

City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, December 7, 2020

6:30 PM

Remote Meeting via Zoom

Members Present:

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

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

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

I. Introduction of Board Members

Chair Gorman called the meeting to order at 6:33 PM. Roll call was conducted.

II. Minutes of the Previous Meeting – November 2, 2020

Ms. Taylor stated that she has several corrections.

Chair Gorman made a motion to approve the meeting minutes of November 2, 2020. Mr. Welsh seconded the motion.

Ms. Taylor stated that her general comments are that throughout the draft minutes of the November 2, 2020 meeting, whenever the Board reviewed the individual criteria, the minutes indicate that the criterion was “granted,” and she thinks that should instead say “approved,” because it is the application that is granted, not the individual criteria. She continued that the second correction she has is regarding something that, again, appears throughout the minutes: in the voting, traditionally the Board indicates the affirmative votes first followed by the negative

votes. For example, if no one favored approving a particular criterion or application, that vote would be “0 to 5,” and that is not how it is presented in the minutes. It would be helpful if Staff went through and corrected it so the affirmative votes, even if they are 0, appear first.

Chair Gorman asked what specifically she is referencing. Ms. Taylor replied that there are several instances of this as example, on page 27 of 90, line 1051. It says “denied 4 to 1” and should say “denied 1 to 4.” On line 1054 it is the same issue. On the same page, line 1056, it says “granted” but should say “approved.”

Chair Gorman asked for Staff to review and correct.

Ms. Taylor continued with her corrections:

- Page 8 of 90, line 190: where it says “Chair Gorman agreed,” she thinks it is more accurate to say that “Chair Gorman confirmed that was correct.”
- Page 11, line 331: “Peter Starkey, on behalf of 64 Beaver St.,” should be “Peter Starkey, on behalf of Monadnock Peer Support Agency.”
- Page 21, line 774: “Mr. Hoppock replied yes” should be “Mr. Rogers replied yes.”
- Page 30, line 1162: the words “usable pallets” should be changed to “unusable pallets.”

Chair Gorman stated that his motion is to approve the minutes with changes. He asked if Mr. Welsh agreed which he replied yes. The motion to approve the minutes with changes passed by unanimous vote.

III. Unfinished Business

Chair Gorman asked if there is unfinished business. Zoning Administrator John Rogers replied no.

IV. Hearings:

a. Motion to Rehear: A Motion to Rehear petition ZBA 20-24, 850 Marlboro Rd., Petitioner, Rocky Brook Realty, LLC, has been submitted by Andrew Symington of Keene

Chair Gorman stated that this is not a public hearing so the Board can begin its deliberations. He asked for thoughts. Mr. Welsh stated that if he understands the Motion correctly, the point was the fact that the Board did not adequately appreciate the presence of the site within the floodplain. He continued that they may have seen the floodplain in some of the drawings put forth by Staff but, not appreciated it fully and it was not part of their discussions. He asked if his assessment is correct. Chair Gorman replied that he believes so. He continued that the Applicant also stated that the Board was too tired.

Ms. Taylor stated that the minutes show that the issue of the floodplain, Shore Land Protection, and the Overlay District were all discussed. She continued that one of the Applicant's concerns appears to be that the Board deliberated in closed session, but actually, they deliberated appropriately after the public hearing and the deliberations are not part of the public hearing. She thinks the deliberations were appropriate and she did not find any new information or anything else that would change the deliberations and she thinks the Board acted totally in accord with the requirements of the statute and the City ordinances.

Mr. Hoppock stated that he did not see that the Applicant made any argument that the Board's decision was unlawful or unreasonable in any sense, and that is the standard, so he would agree. He continued that he will not support the Motion.

Chair Gorman stated that he is not inclined to support the Motion either. He continued that he does not see anything new or anything indicative that the Board did not do their job.

Mr. Hoppock made a motion to grant the Motion to Rehear for ZBA 20-24. Ms. Taylor seconded the motion, which failed with a vote of 0-5.

Mr. Hoppock made a motion to deny the Motion to Rehear ZBA 20-04. Ms. Taylor seconded the motion, which passed with a unanimous vote of 5-0.

b. ZBA 20-26:/ 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).

Mr. Welsh stated that he needs to recuse himself from this hearing because his employer is an abutter. Chair Gorman stated that Mr. Gaudio, as Alternate, will sit in for Mr. Welsh. Ms. Zerba will be present for commentary but will not be voting.

Chair Gorman asked Staff to speak to this petition.

Mr. Rogers stated that 15 King Ct. is near the intersection of Main St. and Route 101 and is in the Low Density District. There is some Commerce across the highway where Agway and a ski and bike shop are, but the majority of property surrounding this property is Low Density. Prior to 1981, this space was used by the State of NH's Library System. In 1981, the Board approved what they then called an "Alteration of Non-conforming Use" to allow a retail and wholesale picture frame business; The Indian King Framery business was there for many years. In September 2018, the Board approved a change in non-conforming use from that retail use to a fitness facility which is the current permitted use. The current Applicant would like another

change in non-conforming use to a lodging house/shelter, which is not an allowed use in this district.

Chair Gorman asked if anyone had questions for Mr. Rogers. Mr. Gaudio stated that he believes there are other properties nearby or adjacent that are in a Low Density District but used for commercial office buildings or similar use. He asked if that is correct. Mr. Rogers replied yes, there are other commercial businesses nearby. He believes that the building just to the east of this, are office-type businesses. The majority of the other properties are single-family homes that are to the northeast side of this property.

Mr. Gaudio asked if those commercial properties received approval from the Zoning Board for their non-conforming use or by a variance. Mr. Rogers replied that he does not know; he did not research the surrounding properties.

Chair Gorman stated that the Board has received and read over 100 letters submitted by the public regarding this topic, both in support and in opposition. He continued that those letters have been filed into the record. He opened the public hearing and explained the procedures for participation.

Chair Gorman asked Jim Phippard, representing Hundred Nights, Inc., to speak.

Mr. Phippard stated that he is representing Hundred Nights, Inc., which has filed an application for a Change in Non-conforming Use for 15 King Ct. He continued that he will address the criteria.

1. The changed use will be more in the spirit and intent of the Zoning Ordinance.

Mr. Phippard stated that he believes that this change to be true, because previous uses on this property were business uses in nature. Most recently, a fitness center occupied the building, and before that, a retail framing business. The change to the use that Hundred Nights is proposing is not exactly a homeless shelter or lodging house, per se, but it is a portion of the homeless shelter operations. That distinction is important because this will not be occupied on a full-time basis but will be used as sleeping quarters only in an attempt to replace overflow beds that the homeless shelter has lost due to COVID-19. They previously had facilities in St. James Church and the United Church of Christ (UCC) with that possibility no longer existing, primarily due to COVID-19 and the requirements to occupy those spaces under the social distancing guidelines. Mr. Phippard stated that is what is driving Hundred Nights to look for additional sites where to provide sleeping quarters. This request is to allow Hundred Nights temporary use of the property, beginning now, through this winter and next winter, ending on April 30, 2022. If the Board was inclined to approve this request, Hundred Nights would not object to conditions restricting the use to sleeping quarters only, and restricting the use to extend no further than April 30, 2022. Mr. Phippard stated that should alleviate concerns people have expressed to the Board and to him from abutters and those in opposition.

Mr. Phippard continued that the building would not be open to Hundred Nights guests until after 6:30 PM which would only be open as a sleeping facility. Anyone sleeping there would be shuttled to the property from the current Lamson Street shelter in the early evening then again in the morning when the King Court location would close at 7 AM. People would not be encouraged to go to the facility on their own. The only activities during the day would be staff cleaning or maintaining the facility. It would not be used for any of the shelter practices that typically occur in the resource center, which will continue to be located on Lamson Street. Even though Hundred Nights can no longer use the St. James facility for overnight beds, they are allowed to use that facility as the resource center which they are currently and will continue doing for the near future.

Mr. Phippard stated that for the 15 King Court property, the use in the building is very restrictive and again, Hundred Nights would be agreeable to conditions that clearly outline that restriction. They feel that the use as sleeping quarters is a residential-type use in character, much more so than previous uses as a fitness center and a retail store. They do not feel this type of use would introduce more traffic into the area, since they are looking at transporting guests from their location on Lamson Street. Other than that, the only traffic to and from the facility are the staff who clean and maintain the facility during daylight hours. There should not be a lot of interference with local traffic and the business activities that currently exist on this property.

Mr. Phippard continued that Hundred Nights thinks this is in the best public interest and does meet the spirit and intent of this ordinance to allow the use under the conditions he has described. They think it is much more consistent with the intent of the Low Density District and the existing residential uses. As seen on the slide Mr. Rogers presented, there are Keene State College (KSC) dorms in the area, single family homes to the right of that and some rental homes, which is all exactly within the intent of the Low Density District. What Hundred Nights is proposing, is in keeping with that, more so than the previous business uses.

2. The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.

Mr. Phippard stated that Hundred Nights thinks that sleeping quarters should be much less injurious, obnoxious, or offensive to the neighborhood than the business uses allowed there previously. He does not know the exact hours the fitness center had, but typically fitness centers operate into the evening, as people tend to go after work. Hundred Nights thinks that by operating from 6:30 PM to 7:00 AM they can operate in a manner that is not injurious, obnoxious, or offensive to the neighborhood. The restrictions he described would be adequate to protect the interests long term of the neighbors and would help to solidify this representation that he is making.

Mr. Phippard continued that he knows an opinion letter was sent by Brian Underwood, a professional real estate appraiser, stating that he feels that this would contribute to devaluation of the properties adjacent to this site and in the neighborhood and he disagrees with that finding, for several reasons. Firstly, that is Mr. Underwood's opinion. Mr. Underwood is experienced, has

an impressive resume, and writes well, but after stating his opinion he does not offer any examples or evidence to show that Hundred Nights has caused property devaluation in the City of Keene. Mr. Underwood's letter concluded that *"The City of Keene's Assessing Office has, in the past, made certain reductions to assessments to account for abutting parcels that have adversely impacted their value."* Hundred Nights has been in existence in Keene for a little over ten years, at the same location on Lamson Street. Mr. Phippard stated that he emailed the City's Assessor Dan Langille, questioning if there is a negative effect on property values associated with being near the Hundred Nights shelter on Lamson Street, though this shelter is different from what Hundred Nights is proposing at 15 King Ct. The shelter on Lamson Street is a full operational shelter, with a resource center, operating 24 hours a day/seven days a week. There are reasons for homeless people to be there during the day, as they receive support services at the resource center, which currently is located at St. James Church space adjacent to the shelter, and also within the shelter itself. In his response email, Mr. Langille, pointed out that Hundred Nights has been in its Lamson Street location for ten years and that he personally found no evidence indicating devaluation of properties. In fact, when they reviewed a list of the assessed values for all of the abutting properties to the Lamson Street shelter, they found that those properties' valuations were less changed than the balance of properties in the City of Keene. Reductions in property values over a ten year period were roughly 1.8%; where city-wide they were 5.7%. Thus, they found evidence of the opposite: absolutely no diminution of property value. Mr. Langille replied to Mr. Phippard's email on December 3 stating, *"We are currently not applying any specific negative adjustment factors directly related to Hundred Nights to any properties located near their 17 Lamson St. location. It should be noted that on Lamson St. the property abuts exempt properties owned by the St. James Church as well as parking lots owned by the County and the City across the street. The other surrounding properties are mixed-use properties and primarily accessed off of Main St., West St., or Gilbo Ave. Let me know if you have any further questions."* Mr. Phippard stated that this was Mr. Langille's entire response, which he feels supports his observation that there was no diminution of property values associated with Hundred Nights or being in close proximity to them. There are properties on St. James Street, such as Sid's Furniture Store, and the Keene Sentinel building, which look directly at the resource center, and if anyone would be affected, they would be but, the valuations shows were not affected. Thus, in the absence of evidence to the contrary, he thinks you have to acknowledge that the City of Keene's Assessing Department recognizes no negative effect on property values associated with Hundred Nights on the Lamson Street location. He thinks the same would be even truer on King Court, since they only propose to use the location as sleeping quarters.

Mr. Phippard continued that he worked with Mr. Underwood before and is working with him now on another project in a different town, where Mr. Underwood was asked to give an opinion on the effect of a project on property values. Part of his report that was submitted on that project application on November 15, 2020 says: *"It is not uncommon for a property owner to claim that their property's value will decrease because of a proposed project. In the course of my 28+ year career, I have been asked many times by abutters proposing the project to opine that a proposed use will adversely impact their property values. In most cases, as in this case as well, the market*

data, along with researching the actions of buyers and sellers in the marketplace, result in indisputable evidence that in fact there is no diminution of value. It is easy to claim an impact; however, the supporting evidence and market data indicates otherwise.” Mr. Phippard stated that this statement further supports his claim that Hundred Nights’ proposed activity at this location would not diminish property values and would not have a negative effect on the properties in the neighborhood.

He continued that he knows that some people are uncomfortable seeing a homeless person walk by their property or walk down the street. There is a stigma our society has created for people who are homeless. He understands that some homeless people have mental health issues and some of them have additional issues, but today more than ever, the occupants of homeless shelters are everyday people who lost their jobs or were evicted from their apartments, or for other reasons are homeless. The standard here is not that people would be made uncomfortable seeing these homeless people at this building, the standard is that they would be harmed or would have diminished property values as a result of allowing this use. He thinks the only evidence before the Board is the evidence that he has given them, nothing from Mr. Underwood or the opponents indicating any negative effect on property values. He believes that this request should be approved. He thinks it is appropriate for the Board to approve it with conditions restricting the use on a limited basis as he described, terminating April 30, 2022, and they would be willing to allow it to be restricted to Hundred Nights, Inc., for sleeping quarters only. They would also be willing to restrict the number of beds in that facility to no more than 24. They are not looking to expand the number of homeless beds that are available in the Keene area; they are trying to maintain the same number of beds that they had a year ago. This is not an attempt to grow or expand the operation.

Mr. Phippard continued that Hundred Nights recently received approval for construction of a homeless shelter in what they hope will be a permanent location at 120-124 Water St. That application has been appealed and the Board denied to reconsider it. He agrees that decision was correct. They made no errors within that application. An appeal has been filed in the Superior Court. Hundred Nights will continue fighting that appeal, believing they ultimately will prevail and will be building a permanent homeless shelter in that location.

Mr. Phippard stated that he would be happy to answer questions. If this meeting had been in person he would have given the Board a hard copy of Mr. Langille’s email, but he did read it accurately into the record.

Chair Gorman stated that the Board did receive copies of the email. He continued that he does have some questions regarding Mr. Phippard’s reference to this application as a “residential use”. Chair Gorman stated that he sees this as a commercial use similar to a lodging house. A residential use is a single- or two-family home with no more than a four unrelated people in a dwelling unit. This proposed use at 15 King Ct., is a commercial use which people will reside in does not make it a residential use, the same as how a motel is not residential. Chair Gorman asked if Mr. Phippard if he would like to explain how he thinks this view errs.

Mr. Phippard stated that he disagrees with how Chair Gorman is representing this. He continued that people sleeping at Hundred Nights are not renting a room or paying a fee to occupy the space. It is not operated as a business. This is a space that gives people a place to sleep and it is a temporary use. This is not commercial in nature. The physical act of sleeping in the building, even though it is more than four unrelated people, puts it into the “lodging house” category. He feels that is residential in nature, much more than it is commercial in nature.

Chair Gorman stated that he thinks they will have to agree to disagree and questioned how the price of a room dictate whether or not it is commercial. He continued that Hundred Nights has a Board, and economic commitments they need to meet. Just because it is a non-profit organization does not mean it is not a business entity, needing to take money in from whatever source. Thus, regardless of whether people are paying, it is still the same type of purpose with people sleeping in one building, thus, a commercial use.

Mr. Phippard replied that he will continue to agree to disagree. He stated that if anything, it is closer to an “institutional use” than commercial. He agrees that Hundred Nights has a Board of Directors and needs to raise money for expenses, but he feels that the nature of the use, occupying a building to sleep, is more consistent with a residential use than a commercial use.

Mr. Gaudio stated that he thinks the question here is whether or not it is more in the spirit and intent of the Zoning Ordinance. He continued that as he reads the ordinance, he sees two aspects to this. This property is the Low Density District but, it has both low density and residential aspects. He heard Mr. Phippard speak to the residential aspect, but regarding the low density part, the number of people occupying the building are not similar to the number of people living in a residence elsewhere. Those are one- or two-family, or in some cases three-family occupancy but, they are not the number that Hundred Nights are proposing. This proposal is more like a hotel or motel use, with the kind of density that is there, rather than the density of a single-family or multi-family house. He asked for Mr. Phippard’s comments.

Mr. Phippard stated that he maybe repetitive, but, he still feels that the use of the building for sleeping purposes makes it primarily a residential use in character. He continued that Hundred Nights is not charging for these rooms or beds and it is much different than the businesses that previously occupied the property. The fitness center had classes with multiple people, with approximately 10-15 people in a class, with several classes a day. That certainly is not consistent with a low density, residential neighborhood. King Court has two rather large office buildings, three stories with multiple offices, with occupants and visitors coming and going throughout the day. That is certainly not within the residential character, either. Thus, what Hundred Nights is proposing is appropriate and more consistent than the business uses that exist on King Court and is also more compatible with the neighborhood than those businesses. While Hundred Nights’ use does not fit the low density designation as Mr. Gaudio described it, none of the previous uses did either, especially given that location. The location looks directly at Rt. 101 and a busy intersection with about 12,000 cars per day, and tractor-trailer trucks all night. It is certainly not consistent with a low density neighborhood as well. If this building were torn down, he does not

think there would ever be a single-family home built on it because of the location. He thinks the use Hundred Nights is proposing is benign and low intensity in nature. For that reason they hope the Board allows it.

Mr. Greenwald stated that he is envisioning sleeping quarters with some staff members. He asked how many staff members would be there each night and what type of security measures would be taken. He continued that he is not asking because he is assuming any danger, but of course the people coming and going with not always the same people as you might see in a tenancy or people that are known to live there. He also stated there are woods nearby and would like details on the staff count and the security planned.

Mr. Phippard stated that the Hundred Nights Director, Mindy Cambiar is a panelist as well and could elaborate more but, he thinks there would be two staff people awake all night if there are any occupants in the building. He continued that there will be flexibility during the year with colder months expecting occupancy but during the warmer summer months, they expect lower occupancy as the Lamson Street shelter could house guests. Portions of this property are fenced and they can certainly add fencing along the north side if there is concern about guests of this facility walking off into the woods heading toward KSC or the private neighborhood to the north. He does not think there would be a lot of outside activity as people going to the homeless shelter are looking for shelter for the night. They will be going to the Lamson Street building, not reporting to this facility; they will be delivered to this facility by a van if Hundred Nights does not have adequate beds at the Lamson Street facility. Other than that, they are not going to have armed guards as this is not a prison. Mr. Phippard concluded that if people want to step outside to have a cigarette, they will be allowed too and asked if Ms. Cambiar had anything to add.

Mindy Cambiar, Executive Director of Hundred Nights, of 447 Park Ave., stated that she has heard that people are afraid that guests from Hundred Nights will hang out there during the day, and she does not think that is a realistic assumption as the building will not be open during the day and questioned why anyone would be there if it wasn't available. She continued that she thinks most of the Hundred Nights guests want to go somewhere where they feel welcomed, and will be found at either the Library or Hundred Nights' resource center or someplace where they can have coffee and food. She continued that Hundred Nights can install security cameras around the perimeter of the Kings Court property and are willing to make sure that the only place where people can smoke cigarettes before lights out at 10:00 PM, would be at the back side of the building. Some abutters were worried about seeing people smoking, which she does not think will be an issue, because people will only be there overnight. Everyone will be out at 7:00 AM except for the cleaning staff.

Chair Gorman thanked Ms. Cambiar, and asked if everything else Mr. Phippard represented was pretty accurate, in terms of the staff on site. Ms. Cambiar replied yes, and stated that she agrees that there will probably be fewer than 24 people there overnight during the summer months. The numbers typically go down as it gets warmer because people have found housing or found someone to stay with, or people have decided that when it is warm outside they want to be

elsewhere other than a place where there are rules and regulations to follow. But in the winter it is crucial that people have a place to be inside so that they do not freeze to death. She stated that is the whole point of this application as they do not want anyone getting sick or dying because they are outside.

Chair Gorman asked, even though he knows this has been covered, for more details about potential staff. Ms. Cambiar replied that if approved, their plan is to shuttle people to Kings Court. They have been talking to some of the auto dealers in the area, about getting a passenger van to transport people from and to the resource center. They have also reached out to the City Express to see if they could contract with them for the transportation though there is nothing confirmed as of yet. Ms. Cambiar continued that if Hundred Nights are allowed to be in this location, they will have staff there at approximately 6:30 PM. There would be one staff person if there are fewer than twelve guests, and two staff people if there are more guests. She continued that security cameras will be installed and that staff will be awake overnight and once all the guests are shuttled back to the Lamson Street shelter, staff will also leave the property.

Mr. Hoppock asked Ms. Cambiar if it is correct that the shuttle would transport guests to the facility by 6:30 PM, and then they would leave at 7:00 AM. Ms. Cambiar replied yes, the shuttle would begin at 7 AM and they are expecting with the number of guests they are expecting, it may take two trips for everyone to be brought back to the Lamson Street shelter. Mr. Hoppock asked if she said lights out is at 10:00 PM. Ms. Cambiar replied yes. Mr. Hoppock asked what kind of activity is anticipated between 6:30 PM and 10:00 PM to keep people occupied. Ms. Cambiar replied that in this location, 24 beds do not take up a lot of space in the building. The building is laid out beautifully so that people could be spread out with less danger of COVID-19, and they would also have the ability to have people play a game. She estimates that about 70% of the people who come in at 6:30 PM are people who want to go to bed right away. Families with kids, and people who have been outside, are cold and tired, and just want to go to bed. Others may want to stay up until 10:00 PM and noted she misses the pre-COVID days with volunteers and guests interacting with conversations and games being played. That is the kind of thing they like to encourage. Other people like to come in and be quiet and read a book in their own little corner. She does not think there is any kind of activity that would go on there that would be frowned on. People do want to go outside to smoke cigarettes, and Hundred Nights provides a place for people to smoke then to dispose of their cigarette butts, outside in the back of the building.

Mr. Hoppock asked what steps would be taken to make sure people are not wandering out of the building and coming and going as they please. Ms. Cambiar replied that her feeling is that if they are that far away from any other service and people would have to walk back and forth into town that is unlikely to happen. She continued that people do not like being out when it is freezing cold out with bitter temperatures or when it is snowing. It has been harder to deal with this issue downtown, because people might wander off to a store or a bar or whatever, but, those are in walking distance. Walking distance is much more difficult when you are that far away from the downtown. And certainly a family with children is not going to leave the building.

Chair Gorman asked if anyone else had questions for Ms. Cambiar. Hearing none, he asked if anyone had further questions for Mr. Phippard. Hearing none, he thanked Ms. Cambiar and Mr. Phippard then welcomed public comment. He asked for comments in support first, before comments in opposition.

Reverend Elsa Worth of St. James Episcopal Church of 44 West Street stated she first wanted to talk about the personal experience of having had Hundred Nights guests sleeping in the St. James building. She thinks the objections to this are without grounding, because for St. James, they were not just a parking lot or a few blocks away from these people sleeping, they were in St. James' very own building. The guests would come in at night, after all of the ministry activities were done, were gone well before anything else began and cleaned up after themselves. St. James folks pretty much would never have known the Hundred Nights guests were there. Because she has had this experience in her own building, she cannot even imagine why abutters or nearby neighbors or neighbors a few blocks away would have opposition to this use, especially since Hundred Nights is going to delineate the use so clearly. The second issue she would like to address is whether or not it is a commercial enterprise. Rev. Worth continued that they need to look at this with the eyes that most of us do not have. Most of us, at the end of a long day, have a house to go to, with windows, a roof, and a bed to get into with blankets, changes of clothes and hot showers in the morning, and food in the fridge. Most of us, if we want to go to a hotel or a lodging house and pay rent to go there, can. But these people do not have any of that. She continued that this is their home, their residence; it is all they have. Most of us would never choose that for ourselves. Even though that is the case and they live with a number of people in one place, it is their home, for that night. She would really recommend this change of use, because this particular building is so well-suited for the use, with its new HVAC system and the showers with plenty of room to deal with pandemic spacing. It is at the end of a dead end road, and not near anyone. People will not be anywhere near as close as they were to them at St. James. She heartily supports this change in use for this temporary amount of time, to tide Hundred Nights over until they are on Water Street, and she is having a very hard time understanding why anyone would object. These people in our midst, are our brothers, sisters, coworkers, friends, classmates, and parents, and if any one of us were in their shoes, we would hope that the City would want an adequate, safe, and pleasant place for them to sleep.

Seeing no one else wishing to speak in support, Chair Gorman stated that people in opposition may speak.

Attorney Jason Reimers of 3 Maple St., Concord, stated that he is with BCM Environmental and Land Law with an office in Keene. He and Attorney Tom Hanna, represent 19 citizens who own properties that will be directly affected by this location. Most of his clients are deferring to him to speak on their behalf and he appreciates the time the Board has given. He will discuss the applicable legal criteria and then the appraiser, Brian Underwood, will give a summary of his findings, and then two clients would like to make some brief remarks; Bill Beauregard and Ken Bakke. They submitted a September 8 package of exhibits, a September 17 letter, and a September 21 letter by Mr. Underwood, and he assumes those have all been received.

Mr. Reimers continued that homelessness is a serious problem that needs to be addressed, but it needs to be addressed deliberately. As the Board knows, Keene has been working on an overhaul of the Zoning Ordinances, which might be approved as soon as March. One of the purposes was to find appropriate locations for homeless shelters. It is his clients' position that allowing a shelter at King Court, would override the thoughtful and deliberate process of revising the ordinance. It would place a shelter in a location that the new ordinance would not allow, based on his understanding of the current draft. He understands that there is federal money available that Hundred Nights may or may not qualify for; however, this money, as well as the homelessness problem, are not relevant to the legal standards that the Board must consider to decide this case. The legal standards in Section 102-207 are high, and the applicant must satisfy every part of it. Because the proposed use is compared to the prior use, he would say that in this case, the legal standard is no less difficult to satisfy than the Variance standard, because of the prior businesses that are being compared.

Mr. Reimers continued that he listened to Mr. Phippard's presentation and does not see that the Applicant has provided any evidence, other than to talk about property values downtown around the Hundred Nights shelter, to support their application, and it is incumbent upon the Applicant to present evidence. He has not seen any evidence talking about how the Applicant satisfies the legal standards in Section 102-207 with regard to this neighborhood. There has not been a real estate expert produced. He does not understand Mr. Phippard to be so. There is no report regarding diminution in value from the Applicant.

Mr. Reimers stated that the first question in Section 102-207 is whether the shelter is more in conformity with the intent of the Low Density District than the fitness center was. Section 102-361 clearly articulates the intent of the Low Density District: "*The intent of the Low Density District is to provide low density/low intensity lots for single-family dwelling units.*" The words "low density" and "low intensity" are the key. The fitness center and frame shop were 'ordinary businesses' that were open during the day and closed at night. Those were low density and low intensity. The proposed shelter would have up to 24 people from 6:30 PM to 7:00 AM. That is not low density. This is much higher density than the fitness center, and that is the comparison the Board needs to make.

He continued that the Hundred Nights shelter is not low intensity. In his clients' September 8 filing, they submitted a summary of police responses to Lamson Street. From November 11, 2019 to May 31, 2020, the police visited Lamson Street 126 times. Often, it was for very serious matters, including theft, criminal threatening, and assault, harassment, intoxication, and noise complaints. Granted, the list also states non serious items as well, however, more than 40 of these visits occurred between the hours of 6:30 PM and 7:00 AM. Even a tiny fraction of this would be a great increase in intensity for King Court. Police activity, especially after dark, is highly intense for neighbors, and virtually nonexistent right now on King Court, as it was during both the time of the frame shop and the fitness center. The Applicant argues that the proposed use is residential in nature and therefore more compatible with this residential district than the fitness center was. Mr. Reimers continued that some of the Board members may agree that

Hundred Nights is not a residential use. The Applicant, he thinks, mistakes the intent of the district as being all things residential while ignoring the low density and low intensity intent that applies to all uses, whether residential or commercial or otherwise. It is the low density/low intensity that is the key, not residential. When he says this is not a residential use, there are attributes of it that are residential, such as people sleeping, but this is not overall a residential use. The fitness center and the frame shop were more in conformity with the intent of the district even though they lacked residential characteristics.

Mr. Reimers continued that the Board also has to find that the shelter is more in conformity of the spirit of the district as the intent was clearly stated in the ordinance. Regarding the spirit, he looks in the Variance context, where the court evaluates the spirit of the Zoning Ordinance in terms of whether the proposed use will change the character of the neighborhood and a shelter with up to 24 residents will change the character of the neighborhood, much more so than the fitness center or frame shop did, and will change it for the worse. When Hundred Nights was before this Board in 2017 seeking a Variance for a location in the Central Business District, it was represented by Brickstone Masons. The minutes of that hearing state: *“Mr. Bergeron said that the best place to put the shelter would be in the Central Business Zone and not in a residential zone.”* He was right, a residential zone is not appropriate. Mr. Reimers stated how there are uses in this district that are not residential but overall it is a quiet, mixed residential and light office use zone. The shelter will change the character of the neighborhood more than the fitness center did. He further stated that a shelter is not more in conformity with the spirit of the district, so the Board must deny the application on that ground as well.

Mr. Reimers continued that the application mentions that an institutional use is allowed by Special Exception in this district and that is partly accurate. Institutional uses are allowed by Special Exception in certain parts of the Low Density District. Those are separately listed in Article 5, Division 12. King Court is not listed there so it is incorrect that a Special Exception could allow an institutional use. It is another showing of the intent of the district and the drafters of the ordinance’s consideration of where in the district more intense uses would be more appropriate, and they did not choose King Court as being one of those places.

He continued that the second criteria of Section 102-207 is “injurious, obnoxious, or offensive.” In order to approve the application, the Board has to find that the shelter is not more injurious, obnoxious, or offensive to the neighborhood. The Applicant calls this a “benign use.” The dictionary defines “benign” as “harmless.” The police were on Lamson Street 126 times in 201 days. That is evidence of injurious, obnoxious, and offensive behavior associated with the operation of this shelter, albeit in a different location, but it is the same use. Further, Ms. Cambiar described the shelter’s guests in an NHPR interview in 2017 and said: *“We have a population of homeless that includes people who have some kind of mental illness that is perhaps untreated. We have some people who are definitely just released from jail because of one thing or another. Drugs have been huge. We’ve had a lot of alcoholics this year who were drinking actively and coming in. We can’t not take everybody in because that was our mission.”* The frame shop and the fitness center were benign, and compatible with the neighbors. They were

open in the day and closed at night, but here, the shelter would be open from 6:30 PM to 7:00 AM with the clientele that Ms. Cambiar described. Obviously, she is not describing the entire clientele, however, that is a part of the clientele and that is very relevant to the standards in Section 102-207. This is not a nighttime-only operation or a sleeping-only operation. For half the year or more there are significant sunlight hours after 6:30 PM. Hundred Nights cannot force people to stay inside or even stay on the property. According to neighbors he spoke with at the current location on Lamson Street, it is not uncommon to find alcohol containers, needles, and condoms in the vicinity. It is common to encounter people who are under the influence of drugs or alcohol. The fitness center did not bring any of this activity to the neighborhood and that is the comparison the Board has to make.

Mr. Reimers continued that the proposed shuttles will not resolve the problems. First, there is no plan set up for these shuttles. He hears that there is a plan to make a plan. But even if the shuttles were lined up and ready to go, you cannot force someone into a shuttle, either to get to or leave King Court. Even if you think shuttles will lessen the impact, the shuttles will not make the shelter less injurious than the fitness center, which is, as he keeps saying, the comparison the Board is required to make under the Zoning Ordinance. People will walk to and from King Court and will walk from other parts of Keene. Ms. Cambiar suggested that they would be spending their days at the Library and other places downtown, so, they will be cutting through campus and through the KSC Pondside Dorm area to get to and from the shelter property. They will walk down Main Street as well as from other parts of Keene and cross Rt. 101, which is dangerous.

Mr. Reimers continued that in response to Mr. Hoppock's question about keeping people on site, Ms. Cambiar's stated that because there are not any other services nearby, people will stay on site. He questions whether that will happen, and his clients who live and work in the neighborhood also question that. Hundred Nights cannot force people inside or to stay on the property or into shuttles. If Hundred Nights accepts walk-ins that will encourage more walk-ins, and if they do not accept walk-ins, then the neighborhood is left with people needing a place to go. Either way, the neighborhood will be injured, more so than by the fitness center. If someone is expelled during the night, as is called for by the guidelines of the shelter, they are asked to leave. In this case, they will not be exiting into downtown, they will be exiting into the low density neighborhood of King Court. In contrast, the fitness center was not injurious to the neighborhood at all. Even if you think that the shelter would be minimally more injurious than the fitness center, you still must deny the application under Section 102-207. The new use cannot be any more injurious than the prior use.

Mr. Reimers continued that the shelter will also cause economic injury. Injury to the property values he thinks is acknowledged by the Applicant as being a relevant injury under Section 102-207. The closest neighbor is Ken Bakke, who owns 11 King Court who submitted a letter to the Board in the September 8 submission. That included photos showing the barn before Mr. Bakke invested a million dollars into the building which has currently three commercial tenants, State Farm, and two businesses of engineers, and there is one vacant office. The tenant's park in the

rear of the building and the parking space is about 30 feet from the front door of the proposed shelter. These buildings are really close together with Mr. Bakke's property including some parking spaces in front of the shelter and a portion of all the rest. Mr. Reimers stated that he submitted plans along with the September 8 packet that also highlighted where Mr. Bakke's property is. He continued stating Mr. Bakke's tenants often work after hours, and that he has heard from them that they are concerned about this and would not feel safe doing so if the shelter is approved. Mr. Reimers stated that also submitted is a letter from J.R. and Marybeth Coughlin, who own the white building at 441 Main St. on the corner, on the other side of Mr. Bakke's building. They also have commercial tenants who work in the evenings. The Coughlins' letter is built on 35 years of real estate experience and testified about the shelter reducing their property values by impacting their ability to keep tenants and to attract new tenants. This will substantially decrease the rental income of their property and others, and thus the values. Mr. Reimers requested the Board to consider the Coughlins' and the Bakke's real estate and business experiences, as these are real concerns.

Mr. Reimers stated that these concerns are supported by Brian Underwood, an experienced appraiser. He believes that Mr. Phippard said that there is a stigma towards the homeless. The definition of "stigma" is *"an adverse public perception regarding a property, the identification of a property with some type of condition which extracts a penalty on the marketability of the property and hence its value."* He thinks he just proved Mr. Underwood's and the Coughlins' point with regard to property value. Mr. Underwood will give a summary of his findings.

Mr. Reimers stated that in his letter, Mr. Underwood noted that even if Hundred Nights rents and uses this property for a couple years, which they have learned at this meeting is the plan, the change of use runs with the land. This is a permanent use that would be conferred. He has never heard of a Variance or use like this being conditioned on the length of the use. Mr. Reimers questioned what would happen if Hundred Nights returned to the Board to request an extension of the use. He further stated that an approval of this application could also be seen as a "temporary taking" for the next year and a half of his clients property. Even if the use is only until April 2022, as currently planned, the use still has to satisfy every part of Section 102-207. That section applies, regardless of the duration of the proposed use. Even a lease until April 2022 is more injurious than the prior use of the fitness center, so it still would not satisfy Section 102-207. The duration here does not change the legal analysis.

Mr. Reimers stated that in conclusion, the evidence does not support a finding that the Applicant satisfies any of the criteria, much less all of them. He disagrees with Mr. Phippard that he and his clients have not supplied evidence. They have supplied police logs, Ms. Cambiar's prior statement about disruption of the guests, and they have provided Mr. Phippard's business's prior presentation saying a residential zone is not the best spot for a homeless shelter. They have provided the actual real estate expert's opinion. Mr. Underwood can speak to the quote that Mr. Phippard quoted from Mr. Underwood's work in another case. Mr. Underwood's letter stands on its own and it is the only piece of evidence here regarding the property values and the injury to them in this neighborhood. To support this application, the Board must find that all of the

criteria are satisfied and he does not think Hundred Nights satisfied any of the criteria and to define it otherwise would be a legal error.

Ms. Taylor stated that she looked over all the police reports and she does not mind them presenting that evidence, but she is a little concerned that they are not being presented as what they actually are. She continued that she cannot give exact numbers tonight but she was amazed at the number of items where there was either no police action taken, or it was the address that was given but the issue was somewhere else in town, and so on and so forth. She is a little concerned that the Board is being presented with “126 visits,” but many were just welfare checks or ones in which no action was taken, or unfounded. You can have those in any neighborhood in Keene. She is concerned because she does not see it in relationship to anything else.

Mr. Reimers stated that he agrees with many of her comments. He continued that they put all of this in because he wanted the Board to be able to see for themselves the whole range of Police responses that were for Lamson Street. He could have made a list of just the really serious ones, but he did not, knowing the Board members could all see for themselves that some of these were not serious. However, they can also see that a lot of them *are* serious. There are 23 incidents in which someone was arrested elsewhere. He thinks those are significant, because in all 23 incidences, it was people who gave their address as Lamson Street being arrested elsewhere. He thinks that in addition to the bad conduct reported in the police reports happening at Lamson Street, the fact that it was done elsewhere by someone who lives at Lamson Street. is also telling. The Board can give that the weight they think it deserves. He agrees that police can and do show up just about anywhere from time to time, but regarding the level of activity, he bets there is not another place in Keene where there is this level of activity, and this number of police responses.

Ms. Taylor asked if he did any research into the percentage of overall calls, or looked at any other place that had activity. She continued that it is hard for her to get her head around it when it is such a narrow picture and not presented in relation to anything else. Mr. Reimers replied that he heard someone say that this is 1% of Keene’s responses during that time period. He continued that he cannot verify that. Mr. Reimers stated that 1% is not very much, but 1% is a lot, if one place is garnering 1% of all Police calls, which is huge. He continued that he did not go around the City looking at anywhere else, because this application is for a specific location, and the criteria that the Board needs to apply are only for this location. They could look at it in terms of “how many times are the police responding to the Lamson Street location” and the answer is 126 times in 201 days, which is much more than, he thinks, any other location the Board might get a Variance or Change in Non-conforming Use application from.

Chair Gorman stated that 126 calls in 200 days would be 1.26 calls every two days which is a lot of activity. He can go weeks on end without seeing the police in his neighborhood. He asked if it is correct that Mr. Reimers does not have anything statistically about the total number of police calls over that period. Mr. Reimers replied that he does not, but, Chair Gorman said he could go weeks on end without seeing a Police Officer, and his clients say something similar. There is not much of a police presence on King Court currently because there has not needed to be and the

same is true of when the fitness center was there. Thus, comparing the fitness center to this proposed use, regardless of what the numbers are, the numbers they have are evidence that there is going to be more police presence than their used to be, and that is the important comparison the Board needs to make.

Ms. Taylor stated that in a vacuum it really does not tell her much of anything. She continued that she sees police around, but there are a lot of locations downtown where there is a lot of activity. She is trying to understand this as it is not necessarily an accurate representation of what goes on downtown, whether it is Lamson Street or Main Street or a lot of other places that have issues.

Chair Gorman asked if the Board had any further questions for Mr. Reimers. Hearing none, he called on Mr. Underwood.

Brian Underwood stated that he is a real estate appraiser and a consultant, and in his role as a consultant on this project he was asked to review the application and determine whether or not there was a diminution of value of the surrounding properties. He continued that to “take it back to 10,000 feet” and keep it simple, based on the principle of substitution, all things being equal, whether you are a residential property use or commercial property use, if you are looking at two identical properties, one that abuts the proposed use and one that does not; Mr. Underwood questions which property would be chosen. He thinks that common sense applies; they know that market influences and people that are participating in the market would choose the property without the adverse condition that would abut them. Mr. Underwood further questioned the choice a prospective commercial tenant would make with two similar geographic locations and the exact costs, but with one next to a homeless shelter with the some of the detrimental conditions that have been testified to by the Applicant and acknowledged by the Applicant, the prospective tenant would choose the property not abutting a shelter. He further stated that situations like this it can be difficult to measure the diminution in value but the fact remains that there is a diminution in value as they know that because it will take longer to find somebody to accept the condition of a homeless shelter that is next to the property. Second, Mr. Underwood stated that a landlord would have to lower their pricing to make the space attractive to potential tenants being an abutter to a homeless shelter compared to similar rentals in other sections of town. That is a diminution in value. An increased marketing period that is abnormal to the market is, in effect, a diminution of value.

Mr. Underwood continued that he wants to clarify some things that Mr. Phippard talked about tonight. When the Applicant acknowledges that the type of use carries with it a “stigma,” that pretty much confirms that there is an impact on value. In the appraisal world, they are all bound by the Uniform Standards of Professional Appraisal Practice. The definition that is commonly used, found in the dictionary of real estate appraisal, is exactly what Mr. Reimers cited earlier. The bottom line is that the stigma exacts a penalty on the marketability of the property and hence its value. That goes right back to the principle of substitution. Mr. Underwood stated that if the Board gets confused about the facts they hear as evidence and what they think is conflicting

testimony, they should ask themselves what property would they choose if they are sitting on the curb looking at the 15 King Court property versus another one across town with the exact same location for the exact same price.

Mr. Underwood continued that Mr. Phippard mentioned a project that the two of them are collaborating on where a commercial use is being relocated from a location where it is completely surrounded by residential property to a location on the corner of NH Rt. 101 in a more appropriate location for a commercial use for a property. He continued that Mr. Phippard suggested that his opinion in that case is not comparing apples to apples. Frankly, he was surprised that Mr. Phippard would suggest that somehow that case has any relevance to his opinion in this case. Mr. Phippard also mentioned the assessing data, and the purpose of the second to last paragraph on page 3 of his letter to the Board dated September 21, 2020, was simply to acknowledge that in other parts of town, the Assessing Office, in the past, has made certain reductions to assessments when they abut adverse conditions. Mr. Phippard took it upon himself to ask specifically about the existing location of Hundred Nights and he also mentioned that the existing Hundred Nights location abuts the church and a parking lot. The church is non-profit use which is tax-exempt, to suggest that a church would file for a tax abatement application because it is adjacent to a homeless shelter really is not the same comparison as whether or not the commercial property owner who owns a building next to the homeless shelter that would be located on this site would have a tax abatement warranted because of the stigma that the Applicant has acknowledged, and also, from just the principle of substitution.

Mr. Underwood stated that in closing, he addressed the issue of stigma in the first page of his letter, in the third paragraph. That is not to say that he personally has an opinion on homeless shelters, but his job is to tell the Board how the market reacts and to explain to them in real estate, technical terms what the diminution in value issues are related to this application. It all boils down to the principle of substitution and alternative locations and alternative uses and what do the surrounding properties have to do to either attract a buyer or a tenant where there is a commercial or residential property to either rent or purchase, when there are other, alternative locations and uses in other parts of Keene that people could buy or rent.

Chair Gorman asked if the Board had questions for Mr. Underwood. Mr. Hoppock asked for examples of other assessments in Keene where the City Assessor has made reductions for negative assumptions on property. Mr. Underwood replied that he does not recall the specifics. He continued that when he contacted the Assessing Department, not specifying the property type or use, he spoke with the Assistant Assessor. He stated he questioned that during his experience, if he was aware of other properties that have been adjusted downward because they abut properties that have an adverse condition. Mr. Underwood state the response he was given was yes. Mr. Hoppock asked which properties were affected. Mr. Underwood replied that none were cited nor did he ask specifically though he did state he wanted to know if the City had done the same for other properties. Mr. Hoppock asked if Mr. Underwood would agree that if you had a sterling view of Mt. Monadnock, that would be a positive condition on the value. Mr.

Underwood replied yes. Mr. Hoppock replied that then this cuts both ways. Mr. Underwood replied absolutely.

Ms. Taylor asked if Mr. Underwood is aware that the Hundred Nights shelter on Lamson Street is a direct abutter to several commercial properties. Mr. Underwood replied yes. Ms. Taylor asked if he has an opinion on the impact to them that differs with the email that was received from the City Assessor that there was not a diminution in value. Mr. Underwood replied no, he was not asked to look at the property on Lamson Street. He was asked to look at the proposed project in the proposed location. Ms. Taylor asked if Mr. Underwood is aware that the Lamson Street shelter abuts commercial, mixed use buildings. Mr. Underwood replied yes, he is familiar with the location and the downtown area.

Chair Gorman asked if anyone else had questions. Hearing none, he asked for Bill Beauregard to speak.

Bill Beauregard stated that he and his wife own 440 Main St., which is directly across from the King Court property. He continued that the apartments in their building are four-bedroom and are occupied by families. He and his wife are exceedingly concerned about locating the Hundred Nights shelter on King Court as they cannot imagine a more inappropriate location for a homeless shelter. This is a vibrant business community and residential area and highly visible from the highway entering the City. It seems the main reason the site was selected was that it was available, and that is not a reason for the City to grant a change in non-conforming use, particularly where the City is nearing completion of its Zoning clarifications which will allow for this use elsewhere in the City. He believes everyone understands the necessity of taking care of those who are in need, and it is striking that there are four other shelters, and it seems that Hundred Nights is the only one that continues to get negative press. Perhaps it is a reflection on the operation and the rules of the organization that raise so much angst in the community. Mr. Beauregard continued that comments have been made by the Applicant publicly about the financial necessity of Hundred Nights getting this application for its needs. He wants to stress that that testimony should have no bearing on the Board's decision.

Mr. Beauregard stated that to reiterate some of Mr. Reimers' words, by the terms of the Zoning Ordinance, the proposed use must be more in conformity with the spirit and intent of the ordinance than the prior use. That is the focus of this hearing; this proposed use versus the existing use. There will be many more people staying in this building than there would be in a single-family home or duplex in the Low Density District. There has been discussion of the police logs submitted, but the numbers speak for themselves. Mr. Beauregard continued that there are approximately one visit per day to the Lamson Street site and questioned it that the King Court location would be two thirds or half of that number. It still would be a significant increase from what is on King Court right now. He thinks everyone on the Board would agree that a fitness center or frame shop is a *de minimis* use where this use is going to be very impactful on the neighborhood. The Zoning Ordinance also states the proposed use must be less injurious, obnoxious, or offensive than the current use.

Mr. Beauregard continued that regarding shuttling guests and other operational details promised, the Board should remember that when Hundred Nights started it promised, as its name states, that it would only be open for the hundred coldest nights of the year. It is now a 365-day operation. So promises made may not be kept tomorrow. For those reasons he detailed, he and his wife strongly urge the Board to deny the request.

Chair Gorman asked if anyone on the Board had questions for Mr. Beauregard. Hearing none, he continued with public comment.

Rev. Derek Scalia, Deacon at the St. James Episcopal Church, stated that he is also a Keene resident at 16 Hillside Ave. He continued that he speaks on behalf of his neighbors at the Hundred Nights shelter. Tonight the Board has heard standards of law and the market, and they keep forgetting another crucial part of social democracy, and that is morality. In the book *“Morality,”* Jonathan Sacks says, *“A free society is a moral achievement. Over the 50 years in the west this truth has been forgotten, ignored, and denied. That is why today democracy is at risk. Societal freedom cannot be sustained by market economics and law alone. It must need and have a third element: morality, a concern for welfare of others, an active commitment to justice and compassion and a willingness to ask not just ‘what is good for me?’ but ‘what is good for all of us together?’”* These people are our neighbors, neighbors he knows by name. He has heard their stories and experiences, and has literally slept overnight beside them. Reverend Scalia continued that the application in front of the Board is for a COVID-safe environment. He continued that while they were at St. James, there was not police called, there was not desecration of the building and there was not destruction around the building because it was their home, too, and they saw it as that. These are people who need out from the cold.

Rev. Scalia stated that in closing, he knows that the attorney cited a book that is the standards for which the Board’s decisions ought to be made, but he follows a different book, a book that has clear standards on how we ought to be supporting people who are impoverished and experiencing poverty. He would guess that many here tonight are also going to be taking a few of those stories in a few weeks to celebrate Christmas. Rev. Scalia concluded that he hopes everyone can find a way to come together and see each other, as opposed to continually criminalizing the poor.

Kenneth Bakke of 6 Prospect Hill Rd., Spofford stated he owns 11 King Court that literally encompasses 15 King Court. He continued that to give perspective on his opinion, and especially for the pastors who have called in, he wants them to know that you can have empathy and disagree. Mr. Bakke stated that he is a Vietnam veteran and even after 50 years he has memories that haunt him, so he can empathize with the veterans that are suffering from PTSD and how they can spiral into homelessness. He also has family members who have experienced hardships. The one thing that strikes him here is that his father, after retiring from a federal aviation career, chose to be the director of a homeless shelter in Newark, NJ. In spite of being mugged three times, he managed the mission until his death. Mr. Bakke stated that he understands and appreciates the fact that Hundred Nights is a much needed and noble service.

However, for many reasons, clearly communicated by Ms. Cambiar during her radio interview, including the comment that she made that 40% of the residents suffer from mental illness, the shelter should not be located in a low density, residential area, or adjacent to KSC dormitories or a business area. It needs to be strategically placed as was previously said, in an area that is safe, safe for the area residents, and safe for the homeless people. In 1990 he came to Keene and chose to invest over \$1 million transforming the old, dilapidated barn into an attractive office facility at the gateway to Keene. He has since paid about half a million dollars in taxes in Keene. Now, due to the Hundred Nights' proposal, his tenants who have occupied the building for 25 years expressed serious reservations about keeping an office next to a homeless shelter and are concerned about their customers coming and going.

Mr. Bakke continued that the only way to access the proposed 15 King Court homeless shelter is to drive over his property which there is a right-of-way not an easement. Mr. Bakke asked for the vision of the residents of the shelter, lounging out in front of King Court, the way they currently lounge out in front of Lamson Street. He then asked to add the incidents described in the 126 police visits to Lamson Street and above all, the comings and goings of his employees or the renters that happen from 5:30 AM until late at night, with the women and men engineers with their clients. Regarding the comments that Ms. Cambiar made, about "we hope" to have supervision, "we hope" to have this and that - 20-40% have mental illnesses. Mr. Bakke state he can relate to this as some of his family members are struggling with mental health issues. He continued that these individuals need to be treated strategically and safely. He has a family member who works in the local hospital and treats the homeless patients, lovingly but carefully.

He continued, quoting from the Manhattan Independent Budget Office who analyzed 2010-2018 real estate sales data of 6,237 properties located within 1,000 feet of 39 homeless shelters which found that property owners got 24 to 25% less compared to comparable properties farther away. Mr. Bakke stated that property located close to a homeless shelter does affect property values and he doesn't state this because he is a hungry money-monger. They cannot stay in business if their tenants leave and they go to sell and get 20% less than what they put into the building and what the market value is. He continued that the financial losses do not happen just when they sell. He has been told by his tenants that as soon as the homeless shelter locates at the King Court location, his tenants have stated they will leave the building. If the tenants vacate his building, the loss to him starts immediately. Hundred Nights says they would only be at King Court for two years, but he loses \$91,000 per year when his tenants walk out of the building. He stated that literally, his King Court property will be out of business if it is next to the homeless shelter. Mr. Bakke stated that what he finds incredible, is now during the worst economic calamity since the 1930s, the Board is considering granting a request that would jeopardize the survival of taxable entities like his building and that of the Coughlins' office building.

Mr. Bakke stated that he wants to close with a question to Mr. Phippard. In preparing his thoughts regarding the homeless shelter at the entrance to his property, he reviewed his project development files and noticed a letter from William Stretch, the former owner of the frame business that used to be at 15 King Court. It was a letter to the NH Department of Transportation

Project Manager for the bypass roundabout project at that was planned. In the letter he complains that the invert on the city's sewer passing under the highway from 15 King Court across to the bike shop was too shallow and was causing repeated backups and flooding the building's lower level with raw sewage. In fact the City's sewer main is installed or pitched inadequately, as Mr. Stretch's plumber claimed, he is not aware of any attempts by the City to correct that problem. He wants to know if Mr. Phippard has any knowledge about this. He asks because the first week that the fitness center opened at 15 King Court, the sewer line clogged and backed up, which suggests that the sewer main problem still exists. Mr. Stretch had a maximum of five people employed at that building and now they are proposing housing 20+ people using toilets and showers. He would like confirmation that the existing sewer main has the capacity for the increased volume.

Chair Gorman stated that he will have Mr. Phippard answer that question when they hear from him again. He asked if anyone had questions for Mr. Bakke. Hearing none, he asked if there was any more public comment. Hearing none, he welcomed Mr. Phippard to speak again.

Mr. Phippard stated that he was not made aware of any problems with the sewer at that location. He continued that he can certainly look into it by reaching out to the Public Works Department to see if there is a problem with the capacity. If there is, there are several different ways it could be addressed, and he does not need to go into all the details at this time. If that is a problem he is glad Mr. Bakke made him aware of it, in event that Hundred Nights is allowed to use the property. It should and can be corrected.

Mr. Phippard stated that he was expecting questions about the police calls. He was glad to hear Ms. Taylor did her homework and looked into the list of calls. Most of them were related to wellness checks and different activities at the property, not serious calls. To hear that only 40 took place in the evening hours is further evidence that as you get away from the existing shelter location, they would expect fewer and fewer calls. He would like to remind the Board that Hundred Nights is proposing sleeping quarters, not another homeless shelter. There is no invitation for residents to hang out here and spend time here during the day. They will restrict the guests to that location and the people who are allowed to sleep in that building. They heard direct testimony from the Pastor at St. James Church who has dealt directly with many of the residents from Lamson Street. They had no police calls at the St. James location which should weigh in the Board's determination. He has been working with and volunteering for Hundred Nights for about the past six months, and it really opened his eyes to what is going on. He never really understood why there was such concern and hand-wringing. He knows there are some bad examples, which he does not want to focus on, but that happens everywhere. He does see the police on a regular basis as he lives on Arch Street right next to the high school. The neighborhood gets a lot of questionable activity and the police are a daily presence in his neighborhood and he is grateful for that and feels safe because of it.

Mr. Phippard continued that in dealing with homeless people, they recognize there is a stigma. This has been recognized by the Hundred Nights' Board members and those who deal with

homeless people on a regular basis. The stigma comes from our society and our prejudice against people who are less fortunate. People do not want to deal with the homeless or see them in their neighborhoods and when something like this comes up, residents are quick to call their attorneys and say “Make this go away. I don’t want them near me; I don’t want them in my neighborhood.” Mr. Phippard stated that prejudice is wrong. He agrees with Pastor Scalia that our society needs to be educated and better informed about how to deal with homeless people and they need to find ways to help, not push them out and hide them and try to make them go away which he continued with stating that the Mayor is looking at the bigger picture, trying to get the State involved to avoid homelessness in the first place, instead of only dealing with it after the fact like Hundred Nights is being forced to do. But for now, for Keene, we have a very serious problem and people are homeless for all kinds of reasons. It is not just mental health or drug addiction or alcoholism, it is partly because of COVID-19 making it worse with people who have lost jobs and the subsidy programs ended, and then they were found without housing. Hundred Nights now deals with more families, more women with children, than they ever have in the past. To him that is shocking and upsetting and he cannot believe this is Keene, NH. He cannot believe the prejudice is so strong that they cannot find a way to better help these people who are in trouble. It is frustrating for him and he bets it is frustrating for others.

Mr. Phippard continued that he is not going to try and respond to every issue that was brought up. A lot of the points were legitimate, others are not. For the limited time period, Hundred Nights is seeking to use that space, it is an overflow space, and it is not the primary shelter. People keep implying that all of the problems that have been recognized at the Lamson Street shelter over the years will carry on at King Court and he strongly disagrees with that. People will be brought to that facility to take a shower and have a safe place to sleep overnight which is badly needed and it is something that people using that the space will be very grateful for.

He continued that the Board heard the testimony from the Rev. Scalia and Rev. Worth, who both testified to what good residents/visitors people were when they stayed in their space at the basement at St. James Church. These guests cleaned up after themselves and did not create a problem for the church. That is the type of activity and the type of behavior that Hundred Nights expects would take place, if they were allowed to be in King Court. He hopes the Board can find a way to allow this, on this temporary basis. Conditional approvals are allowed by the Board, even though Mr. Reimers was not familiar with that. He himself has experienced conditional approvals before from this Board and it is appropriate in this case. Hundred Nights is not looking to expand the shelter or extend the time period beyond two years and they would be willing to live with such conditions if the Board is willing to grant approval with that condition.

Mr. Hoppock asked what the Board’s authority is to grant this application and have it terminate by April 30, 2022. Mr. Phippard replied that as a condition of approval, he believes the Board is allowed to limit the use on a property as a Special Exception. He thinks they are allowed to recognize that in this particular case, there are concerns from the neighbors and one way to address those concerns is to apply a condition of approval limiting the term of use of that property. Hundred Nights is willing to use the property under such a condition.

Mr. Hoppock replied that he understands all that; he is looking for the Board's legal authority to do that. He has been on this Board for a while and has never had an application where the Applicant was willing to have the approval terminate and not run with the land. Mr. Phippard replied that he cannot cite a statute. Mr. Hoppock replied that he does not think there is one. Mr. Phippard replied that one he can say is that during the 43 years that he has been doing this work, he has had conditions imposed by previous Zoning Boards that limited and restricted uses that he and his clients were proposing on properties. Mr. Hoppock replied that is not his issue; he realizes that the Board can condition the use. He continued that he is talking about a condition that ends the use by a date certain, which is something he has never seen. Mr. Phippard replied that he wishes he could provide better information for him, but stated that he has experienced conditions being imposed in the past.

Chair Gorman questioned that he believes the problem, from his perspective as a Board member, and he is not saying he is familiar with the legality of it, is that if the Board deems this property to be changed to a non-conforming use which is less impactful or more conforming than the previous use, as Mr. Phippard has told them he believes to be the case, what happens in two years after the Hundred Nights approval expires. Chair Gorman further questioned if the property would revert back to the use that Mr. Phippard says is more egregious/more non-conforming which would not make sense from the perspective of the purpose of a Zoning Ordinance. He asked Mr. Phippard if he agreed with that assessment. Mr. Phippard replied that he thinks he understands what Chair Gorman is asking, and questioned if that would leave the property owner in the position that they would come back in front of the Board and expect to be allowed to put a fitness center back in that location.

Chair Gorman replied in the affirmative as well as anything else. He questioned what the property status would be moving forward from there. He continued that it is one thing for the Board to put permanent conditions on an application, but to assign a time condition, he think defies all logic. Mr. Phippard replied that once again he agrees to disagree, and feels that conditions would be appropriate in this circumstance. As far as future uses on that property, this is an existing non-conforming lot, a non-conforming building, with a non-conforming use. In the future, if Hundred Nights was allowed to occupy the property for two years and then vacate it, he suspects it will still be a non-conforming building on a non-conforming property and depending on when or if the Zoning changes maybe that can be address some of these issues. Mr. Phippard continued that this is one of those buildings that, because of its location, is always going to be in a similar status. If the owner at that time wants to change the use to something else or back to what it was previously, they will have to return to the Board and gain approval.

Mr. Rogers asked the Board to look at Section 102-206, which addresses Chair Gorman's question. He continued that it states that "*A non-conforming use may be changed to a use of the same or more conforming classification,*" which is what the Applicant is asking from the Board. It goes on to state "*And such use thereafter shall not be changed to a less conforming classification.*" If this application were approved, the Board would be stating that this proposed

use is more conforming to this district and there could not be a time limit condition that it would then go back to a fitness facility. Section 102-206 would not allow this to occur. He also agrees that the Board does not have the authority to put a time limit type of condition on this application. Mr. Phippard is correct that the Board can condition different uses and such, though Mr. Rogers stated he does not think the Board has the authority to put a time limitation on a use that then the occupant would have no use at the end of the two-year period.

Ms. Taylor stated that *Peabody v. Town of Windham*, a 1997 case, affirmed the ability of a Zoning Board to attach conditions to cases involving non-conforming uses, "*Provided the conditions are reasonable and lawful.*" That sort of clarifies the earlier question about whether or not they can add conditions. As to the time, she thinks that what had to be determined is whether or not that would be a reasonable condition, given the circumstances. She suspects the Board agrees with Mr. Rogers to the extent that if it is a non-conforming building with an expired use and another use wants to come in that it is not a permitted use in the zone, then the Board gets to look at it again.

Mr. Hoppock stated that he thinks Mr. Rogers misread Section 102-206. It provides that "*once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use.*" He continued that the use they are being asked to consider is not a conforming use, as he understands it. Thus, he does not think Section 102-206 applies. Mr. Rogers replied that before the statement Mr. Hoppock read, it says "*A non-conforming use may be changed to a use of the same or more conforming classification, and such use thereafter shall not be changed to a less conforming classification.*" Mr. Hoppock replied he understood, but also questioned that the request would still be heard by the Board. Mr. Rogers stated that regarding another non-conforming use, in there his point would be, that if the Board put a time limitation on this approval, once Hundred Nights moved out after that two-year period, there would be a property that basically has no use. He does not think that would be reasonable, as Ms. Taylor mentioned. Mr. Hoppock stated that he agrees. He does not think a time limitation is a workable alternative here.

Ms. Cambiar stated that it was mentioned that people potentially looking for property could buy or rent elsewhere than at King Court if Hundred Nights were to be their neighbor. She continued that the problem is that, Hundred Nights does not have that ability. Hundred Nights does not have the ability to go anywhere in town and find a property. That is why they are asking for a Change in Non-conforming Use on this building. The other thing that is important to remember about the timeline is that the funding for this project is only available through June 2022 and Hundred Nights is offering to make end its use by April 30, 2022. Hundred Nights has no intention of being on King Ct. after that date. She continued that they really would like to be in their own home, which is why they are trying to make Water Street work. Someone else mentioned that the occupants of the building next door were opposed to Hundred Nights moving in and she would like to say, without naming names; that one of the businesses in that particular building came to Hundred Nights as a new business in Keene several months ago, offering support in any way possible. Ms. Cambiar also stated that they bought Hundred Nights an entire

meal for everyone who came into the shelter on a specific night and sponsored the shelter's Fall Into Brunch event by paying for masks for people who came to the event. She further stated that they also offered any kind of support possible to help Hundred Nights get into the building next door because they did not feel that Hundred Nights was going to be detrimental to their business. She does not know who they are talking about as an occupant of the building next door who is absolutely dead set against the Hundred Nights guests moving there as a nighttime-only occupant.

Chair Gorman asked if the Board had any questions for Ms. Cambiar or Mr. Phippard. Hearing none, he asked if the public had any additional commentary.

Mr. Reimers stated that Mr. Phippard might have heard him wrong. He continued that he is obviously familiar with conditional approvals. The condition he was unfamiliar with was putting a time certain, and it sounds like many Board members have never heard of that either. Neither he nor Attorney Tom Hanna have heard of an example where that has been done, and Mr. Hoppock said that he was unfamiliar with it, and when asked, Mr. Phippard could not come up with an example of it, nor could Mr. Rogers. He thinks what the Applicant is asking for is some kind of short-term exemption from satisfying Section 102-207 criteria, and that would have to be spelled out in the ordinance if there was such an exemption, otherwise the criteria apply regardless of the time that they currently say that they want.

Chair Gorman asked if Mr. Phippard had anything to add before he closed the public hearing. Mr. Phippard replied no. Chair Gorman closed the public hearing and stated that the Board will discuss then vote on this application. They will reopen the public hearing if necessary to answer any technical or procedural questions.

Chair Gorman called a five minute recess at 8:35 PM. He called the meeting back to order at 8:40 PM. The Board deliberated on the criteria for a Change in Non-conforming Use.

- 1. The changed use will be more in the spirit and intent of the Zoning Ordinance.*
- 2. The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.*

Ms. Taylor stated that to reiterate, the fitness center came before the Board in 2018 which she has the minutes and the application. She continued that at the time, their business plan estimated that between staff and customers they would have between 30 to 40 people at a time using the facility with their plans to open at 5:00 AM. One of the concerns of the Board at that time was the intensity of use. She is not trying to compare this to the Hundred Nights proposal; she wanted to provide background on the prior non-conforming use.

Mr. Hoppock stated that he thinks this application should be approved. He continued that he thinks the changed use will be more in the spirit and intent of the Zoning Ordinance and it will lower the density of use of this property. There will be one or two trips in the morning and one or two trips in the afternoon, as they heard the Applicant testify. He further state that there will

be nobody there during the day to impact any of these businesses that abut the property. Mr. Hoppock stated he believes the most persuasive piece of evidence he heard was from Rev. Worth who stated she provided this same service in the basement of St. James church. He finds that what will likely happen if this moves forward, is what has happened already in that location.

Mr. Hoppock stated that regarding the second criteria, everything the Board has heard from the opponents, is, in his opinion, horrible, assumptive, and speculative, and he sees no basis in fact for any of it. He is glad Ms. Taylor said something about the police log evidence, because it reminded him of Captain Renault in Casablanca saying to *“round up the usual suspects.”* He continued that he finds quite frankly, offensive. He is prepared to vote in the affirmative for each of these criteria.

Mr. Gaudio stated that he is concerned about whether or not this request is more in the spirit and intent of the Zoning Ordinance. He continued that the zone is low density. He continued that Mr. Phippard described this proposal as “sleeping quarters” though he does not think it is really a residence. Mr. Gaudio stated that a fitness center is not exactly residential either, but he is not sure that sees it as more in keeping with the spirit in that respect than a lodging house/homeless shelter. Regarding the low density, normally this is seen in a residential district with single-family or two-family homes, not usually 24 people. He realizes the fitness center’s plan was to have 30 to 40 people but, that would probably be 30 or 40 spread throughout the day, as opposed to 24 all at the same time overnight. Mr. Gaudio state that he is concerned about the first requirement but, regarding the second, he thinks similarly to Mr. Hoppock that there was a lot of speculation. Thus, he could not come to a conclusion one way or the other. He concluded state that he is not exactly expressing an opinion about the second criterion.

Mr. Greenwald stated that he’s not pleased with this but he feels compelled to look at this application as a real estate agent. He continued that he agrees with the appraiser’s statement so he does not necessarily think this would be a dangerous location and it sounds like Hundred Nights will do everything they can to keep it as quiet as possible. Mr. Greenwald stated that he finds it unreasonable that when asked, that property values will not be negatively affected by this approval, as they absolutely will be affected. Whether or not it affects it a lot or keeps somebody from renting a space because of it, Mr. Hoppock is right, that is speculative. However, it is not a selling feature for selling the building or renting the office space, and it absolutely would be the second choice to rent, being that there is a homeless shelter next door. Like it or not, it does have a stigma. He continued stating that he is not opposed to homeless shelters; he is a supporter of Hundred Nights but, in regards to answering the second question, yes, it will negatively affect the property values in his opinion as a realtor.

Ms. Taylor stated that to clarify her earlier comments, that was 30 to 40 people at a time (in the fitness center). She agrees with Mr. Hoppock that this is a lower density/intensity than the prior use would have been had it been successful, so she feels it meets that criteria. The Low Density District allows three-family homes and there are the KSC dorms right behind it, which is not necessarily apples to apples, she realizes, because as a government use it would not have to

present before any Zoning Board for its use, but clearly there is a more intensive use in those buildings. There is also the fact that the two closest buildings to 15 King Ct. are both commercial uses, which are clearly not permitted in the Low Density District. Thus, she thinks the Applicant can meet the criteria that it is more in conformity than the prior use. Regarding whether it is injurious, obnoxious, or offensive to the neighborhood, she thinks the value may be open to question, but that is a very small part of whether it is injurious, obnoxious, or offensive to the neighborhood. Frankly, as long as smoking is a legal activity, people are going to smoke. Ms. Taylor continued that if the Board were to approve this application, she questions the lighting on the property. The minutes show that for the prior use, lights were to be installed and there is no way for the Board to know if that was ever completed. In a motion to approve she would like to see added a condition that there be appropriate lighting and security on the property, whether that be cameras or whatever is appropriate for that type of building.

Chair Gorman stated that this is a difficult situation. He continued that sometimes as a Board member, a crossroads is reached with what may be morally right and what is right strictly from a Zoning perspective. He stated that as Board members, they all do their best to keep these separate though it is difficult, particularly in these situations where his natural inclination would be to help anyone and everyone at all times, regardless of the impact it might have to himself. Unfortunately as a Board member it is important to remove that from the equation. Chair Gorman continued stating that in doing so, he is not convinced on the residential portion of Mr. Phippard's argument as he attempted to articulate. He stated that perhaps he said things that came across incorrectly when he alluded to Hundred Nights as a business though his intent was to describe it as an operation. Chair Gorman clarified that there are several staff members and this is not a house dwelling where a family lives or a few friends live. He stated that this is a lodging facility which he feels is more like a business or a commercial setting.

He continued that in terms of the police logs, he accepted some feedback from Ms. Taylor and Mr. Phippard about the presence of police in their neighborhoods after he stated that he was unfamiliar with that type of presence where he lives. He wants to clarify his stance that maybe the statistical data the Board received was incomplete or maybe it is skewed. He continued that maybe homeless people are targeted, though he hopes that is not the case. The fact remains for him that while Mr. Phippard and Ms. Taylor may see police officers in their neighborhoods, he does not think police officers are being called to any home in their neighborhood 1.25 times every two days. If that was the case, he thinks Mr. Phippard and Ms. Taylor would feel that was excessive. With that said, he does not admit that the police data is incomplete. Chair Gorman continued that when the substitution method that the real estate appraiser described, he has significant difficulty thinking that this type of use would not adversely impact the value of the surrounding properties. Also, when he compares a gym or a frame shop to a homeless shelter, he has a great deal of difficulty coming to grips with the fact that a shelter would be more in the spirit and intent of a low density, low intensity use. Chair Gorman concluded that regarding the second criterion, he does not think it would be more injurious, or less injurious but, primarily of the first criterion and certain facets of the second, he is inclined to oppose this. Chair Gorman asked if anyone else had comments. Hearing none, he asked for a motion.

Mr. Hoppock made a motion for the Zoning Board of Adjustment to approve ZBA 20-26 subject to the following conditions: it be permitted no more than 24 beds in the facility, and that appropriate nighttime lighting and security are provided, for so long as the use may occur. Mr. Gaudio seconded the motion.

Chair Gorman asked Mr. Hoppock to re-read the proposed conditions for purposes of clarity, and he did so. Chair Gorman asked if any conditions should be imposed on daytime activity. He continued by asking if the parameters that the Applicant set forth sufficient. Mr. Hoppock stated that he would be happy to rephrase the motion to add additional condition that there will be no occupation of the building between the hours of 7:00 AM and 6:30 PM, aside from maintenance and things of that nature. Chair Gorman asked if Mr. Hoppock wants to add that to the motion. Mr. Hoppock replied yes. Ms. Taylor stated that she was going to echo what Mr. Hoppock said and make sure they could do cleaning and maintenance during the daytime hours.

Mr. Rogers asked if Mr. Gaudio would confirm his second on the motion, given the additional conditions added. Mr. Gaudio stated yes, he seconds the motion with the conditions.

1. The changed use will be more in the spirit and intent of the Zoning Ordinance.

Ms. Taylor stated that she believes that it is more consonant with the ordinance. Certainly it is closer to what the ordinance requires than the immediately prior use as a fitness center and it will have a lower intensity than what the fitness center was anticipated to be.

Mr. Hoppock stated that with these conditions, he thinks they make it more probable than not that everything they just said is the case that it will be more in the spirit, less intense, and more consistent with the ordinance.

Mr. Gaudio stated that he thinks it is not more in the spirit of the residential use possibly close to the same, but not more. Second, regarding the intensity, the use of it by the fitness center was not apparently more intense. It is going to be a constant, nightly, 24 people plus the two staff members. It will be more intense of a use, and especially now adding lighting, it will make the use even more intense.

Met by a vote of 3 to 2. Chair Gorman and Mr. Gaudio were opposed.

2. The changed use will not be more injurious, obnoxious, or offensive to the neighborhood.
Mr. Hoppock stated that he places a lot of weight on Rev Worth's observations when she ran the same operation in the bottom of the church, as she described earlier. He continued that everything they heard from the opposition is just assumptions and speculations; he does not think they really had any evidence to show that the changed use will be more injurious, obnoxious, or offensive, and in contrast to that, he thinks the Applicant has shown that it will not be. He cites again Rev. Worth's testimony with her direct observations as powerful evidence. Mr. Hoppock

also stated that stigma is not evidence. Certainly there is no evidence that there is property damage or violent behavior at the Lamson Street property. He is prepared to vote “yes” for this second criterion, for those reasons among others.

Ms. Taylor stated that she agrees with Mr. Hoppock and does not think it is more injurious, even given all the testimony. A lot of it was frankly fear-mongering and not necessarily based in what actually has been going on in the current overflow shelter that has been housed in the churches. She continued that she thinks that is the best comparison the Board has, as Mr. Hoppock said. She agrees with this particular criterion.

Mr. Gaudio stated that the criterion is that it has to be more injurious, obnoxious, or offensive and making that comparison is, he does not think the evidence is all that clear and convincing and some of it is speculative. He does not think that it is more injurious.

Mr. Greenwald stated that he respectfully disagrees, based on his experience with renting property, commercial rentals, and commercial sales. He continued that like Mr. Gaudio stated, is it about whether it is more injurious than what it previously was, and the answer would be “yes,” unfortunately. He does not think it is right, it is just the reality of real estate. Mr. Greenwald stated that he agrees with what the appraiser stated on how properties are priced based on the abutting properties. Unfortunately, he does think that it is more injurious.

Chair Gorman stated that this is difficult for him to vote on as he stated before. He continued that agreed with both of the pastors’ testimony but then there is the property value issues from the appraiser he also needs to take into consideration.

Met by a vote of 4 to 1. Mr. Greenwald was opposed.

The motion to approve ZBA 20-26 subject to the following conditions; it be permitted no more than 24 beds in the facility; and that appropriate nighttime lighting and security are provided, for so long as the use may occur; and that there be no occupation of the building between the hours of 7:00 AM and 6:30 PM, aside from maintenance and things of that nature,

Motion failed by a vote of 2 to 3. Chair Gorman, Mr. Gaudio, and Mr. Greenwald were opposed.

Chair Gorman made a motion to deny the Change in a Non-conforming Use request for ZBA 20-26. Mr. Hoppock seconded the motion.

Motion passed by a vote of 3 to 2. Mr. Hoppock and Ms. Taylor were opposed.

c. ZBA 20-27:/ Petitioner, Noyes Volkswagen, Inc., represented by Jim Phippard of Brickstone Land Use Consultants of 185 Winchester St., Keene, requests an Enlargement of a Nonconforming Use for property located at 18 Production

Ave., Tax Map #110-004-000; that is in the Industrial District. The Petitioner requests an Enlargement of a Nonconforming Use of the existing motor vehicle dealership by constructing 3,690 sf building addition. The existing Volkswagen building is 10,490 sf plus a 740 sf mezzanine. This proposal will enlarge the existing building by expanding on the south side with a 30' x 123' addition. The addition will be used for storage and additional service bays

Chair Gorman asked to hear from Mr. Rogers. Mr. Rogers stated that this is on Production Ave. in an area that has multiple motor vehicle businesses. He continued that it is in the Industrial Zone and as such is a non-conforming use for this district. In doing some research, he found that this property was subdivided in 2013 which is what he believes to be the Subaru dealership. At that time, they were required to get a Variance for a pavement setback from some existing conditions that were going to create some issues.

Chair Gorman stated that Mr. Welsh is rejoining as a voting member and Mr. Gaudio will be participating in the process but will not be voting.

Chair Gorman asked if anyone had questions for Mr. Rogers. Ms. Taylor stated that maybe this is a question for the Applicant, but, none of the information the Board received showed exactly where this expansion was going to be. Mr. Rogers replied that he can show the general area and let the Applicant explain it in more detail. He continued that the lower portion of the building closer to the south is the proposed the addition.

Mr. Hoppock stated that on the back side of the plan that accompanies the application there is a proposed location for the addition, marked with a red arrow. Ms. Taylor thanked him for the information.

Chair Gorman opened the public hearing and explained how members of the public could participate. He asked Mr. Phippard to speak.

Mr. Phippard stated that he is representing Noyes Volkswagen. He continued that they are proposing to enlarge the existing motor vehicle dealership located at 18 Production Ave. This area has developed over the years and since the late 1970's, motor vehicle dealerships have been located there with the first being Keats, Inc. In the diagram Mr. Rogers displayed are the buildings adjacent to this area with the top left, labeled #11, is the Subaru of Keene dealership in both buildings currently which they have recently expanded with an approval to enlarge that non-conforming use, from this Board. Directly across the street is #14, the Hyundai of Keene, auto dealership. Below that is #18, the current location of Noyes Volkswagen dealership. The addition would be located on the south side of that building, and it would be 30' by 123', 3,690 sf. on the south end of the building. That portion of the property is part of the paved area for parking and circulation around the building, so there is no increase in runoff or lot coverage associated with this proposal. He concluded that they would be adding three additional service

bays inside the building, and additional storage area, which will eliminate most of the outside storage that exists on the property currently.

Mr. Phippard addressed the criteria.

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

Mr. Phippard stated that given that three of six properties on Production Ave. are all motor vehicle dealerships, this is consistent with the uses in the area and should not create a nuisance or be injurious, obnoxious, or offensive to the neighborhood. The character of the neighborhood has been well established and this is completely consistent with that character. The new construction of the building is occurring with the future onset of electric cars. The Volkswagen brand is introducing a line of electric cars which will require the additional building space to service those cars and to provide electric charging stations at their site. This is consistent with that dealership and it will add to the value of the dealership, the building, and the property.

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

Mr. Phippard stated that Production Ave. is accessed by Route 9, which is a signalized intersection with dedicated left turn lanes so cars turning from Route 9 and going west, turning left onto Production Ave., have a dedicated turn lane and a separate signal for left turns. Cars driving east on Route 9 into Keene also have a dedicated right turn lane to enter Production Ave. Production Ave. is well supported by the road network developed by the State of NH and Production Ave. is sized appropriately to support this traffic and industrial traffic from the other uses that exist further down Production Ave. There will only be three additional employees as a result of the additional service bays with the hours of operation remaining the same and there should not be a significant increase in the intensity of the use. Given the additional service bays and the additional employees, they are anticipating about 30 additional vehicle trips per day, which can be easily accommodated by the existing road network with Route 9, the signalized intersections, and Production Ave. There are no sidewalks in this area and therefore there is not a lot of pedestrian activity and they do not feel this would introduce a new hazard to the few pedestrians that might exist.

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

Mr. Phippard stated that the third criterion calls for adequate facilities and they will be provided. This site is serviced by City water and sewer and they are adequate to serve the property even with the proposed expansion with no new bathrooms proposed. He continued that there is adequate parking on site with zoning requiring 75 parking spaces on this lot and 135 parking spaces will be provided on the property. There is more than adequate capacity to display cars and support customer and employee traffic.

Chair Gorman asked if anyone had questions for Mr. Phippard.

Mr. Welsh questioned if the addition is not in violation of any setbacks or any other dimensional requirements, as it looks extremely close to the side setback. He asked if it is consistent with what is permitted in the Industrial Zone. Mr. Phippard replied yes, the side setback is shown on the plan, and the addition will be right up to the side setback at approximately one foot away from the side setback on the south side. He continued that this does comply with the dimensional requirements with regard to the proposed changes. They meet the lot coverage requirements and the parking requirements. The only existing nonconformities on the property are a result of the subdivision that was approved in 2013.

Mr. Rogers stated that to answer Mr. Welsh's question, when a building permit is issued when it is this close to the setback line, they will require documentation from the surveyor to indicate where the building is actually located on the property.

Ms. Taylor asked Mr. Rogers if they will not have any additional impermeable surface, so will this require any kind of site plan as she is thinking about drainage issues. Mr. Rogers replied yes, he believes Mr. Phippard has already submitted to present before the Planning Board if this is approved by the Zoning Board.

Ms. Taylor stated that this might also be a site plan question, but she knows one of the requirements of the Fire Code is to have proper circulation around buildings. She continued that seeing as how this is on the setback, she cannot read from the map and has not cross-referenced what the setback requirement is. She asked how wide it is. Mr. Rogers replied that regarding the Fire Code, there is an exception that does not necessarily require complete access all the way around the building if it is less than 150 feet and the Fire Department could get to that side of the building. This falls under that distance, so the owner does not need to meet that requirement.

Mr. Phippard stated that this building is also equipped with sprinklers for fire protection. Fire Department access is usually required on three sides of a building that has sprinklers and that is what they are providing here with the sprinkler system extended into the addition. He continued that they are scheduled to present to the Planning Board on December 21, provided the Zoning Board approval.

Chair Gorman asked for public comment and explained the procedures for members of the public to participate. Ms. Marcou stated that there are no public call-ins. Chair Gorman stated that he does not see any hands raised, either. Hearing no comments he closed the public hearing and stated that he will re-open it if necessary to ask technical or procedural questions.

The Board discussed the criteria.

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

2. *There will be no nuisance or serious hazard to vehicles or pedestrians.*
3. *Adequate and appropriate facilities (i.e. water, sewer, streets, parking, etc.) will be provided for the proper operation of the proposed use.*

Mr. Hoppock stated that he agrees with the Petitioner that the entire area is motor vehicle dealerships, so their proposed expansion is consistent with the area. He continued that he does not see any harm to the properties abutting or in the area, nor will the addition, from his perspective, impose any diminution of value on the other properties and may well enhance the value of this one. Production Ave. is accessed off of Route 9 and there is a traffic signal there, with plenty of room to get in and out, and the roads are spacious enough to accommodate any new traffic and the three new employees. He does not see any nuisance or serious hazard to vehicles or pedestrians. There is water, sewer, and adequate streets and parking. His only question/concern is the close proximity to the setback, but as stated, there is no issue with the side setback.

Mr. Greenwald stated that he agrees with Mr. Hoppock and the Petitioner.

Mr. Welsh stated that he agrees with what Mr. Hoppock and Mr. Greenwald have said.

Ms. Taylor stated that she does not disagree with anything that was said though her concerns with the site, since it has to undergo site plan review, are more for the Planning Board. There is increased business, increased traffic, and she is a little concerned about pedestrian movement and traffic circulation on site and the closeness to the setback, but since it has to go for site plan review, those are better handled in that jurisdiction.

Chair Gorman stated that he agrees with everything the Board has said. He continued that as far as increased traffic goes, this area is suitable to the increased traffic. There is the Monadnock Marketplace Plaza, the traffic lights, and no sidewalks, which is favorable to reduce danger. Chair Gorman stated that there are a lot of pluses which make this property already in line with what is already in that area.

Mr. Hoppock stated that the minutes should reflect that it is 10:01 PM. He made a motion for the Zoning Board of Adjustment to approve ZBA 20-27. Chair Gorman seconded the motion.

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

Ms. Taylor stated that there is an old adage, *"If you want to increase your business, have a competitor near you."* She thinks this will increase the value of all automobile dealers in the area. Chair Gorman agreed.

Met by a vote of 5-0.

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

Ms. Taylor stated that generally, external to the site, there are no concerns. She has some concerns with pedestrians and traffic flow on the site itself but it should be addressed by the Planning Board.

Met by a vote of 5-0.

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

Ms. Taylor stated that they have already established that there is adequate water and sewer and the traffic is adequate. Infrastructure at least on Production Ave. should meet the requirements.

Met by a vote of 5-0.

The motion to approve ZBA 20-27 passed with a vote of 5-0.

- d. **ZBA 20-28:/Petitioner, John Pappas of 82 South Lincoln St., Keene, requests a Variance for property located at 18 Woodburn St., Tax Map #548-031-000; that is in the High Density District. The Petitioner requests a Variance to permit the conversion of the current two family into a three family residence-renovate the open space-workshop garage into a one bedroom or studio apartment per Section 102-791 of the Zoning Ordinance.**
- e. **ZBA 20-29:/Petitioner, Knotty Pine Antique Market Inc., of West Swanzey, represented by Jim Phippard, of Brickstone Land Use Consultants, 185 Winchester St., Keene, requests an Enlargement of a Nonconforming Use for property located at 96 Dunbar St., Tax Map #585-007-000; that is in the Central Business District. The Petitioner requests an Enlargement of a Nonconforming Use to expand the existing indoor self-storage space from 1,800 sf to as much as 6,700 sf on the ground floor of the existing building. The second floor of the building is currently 5,955 sf of self-storage. Currently the Knotty Pine Antiques auction gallery occupies 4,900 sf on the ground floor. Due to COVID-19, the owner wishes to convert the gallery space to self-storage units.**

Chair Gorman stated that since it is now 10:06 PM they will not be hearing any more hearings. Mr. Rogers replied that that is correct; the Rules of Procedure state that no new applications will be heard after 10:00 PM. He asked for the Board and Mr. Pappas to discuss when to hold the next meeting.

Chair Gorman stated that they appreciate Mr. Pappas still being here and he apologizes for not hearing his two applications. He asked Mr. Pappas his preference to present to the Board in the New Year or later this month. Mr. Pappas replied the sooner the better.

Mr. Greenwald asked if the rules prevent them from continuing past 10:00 PM. Chair Gorman replied that the rules allow them to continue past 10:00 PM but not to start a hearing past 10:00 PM.

Mr. Rogers stated that the next meeting could be Tuesday, December 15, or Tuesday, December 22. Discussion ensued about the Board members', Mr. Pappas', and Mr. Phippard's availability.

Mr. Hoppock made a motion to continue ZBA 20-28 and ZBA 20-29 to December 15 at 6:30 PM. Ms. Taylor seconded the motion, which passed by a unanimous vote of 5-0.

V. New Business

a. 2021 Calendar

Chair Gorman stated that if they have new business they can take it up on December 15.

VI. Communications and Miscellaneous

VII. Non-public Session (if required)

VIII. Adjournment

There being no further business, Chair Gorman adjourned the meeting at 10:14 PM.

Respectfully submitted by,
Britta Reida, Minute Taker

Staff edits submitted by,
Corinne Marcou, Zoning Clerk

Board edits submitted by,
Jane Taylor