

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Tuesday, September 22, 2020

6:30 PM

Council Chambers/Zoom

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk
Mari Brunner, Planner

Members Not Present:

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

I. Introduction of Board Members

Chair Gorman called the meeting to order at 6:38 PM. Roll call was conducted.

II. Minutes of Previous Meeting – September 8, 2020

Mr. Hoppock made a motion to approve the meeting minutes of September 8, 2020. Ms. Taylor seconded the motion, which passed by unanimous vote.

Mr. Rogers stated that that Mr. Gaudio is not a voting member tonight.

III. Unfinished Business

None.

IV. Hearings

a. **ZBA 20-11:/ Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester St., Keene, requests a Variance for property located at 122 & 124 Water St., Tax Map #585-027-000 & 585-028-000; that is in the Business Growth and Re-Use District. The Petitioner requests a Variance to permit a homeless shelter (lodging house) and resource center in the BGR District where a homeless shelter and resource center are not listed as permitted uses per Section 102-771.1 of the Zoning Ordinance.**

Chair Gorman opened ZBA 20-11. Mr. Greenwald stated that he needs to recuse himself due to a conflict of interest. Chair Gorman replied that they will be asking Mr. Gaudio to sit in on this hearing as a voting member in place of Mr. Greenwald. He continued that alternate member Ms. Zerba will participate in the discussion but not vote. He asked Mr. Rogers to speak.

John Rogers, Zoning Administrator stated that this property is currently being used as an auto repair garage, which is allowed here in the Business Growth and Reuse (BGR) District. He continued that the applicant is asking for a Variance for a non-permitted use in this district. The BGR District is relatively new, from 2017, and the intent as stated in the Zoning Code is “to create an additional downtown district to enhance the economic vitality of the area by redevelopment with new technology companies, as well as clean manufacturing, processing, assembly, and wholesale businesses within walkable, human-scale place.” This property is on the very northern edge of this district. This is the only piece of property on the north side of Water St. and the zone carries on down toward Marlboro St. The Kingsbury properties are a big chunk of this and older, more industrial lands. He showed the two parcels on the screen are that are being used as the auto repair facility. He continued that just south of that is the rest of this district. Abutting this district to the north is the Central Business District (CB) and directly across from Water St. is the Residential Preservation District (RP). There is one sliver of Industrial Zone left to the northeast to this property. Just above that is the Central Business Limited (CBL) District. The property in question is a peninsula of the BGR district.

Mr. Hoppock asked for history or background for why this peninsula sticks out like this. Mr. Rogers replied that he believes at the time of the rezoning, the owner requested these properties be included in the BGR since the list of permitted uses was far wider in range than the previous Industrial District, some by right others by Special Exception.. In 2017 when the City was re-doing these areas and developing different districts in the Marlboro St. area, the property owner requested to be part of the BGR District.

Mr. Hoppock stated that according to the materials, this is going forward as a lodging house. He continued that this may be a question for the applicant but he would rather get an answer directly from Mr. Rogers if possible. A lodging house is defined as “Any dwelling for more than four unrelated persons which lets sleeping accommodations on a transient or permanent basis.” He asked, if there is no rental aspect contemplated here. Mr. Rogers replied no and asked for a moment so he could verify the definition. He thinks the word “lets” has been removed. Mr.

Hoppock replied that it is not removed in his copy. Mr. Rogers looked and replied that he does see it. He continued that there would be no rental as part of this. Mr. Hoppock asked why it would not be a “group home,” defined on page 21 of the Zoning Code. Mr. Rogers replied that the Zoning Administrator at the time that Hundred Nights started characterized it as a Lodging House and that is what they are categorized as on Lamson St. Mr. Hoppock asked if he means that the nomenclature carried over. Mr. Rogers replied yes.

Chair Gorman stated that the Board received notice that the toll free numbers are not working tonight. He listed a different phone number members of the public can call to listen in and/or participate.

Mr. Welsh stated that when this property was zoned prior, it was Industrial. He asked Mr. Rogers if a lodging house is a permitted use in an Industrial Zone. Mr. Rogers replied no, the lodging house is a permitted use within the High Density District (HD), with a special exception, and CBL, by right. Mr. Welsh stated that he noted the possibility of a rezoning to the BGR District where the applicant asserts that a homeless shelter is a permissible use. Is that because the words “homeless shelter” have been inserted into the new Zoning Code, or is it because a lodging house will be a permitted use? Mr. Rogers replied that the current land use re-write is in the draft form and still has to go through the whole process with public workshops and public meetings and the City Council, so he/staff has ultimately no idea where this might end up if the land use re-write gets adopted at all. Part of the reason for the re-write is to take care of some of these issues and situations such as this, where a “homeless shelter” is not really defined. Previous Zoning Administrators have tried to find a place to put it.

Chair Gorman asked about the RP District. Mr. Rogers stated that across from Water St. is the RP District, which is mostly single-family homes, and some duplexes and rental units. Further down the street, right across Community Way, is the workforce housing project that went on, and a block or two further is the HD District. Some residential neighborhoods are on both sides of this property.

Chair Gorman asked if there were any other questions for City staff. Hearing none, he opened the public hearing. He shared instructions and guidelines relative to public comment for this Variance request. He stated that the Board has received over 100 letters and those have been read and filed into the record. Tonight they would like to hear comments from people who have not already submitted letters.

Mr. Rogers stated that Community Development Department Director Rhett Lamb was a large part of the rezoning of the area so he might have a better background of why that property was pulled into the BGR. Mr. Lamb stated that to clarify the answer to Mr. Hoppock’s question about the origin of the BGR district: he agrees with Mr. Rogers’ answer and wants to add that there were two parts that were changed when that property came into the district to be added to the BGR. One was the zoning map change. Second was the amendment to the text of the new BGR District to allow auto repair uses to continue. Initially it was not a use contemplated for the

BGR, and in the process of rezoning and adding the property on Water St. they also amended the language to allow those uses to continue. He does not recall if it was by special exception or by right.

Chair Gorman asked Jim Phippard of Brickstone Land Use Consultants, representing Hundred Nights, to speak. Mr. Phippard stated that present with him is Mindy Cambiar, the Director of Hundred Nights, and Jan Peterson, President of the Board of Directors for Hundred Nights. He asked Ms. Cambiar to give a statement to share the background.

Mindy Cambiar, of 447 Park Ave., stated that she has been the Executive Director of Hundred Nights in Keene since 2013. She read the following statement:

“Hundred Nights was founded in 2010 in response to an existing need in the local community: individuals and families were being left out in the cold when local emergency shelters reached capacity or individuals were deemed ineligible for services. Hundred Nights’ vision is that every individual in the Cheshire County area will have access to appropriate, stable housing so they can live safe, productive, and satisfying lives and be respected members of their community. In other words, our vision is for our organization to one day become obsolete because our community does a better job of working together to address complex issues that affect the community at large. Until then, Hundred Nights will continue its mission of providing temporary shelter and crisis-related services to those experiencing or at risk of homelessness. Hundred Nights has been planning for a larger, more appropriate facility to not only consolidate services in one location, under one roof, but to offer a solution to a growing need, that need being an increase in the number of families experiencing homelessness and requiring shelter throughout the year. Between 2016 and 2019, Hundred Nights recorded a 280% increase in homeless families using its services -- from 5 families with 7 children in 2016 to 14 families with 26 children in 2019. This past winter, Hundred Nights had as many as 16 children under the age of 18 in the shelter at one time. The facility that Hundred Nights leases at 17 Lamson Street has a capacity of 24 shelter beds, plus two staff beds. Sixteen of those were taken by children.

The two petitions before you are part of a larger short-term strategy to mitigate the community spread of the novel coronavirus and keep clients safe during the pandemic. The physical separation required to keep residents safe and to avoid the spread of the coronavirus has resulted in a loss of beds previously provided by the United Church of Christ and St. James Church in Keene. Hundred Nights has not been successful in identifying apartments or alternative space to rent other than 15 King Court to meet the anticipated demand for shelter this coming winter. Our grateful thanks go out to the owner of 15 King Ct., Raette Trombly, for her kind offer to work with Hundred Nights and those experiencing homelessness. Apartments were already difficult to rent prior to the pandemic -- Cheshire County recording a vacancy rate of less than 1% in 2019 compared to a normal market of 4-5% vacancy.

One of the petitions, 122-124 Water Street, is also the proposed future site of Hundred Nights emergency shelter and resource center, a facility that will be designed to accommodate families in private rooms and better serve those with disabilities, provide the community with public restrooms including shower facilities, and outdoor grounds and a larger resource center space

to give clients a place to go during the day. The temporary COVID-19 decompression plan and new facility do not seek to increase the current number of shelter beds operated by Hundred Nights, which, as of this past winter, totals 48 shelter-beds including the Lamson St. facility and the UCC and St. James overflow locations.

In closing I would like to quote Ruth Bader Ginsburg, 'If you want to be a professional, you will do something outside yourself. Something that repairs tears in your community. Something to make life a little better for people less fortunate than you. That's what I think a meaningful life is – living not for oneself, but for one's community.' I would add – the entire community."

Mr. Phippard referred to a map of the properties and stated that these two are owned by Green Diamond Group LLC, currently the site where the auto repair business is located. He continued that the property shaded in yellow is 0.33 acres and the one to the right in white is 0.29 acres. If Hundred Nights receives approval and purchases the property, they want to merge the two into one property. The underlying zone is the BGR District, which is relatively new. Back when this discussion started about rezoning the industrial area, the owner, Tom Stevens, wanted to be rezoned to the CB, which is what surrounded him on three sides. Auto repair was not permitted in the CB and the City was uncomfortable bringing that in as a non-conforming use. He then wanted to be in the CBL but staff did not do that, so auto repair use was included in the BGR District. Today those three buildings you see are existing on the property. The one on the left is about 2000 square feet. The smaller one on the right is a storage building. Behind that is a larger, oddly-configured building, also a storage building. If Hundred Nights acquires this property they would most likely tear down the oddly-shaped one and may or may not keep and renovate the other two for uses associated with Hundred Nights.

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

Mr. Phippard stated that Hundred Nights is getting into a situation that could become an emergency with the inability to provide the necessary beds. This property in particular is a large enough site. They think it is in the correct location, to offer a safe location for the Hundred Nights shelter. They think the property is large enough to accommodate a two-story building, which would fit in with the Zoning requirements. Hundred Nights could provide not only the sleeping quarters but also the resource center on the same property. That is important for Hundred Nights. Rather than being spread out in three different locations, with staff and volunteers, they would be together in one location in a larger building, with not a larger number of beds, but a larger resource center, and an outdoor area for seating and small gathering places, to give residents a place to be instead of forcing them out onto the street. Which is the situation they are in today on Lamson St. The additional space is important to better organize this facility and allow a clearer, more well-defined operation, and it will be much safer for all parties. They believe that because this will greatly improve the ability to provide for the needs of homeless people in one location, it is in the public interest to grant a Variance for this address.

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

Mr. Phippard stated that the spirit of all Zoning ordinances is to protect the health, safety, and general welfare of the public. He continued that it is easy to recognize that for the most vulnerable population in our community, this type of facility is necessary, to protect their health and safety and improve their general welfare. Being in a facility that offers a larger, better-operated resource center will give these individuals help to find their way back into a productive life in our community. Many homeless people have used this facility and they are not all mentally ill or addicted. Many have lost their jobs and are just economically not able to get back on their feet. The resource center and programs that can be available to them can dramatically reduce the likelihood of homelessness happening in the future. This can help to meet that need and does meet that portion of the spirit of the ordinance.

He continued that secondly, the intent of the BGR District is, in part, to encourage the redevelopment of properties near the urban core, using the existing infrastructure, buildings, and services, as well as access to public trails like the Cheshire Rail Trail (CRT). A portion of the intent statement for this zone talks about encouraging high tech jobs to improve economic development activity and new technology companies, but that is only a portion of that intent statement. The other portion focuses on reuse, and that is where Hundred Nights fits in. The intent statement, under Division 22 of the Zoning Ordinance, gives 13 intentions identified under the BGR District as the proper direction for development and redevelopment of these properties, especially with new buildings being constructed. Hundred Nights feels they can meet this intent.

Mr. Phippard went through the 13 intentions:

1) To create conditions suitable to co-exist adjacent to residential neighborhoods.

He stated that as seen on the map, the auto service business is located right at the corner. Extending along Community Way, behind that building, is a 6-foot high, solid fence that extends the length of the property (with the exception of one curb cut opening) then turns the corner and at the rear of the property it turns to chain link fencing that winds around to the easterly side of the property. The area located to the rear is forested. He showed an aerial photograph. He continued that there is a green area of thickly grown trees and shrubs, which buffers this property and provides effective screening between this and the CRT. The 6-foot high solid fencing along Community Way and vegetation and chain-link fencing in the rear and on the east side, all the way back to the small building that exists next to Water St., provide sufficient buffering from the adjacent residential use across Community Way and the other uses on the railroad property to the rear. The buildings themselves also provide a visual buffer from Water St.

2) Create conditions which support that of a high quality, walkable community.

He stated that the CRT is open to the public at the rear of the north side of the property. There is a public sidewalk that runs the length of Community Way all the way up to the Monadnock Food Coop and back to Main St. Both sides of Water St. have public sidewalks. This location is supported by the Friendly Bus and City Express.

- 3) Create a sense of place through enhancing public access, providing landscape amenities, ensuring proper lighting, and promoting an aesthetically-pleasing streetscape.**

Mr. Phippard stated that if granted the Variance, after purposing and merging the properties Hundred Nights proposes constructing a new, 2-story building, probably to the rear of the existing auto service building, unless that building ends up getting torn down. They have different versions, where they are saving that building and repurposing it as the resource center, or removing it in order to fit this building in. They envision a 2-story building with architecture compatible with buildings across Community Way, with new lighting and new landscaping, including trees along this property. They think it would be an aesthetically-pleasing streetscape.

- 4) Connect uses and buildings while prioritizing pedestrian and bicycle access separate from vehicular access.**

Mr. Phippard stated that they would be maintaining vehicular access from Water St. with a one-way in, and a one-way exit out to Community Way. They do not anticipate a lot of traffic; it will mostly be staff and volunteers. Most of the residents do not have cars. They do not see a big need for adding parking spaces. They are very close in proximity to public sidewalks and the bicycle path.

- 5) Utilize the construction of new and adaptive re-use of existing buildings as opportunities to create “outdoor rooms,” a critical element of “place making”; aiming for ratios of building facades to roadway widths from 1:2 to 3:2.**

Mr. Phippard stated that this ratio they are talking about is the height of the building compared to the width of the street it fronts on. The two-story building would fit those ratios. It would accommodate the type of design feature this paragraph is recommending.

- 6) Recognize the role of large street trees, which plays an important role in creating a pedestrian scale. Pedestrian comfort being another critical element to the vitality of these new places being created.**

Mr. Phippard stated that there are existing street trees on Community Way on the east side of the road. He continued that they would propose to add to those trees to further enhance the appearance of landscaping and shading along that area. They would also be adding trees within the site area, especially in the courtyard area where they want to encourage residents to sit and be comfortable and be in the shade in the warmer months.

- 7) Reduce the impacts of parking through its placement behind or alongside buildings.**

Mr. Phippard stated that Hundred Nights would maintain that pattern. There are about 30 parking spaces today and that is more than is needed by the homeless shelter so they would reduce that. Primarily they would be located on the easterly side of the site.

8) Provide open space and landscaping to create small, public spaces for social interaction, enhancing the visual appearance and appeal of the individual properties along Marlboro St. and into the connecting streets and neighborhoods.

Mr. Phippard stated that this is several hundred feet away from Marlboro St. but it is a connecting street. He continued that Hundred Nights thinks they will do a good job enhancing the appearance. They want a courtyard area with outdoor seating, an outside garden area, and more landscaping, which is something they cannot do today in the downtown location; the building on Lamson St. is right up to the sidewalk. When they own a facility like this they can add features like that which will encourage guests to remain on the property rather than looking for a place to go downtown. The resource center is very small on Lamson St. This property would give the ability to enlarge the resource center, which means increasing the programs.

9) Provide trails for pedestrians and bicyclists to be sure Keene's walkable and pedestrian-friendly environment is extended along Marlboro St. and into the connecting streets and neighborhoods.

Mr. Phippard stated that Hundred Nights will be taking advantage of the public sidewalks here and the access to the rail trail. They are maintaining this pedestrian link.

10) Provide pedestrian amenities such as kiosks, stands, street furniture, drinking fountains, trash and recycling receptacles.

Mr. Phippard stated that on the site they will provide trash and recycling receptacles and encourage the use of those. They would not be providing public trails through the property, however, but they are nearby through the public sidewalks and the CRT.

Mr. Rogers stated that just to be clear, Community Way is a private road. He continued that in any of these improvements or activities would have to receive permission of the property owner that owns Community Way. Mr. Phippard stated that he understands it is a private road, but the sidewalk is open to the public for use through that area, as well as travel along Community Way and access to the CRT over that property.

11) Enhance the visual appearance of the individual properties, Marlboro St., and connecting streets.

Mr. Phippard stated that Hundred Nights thinks by redeveloping the property and constructing a new building using similar architectural features that will be compatible with the residential facility across Community Way, that will help enhance the visual appearance of this area, and

they think that is a positive step forward. Right now there is a large parking area partially visible at the back of the site. That will be greatly reduced in size and screened by the fencing, most of which will remain, and the new building they are proposing.

12) Provide the location-sensitive transition between neighborhoods and uses along Marlboro St.

Mr. Phippard stated that that again, this site is not located along on Marlboro St., but they think it is a transition site between Water St. and the downtown CB District. The property is surrounded by the CB but this remains in the BGR District. By building a residential building as they are proposing, and maintaining the fencing and screening, they think it creates a very effective transition from the downtown area through partially residential and commercial area to the Water St. area.

13) Provide shade and public spaces for social interaction.

Mr. Phippard stated that Hundred Nights is proposing to do that on the site with the courtyard area and garden area, and they will be providing shade trees and benches for residents and visitors.

He continued that if you look at all of these design requirements that are recommended under the intent statement of the BGR District, Hundred Nights will do a very good job of meeting exactly the intent as described. If it becomes a different zone in the future, they think it will still be a site that can enhance the neighborhood and be a safe, positive contribution to the community.

3. Granting the Variance would do substantial justice because:

Mr. Phippard stated that the owner of the property needs to sell his now-vacant building, since he found it too difficult to operate under the COVID-19 requirements and conditions, and vacant buildings are not good for anyone, especially for the downtown area. He continued that granting the Variance would allow Mr. Stevens to sell the property for a use that is reasonable and safe in this location. It would improve the appearance of the site and add to the property's value. There would not be any benefit to the public by denying the Variance. The homeless shelter will remain in the situation they are in. They are not homeless themselves, but many of the people who may need this facility this coming winter may be homeless if they cannot find a place to expand the footprint of Hundred Nights – not add beds, but expand the footprint to provide safe occupancy to people through this pandemic. It would be an unnecessary injustice to the owner to deny the Variance, and to the residents needing shelter and crisis-related services. Hundred Nights has heard of complaints of downtown merchants, who say that people who are not customers are trying to come in to use bathrooms, and this could help alleviate that problem as well, by providing additional restrooms on site in the resource center. This means that Hundred Nights residents and guests will not have to go into stores in downtown to use the restroom.

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

Mr. Phippard stated that this is something that over the years Hundred Nights has monitored and they have done an examination of how Hundred Nights affects property values, being in the location they are in. They looked at the values from 2011 to 2016 of abutting properties in the Lamson St. area. During that time period the abutting property assessments went down by about 1.31%. During that same period of time, citywide, property assessments decreased by an average of 5.9%. That is solid evidence that Hundred Night's occupancy of that location by itself did not cause a diminishment of property values in that area. If the Variance is granted Hundred Nights will be creating a new building on the proposed site, as described, including a resource center, and it will enhance the appearance and value of this property and it will not diminish the value of surrounding properties. It will not increase traffic or noise from the previous uses. Surrounding properties will not be negatively affected.

5. *Unnecessary Hardship*

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

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

Mr. Phippard stated that this property is unique. He continued that it is not only in the BGR District. Also, the easterly lot is in the Historical District and the Downtown Railroad Property Redevelopment Overlay District. Thus, this becomes one of the most regulated properties in the City, in so many different zones and overlays. It creates a very unique situation. Also, where it is physically located. He showed a copy of the zoning map and stated that the area in light blue is BGR. He showed the location of site – a “peninsula” of BGR, surrounded by CB District. He continued that the characteristics of these districts are very different from each other. For example, CB does not require on-site parking, and the BGR does. CB does not have setbacks for buildings, and the BGR does. To be this peninsula of land creates a very unique situation.

Mr. Phippard continued that as described earlier in Mr. Rogers's comments, there is a draft of an ordinance being discussed, that would re-zone this area to Downtown Growth. In the current draft form, a homeless shelter is now defined. Hundred Nights would no longer be a lodging house. It would have its own definition, to be clear and accurate. A homeless shelter would be a permitted use, probably with a conditional use permit, which means getting Planning Board approval to locate on that site. If they were granted a variance today under the BGR District they would still have to be reviewed by the Planning Board for the change in use for the property, so that additional review would be required. He gives staff credit; they have been knocking themselves out trying to accomplish this massive rezoning of the downtown area, and he is all for it. He is on one of the committees that has been reviewing this, volunteering his time, trying

to make this happen. It is a complicated, time-consuming change. The process is the process and he knows staff does not want to interfere with the process by granting a Variance, and he does not feel this is an interference. It has been over two years since he got involved in working on the draft changes, and staff has said it is not likely to be finalized by the end of this year. Hundred Nights has tried to be patient and find other sites. But they are still not defined and still not a permitted use anywhere in the city with a couple exceptions. It has become untenable and they have to do something. They went to him for assistance, and he suggested they seek a Variance for this site. He looked at the site, the surrounding uses, and Hundred Nights' needs (program needs, access needs, and the needs of the residents), and this made sense to him. He feels, given his background and in looking what the possible impacts could be, that this could work. Hundred Nights being on a single site, operating much more efficiently and successfully, will be a big improvement. Given the uncertainty of the proposed rezoning, Hundred Nights just cannot wait. They are facing an emergency to a degree they just do not fully understand yet, if evictions are allowed again. They are already aware of many more families who are going to lose their housing. There is not a lot of low-income housing available for families in Keene, as everyone knows. This is a legitimate hardship, for the proposed use, and for this property, given its unique conditions and unique location and unique zoning circumstances.

And

ii. The proposed use is a reasonable one.

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

Mr. Phippard stated that he has already described the unique location and zoning characteristics and will not repeat all that again. He continued that he did describe the different zoning, being partially in the Historic District, partially in Downtown Railroad, and the rest in the BGR District. That creates a very unique situation. "Homeless shelter" not being defined in the ordinance is another hardship that is created. This Variance would go a long way to solving all of these problems. Since this is an area that has been recommended by staff to be rezoned and it would include "homeless shelter" in that district they think it is reasonable to get the Variance and allow Hundred Nights to get started on making that happen. The Planning Board will review what they are proposing for a building, to make sure it is aesthetically appropriate in the area, and the Planning Board will look at everything from driveway to landscaping to parking. Thus, this is not over with the granting of the Variance. They think this property in particular can support this use and can be done in a reasonable manner that will enhance the property value, be safe, and not diminish property values in the neighborhood.

Mr. Phippard stated that he will answer questions, or turn it over to Jan Peterson from the Hundred Nights Board of Directors.

Chair Gorman stated that he would like Mr. Phippard to take questions first.

Mr. Welsh asked if it is correct that a few years ago when it was rezoned to BGR, there was some consideration of applying the CBL category to this piece of land. Mr. Phippard replied yes, and Mr. Stevens is an attendee tonight and may want to speak to that. He continued that originally it was zoned Industrial. Many years ago this was a fuel storage area. Over the years the buildings and uses changed to end up as an auto repair business. When Mr. Stevens was first approached he wanted his property to be in CB and he explained why that did not happen. It was reasonable of City staff to take that approach. Mr. Stevens felt that CBL would be the next best thing for him, but being the only piece of property being designated CBL, or “spot zoning,” would have been inappropriate. BGR was the next available option and staff agreed to make Mr. Stevens’s use an allowable use so it did not immediately become nonconforming by the rezoning.

Mr. Welsh asked if “homeless shelter” is, in the current draft, a permissible use of the BGR specifically. Mr. Phippard replied yes, that is his understanding. Mr. Welsh asked based on Mr. Phippard’s recollection of this district in its draft form, would this parcel be on the edge of that district, in the center, an island, or what? Would it fit very well? Mr. Phippard replied that his understanding is that unless they change the proposed district lines it would be well within the BGR and no longer be a peninsula.

Mr. Welsh asked/stated for it not to be permissible to have a homeless shelter at this site if it were this new designation that would make it an unusual situation for the other properties within that area. Mr. Phippard asked if he means if it is not permitted in BGR and gets rezoned to BGR after Hundred Nights has constructed a new building. Mr. Welsh replied yes, if this not permissible as a homeless shelter at that time, that would be an unusual circumstance for this property, in BGR. Mr. Phippard replied the way it is currently proposed, yes, if they removed that as a permitted use after Hundred Nights had already purchased the property and built the facility, it would become non-conforming, like it is now, only now it is in CB, located there by Variance.

Chair Gorman stated that he has a comment about the future zoning. He wants to caution the board about looking into the future, relative to decisions today. They are using the current Zoning Ordinance today.

Chair Gorman asked Mr. Rogers which zones lodging houses are allowed in. Mr. Rogers replied CBL and High Density. He continued that High Density does require a special exception from this board.

Chair Gorman asked, as far as Mr. Steven’s auto repair property being in limbo as a result of the lack of a new ordinance and its current position, what uses are allowed in the zone that it sits in right now? Mr. Rogers replied: assembly; bed and breakfast/tourist home; bulk storage and distribution of goods, accessory to the main manufacturing use; college - undergraduate,

graduate, or industrial training programs; health and fitness center; historic site; home offices; insurance, publishing, and manufacturing firms; manufacturing and processing; mixed-use development; multi-dwelling structures; neighborhood grocery stores; nursery or greenhouse; office for a small-scale corporate business; repair garage; research and development laboratory; restaurant; warehouse; and wholesaling.

Chair Gorman stated that Mr. Phippard made several references to the coronavirus and the state of the affairs it has put Hundred Nights in. He continued that it is his understanding that they are proposing the same number of beds as the existing facility but they will have everything under one roof, with the resource center and so on and so forth and will be all inclusive in this proposed location, but with the same number of beds. That, coupled with the fact that he assumes this is a pretty extensive construction process, with building a new building and renovating existing buildings and all of the other elements he mentioned, and his reference to an emergency in this fall and winter, makes him wonder how Mr. Phippard feels this proposal alleviates any of those imminent concerns with the coronavirus. By the time this project is done, the distancing measures and coronavirus guidelines may not even be relevant.

Mr. Phippard replied that Hundred Nights feels that because this property would allow them to construct a larger building next year, it would provide a better solution to possibly get them through another year of this pandemic. In the meantime they are looking at other options. One is to renovate the 2,000 square foot building that is there, to provide the overflow bed spaces that are needed. They would continue to have beds at Lamson St. and then through a renovated space - they would have a couple of months to make that existing space usable for the beds needed during the critical time, especially if they are not available at the United Church of Christ (UCC) or St. James Church. They are looking at this property to provide both a short-term solution to get through this winter and a longer-term solution, to get approval to construct a new building, which is the ultimate solution to provide everything they need to provide on one site, maintaining that maximum number of 48 beds. If in future years the pandemic is not an issue and it became necessary for whatever reasons, due to numbers [of homeless people] exceeding the number of beds available, perhaps the UCC and St. James Church could make their sites available again temporarily. The Hundred Nights board and volunteers are constantly looking for ways to address these needs. They have been very creative in using different solutions. There are trailers that can be rented temporarily to provide bathrooms and showers, for example. They think that if they are granted permission to use this site they can get through the immediate needs of this winter and then work on the plan for the long-term needs, starting construction next year on a new facility.

He continued that he wants to mention to the Board that Hundred Nights have looked long and hard at this. Several of the board members have put in an incredible amount of time into looking at different option for how to make it work on Lamson St. They feel that if they are granted a Variance tonight, they can make it work and meet the immediate needs through this winter. If they get the Variance granted tonight they would withdraw the request for the change in non-

conforming use for Kings Ct. It is inefficient to be on three sites and difficult to do it safely. Therefore, they are putting all of their eggs in the Water St. basket.

Mr. Hoppock stated that Mr. Phippard spoke of the re-use intent for this district and the 13 factors. But he did not give a preliminary plan for the development of the property. Is there one? Mr. Phippard replied that there are several options that they have looked at, such as a single large building, saving the 2,000 square foot building and creating a second building, or a U-shaped building to create courtyards, or a different-shaped building. He continued that he felt that since they have to go to the Planning Board, if they get granted a Variance, that would be the place to focus on the site design and City staff and the Planning Board would have adequate input into what would be permissible. Mr. Hoppock replied that he understands, but what disappoints him is they are looking at whether or not this is in the public interest, and there are the 13 factors, which are relevant to that analysis, and then there is the question about the general public purpose of the ordinance and its application to this specific property, and renewal of this property is a significant component of that, and Mr. Phippard is telling them all about factors 1 to 13 and he (Mr. Hoppock) cannot visualize any of it and is skeptical of how it would work on this site. For example, “Recognize the role of large street trees, which plays an important role in creating a pedestrian scale.” He does not even know what ‘pedestrian scale’ is. And regarding “Pedestrian comfort being another critical element to the vitality of these new places being created,” he does not know what these new places being created are. He has a problem with that piece of the application.

Mr. Phippard replied that it was his decision to not submit a concept plan for the property because he did not want to distract the ZBA from the Variance criteria and felt it was primarily a Planning Board issue. He continued that when he talks about pedestrian scale and designing a site plan, they look for a building to be articulated – maybe jogs in the building or a recessed portion of the building; they look for windows down at the street level so for pedestrians walking by it is not a blank wall. This is not a large site. They are looking at creating a 6,000 square foot footprint, 60 feet wide by 100 feet long, with windows on the ground floor and second floor. Those are the types of features the Planning Board would be looking at in determining whether or not they had done a good job at providing pedestrian scale. They also will provide on-site sidewalks for circulation on the property, separate from the driveway and parking areas; landscaped areas; and green lawn areas that can support benches and sitting under shade trees. They have an area designated as a garden space, and at the north end of the property there is a place for snow storage. There were a lot of site features he could have shown the ZBA on a site plan, but he was hoping the narrative and his verbal presentation would be enough to convince the Board that he knows what he is doing with designing site plans. If that is not enough, they can let him know, and he is sorry now that he did not include a site plan. He thinks they can provide safe circulation through the site by providing the one-way driveway in from Water St. and circling out on Community Way. The building he visualizes would be in line with the existing 2,000 square foot building, but extending further back on the property, and the driveway would go around it. There would be landscaping on both sides of the building and the courtyard area. It will be an attractive, two-story building, in a nice setting. They are comfortable that it

can balance nicely opposite the low-income housing that is on the opposite side of Community Way. Redoing the existing 2,000 square foot building, which is just block painted red, they can give it new siding and a pitched roof, and it can be a whole different appearance on that property and be attractive.

Mr. Hoppock stated that he did not mean to suggest by his question that Mr. Phippard does not know what he is doing; he knows Mr. Phippard knows what he is doing. That is not his concern. He asked if Mr. Phippard said earlier that there would be 48 beds. Mr. Phippard replied that would be the maximum. Mr. Hoppock asked what the “resource center” and its purpose is. What activities will be there? How many people will use it? Mr. Phippard replied that the current one is about 600 square feet. He continued that his understanding is that it is an area where Hundred Nights can provide clothing, counseling (to a degree), a meal, and some programs to help with resume writing and employment skills to help residents find new jobs. It is a way to help people access the welfare programs that the City provides. The idea is not just to give people a place to sleep, but to help people get back on their feet and become contributing members of the community once again.

Mr. Gaudio stated that he has questions about the several different sites that are involved. He continued that he takes it that this year they would use a facility with some renovation, along with the Lamson St. property, to accommodate the homeless people this year. He asked if that would be sufficient. Mr. Phippard replied yes, that is the plan – they would renovate one or two of the buildings on this property. He continued that they plan to have 16 beds available at Lamson St. and meet the COVID-19 requirements. If they could have additional beds here, that would hopefully get them to the number they need and get them through the most current emergency they see coming, which might not be all 48 beds. Mr. Gaudio asked if the plan is to do the construction of a new facility next summer. If so, do they plan to continue the Lamson St. property, or would they be discontinuing that? Mr. Phippard replied that they would keep the Lamson St. property as long as it is needed, but if they are granted the Variance for this site, they would close the Lamson St. facility and relocate entirely to this new one.

Mr. Welsh asked about the language of the BGR and the 13 items. He continued that it was unfamiliar to him, and he is more familiar with seeing that (kiosks, drinking fountains, and so on and so forth) in planning regulations. That level of specificity is usually for when you are analyzing a site plan. When the ZBA gets that type of information it gets confusing because it has not been approved by the Planning Board, because the Planning Board application comes next. If Hundred Nights is granted a Variance and if this language is in the ordinance they will be moving forward with, are these standards something that will apply and that Hundred Nights will adhere to, and will Mr. Phippard be showing that to the Planning Board? Mr. Phippard replied this is in the Zoning Ordinance and they have to do their best to comply. He continued that this would be the basis for the initial design and it would then go through the 19 Planning Board development standards. He agrees with Mr. Welsh - this is different language. This is a step in the direction of form-based zoning, but not really clear, and that is why he thinks some of this may be changed with the re-zoning in the future.

Chair Gorman asked: how would these interim, pre-construction but post-approval plans look? He continued that Hundred Nights is proposing the possibility of quickly renovating the existing building that has most recently been Mr. Stevens's auto repair building, 2,000 square feet in size, to accommodate the immediate need for shelter as a result of the pandemic and the basic need to shelter an increasing number of homeless people. How would he propose to meet these Zoning criteria, go in front of the Planning Board, and renovate a building, all for a temporary use for one winter? Is he understanding that accurately?

Mr. Phippard replied that that is not exactly correct. He continued that if they decide to renovate the existing building they do not want to waste money by doing it twice. They would create a new vision for the existing building. It would no longer be red. He would like it to have new siding, or if they do not have time due to the weather, at least re-paint it, maybe white. If they are going to use that structure it would be necessary to provide handicapped accessibility, address some fire safety issues, upgrade electrical and plumbing, and install new bathrooms. Hundred Nights is counting on getting grant money that is out there and can be used for all of those purposes, which they could get on right away if they get approval from the City. They would have to go to the [Community Development Department] to talk about the change in use, and the Community Development Department might require Hundred Nights to go to the Planning Board. They might end up with a phased plan, where phase one is the redevelopment of the existing building and removal of the warehouse building in the back, and phase two would be the construction of a new building, which they would want to start as soon as possible in the spring, to get it up in place before winter of 2021. If they cannot get enough bathroom space in the building, they would lease an accessible trailer with adequate bathroom space. All of that would have to go through the Planning Board and the Code Enforcement Department.

Ms. Taylor asked Mr. Phippard to fill her in on the intended hours of operation. She continued that there is a bit of a dichotomy between shelter times and resource center times. Also, how many people would be non-residents (volunteers or employees) onsite, and for which functions?

Mr. Phippard asked Mindy Cambiar to reply. Ms. Cambiar stated that right now the shelter part of the operation is open from 6:30 PM to 7:00 AM. She continued that in the past when the Community Kitchen and breakfast program were running they would provide breakfast on site at 7:00 AM. That had to stop because of COVID-19, so Hundred Nights started opening the resource center at 7:00 AM in March and it is open until 6:00 PM because the Community Kitchen is no longer serving dinner. They just hand out bagged dinners to go, but people who are homeless have nowhere to eat, so they eat those bagged dinners in the resource center. Only 6 to 8 people at a time can be inside the resource center because it is so small. The plan is that people who stay in the shelter (unless they are families with children, who they hope to keep in their own spaces) would have to leave the shelter during the day so [staff] can clean and do laundry, and the resource center would be large enough to allow 24 people inside this winter with social distancing. They hope to use their own resource center and possibly St. James Church as a possible accessory resource center, to keep people spread apart this winter. This gives

people a place to be inside, because since March, until recently, everything else was closed, like the Library.

Ms. Taylor asked how many non-guests would be in there at any one time, for either the shelter or the resource center. Ms. Cambiar replied that since March they have had no volunteers in the evenings, when they used to have 2 to 3, mostly because the volunteers are retired or at-risk people who have not felt safe coming in. She continued that they have also asked anyone staying at another shelter in town to not come in for the past 6 months and they plan to keep it that way for now. Only Hundred Nights people and unsheltered people can come into the resource center. The shelter has a staff member at all times, and in the resource center there are two staff people for most of the day, and while the resource center is open, two to three staff members are upstairs cleaning the building, currently, and that would continue.

Ms. Taylor asked: if Hundred Nights got a Variance and moved to the new site fully, would there be the same number of staff members, or more? Ms. Cambiar replied that they would actually have fewer staff members in the one location than they would have in three locations. She continued that it would be nice to have two people overnight, and two people there to clean every day. Right now they are so short of space that their Shelter Manager and Operations Director have to share an office and she shares an office with storage for the whole facility as well as an administrative person. They are not planning on increasing anything, other than having their case manager be full-time instead of part-time as the position is currently. A housing case manager is extremely important to helping people get out of the shelter and into housing. They had a housing case manager for the past five months. She just recently left and they are looking for another. In the past year they have gotten 54 people into housing, which is a significant increase from years past when they have not had a case manager who was able to work one on one with shelter guests.

Ms. Taylor stated that she was trying to get a handle on the actual people count Ms. Cambiar anticipates, to anticipate how intensely-used the site would be. Ms. Cambiar replied that they would have up to 48 overnight guests, and during the winter there are not many unsheltered homeless. She knows of five people who just do not want to come in. The children are in school or doing remote learning. Hopefully the Library will also accommodate them. Many Hundred Nights guests enjoy being able to go to the Library to use computers and look for jobs, be in a quiet space, or read a book. She does not think people who are not people Hundred Nights is providing shelter for would be in the resource center, other than staff and a volunteer or two, but only one or two at a time, especially right now.

Ms. Zerba stated that they have talked about the 600 square feet they currently have. She asked what they anticipate for the size of the new resource center. Ms. Cambiar replied that she does not have a number right now because there are so many different estimations for how many square feet you need per person to be six feet apart at all times. Ms. Zerba asked for an estimate. Ms. Cambiar replied that when they were on Main St. for a couple months, when Monadnock

Family Services donated space, that space was ideal. She thinks it was about 2,400 square feet. Ms. Zerba replied that she will not hold her to that; she was just curious.

Mr. Rogers stated that to answer Mr. Welsh's question from earlier, the draft map shows the property in the southern edge of the proposed district, with still having the RP across the street as well as BGR across the street.

Chair Gorman stated that Mr. Phippard can continue his presentation. Mr. Phippard asked Jan Peterson to speak.

Jan Peterson, of 27 South Shore Rd., Spofford, stated that she has been Hundred Nights' Board President for about a year and has been on the board since 2017. She continued that she spent 24 years as a public defender in an office across the street that used to be the District Court, and dealt with a high risk population, which is partially why she was attracted to Hundred Nights. There is a lot of intersection with the folks at Hundred Nights. Her clients back in the day struggled with homelessness and housing insecurity. Hundred Nights is once again reaching out to the community to help address a problem that concerns everyone, those who support the relocation efforts as well as those who oppose it. Everyone knows the problems: lack of affordable housing, poverty and unemployment, rising eviction rates with dire consequences for the tenants and the landlords, mental and physical health challenges, unexpected life challenges, and as Chief Russo so eloquently stated in her conversation with him, "these are issues of quality of life." That summarizes the whole thing. Hundred Nights is not naïve about the challenges facing their guests, and they are not naïve about who the guests are and what they need. They are not naïve in assuming success is always just around the corner, even with a robust resource center.

Ms. Peterson continued that since we are in New England and since she once saved a client who had trespassed at a homeless shelter from some jail time by tapping into quintessential New England, by quoting Robert Frost, she will do so again now: "Home is the place where when you have to go there, they have to take you in." To paraphrase that: they have to take you in, even if you do not deserve it. Hundred Nights is not naïve about who the clients are, and they know the public is not naïve about it, either. The clients are a large spectrum of people in the community. We are all in this together. This phrase is used a lot, but it is not trite, because it is true. We all want safety and security; we all want to protect the general public welfare; and we all want the underlying issues to be addressed. Hundred Nights has been very patient, but as she wrote in her letter of support for these applications: if not now, when? We are in a national emergency with protocols necessary to control this viral spread. There is an urgency to having this location to help the community cope with the imminent issues as well as long-term issues. Hundred Nights does not offer a panacea; everyone knows that. It is one part, one building block of the community solution to the problem of homelessness. Closing our eyes will not help. Putting it off again and again will not help. The dialogue around hoping another town will step up and welcome them will not help. Stalling so that the problem continues and exacerbates our

ability to address social services does not help. Stalling the problem to have refrigerator boxes behind Hannaford's, which her clients used to call their 'home,' will not help.

Ms. Peterson stated that she wants to address the issue of how we deal with social services issues in our society when we fail to take a deep dive into the solutions. She did this work for so many decades, in social service agencies to help people get their feet on the ground, and avoid criminogenic thinking and criminogenic life. It is her fear – and it is a real fear - that for the last several decades with community mental health and mental health hospitals closing, the community has let Police and Corrections deal with substance use disorders. That is a legal issue. She was on the drug court, and the mental health court, and went down to Washington regarding veterans' issues, and has done many sit-downs with people in trying to solve these problems. It is not a solution to say to someone "You'll get a cot and 3 hots." It is not a solution for mental health challenges or life challenges. Having no place to put your head for the night and be warm are not problems that will be solved by bigger jails, more minor criminal arrests, and more court alternative programs. These problems are solved by finding the community services in the first instance. She gave a graduation speech at the Hillsborough County South Drug Court graduation in Nashua. It was full of family members of participants and graduates. She went out on a limb and said, "How would you feel if we had community services that could have addressed your child's addiction issues and drug use issues when they were 14, instead of now that they are criminals, and there had been robust community services to help your child?" She almost got a standing ovation from those families.

She continued that she has hope that the Keene community will step up to address this one issue, emergency needs for homeless individuals and families, to direct the money to the community to help solve these issues. Oscar Wilde once said, "All saints have a past, and all sinners have a future." They want to address the future efforts to help folks get on their feet, have a place in society, and have hope for a better tomorrow. Both the saints and the sinners, because that is the continuum of who we have to help. By doing that, they are one piece of the foundation to make the community safer and more secure, and more humane. If not now, when? Let's go down this path together and solve this problem for a better future. She continued that she wants to thank Mr. Rogers, Mr. Lamb, Ms. Kessler, and Mr. Phippard, who has done enormous pro bono work for Hundred Nights, and Ms. Cambiar, who is a champion of social issues in the community. Everyone needs to keep in mind what they are trying to solve here, as well as the deep dive into the regulations.

Chair Gorman opened the meeting to public comment and asked for people in support of the Variance request to speak first.

Ben Albert, of 380 Main St., stated that he is 100% in favor of what Hundred Nights is doing. He continued that they have been in business for ten years. They do a great job taking care of people that need to be taken care of. Tom Stevens was his former mechanic before he closed up his shop, and his father's mechanic for 17 years before that. If Mr. Stevens could sell his property to Hundred Nights that would be great. It is greatly located, right next to Community

Way, which has a lot of apartment buildings, and close to downtown. Hundred Nights could do a wonderful job with that property and he is in full support of giving them the Variance they need to A) take the emergency steps they need to take to get people in housing this winter and B) develop that property into a support property for disadvantaged people.

Chair Gorman again gave the phone number people can call to participate.

Sarah Harpster, of 32 Old Walpole Rd., stated that she meant to write a letter but did not. She continued that there is not much she could say that would be more convincing than that great wrap-up by Ms. Peterson, but she wants to voice her support for this Variance. Our public interest is served when people who are facing any kind of instability can be made more stable. She likes that Hundred Nights is not being too innocent about what it takes. If the community is not doing anything to hold people's lives together and help them take the next steps, it is a disservice to the public. Hundred Nights has been taking a long and patient journey in their efforts to build these foundations under people who are experiencing homelessness, and now is really the time the community needs to step forward and put this together. She supports the Variance and hopes that after the Variance is supported by the [Board] the community can continue to come together and support Hundred Nights in being able to build this new facility and providing the services that people really need.

Derek Scalia, of 16 Hillside Ave., stated that he serves as the Deacon at St. James Episcopal Church and the Archdeacon of the Episcopal Church of NH. He continued that these individuals experiencing homelessness are one of us. As we look around the beautiful city and see signs throughout the community that claim that we are a "welcoming community" and that all are welcome here, we must recognize that that is also for those experiencing homelessness. He has slept over at the UCC to help their operation, many nights last year, and has welcomed guests that have stayed overnight at St. James this past year. The fact is that this site is no longer a safe place for them because of COVID-19. This Water St. site provides them an opportunity. He hopes the Board finds this is the right and just place for them. He continued that he wants to close with Proverbs: "If you close your ear to the cry of the poor, you will cry out, and not be heard, remembering that we are connected with them through thick and thin."

Tom Julius, of 3 Tannery Rd., Gilsum, stated that he is speaking as the chair of the Monadnock Interfaith Project, speaking for many people of faith throughout the region. He continued that it is a basic, human value to care for one another as we ourselves would want to be cared for if we were in need. Monadnock Interfaith Project believes this proposal by Hundred Nights fits the spirit and requirements of the Zoning law and represents an opportunity to fulfill a civic responsibility that would lift us all.

Elsa Worth, Rector of the Episcopal Church in Keene, stated that as it might be expected for her to say: "Do unto others as you would expect them to do unto you." She continued that that is certainly the case when it comes to our homeless neighbors. She does think this request from Hundred Nights meets the Zoning criteria for a Variance and it is a good location and a good

solution for Hundred Nights in the long run. We all know this is absolutely the right thing to do, to finally find a place for Hundred Nights to have warm, safe, adequate facilities for our homeless neighbors. How we treat the least of us is how we treat each other, and no different. She firmly and strongly suggests passing the Variance tonight.

Julia Floodpage, of 44 Mountain Rd., Rindge, stated that she is on the board of the Monadnock Area Transitional Shelter that transitions families and occasionally individuals in Peterborough. They are facing more and more people needing shelter and are unable to meet the need, due to the limitations of their building. They are looking at buildings and hoping to find more places where people can get shelter this year. We cannot have people dying on the streets of Cheshire County or Hillsborough County. We must have adequate temporary shelter for people until this country can come to the point of promoting housing that people can afford.

Erin Hoy, of 389 Main St., stated that she sees the need for a place to stay where people can preserve their dignity, and a central property within walking distance. She continued that she has walked by the location many times and thought it was a deteriorating place and it would be nice to do something with it. She was concerned, though, about its size. It sounds like they are saying they can fit everyone in it, but she is worried about the impact of multiple locations on neighborhoods and decreasing property values. If this could be a single place, with everything happening in one location, she would support it.

Michael Mattel, of 19 Salisbury Rd., stated that the Zoning, as was pointed out perfectly on the pictures, shows that this will be a good thing for the city. It will be a good thing for Hundred Nights as well as the city, with bathrooms that will solve many issues for Hundred Nights residents, and it will take a lot of folks off of Main St. It will be good for the City because it fulfills the City's responsibility. He has previously worked with Ms. Cambiar and thinks her care and dedication will be a benefit and make this facility a go. She did that with the Community Kitchen and is well on her way to doing it here.

Dave Curran, of 16 Prescott St., stated that he will stick to the Zoning questions. He continued that as for the hardship for the property, the property can be sold and used for multiple uses. It is currently an auto repair and could stay as an auto repair. Regarding the BGR District, that chapter was created not too long ago, and along with that came the RP District. The intent was to restore the neighborhoods that have been "beat down" for quite some time. The hope is that as Kingsbury moves forward at some point the BGR District will start to look like something. The residents that abut it will have something really nice. They need to keep in mind that the RP District sits right up against this proposed use. He also wants to mention that Mr. Phippard said that Community Way residents are low-income, but they are not. It is a workforce housing program. Finally, that has been created; it has been needed. They are residents and they are very close. Also, up against or in the BGR District is American Home assisted living: a huge user of the pedestrian path. One more thing that got him was: Mr. Phippard said the Kings Ct. problem will go away if this is approved on Water St., and that sounds like he is using the ZBA as

pawns/leveraging and threatening the ZBA, saying, "If you give us what we want, Kings Ct. and lower Main St. will go away." That is not fair.

Charles Redfern, of 9 Colby St., stated that he was appointed by the Mayor to be on the Ad Hoc Marlboro St. Rezoning Committee, back in about 2013. He continued that it was composed of various folks with City staff support. It was a long process, and basically the concern is to make improvements to Ward 1 and Ward 2 areas, to improve housing stock, to improve economic viability, and specifically, it resulted in millions of dollars being poured into both the Water St. area and soon to be in the area of Marlboro St. Between Water St. and on Community Way, millions of dollars in a TIF district was created. A hotel was built with the purpose of that area being a nice area for businesses; they had a nice restaurant there, Nicola's. The committee's findings were to make improvements to this area, with substantial investment from the City and taxpayers. His concern is that if this Variance is granted, Hundred Nights is allowed up to seven floors for a building there. He is not saying that is what they are going to do. But they would be allowed to. There is drug use in that area already; granted, it is on a much smaller scale than what he thinks it would be with a homeless shelter there. There are syringes on the path and on the basketball courts, and empty alcohol bottles. Some people are very concerned about what the City is planning to do and what the City has done. He thinks a Variance would be counter to where the neighborhood needs to go.

Krishni Pahl, of 84 Valley St., stated that her family's property is about 300 feet from the Water St. property and she wants to talk about the second criterion. What the Board needs to understand is that Water St. abuts many residential streets, such as Valley St., Kingsbury St., Myrtle St., Grove St., Prescott Ct., Douglas St., and Eastern Ave. These are all streets that have young families. She understands that Hundred Nights is an essential component in the community but they have been here ten years, and unfortunately, Hundred Nights clientele have not been good neighbors in the downtown. Now they are proposing to bring that use and put it right in the middle of a residential neighborhood. The clientele have been known to have drug issues, and other similar issues. They are going to be .09 miles from Wheelock School. Grove St. is already a challenging street with college use. These two uses together are going to cause such a detriment to her family's property. She and her husband have been good taxpayers for 25 years. They live in a two-family house; they live on the second and third floors and rent the first. When her tenant of seven years heard of this change coming in they got agitated. If she loses her tenant she loses her home. That is not something the City should be encouraging. She is also supporting the homeless and always has and always will, but now, it is affecting her and her safety. And her children will have to walk by this site to go to school. This use downtown has not been controlled or managed; they have had ten years to correct it, and they have not. Now they want [the neighborhood] to take this on? East Keene is a declining residential area and they do not need anything more. She asks the Board to not approve this Variance.

Kay Kendall-Georgina, of 41 Douglas St., stated that she is a lifelong resident of Keene and a taxpaying homeowner. She thinks that is important because she hears people phoning in who are not taxpaying residents of Keene, so she hopes the Board listens to the voices of her and other

people who live in this area of the city. Her concerns for the Variance are: the site is near family public housing, near family homes, and near a basketball court that the public should be able to use, and Pat Russel Park is a few feet away and the City is looking to upgrade that. She continued that “those of us who live in Keene know what Hundred Nights is and who it attracts,” and they know Hundred Nights is looking to grow more beds and are bringing “more outside people” here. She questions whether they are “our” homeless [people]. These people are drug users. She banks at Citizens Bank and sees what goes on firsthand. She sees the Police cars there and people passed out on the sidewalk. As Ms. Pahl pointed out, these are not good neighbors. It is a step in the right direction that Hundred Nights found a site with a footprint so they might be able to manage their people better. But they have no authority to manage the people better, so she does not know how that can be changed. She is concerned because Hundred Nights brings in sex offenders and they are too close to Wheelock School and to America House where she is taking care of people, and people want to go out and walk and be safe. She is concerned about this property being converted in that way, and where would the number of people end? She asks the Board to consider that this would not be a good location, and to not [give the Variance.] She would rather see a business there that is bringing in money to the community, not taking something off of the tax rolls, and keeping the neighborhoods a little safer.

Angeline Pahl, of 84 Valley St., stated that she is opposed to the [Variance being given to] the Hundred Nights shelter. She continued that she does not have anything against the homeless [people] and she has seen shelters that can make that kind of thing work but she does not think that Keene is a place where they could make that work, unless a lot of changes were to be made. She also does not think the neighborhood is big enough to give a safe or comfortable distance from the American House. There are a lot of kids in her neighborhood who run around and play, and she would hate to have that stop. There is a basketball court there, too, and the bike path, and she feels like those would not be able to be used as much as well, if Hundred Nights [is given a Variance] for that location.

Chair Gorman called on Mr. Phippard to give him the chance to respond to public comments. Mr. Phippard stated that Mr. Redfern mentioned that if this Variance is approved Hundred Nights can build up to a 7-story building; he is not sure where that is coming from. Seven stories are not permitted in BGR. They are allowed to go higher than two stories if they do parking under the building, but they certainly will not be doing that. He continued that that is unfounded. Regarding the other comments, he understands the concerns people expressed about drugs and alcohol, but these are problems that exist throughout the community, not just on Lamson St. and not just at the homeless shelter. It is not fair to categorize this particular use as the central focus for those negative activities. Something they are trying to accomplish by centralizing the shelter and resource center on one site is to cut down on those negative activities. When people have a place they can go do during the day, and get help, using the resource center activities as described, Hundred Nights thinks it will cut down on those types of activities. If residents will have access to bathrooms, computers, and programs in a large enough resource room, in one location, it has to have a positive impact.

Chair Gorman asked Mr. Phippard about the fourth Variance criterion, not diminishing surrounding property values – Mr. Phippard referenced statistical data and he did not pick up on who/where that data came from. Mr. Phippard replied that Hundred Nights staff and volunteers collected the City tax card records, public information from the Assessor’s Department, and looked at the properties that abut the Lamson St. property, for the years 2011 to 2016. He continued that they determined that the property values over that time period were decreased by approximately 1.13%, and then they looked at the entire citywide database for property assessments and found that the value decreased by an average of 5.9% over that same time period. Thus, this is solid evidence that the location of Hundred Nights on Lamson St. did not diminish surrounding property values because they diminished less in value than the average value citywide.

Chair Gorman asked Ms. Cambiar – there was reference made to the fact that perhaps these homeless folks are not from the local community. He asked if that is accurate or not. Ms. Cambiar replied that almost 80% of the bed nights provided at the shelter in 2019 were for people with Cheshire County IDs and their children, and about 20% of people had no ID.

Chair Gorman asked if Board members had more questions for Ms. Cambiar or Mr. Phippard. Hearing none, he welcomed more public comment.

Krishni Pahl stated that her neighborhood has started a petition “to oppose the rezoning from BGR to Downtown Growth and to take this property off of tax rolls, and for the location of Hundred Nights” and so far there are 26 signatures. She continued that she has also filed a Right to Know request for call logs of Police calls to Lamson St., Federal St., Ashuelot Park, and is working with a detective who is in charge of sex offenders. She wants to see if anyone from the Lamson St. shelter is on the sex offender list and she will make that available to the ZBA. She found it very interesting that one of the callers who favored this Variance said it would be nice to not have Hundred Nights in various locations and just keep it in one place so other property values do not decline. That is exactly her point. Do not bring this facility to Water St. It already has two shelters. Do not bring a third one into her neighborhood. They are trying really hard to revitalize east Keene. If they really need to put the Hundred Nights facility somewhere, there are so many other vacant properties, like the one behind Joann Fabrics, or the one on Ashuelot St. She asks that they please take their focus off of east Keene.

Elsa Worth stated that she wanted to respond to the comments she has heard about Hundred Nights being “poor neighbors,” because she has experience about that. She lives on School St. and right around the corner from St. James and Hundred Nights is literally the next-door neighbor. Her church has had Hundred Nights guests in the building seven nights a week last winter as overflow guests and she sees them and knows them by name. To have her neighbors disparaged as though they are not as decent as other people in the city is really distressing to her. She feels that people are losing a sense of humanity by making comments in this way. Hundred Nights has been a fine neighbor. There are always sometimes problems in homeless shelters, as there are everywhere, but she has experienced the Hundred Nights staff being very effective in

addressing them. They have never had any serious problems at St. James even with guests in their building, and they have developed very fine relationships with their neighbors, including a great deal of gratitude from their neighbors who are suffering with homelessness. It does not matter if they have addictions or not or mental illness or not – they have still been gracious, and they have still been responsible as guests. She has no qualms about having them as her neighbor, as has been the case for many years. The property on Water St. is large enough for a facility to be created that makes a courtyard and space for [Hundred Nights' residents] to be outside in a comfortable and private way instead of where they are now in front of the whole world, which is not comfortable for [the residents themselves]. Just going to a local business and seeing [homeless people] is not an assault. They are people and neighbors like anyone else in town. She felt that as a literal neighbor of Hundred Nights she had to speak up after hearing those comments.

Nikki Sauber, of 34A Royal Ave., stated that she agrees with everything that has been said in favor of the Variance. She continued that she wanted to respond to Ms. Pahl's comments about looking at the Police log data and calls to Lamson St. She is on the Hundred Nights board and a member of the Advocacy Committee, and they actually looked into this. She wants to share some data they collected from public records. They looked at the Police calls from November 12, 2019 to May 31, 2020. There were a total of 14,183 calls made to the KPD. Of those calls, 149 of them were about Lamson St., which is 1.05%. That is a very small number. There were 186 assaults reported to the KPD, out of those 14,183 calls, and none were on Lamson St. There were no reports of property destruction on Lamson St., or of sex offenses, larceny, or theft.

Chair Gorman asked if Mr. Phippard wanted to make a rebuttal to any of these recent comments. Mr. Phippard replied that the last caller did a good job, and he has nothing to add. He continued that he thanks the Board.

At 9:15 PM, Chair Gorman announced a five minute break. He called the meeting back to order at 9:20 PM.

Mr. Phippard stated that something he meant to reply to earlier is that Mr. Curran felt Mr. Phippard was somehow threatening the ZBA by saying Hundred Nights would withdraw the King Ct. application if they received the approval for the Variance on Water St. He continued that he is not sure how that is a threat. The Water St. Variance is Hundred Nights' first choice and they feel that operating in one location is the best, safest, most efficient way to operate a homeless shelter. They do not want to spread out over more and more locations. If they are at Lamson St. and using UCC and St. James Church for overflow and then using King Ct. that creates a staffing nightmare for Ms. Cambiar and that is the last thing they want. He wanted to be honest, open, and clear with the Board: Hundred Nights feels they can make it work at Water St., in one location, and operate safely and appropriately. If they receive the Variance request they will withdraw the King Ct. request and not waste the Board's time with that.

Mr. Hoppock stated that for the record, he himself did not hear anything Mr. Phippard said as a threat. Two other Board members replied “likewise.”

Chair Gorman stated that he will give Mr. Curran the opportunity to respond. Mr. Curran stated that he did not state that Mr. Phippard was threatening the ZBA. He continued that what he said was that it sounded to him like Mr. Phippard was using the residents of Water St. as some sort of pawn, and he will leave it at that.

Chair Gorman stated that the public hearing is closed. He continued that the Board will deliberate on the Findings of Fact.

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

Mr. Hoppock stated that the phrase “public interest” does not mean what most of tonight’s speakers think it means. He continued that the requirement that the Variance “not be contrary to the public interest” is related to the requirement that the Variance be consistent with the spirit of the ordinance. It has nothing to do with the public good/social service/proposed use. With that said, to him the public spirit of this ordinance is the uses related to the environmentally progressive planning policies and adaptive reuse traditions that the ordinance lays out. Mr. Phippard went into great detail on Section 107-771, numbers 1-13, and he is satisfied that Mr. Phippard met those 13 criteria and this Variance would serve the public interest, for that reason only. He continued that he pressed Mr. Phippard on that – he did not think Mr. Phippard had a plan, and Mr. Phippard convinced him that he did. That is why he believes the first criterion is satisfied in that regard.

Mr. Gaudio stated that he agrees. Mr. Welsh stated that he adds his concurrence. He continued that if he had any question at all about the public interest, it is the portion of the ordinance that states a preference for technology or new kinds of industry. But permissible uses include many other things, so these are preferences but not exclusive, and he does think that items 1-13 specifically were laid out very carefully and an argument was made for them.

Ms. Taylor stated that she also agrees that this not contrary to the public interest, along the lines as stated by Mr. Hoppock. She continued that she thinks it is consonant with the basic objectives of the Zoning Ordinance of this district. It is perhaps closer to those objectives than it is currently located on Lamson St.

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

Mr. Hoppock asked: would granting the Variance alter the essential character of the neighborhood in question? He continued that here, he thinks the applicant failed to meet his burden of proof on this point. Second, would granting the Variance threaten the public health, safety, or welfare? Again, he thinks the applicant failed to meet his burden of proof on this point. The Board heard only about the guests at the proposed site, not any impact of the guests

on the neighborhood. The applicant did not talk about the essential character of the neighborhood and he is not satisfied the burden was met. He will vote 'no' on this criterion.

Mr. Gaudio stated that he believes contrary. He continued that he thinks the burden was met, and the spirit of the ordinance would be observed. The spirit of the ordinance is not such that it is a requirement that it be the specific list of the uses, as already mentioned, but rather that it be in accordance with the general types of uses that are permitted there, and a number of them are uses that have a certain amount of intensity to their use and can be not as accommodating, for example, to single-family housing as in some other situations, so he does not think this use would be in violation of or contrary to the general spirit of the ordinance.

Mr. Welsh stated that he concurs with Mr. Gaudio, and in his view the spirit of the ordinance would be observed.

Ms. Taylor stated that she agrees with Mr. Welsh and Mr. Gaudio that the spirit of the ordinance would be met. She continued that it seems to be consonant with residential uses that are allowed as well as commercial uses, such as a health and fitness center or a training program. It is clear that the ordinance did not expressly contemplate a homeless shelter but then again, there really is not much in the ordinance as it stands today that *does* contemplate a homeless shelter. When you look at the objectives of this ordinance, she definitely thinks it is in accord with the spirit of the ordinance.

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

Mr. Hoppock stated that the only fact he heard cited to support this criterion is the owner of the properties would be able to sell the properties. He continued that the applicant offered no substantive comment to support any other loss to himself. A loss of this nature to the individual is not a loss that creates an injustice, in his opinion. Therefore he will vote 'no' on the third criterion.

Ms. Taylor stated that she disagrees. She continued that she thinks that as part of the balancing test, it is not necessarily loss to the individual owner. She looks at this as loss to the applicant and whether or not there is an injustice to the general public, and based on the information they heard tonight, she thinks the scale is tipped in favor of the applicant and that there is no general injustice to the general public.

Mr. Gaudio stated that he agrees with Ms. Taylor. He continued that the point here is that it would do substantial justice because there is no showing of an injustice to the public.

Mr. Welsh stated that he concurs with the past three. He continued that as he evaluates the substantial justice issue, he sees it as a balancing act. He sees that the weight of the various pros and cons moves toward approving the Variance.

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

Mr. Hoppock stated that here, he heard the evidence was that the Lamson St. property tax cards were evaluated over a course of time when the homeless shelter was there and compared against citywide property taxes, and that the slight diminution at Lamson St., in relation to the value of properties citywide, is indicative of no loss of property values. He continued that however, the test should be: what is the diminution of the property values to the surrounding properties at the site in question. Here, again, he has to say the applicant offered insufficient evidence to the point and failed to meet his burden of proof. He cannot vote 'yes' on this criterion for this reason.

Mr. Welsh said that he was fairly persuaded by the evidence that was presented, because it was evidence, and that is in contrast to impulse or reflexive assumption about one would think would happen. He continued that what he finds compelling is: it is the strongest, single piece of hard evidence the Board has received on this issue, and that is the evidence the applicant provided. He would be supporting the argument that they would not be as diminished as surrounding properties.

Ms. Taylor stated that she thinks that at worst it would be a break even on surrounding properties. She continued that the site is something badly in need of redevelopment and if you were to weigh the auto repair shop that was there, as opposed to construction of a new shelter that is contained within the site, she does not see that there is any reduction in value on the impact of the neighbors. The objections the Board heard were not from the immediate neighbors, they were from people several streets away, which does make a difference.

Chair Gorman stated that for the record, they did get some letters from people who are opposed to this who are abutters and located relatively closely. He continued that those people did not speak tonight but they did issue public statements. Ms. Taylor replied yes, she did read those letters.

Mr. Gaudio stated that he agrees, too. He continued that he does not think the evidence carries that there will be a decrease in the values. Whether or not there would be an increase or stasis they cannot be sure about, but he is not convinced that there is evidence to say there would be a decrease.

Chair Gorman stated that this is a difficult one for him. He continued that the burden of proof does lie on the applicant. They did give some statistical data, however, it is not very deep data. Without speaking to the Assessing Department, he could not give much credibility to it because he does not know if there is the potential that a citywide, commercial evaluation was done in that timeframe that might have juiced the numbers in favor of certain districts while other revaluations might not have been performed. It is his understanding that the City did do a big commercial revaluation at some point during that timeframe and that Lamson St. would have fallen probably into that category. While the burden of proof does remain on the applicant, if

this statistical data is accurate, he thinks there would have to be a lot more provisions to it for him to be sold on it being proof or hard data.

Ms. Taylor stated that for informational purposes, the City does undertake a revaluation of the entire city every five years as required by statute. She continued that there is one coming up in 2021, so it would make sense that there would have been one in the 2015 or 2016 timeframe. It is done every five years for the whole city, not just commercial or just residential. Chair Gorman replied that he understands that, from a statewide perspective. He continued that he does not claim to have an understanding of the inner workings of the Assessing Department. He does not know what other forms of revaluation or specific to what areas or districts may be performed, but he is aware that that is performed every five years.

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*

Mr. Hoppock stated that he does agree that, as Mr. Phippard explained, the peculiar zoning of this property in its various divisions and the fingerlike structure of it, and so on and so forth, does create a special condition of the property that is relevant to the Zoning inquiry. He continued that the general public purpose of the permitted uses in this section, as he understands them, would be to regulate and control density and population, protect health and safety and welfare, and in this particular zone, deal with the reuse of an old industrial zone. With those general purposes in mind, he finds that there is a fair and substantial relationship for those purposes to this site. He is not satisfied that an unnecessary hardship exists.

Mr. Welsh stated that his impression, from the applicant's presentation, is that this is as Mr. Hoppock stated: a very complicated piece of property with some very complicated layers and divisions. That could lead to difficulties with various uses and selling it for various purposes. He would have liked a bigger sketch of the likely, approvable uses. One of the other impressions he gets is that the proposed use they are dealing with is a very difficult one to locate anywhere within the current Zoning in the City. This is, from among the various types of Zoning the City has and situations they are presented with, one that is (one could decently argue) acceptable and within the realm of what is likely to be planned based on past and future considerations of Zoning. The complexity trips him up but he would vote that this has been satisfied and the applicant has made their case.

Mr. Gaudio stated that he agrees with Mr. Welsh's comments. He continued that the relationship between the general public purpose of the ordinance and the application to this property he thinks is such that there are multiple possible purposes here that can be applied both within the BGR and right across the line in the CB District. These multiple uses really should

accommodate somewhere a homeless shelter or a group home, and this is a difficult situation but he thinks there is no fair and substantial relationship between the general public purpose and the specific application to this property.

Ms. Taylor stated that she was going to say something very similar to Mr. Gaudio but in the interests of time she will just say: she is in full agreement with it.

And

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

Ms. Taylor stated that she thinks the use is reasonable. She asked: if they treat this application under 5.A., do they need to treat it under 5.B.? Chair Gorman stated the only reason they would need to cover 5.B. is they had one board member who did not feel that it met 5.A. and that might not be the case with 5.B.

Mr. Hoppock stated that he does not think 5.B. is applicable to this Variance. He continued that he agrees with Ms. Taylor that the use is reasonable, but he still does not think it meets the unnecessary hardship test.

Mr. Welsh and Mr. Gaudio stated that they agree that it is a reasonable use.

Chair Gorman stated that given Mr. Hoppock's statement that he does not think it is worth talking about 5.B., he will not spend the time on that. He continued that the Board is done with deliberations and he will ask for a motion.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 20-11 without condition. Mr. Welsh seconded the motion.

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 4-1. Mr. Hoppock was opposed.
3. *Granting the Variance would do substantial justice.* Granted 4-1. Mr. Hoppock was opposed.
4. *If the Variance were granted, the values of the surrounding properties would not be diminished.* Granted 3-2. Chair Gorman and Mr. Hoppock were opposed.
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.

And

ii. The proposed use is a reasonable one.

Granted 4-1. Mr. Hoppock was opposed.

By a vote of 3-2, the Zoning Board of Adjustment approved ZBA 20-11. Chair Gorman and Mr. Hoppock were opposed.

- b. ZBA 20-16: Petitioner, Hundred Nights, Inc. of 17 Lamson St., Keene, represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester St., Keene, requests a Change of a Nonconforming Use for property located at 15 King Ct., Tax Map #122-022-000; that is in the Low Density District. The Petitioner requests a Change of a Nonconforming Use from a now vacant fitness center to a lodging house (homeless shelter).**

Chair Gorman opened ZBA 20-16. Mr. Welsh stated that he needs to recuse himself. Chair Gorman stated that Mr. Gaudio and Ms. Zerba are both alternate, voting members, standing in for Mr. Welsh and Mr. Greenwald.

Mr. Rogers stated that there is an appeal period for this Variance that was just granted and Mr. Phippard (Hundred Nights) has the option to continue this application until the appeal period is over. He continued that if he (they) withdraw(s) it tonight he (they) would have to go through the whole process to re-file it, if he (they) choose(s) to continue this application, if something happens during the appeal process.

Mr. Gaudio asked if there is a time limit for the continuances. Ms. Taylor replied that she believes they have to continue to a time and date certain but there is no limit on the number of continuances; probably only a limit on the ZBA's patience. She continued that if no one objects, she would like to make a motion to continue. Chair Gorman replied that they should hear from Mr. Phippard first.

Mr. Phippard stated that he requests on behalf of Hundred Nights that they continue this hearing until the next ZBA meeting. He continued that in the event that an appeal is not filed, his intent at the next hearing would be to withdraw this application.

Mr. Rogers stated that he recommends that instead of continuing this to the October meeting, that they continue it to the November meeting, so they do not have to continue it twice.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to continue ZBA 20-16 to the regularly-scheduled November meeting of the ZBA. Ms. Taylor seconded the motion.

Mr. Rogers stated that the meeting is November 2, at 6:30 PM.

The motion passed unanimously.

Mr. Phippard thanked the Board. Chair Gorman closed the public hearing.

V. New Business

Mr. Rogers stated that there is no new business. Chair Gorman asked if the Board members had any new business and there was no response.

VI. Communications and Miscellaneous

VII. Non-Public Session (if required)

VIII. Adjournment

There being no further business, Chair Gorman adjourned the meeting at 9:59 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Staff edits submitted by,
Corinne Marcou, Zoning Clerk

Board edits submitted by,
Jane Taylor