

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, November 2, 2020

6:30 PM

Remote Meeting via Zoom

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Louise Zerba, Alternate

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 State of Emergency. He called the meeting to order at 6:33 PM.

I. Introduction of Board Members

Roll call was conducted.

II. Minutes of the Previous Meeting – September 15, September 22, and October 5, 2020

Ms. Taylor made a motion to adopt the minutes of October 5, September 15, and September 22 as presented. Mr. Hoppock seconded the motion, which passed by unanimous vote.

III. Unfinished Business

Mr. Hoppock asked if they should talk about dates for a possible second meeting as there are many petitions before the Board. Chair Gorman asked for Board members' availability on November 10 and/or 17. Discussion ensued. Chair Gorman stated that Tuesday, November 17, at 6:30 PM, will be the next meeting, if necessary, for continuing any applications from tonight's agenda.

Chair Gorman asked Staff is there any other unfinished business. Mr. Rogers replied no.

IV. Hearings

- a. **Motion to Rehear: A Motion to Rehear petition ZBA 20-11, 122 & 124 Water St., Petitioner, Hundred Nights, Inc., has been submitted by Stephen Bragdon of 51 Railroad St., Kevin Beal of Dunbar St., and John Pappas of 69 Dunbar St.**

Chair Gorman stated that this Motion to Rehear petition ZBA 20-11 has been submitted by Stephen Bragdon, Kevin Beal, and John Pappas. He continued that this is not a public hearing but Mr. Greenwald needs to recuse himself, since he is an abutter to this property and recused himself during the original hearing. Mr. Gaudio will again be filling in for him.

Chair Gorman stated that they will have just general deliberation, since this is not a public hearing. He asked for Board comments.

Ms. Taylor stated that the Motion appears to have been filed in a timely fashion. She continued that what it comes down to is the question of whether the Board, in its decision, committed a technical error, or if there are any new considerations that were presented in the Motion. From her perspective, having gone back and read the application and the meeting minutes, she does not find that there are new considerations. She thinks the question is whether there was a technical error of notice. She spent time going through the Assessor's database and looked at the abutters' notice and there is no requirement to notify each individual owner in a condominium. The governing body, which is the condominium association, was notified, so she does not find that there was a technical error.

Mr. Gaudio stated that he thinks this is a question for Mr. Rogers as he thinks 51 Railroad St. is the only property for which there is an allegation of lack of notice, and according to Google Maps, it is over 800 feet from the property. If that is true, and Mr. Gaudio stated he believes it is, then there is no requirement for notice to 51 Railroad St.

Chair Gorman stated that he knows that 51 Railroad St. was noticed as an abutter. He continued that the question is whether each individual occupant of the condominiums needed to be noticed. According to RSA 356-B, XXIII, "*Officer*" means any member of the board of directors or official of the unit owners' association." Specifically in the case of abutting property being under a condominium or other collective form of ownership, the term 'abutter' means the officers of the collective or association as defined. From his perspective, he has to assume that the notice sent to 51 Railroad St. was sent to an officer or agent, given that they open the mail. He does not believe they are denying receipt of that individual notice, rather that each member of the condominium was not noticed, but it seems clear in the RSA language that they do not have to be.

Mr. Rogers stated that along with that RSA, he would reference them to the Board's Rules of Procedures, which state the same thing about condominiums. He continued that to clarify that 51 Railroad St. is one building on that large property that includes multiple buildings.

Chair Gorman asked if 51 Railroad St. is within 200 feet of the petition property. Mr. Rogers

replied that the 51 Railroad St. address/building itself probably is 800 feet; he would not deny that, but the overall condominium property, the land under all those properties, is well within the 200 feet.

Mr. Hoppock stated that he did not hear what Kevin Beal's address was. Chair Gorman replied that Mr. Beal did not list his address as the Motion states "Dunbar St.". Mr. Hoppock stated that he would argue that he has not met his burden of proof as an abutter. Chair Gorman replied in agreement. He continued that John Pappas, of 69 Dunbar St., was noticed; asking for confirmation from Mr. Rogers who replied in the affirmative, that Mr. Pappas was on the abutters list that was provided to Staff by the Applicant.

Mr. Hoppock stated that as this is not a public hearing, the Board has to take the Motion on its face and ask themselves if the Motion to Rehear points out that the Board did anything unlawful or unreasonable. He agrees with Ms. Taylor that neither the Motion nor the statements contained within demonstrate that there was an error in the decision. He would not support the Motion.

Ms. Taylor stated that the Motion for Rehearing challenges the notice to individual owners at 51 Railroad St.; it does not challenge notice to anyone else. Since the statute requires the Motion to set forth all possible issues with the Board's action, she believes that is the only notice issue they have before them.

Mr. Hoppock agreed. Chair Gorman agreed. He continued that unless there is further comment on the notice issue, he thinks they are all in agreement that 51 Railroad St. was properly noticed. Mr. Welsh replied that he too agrees. He continued that he appreciates the clarity about the Board's task. He does not feel that there is any description of anything illegal or that there is any reason to grant a new hearing. Chair Gorman stated that generally speaking they are trying to see if the Board overlooked anything or have been presented with something that shows them they made a mistake.

Mr. Hoppock made the following motion, which was seconded by Ms. Taylor.

By a vote of 0-5, the Zoning Board of Adjustment denied the motion to approve the Motion for Rehearing that was filed for ZBA 20-11.

Mr. Hoppock made the following motion, which was seconded by Ms. Taylor.

By a vote of 5-0, the Zoning Board of Adjustment denied the Motion for Rehearing that was filed for ZBA 20-11.

- b. Continued: 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 asked Staff if this has been withdrawn. Mr. Rogers replied yes, that is correct. He continued that the Petitioner may bring it back at a later date.

- c. **ZBA 20-20:/ Petitioner, Maureen Baxley Murray Trust of 195 Columbia Turnpike, Suite 125, Florham Park, NJ, represented by Joseph Murray, requests a Variance for property located at 0 Chapman Rd., Tax Map #241-017-000; that is in the Rural District. The Petitioner requests a Variance to permit the construction of a single family residential dwelling and garage on an irregularly shaped lot where lot width at the building line would be less than the required 200 feet in the Rural District per Section 102-791 of the Zoning Ordinance.**

Chair Gorman asked Staff if this has been withdrawn as well. Mr. Rogers replied yes. He continued that this is a request for a Variance and once the Applicant had survey work done to get a rough idea of where the house could be located on the property, they decided to take more time to look. They might seek a second Variance to this property as well and want to just come before the Board once, instead of multiple times for multiple Variances. So the Board might see this at a later date as well.

- d. **ZBA 20-21:/ Petitioner, Timothy Russett of 40 Bryant Rd, Jaffrey, requests an Enlargement of a Nonconforming Use for property located at 686 Court St, Tax Map #228-008-000; that is in the High Density District. The Petitioner requests an Enlargement of a Nonconforming Use in order to increase size of hospital to accommodate growing clients and staff.**

Chair Gorman asked Staff to speak to this. Mr. Rogers stated that this property currently contains a non-conforming use as a veterinary clinic, which the Applicant is looking to increase the size due to growing demand of clients and staff. He continued that this is in the High Density District (HD) on upper Court St. near Genesis Healthcare, with a mixed use occurring on this property. There is a residence in the building on the front of the property, and the building in the back houses the veterinary hospital and other businesses. In 1984 this property received a Change of Nonconforming Use from tree service to the veterinary hospital. In 1989 it received an Enlargement of Nonconforming Use and an addition was built.

Chair Gorman asked if the Board had questions for Mr. Rogers. Hearing none, he opened the public hearing and explained how the public could participate. He asked the Applicant to speak.

Tim Russett, of 40 Bryant Rd., Jaffrey, stated that he is currently located at 686 Court St., Keene. He continued that they have an existing building that was zoned as storage and a closed porch; they are looking to expand the clinic into those areas to have more exam rooms and more facilities for the growing staff and clients. They are seeing an increase because a Veterinarian who was in the area for a long time recently retired and his clients are shifting over. They are not looking for major changes. All of the structures are existing. There would be about two

existing walls that go in the back and then they would be pushing back what is currently in the front of the clinic to the back in the existing structures and then renovating inside to accommodate what they have. There would be no new structures, and the water and sewer has been in place for the 30+ years the business has been open.

Ms. Taylor stated that she could not tell from the application which building is impacted. She continued that there is a dog grooming building behind the veterinary clinic and she cannot tell if they are attached. Mr. Russett referenced the map and replied that the front building is residential, and in the back building, the right side is the veterinary clinic and in between was the open porch area and the dog groomer is the top left corner of the building. Behind that area is the storage space that is not being used.

Ms. Taylor asked if the plan is to essentially connect the two buildings. Mr. Russett replied no, the back building is one full building already connected. They would not be building anything. It was just that in between one area and another area was a porch, but it is all connected already. Ms. Taylor asked if they would just expand into that area and it will no longer be a porch. Mr. Russett replied yes.

Mr. Rogers stated that when the Board deliberates and votes on this, they should clarify for the record who the voting members are, and whether Mr. Greenwald is back voting or if Mr. Gaudio is filling in for him. Chair Gorman confirmed that was correct.

Mr. Hoppock asked what the projected impact is on parking and traffic, in terms of the expansion of the business as it is pushed back into these new areas. Mr. Russett replied that the parking lot is very large to begin with and would not need to be enlarged. He continued that the driveway goes around both sides of the building in a U shape. Traffic-wise, it would be the same as normal. It is just that they are increasing their ability to see a couple more patients and accommodate the more doctors that they currently have.

Ms. Taylor stated that “more patients and more doctors” seems to indicate more traffic. She continued that she is not worried about water and sewer, because that is on site, but she is a little concerned about how many additional employees they are going to have and what they anticipate in the business plan will be an increase in patient numbers.

Mr. Russett replied that currently they do not plan on hiring any more doctors or employees because they are fully staffed. He continued that when his wife bought the business two years ago it was a one- to two-doctor practice and for the past two years they have been operating at four doctors with supporting staff. They have already had the increase in employees and clientele in the past two years. This addition would help when COVID relaxes a bit and people are allowed back into the clinic, so that they can properly accommodate having those doctors on at the same time with exam rooms. Currently they only have two exam rooms and when they expand to four they can hopefully accommodate all of these people at once with exams.

Ms. Taylor replied that that does not answer her question about what the ‘people load’ is going to be. If there are four doctors, who can see X number of people and animals, does he have a number of spaces or any kind of count. She suspects that Mr. Hoppock is concerned about the

left turns out onto Court St. from various businesses, which can be challenging.

Mr. Russett replied that it is hard to answer because it depends on the time of year - veterinary clinics have a busy season and a slow season. He can probably pull numbers for her. He asked if she is asking about people in the clinic or car traffic coming out of the clinic. Ms. Taylor replied that she is concerned with the amount of traffic that would be generated. Mr. Russett replied that it would not change from what it is today, because they are already at an increased load from having the doctors. He does not have an actual number.

Mr. Hoppock stated that he thinks the question is what does Mr. Russett anticipate the doctor load to be, and the patient load to be, after he has completed the enlargement. Mr. Russett replied that he is not explaining this very well, but again, the load is already there. They need the extra room to accommodate for when they open back up after COVID, to accommodate with the schedule and the need for clients to come in, in a timely manner. One doctor sees between 20-30 patients a day, depending on the season and the severity of the visit. Mr. Hoppock asked if he does not anticipate any increase in staff or patient levels. Mr. Russett replied no, because currently they are already at that high demand.

Chair Gorman asked if it is correct that they already have four doctors. Mr. Russett replied yes. Chair Gorman asked, if each doctor sees 20 to 30 patients a day, is it accurate to say they are just not doing that in a manner conducive to how Mr. Russett wants to run the business, thus, the need for the expansion. Mr. Russett replied yes, absolutely. He continued that if COVID were not a problem right now people would be allowed into the clinic and if they had all four doctors working on the same day with half-hour appointments, they would need four exam rooms.

Ms. Taylor asked for clarification – pre-COVID, did they have four doctors each seeing 20 to 30 patients a day and only two exam rooms. Mr. Russett replied that not all four doctors were working at the same time. He continued that three out of the four have young children and were out on maternity leave; more or less one comes back, another goes out. Some of them were working part-time to care for their children, but now the schedules are changing and they need more room. Also there are tech appointments that also need a room, and laser therapy needs its own room. They also need a separate room for euthanasia appointments because they do not want to rush people who are spending time with their pets. Ms. Taylor asked if it is correct that while they have four doctors on staff, the business has not been operating with all four doctors working at the same time. Mr. Russett replied that is correct.

Chair Gorman asked if he is going to now have four doctors in there at once, for the first time. Mr. Russett replied that when COVID finally breaks and they are allowed to have the owners back in the building with their pets, then ideally yes. Chair Gorman stated, in that case, it is an expansion. He asked how many techs there are. Mr. Russett replied two, plus two tech assistants. Chair Gorman asked how many patients they (the four doctors, and all the techs) can see at once. Mr. Russett replied that he estimates between six and eight. Chair Gorman asked if it is safe to say the business could have eight people coming and going with another eight scheduled right behind them, so at any given time, about 12 or 18 cars coming and going. He asked if that is an accurate estimate, without going into a deep study. Mr. Russett replied yes, that is a very good estimate for the busy times.

Chair Gorman asked if anyone had more questions. Hearing none, he thanked Mr. Russett for

his time. He opened the public hearing and explained how members of the public could speak. Ms. Marcou stated that Staff did not have members of the public calling in. Hearing no public input, Chair Gorman closed the public hearing.

Mr. Hoppock stated that he was satisfied that the three criteria for enlargement of a non-conforming use have been met.

Mr. Hoppock made a motion to approve ZBA 20-21. Mr. Welsh seconded the motion.

Chair Gorman asked if they should discuss each criterion or just vote.

Mr. Hoppock stated that regarding the first criterion, no, it would not reduce the value of any property and it is not obnoxious, injurious, or offensive to the neighborhood. He continued that he notes the Applicant will not enlarge the number of doctors or supporting staff; they will try to accommodate their current level of work with more space, albeit there may be four doctors there at a time and in the past there has not been, but he does not think that will be significant enough to affect the first criterion. He continued that regarding the other criteria, he does not see any evidence of any nuisance or hazard to vehicles or pedestrians based on what the Board heard. No one is challenging that there is not adequate water, sewer, or parking. For those reasons he would approve the application.

Ms. Taylor stated that she agrees with Mr. Hoppock and does not believe it would reduce the value of property or be injurious, offensive, or obnoxious. She continued that the veterinary buildings are at the rear of the property which helps reduce any potential nuisance. She has some concerns about vehicular traffic though they do not rise to the level of her wanting to vote against the application but, if she had any concerns on this, it would be the increased number of vehicles entering and exiting Court St. She believes it has adequate water, sewer, and parking on site.

Chair Gorman stated that for the record they have five voting members: Josh Greenwald had recused himself from the Motion to Rehear but is back now for this petition, making Mr. Gaudio a participant in the meeting but not a voting member.

Chair Gorman stated that he is in agreement that generally Mr. Russett is not changing the structure, so it would be difficult to pinpoint any type of devaluation of abutting properties. He continued that water, sewer, and parking all seem to be in place on a fairly good-sized lot. He does not see any real concerns or hazards being created. It is just someone trying to expand his business to better serve his clients, which is a good thing.

He asked if there is more input from the Board before they vote on the criteria. Hearing none, he called for a vote.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

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

Met with a vote of 5-0.

The motion to approve ZBA 20-21 passed unanimously.

- e. **ZBA 20-22:/ Petitioner, Monadnock Area Peer Support Agency of Keene, represented by Peter Starkey, of Keene, requests a Special Exception for property located at 194-202 Court St., Tax Map #554-012-000; that is in the Medium Density District. The Petitioner requests a Special Exception to permit a group home and wellness center per Section 102-392 of the Zoning Ordinance.**

Chair Gorman asked Staff to speak to the next petition. Mr. Rogers explained the location of the property on Court St., which had been a home for the elderly as a non-conforming use in the Medium Density District. He continued that he assumes it was such for many years, because Staff files do not have a lot of history about this property. The Petitioner is asking for it to be a group home, which would be allowed in the Medium Density District with a Special Exception by the Board. All Staff has currently in the files is that they were licensed through the State with 24 beds for this facility when they were operating. It has been empty for quite a while now. It was part of the organization that opened the Hillside property.

Chair Gorman asked if the Board had any questions for Mr. Rogers. Hearing none, he opened the public hearing. He asked to hear from the Petitioner.

Peter Starkey, on behalf of Monadnock Peer Support Agency, stated that he wants to begin by reading his answers to the criteria into the record. He continued that he knows the Board has received several letters of opposition. He can give verbal testimony after his presentation.

Mr. Starkey read:

1. *The proposed use is similar to one or more of the uses already authorized in that district and is in an appropriate location for such a use.*

Although there are no group homes in the district, the proposed use is similar to other uses already authorized and by special exception in this area which includes offices and institutional use. The property was already classified as an institutional use for elder care, in addition to another elder care facility at 361 Court Street (Prospect Home). These institutional elder care facilities had 24 and 15-18 residents respectively, which is significantly above MPS' proposed uses. MPS is proposing 5 total individuals overnight, 2 for our week long program and 3 for our 2-month program. There are several multi-family, or mixed office/single family use properties in the district, and MPS would be providing

supportive housing uses at similar or decreased amounts to these properties. The Surry Village Charter School operates institutional use in two locations nearby. MPS is also currently located in a medium density district. The 194-202 Court St. property also neighbors high and low density areas which have a multitude of special exceptions for institutional use. As mentioned above, the location is an appropriate one because MPS' proposal represents a significant decrease in the amount of people living and interacting with the location. The location is appropriate for our programming because it is the same distance from necessary facilities and needs of members, staff, and residents as our 64 Beaver location.

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

MPS has existed at our current 64 Beaver St. property for 21 years, and has not had a negative impact on the value of any property in the district. The value of properties on the street have increased in value over this time. MPS has made exterior improvements to our current property including exterior upgrades, paint, and gardening. The proposed property is currently not being used, and maintenance/upkeep has been minimal. MPS' occupancy of the facility would add value in our maintenance and upkeep of the building's exterior. MPS also is looking to make significant renovations to the interior and exterior of the building in the coming years, allowing for increased value to surrounding properties. MPS will be ensuring the historic preservation of the building's exterior, which is well regarded nationally as a primary way to increase property values. MPS would not increase traffic and will not increase noise from the previous use when upwards of 24 residents and associated care staff utilized the building.

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

The property at 194-202 Court St. is appealing to MPS because of its ample onsite parking. Court St. also has ample street parking and other parking lots within easy walking distance. MPS programming is always facilitated on property, and would not pose a hazard to vehicles or pedestrians.

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

MPS would not increase use of facilities from the previous use when upwards of 24 residents and associated care staff utilized the building daily. The facilities are more than necessary.

Mr. Starkey stated that he would like to respond to the people who wrote to the Board in opposition. He continued that the Board's decision needs to be based on fact and law, not prejudice or hysteria. Mental health is a protected class under federal and state law, and the Board should disregard any prejudice to people with mental health issues as being a threat or danger to the neighborhood, as it is not based in fact or law. Opposition has not presented this evidence of a threat to people in the neighborhood and concerns are not based in fact or law. When submitting the application, staff from Monadnock Area Peer Support (MPS) spoke at length with City Staff and MPS's own counsel about the proposed use as a group home, while opposition comments that it be considered an institutional use as a clinic, which is not based in fact or law or an understanding of MPS. MPS is a non-clinical and non-medical program as defined by MPS's mission, state contract, and NH administrative rules. They do not bill to insurance and they do not hold medical records that follow HPPA. They do not offer clinical services that are traditionally sought at places like Monadnock Family Services or MAPS Counseling. MPS provides a safe space and location, not a paid or insurance-based service. To the extent that there is a service, it is to share with each other respectfully, to build each other up and support each other. The opposition saying it is an institutional use is not based in fact or law and contradicts numerous conversations with City Staff and counsel, who were presented with the full picture of what MPS does.

He continued that Special Exception means the use has been contemplated for the Zone and just needs to be approved by the Board. Based on fact and law, group homes are permitted by application. MPS has been in a Medium Density District for 21 years and are seeking to locate in a Medium Density District. In their existing location, they have not had an impact that is reflective of the picture the opposition presents. There is no evidence of that impact in the proposed location. Yes, a property owner is permitted to testify on their property value, but the Board gets to decide whether to believe those statements.

Mr. Starkey continued that the Board should also weigh the fact that the building has been vacant and in a state of disrepair for 2-3 years. There was concern about the property being difficult to heat and the lack of parking. MPS is fully aware of utility costs and he did not understand why that information was needed for the Board. Regarding parking, MPS measured on site with cars, and could fit five cars along the south side, two to three in the rear, and two in the northwest corner. With varying sizes of cars that might go up or down but it is about nine or ten spaces. MPS also spoke with staff about the parking concerns and compared to the parking capacity at their current space, which is eight cars. The move has a net increase in parking availability. There is no basis in fact that MPS poses a hazard or threat to their current neighborhood due to parking and the net increase in available parking supports MPS's proposed use.

Mr. Starkey stated that several people in opposition paint Court St. as a small, low-use neighborhood and this is not based in fact. It is a major roadway with a multitude of mixed uses. The fact that people walk or drive there does not make any difference to the current use of the street, which is a high-traffic community with businesses, residential facilities, and close proximity to the hospital, Fire Department, Keene Senior Center, Keene Community Kitchen, and the Keene Serenity Center. The proposed use would be a dramatic decrease from the over two dozen former assisted living residents and associated staff and visitors, as opposed to MPS's five overnight individuals and support groups. At MPS's busiest time and busiest group there are only about 11 people in the building. It could increase or decrease for multiple reasons but

the current facility does not accommodate the inflated projections of “dozens of people” as stated by the opposition, nor do they see this as an issue at the proposed facility. MPS does not seek to lose its small community feel that is important to fostering wellness and the opposition’s assertion that they seek to “stuff the building full of people” is not based in fact. The building’s prior use had 20 to 24 people, which is much higher than MPS’s proposed use. There is no evidence that residents would be “hanging out in the front” and opposition letters paint the residents they serve as a danger or threat to neighbors and society – this is based on prejudice, not fact.

Mr. Starkey continued that he has been talking a lot about fact but also wants to offer a qualitative response to several of the points he has raised. MPS has been in the community for 25 years. He questioned the Board as to who knew of its existence before this application. He has lived in Keene his entire life and until he became employed, he did not know MPS existed. Probably most people speaking in opposition were unaware of its existence as well with many people mistakenly thinking he started the organization three years ago. Many of MPS’s current neighbors did not realize MPS was there. He says all this to underscore that the opposition’s claim that MPS will be a nuisance, eyesore, burden, and so on and so forth is not based in fact, but based in prejudice and fear of people with mental health needs and the Board should reject this prejudice.

Ms. Taylor asked how many staff members there are and what the maximum number of staff members would be. Mr. Starkey replied that usually there are no more than three or four staff members in the building at once. They have 11 staff members total when fully staffed but that represents people who are part-time or supervising overnight. Ms. Taylor asked if MPS is staffed 24 hours a day. Mr. Starkey replied that the proposed model is to have five residents and one Residential Manager who lives on site, similar to a Residence Director of a college. They would also have an additional staff member, so there would be two staff members on site at all times, and at least two staff members on call within a 5- to 10-minute drive.

Chair Gorman stated that Mr. Starkey mentioned there has been no diminution of property value on Beaver St. where MPS currently is. He continued that the burden of proof falls on Mr. Starkey. He asked if he has anything to back up that statement or if that is just his general assessment. Mr. Starkey stated that he does not have the numbers in front of him but assessed property value has increased from what they paid in 1999 and they expect to sell the building for well above what they paid for it in 1999. He continued that in partnership with their real estate agent, they pulled a lot of property cards in the surrounding area, going about 200 feet like they had to for this application, looking at what people have paid for their houses and the history of the assessments, and there has not been a negative impact with MPS being there. Most people in the neighborhood do not even realize MPS is there.

Chair Gorman stated that he understands that and appreciates that position. He continued that the question about property value is not about how MPS’s property value has or has not changed, but rather what it has done to properties around it. The fact that they have gone up in value in the last 21 years does not really offer any statistical data as to whether they have gone up and down in value the same as the rest of Keene, or less, or more. One would expect the property to appreciate but it may not appreciate at the same pace as other properties in the city. He asked if

Mr. Starkey has any comment relative to that. Mr. Starkey stated that based off of the information they have received from city records, as a whole the properties in the city have gone down in value over the last 20 years. None of the publicly-available evidence he has seen suggested that MPS's presence in the neighborhood has negatively impacted the property value of abutters.

Mr. Hoppock stated that Mr. Starkey's background materials state that MPS has a daily average attendance of 20 unique individuals. He asked if it is correct that those are not overnight guests. Mr. Starkey replied that the number is inclusive of overnight guests. Mr. Hoppock asked if it is part of the five, two, and three that he mentioned separately. Mr. Starkey replied that the 20 represents the two they currently have at the Beaver St. location, two short-term stays they have been operating for three years. This move represents a new program they are starting with financial support to start three longer-term supportive housing beds. Mr. Hoppock stated that if you take those five people out of the 20 that is 15 people who do not stay overnight. Mr. Starkey replied yes.

Mr. Hoppock asked what those 15 people do during the day. Mr. Starkey replied that MPS, through its state contract, provides peer support groups. He continued that they facilitate an environment where people can exchange what is going on for them in their mental health and give and receive support. There is one-on-one peer support for people who are having a tough day and need someone to talk to. There is also relationship-building and community-building, which is the foundation of everything they do. The two things that really exacerbate mental health challenges are the feeling that you are alone and the feeling that you are rejected by society. MPS tries to combat that in the sense that if they can create connection and foster community they are able to lessen the burden that comes with that. They have support groups, one-to-one peer support, and community-building activities like creative writing and drawing, a weekly community meal, and social activities like a gardening club.

Mr. Hoppock asked if it is correct that there are more than five employees. Mr. Starkey replied yes.

Mr. Gaudio stated that a substantial portion of the Brattleboro Retreat will be closing soon. He continued that he is not sure how that will overlap with MPS but asked if Mr. Starkey foresee an increase in demand for MPS's services and an increase in clientele as a result. Mr. Starkey replied no, the Brattleboro Retreat is very different as it is an institutional care that provides clinical and medical services that MPS does not provide. MPS would not be an appropriate place for people who are at the Retreat or need psychiatric hospital evaluation or care. MPS's care is more about preventing that sort of situation from happening or supporting someone after they leave that sort of facility and have reached a state of wellness, not actively in psychiatric crisis.

Chair Gorman asked if the Board had more questions for Mr. Starkey. Hearing none, he stated that he will open the public hearing after he first asks Staff a question. He asked Mr. Rogers if it is safe to assume that parking requirements in the Zoning Code have been or will be met. Mr. Rogers replied that a group home use is not a use spelled out under the parking table under Section 102-793 so there are a couple avenues for Mr. Starkey to use. One is a permit-type

situation, with the allowance of one parking space per unit, but that does not seem to fit this building. Another avenue would be to use the section of the Zoning Code that allows the Zoning Administrator to make the determination of what the requirement would be based off of the uses they are determining. If the Applicant made the argument that they need one parking spot per bed, then parking could address. The parking solution would have to be done prior to a permit being issued for a change of use for this property.

Chair Gorman stated that just to be clear, that would be handled administratively and would not come back before the Board. Mr. Rogers replied unless they could not make the argument that the parking is not required. He continued that if he, as the Zoning Administrator, made that determination then, the Applicant would go to back to the Board to seek a Variance. For group homes, there has been a reasonable argument that in many cases the clients do not have vehicles.

Mr. Welsh stated that his curiosity about the origin of the designation of this facility and its proposed use as a group home. He asked if that is determined administratively or if it is a claim made by the Applicant. He is interested in the contrary notion that it may be a clinic and may be an institutional use. Mr. Rogers replied that staff had conversation with Mr. Starkey about this proposed use. The Zoning Code's definition of "group home" fits with what Mr. Starkey was describing. He continued that the definition is *"any premises, privately or publicly sponsored, where board and supervision are given to five or more persons not related by blood or marriage to the owner or primary occupant thereof, for the purpose of social rehabilitation and/or long term sheltered care."* He continued that Mr. Starkey made the argument that they are providing the social rehabilitation as outlined in that definition.

Chair Gorman asked if the same determination was made for the Beaver St. property that exists. Mr. Rogers replied that he has not made a determination of that property. He continued that he knew it was there but was not aware of its services or how that property was operated.

Chair Gorman opened the public hearing and gave information about how the public could participate. He asked for comments from those in favor of ZBA 20-22 to speak first.

Mari Brunner, of 100 Pearl St., stated that she is calling to speak in support of this petition. She continued that she lived on Beaver St. and was a direct abutter to MPS for two years, from 2013 to 2014. She continued that MPS was a great neighbor and for the first year, she did not even realize they were there and there were no issues. It was a quiet, clean, well-maintained place. The only reason she ever realized they were there, is because her window overlooks their side yard and she saw people out there gardening. They were a really great neighbor and there were no major issues with parking or traffic; no one ever parked on the street or blocked the sidewalk or anything of that nature.

Maggie Rice, of 84 Elm St., stated that she lives right around the corner from 194 Court St. and she wants to voice her support for this Special Exception to be granted to MPS. She continued that this is an area of the city that sits right between the Medium Density District and the High Density District. This means that people who live here are right up next to office buildings, yoga studios, and things like that. She feels a little frustrated as an occupant of this neighborhood because there are some folks opposing the petition by claiming that this is a family-centered

neighborhood. Nobody's kids are playing ball in the middle of Court St. This is not Maple Acres, and there are cars, and different people coming and going all the time, and that is something she really likes about living here. It is exciting and vibrant. She loves living in a place that she perceives as mixed use and wants to see that trend keep going. Regarding property values and offense to the neighborhood, she is not a property appraiser and cannot speak knowledgeably on what causes fluctuations in property values but she imagines that an unoccupied building would cause more devaluation than this specific use. She personally finds nothing injurious, obnoxious, or offensive in helping people who are experiencing mental health challenges. To be blunt, it is not like this is a strip club going into the neighborhood, so she does not feel that it would be disturbing the peace or offending occupants of nearby dwellings. In fact, she thinks it would be a positive change for this neighborhood to host an organization like MPS. She would be very proud to be their neighbor. The last thing she wants to say, although she knows it is not within the four criteria the Board is addressing: there is a sign on Court St. that says "Hate has no home here." She takes that to heart and thinks that the city takes that to heart. She is disappointed in her neighbors who are being so unwelcoming to people who are having a tough time and are seeking help, because hate has no home here. She thinks MPS and all of the people they serve should have a home in her neighborhood.

John Schuerman, of 189 Court St., stated that he lives right across the street from the property. He continued that he does not have an opinion but would like to ask some questions. This is a fairly large building and accommodates far more than five people. Mr. Schuerman questioned if the anticipated number of overnight residents would increase over five over the next year or five years. He also questioned what the qualifications of the staff are and what education do they have, and what qualifications do they have in dealing with mentally ill individuals. He continued that he is not familiar with MPS and is interested in knowing how they handle crises that come up with mentally ill individuals, which do arise fairly often. He asked what protocols are in place when that occurs. He understands that they are not clinical programs, but asked if there relationships with clinical programs that staff can call upon to deal with problems that arise. He also does not understand what the living arrangements will be and asked if meals will be provided in the facility with these meals being prepared and consumed onsite. He noticed the programs have been going on for quite some time but has no knowledge of them, so he is interested in knowing what the criteria are for someone being in the program, understanding that they cannot be actively psychotic when in the program. He also asked what provisions have been made for COVID-19 and if participants regularly tested and what provisions are in place for taking care of them medically if there are positive cases.

Chair Gorman stated that they will finish hearing from the public and then have Mr. Starkey address those questions. He continued that they will try and stay on task with the actual criteria of the Zoning Code.

Chair Gorman asked if there were any more call-ins from people in favor. Ms. Marcou replied no. Chair Gorman opened public comment from those in opposition.

Patricia Gallup stated that she is speaking on behalf of McLellan and McMahan Holdings, of PO Box 286, Keene. She continued that they are opposed to the issuance of a Special Exception for MPS's proposed use of the property at 194-202 Court St. McLellan and McMahan Holdings

owns 217 Court St., considered by the City to be an affected property regarding this proposal. She is a partner and owns and resides in a different neighborhood property less than a block away. She believes properties in the neighborhood will be significantly devalued should the Special Exception be allowed by the Board, both monetarily and in terms of the neighbors' and abutters' "rights of private enjoyment." In addition she has concerns on behalf of the tenant at 217 Court St., the Surry Village Charter School, which also has a building on School St. Both buildings are only about a tenth of a mile away from the proposed use of this building. The "clinic and institution" that is being proposed would fall in between the two buildings. MPS's operations, as outlined on their website, particularly the "clinical and institutional" aspects of their services, would not be in keeping with the residential nature of the neighborhood. Although McLellan and McMahan Holdings is supportive of MPS's goals and mission, they do not feel this property is a good place to hold meetings and therapy sessions throughout the day and evening, six days per week. That is not compatible with the surrounding residences. MPS also states on their website that currently in the warmer months these meetings take place outdoors. Certainly the small amount of outdoor space on the property would not allow for much privacy for those participating nor for the neighbors.

Ms. Gallup continued that a second major concern is that there is very little on-site parking or space to accommodate more. Most of the clients would have to make use of on-street parallel parking and it is already a busy street. Third, the former Woodard Retirement Home was truly a home to its residents. The proposal of MPS to use the property to provide short-term overnight stays for clients in distress is very different. According to what she has heard and understand from the articles in the Keene Sentinel, MPS plans to considerably expand their programs by as much as three times. MPS plans to do that for both the overnight program and the day classes and therapy sessions. That increases McLellan and McMahan Holdings' concerns. She encourages Board members to look at MPS's website and the list of classes and sessions already offered which are quite substantial. If that were to increase by three times and/or the numbers of clients was increased by three times that would be a really heavy usage of that facility. McLellan and McMahan Holdings respectfully requests that the Board not make this Special Exception.

Judith Putnam, of 168 Court St., stated that MPS seems to be a very successful agency helping the mentally ill in this community and for that everyone is grateful. She continued that because of its success MPS is looking to move to a larger space to increase the services they offer – increase the overnights and lengthy stays and add more help to clients through more peer support groups. They define their request as a "group home and wellness center." The proposal by MPS is not similar to the Woodard Home, which was a permanent residence for elderly people who made connections and hosted activities in the neighborhood. While five people staying a week or two months is where MPS would begin, what would be the limit for the number of people they could house? The facility has 24 bedrooms with bathrooms and MPS has said they want to increase the number of people they serve. Ms. Putnam quested how many more people would stay there. Some of these people could be in crisis and awaiting hospitalization. The Special Exception would put no limit on how many people could be staying at any time and the Special Exception would be permanently on the property so that another owner could continue to use the buildings to house many people. This is to her a cause for concern. She believes MPS functions as a mental healthcare facility, with clients coming at appointed times for specific group work. Although there currently seem to be about 10 to 12 group meetings per week, MPS has stated

that they want to increase the number of programs offered. That would certainly fit with their mission, but what does that mean? Would 12 meetings quickly become 20 meetings? Would it be 100 to 200 people coming and going during the week?

Ms. Putnam continued that parking is very limited on the premises so most clients would need to park on Court St. This is a residential neighborhood and a heavily traveled main street. Adding significant parking adds to the hazards of driving, biking, emerging from a driveway or side street, or even crossing Court St.

She continued that there are two old single-family homes on either side of MPS's proposed property. Both have had families with children living there over the last ten years. These properties will be much less appealing and therefore of less value to families in the future if this busy social service agency relocates there. For these reasons, it is not similar to the previous use and it is not an appropriate location for a mental healthcare facility. Increased parking and traffic bring increased hazards, and because of the lessening of adjacent property values she strongly urges that the request for the Special Exception be denied.

Joe Durell stated that he and Beth Durell live at 33 Mayflower Dr., which is about 500 feet directly behind the former Woodard Home. He continued that they have significant concerns, because even though the location is on Court St., they live in a nice residential neighborhood, directly behind the home. They are concerned for the safety of their young child who play in the backyard. He has been in the Woodward Home before, visiting clients, and this would be a significant change in the use of the facility. He supports the goals of the organization but he and his wife have significant concerns about such a facility being directly in front of their home. They are also concerned about MPS's expansion and additional projects and additional clients or patients. The only available parking would be on Court St. and it would cause a significant increase in risk to people pulling out of driveways, traffic, pedestrians, and bicyclists. For those reasons he and his wife respectfully hope the Board would vote against the expanded use of this property.

Gary Kinyon stated that he is an attorney in Keene and is representing the Surry Charter School. He continued that many of his points were already covered by other abutters' comments and in the letters submitted. He wants to point out a couple of things the Board should be mindful of. The Board has both legal questions to deal with and factual questions. A legal question is whether the application and what is being applied for, a group home, is really what the proposed use is. The intent of the Medium Density District is to "provide for medium density, medium intensity, and residential area." There are a very limited number of other uses permitted, which are associated with a residential setting. Normal commercial, industrial uses are excluded. All uses in this Zone are required to have City water and sewer services. Clearly the intent of this Zone is an emphasis on residential use. It is just not accurate to characterize the prior use of the Woodard Home with the proposed use. He does not think the proposed use fits within the definition of "group home" under the Zoning Code. A group home is designed for long-term shelter care or social rehabilitation. He does not believe "social rehabilitation" is what is being proposed here. As referenced in Attorney Hanna's letter to the Board, it is clear that the primary proposed use will be related to mental health service being provided at the property.

Mr. Kinyon continued that there is a great deal of potential for expansion, as others stated in their testimony. The facility is much larger than MPS's current facility on Beaver St. The proposed use is closer in definition to a "lodging house" in the Zoning Code because a lodging house contemplates transient housing. To the extent that housing will be provided here, it is transient, not long-term. The question of law the Board has to determine is first whether the proposed use is in fact a group home, and Mr. Kinyon says no, it is either a lodging house or an institutional use like a clinic. If it does not fall neatly into any definition then it is not a permitted use in the Medium Density District. In that case, what it would need is a Variance, not a Special Exception.

Mr. Kinyon continued that in terms of the factual decision the Board needs to make, that is addressed by the standards for Special Exception, which are addressed in the application. As already addressed by the abutters and Attorney Hanna, those standards have not been met by the Applicant. It is the Applicant's burden of proof to meet those standards. If the Applicant has not done that, the application should be denied. Mr. Kinyon continues that the Applicant drew their attention particularly to the issue that the proposed use would not reduce the value of property within the district and otherwise be injurious, obnoxious, or offensive to the neighborhood. Here it is not a strict requirement that the Applicant provide the opinion of an appraiser that property values would not be diminished, but the lack of an expert opinion is very telling here. And merely because the Applicant offers the assurance that it will not happen does not mean that the Board should not and cannot take into account its own experience and judgment in determining that an operation such as the one proposed, in a facility this large, if expanded to take up the whole facility, could very well diminish property values and especially properties directly abutting the properties, such as the people who have spoken already. With respect to the standard that it would create no hazard to vehicles or pedestrians, the Board should think about what a residential use, which is primarily what is intended for this Zone, will produce for traffic, then think about what this proposed use would produce for traffic. The difference is substantial. The Board can take note of the fact that parking is limited on this property and on Court St. and that will create a problem. For those reasons and the reasons given by others, he would respectfully ask on behalf of the Surry Charter School, which is located on both School St. and Court St., that the Board deny the application.

Next to speak was Attorney Thomas Hanna who stated that he would not go through the criteria because the neighbors and Attorney Kinyon have already, but he wanted to add to the question of whether this is a group home or not. He continued that he thinks the Board needs to focus not so much on the technicalities of the qualifications of the clinicians, for example, or whether this is a clinic in the typical form of that word, but on the real issue of what is happening from a land use perspective. He suggests that a group home is not the primary activity that the Applicant has proposed. He takes that primarily from the Applicant's own application, which states that MPS has a daily average total of 20 individuals. He took that to mean that is the average now, while the organization has two overnight people, so that would be 18 non-overnight people. The application goes on to state that the closure of the psychiatric unit at Cheshire Medical Center in 2017 resulted in the region losing critical mental health services which are now outsourced to a Concord hospital and Brattleboro Retreat in Vermont. Then there is the sentence: "*The primary focus of MPS is to provide low-impact mental health services that keep individuals in mental health wellness and attempt to reduce the instances of crisis turning to hospitalization.*" It is

clear that counseling or group support really is first and housing is second. It does not pass muster to say this is a group home. A group home is what would be allowed at that site by Special Exception but he thinks it is really more akin to a clinic activity, and as his letter indicates, a clinic is an institutional use, which is not allowed at this site, but would be allowed elsewhere on Court St. The threshold issue for the Board is whether or not this is a group home, and as Mr. Kinyon mentioned, if the Board cannot determine what use this is, it really does not have the right to try to fit this square peg into a round hole and has to deny the request.

Mr. Hoppock asked where in the Zoning Ordinance that an institutional use would not be permitted at this site. Mr. Hanna replied that institutional uses are only allowed under Division 12 of the Zoning Ordinance on certain enumerated streets and it indicates that the west side of Court St. institutional uses are only allowed from Westview St. north to Maple Ave. Mr. Hoppock asked if it is correct that this property is well before that. Mr. Hanna replied yes, substantially - Westview St. is close to the hospital.

Mr. Rogers stated that Section 102-1111 of the Zoning Code gives the permitted locations for institutional uses and states that institutional uses are allowed anywhere in the Central Business, Central Business Limited, and Commerce Districts, and then they are allowed in other districts but there is a street list, and as Mr. Hanna spoke to, on Court St. they are allowed closer to the hospital and heading north from there.

Mr. Hoppock asked if an institutional use could be permitted at this location by a Variance. Mr. Rogers replied yes.

Ms. Taylor asked if the Surry Village Charter School on Court St. is an institutional use. Mr. Rogers replied that he would have to do a little research to properly answer. He continued that he assumes that charter schools are an exception under the RSA, but a private school in a normal situation would qualify as an institutional use. As a charter school, they might fall under the state school system. Ms. Taylor asked for clarification that Mr. Rogers refers as a government use. Mr. Rogers replied that he believes so.

Mr. Welsh stated that he noted the “institutional use” phrasing used in regards to the Surry Village Charter School in the materials supplied by the Applicant. He continued that if that is the case then presumably the charter school did apply for a Variance and not a Special Exception. He asked if that is a fair assumption. Mr. Rogers replied that he would have to do some research on this, but he thinks the charter school may have received an exemption from the City’s Land Use Code.

Chair Gorman asked Mr. Rogers about Mr. Kinyon’s statement that MPS’s use would be more of a lodging house than a group home. He asked Mr. Rogers to speak to the transient nature of one versus the other. Mr. Rogers replied that the “lodging house” definition speaks to transient or permanent housing. He continued that the difference between the two, in his opinion, is that in a group home you receive some sort of services, social rehabilitation, and/or long-term shelter care. The “group home” definition does not necessarily speak to the length of a person’s stay. At a lodging house you are not receiving services like in a group home; you are just renting a room.

Mr. Welsh stated that he has another question about “group home.” He continued that they heard from the Applicant that about 18 to 20 people would be there on a daily basis but that only between 5-8 would be overnight. It seems like the balance of use is going to be on the daily individuals. Mr. Welsh stated that hypothetically, if a facility was to provide daily use to individuals with no overnight facility that would not be a group home. He continued that it seems like that might be the primary use. Mr. Rogers replied that is the argument the attorneys have been making. He continued that if there is no residence there it would not be a group home, and it would be a different type of use, and at this point in time it is up to the Board to make a determination, based on what they have heard, of what the primary use is. Mr. Welsh asked if Mr. Rogers had any suggestions. Mr. Rogers replied that he would rather the Board make that determination.

Ms. Taylor asked what the designation of the Beaver St. property is, where MPS is currently operating; is that considered a group home. Mr. Rogers replied that he has not done research on that property and has not made any determination of whether it is a conforming or permitted use. He continued that he has not had the opportunity to pull those property files.

Returning to public comment, Jim Putnam, of 168 Court. St., stated that he grew up on Court St. and that he owns 180 Court St. which is next door to the former Woodard Home. In doing his own homework about the zoning, he found a definition of “institutional use” in the definitions section, which does not use the words “peer group,” but says that a healthcare facility is an institution, such as a nursing home, convalescent home, sanitarium, and so forth. He thinks the “such as” would include a peer group. He thinks this is further evidence that the Zoning Code would consider this an institutional use, which would not be allowed here. He recognizes the importance of the mental healthcare activities of MPS and he supports it, but sadly, he has had personal experience with a nephew who suffered from mental illness and spent a lot of years in peer support facilities. He wound up in residence in Massachusetts, Colorado, and Texas, and sadly perished at a facility in Texas. These facilities are important but should be located in appropriate districts as the Zoning Code calls for. He does not think it is appropriate for a Special Exception to be granted.

Mr. Kinyon returned and stated that he represented the charter school years ago when it was approved to operate on Court St. and he can confirm that it did not apply for a Special Exception or a Variance under RSA 674:54, Government Land Uses, because as a charter school it had the same status as a public school in terms of being exempt from local Zoning. That said, the school has shown that it can be an integral and good part of a residential area, since they are educating the children who live in the area.

Christine Nowell stated that she is the Chair of the MPS Board of Directors. She continued that she is a social worker in town, a member of MPS as well as a board member, a community member, the President of the Greater Keene Youth Baseball & Softball Association, and the Chair of the Board of Directors for the Membership Committee for the Lions. She is saying all of this because we all have mental health, from one area to the next. We all have a stake in the game, in terms of the location and its purpose. Ms. Nowell continued that she is a normal individual who is married, has children, works full time, and thoroughly enjoys what MPS offers to the community. Oftentimes people have this assumption that there will be 20 to 25 people per

day with severe mental health issues and that is not at all the case of what happens at MPS. She continued that she heard someone say there is no guarantee there would not “be an issue,” but there is no guarantee of that anywhere. What MPS guarantees is that they are providing sound, clear instruction and expectations, and a phenomenally safe environment for people to come and feel welcome in the community, and feel wholesome, and feel that they are getting the tools and resources necessary for them to be better citizens and members of society, so that we all, as a whole, can be better. It takes a village. The whole basis of MPS is to create that culture and environment. She is incredibly proud to be the Board Chair, a member, and a community member. Rather than worrying about the assumption that something will go wrong, let’s take a different perspective and look at the beauty that we have and the opportunity they have to bring to the table. This is a phenomenal, beautiful building that will provide MPS to take what they do to the next level. MPS has worked so hard to be able to provide this opportunity for the members and the community. Mr. Putnam’s story is a unique story. Ms. Nowell state that MPS has an opportunity that their help will ensure that whether it is Mr. Putnam’s family, or Mr. Starkey’s family, or so-and-so’s family, or any person who has a mental health issue, whether minor or severe, MPS has the tools, the resources, and the know-how, and the ability to help every single individual rise and be the very best version of themselves.

Ms. Nowell continued that they all need to take pause and not have a fear-based mentality and look at this for what it is. They have an amazing opportunity to provide a wonderful resource and a wonderful environment for everyone. Certainly, there will be some folks who come in who are in mental health crisis, but MPS has the experts on hand who are able to help guide those individuals. Someone who comes to MPS could be someone like her who, say, needs a respite away from their five children, or it could be Jane Doe up the street who is in the middle of a divorce and needs to get away; it could be somebody who is moving from another town and does not have anywhere else to turn and does not have a counselor. MPS offers a huge variety of services in a very positive environment. She has been on the board a long time and has not seen any issues that raise her eyebrows. It is important to look at what MPS is trying to do in its mission, and how MPS is contributing to society, to every single member in greater Keene. Ms. Nowell concluded by asking how a community could rise above, and not come at this from a fear-based mentality.

Chair Gorman asked if there was any more public input. Hearing none, he asked Mr. Starkey for his rebuttal.

Mr. Starkey stated that he appreciates all the testimony given, and even appreciates the opposition for taking an active voice. He continued that he is not angry at anyone or the words that were said. He will reiterate that this is about the facts and the law. A lot of the comments made were based on conjecture and speculation – specifically that MPS offers therapy sessions. He is not a counselor. No one on the staff is a counselor and no one on staff is qualified to offer therapeutic services. It would be a violation of their state contract and a violation of ethics to give therapeutic services. It is not what MPS does.

Mr. Starkey continued that one person who spoke in opposition was mischaracterizing a Keene Sentinel article and the “three times” aspect. At no time has he or anyone on the staff or board said that they want to increase programming by three times. What that was in reference to is that

this space is going to be a considerable amount of increased space, to the tune of three times. They have been in their current location for 21 years and have essentially been on top of each other. They have been doubling up in offices. Their groups are capped at eight people and still do not have enough space to fit everyone comfortably there. In order to bring their groups inside they had to empty out all the furniture in the barn.

Mr. Starkey continued that Mr. Schuerman had a lot of questions that he is not sure are really on the agenda for this meeting, and it is getting late at night, but he or anyone else who wants the answers to those questions can call, email, or otherwise reach out. One question was about MPS's long range strategic goals, and a lot of people tonight who have no connection to MPS have made assumptions about what their plans are. MPS has no plans to greatly expand and serve 60 people. The building does not have the size for that and MPS does not want to take on having a huge building with 24 residents in it. That is not what they are looking for and not what their intended purpose is. He believes that if they were to increase the amount of people that are there, they would have to come to the Board again.

Mr. Starkey stated that he spoke with City Staff at length for about three weeks and they went through every single way that this can be characterized. This was not a case of trying to shove a square peg into a round hole. There was considerable effort, research, and understanding that was incredibly thoughtful that went into this. He does not want to give any perception that they are trying to pull the wool over somebody's eyes. That is not the case at all. Ms. Nowell spoke to this. He feels like they have mischaracterized to a dangerous degree that "people with mental health challenges are dangerous" which he stated is really unfortunate. If that is the case, then he is dangerous, and a lot of people in this meeting are dangerous. MPS really strives to provide a community where somebody acknowledging their mental health is not afraid and they do not feel alone. A lot of comments tonight have really demonized people with mental health challenges and that is extremely concerning to the city he has lived in his entire life.

Chair Gorman stated that a good portion of the public input was relative to future growth, and Mr. Starkey did talk about that a little bit. He continued that it strikes him that in the line of work Mr. Starkey is in, he probably would not want to turn people away. Chair Gorman state that is commendable, but asked if people present themselves, doesn't it seem fit that MPS would serve them in the similar capacity at their current location they've outgrown.

Mr. Starkey replied that he wants to answer in two different ways. He continued that MPS staff is very committed to the fidelity of their model and to the state contract. They turn people away when it is not a correct fit. If someone comes into the respite program needing acute hospitalization, MPS supports them in seeking acute hospitalization. MPS is not a homeless shelter. If people come to them just needing a place to live, that is not what they are funded for. That is not what MPS does. They work with people who represent what MPS is trying to achieve. Yes, they want to help everyone whom they are able to appropriately support – which might be in that moment, or might be later on. Also, a significant portion of MPS programming does not happen on site. A lot of the natural aspects that happen off site are where staff members are meeting with people out in the community. Currently because of COVID-19 they are doing a lot of remote support groups and a significant amount of telephonic support as well. It is not in the strategic goal to stuff 24 people into the building. They are very Keene-centric. They do not

have a presence in Walpole, Peterborough, or Winchester, and that is part of their state contract. MPS is very closely monitored by the State of NH, which is their main funder. That is why MPS practices strong fidelity and very careful accountability to how programs are run and operated to the highest degree.

Mr. Welsh stated that Mr. Starkey went to some length to distinguish between therapy and other forms of service and to make it clear that staff would not be providing therapy. He asked if Mr. Starkey would characterize the work that the staff does as providing mental health services. Mr. Starkey replied yes, if they were to quantify the service that MPS offers it is that they facilitate an environment. He continued that the primary way that people are getting support is from each other. It is not someone going to a facilitator of a support group and thinking that they are the “bringer of all healing.” It is not a one-way relationship where a therapist is giving you what you need in order to be well. It is about creating relationships and community so people are able to support themselves.

Mr. Welsh stated that he is also wrestling with the definition of “clinic.” He continued that before, Mr. Starkey was asserting that the facility is not a clinic, saying they do not have billing or transactions like that. He asked if that is an important piece which differentiates a clinic from what Mr. Starkey proposes. Mr. Starkey replied that he thinks it is a big difference. He continued that a group home is distinguished as providing something free of charge to individuals for social rehabilitation and that is what MPS does; they work with people in a social atmosphere. “Clinic” implies that someone presents an insurance card or pays money and receives something in return. MPS does not give people something for their money or insurance. A lot of people misunderstand what they do, and this is where they get into this conundrum – people ask, “Oh, you don’t offer therapy?” and this confusion arises, and he is very used to questions like Mr. Welsh’s.

Chair Gorman asked if there is a use or definition in the Zoning Ordinance that Mr. Rogers is aware of that would offer an array of support groups. Mr. Rogers replied that many times uses such as that are classified as “office use,” especially if it is an outpatient situation, such as one-to-one counseling or small groups. He continued that this was a use that was brought forth to staff with the main purpose as a group home with a wellness center as part of the use, possibly as an accessory use. That would be something they would discuss such as how much they would use the building for each of those uses and for what amount of time it would be used. If MPS was using the consulting portion of the office for a large chunk of time it might not be considered an accessory use. That is something for the Board to take into consideration.

Chair Gorman closed the public hearing so the Board could deliberate. He stated that if needed he will reopen the public hearing to ask procedural or technical questions.

The Board went through the four Special Exception criteria.

- 1. The proposed use is similar to one or more of the uses already authorized in the district and is in an appropriate location for such a use.*

Mr. Hoppock stated that the definition of “institutional use” includes healthcare facilities, hospitals, accessory housing for families of patients at hospitals, and etc. Clinic, nursing home,

sanitarium, and so on and so forth. He continued that it goes on to say it may be public or private, for profit or not for profit, and “deals with a service rather than a product.” The testimony is unequivocal that MPS deals with a service, be it peer-to-peer, community, or some other type of counseling. There is no question that the primary use here is institutional instead of a group home. He does not think the definition of “group home” is satisfactory. A “group home” requires that board be paid and it is for purposes of social rehabilitation and/or long-term shelter and with this element not met, this is not a group home. Mr. Hoppock continued that it is an institutional use, and institutional use in this zone is not allowed by the Zoning Code. That is why he asked Mr. Hanna the question that he did. He does not think the first criterion is met, in terms of the proposed use. If the proposed use is not a permitted use then this is not an appropriate application; it should be a Variance.

Ms. Taylor stated that she partially disagrees with Mr. Hoppock, because they heard testimony that there are weekly community meals and food preparation. She continued that she thinks it is more of a group home than an institutional use. She definitely does not think it fits the definition of “clinic.” The Code is not entirely clear when it says “medical, dental, or mental health service,” but that usually indicates that there is some sort of fee for service paid. The reason that whether the Surry Village Charter School had received any kind of dispensation, and she agrees it is exempt if it is in fact equivalent to a public school, it still is an institutional use. She thinks that MPS fits more closely with the category of “group home” than with any other definition the Code has.

Chair Gorman stated that he agrees with Mr. Hoppock, and what he keeps coming back to is the 20 unique individuals per day while two people live there, so about ten percent is relative to boarding or lodging, which is what he thinks of with the term “group home” or “lodging house,” although a lodging house is more transient in nature. When he looks at ten percent of an activity he has a hard time seeing that as its primary purpose or use.

Mr. Welsh stated that there may be a group home aspect, but he finds Mr. Hoppock’s characterization of it as institutional compelling. He continued that when he looks at the primary proposed use being discussed, to him it is more clinic than not. He sees the definition includes outpatient mental health services and he does not see implied in that the acceptance of fee in return for services and therefore does not see that necessarily as a qualification or non-qualification for that category. Those would be his two main definitions of the proposed use, both of which would imply that they are looking at a Variance as opposed to a Special Exception.

Chair Gorman stated that he agrees that cost of services is fairly arbitrary, at least in his view. He continued that he does not think anyone is prohibited from providing a service for free or vice versa. He agrees that the service being provided is for treatment of mental conditions, irrespective of whether or not they are charging a fee.

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

Mr. Hoppock stated that he does not think the Applicant has met his burden in terms of whether or not property values would be reduced by this type of proposed use. He continued that he does

not believe the use would be injurious, obnoxious, or offensive to the neighborhood, so he is focusing on the value of the properties. He did not see any helpful evidence on that point.

Ms. Taylor stated that she does not see that there would be any negative impact on the values and does not see that it would be injurious, obnoxious, or offensive to the neighborhood as was pointed out by one of the people who testified that a large, vacant building is probably worse for the value of the surrounding properties than a property that is in use.

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

Ms. Taylor stated that she does not see this as a potential negative. She continued that she knows from visiting residents at this building when it had a prior use there were many staff members and residents with vehicles. There was probably more intense vehicle use previously. If people are coming and going to support groups, as opposed to parking long-term, she sees MPS's use as a less intensive vehicle use than what was there previously.

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

Mr. Hoppock stated that he sees absolutely no issue with this at all. He continued that he thinks this criterion has been met. Chair Gorman stated that he would agree. He continued that the only one he maybe questions is parking, but they addressed that through Staff and were assured that it would be addressed. If Staff cannot appropriately address it, it will come back to the Board. He agrees that the fourth criterion is met.

Chair Gorman asked if anyone had more comments on the criteria. Hearing none, he asked for a motion.

Mr. Hoppock made a motion to approve ZBA 20-22, which was seconded by Mr. Greenwald.

1. The proposed use is similar to one or more of the uses already authorized in the district and is in an appropriate location for such a use.

Not met by a vote of 1-4. Ms. Taylor was in favor.

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

Not met by a vote of 1-4. Ms. Taylor was in favor.

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

Met by a vote of 5-0.

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

Met by a vote of 5-0.

The motion to approve ZBA 20-22 was denied 1-4. Ms. Taylor was in favor.

Mr. Greenwald made a motion to deny ZBA 20-22, which was seconded by Mr. Hoppock. The motion passed by a vote of 4-1. Ms. Taylor was opposed.

- f. **ZBA 20-23:/ Petitioner, Rocky Brook Realty, LLC of 850 Marlboro Road, Keene, represented by Andrew Symington of Keene, requests a Variance for property located at 850 Marlboro Road, Tax Map #240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a mixed use in the Rural District per Section 102-332 of the Zoning Ordinance.**

Chair Gorman asked Staff to speak to the petition. Mr. Rogers stated that this is in the Rural District and does already have some mixed uses occurring on the property. He continued that there is an ice cream establishment in a larger, newer building that the owner built, and a multi-family building and several single-dwelling cabins. All of those are non-conforming uses for this property. There is also miniature golf on this property, which is an allowed use in the Rural District as an outdoor recreational activity. He continued that he encouraged the Applicant to seek this Variance and the other application the Board will see tonight for an additional use for this property because what they are requesting is an industrial-type use and because it is an additional use to the property. That is what is leading the Applicant to seek this mixed-use Variance and that decision is up to the Board. The Applicant believes he might not need this Variance.

Ms. Taylor stated that other than the mini golf and ice cream stand, the mixed use and the cabins, her understanding is that they have been there for a really long time and they would not necessarily have been governed by things like the Shoreline Protection and all of the modern requirements that exist. Mr. Rogers replied that is correct; when he looked into the property files he found correspondence from 1958 addressing the cabins, so they pre-exist that, although he is not sure when they were built.

Ms. Taylor stated that clearly this property has multiple uses on it – mini golf, ice cream/restaurant use, an apartment building, and the cabins. She asked how the other buildings got approved. Mr. Rogers replied yes, the City's records indicate that in 1983 the property received what was then called an Alteration of a Non-conforming Use to expand what was then a coffee shop to allow the ice cream to occur at a take-out window. He continued that in 2005 they received an Enlargement of a Non-conforming Use; that is probably when the current owner built the new building. That allowed the restaurant-type use to occur, and at the same time, he received a Variance for the mini golf that was being built, for the setback. The following year there was a Variance for a sign. Referencing the map, Mr. Rogers showed the floodplain. He continued that any development that occurred would have to deal with the City's Floodplain Ordinance and portions of this property would probably have to deal with the Shoreland Impact permits and the City's Surface Water Ordinance would have to be observed.

Ms. Taylor asked if Mr. Rogers could explain why, after all of these mixed uses have existed on the property, he is recommending there now be this Variance for mixed use. Mr. Rogers replied yes, there are some mixed uses occurring; most pre-date any of the City's current ordinances. Most were enlargements for non-conforming uses that were occurring on the property. Again,

one use that is permitted is mini golf. The fact that this is going into more of an industrial-type use, with the next Variance the owner has applied for, he (Mr. Rogers) felt the need to make it clear that multiple uses are occurring on this property and it had not necessarily gone through a mixed-use Variance in the past, most likely because it pre-dated those determinations.

Ms. Taylor asked if it is correct then that this is a new use. Mr. Rogers replied that his understanding is that the applicant is not asking to replace the current uses; this would be an additional use. Ms. Taylor asked if it is correct that it is not related to any of the existing uses. Mr. Rogers replied that is correct; it is an industrial, manufacturing/processing-type use that the owner asked for.

Mr. Gaudio asked if the property is currently being used for the pallet processing already. He continued that a photo included with the application shows pallets. Mr. Rogers replied yes, that is correct. He continued that this came to Staff's attention and they spoke with the property owner, and the property owner submitted a letter back to Staff about what was occurring on the property and that is when Staff made the determination that this is a manufacturing/processing use occurring. Since the property owner did immediately apply for Variances Staff stepped back to allow for this process. The Board's decision will dictate what actions Staff takes, whether that is enforcement of a violation or, if approved, a site plan review.

Chair Gorman stated that there are two Variance requests that are close together, so a question is whether it makes sense to combine the presentations into one application. Mr. Rogers replied that from Staff's perspective it is fine to combine them for the presentation and discussion and then vote on them separately, or the Board has the ability to make the determination that this mixed use Variance is not needed, but he just wanted it to be very clear, since this is a completely new use the property owner is asking for.

Ms. Taylor stated that she does not mind having the two presentations combined, but since they need to be voted on separately, hypothetically, should the Variance request for mixed use on this property be denied, would there be a need to move forward with the next Variance request, which was for the actual use. Chair Gorman replied that is a legitimate question. He continued that if the Board, Staff, and Applicant agree, what he would be comfortable doing is, if there is any duplicate information in the second application he can include that in his first presentation and not the second. Then procedurally, they can handle the two separately, because Ms. Taylor made a good point that if the Applicant does not get the mixed use Variance there is no sense hearing the second one. He does not know how the Board feels about Staff's comments about the necessary of a mixed use application.

Ms. Taylor stated that she thinks it is a good idea to move forward with the mixed use Variance application because if for whatever reason this proposed use were denied, then at least the status of the property would be cleaned up for the owner to potentially have a different use on the property. She sees the two as connected but disconnected at the same time.

Chair Gorman asked if there was any other comments from the Board. Hearing none, he opened the public hearing and gave information about how the public could participate. He asked the Petitioner to speak.

Andrew Symington stated that he is the Manager of Rocky Brook Realty, LLC, 850 Marlboro Rd., which is where he is speaking from. He continued that to answer some of their questions, the buildings were built in the 1950's and is a 7.12 acre parcel of land situated in the southeast corner of the city. The property has over 1,450 feet of frontage on Rt. 101 and is located next to the Cheshire County House of Corrections. The property is situated within the Rural District; however, the following non-conforming businesses already exist on the property: the Rocky Brook Motel, which consists of an apartment building, motel building, four small cabins and two large cabins, which are primarily rented year round to low-income families; and the Humdinger's Grill, which has a shared structure with the mini golf concession. There was an Enlargement of Non-Conforming Use, ZBA 05-05, and an Area Variance, ZBA 05-06. It is important to note that the activity conducted at the mini golf is different in nature compared to the snack bar business, which sells ice cream and hot food, which in turn is different in nature than the motel business, rental of living space. Consequently, the property can by default already be classified as a mixed use property. The property owner, Rocky Brook Realty, LLC is the Applicant and the parent company and is in the real estate rental business and the Applicant is proposing renting the field or a portion thereof, on the westerly end of the property, to persons or businesses that might be engaged in light manufacturing of products and subsequent retail sales of those or other products.

Mr. Symington continued that the following is a description of the current business candidate who operates a wood pallet reclamation business. This person obtains used pallets off site, repairs the broken portions of pallets on site, using cannibalized pieces of unusable pallets, then sells the repaired pallets to local industries and businesses. This operation can be classified as a retail sales business due to the resale of the product but it can also be classified as a light manufacturing operation because the pallets are physically repaired on site using typical activities associated with manufacturing, such as sawing and hammering. Most of the work is performed using hand tools. The broken or unusable pieces of wood are carried off site and properly disposed of. This business only operates during daylight hours and does not require electrical, water, or sewer hookups. The only vehicle allowed in the field is a pick-up truck and small trailer, used to transport the pallets back and forth. Access to the property is via the State-approved curb cut for the existing Rocky Brook Realty, LLC businesses. Pallet customers can conduct business over the phone and there is no need for customers to visit the 850 Marlboro Rd. campus.

Mr. Symington continued that the following is an overview of the business owner himself who is disabled. This individual was involved in an automobile accident as a young adult and suffered severe brain trauma as a result and has limited cognitive function. Allowing this person to conduct this type of business facilitates his independence and allows him the opportunity to be a productive member of society. He is also a tenant, living in the motel unit, with his 80-year-old mother.

Mr. Symington stated that he will go through the criteria.

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

Mr. Symington stated that granting the Variance would not be contrary to the public interest

because 850 Marlboro Rd. is physically a mixed-use property. The following businesses are currently located on this property: The Rocky Brook Motel, Humdingers Grille, and Humdingers Mini-golf. Granting the Variance is an administrative action; that is, amending the paperwork to more accurately reflect the physical reality that currently exists. Granting the Variance will also allow a commercial retail sales/light manufacturing business to also operate on the property.

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

Mr. Symington stated that if the Variance were granted, the spirit of the Ordinance would be observed because essentially it is an administrative action. The same reasoning applies here. Amending the paperwork will accurately reflect the physical reality of what currently exists.

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

Mr. Symington stated that again, granting the Variance is an administrative action to amend the paperwork to accurately reflect the physical reality of what currently exists.

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

Mr. Symington stated that essentially it is already a mixed-use property so there will not be any change. He continued that granting the Variance is an administrative change that would amend the paperwork to accurately reflect the physical reality of what currently exists.

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.*

Mr. Symington stated that granting the Variance is an administrative change that would amend the paperwork to accurately reflect the physical reality of what currently exists. He continued that he will not read the rest of his responses to the criteria because it is basically that same statement over and over.

Mr. Symington stated that he will move on to ZBA 20-24. Chair Gorman stated that from a procedural standpoint, they need to go through the whole public hearing for ZBA 20-23 for everyone's benefit and so that the record is accurate. He asked the Board if they have questions.

Ms. Taylor stated that she appreciates them being separated out because she has questions about ZBA 20-24 that are not pertinent to ZBA 20-23; this will make it more clear for the record.

Chair Gorman asked if the Board has questions. Hearing none, he asked for public comment. He asked Staff if there was anyone wishing to participate via telephone. Ms. Marcou replied no. Chair Gorman closed the public hearing. He stated that he will reopen the public hearing if necessary to ask procedural or technical questions.

The Board discussed the five criteria.

1. *Granting the Variance would not be contrary to the public interest.*
2. *If the Variance were granted, the spirit of the Ordinance would be observed.*
3. *Granting the Variance would do substantial justice.*

Ms. Taylor stated that her comments apply to criteria 1, 2, 3, and possibly 4. She continued that she thinks granting the Variance will actually do a service, to get all of these bits and pieces of non-conforming use into one bucket so that non-conforming uses one, two, and three will have a place in the Zoning universe if they are all classified as mixed use, so if there are further improvements to be made they can be made under one umbrella.

Mr. Greenwald stated that he agrees with Ms. Taylor. Chair Gorman replied that he does, too. He asked if anyone had further comments on criteria 1, 2, or 3. Mr. Hoppock stated that he agrees with the analysis, too.

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

Chair Gorman stated that he does not think the property values would diminish because the mixed use is already happening. He does not think that calling it what it already is would have any impact on the value.

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.*
- 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.

Ms. Taylor stated that she thinks this falls under A, and not B. She continued that this a strange situation where the property has grown and she thinks the application may have come later. There is clearly no substantial relationship between the purpose of the ordinance to this particular parcel and how it has been applied, in large part because of the preexisting use and the continued expansion of the non-conformance.

Chair Gorman asked if anyone else had anything to add. Hearing none, he asked for a motion.

Mr. Hoppock made a motion to approve ZBA 20-23. Chair Gorman seconded the motion.

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

Met by a vote of 5-0.

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

Met by a vote of 5-0.

3. Granting the Variance would do substantial justice.

Met by a vote of 5-0.

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

Met by a vote of 5-0.

5. Unnecessary Hardship

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

- 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.

Met by a vote of 5-0.

The motion to approve ZBA 20-23 passed unanimously.

- g. ZBA 20-24: Petitioner, Rocky Brook Realty, LLC of 850 Marlboro Road, Keene, represented by Andrew Symington of Keene, requests a Variance for property located at 850 Marlboro Road, Tax Map # 240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a commercial retail business and/or light manufacturing business in a Rural District per Section 102-332 of the Zoning Ordinance.**

Chair Gorman asked to hear from Staff. Mr. Rogers stated that this is a property that already currently has multiple uses, some conforming and some non-conforming. The Applicant is asking to add another use, which was determined to be a manufacturing/processing use, as the Applicant described – the person would be fixing up pallets and selling them to businesses. If this Variance were to be granted there are other processes that Mr. Symington would have to go through, like he spoke to before, such as the Shoreland Impact and the Surface Water Overlay District requirements and Floodplain Ordinance.

Ms. Taylor stated that she has a procedural question. She continued that this Variance is for this specific use. Ms. Taylor asked that if for some reason this particular use does not last or decides not to continue or does not get approved, is granting this Variance then approving an additional use on this parcel for another commercial retail or light manufacturing business. Mr. Rogers replied yes, he believes that is correct - unless the Board was trying to condition this in some way, another commercial retail or light manufacturing business could operate there as long as it met the criteria that he spoke to before. Ms. Taylor asked if it would have to go to the Planning Board for site plan review. Mr. Rogers replied that it would at least have to go to the Community Development Director, whether or not it meets the criteria of going to the Planning Board. It might be able to be done with just Community Development Director approval, depending on certain criteria such as size.

Ms. Taylor stated that her last question might be for the Applicant to answer, but regarding the picture of the pallets, it does not appear that there is any type of building. Mr. Rogers replied that is a question the Applicant can answer.

Chair Gorman opened the public hearing and explained how members of the public could participate. He asked to hear from the Petitioner. He stated that Mr. Symington does not need to repeat any information that he feels is redundant.

Mr. Symington stated that all of the background information from ZBA 20-23 applies to this one as well. He continued that he will go through the criteria.

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

Mr. Symington stated that the proposed business is similar to the ones currently permitted in the same Rural District and in the same neighborhood. He will list the retail sales and/or light manufacturing businesses permitted to operate in the same district in the same neighborhood.

Something to keep in mind is that cord wood; that is, chopped up wood that is used for building a fire with, is not something that occurs in nature; it is something that has to be manufactured. Cord wood manufacturing is permitted to occur at 717 Marlboro Rd. (reference ZBA 13-08). Cord wood manufacturing consists of cutting logs to length, splitting the cut log pieces, loading the split pieces onto a conveyer belt, sizing the load, and transporting the finished product to customers. All of these activities can be called “light manufacturing operations” and all occur on the 717 Marlboro Rd. property.

He continued that an important note is as follows from the Zoning Board meeting minutes of April 1, 2013, paragraph 4, line 3: *“The applicant also clarified that there is no harvesting done on this property. The firewood is trucked into the property.”* The City’s Code Enforcement staff determined that that statement means the following; trees are felled/physically harvested off site. In this instance, “firewood” means the actual, bulk logs. The logs are transported to the 717 Marlboro Rd. property, and then cord wood is manufactured on site which are cut, split, placed onto a conveyor belt, loaded onto a truck of appropriate size, and transported. All of these activities can be classified as “light manufacturing operations.” The applicant, MSP Industries, Mr. Patnaude (ZBA 13-08) has been allowed to produce cord wood (perform light manufacturing) at this site unmolested since April 2013. Consequently, other potential applications should also be allowed to conduct similar light manufacturing operations within the same district in accordance with the Doctrine of Administrative Gloss. Code Enforcement has interpreted the Zoning a certain way and he is hoping they interpret this the same way and allow this light manufacturing under this Variance as well.

Mr. Symington continued that cord wood retail sales are permitted to occur at 717 Marlboro Rd., as are landscaping material retail sales. At 850 Marlboro Rd., fast food, ice cream, and retail sales of other products (Humdingers Jail Ale beverages, boxed campfire wood, etc.) occur (reference: Rocky Brook Realty, LLC, ZBA 05-05 and ZBA 05-06). Also, radiator and radiator component retail sales occur at 711 Marlboro Rd. (reference: Radiator Express).

Mr. Symington continued that he also wants to point out that he does not know the exact time frame, but there used to be a gift shop at Rocky Brook as well. The people who owned the ice cream business, which used to have a different name, also had a gift shop on the property which is obviously retail sales. There is currently a viable market for these wood pallets, which support local businesses or industries. Consequently, there is a substantial public interest or need for these products.

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

Mr. Symington stated that on April 1, 2013, the Zoning Board approved ZBA 13-08, meaning, the Board has already determined that light manufacturing of cord wood and retail sales of cord wood are in accordance with the spirit of the ordinance as written and therefore have granted a Variance. The mechanical principles employed by the Skilling’s Pallets business is similar in nature to that employed by MPS Industries. Following is a comparison of the mechanical principles governing each operation: At MSP Industries, at 717 Marlboro Rd., manufacturing activities that already occur at this location include cutting the wood and splitting the wood with a wedge (that is, piercing the wood with a piece of metal). At Skilling’s Pallets at 850 Marlboro

Rd., light manufacturing (cutting wood and hammering in nails, which is also piercing the wood with a piece of metal) and retail sales (re-sale of refurbished wood pallets) is consistent with the types of light manufacturing and retail sales already occurring and approved in the same zoning district and in the same neighborhood. Because both operations work with the same base material (wood) and both operations use the same mechanical principles, both operations must therefore be consistent with the spirit of the ordinance as written.

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

Mr. Symington stated that the property in question has limited commercial/manufacturing/retail potential because of its size, proximity to the highway, proximity to the Minnewawa Brook, overhead utility lines, and so on and so forth. The property is, however, ideal for a certain type of small, craft-like light manufacturing and/or commercial retail applications. From Rocky Brook, LLC's perspective, granting the Variance will allow the Applicant to utilize the property in a manner consistent with its current commercial application. Potential income from this lot rental will help stabilize rent prices for a poor, disadvantaged tenant community (Rocky Brook Motel). He continued that from Skilling Pallet's perspective, as previously stated, the proprietor of the proposed business suffered traumatic brain injury in an automobile accident and has limited cognitive function. Allowing this person or persons like him to start and maintain their own business is in the public's interest. We, as a society need to facilitate the success and self-reliance of those less fortunate.

He continued that granting the Variance will do substantial justice because it will allow this person to be a productive and self-reliant member of our society. Furthermore, it will potentially allow others with the same challenges to do the same, should the lot or portion of it become available to another similarly situated individual or business.

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

Mr. Symington stated that the value of the surrounding properties would not be diminished because the proposed business has no physical structure or permanent features. Everything is transportable or removable. If the proposed pallet business is not successful, the stack of pallets can be easily removed thereby returning the property to its previous vacant condition. The pallet reclamation business requires no chemicals and does not produce any waste products harmful to the environment.

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. Symington stated that the current zoning designation is completely arbitrary and not representative of the type of structures and businesses currently located within the area. Following is a list of businesses and institutions located in the immediate vicinity: Cheshire County House of Corrections, Second Chance for Success, PB&J (automobile garage/sales/junkyard), Rocky Brook Motel, Humdingers Grille, Humdingers Mini-golf, City of Keene Water Pumping Station, Glad Wags, and Radiator Express.

and

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

Mr. Symington stated that from Rocky Brook Realty, LLC's perspective, the proposed use is a reasonable one because it is an extension of the existing real estate business. He continued that from Skilling's Pallets perspective, the proposed use is reasonable because the lot is ideally suited for the type of proposed business. The lot is flat, and there is high visibility on Rt. 101, and there is plenty of workable area, away from any residential area. The hours of operation do not interfere with the quiet enjoyment of surrounding tenancies, and there is an existing curb cut, and so on and so forth.

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. Symington stated that although 850 Marlboro Rd. is in a Rural District, it is almost exclusively used for business purposes. He continued that it currently hosts a miniature golf course, a seasonal restaurant/snack bar, an apartment building, a motel building, and several cabins. The owner of the property, the Applicant, is predominantly in the real estate business. The existing field/vacant lot is unproductive from a revenue-generating standpoint. The existing business (Rocky Brook Realty, LLC) is under constant economic pressure. Business expenses such as insurance premiums, electricity, and fuel costs continually increase year-to-year. The business must develop a new income stream to remain viable.

He continued that Rocky Brook Realty, LLC currently provides affordable housing to an economically disadvantaged market segment. Not allowing a Variance will create an unnecessary financial hardship for the low income residents since their rents will most likely need to be increased to make up for anticipated shortfalls.

Chair Gorman asked if anyone had questions for Mr. Symington. Ms. Taylor asked if there is a building related to this business or a plan for that. Mr. Symington replied no, there is no permanent structure at all. He continued that the individual has an awning out for when it is raining to keep him dry while he is working. Ms. Taylor asked if the business operate year-round. Mr. Symington replied yes, and the individual bundles up, and the work is physical exercise. Pounding nails with a hammer tends to generate a little internal heat.

Ms. Taylor stated that it was hard to figure out exactly, from the information they were given, where on the property this is going to be, although Mr. Symington referenced a field. She continued that it appears that on that end of the property there is a 250-foot-wide easement that National Grid has that goes across the property. She asked if that creates any issues. Would someone be allowed to operate within the confines of that easement?

Mr. Symington replied that this proposed use would not be within the easement – it is on the perimeter of the easement, between the last cabin and the easement of the overhead utility line. It is a small area, only 50' x 50', a total of 2,500 square feet.

Chair Gorman asked if anyone else had questions. Hearing none, he thanked Mr. Symington and stated that they will call on him if needed. He asked if there was any public comment. Ms. Marcou stated that she sees no callers or people with their hands raised. Chair Gorman closed the public hearing. He stated that he will reopen it if needed to ask procedural or technical questions.

The Board discussed the five criteria.

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

Ms. Taylor stated that she is not sure if her comment is regarding the first criterion, but, the area of this proposed business use is not really delineated. The way the application reads to her is that it essentially applies to the entire property. She continued that she knows that does not appear to be the intent, but, her concern is that if you grant a Variance to permit a commercial retail and/or light manufacturing business on the property, you could locate it anywhere. She is a little concerned about the breadth of it and does not know if there is a way to condition the Variance. This is what is giving her concern with this criterion and the next two criteria.

Chair Gorman stated that he agrees and he has several questions about the scope of this operation. While it is at this point one person who seems to be not harming anyone and just trying to rebuild old pallets, a Variance goes with a property, and this is for manufacturing and retail use, not specifically for a 50'x50' outdoor area where one person is putting together pallets, so he shares Ms. Taylor's concerns.

Mr. Hoppock stated that what he suggests is that if there is an inclination to approve the Variance, they could condition it defining the area to the south of the utility right-of-way and the cabin that Mr. Symington mentioned.

Chair Gorman stated that he is reopening the public hearing in case Mr. Symington has something relevant to say. Mr. Symington stated that he has a commercial rental agreement with the individual and he has a definition of the property that is in the agreement. It starts at a large pine tree located on the bank of the Minnewawa River, situated approximately 50 feet west of Cabin 18, and proceeds in a westerly direction along the bank of said river to 50 feet to a marker then in the northerly direction for 50 feet to a marker and in the easterly direction for 50 feet to a marker and in a southerly direction for 50 feet to the place at the beginning. It is approximately 2,500 square feet. It is anchored to a position.

Chair Gorman thanked Mr. Symington and closed the public hearing.

Ms. Taylor stated that if they are going to move forward and approve the Variance she would like to condition it on that 50'x50' description to specify the location.

Chair Gorman stated that he agrees that there should be conditions. He continued that he personally is not opposed to conditioning for this specific use, if that is something the Board can do.

Mr. Rogers stated that if the Board approves this and conditions it, he asks that they include requirements for it to meet the Shoreland Protection Act, and the Surface Water Ordinance.

Chair Gorman replied that that is a good point.

Mr. Hoppock asked if the Surface Water Ordinance and Shoreland Protection Act compliance would be separately enforceable by another Board. Mr. Rogers replied that Community Development Department staff would look at surface water issues as part of a site plan review, and the Shoreland Protection Act as well. If the Board were to condition the Variance to be that specific 50'x50' area and it turns out that the 50'x50' location could not be in that place because of that Act or that Ordinance there would be an issue with that condition. Mr. Hoppock stated that Mr. Symington would have to meet those conditions anyway. He questioned as to why the Board would have to condition those two items.

Chair Gorman stated that he does see what Mr. Rogers is saying, and also sees what Mr. Hoppock is saying. He continued that the condition perhaps is just that it is a 50'x50' area not in the easement. Chair Gorman asked, that in other words, if the Applicant could not meet those criteria specifically, where Mr. Symington has currently drafted his rental agreement, if he had to move it five feet but it was still the same size, would the Board be satisfied.

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

Mr. Hoppock stated that he does not see any evidence or information in the packet that would lead him to believe that the essential character of the neighborhood would be altered by allowing this narrow type of use. He continued that he does not think this is any threat to public health, safety, or welfare by allowing it.

Ms. Taylor stated that she would add that variances have to be taken on their own merit. She continued that she agrees with Mr. Hoppock but it is not necessarily relevant what another parcel in the vicinity has been approved for or not approved for.

Chair Gorman stated that he agrees, especially in light of the other properties. He continued that he does not know that they have a multitude of uses, he does not know that they are not screened from the street; there are so many variables that come into play on a specific property that can certainly segregate it from past Board decisions. With that said, he does not think this specific application is contrary to the spirit of the ordinance, in this scope and size.

3. Granting the Variance would do substantial justice.

Ms. Taylor stated that this is about the balancing act of whether or not the benefit to the Applicant outweighs the detriment to the public or the opposite, and it is a situation where it is pretty level. She continued that she does not think the pendulum swings in one direction or another on this.

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

Chair Gorman stated that he does not believe there would be a diminishing effect relative to this small operation. He continued that he is speaking as if they were going to put conditions on this.

Ms. Taylor stated that without conditions she thinks this might be of concern, because of maintenance of the site because it is totally out in the open and nothing is stored inside, so it has the potential of being a negative visually. There is that potential, but they do not know enough details about how it would operate and they have not added any conditions. Chair Gorman stated that he agrees, and he thinks that there would not be a diminishing effect if the business was small and conditioned. He continued that he does not know if the Board would contemplate some sort of screening as a measure.

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.*

- 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. Hoppock stated that he is having a hard time seeing the special conditions of the property. He continued that maybe there are special conditions in criteria three. Mr. Symington talks about proximity to the highway and proximity to the brook and overhead utility lines. He does not know what else he could point to which would help the Board identify special conditions of the property. He is not convinced about the ones that have been identified, not even in criteria five.

Ms. Taylor stated that she agrees and is having a bit of a struggle with this as well. She continued that part of the concern is whether or not Mr. Symington is being deprived of his use of his property, and she does not see that as an issue. Financial issues certainly can be a consideration but they are not determinative.

Mr. Hoppock stated that financial hardship is not a hardship under this criteria. He continued that there is a case on that but he cannot tell them the name of it. Chair Gorman stated that he agrees that financial hardship is not something he can get his head around here either. Further than it not being a reasonable hardship under case law, he also believes that the mini golf, multitude of rentals, and restaurant are certainly indicative of adequate and ample use of property. He is not sure the notion of the Board being responsible for his choices of rent prices is relevant.

Mr. Hoppock made a motion to approve ZBA 20-24, with the following conditions: 1. That any use be restricted to light manufacturing use involving refurbishing or refinishing of used or discarded wooden pallets for resale off premises, and further conditioned on a 50'x50' description as described by Mr. Symington that is not located within the parameters of any easement, and 2. That it comply with the Shoreland Protection Act and the City of Keene's Surface Water requirements. Ms. Taylor seconded the motion.

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

Met by a vote of 5-0.

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

Met by a vote of 4-1. *Ms. Taylor was opposed.*

3. Granting the Variance would do substantial justice.

Met by a vote of 5-0.

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

Met by a vote of 5-0.

5. Unnecessary Hardship

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

- 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:

and

- ii. The proposed use is a reasonable one.

Not met by a vote of 0-5.

- 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.

Not met by a vote of 0-5.

The motion to approve ZBA 20-24 was denied 0-5.

Chair Gorman made a motion to deny ZBA 20-24. Mr. Hoppock seconded the motion, which passed by unanimous vote.

- h. ZBA 20-25:/ Petitioner, Rocky Brook Realty, LLC of 850 Marlboro Road, Keene, represented by Andrew Symington of Keene, requests a Variance for property located at 850 Marlboro Road, Tax Map #240-025-000; that is in the Rural District. The Petitioner requests a Variance to permit a free standing sign for a retail/manufacturing business where free standing signs are not listed as a permitted use in a Rural District per Article VIII. Sign Regulations, Division 7, District Regulations of the Zoning Ordinance.**

Mr. Hoppock asked if this application is now moot. Mr. Rogers stated that the Applicant can choose to withdraw this. Chair Gorman asked Mr. Symington what he wants to do. Mr. Symington stated that he will withdraw ZBA 20-25.

V. New Business

Chair Gorman asked Mr. Rogers if there is any new business. Mr. Rogers replied no.

VI. Communications and Miscellaneous

VII. Non-Public Session (if required)

VIII. Adjournment

There being no further business, Chair Gorman adjourned the meeting at 10:32 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Edits submitted by,
Corinne Marcou, Zoning Clerk

Edits submitted by,
Jane Taylor, Board member