

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, October 1, 2018

6:30 PM

Council Chambers

Members Present:

Nathaniel Stout, Chair
Joshua Gorman, Vice Chair
Michael Welsh
Joshua Greenwald
Jane Taylor

Staff Present:

Thomas Mullins, City Attorney
Gary Schneider, Plans Examiner
John Rogers, Zoning Administrator

Members Not Present:

Louise Zerba, Alternate

I. Introduction of Board Members

Chair Stout called the meeting to order at 6:30 PM, introduced members of the Board and welcomed everyone to the meeting. Chair Stout also welcomed and introduced new member Joshua Greenwald to the Board.

II. Minutes of the Previous Meeting-September 4, 2018

The Board moved to defer approval of the September 4, 2018 minutes until the next meeting that will be held on November 5, 2018. The motion passed unanimously.

The ZBA agreed to change the order of hearings as follows: ZBA 18-14, ZBA 18-18 and ZBA 18-12, ZBA 18-17 and ZBA 18-19.

IV. Hearings

Continued ZBA 18-14:/ Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene requests a Variance for property located at 76 Railroad St., Keene, Tax Map # 574-010-000, owned by The Moving Company Dance Center, 76 Railroad St., Keene and is in the Central Business District. The Petitioner requests a Variance to permit a lodging house in the Central Business District where a lodging house is not a permitted use per Section 102-482 of the Zoning Ordinance.

Mr. Greenwald announced he needed to recuse himself due to a conflict of interest. With no objection, the Board continued with hearing ZBA 18-14.

Chair Stout read an email into record that was sent to the Board by Mindy Cambiar. The email notified the Board that The Moving Company Dance Center (MOCO) signed a purchase and sales agreement with another purchaser at 76 Railroad Street. In addition, Ms. Cambiar stated in the email this made her very sad and explained the need to withdraw their application for a Variance at that location. However, Ms. Cambiar stated in the email that Hundred Nights will be requesting an Appeal of Administrative Decision for ZBA 18-18.

Ms. Taylor made a motion to accept withdrawal for continued application ZBA 18-14. The motion was seconded by Vice Chair Gorman, which carried unanimously.

ZBA 18-18:/ Petitioner, Hundred Nights, Inc., of 17 Lamson St., Keene requests an Appeal of an Administrative Decision based on the definition of a hotel versus a lodging house and the Administrative Decision by the Zoning Administrator that Hundred Nights, Inc. “is considered to be a lodging house under the City’s Zoning Ordinance, and not a Hotel.

After reading the request, Chair Stout announced the Board has been advised it would not be appropriate for the Board to offer an opinion on this, given there is not an application to which this matter applies.

Chair Stout asked the Board if there was a motion.

Mr. Welsh made a motion to deny application ZBA 18-18 for an Appeal of an Administrative Decision. The motion was seconded by Vice Chair Gorman.

As the Board moved to deny the request, Attorney John Rab, 234 Court Street, Keene came forward to request to address the Board. The City Attorney stated it would appropriate to allow Attorney Rab to speak prior to voting on the motion. Chair Stout welcomed comment.

Attorney Rab stated he was representing Hundred Nights and they object to the Board’s denial of this outright on the basis of a lack of standing. He asked if the Board does deny the application, the Board state the reasons for denial. Attorney Rab stated it was their firm belief they have the powers under RSA 674:33A that the Board hear the appeal. He explained they are appealing a determination of a zoning official with respect to the Zoning Ordinance. He noted they have a clear standing to do such.

Chair Stout asked the Board if there were any questions. With no comment, the hearing continued.

Attorney Rab reiterated that if the Board does deny the application, the Board state reasons clearly for the record in order to provide them a record for appeal. Chair Stout stated that Attorney Rab’s reference to RSA 674:33A does not refer to whether or not there is an active case, to which this advice is relevant. Attorney Rab stated this is a separate accepted application and they are appealing a specific decision. He noted the application was duly docketed and is not related to the application that was withdrawn. In addition, he stated this is not related to a specific property and is related to a specific decision made by a Zoning Officer. Chair Stout asked if there is an application before the Board at the present time. Attorney Rab replied in the

affirmative and that it was an Appeal of an Administrative Decision. Chair Stout stated that he would disagree that an Appeal of an Administrative Decision is an application for a Variance. Attorney Rab stated this application was a separate matter before the Board. Chair Stout stated that it may be a separate matter but the matter should refer to an active case. He noted this was based on the advice given to the Board. Attorney Rab stated if that is the case the reasons for denial should be made clear. Chair Stout stated that he believed he had just done so.

Attorney Rab then asked if the Board was denying the application because they have withdrawn their application for a Variance for the MOCO building. Chair Stout replied that was correct and is because the Board does not have an application before the Board. Ms. Taylor added the Board's role is not to issue any advisory opinion. She stated the request to the Administrative Official related specially to a certain property that is the subject of the Variance that is now withdrawn. Based on this information, Ms. Taylor stated the result in any decision other than a denial would result in an advisory decision, which the Board is not empowered to give. Attorney Rab stated Hundred Nights requested the City define the use of Hundred Night's homeless shelter as a hotel rather than a lodging house for purposes of the Zoning Ordinance. He reiterated this is a separate matter and is not related to the application for the MOCO building.

Chair Stout asked for comment from the City Attorney.

Mr. Welsh asked for clarity on the assertion being made by Hundred Nights that there is no specific linkage of their question about definition to a specific property. The City Attorney stated that he would defer back to the N.H. Supreme Court's decision on *Perron v. Concord*. He explained that once the application was withdrawn there is no live application before the Board to consider the Administrative Decision against. The City Attorney continued to explain that there is no case or controversy and the same standard applies over in the Superior Court. He stated if there is no case or controversy before the Board, the Board is prohibited from issuing an advisory opinion.

The City Attorney stated the Supreme Court case stands exactly for that proposition. He stated once the *Perron v. Concord* matter was resolved by the Board in Concord and concluded, the applicant requested an opinion from the Board as to what they could or could not do. The Supreme Court properly confirmed that the Board does not have the authority to issue an advisory opinion. The City Attorney said Hundred Nights may disagree with that opinion, which he understands. Therefore, he stated there is a process which would need to go to the Superior Court for a decision.

The City Attorney stated that his advice is that it would be an issuance of an advisory opinion and is prohibited under law. He noted this decision was up to the Board.

Mr. Welsh asked the City Attorney to clarify if withdrawal of the application places the question in the status of not something that has a case or controversy attached to it. The City Attorney replied that was correct. Mr. Welch then asked if that status means that anything the Board would be giving is an advisory opinion, which is something that case law has shown is not appropriate. The City Attorney stated that is a correct restatement of what he stated to the extent that they may have another property that would qualify for status or meet the definition. He stated that it would then be proper for the Board to consider the issue.

With no further comment, Chair Stout thanked the City Attorney.

Chair Stout welcomed public comment.

The City Attorney stated this was not a public hearing on this question and is very much like a motion for reconsideration. He explained the motion for reconsideration is filed with the body, the body makes a decision based on the documents filed and this was filed. The City Attorney stated Hundred Nights had the opportunity to state their position at this point and his suggestion is that the hearing closes at this point.

Chair Stout retracted welcoming comment from the public. The Board moved to vote.

On a vote of 4-0, the Zoning Board of Adjustment denied ZBA 18-18.

Mr. Greenwald joined the rest of the Board for the remainder of the petitions.

Continued ZBA 18-12:/ Petitioner, Kay M. Alderman of 350 Hurricane Rd, requests a Variance for property located at 350 Hurricane Rd., Tax Map # 234-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit the extension of a garage to within 11 feet of side boundary line and to within approximately 45+/- feet of Hurricane Rd. where 50 feet is the setback requirement for both side and front side yards per Section 102-791, Basic Zone Dimensional Requirements.

Chair Stout asked for the City staff report.

Mr. Schneider displayed a map stating the location of the property highlighted in yellow. He noted Hurricane Road is just above the property and to the south is Aldridge Road and Dickinson Road. He noted all of these properties are in the area of the Rural Zone.

Chair Stout asked for the overall acreage. Mr. Schneider replied 3.9 acres.

Chair Stout welcomed James Mountford, 350 Hurricane Road, Keene. Mr. Mountford stated that he was the husband of the applicant Kay Alderman. He noted the reason for the Variance is because they want to put an addition on their garage. Mr. Mountford stated his wife has been faced with medical issues and she wants to move the washer and dryer from the basement up to the next level. He stated they are putting in a mudroom and that takes up half of the two car garage. In order to keep the two car garage they will need to add another bay. He noted his neighbor's property line comes within 11 feet of their property line. Mr. Mountford stated the abutting neighbors have provided a letter in support of the application.

Ms. Taylor stated the map provided in the packet did not indicate the terrain in that area. Mr. Mountford replied the edge by the garage is built up and there is a lawn that drops off to the level of the walkout cellar. Ms. Taylor asked City staff in reference to the 11 feet to the property line if there are some provisions with fire code. Mr. Rogers replied that it would not refer to a single family home, especially with a single story home.

Chair Stout explained to Mr. Mountford that the applicant has the option to read through their application. He asked Mr. Mountford if he wished to address the criteria in his application. Vice Chair Gorman stated that it was not necessary and that Mr. Mountford had stated his case.

Mr. Mountford stated that Attorney Tom Hanna prepared their application. He declined to read through the criteria.

Ms. Taylor referred to the letter Mr. Mountford stated he had from his neighbor that spoke in support of the application. Mr. Schneider provided a copy of the letter to Board. Chair Stout read the letter to the Board.

The letter was sent from Mark and Sharon Rhoades 354 Hurricane Road, Keene and stated they had no objection to the applicant's building an addition to their garage on their property. In addition, the Rhoades stated there is no need to add shrubbery or landscaping between their properties.

Vice Chair Gorman asked if a vegetative buffer currently exists. Mr. Mountford replied in the affirmative.

Ms. Taylor asked how far the neighbor's house is on other side of the vegetative buffer. Mr. Mountford replied approximately 75 feet.

Chair Stout welcomed public comment.

With no comment, Chair Stout closed the public hearing and asked if there was a motion.

Vice Chair Gorman made a motion to approve ZBA 18-12. The motion was seconded by Mr. Welch.

Chair Stout stated that he drives past this property frequently and noted the buffer is more than adequate. He added that he sees no problem with plans to proceed. In addition, he stated there is a hardship here and is in favor.

Ms. Taylor stated that she wanted to clarify that it appears the hardship is related to land and due to the terrain. She stated when she drove by the property it is clear the terrain drops off and is not sure there would be any opportunity to build in back of house and be within the setbacks.

The Board reviewed the criteria.

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

Ms. Taylor stated this is an area of single family residences and the addition is not going to be any closer to the street. She stated there no interference and is in keeping with the neighborhood. She added that granting the Variance does meet that criteria.

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

Chair Stout stated there was no major change in anything the ordinance stipulates for this zone. In particular, he stated that it is not out of keeping with other properties in the area.

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

Chair Stout stated the Board has already heard of the need.

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

Vice Chair Gorman stated this is not a substantial change to the property. He noted this is a rural house in the Rural District. In addition, Vice Chair Gorman commented there will be no impact to buffers or the surrounding property values.

5. *Unnecessary hardship*

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

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

Ms. Taylor reiterated the nature of the terrain. In addition, she stated that is the only place to do this without building a two story foundation underneath a garage expansion.

ii. The proposed use is a reasonable one because:

All members of the Board agreed the use is reasonable based on previous statements.

The Board reviewed the Findings of Fact.

1. *Granting the variance would not be contrary to the public interest. Granted 5-0*
2. *If the variance were granted, the spirit of the ordinance would be observed. Granted 5-0*
3. *Granting the variance would do substantial justice. Granted 5-0*
4. *If the variance were granted, the values of the surrounding properties would not be diminished. Granted 5-0*
5. *Unnecessary hardship*
 - A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

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. Granted 5-0

ii. The proposed use is a reasonable one because: Granted 5-0

With a vote of 5-0, the Zoning Board of Adjustment approved ZBA 18-12.

The Board took a brief recess at 6:58 PM. The meeting was called back to order at 7:05 PM.

ZBA 18-17:/ Petitioner, The Prospect Woodward Home of 194-202 Court St., request a Variance for property located at 95 Wyman Rd., Tax Map #221-019-000, owned by the Petitioner and is in the Rural District. The Petitioner requests a Variance to permit a free standing sign 29.32 square feet in an area where 20.00 square feet is the maximum area allowed per Section 102-1310.2B.

Chair Stout asked for City staff report.

Mr. Schneider displayed a map stating the property highlighted in green. He indicated the location of the property is on Wyman Road. The top of the page on the map is Wyman Road heading toward Old Walpole Road and the bottom of page is heading back towards Route 12. He noted the property is on both sides of Wyman Road. The property is in the Rural Zone and in this zone a 20 square foot free standing sign is permitted. Mr. Schneider stated this is a legal commercial piece of property. He explained the Sign Code was recently amended to allow signage in legally nonconforming commercial properties.

Mr. Welch asked if this is a legal nonconforming rural district property. Mr. Schneider responded that prior to the revisions to the Sign Code, signage was not allowed on any residential piece of property. He stated it was recently amended to allow signage as long as the applicant conforms to the signage requirements in the Office Zone. Mr. Rogers added this part of the changes to the Sign Code was to try to allow for situations where in the Rural Zone there are a lot of commercial type activities.

Ms. Taylor asked City staff to clarify that this development is there because of prior Variances and is not a nonconforming use. Mr. Rogers stated the use that is currently there itself is an allowed use on this road. Ms. Taylor asked if this was an application for one sign or more signs. Mr. Rogers stated that based on his understanding the request was for one sign.

Vice Chair Gorman asked if there are setback requirements for the sign. Mr. Rogers replied the applicant would meet the 50 foot setback in the Rural Zone.

Jim Phippard, Brickstone Land Use Consultants, LLC spoke on behalf of The Prospect Woodward Home. He stated the application is for a Variance for a larger than normally permitted sign in this location. He stated the Board has already heard from staff up until this year that signs were not permitted in the Rural Zone. He noted they have been working on this project for several years and in the meantime the Sign Code was amended and a provision was added to allow for legal commercial uses in Residential Zones to have signage. Mr. Phippard stated in the

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Office Zone a free standing sign up to 20 square feet is permitted. He said originally two signs were requested but at the last minute they changed the health center sign back to 20 square feet.

Mr. Phippard then displayed a picture of the sign they are proposing for the community center, which he noted is the largest building at Hillside Village. Mr. Phippard stated this is a five story building on Wyman Road that appears as two stories because it is cut into the slope. The back side of the building that is not visible from Wyman Road is a five story building. He indicated the location of Wyman Road and the community center building. The community center is 588 feet long and two stories high. Across the street is the health center building that is a four story building. Mr. Phippard stated they are proposing to place a sign for the community center or the main sign at Hillside Village adjacent to Wyman Road. He also stated that in the Office District, the sign setback is five feet from the right of way. Mr. Rogers noted that it would be his interpretation that it is the zone the applicant is asking for signage to be in, which is in the Rural Zone and not the Office Zone. Therefore, the applicant would have to meet the 50 feet setback. Mr. Phippard stated that it is apparent that he will be coming back to the Board for additional Variances for sign locations.

Mr. Phippard stated that the important thing to understand is they are proposing to place a sign in view of Wyman Road as people approach the property. Mr. Phippard stated the sign will be a two faced sign, six feet high and close to the ground. He said the sign panel itself is 4 X 7 feet 4 inches, which is the sign between the posts. The posts are stone covered to match the facade on the building to help blend in with the background.

Vice Chair Gorman stated that he was concerned the Board is looking at a Variance for a sign and noted that the location of the sign is unknown. He added the location will play a factor and that he would have a difficult time voting on this time without knowing where the sign will be placed. He suggested presenting everything at once. Mr. Phippard stated that he was caught off guard by this decision. Vice Chair Gorman stated he could not vote on the size of the sign unless he knew where it would be located.

Mr. Phippard stated that he understands and requested to table the hearing until the next hearing. He stated that he will file an additional application for a Variance and will review the application with Mr. Rogers. Mr. Rogers stated that he would appreciate the opportunity to meet with Mr. Phippard to have this clarified in order to have an appropriate application for the Board.

Vice Chair Gorman asked if continuing the application will impede in the progress of the project. Mr. Phippard replied continuance would delay the manufacturing of the signs.

Ms. Taylor stated she does not know if the other signs are all within the appropriate size limitations. She then suggested if there is a possibility for any of those signs to be a different size to try to handle all of this in one application. Mr. Phippard stated that all of the other signs comply with size at this time but may not comply with setbacks.

Vice Chair Gorman made a motion to continue ZBA 18-17 until the next Board meeting on November 5, 2018. Ms. Taylor seconded the motion, which carried unanimously.

ZBA 18-19:/ Petitioner, Hope Chapel of 667 Main St., represented by Chad Branon of Fieldstone Land Consultants, PLLC of 206 Elm St., Milford, NH, requests an Enlargement of a Non-Conforming Use for property located at 667 Main St., Tax Map #120-055-000, owned by Keene Four Square Church, 667 Main St., Keene. The Petitioner requests an Enlargement of a Non-Conforming Use to expand the existing church with a building addition and associated site improvements.

Chair Stout asked for the City staff report.

Mr. Schneider stated the location of the property is at 667 Main Street. He referred to a map indicating the top of page is heading back into town and the bottom of page heading into Swanzey. He stated Hope Chapel used to be the Hungry Lion and has been a place of worship for a number of years. He stated residential properties are located in the back of the property as well as all around the neighborhood. The property is located in the Low Density Zone and is a legal nonconforming use. Mr. Rogers stated the history of the property is that it has been multiple restaurants over the years. He stated back in 1998 they received a change of non-conforming use under ZBA 98-16, to convert from a restaurant to the institutional use as church under Harvest Christian Fellowship.

Chad Branon of Fieldstone Land Consultants, PLLC of 206 Emerald Street, Milford stated that he represents the landowner and applicant. He stated the property is situated at 667 Main Street and is currently occupied by Hope Chapel. They are proposing to construct a 7,045 square foot addition off the rear of the building.

Mr. Branon stated the site as it exists today is essentially developed. He explained there is an existing church parking lot along the entire front of the property and two curb cuts onto Main Street. The property is paved right up to an abutting house and the back parking lot is paved up to the proposed building site. He stated that parts of the project will make the site more conforming. It was noted the site does not meet the greenspace requirements. Mr. Branon reported they will be eliminating one curb cut along Main Street, address drainage improvements and incorporating some low impact drainage solutions. Mr. Branon stated they will be constructing some rain gardens along the front and removing pavement against the existing building areas. In addition, they will be removing pavement along the proposed building, the southern boundary of the existing parking and pavement along the northwest boundary. He noted there will be a lot of relative features that will bring the property into compliance under the current development standards.

Mr. Branon referred to the 1998 ZBA decision and noted that they must maintain the existing grass buffer at the rear of the property "as is". He noted they are not proposing to expand the improvements in that direction and are trying to consolidate the improvements to the existing impacted area. Mr. Branon state they are going to be required to do some tree clearing along the back edge of the parking lot to address drainage improvement. They are proposing to construct a storm water management area that will capture essentially all of the runoff from the existing parking lot. In addition, they are proposing a drainage swale that parallels the southern boundary of the parking area to captures all runoff and routing it into the basin.

Mr. Branon asked the Board if they had any questions based on the plan.

Mr. Greenwald asked what the use is of the proposed structure. Mr. Branon replied they would be relocating the existing sanctuary to this new building. In addition, there will be a multipurpose room for weddings or youth group functions. Mr. Branon noted that all functions will be associated with church functions. Mr. Greenwald asked if there was a potential for a school. Mr. Branon replied he was unaware of any plans for a school.

Vice Chair Gorman asked if the proposed space will be leased out for functions. Mr. Branon replied that he is not aware this is a use the applicants are seeking. He noted the primary use will be for a sanctuary. Mr. Branon explained the room they currently hold their services in is small and the seating is tight. The proposed addition will provide a much better seating plan along with an elevated platform for services and speakers. Vice Chair Gorman asked how the existing sanctuary will be used. Mr. Branon replied the applicants have discussed using this as a children's sanctuary. Vice Chair Gorman asked what the building will be constructed of primarily. Mr. Branon replied they are proposing a metal building.

Ms. Taylor asked if the surrounding properties are mostly single family residential properties. Mr. Branon replied the majority of the properties southwest and north is single family residential homes. He noted there are one or two commercial businesses on the other side of Main Street. Ms. Taylor asked Mr. Branon to identify the residential streets on the map. Mr. Branon identified Leawood Avenue, Linwood Avenue and Edgewood Avenue. Ms. Taylor asked if there is adequate parking for the proposed expansion. Mr. Branon replied because of the previous uses on the property there was an expansive parking lot along the back and to the north of the site. He said the site does meet all parking requirements and they have addressed the parking components. Mr. Branon noted they are also removing parking in areas that exist within 15 feet of property lines.

Ms. Taylor referred to the apartment building to the north of the property and asked if there only access was through the Church's property. Mr. Brannon replied this is not their only access.

Ms. Taylor then referred to a photograph in packet of a storage trailer and dumpster. She asked Mr. Branon to indicate the location of these on the map. Mr. Branon explained this picture was taken in the southerly direction along the back corner of the building. He stated this whole area is where the addition would be constructed. He said in bringing the project into conformance, the dumpster location they are proposing is on the southern boundary and would be a fully enclosed dumpster.

Mr. Greenwald stated the reason why he asked if the use would be a school is that this facility normally just operates on Sunday's. Mr. Branon replied that most often churches offer services a couple times a week. Mr. Greenwald asked if this is what this church offers. Mr. Branon replied that he was unable to answer because he would not want to restrict this from being an option. Mr. Greenwald stated the reason he was asking if it was a school because there are buses, drop offs and other things of this nature. Mr. Branon noted that nothing of this nature has been presented to him.

Vice Chair Gorman asked City staff in the event they did want to use this addition for purpose of a school what zoning limitation would be in effect. Mr. Rogers replied the school would fall as an instructional use. However, he stated that it could also fall under a change of a non-conforming use even though it is in the same category going from a church to a school. In addition, he stated that it might be considered a change a nonconforming of use and be required to revisit Board at that time.

Mr. Welsh asked looking at Criteria #3 there is a mention of some assurance the enlargement and/or expansion does not violate any of the basic zone dimensional requirements set forth in the Zoning Ordinance. He stated that he presumes this is in regards to setbacks and building dimensions. He asked Mr. Branon to talk about dimensional required setbacks and how they may be impacted, if at all by the proposal. Mr. Branon replied the best way to address this is to explain what has brought before them here today. He stated they took part in a review meeting with City staff, went through the proposal and then submitted a formal site plan submission to the Community Development Office. City staff then reviewed the application in its entirety and they felt the only item they would need relief from is the expansion of a nonconforming use. He stated he believes they meet all of the dimensional criteria and the other 19 development standards that are reviewed. In addition, he stated the proposed addition does meet all setback requirements. As a part of the design process they have redesigned the site to address pedestrian traffic and vehicular circulation. Based on this design they believe they can improve vehicular and pedestrian traffic along Main Street as well as inside the site. Mr. Branon explained the improvements will be made by defining travel paths more clearly, providing landscaped areas in appropriate locations, adding walkways and adding handicap access in appropriate locations.

Mr. Brannon reviewed the criteria.

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

Mr. Branon stated approval of the proposed expansion of the existing church would have no negative impacts on the value of any property within the district nor would it be injurious, obnoxious or offensive to the neighborhood. This proposal would result in no changes to the neighborhood as the use already exists on-site. He stated they would be maintaining the vegetative buffer to the abutting property owners but do have to accommodate some storm water. He explained this was the reason for the tree cutting in that one area. Mr. Branon stated they believe they have put a design together that balances the criteria and is sensitive to neighboring properties.

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

Mr. Branon stated this proposal would not cause any nuisance or serious hazard to vehicles or pedestrians. The site improvements proposed will reduce the amount of existing impervious cover on-site therefore reducing the number of parking spaces and potential traffic over what presently exists. He stated the project also proposes to reduce the width of the existing curb cut to allow for better traffic flow and safety entering and exiting the site. The project also incorporates on-site pedestrian and vehicular traffic circulation improvements. Based on this

evaluation this project should have no adverse impacts on the traffic characteristics of the surrounding roadway network.

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

Mr. Branon stated the appropriate facilities for this project will be provided for the proper operation of the proposed use. The site is serviced by municipal sewer and water, propane gas and overhead utilities. He stated this project will require Planning Board review and approval and all necessary improvements to the property will be incorporated into the final design plans.

The site will maintain all existing utility connections.

With no further comment from Mr. Branon, Chair Stout welcomed public comment. He asked for those in favor of the application to come forward.

Dawn Yocum 108 Greenwood Avenue, Keene stated that her property abuts Hope Chapel. She stated that she is not sure where the petitioner is seeking to build an addition. She asked Mr. Branon to indicate on his map the grassy area that touches her property. She asked if these are trees they are considering cutting. Mr. Brannon indicated the existing tree line that surrounds the grassy area and explained the improvements are east of that area. He said they are imposing some tree cutting on the western edge primarily for storm water. Ms. Yocum asked where her house is in reference to this proposal. She reiterated that she does not understand the location of the addition and that she has vested interest. She stated that she is not against the application but wanted to be informed. Chair Stout explained the Board cannot conduct a meeting with personal interchanges of this nature and apologized. He asked if there was anything the Board could help answer. She replied that her question would refer to Criteria #1.

Mr. Branon noted that he would be happy to measure the distance out to Ms. Yocum's property after the hearing.

John Dunnell 30 and 34 Lynwood Avenue, Keene commented on the fact that there does not appear to be any representation of the proposed building. He noted it is important as far as any impact to neighbors from this proposal. Chair Stout explained to Mr. Branon that this application will also go before the Planning Board and the Planning Board will likely be the better venue for that specific question. Mr. Dunnell stated the size and scope of the project would have impact on the neighbors. Ms. Taylor added the size of the building directly bears on what is an appropriate expansion for a nonconforming use. Vice Chair Gorman stated in summary the Board will address impact in regards to size but will not address aesthetic impact. He noted that is for the Planning Board to consider. Vice Chair Gorman stated the Board will look at impact based on size and scope of project.

Mr. Dunnell asked about the lighting for this project since he is an abutting neighbor. Chair Stout noted that lighting is one of the 19 Standards before the Planning Board.

Mr. Dunnell then stated that in reviewing the petitioner's website and earlier discussion at this meeting, Hope Chapel talks about the addition of a gymnasium for the youth group. He stated that in his mind when there is currently no gymnasium it would be considered a change of use for that structure.

Mr. Dunnell noted the nuisances associated with any public construction with a nonconforming use in a Low Density Zone. He said in the Low Density Zone people usually do not have to deal with dumpsters being picked up, car noises and door lock beepers. He noted these are all considered to be nuisance items. In addition, he stated that more and more people assembled in a particular area and children playing in the buffer zone are also nuisance items.

Mr. Dunnell reported that Hope Chapel's website mentioned Christian bands would be coming to the church. He noted this was a noise consideration.

Mr. Dunnell then asked if he could approach the map displayed by Mr. Branon. With no objection, Mr. Dunnell stated the northwest corner of their proposal indicates they would be adding parking spaces highlighted in the gray area. Mr. Dunnell stated in that whole area there is a living hedge that was put in 1971 to protect properties from visual sounds. He noted they are proposing cutting this and this would be cutting existing living hedge. He noted this hedge was attached to their deed and is a document that has some substance.

Mr. Dunnell then proceeded to read Chapter 2 from the Board Handbook and read RSA 674:19 as follows, *"Does the challenged activity have a substantially different impact on the may not render the property proportionally less adequate. Because nonconforming uses violate the spirit of zoning laws, any enlargement or extension must be carefully limited to promote the purpose of reducing them to conformity as quickly as possible"*.

Mr. Dunnell continued quoting a case from NH Supreme Court as follows, *"The ultimate purpose of zoning regulations contemplates that nonconforming uses should be reduced to conformity as completely and rapidly as possible."* New London Land Use Assoc. v. New London Zoning Board.

Mr. Dunnell explained that does not in itself lend to a situation as such where there is a 7,000 square foot existing building, with a proposal to add on a 7,000 square foot building behind it.

Lila Sinclair 24 Lynwood Avenue, Keene stated her property was located next to the Dunnell properties. Speaking to Criteria #1; she was concerned about the uses of the property. She stated that Hope Chapel has frequently used the parking lot to let homeless stay in RV's and trucks with animals and ducks. She noted they use the corner of their property that abuts her property. Chair Stout asked Ms. Sinclair to indicate the location of her property on the map. She approached the map and indicated the location of her property as well as the Dunnell's properties.

She noted the representations on the map are not to scale.

Ms. Sinclair stated in one corner of the property there was a whole summer where a homeless person stayed with his ducks in the church's parking lot. She reported this person was eventually plugging his coffee pot into her home and leaving his coffee pot in her yard. Ms. Sinclair asked what could potentially happen if Hope Chapel is permitted to double in size. She stated losing some of the privacy shield as well as the expansion of their building is a concern. Ms. Sinclair also reported that Hope Chapel let a trucker stay in the parking lot and the noise and lighting of the truck was a nuisance. In addition, she stated the applicant also allowed someone to sell vegetables in the front of building. Ms. Sinclair questions how they are actually going to use this extra space.

Ms. Sinclair stated that Hope Chapel could have been neighborly and sent a packet to the abutting neighbors explaining their intentions. She added that taking out privacy buffers and adding a metal building that is not aesthetically pleasing and is not neighborly. Another concern Ms. Sinclair emphasized is what will happen to her property value if the application is approved. She noted that Mr. Branon's map is not true to scale because of how tightly all of the homes are located in that neighborhood. She explained that most of the yards in that neighborhood are very small and most people sit in their front yards. Ms. Sinclair also wanted to note to the Board that just this past weekend in the field, there was an RV parked on the property for some sort of revival activity.

Ms. Sinclair concluded that the applicant has not been transparent about their activities as well as their own representation of the property.

James Frederickson, 675 Main Street, Keene stated that his property abuts the petitioner's property on the south side. He asked for the height of the proposed addition. Chair Stout replied that will be discussed.

Jane Frederickson, 675 Main Street, Keene stated that she was not here to necessarily oppose the building plan but was seeking clarity. She said they need to be sure that the buffer of trees and bushes will still be there when the project is done. Ms. Frederickson asked how they would get that reassurance. Chair Stout responded the Board will address this question. In addition, she said it seems to her that building this large structure and doubling the size makes the property more less confirming to the Low Density Zone.

John Dunnell, 30 Lynwood Avenue, Keene stated he is a contractor and that the impact of the project is substantial to the neighbors. He indicated the location of his property on Mr. Branon's map and noted the map is not to scale. Mr. Dunnell stated that the map does not show where the houses are truly located. He noted the three homes that directly abut the property will be demolished with runoff and also be hit with huge snow storage. Mr. Dunnell stated these homes were built before setbacks were put into place and homes are really less than 10 feet from the property line. He said the massive amount of water will change the yards of these homes. Chair Stout stated that if this application gets through, the Planning Board may have one stipulation that there is no extra water allowed. Mr. Dunnell stated the proposal is absurd and is a major concern.

He noted improvements to the parking lot are great. He said if this was a much smaller addition people would agree with the proposal. Mr. Dunnell concluded that he likes building improvements but for a nonconforming use this is a ridiculous structure for a conforming use.

Ron Hitchings 14 Leawood Avenue, Keene stated that he was also an abutting neighbor. He emphasized the massiveness of the water flow that is in his yard. Currently, all the water in the back parking lot comes over the line and across his lawn. Then the water goes back into the culvert on the back part of his land and runs into Ms. Sinclair's back yard as a pond. He reiterated there is a huge runoff concern.

With no further comment, Chair Stout acknowledged Mr. Branon.

Mr. Branon stated the plan he presented is absolutely to scale. He noted the homes in some areas are certainly close in others areas and are not located within the required distance to locate to meet submission requirements. He asked the Board if he could be afforded the time to respond to the abutter concerns. With no objection, Mr. Branon continued.

Mr. Branon stated they are reducing the impervious cover onsite. He explained with no drainage improvements there would be an improvement to storm water runoff. They are reducing the existing coverage on this site. Mr. Branon stated they are proposing infiltration and rain gardens along the front of property. In addition, they are proposing a swale on the southern part of the property. This will capture runoff from the rear pavement runoff and bring it to the storm water management area. Mr. Branon stated the roof runoff from the structure will be routed to the storm water management system. In addition, they are replacing the leaching basins in the parking lot. Mr. Branon stated that not only is there a reduction in impervious cover as well as a reduction in runoff, there will be even more reduction in runoff because they are implementing storm water practices to meet current City standards. He said the issue is that some of these storm water improvements do require cutting some form of the vegetation.

Vice Chair Gorman asked if some of the parking spots could be surrendered in lieu of the buffer being an issue. He stated that it seems they could excavate some of the parking area and hold storm water in that area. Mr. Branon replied they are proposing that in areas. He explained they are meeting the City parking requirements and do not have extra spaces available.

Mr. Branon stated as related to storm water this project will most certainly address those concerns. He noted as it relates to buffering they meet all of the dimensional setback requirements and are increasing the buffering because they are removing pavement that exists on the southern boundary. Chair Stout stated in reference to removing the pavement he asked what will be in place. Mr. Branon replied loam and seed at this time.

Mr. Branon said they are not proposing any tree cutting to the closest neighbors. He indicated that the first property on the corner is 140 feet from back from the edge of parking lot. Mr. Branon said size of the building proposed is a function of a growing church. He referred to the concern raised about a gymnasium and the proposed basketball hoop. Mr. Branon

emphasized this concept is not uncommon for these type of facilities. He stated the idea is to keep the children active and bring them into the church.

Mr. Branon said the lighting plan would be submitted to the Planning Board and that there would be no light pollution.

Mr. Branon stated this was an existing parking lot and that they are working within the existing footprint of the parking lot. He referred to the map and noted the hatched area on the map is proposed pavement. Mr. Branon explained the reason for the pavement is to make this area function in order to maintain the parking. Chair Stout asked if the hedge would need to be removed. Mr. Branon replied there is a partial hedge they are proposing to remove. He stated the Church could work on placing some form of hedge on the back side of the parking spaces.

Mr. Branon said he does not want to lose sight they are proposing to repurpose and construct a building inside an existing parking area. He noted this addition is standard size for a sanctuary hall because the idea is to fan the seats around the stage. He noted the idea is to increase the numbers in the church.

Chair Stout asked for the height of the proposed addition. Mr. Branon replied 33 feet to the peak and that it is a single story building.

Vice Chair Gorman asked if this is an allowable height in that zone. Mr. Branon replied in the affirmative.

Ms. Taylor asked what the height is of the existing building. Mr. Branon responded 20 feet approximately.

Chair Stout welcomed new questions or comments from the public.

John Dunnell, 30 Lynwood Avenue, Keene stated the buffer zone sounds immature and was put in 1971. He said this was a 20 foot tall tree structure and is the length of the parking lot. Mr. Dunnell stated that he wanted it to be known this buffer would be gone and was something that could not be put back. Mr. Dunnell noted that the buffer consisted of honey suckle bushes.

John Holbrook, 11 Leawood, Keene stated that he lives directly behind the proposed building. Mr. Holbrook stated that Mr. Branon keeps referring to the tree line. Mr. Holbrook stated that this tree line is sort of a joke because they are sumac trees. He noted that all these trees do is intertwine and kill everything and he needed to take these trees out. Currently, Mr. Holbrook has a great big hole in that area of his property. Mr. Holbrook stated now there is a proposal to put up a 33 foot structure that will be in his line of sight. He stated he would appreciate putting trees in this area as a buffer.

Gerri Frederickson 675 Main Street, Keene stated they are only people that have a tree line and their tree line goes across the existing building. She said that Mr. Branon says they do not plan cutting down trees but she understand there are trees in this area on her property. Ms.

Frederickson stated that she would like to know if Hope Chapel thinks they own that buffer. Vice Chair Gorman added that Mr. Branon stated there would be no tree cutting on her side of the property.

Chair Stout invited Mr. Branon back to address Ms. Frederickson's question.

Mr. Branon reiterated they are not proposing cutting trees any trees in the location of Ms. Frederickson's property. He stated he implied they are removing pavement behind the building and reestablishing vegetation. He said there will be no trees clearing in the southern edge and are working with impacted area.

Vice Chair Gorman asked if it was accurate the rear tree buffer that would be removed, distance being 100 feet, is a wide open field. Mr. Brannon replied in the affirmative. He added they will work with the closest abutter if there was some hedging they felt would be a good fit.

With no further comment, Chair Stout closed the public hearing. The Board began deliberations.

Ms. Taylor stated she has some concern because the three criteria do not reflect the required criteria, which is more established by case law verses statutes. She referenced *New London Land Use Assn. v. New London ZBA, 130 N.H. 510 (1988)* it was the challenge activity has a substantially different impact on the neighborhood. She stated what concerns her are the criteria of whether it is an enlargement or expansion for a nonconforming use. Ms. Taylor read as follows, "*However, enlargement or expansion may not be substantial and may not render premises or property proportionally less adequate.*"

Chair Stout stated the Board was looking at the enlargement of nonconforming uses as listed in Section 102-210 of the Zoning Code. Chair Stout read as follows "A *nonconforming use may be expanded and enlarged, provided such enlargement and expansion does not violate any of the basic zone dimensional requirements set forth in this chapter. Such expansion must receive permission from the zoning board of adjustment, which must find that the expansion will meet the following conditions:*

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

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

(3) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Chair Stout stated those are the criteria stated. Ms. Taylor stated that was correct but City Code is still subservient to state statutes and case law. She stated her point is to consider the standard the state has set and is something to keep in the back of the Board's mind. Chair Stout asked if Ms. Taylor if she would care to rephrase the criteria in terms of criteria the Board could take. Vice Chair Gorman stated the word "substantial" is relative and does not know if there is a finite

definition that could incorporate this to the discussion. Vice Chair Gorman suggested the Board go through criteria and see where that leads. The Board agreed.

The Board reviewed the criteria.

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

Mr. Greenwald stated as a real estate agent, the things that he saw during the presentation are not selling features. He noted the sketch of the proposed building. Mr. Greenwald stated it will devalue the abutting properties. In addition, he stated that he would not go as far to say that it is obnoxious but that it was certainly breathtaking to see the magnitude of the substantial increase in size. He stated that it will have a negative effect to surrounding properties.

Vice Chair Gorman stated that it is important the Board does not lose sight with some of things the Board is charged with addressing. He stated some of things are not in the purview of the Board such as runoff, aesthetic and building height. Vice Chair Gorman noted these are to be addressed by the Planning Board or City Code. Though he did stated there are concerns on the removing of buffers, doubling of size on the proposed nonconforming use, and the question of what the use will be and the distribution to the neighbors would almost definitely weigh on the property values.

Mr. Welsh stated the idea that it would have no impact on the property value to the district is hard to imagine. He stated “substantial” being a case law citation term does occur in the doubling of size the elevations. Mr. Welsh stated this is a tough case to make that the expansion will satisfy these criteria. He stated that he is not sure that case has been made.

Ms. Taylor stated that she largely in agreement of what has been said. She stated that from what she has seen during this presentation is the virtual doubling of the size and the ability to use this non-conforming use does qualify as substantial. She said the types of activities are not necessarily bad activities but they will result in a much enlarged and expanded use. Ms. Taylor stated that she thinks this will have a negative impact on the neighborhood. She noted not just value but also levels of nuisance and enjoyment of properties. Ms. Taylor stated that she find this as very problematic.

Chair Stout stated the Board has heard a lot of comments on both sides and that the Board has tried hard to afford everyone the time to express their opinion. He stated he hopes that is how everyone feels.

Mr. Greenwald referred to Mr. Dunnell’s comments about expanding a nonconforming use and what should happen is to move toward conforming as rapidly as possible, if possible. Mr. Greenwald noted this proposal is the complete opposite.

Chair Stout stated there are aspects that are more conforming aesthetically. He stated there is a major improvement to the aesthetics as to what exists today. He noted not so much that it would overrule the negative connotations.

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

Vice Chair Gorman stated that does not believe this will be impacted to any degree. He said they are creating a better curb set situation. He noted Route 12 is a heavily traveled street and does not think in this particular question there is impact in terms of causing hazard.

Ms. Taylor stated there was no information presented in that point is what happens to improvement to city sidewalks that exists along Route 12. She stated that she would agree this does not factor in overall.

Mr. Welsh stated that he sees a bit of improvement and a more logical way of parking. He stated the flow will be improved with more logical parking spaces.

Mr. Greenwald does not know what will be done with the multipurpose building. He stated when he asked earlier if this could be a school, he noted that schools have commutes. Mr. Greenwald explained that having a school would add more vehicles which in return would mean there would be more vehicles entering and exiting. He stated that by adding a school, wedding receptions or other functions he cannot see this being better and feels this has the potential to be more dangerous.

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

Vice Chair Gorman state this property has City water utility connections that will be mandated by City Code and does not see any issues.

Ms. Taylor stated she is not sure other than basic utilities the Board has adequate information to determine what other services may be required. She noted this is because the Board does not have all of the details of the different uses, especially if they permit campers onsite.

Chair Stout stated what the Board has heard tonight is that the Church allows certain activities that may be all noble and well-conceived but also may affect the neighborhood in adversarial ways. He stated that he does not think the Board should suggest the applicant did not bring adequate information.

Vice Chair Gorman stated that in reference to criteria #3 there are adequate facilities present currently as are the roads but the fact that the church has broken Zoning Code by allowing people to take up camp on their property is not what the Board needs to concentrate on. The property does have adequate facilities.

With no further comment, Chair Stout asked for a motion.

Ms. Taylor made a motion to approve ZBA 18-19 an enlargement of a nonconforming use to include there are maintained vegetative buffers between this property and all surrounding residential properties. Chair Stout seconded the motion.

Ms. Taylor explained the reason she suggested the addition of the condition to add vegetative buffers to the motion is that even though there are vegetative buffers that do exist, it sounds that some are contemplative and may be removed or lessened. She stated in her opinion it would be more appropriate because these are such dissimilar uses if some protection is afforded to the surrounding residential properties.

The Board reviewed the Findings of Fact.

1. *Such approval would not reduce the value of any property within the district, no otherwise be injurious, obnoxious or offensive to the neighborhood.* 0-5
2. *There will be no nuisance or serious hazard to vehicles or pedestrians.* 2-3, Vice Chair Gorman and Mr. Welch voted in the affirmative.
3. *Adequate and appropriate facilities (i.e., water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.* 4-1 Ms. Taylor voted in opposition

On a vote of 0-5, the Zoning Board of Adjustment denied the motion to approve ZBA 18-19 an enlargement of a nonconforming use to include there are maintained vegetative buffers between this property and all surrounding residential properties ZBA 18-19.

Vice Chair Gorman made a motion to deny ZBA 18-19. The motion was seconded by Mr. Greenwald.

On a vote of 5-0, the Zoning Board of Adjustment denied ZBA 18-19.

V. New Business:

Mr. Rogers stated the Board has expressed an interest in taking a look at what is included in the Board's packets. He thought this would be an opportunity to gather feedback from the Board. Mr. Rogers stated they are taking a look at the GIS mapping services and what layers could be added to help better illustrate the maps.

Chair Stout stated that his understanding is that the type of information brought forward from the City could have implications and demonstrate favoritism. Mr. Rogers stated that he is hesitant for City staff to do a lot of research on certain areas. He stated that he feels the burden falls to applicant. Chair Stout referred to the standard of the Planning Board on to vote whether or not

the application is complete. Mr. Rogers stated that he will confirm with City Attorney and report back to the Board.

Chair Stout urged the Board to read through applications right away in case of a conflict of interest. He explained it would help City staff find an alternate in a prompt manner.

Ms. Taylor stated that it would helpful to have prior information about Board activity for a property such as a prior Variance. Mr. Rogers stated that he will confirm with the City Attorney if this is possible and report back to the Board. Ms. Taylor stated that she appreciates having relative correspondence available on an application.

Ms. Taylor stated that she would like to see the abutters list in order to help identify potential conflicts. Mr. Rogers stated abutter lists would now be included in the packet.

Mr. Welch asked if the entire packet is available online for abutters to access. Mr. Rogers's replied the packets are a part of the agenda and available online. Mr. Welch asked if the abutter notice is clear so that if abutters have questions they are able to access the packet online. He suggested language be added to the notices to inform abutters where additional information can be found. Mr. Rogers replied the notice of hearing includes the date and time of the meeting, petition and the Variance that is being requested.

Mr. Rogers stated this suggestion is a great idea and that language will be added to the abutter notices.

Vice Chair Gorman stated that he was happy with packets and commended the work of City staff.

VII. Adjournment

Hearing no further business, Chair Stout adjourned the meeting at 9:17 PM.

Respectfully submitted by,
Jennifer Clark, Minute Taker