. Mr. Newton said that it was easy to put emergency locks on that door and that it should not be an issue.

He said that all of the clients, except for anyone in a wheelchair, would be coming in from the Vernon Street entrance. Mr. Newton added that this was also easy to control.

Secondly, he said the parking lot is owned by MFS. He said that it was their parking lot and to his knowledge no one that parks there other than MFS personnel.

Mr. Newton said the resource center at the Shelter serves lunches for 35-40 people a day in a room that is too small to allow clients sit while they eat. He stated that when they move into the new location, they would be able to double if not triple that space. Mr. Newton explained how the resource center will also be able to offer additional services and there will be no need for any loitering. He stated that people were loitering right now because the current space is too crowded and too hot. He noted, if loitering did occur at the new location, they would have control because they would own the space.

Chair Pro Tem Stevens asked if there was further comment in support of the application. With no comment, Chair Pro Stevens asked for those against the application to come forward.

Dorrie Masten, 326 Matthews Road, Swanzney, NH, stated that she was the owner of Centerfold Laundry located on Vernon Street. She stated that she is 100% against the application and that she has done her best to reinvest in her properties. Ms. Masten stated that she has twelve tenants above the laundry mat and that she also owns the space where a hair salon is located. She stated that the hair salon had already given their notice. She said that if this was already happening with her tenants and that it would eventually happen with more tenants. She explained how she already received several complaints from her tenants. Ms. Masten stated that the Shelter's move was not fair to her, the law offices and other businesses that are located across the street.

She stated that she understands and sympathizes with the people who favor the shelter but feels that there has to be a better place to move Hundred Nights other than Vernon Street. Ms. Masten stated that the current location of Hundred Nights is located on a small alleyway and that Hundred Nights was planning to move to an area where there is a huge alleyway. She stated her concern that the parking lot was going to become a hang out.

Ms. Masten said that she has driven by the current location for the last month and has taken pictures and videos. She stated that these people are not under control and are not being asked to leave. Ms. Masten stated that these people are under the influence of drugs and alcohol, which is unacceptable on Lamson Street and is unacceptable on Vernon Street.

She said her property values would diminish as well as she would lose tenants. Ms. Masten said that the productive members of society are going to move away from the area of Vernon Street when people who are having difficult times are housed there.

She stated that she understood that budget and fundraising was an issue for the Shelter but at some point there was no reason to settle. Ms. Masten stated that the community was all for the Hundred Nights Shelter and that it was a great service for the community. She said that over the years, the Shelter has gotten a black eye because there is no control. Ms. Masten stated that Lamson Street was out of control and Vernon Street would be even worse.

She asked the ZBA to take her property value and standard of living for her tenants into consideration. Mr. Plenda asked if she owns the building the laundry mat is located and if the deed to her property stopped at the back building wall. Ms. Masten replied that the MCSC Building's parking abuts her back wall.

She stated that right across the street from her property is the law firm of Bradley and Faulkner. She asked how much damage would be done at that property.

Ms. Masten stated that someone was just arrested for having sex right across the street from the Hundred Nights Shelter and asked if that was going to happen at Bradley and Faulkner or her business. She explained how she has already had to fix bathrooms, vandalism and remove graffiti.

Mr. Gorman asked Ms. Masten if she has seen a change in the value of her property that she owns on West Street. He continued to ask if her tax assessment reflected what Councilor Clark described and if those assessments were in line with the actual value. Ms. Masten replied that she thought Councilor Clark's interpretation was shenanigans and that it was in no way was a fact. She stated that the SAU 29 building and Lindy's has been for sale for several years.

Kammie Greene, 341 Pako Avenue, Keene, NH, read the letter she submitted to the ZBA as follows,

"I am writing to you to today express my utter concern for the proposal of the Variance for property regarding One Hundred Nights, Inc. As an established business owner the proposal of this Variance is quite unsettling. Granting a lodging house in the Central Business District is counterproductive to the efforts made to attack business activity in this direction off of Main Street. Allowing this variance would not promote or sustain businesses and will inevitably detract existing or potential consumers from frequenting reputable businesses currently in the Central Business District. Much time and effort has gone into creating a welcoming shopping environment for consumers where a lodging house would only create trepidation for safety, property and appeal. Therefore, I am asking for the request for this Variance is denied".

ADOPTED

Attorney Paul Schweitzer, 606 West Street, Keene, NH, stated that he owns the building located on 11 Vernon Street. He stated that the first floor of the building is where The Richards Group is located and the second floor is a law office. Attorney Schweitzer stated that he agreed with most everything that people have said so far at the meeting. He said that this was an important issue and that the Hundred Nights Shelter was a great charity but 32-34 Washington Street is the wrong location for their relocation.

Attorney Schweitzer stated that he wanted to focus on the issue Councilor Clark had discussed. He said that in his mind this was the only real substance of issues concerning the task for Board. Attorney Schweitzer stated that it was important not to have people sleeping on the street and dying behind the Hannaford's Shopping Plaza but that it does not have much to do with the issues. He said that it has to do with the state law and the Keene City Code. He stated that the Hundred Nights Shelter was seeking a Variance from the Central Business District Zoning Ordinance and their proposed use, a lodging house, is not permitted in that zone. Attorney Schweitzer stated that zoning was important for the vitality of a city. He said that granting any Variance was in essence a violation of that Ordinance and should not be something that was easy to get.

Attorney Schweitzer referred to one of the five criteria questions that must be answered by that applicant. He stated that in order to get a Variance according to NH, Law and the Keene City Code, parties seeking a Variance must satisfy each of the five criteria.

Attorney Schweitzer stated that he was only going to speak to one of the criteria. He said that the parties seeking that Variance has the burden to prove that granting the Variance will not result in the diminishing value of surrounding properties. He explained that to overcome this burden the parties seeking the Variance have to come forward with enough evidence to convince the ZBA to move the Hundred Nights Shelter to the proposed location will have no negative effect on the surrounding property values.

Attorney Schweitzer referenced the petitioner's application that was filed on February 17, 2017 and asked the ZBA to look at their evidence to grant the Variance. He said that those against the application did not have to do anything and would win because the petitioner has the burden to prove their points. He stated that the petitioner has not done that in this case.

He reviewed the evidence represented, reading the answer to question four of the criteria. "It is valuable to have a place for the homeless and displaced to go that is inside, where there are beds and bathrooms so that they are not sleeping on the streets or needing to use the outdoors as a restroom". Attorney Schweitzer stated that everyone could agree with that statement. He said that the petitioner's response did not answer whether or not the surrounding property values would be negatively affected.

Attorney Schweitzer said that he has not ever seen anyone on Vernon Street sleeping on the street or using the area as a bathroom. He continued reading the response from question four as follows, "Granting a Variance would remove or alleviate current uneasiness with Hundred Nights having such close proximity to Main St, while also bringing our clients/guests closer to needed services like The Community Kitchen Inc.

and the UCC Church breakfast program. At the same time, we would not be interfering with any of the neighboring businesses on Washington or Vernon Streets". He explained that the last part of this sentence was misleading and seemed that the intent was to move the uneasiness from one location to another location in the Central Business District.

Attorney Schweitzer read the response from the application as follows, "The shelter would be a little further from Main Street. The health, safety and welfare of the public would be protected". Attorney Schweitzer stated this was not him saying that, it's the Hundred Nights Shelter's words, and that they were admitting that the health, safety and welfare of the public were at risk.

He said another reason provided by the petitioner was the close proximity to the resources offered in the area of Vernon Street. Attorney Schweitzer said that reason has nothing to do with the issue of property values.

He continued reading the response from the petitioner to question four, "Hundred Nights intends to use the entrance that goes directly from the lower level of the building and opens into a small parking lot on Vernon St, with the Keene Fire Department next door and the backside of a Laundromat in front of it. The parking lot is surrounded by the back of buildings that face Washington St. Further, Hundred Nights would actively discourage lingering in the alleyway on Washington Street by Hundred Nights guests". Attorney Schweitzer said that this explanation was just stating that this would lessen the impact on Washington Street by increasing the impact on Vernon Street.

Attorney Schweitzer stated that regardless of what the burden is there must be some evidence to overcome that burden. He said that there was no question in his mind that granting the Variance would directly affect his building's value. Attorney Schweitzer then asked the Board to think of a picture of their house and then think of a picture of their house with the Hundred Nights Shelter right next door. He stated that he does not believe for one second that the value of property would not be affected. He said a local real estate agent was never presented to explain how the surrounding properties values would not be affected. Attorney Schweitzer said that the reason no one has heard this explanation was that it did not exist. He concluded by stating that the Shelter did not provide any evidence to overcome the burden in regards to the surrounding property values.

Zach Cooper, 12 West Street, Keene, NH, stated that his family owns a property located on 10-12 West Street and abuts the current location on Lamson Street. He explained that when he goes to rent apartments, a concern of the potential tenants is the Shelter; this is especially true for the female tenants. Mr. Cooper explained that the tenants have stated that they did not like walking in the area of the Shelter during the night hours.

He said that there have not been any incidences with tenants but there were circumstances where tenants made the decision not to rent because of the Hundred Nights Shelter. Mr. Cooper stated that he also owns Brewtopia, which is located next door to the proposed location. He explained how he felt that the job by the Shelter was not being done and

what he sees when driving into the parking lot at night is inappropriate. Mr. Cooper stated that homelessness is a problem and believes that we need to help these people. He said permanent housing was a better option and that the proposed location was not a feasible option. Mr. Cooper stated that he did not see why the Variance should be approved.

Bill Beauregard, Clark Hill Avenue, Spofford, NH, stated that he owns Colonial Management. He said that Colonial Management is a rental business that started in 1983. He said that he owns a number of apartments in the immediate vicinity of the proposed project. Mr. Beauregard said that he was a Realtor and received his license in 1983.

He urged the Board to look at the criteria particular to granting the Variance. He said that there has been a lot of emotional testimony during the meeting about the validity of the mission of the Shelter. Mr. Beauregard stated that all of this was heartfelt and on point but that was not the charge of the ZBA.

He said it was up to the applicant to persuade the ZBA that they have met the criteria to approve the Variance. Mr. Beauregard reviewed the criteria.

Granting the variance would not be contrary to the public interest. Mr. Beauregard stated it was not the mission of Hundred Nights that the ZBA was to evaluate; it is that particularly to the criteria of 32-34 Washington Street. He said that the applicant did not speak to the constraints of the property.

If the Variance were granted, the spirit of the ordinance would be observed. Mr. Beauregard said the applicant did not speak to the constraints of the property and why they were before the ZBA to get a Variance. He said a theme woven through the testimony that referenced the 6,000 square feet of space at the new location. Mr. Beauregard quoted the petitioner's response that it "will improve and maintain the value of the property". He explained that his statement appears in several instances in testimony and that this was outside of the purview of the ZBA. Mr. Beauregard said that it was unknown how aggressively the owner marketed the space, whether advertising occurred, what the pricing structure was or whether the owner of the property desired to sell or lease the space.

He said again, the applicant did not speak to the issue of any constraints of the property but merely to their proposed use. Mr. Beauregard quoted the Shelter's response to the third criteria, "it will allow the current and future property owner a reasonable use of the property with no significant impacts to abutters". He said the menu of uses allowed in the Central Business District are multi-family dwellings, art center, clinic, health and fitness center, office, private school, restaurant, etc. Mr. Beauregard stated that there are a multitude of uses available for that property owner and that it ultimately came down to price point.

If the Variance were granted, the values of the surrounding properties would not be diminished. Mr. Beauregard read the response from the applicant as follows, "Granting a

variance would remove or alleviate current uneasiness with Hundred Nights having such close proximity to Main Street". Mr. Beauregard stated that this uneasiness would be transferred to Washington Street.

He continued responding to the application reading the following, "Hundred Nights would actively discourage lingering in the alleyway on Washington Street by Hundred Nights guests".

He said that, as a Realtor with almost 35 years of experience, he believes that relocating the Shelter to Vernon Street would diminish the values of his property as well as the surrounding properties. Mr. Beauregard explained how this would also make it difficult to rent and more difficult for the businesses to serve their customers.

Mr. Beauregard said he was not discussing the merits or mission of the Hundred Nights Shelter but was only discussing the Variance request.

Mr. Beauregard said the petitioner truly fell short in the area of unnecessary hardship. He said the applicant references several conditions to the property differentiating this property from other properties in the Central Business District. He said that the applicant stated that the property was unique and was hidden. Mr. Beauregard wanted to remind the Board that many businesses in the Central Business District do not front on Main Street. Mr. Beauregard stated that whether or not the space has been rented was outside the purview of the ZBA. He said that the issue was incumbent upon the applicant to prove that there is an unnecessary hardship. Mr. Beauregard stated that all of the issues and uneasiness discussed during the meeting will be moved to Vernon Street.

Attorney Gary Kinyon, 50 Washington Street, Keene, NH, stated that he was an attorney at Bradley and Faulkner which is located at 50 Washington Street. Attorney Kinyon said that the goals and objectives of the Hundred Nights Shelter are admirable. He said that the job of the ZBA was to review the request for a Variance in this location and for the use. He pointed out to the Board that what was being proposed was a homeless shelter and that a homeless shelter was not a lodging house. He said that the term lodging house was by definition in the Ordinance was that as not providing services, which is what the shelter does and plans to do in the proposed location. He said that clearly, the Shelter plans to provide services. He said that the petitioner could still ask for a Variance for a lodging house but that the Board should be aware that a request for an emergency shelter is something that is not defined in the Ordinance. He said that the Board has to focus on the use requested and also the facts that exist. Attorney Kinyon stated that the fact is that there is an existing shelter on Lampson Street that has created problems in its existing location.

He said the current issues at the Hundred Nights Shelter would double at the proposed location because of the increase in number of beds. He said that the proposed impact for the area could be four times the present impact on Lamson Street.

Attorney Kinyon stated that the abutters to the proposed location know what will happen and what is going to happen; they know that the type of loitering and activity would create problems for their properties and lessen the property values.

He said that as, an owner of 50 Washington Street, LLC, they would assert the same claims that the applicant has not met their burden of proof on any of these standards. He urged the Board to deny the Variance application.

Jeff Firestone, 23 Sawmill Road, Acworth, NH, stated that he is the owner of Metro Music. Mr. Firestone said that safety is an issue. He said that the parking lot at 32-34 Washington Street is right by his backdoor where his loading dock is located and that people would be congregating around this area. Mr. Firestone stated that he has tenants that have told him that they would move if the shelter was relocated. He noted that he has great tenants and that it took him a while find great tenants.

Mr. Firestone said that he appreciated the work of the Hundred Nights Shelter.

He said that if someone put the situation in reverse where the shelter was there before the current abutters, would they have purchased the property and established businesses. Mr. Firestone stated that he did not believe that would be the case.

Dan Caballero, 305 Millbank Avenue, Greenwich CT, stated that he owns Monadnock Vapor. He stated that all of the testimony during the meeting meant and questioned its validity. Mr. Caballero stated that there is truth on the Internet. He said that, based on his research, there were a lot of incidences that occurred on Lamson Street. He stated that there was an arrest made on January 14, 2017 for drug possession, on March 25, 2016 the same individual was arrested for the same charges and was again arrested on July 1, 2016 for a warrant issued by a judge.

He said that all of the current issues on Lamson Street would be moved to Washington Street. Mr. Caballero stated that the applicant had no proof of what would change or even had a plan to help correct these issues. He said that he cared about protecting his business, his employees and his customers.

Mr. Cavllerro stated that there were five pages of incidents that he could provide as evidence that occurred in a short span of time. He stated that he did not want these problems outside his store.

Mr. Cavallero stated that he was speaking on behalf of his brother, who owns the building where his business resides.

Maria Bradshaw, 45 Greenbriar Road, Keene, NH, stated that she wanted to read the letter she submitted to the ZBA in response to the application. She read the letter as follows,

"As a property owner of 26-28 Washington Street, I am opposed to the petition for a lodging Variance for the abutting property at 32-34 Washington Street, Keene New Hampshire.

Allowing a Zoning Variance in the Central Business Area opens precedent for subsequent Requests for lodging Variances in the downtown area, potentially to the detriment of the Commercial vitality of Downtown Keene. The Central Business Area is so zoned for the Establishment and flourishing of the commercial industry. Throughout the past decade, a number of external forces have played their hands to attempt to disrupt the commercial success of Downtown Keene. A number of storefronts remained vacant, a reminder of the loss of vitality from a generation ago. However, within the past few years, there has been considerable effort put forth to re-energize the Downtown area. Propagation of the "it's Keene to shop local" phrase, Downtown shopping Holiday sweepstakes, and "Plaid Friday" events has generated a resurgence of the commercial infrastructure in the Central Business Area. A Zoning Variance for a Lodging License in the Central Business Area threatens the commercial vitality through the establishment of precedence for continued Variances.

This argument is without prejudice to the Hundred Nights Shelter and its mission; however, with consideration of the specific entity seeking the Variance a number of other concerns arise, directly related to the request and its apparently conflict with the overarching and longitudinal aims of Hundred Nights, Inc.

Hundred Nights, Inc. seeks to" provide shelter and crisis related services to the displaced or homeless; to support the invisible members of our society who deserve dignity and a voice that is heard through community, collaboration and guidance" (Hundred Nights Mission, website: <http://hundrednightsinc.org/>). In understanding the demand for such services, it should not solely be the desire to fulfill the fundamental request for additional space, but to ensure that a standard of quality is not forgotten alongside the basic need for shelter. As such, it is recommended that Hundred Nights, Inc. search for a property location in the appropriately Zoned areas with available green space for the enjoyment and improved life quality such environments provide to those whom the facility serves. A number of studies, reviewed in the research by van den Berg, Wendel-Vos, van Poppel, Kemper, van Mechelen, and Mass in the article "Health benefits of green spaces in the living environment: A systematic review of epidemiological studies" (Urban Forestry & Urban Greening, 2015), cites the association of a green environment with better mental health and lower all-cause mortality. Not only would this recommendation for the consideration of the overall living environment enhance the quality of life of those for whom the Hundred Nights, Inc. has served as more than a temporary lodging, but will also help to greater foster the "community, collaboration and guidance" Hundred Nights, Inc. seeks.

In conclusion, my opposition to the request for a Zoning Variance for 32-34 Washington Street, Keene, NH, is founded upon both concern for the commercial vitality of the Central Business Area, and the welfare of the Hundred Nights, Inc. population. This proposed Variance is not a viable solution for Hundred Nights, Inc.; further, it poses a detriment to the Central Business Area of downtown Keene."

Ms. Bradshaw stated that Hundred Nights will diminish property values and that it is a fact of life. She said she's heard testimony that some people have never had a problem asking people to leave their property. She said asking people to leave was very difficult to do if you are a shop owner and there was also concern for retaliation. She asked the Board to be cognitive of the whole situation.

Chair Pro Tem Stevens asked if there was further public comment against the application. With no comment, Chair Pro Tem Stevens asked the Shelter if they wanted to respond to the statements made against the application.

David Bergeron, 185 Winchester Street, Keene, NH, said a lot of the comments were legitimate and that, with this type of use, there would be issues. He said that the question goes back to the five criteria, how this type of use fits into the City and how its use would be good for the general public. He said as far as with the public is concerned, the use does the public good. He said, as for the location, because of the specific use, no matter where the shelter was to be located; the issue would be back before the Board.

He said that the best place to put the Shelter would be in the Central Business Zone and not in a Residential Zone. He explained that the proposed location was closer to the services and is a great location for the people that use facility. He said that the facility would improve, compared to what exists today. Mr. Bergeron stated that this was something that the City needs.

He said that this location does meet the criteria and that the question of public good is a legitimate one when talking about the general public. He said that there are all types of people that use these services and that there are people who would never thought they would use these types of services.

He said that the Central Business District is the best location for this type of use. He said that most of these people who come to the shelter do not have transportation and that transportation in Keene is limited. He said that all of the services they need are all within walking distance.

He said that question of property values was raised and that this goes back to the issue of public good. He said that the clients of the Shelter are already in the area to come to The Community Kitchen, the UCC and the Unitarian Church. He noted that these clients would continue to use that area regardless of the Variance.

He said the hardship was that there are no other properties available. Mr. Bergeron stated that the proposed building was inexpensive at \$25 a square foot and also that the renovation costs would be minimal. He said that the Shelter would be able to have a building in a downtown location for not a lot of money.

Pro Chair Tem Stevens stated that the hardship goes to the building and not necessarily the hardship of not being able to find a place. Mr. Bergeron said as a Board member of MFS they have tried for many years to sell the building. He stated that property has been

on the market close to 3 years, initially listed at \$450,000, the price was lowered by \$100,000 and then the price continued to drop because there was no real interest in the building. He noted that there was no one interested due to the location and that it was not a desirable area for retail space. He said that there is not enough parking because the fire station took up most of the parking. He said the Shelter was the only real interest shown in the property.

Mr. Plenda asked if the Variance was contrary to the public interest and what evidence was there of that. Mr. Bergeron replied that the City needs a shelter, and there is a need for the shelter to expand. Mr. Plenda stated that they needed to show the evidence. Mr. Bergeron replied that they have shown the evidence by showing the good of the shelter and the service that it provides to the City.

Mr. Bergeron addressed the issue of the ownership of the property. He said that during the meeting he returned to his office for a copy of the property deed, which shows that MCSC owns the property. He presented the ZBA with a copy of the deed.

Councilor Clark, stated that he was also a Realtor as well as a City Councilor who sits on the Finance Committee. He said, in talking about diminishing property values, as Realtor and member of the Finance Committee, there is absolutely no evidence that the presence of current shelter since 2010 had diminished property values or has affected the traffic in the downtown area around Lamson Street. He asked the ZBA if there were such evidence, wouldn't the attorneys bring that information forward? He said that there was no reason to believe that if the Shelter was moved 100 yards up the street that it would be an issue. He said this was false information that was antidotal and invited anyone to look at the City records.

Mr. Plenda stated that there is no evidence that has been provided in either case that property values would be diminished and that there was also no evidence that no harm would be done to the public.

Attorney Schweitzer, stated that it was not incumbent on those against the application to bring the evidence forward and that is what a burden is all about. He explained that NH, Law was clear on that point and that party seeking the Variance has the burden of proof. He stated that the applicants were the ones that needed to bring the evidence, appraisals and legitimate unbiased real estate letters. Attorney Schweitzer stated there has been evidence presented from building owners who have stated that tenants have refused to resign their rent leases because of the proposed relocation of the Shelter. He noted there was actual evidence of that. He said that a comparison of values to what happened to the real estate market in 2010 was irrelevant.

Bill Beauregard stated that every property has a price point. He said he did not know what marketing strategy The Masiello Group used to market that property. He said that what he did know was that the property was encumbered by a lease upstairs that affects the property. He said that his point was that no one knows how aggressively the property

was marketed. He stated that if the property in question was marketed aggressively at a price point that is attractive, it will sell.

With no further comment, Chair Pro Tem Stevens closed the public meeting.

Chair Pro Tem Stevens reviewed the criteria.

He stated that the City of Keene benefits with this type of shelter and that it was a great mission. Chair Pro Tem Stevens said that the concern of direct neighbors should also be taken into consideration.

Mr. Gorman stated that the reason why a Variance exists was so it could determine whether there are exceptions to the zoning rules. He said zoning laws were drafted as a way to see if a particular case should be granted a Variance. He said it was difficult to pull away from the humanitarian aspects of this case. However, Mr. Gorman said that the question before this Board was whether or not a lodging house belongs in that location and if it would benefit the public.

Chair Pro Tem Stevens referred to the Central Business District description in the Zoning Code Ordinances, "*The intent of the central business (CB) district is to be the center or hub of the community. The zone provides commercial, financial, retail, government and multifamily uses oriented primarily toward pedestrian access. A mixture of uses side by side and in the same structure is to be encouraged*" He said on that merit it fits quite well into that and was having hard time with next couple of criteria questions.

Granting the Variance would do substantial justice

Chair Pro Tem Stevens stated that the loss of the individual was not outweighed by a gain to the general public. He said in this case they were not talking about the residents of the Shelter and were talking about the building itself. He asked if the Shelter's gain outweighed by a loss potentially to the general public. He said that, in this case, the loss of potential to the neighbors would have an impact. Mr. Plenda said that the abutters would pay the worst penalty and that the general public would also pay. He explained that there was a possibility to end up with spot zoning. He said that everyone wants the shelter but there are better places to put the shelter.

Mr. Gorman stated that he had a difficult time understanding how the abutting property values would not be affected. He stated that he was hard pressed to feel that that the ZBA has been shown evidence that moving the shelter to the proposed location was not going to change the property values. Chair Pro Tem Stevens stated that he would agree that they have not been shown any evidence. He continued that this use would be allowed in a Residential Zone. He stated that there was a comment made that the use was not good in a Residential Zone and that one limiting factor of the Residential Zone is that the size was much smaller. He added that may be why that use is allowed in the High Density Zone.

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

Unnecessary Hardship

E. 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:

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

Chair Pro Tem Stevens stated that the one thing that distinguishes the property is one of the few properties in that area that has parking and this is more of a benefit than a problem. He stated that he has not seen any evidence to show that this property is in a unique situation because it has not been sold. He stated that the property can be marketed.

Mr. Gorman stated that he did not see a specific hardship with the inability to sell a property.

The proposed use is a reasonable one:

Chair Pro Tem Stevens stated that it was a reasonable one and that it was a reasonable use.

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.

Chair Pro Tem Stevens stated that he had not seen any evidence to show that the building was not usable. Mr. Plenda stated that this was not addressed by the petition. Mr. Gorman stated that he wanted to see a hardship but that he struggled to see one.

Chair Pro Tem Stevens stated that he was on the ZBA when the Hundred Nights Shelter first came before the Board in 2010 and that he voted in favor. He stated that this proposal was different and very emotional. Chair Pro Tem Stevens stated that the Shelter was a good cause but did not see that the criteria have been met in this case.

Mr. Gorman wished the current location of Hundred Nights was large enough to service all of their needs. Mr. Gorman continued his support for denial of the petition with Mr. Plenda seconding.

Chair Pro Tem Stevens reviewed the Findings of Fact:

Granting the Variance would not be contrary to the public interest: 2-1 Mr. Plenda voted against

If the Variance were granted, the spirit of the Ordinance would be observed: 2-1 Mr. Plenda voted against

Granting the Variance would do substantial justice: 1-2 Chair Pro Tem Stevens and Mr. Gorman voted against

If the Variance were granted, the values of the surrounding properties would not be diminished: 3-0

Unnecessary Hardship

E. 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:

- ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property:* 0-3
- x. The proposed use is a reasonable one:* 0-3

Mr. Gorman made a motion to deny ZBA 17-08. Mr. Plenda seconded the motion, which carried unanimously.

With a vote of 3-0, The Zoning Board of Adjustment denied ZBA 17-08.

ZBA 17-10/ Petitioner, Heather Pelow of 186 Tory Hill Road, Langdon, NH, requests a Variance for property located at 181 Washington St., Keene, Tax Map Parcel #016-03-004, which is in the Office District and owned by Patrick J. Enright, William P. Denler and Lynne M. Paul of 165A South Road, Bedford, NH. The Petitioner requests a Variance to permit a change from office use to allow a hair salon, service/retail per Section 102-602 of the Zoning Ordinance.

Chair Stout resumed as Chair of the Board.

Chair Stout stated that according to the Rules of Procedure, the Board is advised not to proceed after 10 PM. Ms. Brander recused herself from the hearings. Chair Stout stated that there were only four members of the Board and wanted the applicant to know that she had the right to come back again in order to have her application heard before a five-member Board.

Vice Chair Stevens made a motion to continue the hearing in light of the length of the previous meeting. Chair Stout seconded the motion, which carried unanimously.

Mr. Gorman stated that in fairness the Board should ask the applicant if they wanted to proceed with the meeting. Ms. Pelow stated that she wished to move forward with the hearing.

Mr. Schneider indicated that the property in question was located on Washington Street and was two doors down from Franklin School. He said that the property was recently occupied by a title and search company. Mr. Schneider said that in the back of the

property there is a carriage house that is a detached single family home. He said that the property was located in the Office Zone.

Attorney Jeremiah Hockensmith, 28 Middle Street, Keene, NH, stated that he was representing Heather Pelow, the applicant who intended to purchase the property. He stated that Ms. Pelow would only do so if the proposed use is approved in the Office District. He stated that the applicant was present for two reasons. The first reason, he said was to determine if a Variance is necessary at all for the proposed use. Secondly, that the proposal meets the criteria for a Variance.

He said the property is located in the Office District and that there would be no change to the existing building footprint or the curtilage. He said that the only change would involve the use and whether it would be appropriate at that location. He said that the use Ms. Pelow wished to make is that of a hair salon and spa. He stated that her business was presently located at 670 Park Avenue in Keene and that it was an established business.

Attorney Hockensmith stated that the hair salon would occupy the first floor of the building. He noted that the first floor was presently occupied by Phenix Title Services, LLC and that that business would move upstairs to a shared space with a mental health counselor who has an existing office. He said that there is a carriage house on the property that is only for residential use.

He stated that the services his client would offer are haircuts and styling, waxing, massage, manicure, pedicure, facials and there would be a small portion of her business in selling hair products. He noted that this was a small portion of her business and that a majority of her money was made in her services. He said there would be five cutting stations and all five are rarely used simultaneously. He noted that there would be a separate room for waxing services.

The hours of operation are Monday and Friday 9 AM to 5PM and Tuesday, Wednesday; Thursday 9 AM to 8 PM and 9 AM until 3 PM on Saturday. Attorney Hockensmith referred to Section 102.61 of the Zoning Ordinance as follows, "*The intent of the office (O) district is to provide for noncommercial offices within walking distance to the downtown. The uses are intended to be low intensity such as professional offices. This zone is intended also to serve as a buffer between the intense uses such as those in the central business, central business limited, commerce zones, and residential areas*". He read the definition of an Office as follows, "*the building room or series of rooms in which the affairs of a business professional or branch of government are conducted*". He said that according to the definition it allows for three different types of offices, two of which are applicable. He said that the Ordinance does not define the terms commercial, retail or professional.

He explained that they would argue that the use that Ms. Pelow proposes is a professional office. He said that a cosmetologist and hair stylist are required to be licensed by the State of New Hampshire. He explained that, under the statute, cosmetologist must meet education training and ethical standards to be licensed. He said that the state board that

oversees certification is the New Hampshire Office of Professional Licensure and Certification. He said that this office oversees the licenses of many well-recognized professions. Attorney Hockensmith asked to present the Board with a copy of the licensing requirements for a cosmetologist and the types of professions regulated by the Office of Professional Licensure and Certification.

He said by looking at the list he provided that the Board will notice that many of the professions listed have offices on Washington Street. He stated that it was their position to argue that there was no reason to treat Ms. Pelow as anything other than as a professional. He stated that in the absence of the Ordinance definition that the Board accepts what the State of New Hampshire calls a profession as a profession.

He said that in the making its decision, the board must look at Devine Back and Body care at 102 Washington Street, which is located several doors down and is in the same district. He explained that this building was a mix of residential and office use and there is no Variance regarding its use. Attorney Hockensmith stated that according to their website their services are facial, manicures and other spa services.

Vice Chair Stevens said that determining whether or not the application needs a Variance was a borderline case of an appeal of an administrative decision. Mr. Schneider stated that was not filed in the application. He said if the applicant disagreed with the City's interpretation of the need for a Variance, the applicant should have gone through an Appeal of Administrative decision. He noted that process was not done. Mr. Schneider referred to the application that was filed discusses a hair salon and does not state anything about facials, spas, pedicures, etc. He said based on the City's interpretation that a beauty salon and a barber shop have always been considered a retail service.

Mr. Gorman stated that a retail service has not been defined by City Code and that he could see where Attorney Hockenmmith would revert to using the definition as offered by the State of New Hampshire. He asked if there is was no definition by the City and State of New Hampshire does have a definition, and the applicant does need professional requirements, would the applicant have the ability to Appeal an Administrative decision if the petition is denied. Mr. Schneider replied he would have to look further into the matter.

Attorney Hockensmith stated that to have an administrative decision, there must be something in writing from a Zoning Code Officer in order to have something to physically appeal. He said that the applicant was told that was a proposed use that could not be made and to file for a Variance. Attorney Hockensmith said he did not know how one could appeal what happened in this case. Mr. Schneider said that the question was probably brought forward as to what they would need to do and suggested by Code Enforcement, and a Variance was the recommended procedure. He said that he does not see how that was challenged.

Chair Stout asked if Board members were contradicting themselves by allowing a Variance and then proceeding to resolve the issue of whether or not the applicant's

business was classified as professional. Mr. Gorman said, with the problems that have arisen in terms of potential retail sales businesses, a quandary would be created if a Variance is approved without a use of a definition. He said the Board could call these businesses a professional hair salon and would therefore not create any quandaries. Chair Stout stated that the Board was not empowered to do that at this meeting. Vice Chair Stevens added that the City's position has been pretty well stated and to go down the road of the Appeals of Administrative process was a whole other application. Attorney Hockensmith stated that the Variance was the applicant's only recourse. Mr. Plenda asked what spa services will be offered. Attorney Hockensmith replied that the services would be facials, body waxing, haircuts, manicures, pedicures.

Attorney Hockensmith reviewed the criteria:

Prior to beginning the review, Attorney Hockensmith stated that in 2004, Mayor Blasts was in favor of the Devine Body Spa and called the project an excellent use of the building in an Office Zone.

- Mr. Hockensmith stated that granting the Variance would not be contrary to the public interest because it would be adding a service to the area. He said that someone has to keep up these old buildings and pay the taxes and that the Board should be flexible enough to allow people like his client to come in and run a low intensity business.
- He stated that, if the Variance were granted, the Spirit of the Ordinance would be observed and the proposed use fits the Office District. Attorney Hockensmith stated that in addition to high density housing and office use, the Office District specifically permits: bed and breakfasts, funeral parlors, historic sites, home occupations, institutional uses, and senior centers. He said that when compared to some of the uses permitted in the Office Zone, the use proposed by the Applicant is far less intrusive to neighbors and the surrounding area.
- He said that granting the Variance would do substantial justice because: similar uses are already being made in the zoning district, or nearby. Presently located in the neighborhood are many service-based, non-retail providers. Such as lawyers, counselors, therapists, insurance salespersons, chiropractors, body spa, and the like. He said that it is very close to the Central Business District, where a jeweler, yoga spa, healing center and a chiropractor are located on Washington Street.
- He said, if the Variance were granted, the values of the surrounding properties would not be diminished because the use of the building would change from a low-intensity office use to a low-intensity professional services and office use.
- He said that the use was a reasonable one, in keeping with the area. He said that reverting the old office to residential use would cost thousands of dollars and would be impractical.

Chair Stout welcomed public comment.

ADOPTED

Heather Pelow, said that she would love to be downtown and would make good use of that building. Chair Stout asked if she was satisfied with the parking situation. Ms. Pelow replied in the affirmative.

With no comment, Chair Stout closed the public hearing.

Chair Stout discussed the criteria.

Granting the Variance would not be contrary to the public interest:

Mr. Gorman said that an old building on Washington Street that is a good business was good for the City and not contrary to the public interest. Vice Chair Stevens stated that he would agree and the business was a good fit. Chair Stout stated that the business would be a benefit to the City and Washington Street.

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

Vice Chair Stevens said that it was a low intensity use that fits right into the Office District. Mr. Gorman stated that he would agree. Chair Stout noted that the business was by appointment only and would remain that way under the Variance.

Granting the Variance would do substantial justice:

Vice Chair Stevens said that substantial justice would clearly be done and no gain would be made for the public by not granting the Variance and that the loss to the applicant would be far greater. Mr. Gorman stated it would be unjust to not speak in favor because of the other businesses on Washington Street that almost mirror the applicant's business. Mr. Plenda stated that this use was good for the City.

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

Vice Chair Stevens stated that there was no reason to suggest that this would affect the surrounding properties but that it may increase property values.

Unnecessary Hardship

E. 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:

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

Mr. Gorman stated that the use is in line with the use that is currently in that area. He said to not allow this in that specific building would be a hardship. Vice Chair Stevens agreed and that the intent for the Office District was to have businesses in walking distance to downtown and to allow this use was reasonable.

The proposed use is a reasonable one:

All of the Board members agreed that the use is a reasonable one.

Mr. Gorman made a motion to approve ZBA 17-10. Vice Chair Stevens Jeff seconded.

Chair Stout reviewed the Findings of Fact:

Granting the Variance would not be contrary to the public interest: 4-0

If the Variance were granted, the spirit of the Ordinance would be observed: 4-0

Granting the Variance would do substantial justice: 4-0

If the Variance were granted, the values of the surrounding properties would not be diminished: 4-0

Unnecessary Hardship

E. 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:

- ix. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property: 4-0*
- x. The proposed use is a reasonable one: 4-0*

With a vote of 4-0, The Zoning Board of Adjustment approved ZBA 17-10.

V. New Business: Rules of Procedure

The Board made the decision to continue the discussion of the Rules of Procedure to the next meeting.

VI. Adjournment

Hearing no further business, Chair Stout adjourned the meeting at 11:00 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker