

**Zoning Board of Adjustment
Tuesday, September 3, 2019, 6:30 p.m.
City Hall Council Chambers
3 Washington Street, 2nd Floor**

AGENDA

- I. Introduction of Board Members
- II. Minutes of the Previous Meeting – August 5, 2019
- III. Unfinished Business
- IV. Hearings:

WITHDRAWN ZBA 19-08:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests a Variance for property located at 105 Castle St., Keene, Tax Map Parcel #567-006-000-000, which is in the Medium Density District. The Petitioner requests a Variance to permit more dwelling unites than allowed per minimum lot dimension requirements per Section 102-791, Basic Zone Dimensional Requirements.

WITHDRAWN ZBA 19-09:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests an Enlargement of a Nonconforming Use for property located at 105 Castle Street, Keene, Tax Map Parcel #567-006-000-000, which is in the Medium Density District. The Petitioner requests an Enlargement of a Nonconforming Use to remove a nonconforming office use at 105 Castle St., and replace with an additional 30 senior housing units. Adding the units to the lot will be an enlargement of a nonconforming use, which is an apartment building greater than three units. 105 Castle St. currently has and will continue to have, maintenance space for Harper Acres. Meals on Wheels space and community space. There will be a reduction level of nonconformity in other respects by eliminating the commercial office.

WITHDRAWN ZBA 19-10:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests a Variance for property located at 105 Castle Street, Keene, Tax Map Parcel #567-006-000-000, which is in the Medium Density District. The Petitioner requests a Variance for property located at 105 Castle St. to construct a 38 foot 2 ½-story building to be built in the Medium Density District per Section 102-701 of the Zoning Code.

ZBA 19-12:/ Petitioner, Montshire Pediatric Dentistry of 340 West St., owned by Bruce R. Anderson Revocable Trust & Kathleen V. Anderson Revocable Trust of 574 Old Walpole Rd, Surry, NH, requests a Variance for property located at 165 Winchester St., Tax Map #592-035-000-000 to remove/revise a condition of approval for a Variance which was granted in 2001. ZBA 01-06 was approved to allow a retail store with 16 parking space where 27 spaces are required by Section 102-793 of the Zoning Ordinance. The approval included a condition that the use be limited to retail use only. The applicant wishes to change the use to a dental office, which is a permitted use in the Commerce District.

- V. New Business:
Amendments to the Rules of Procedure
- VI. Communications and Miscellaneous:
- VII. Non Public Session: (if required)
- VIII. Adjournment:

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City of Keene
New Hampshire

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, August 5, 2019

6:30 PM

Council Chambers

Members Present:

Joshua Gorman, Chair
Jane Taylor, Vice Chair
Joseph Hoppock
Michael Welsh
Michael Remy, Alternate

Staff Present:

John Rogers, Zoning Administrator
Corinne Marcou, Zoning Clerk

Members Not Present:

Joshua Greenwald
Jeffrey Stevens, Alternate
Louise Zerba, Alternate

I. Introduction of Board Members

Chair Gorman called the meeting to order at 6:30 PM, welcomed the public, explained the rules of procedure, and introduced the Board members.

II. Minutes of the Previous Meeting – June 3, 2019

Vice Chair Taylor noted two typos in the minutes. On page two, “Mr. Hoppock said the application was withdraw without prejudice at the last hearing,” should be corrected as, “Mr. Hoppock said the application was to withdraw without prejudice at the last hearing.” On page six, “She said she thought the Board knew that alternates do no vote unless they are called to replace a regular member,” should be corrected as, “She said she thought the Board knew that alternates do not vote unless they are called to replace a regular member.”

Mr. Hoppock moved to approve the minutes of June 3, 2019 as amended, which Mr. Welsh seconded and the Zoning Board of Adjustment carried unanimously.

III. Unfinished Business

Mr. Rogers reported no unfinished business.

IV. Hearings:

Chair Gorman noted the first three applications were for the same property but the Board would hear and vote on each application individually.

ZBA 19-08:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests a Variance for property located at 105 Castle St., Keene, Tax Map Parcel #567-006- 000-000, which is in the Medium Density District. The Petitioner requests a Variance to permit more dwelling units than allowed per minimum lot dimension requirements per Section 102- 791, Basic Zone Dimensional Requirements.

Chair Gorman requested staff comments. Mr. Rogers used a map to demonstrate the location of this property at 105 Castle Street, relative to River Street and Ashuelot Street; it is the first building on the right when turning upon Castle Street. Mr. Rogers demonstrated that this portion of Castle Street has recently been turned over to the property owner by the City. Approximately half of the building (2,000 sf) was used by the Housing Authority as offices, which were considered an accessory use of the property; they now have offices on Court Street. Still, the property owner wanted to continue renting that space for offices and was granted a Variance to do so. The owners now propose to demolish the building and build a new one on the site with approximately 30 additional dwelling units. However, the lot is not large enough square footage to allow additional dwelling units. This first application is to request a Variance for lot dimension deficiency. Mr. Rogers welcomed questions.

Mr. Welsh noted the meeting packet listed the lot as 10 acres and asked if that represents the entire property with all the buildings; Mr. Rogers replied in the affirmative. Mr. Welsh then asked if the Board is looking at the number of residences on the lot as the combined number of living units for all the buildings; Mr. Rogers replied in the affirmative.

Vice Chair Taylor asked if the City has calculated how many dwelling units are allowed on the 10 acres. Mr. Rogers replied in the affirmative and though he did not have the figure with him to reference, he thought it was 105 dwelling units allowed on 10 acres. Mr. Hoppock referenced the third application (ZBA 19-10), which listed 104 dwelling units permitted; Mr. Rogers agreed it is either 104 or 105 and the Board continued discussion referencing the assumed 104 units allowed. Vice Chair Taylor asked if the calculated 104 units is not including the proposed new 30 units; Mr. Rogers replied in the affirmative. Vice Chair Taylor asked if the owner received any Variances when the building was originally constructed. Mr. Rogers said he tried to research that far back but found no information; he assumed it was built prior to the current lot dimension standards. Those current 104 dwelling units would be nonconforming to the lot dimensions there now. The applicant would be expanding that nonconformity, which is not allowed under the Zoning Code if it is dealing with lot dimensions. One cannot just enlarge a nonconforming use, which Mr. Rogers said is why the applicant sought a Variance as opposed to an expansion of a nonconforming use for the lot size.

Chair Gorman asked how many dwelling units would be permitted in a conforming setting. Mr. Rogers offered to work on that calculation while the Board heard this first application; he recalled that this property is in the Medium Density Zone, where 8,000 sf are required for the first dwelling unit and then an additional 5,400 sf for every added dwelling unit.

Vice Chair Taylor stated that the building exists in its current use by virtue of a Variance; if the building is demolished, she asked if the Variance would go away. Mr. Rogers replied in the affirmative. He said the Office Variance would go away from what he has seen of the applicant's intended use, with the proposed new residential building with accessory uses by the Keene Housing Authority to keep Meals on Wheels there for residents, in addition to a maintenance area. Vice Chair Taylor questioned the unrelated office use and if that use would go away with this new Variance on the property. Mr. Rogers said those office uses would go away, in his opinion, with the demolition of the building.

Mr. Hoppock asked, on the theory that a Variance runs with the land and is not personal, if it would be cleaner to vacate the Variance as a part of any approval granted. Mr. Rogers said that was a good recommendation for the Board to consider because it could be a clearer path that limits room for different interpretation in the long-term, which Mr. Hoppock agreed is a concern.

Chair Gorman opened the public hearing and welcomed the Executive Director of Keene Housing, Josh Meehan (of 65 Langley Road, Keene), and Brett Sanderson of Stevens & Associates, P.C. (of PO Box 1586 Brattleboro, VT). Mr. Meehan spoke to why he proposes tearing down an existing building to construct a new one. He recalled a few years ago when Keene Housing took possession of this portion of Castle Street from the City because they own all off the surrounding properties. There are currently 104 units in the building at 105 Castle Street. The current units are mostly studio and one-bedroom apartments occupied by the elderly, disabled, and families; Mr. Meehan said tenants do not have to be elderly or disabled, but the size of the units lend to that demographic.

Mr. Meehan continued saying there is a huge demand for affordable housing in Keene, primarily from elderly and disabled residents. At 105 Castle Street, Mr. Meehan said he hopes to address this demand. Of the current 104 units, three are fully handicap accessible. Keene Housing's goal as an organization is to develop as much accessible housing as possible. He cited data that shows residents in this region are getting older than in other parts of the country; with that data in mind, he plans to build mostly one-bedroom units. There are currently elderly and disabled on the waiting list, who can expect to wait approximately four years before a unit is available. Today, Mr. Meehan said for all the different housing programs the organization offers, there are 3,206 families waiting for affordable housing. He said the demand is high, the cost of construction is high as well, and funding is limited. Because Keene Housing owns the land and the road it sits on, Mr. Meehan said it makes sense for their mission and role in the community to develop more units.

Chair Gorman asked how many of the proposed units would be handicap accessible. Mr. Meehan said the project is not yet in the design phase, so it is too early to know how many will be fully accessible. Mr. Meehan noted that new developments typically designate five percent as fully accessible units. Irrespective of what happens in the design phase, Mr. Meehan said this development would have well above five percent fully accessible units. Keene Housing's goal is to build as many fully accessible units as possible, but there are cost caps on the nature of their funding. Remaining units will have helpful amenities (e.g., grab bars and roll-in shower units) that are fully compliant with the American Disability Association (ADA) standards. Mr. Sanderson agreed that any units that are not fully accessible would be constructed as adaptable units, meaning they can more easily be upgraded to fully accessible units in the future. He said the concept site plan included with the application assumes that all units will be fully accessible; if that is not possible because of cost, they will decrease the amount. First, Mr. Sanderson said they needed to determine with the Board if they can fit what they want to build at 105 Castle Street.

Mr. Welsh asked the applicant to clarify the description in application number eight, which mentions minimum lot dimension requirements per Section 102-791 of the Zoning Ordinance. He questioned if that is a linear dimension. Mr. Rogers said it is an area dimension. Mr. Rogers also provided the calculation demonstrating that 80 units would be allowed on the applicant's current lot size. Mr. Sanderson noted the unique feature that Castle Street was absorbed into this lot, but he was unsure if the street dimension was included in the application. Mr. Rogers said the numbers on the application are very similar to what records the Assessing Department has on this property. Mr. Rogers said it fair to assume the square feet numbers are close.

Mr. Hoppock noted there are already 104 units on the property and the applicant wants to add 30, which would equal 134 units, minus the 80 Mr. Rogers cited within the Code. Based on that calculation, Mr. Hoppock asked if the applicant intends to add 54 units over the limit; Mr. Sanderson replied in the affirmative.

Mr. Remy asked if there is a reason the applicant wants to drive that high on the ADA compliant demographic with 30 new units. Mr. Meehan said there is a constant demand from the demographic for accessible housing and the more Keene Housing can prepare for that demand, it will be better for the organization and the community. Mr. Meehan said the cost of not providing someone accessibility in their existing home increases the likelihood the elderly will enter assisted living sooner, which is exponentially more expensive than affordable accessible housing. He concluded saying it is more efficient to build many accessible units to meet the affordable housing demand now.

Vice Chair Taylor asked the difference between accessible and adaptable units. Mr. Sanderson said that in adaptable apartments: bathrooms must have showers of a certain size but they do not have to be roll-in, bathrooms are smaller and do not have to be wheelchair accessible, and kitchen counters do not accommodate wheelchairs.

There are some features that adaptable units must have, such as door widths. Vice Chair Taylor asked if structural changes would be necessary to convert adaptable units to accessible units. Mr. Sanderson said it depends on the unit layout but added that adaptable units are very close to fully accessible. Chair Gorman asked what the difference is between a regular unit and an adaptable unit, if not everything that makes a unit accessible is present. Mr. Sanderson said he is a Civil Engineer and less familiar with this aspect of development. Chair Gorman thought adaptable just means you can change it later if you feel like it, which is similar to almost any regular unit. Mr. Sanderson said there is a space requirement for wheel chairs to be able to enter adaptable units. Chair Gorman asked, if an adaptable unit's bathroom is too small for a wheelchair radius, if structural changes would be required; Mr. Sanderson replied in the affirmative.

Mr. Remy noted the application stated there would be no impacts on the neighboring property values and he asked if there were evaluations to confirm that. Mr. Sanderson said it is an opinion statement.

Chair Gorman questioned if the standard five percent threshold is cumulative. He noted that the three accessible units of the current 104 only account for three percent. He asked if the applicant needs to make-up the remaining two percent required for the current units in addition to the five percent required for the new units. Mr. Meehan said his goal is always to surpass those minimums; he said the percentages are irrelevant because he guaranteed more than five accessible units and anything remaining will be designed to be as adaptable as possible. Mr. Sanderson said the five percent threshold is mainly for the purposes for funding family housing, whereas this development is intended more as senior housing and will likely have than required. Mr. Meehan added that a significant portion of the people Keene Housing serves use walkers or canes (less are in wheelchairs) and the intention to accommodate all of those needs whether the unit is fully ADA compliant.

Mr. Hoppock asked if there have been traffic or pedestrian analyses; he did not see mention in any of the applications, which is concerning with demographics reliant on wheelchairs and walkers. Mr. Meehan said the organization owns the entire dead-end part of Castle Street and rebuilt the road the accommodate curb cuts designed to accommodate the populations living on that road. Mr. Meehan provided an example of how the curb cuts better meet resident needs today. Mr. Hoppock asked how much vehicle and pedestrian usage there is currently on Castle Street. Mr. Sanderson said there was no study yet and said before designing the entire building, the applicant was before Board to understand if this project is even a possibility. He said the application and designs before the Board were a conceptual plan, not a finished plan. The current parking lot has 20 spaces, which is more for existing personnel than residents are. Mr. Sanderson said 15-18 spaces would be eliminated with the change of use from office to senior housing (for which one parking space is required per every two units). If the outcome is 15 spaces, he feels it is comparable to the current traffic. Chair Gorman asked if the applicant currently complies with City standards for parking lots (52

spaces for 104 units). Mr. Sanderson replied that there are approximately 90 spaces now.

Vice Chair Taylor asked the applicant to clarify that Harper Acres is not dedicated to the elderly, but this proposed building will be; Mr. Meehan replied in the affirmative.

Mr. Remy recalled the applicant talking about a cost measure for going from fully accessible to adaptable. He asked, if the applicant made the choice from a cost perspective to go adaptable, if that cost perspective would fit more units in same area so each unit is smaller, or would it be to make cost adjustments to the quality of the products for the user. Mr. Sanderson said the project architect anticipates a roughly five to 10 percent square area reduction to go to an adaptable unit. He said there is a cost associated with the square footage as well as materials. He added that it is hard to upgrade a unit to fully accessible in the future if the proposed square footage for construction is reduced; Mr. Meehan agreed. Mr. Sanderson also recalled that this building was developed in 1969, long before ADA standards took effect in 1991. The age of the building contributes to why they need to rebuild; Mr. Sanderson said the existing infrastructure there would be challenging to upgrade to adaptable or accessible units.

The Mr. Sanderson reviewed the five criteria for this application:

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

Mr. Sanderson said granting the Variance for the 105 Castle Street would not be contrary to public interest. The site is part of Harper Acres, a dense established senior housing community; the entire property has undergone recent site improvements to make it more efficient for the elderly residents and to help calm traffic. Due to the location of the site, it is largely out of view from the public eye and is on a dead-end road that is now owned and maintained by Keene Housing, however, it is in reasonable proximity to downtown. The building at 105 Castle St. is currently nonconforming and the proposed use change would still leave Harper Acres nonconforming with respect to the Minimum Lot Dimensions. However, by granting the Variance and allowing the current building to be removed, the site can eliminate a nonconforming use and implement an appealing energy efficient building that will add to the number of fully accessible units at Harper Acres, and help satisfy the drastic need for accessible senior housing in the greater Keene area.

Mr. Hoppock asked if and how these application and adding 30 units would change the essential character of the neighborhood. He thinks Mr. Sanderson's response to the first criteria misses that point. Mr. Sanderson said it is already a senior housing area, it was constructed before zoning regulations, and it is a dead-end street; Mr. Sanderson said therefore, the neighborhood is not part of a public street, except at the corner where there is an existing building, which will be replaced with a building that respects the essential character of the neighborhood.

Mr. Remy asked if the building is visible from public view. Mr. Sanderson said the whole property is less visible, but that building on the corner is. Mr. Remy said, in looking at the square footage overlays, the proposed building looks significantly larger than the existing building. Mr. Sanderson agreed that the proposed building is longer.

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

Mr. Sanderson said that if the Variance were granted and the proposed building approved, the spirit of the Ordinance would still be maintained. The proposed building would be visually appealing, energy efficient, and fit within the fabric of the neighborhood while fulfilling a housing hardship for seniors in the area. The proposed building would remove a nonconforming use at the site and allow Harper Acres to add to its number of fully accessible senior housing units, while staying within the already established senior community.

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

Mr. Sanderson said the Variance would be a step in the right direction to help alleviate the great need for senior housing in the area. The Variance would allow the current nonconforming building to be removed and replaced with an energy efficiently designed building, constructed within the current constraints. By granting the Variance, Mr. Sanderson said Harper Acres would be more conforming to the number of ADA units required, and to the goal of Keene Housing.

Vice Chair Taylor said, she did not understand how the building would become more conforming. Mr. Sanderson said it would become more conforming by eliminating the nonconforming office use. Chair Gorman said at the same time, though, the applicant is increasing a nonconforming use. Vice Chair Taylor said the rationale did not seem logical to her. Mr. Meehan said that businesses run out of the offices currently, which is a nonconforming use, and while it would be nonconforming by increasing the density, it would be solely for residential and related purposes.

Respectfully, Chair Gorman said there were three applications for Variances before the Board for this property. Thus, he suggested ending the conversation about being more conforming or losing a nonconforming use because ultimately, the proposed use will be nonconforming in several ways. Mr. Sanderson said when looking at enlarging a nonconforming use, they were trying to speak to the Chairman's point.

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

Mr. Sanderson said granting the Variance would not negatively affect the surrounding neighborhood in an obnoxious or offensive way. Most of the property is contained within the Harper Acres site and the proposed new building would be visually

appealing and fit with the surrounding neighborhood. The recent traffic calming on the dead-end road of Castle Street limits the speed of cars going to and from the site; the nature of elderly drivers is to drive less than other demographics. Mr. Sanderson said the applicant proposed parking at the site that will be located behind the building, out of site from the general public and surrounding properties.

5. *Unnecessary Hardship*

- a. *Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*
 - i. *No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.*

Mr. Sanderson said that if approved, the building would be constructed to add to the number of accessible units within the constraints of the site. The proposed building would fit the residential architecture style on Castle Street and in Harper Acres, and will provide no unfavorable relationship, in the applicant's opinion, between the general public purposes of the ordinance provision.

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

Mr. Sanderson said the proposed use is reasonable because it will remove a current nonconforming use and replace it with additional accessible senior housing at an established senior housing community. The location of the site on Castle Street, in an existing senior housing complex, will allow the new building to blend well with the surrounding senior housing and residential neighborhood.

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

Mr. Sanderson said the property was constructed prior to the development of ADA rules. Therefore, the only way to create fully compliant accessible units would be to renovate or rehabilitate the existing building. He said retrofitting the existing building to become ADA compliant and fully accessible would be a hardship from a cost perspective and could result in a loss of valuable resources (senior housing units). Given the context of the site and neighborhood, the applicant believes the proposed building and use is reasonable and will allow Keene Housing to move in the direction of bringing Harper Acres into conformance with the required ADA units. This building will be a step in the right direction to providing adequate accessible senior housing for the greater Keene area that is in close proximity to downtown Keene, with public transportation available, as well as services and basic residential needs.

Mr. Sanderson and the applicant reminded the Board of Section 674:33 of the NH Local Land Use Planning and Regulatory powers: "*V. Notwithstanding subparagraph I(a)(2), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises ...*"

Chair Gorman advised the applicant to hold discussion of the site plan until the Board heard the subsequent application related to building size.

Mr. Hoppock asked the applicant to explain the special conditions of this property and how they are distinguished from other properties in the area; he did not understand based on the application materials. Mr. Sanderson said the special conditions the applicant is trying to accommodate are the ADA units. Chair Gorman did not understand how that answer makes the property more special than surrounding properties. Mr. Sanderson said from a density perspective, that the property is unusual because it is very large compared to most residential properties in the district. He said the district's density requirement creates a hardship when trying to use this property to its maximum potential. Mr. Sanderson reiterated that this proposed use would be more conforming than the current use by increasing the number of accessible units.

Vice Chair Taylor asked the number of fully accessible units proposed. Mr. Sanderson said the site and building plans allow them all to be fully accessible if financially possible. Vice Chair Taylor said that the Board really has no guidance on if three of 30 units or 30 of 30 units are accessible, if one is more of a fully accessible building than the other is. She said the Board needed clarity in order to apply that provision to whether the building really will be fully accessible. Mr. Sanderson said with this plan the building would be fully accessible and the applicant hopes it will be financially possible to have 30 fully ADA accessible units, which would be the best scenario. Mr. Meehan reiterated that they hope to reach 30 fully accessible units but there is a cost to that and coming to the Board was their first step before spending serious money on development; a lot has gone into predevelopment already. To have more than a standard affordable unit, Mr. Meehan said with 100% certainty that all proposed units will have certain accessible features such as grab bars, light switches, and roll-in showers to accommodate many disabilities, including intellectual disabilities.

Mr. Remy referred to Criteria V.b. and asked staff if that is relevant in this context or more so if a Variance is needed to rebuild an existing unit. Mr. Rogers cited NH RSA Section 674:33, "*V. Notwithstanding subparagraph I(a)(2), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided*

that: (a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance. (b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.”

Mr. Rogers continued saying that based on the statute quoted, there is certainly flexibility for the Board to make determinations. Mr. Hoppock said his problem with applying that provision to this application is that no particular person was identified. He was not convinced that provision applied to this application. The provision allows waiving a hardship requirement, which he was not prepared to do. Vice Chair Taylor said, she asked about the number of units because that provision is linked from a condition of the premises and she had yet to hear anything that links the condition of the premises to needing the Variance for handicap accessibility. She said they may need a Variance to construct the building to increase the number of units, but they would need a Variance to do so even if none of the units were handicap accessible. She agreed with Mr. Hoppock that she was unsure that provision applies to this application. Chair Gorman said that provision is a specific situation of the property, but there are already 104 units, so he thought some could be converted to handicap. The Chairman recognized the applicant's comments about costs, but stated that the Board does not consider financial hardship from a zoning perspective. He thinks that provision might be more applicable when, for example, someone must enter setbacks for a specific person that has become disabled. He said waiving a hardship is a big request to ask the Board to do.

Chair Gorman said he wanted to see more of a case made very specifically on the five criteria because that, and only that, is what the Board votes on. He suggested the applicant request to continue the hearing without prejudice, so they could return more prepared to make solid arguments for those five provisions. Vice Chair Taylor asked if it was valuable to hear public comments on the record specifically for this first application. Chair Gorman held comments because the public did not have full answers yet and the applicant was entitled to fully answer the Board's questions before the public weighs in.

Chair Gorman said, personally, that he wanted to see more information about the specifics of the building if the Board is to heavily consider accessibility. He felt the Board needed to see more numbers to understand. Mr. Meehan said it would be challenging to arrive at a total development cost without knowing a bit more about what the Board would require. He could not guarantee 30 fully accessible units because, for example, the Board might come back asking for little changes, such as the footprint is too big or something needs to be lowered, which would impact the organizer's ability to present a full development cost. The Chairman rescinded his request because he understood the applicant's point.

Mr. Hoppock noted there were members of the public present who might not be able to attend the next meeting and suggested the Board might hear their comments. He

added that the five criteria are in the law and there are a lot of cases about what these criteria require. Those are the questions the applicant was being asked and in Mr. Hoppock's view, there was a lot of missing information to meet a request for voting. Mr. Remy questioned if the information was not there, missing, or withheld; members of the Board indicated they understood his point. Mr. Meehan said the Board's points were well-taken and he requested time to ensure the applications are more articulate, to take into consideration the criteria more, and to feel they presented their best case.

Vice Chair Taylor noted that if the Board decides to continue the application, the public unable attend the next hearing can submit a written position statement to the Zoning Clerk. Mr. Meehan said that if neighbors have concerns he wants to hear them and try to accommodate them as much as possible.

Hearing the applicant's request, Mr. Hoppock moved to continue ZBA 19-08 until the Tuesday, September 3, 2019 ZBA meeting. He encouraged members of the public to submit written comments. Vice Chair Taylor seconded the motion to continue.

Mr. Welsh said this application (ZBA 19-08) was fairly light on details the Board commented on, like the number of units. Some information relevant to the first application was not written until the third application, for example. He thought he would have to vote on an abstraction. He encouraged the applicant to underscore those important figures when revising this first application or to consider how the array of applications could be combined. Vice Chair Taylor said in staffs defense that they have to work with the Ordinance as it is written; Mr. Welsh said perhaps it is easier to go one-by-one, he was unsure. Chair Gorman thought they had to hear applications one-by-one. If continuing this application, Vice Chair Taylor suggested voting on each application individually.

On a vote of 5-0, the Zoning Board of Adjustment continued ZBA 19-08 until the Tuesday, September 3, 2019 meeting.

The Chairman said that, theoretically, the revised application should be better and he encouraged members of the public to attend the next meeting or submit comments to the Zoning Clerk.

ZBA 19-09:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests an Enlargement of a Nonconforming Use for property located at 105 Castle Street, Keene, Tax Map Parcel #567-006-000-000, which is in the Medium Density District. The Petitioner requests an Enlargement of a Nonconforming Use to remove a nonconforming office use at 105 Castle St., and replace with an additional 30 senior housing units. Adding the units to the lot will be an enlargement of a nonconforming use, which is an apartment building greater than three units. 105 Castle St. currently has and will continue to have, maintenance space for Harper Acres. Meals on Wheels space and community space.

There will be a reduction level of nonconformity in other respects by eliminating the commercial office.

Chair Gorman opened the public hearing and recognized the applicant, Mr. Meehan, who requested a continuance. Vice Chair Taylor made the following motion, which Mr. Hoppock seconded.

On a vote of 5-0, the Zoning Board of Adjustment continued ZBA 19-09 until the Tuesday, September 3, 2019 meeting.

ZBA 19-10:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests a Variance for property located at 105 Castle Street, Keene, Tax Map Parcel #567- 006-000-000, which is in the Medium Density District. The Petitioner requests a Variance for property located at 105 Castle St. to construct a 38 foot 2 ½-story building to be built in the Medium Density District per Section 102-791 of the Zoning Code.

Chair Gorman opened the public hearing and recognized the applicant, Mr. Meehan, who requested a continuance. Mr. Remy made the following motion, which Mr. Hoppock seconded.

On a vote of 5-0, the Zoning Board of Adjustment continued ZBA 19-10 until the Tuesday, September 3, 2019 meeting.

ZBA 19-11:/ Petitioner, The Colonial Theater Group, Inc., of 95 Main St., Keene, requests a Special Exception for property located at 89 Main St., Tax Map Parcel #575-008-000 (001 thru 007) which is in the Central Business District. The Petitioner requests a Special Exception from Zoning Ordinance Section 102-791, the Basic Zone Dimensional Requirements; Central Business District maximum building height of 55 feet to 75 feet.

Chair Gorman requested staff comments and Mr. Rogers used a map to demonstrate the location of the Colonial Theater, for which the owners propose renovations and an addition to the building that calls for increasing the building height. Within the Zoning Code, there is a specific height threshold for buildings in the Central Business District, but there are allowances if a special exception is sought to increase that height, which is what the applicant was before the Board to request. Mr. Rogers referenced the Basic Zone Dimensional Requirements table and footnote b with the normal special exception criteria at the end of the Zoning Code that the applicant must address. The Board was looking at the nine criteria in total.

Vice Chair Taylor asked if there are any other buildings in the downtown that are 75' tall. Mr. Rogers said the tallest building that might reach 75' tall would be the building wrapping around the corner from Main Street to Roxbury Street. He did not believe the Carriage House or the old Sentinel building were that height.

Chair Gorman called a four-minute recess.

Chair Gorman opened the public hearing and welcomed Charles Michal (of Weller & Michal Architects, Harrisville, NH) on behalf of the Colonial Theater Group. Also present were Tad Schrantz (Development Committee Chair) and Alec Doyle (Executive Director of the Colonial Theater). Mr. Michal said this application was to seek a special exception to expand the height of a portion of the existing Colonial Theater building, which first opened nearly 100 years ago. While the project does involve expansion of the building's footprint (where the site plan did show additional square feet backstage), the only question before the Board was the height increase. He said the height increase has nothing to do with aesthetics or a desire to make internal changes to the theater. Instead, the increase is driven by a technical need, which he used photographs to explain; the photos displayed existing conditions of a theater similar to the Colonial that uses the same conditions as today.

Today, Mr. Michal explained that the theater relies on a hemp and sandbag system to lift and hold production materials, like lights. The Colonial is operated by skilled employees from an intermediate platform above the stage that is accessed by a tall vertical, precarious ladder. Mr. Michal said the proposed expansion would accommodate a modern rail system with pulleys and a walking grid that will make maintenance above the stage safer and allow more space on the stage and in the theater. He demonstrated details of the two systems using the photos displayed. The proposed expansion will be taller than the existing building to accommodate the modern equipment. The proposed renovation stays within allow 75' available in the Central Business District under special exception from the ZBA.

Mr. Michal addressed the first four criteria for special exception.

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

Mr. Michal said the proposed use is the same as the current use of the existing building. He said this requirement is satisfied, as the proposed increase in building height is necessary to allow the continued competitive use of this special purpose building as a modern theater/performance venue. The use category has not changed from the original 1923 use of the property that is already allowed at this location.

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

Mr. Michal said the approval of the special exception, in the applicant's view, does not reduce the value of any property in the district and is not injurious, offensive, or obnoxious to the neighborhood. He added that this requirement is satisfied because the 15' height increase above the existing stage house roof will have no impact on the Main Street facade and views of the building. They do not believe any abutters' views

would be impacted by the height increase nor do they anticipate reduction to neighboring property values.

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

Mr. Michal said this requirement is satisfied because increasing the roof height by 18% of the building footprint does not impact either vehicle or pedestrian traffic, because it does not change the use of the building.

4. *This requirement is satisfied as the requested Special Exception places no increased burden on sewer, water, parking or other facilities necessary for the proper operation of the Theater.*

Mr. Michal said this requirement is satisfied, as the requested special exception places no increased burden on sewer, water, parking, or other facilities necessary for the proper operation of the theater. He stated affirmatively that adequate services are provided for this use.

Mr. Michal continued addressing the additional five criteria for a special exception for a height increase. He referenced a memo included in the meeting packet that speaks to these five points. He read the responses to each criteria.

1. *There is adequate carrying capacity on public roads serving the proposed project site to accommodate traffic associated with and anticipated for the proposed project. It shall be the responsibility of the applicant to demonstrate such capacity, the demonstration or proof of which shall include affirmative letters from the state department of transportation, if state roads are within 1,000 linear feet of the proposed project site, and the city engineer and police chief. Traffic studies may be required by the board in its discretion at the applicant's expense in addition to the foregoing; and*

Mr. Michal said there is adequate carrying capacity on public roads serving the proposed project site to accommodate traffic associated with and anticipated for the proposed project, as the special exception requested does not increase the capacity of the building nor change its current use. Increasing the roof height by 18% of the building footprint does not affect either vehicle or pedestrian traffic.

2. *All parking requirements can be satisfied on site. A waiver of on-site parking requirements in accordance with division 7 of article V of this chapter pertaining to off-street parking regulations may not be granted. In the central business zone only, parking capacity requirements may be satisfied on site or off site in accordance with division 7 of article V of this chapter, provided that the applicant demonstrates to the satisfaction of the zoning board of adjustment that there is adequate capacity in the proposed off-site parking location, whether a private or public parking area, for the parking required of the use under this chapter. The mere presence of a nearby public parking lot*

shall not in and of itself be a sufficient demonstration of adequate parking capacity in the off-site parking location to accommodate the required parking for the use.

Mr. Michal said parking requirements are satisfied as no increased parking is necessitated by the height increase, which simply accommodates the modern, current-day technology and equipment suitable for a live performance theater. [In the Central Business Zone, parking capacity requirements may be satisfied on site or off site in accordance with Division 7 of Article V.]

3. *The design of the proposed building is attractive and compatible with adjacent buildings and those in the vicinity, does not unreasonably obstruct vistas of hills that can be seen from any public ways on the valley floor, or the light and air available to adjacent buildings; and*

Mr. Michal said the design of the proposed remodeling is attractive and compatible with adjacent buildings and those in the vicinity, does not unreasonably obstruct vistas of hills that can be seen from any public ways on the valley floor, or the light and air available to adjacent buildings.

4. *Adequate capacity and availability of emergency services exists; and*

Mr. Michal said adequate capacity and availability of emergency services exist, as this is an existing use unchanged by the proposed height increase. The height increase does not introduce a higher occupied floor level than currently exists, and only increases the volume of the stage house for the theater.

5. *Adequate existing sewer and water are available to serve the proposed building.*

Mr. Michal concluded saying that adequate existing sewer and water are available to serve the building.

Vice Chair Taylor asked Mr. Michal to demonstrate, using visuals, not where the height increase will be but how deep the height increase will continue from the back of the existing building forward. Mr. Michal shared a handout of a flat side architectural drawing, demonstrated the stage house location, and showed where the height increased is proposed. Vice Chair Taylor clarified asking how broad the height increase would be toward Main Street. Mr. Michal said height increase will span the full width of the building but will not go any closer to Main Street than the high part of the current stage.

Vice Chair Taylor recalled the need for emergency services access. She asked if an emergency exit would be required to reach the new work area. Mr. Michal said reaching existing ladders requires starting with a single rung-over-rung ladder up 20' and walking along a wooden catwalk to the stage wall. The future equipment will

require adding to the back of the building, where the mechanical equipment is now that will be moved to the roof. Mr. Michal said the backstage would have an elevator and conventional stair system allowing employees to reach the platform without negotiating a tall ladder. Similar access will be available on the far side, creating two exits on the back of the building to within the volume of the backstage. Vice Chair Taylor asked whether there is a need for any emergency egress on the top and if that changes anything structurally. Mr. Michal said the applicants are providing what is required by Code as a part of the design.

Chair Gorman closed the public hearing.

Mr. Hoppock said that it was generally a clean application and he was satisfied that all five criteria were met. He supported the application. Chair Gorman said he has much greater respect for the work that goes on precariously backstage currently.

Vice Chair Taylor said her major concern was, given the height, that appropriate provisions were being made for any kind of emergency to allow employees to leave the premises. Chair Gorman thought the City Code would dictate that. Vice Chair Taylor said, she had not a clue what the City Code requires for that type of facility. Mr. Rogers said the Chairman was correct that this work would require a Building Permit and would be subject to the state building and fire codes, which would address some of Vice Chair Taylor's concerns.

Mr. Welsh said he approved of the well-developed application. This was his first experience seeing this amazing backstage work also. He imagined the Code is more so focused on instances of adding a story of living space or a restaurant on a building roof; something different from this application. He supported the application.

Chair Gorman agreed and reiterated this is just mechanical space and does not add to a previous use and will not adversely affect the neighborhood or community. To the contrary, the Chairman thought this project was great for the community.

Mr. Remy expressed no concerns as long as height is covered in the fire code.

Mr. Hoppock moved to approve ZBA 19-11 without condition, which Chair Gorman seconded.

The Board reviewed the nine criteria for a special exception for a height increase.

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

Vice Chair Taylor said the proposed use is an allowed use already and she expressed no concern. Mr. Hoppock thought the location dedicated to stage functioning was appropriate.

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

Mr. Hoppock agreed with the statement. Vice Chair Taylor added that factually, the district is commercial and the height increase would not impact a specific commercial use. She said the expansion is not on Main Street so she expressed no concern for neighboring impact or value reduction. Chair Gorman agreed that the theater adds value to the district and other merchants on Main Street. He said the City is lucky to have such a historic theater.

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

Mr. Hoppock agreed with the statement. Vice Chair Taylor did not identify any impact on vehicles or pedestrians.

- 4. This requirement is satisfied as the requested Special Exception places no increased burden on sewer, water, parking or other facilities necessary for the proper operation of the Theater.*

Chair Gorman felt the Board had determined already that this project is not adding people, only mechanical space. He continued to the five criteria for increasing height.

- 1. There is adequate carrying capacity on public roads serving the proposed project site to accommodate traffic associated with and anticipated for the proposed project. It shall be the responsibility of the applicant to demonstrate such capacity, the demonstration or proof of which shall include affirmative letters from the state department of transportation, if state roads are within 1,000 linear feet of the proposed project site, and the city engineer and police chief. Traffic studies may be required by the board in its discretion at the applicant's expense in addition to the foregoing; and*

Mr. Hoppock thinks it is satisfied that this project will have no impact on the carrying capacity of public roads. Vice Chair Taylor agreed.

- 2. All parking requirements can be satisfied on site. A waiver of on-site parking requirements in accordance with division 7 of article V of this chapter pertaining to off-street parking regulations may not be granted. In the central business zone only, parking capacity requirements may be satisfied on site or off site in accordance with division 7 of article V of this chapter, provided that the applicant demonstrates to the satisfaction of the zoning board of adjustment that there is adequate capacity in the proposed off-site parking location, whether a private or public parking area, for the parking required of the use under this chapter. The mere presence of a nearby public parking lot shall not in and of itself be a sufficient demonstration of adequate parking capacity in the off-site parking location to accommodate the required parking for the use.*

Vice Chair Taylor said there is no change in number of seats in the facility so the parking requirements have not changed. Mr. Hoppock said there might even be fewer workers if new equipment reduces staffing needs.

3. *The design of the proposed building is attractive and compatible with adjacent buildings and those in the vicinity, does not unreasonably obstruct vistas of hills that can be seen from any public ways on the valley floor, or the light and air available to adjacent buildings; and*

Chair Gorman said that this project would not unreasonably obstruct anything.

4. *Adequate capacity and availability of emergency services exists; and*

Vice Chair Taylor said the only information missing is if the ladder truck can reach that 75', but if it reaches the Central Square Terrace, then it should be able to reach the top of the new theater structure as well. She said it was somewhat of an assumption on her part.

5. *Adequate existing sewer and water are available to serve the proposed building.*

Mr. Hoppock saw no questions on this criteria.

The Chairman recognized the criteria reviewed, a motion, and a second to approve this special exception.

On a vote of 5-0, the Zoning Board of Adjustment approved ZBA 19-11.

V. New Business
a. Amendments to the Rules of Procedure

Mr. Rogers recalled some changes to the rules of procedure that can be found as a draft in the meeting packet.

- On page 62 of 73, there was a change in the meeting room.
- On page 64 of 73, the new department name is reflected.
- On page 65 of 73, edits were made to reflect the bill passed in the NH RSA that changed the timeframe required to hear if someone applies for a rehearing. A motion for rehearing is spoken to a few places in the rules and it says 30 days; the new NH RSA allows 45 days, which in the City's opinion is better and gives more time if someone were to apply for rehearing immediately after the decision is made, when there could be challenges scheduling a special ZBA meeting.

On page 69 of 73, Vice Chair Taylor noted a highlighted portion of a sentence. Mr. Rogers said that highlight was his personal note, included by mistake. Any changes

presented to the Board in the meeting packet were evidenced by red strikethroughs. If an applicant receives a decision and requests a motion for rehearing, the Board now has 45 days to make a decision whether to rehear the petition. If the Board decides to rehear, then it still has 30 days to actually re-hold the public hearing; Mr. Rogers confirmed.

Mr. Hoppock asked, on page 65 of 73 (b) of the meeting packet, if staff ever have issues with incomplete applications. He provided the example of the previous hearing and if square footage were left blank because an applicant did not know, he asked if staff reject the application. Mr. Rogers replied in the affirmative that if specific information were missing related to the lot, then staff would reach out to the applicant immediately to get that information. Mr. Hoppock asked if staff is satisfied with how the rules read and Mr. Rogers replied in the affirmative.

Vice Chair Taylor said that unfortunately for Zoning Boards there is no statutory guidance on a completed application, though Mr. Hoppock said that guidance is available for Planning Boards. Vice Chair Taylor referenced the last page of the meeting packet that read: “public hearing shall be held within 45 days of recent notice of the appeal.” She said notice of the appeal is the application and the rule just says when staff receives the application, so she questioned if staff review those forms with applicants to determine if there is adequate information to move forward. Mr. Rogers said that is typical staff protocol, though the Board could also determine an application is missing information through discussion, such as what happened in ZBA 19-08. Chair Gorman agreed he did not think that application was incomplete, but inadequate. Vice Chair Taylor added that from the Board’s perspective, there was inadequate information to determine if the applicant can carry the burden of proof, which is a completely different standard than what staff is looking at. Mr. Hoppock agreed.

Vice Chair Taylor made the following motion, which Mr. Hoppock seconded.

On a vote of 5-0, the Zoning Board of Adjustment adopted the revised rules of procedure as presented.

Mr. Welsh questioned and Mr. Rogers clarified that the motion referred to the strikethrough items and red text demonstrated in the draft rules in the meeting packet.

b. Alternates Removing Themselves from the Decision Process

Mr. Rogers recalled new business brought by Vice Chair Taylor about how the rules are currently written for alternate members and their being present at the podium with the regular members and a part of the initial discussion during public hearing. Once the public hearing is closed, alternates are supposed to remove themselves from further discussion. At the June 2019 meeting, Chair Gorman encountered this situation by asking an alternate’s input during a public hearing. This led to discussion as to if rules of procedure can change to allow alternates to still participate in discussion after the public hearing is closed. In a brief conversation with the City Attorney and in reviewing

the NH RSA's that Vice Chair Taylor mentioned, it appears to be at the Board's discretion to alter the rules of procedure.

Chair Gorman supported changing the rules given the amount of effort and energy Mr. Remy has dedicated to these meetings; the Chairman values and welcomes his input. Vice Chair Taylor said the only thing to do differently is, if alternates were allowed to participate in the deliberations prior to the vote, the Chair would need to specify at the beginning of a hearing that the alternate is participating as such but will not vote. Mr. Rogers thinks it might already be stated as such in the rules. Vice Chair Taylor agreed and added that, having been on a Zoning Board before the change in statute that allowed alternates to participate fully in the discussion and after the change, she thinks there is a tremendous amount of added value to the discussion. She also thinks it gives a fairer opportunity to the applicant to have diverse perspectives reviewing applications. Mr. Welsh agreed the change would be beneficial; he noted it is just eliminating the sentence, "*once the board moves into deliberations.*" He said it is not just a good idea because of valuable contributions from alternates but also because it eliminates a clunky necessary step the Board would otherwise have to take, that could be a problem if overlooked. Mr. Welsh supported eliminating that sentence.

Based on the Board's comments, staff agreed to review the rules of procedure and determine how to strike that line from the rules, while keeping in mind Vice Chair Taylor's comment about keeping apparent that the alternate is present as such, not as a voting member. Staff will bring revised rules of procedure to the September 3, 2019 meeting.

- VI. **Communications & Miscellaneous:**
- VII. **Non Public Session: (if required)**
- VIII. **Adjournment**

Hearing no further business, Chair Gorman adjourned the meeting at 8:29 PM.

Respectfully submitted by,
Katrnya Kibler, Minute Taker
August 21, 2019

From: [Taylor Shulda](#)
To: [Corinne Marcou](#)
Cc: [Brud Sanderson](#); [Joshua Meehan \(jmeehan@keenehousing.org\)](mailto:jmeehan@keenehousing.org)
Subject: 105 Castle St. - ZBA Applications
Date: Friday, August 16, 2019 11:17:32 AM

Dear Corinne,

On behalf of Keene Housing, we would like to formally withdraw our 3 applications (Enlargement of Non-Conforming Use, Variance to exceed building height and number of stories and the Variance to exceed dwelling units allowed per lot dimensions) from consideration to submit at a later date.

Thank you and do not hesitate to reach out with any questions.

Best,

Taylor Shulda

Landscape Architect Designer | Stevens & Associates, PC

PO Box 1586, Brattleboro, VT 05302 | [802.257.9329](tel:802.257.9329) x103 | www.stevens-assoc.com

Architecture | Engineering | Landscape Architecture

165 Winchester St. ZBA 19-12



Petitioner requests a Variance to remove/ revise a condition of approval for a Variance granted in 2001 which was to allow a retail store with 16 parking spaces where 27 is required per Section 102-793.



NOTICE OF HEARING

ZBA 19-12

A meeting of the Zoning Board of Adjustment will be held on Tuesday, September 3, 2019 at 6:30 PM in City Hall Council Chambers, 2nd floor, 3 Washington St, Keene, New Hampshire to consider the petition of Montshire Pediatric Dentistry of 340 West St., owned by Bruce R. Anderson Revocable Trust & Kathleen V. Anderson Revocable Trust of 574 Old Walpole Rd, Surry, NH, requests a Variance for property located at 165 Winchester St., Tax Map #592-035-000-000 to remove/revise a condition of approval for a Variance which was granted in 2001. ZBA 01-06 was approved to allow a retail store with 16 parking space where 27 spaces are required by Section 102-793 of the Zoning Ordinance. The approval included a condition that the use be limited to retail use only. The applicant wishes to change the use to a dental office, which is a permitted use in the Commerce District.

This application is available for public review in the Community Development Department at City Hall, 3 Washington Street, Keene, NH 03431 between the hours of 8:00 am and 4:30 pm. or online at <https://ci.keene.nh.us/zoning-board-adjustment>

ZONING BOARD OF ADJUSTMENT

Corinne Marcou, Clerk

Notice issuance date: August 22, 2019

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:	
Case No.	<u>ZBA 19-12</u>
Date Filed	<u>8/14/19</u>
Received By	_____
Page	<u>1</u> of <u>11</u>
Reviewed By	_____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL - MARK AS MANY AS NECESSARY

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) Montshire Pediatric Dentistry Phone: 603 357-0116
Address 340 West Street Keene NH 03431
Name(s) of Owner(s) Bruce R Anderson Rev Trust Kathleen V Anderson Rev Trust
Address 574 Old Walpole Road Surry NH 03431
Location of Property 165 Winchester Street

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number 592-035-000 Zoning District Commerce
Lot Dimensions: Front 189.3' Rear 166.51' Side 100' Side 103.05'
Lot Area: Acres .41 +/- Square Feet 17,860 +/-
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing 28% Proposed 28%
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing 64% Proposed 64%
Present Use Retail
Proposed Use Dental Office

SECTION III - AFFIDAVIT

I hereby certify that I am the owner or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

Bruce Anderson Date 8/12/2019
(Signature of Owner or Authorized Agent) KV Anderson

Please Print Name BRUCE ANDERSON
Kathleen V Anderson

5. Unnecessary Hardship

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

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

and

ii. The proposed use is a reasonable one because:

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

PROPERTY ADDRESS 165 Winchester Street

APPLICATION FOR A VARIANCE

- This is a request to remove/revise a condition of approval for a variance which was granted in 2001. ZBA-01-06 was approved to allow a retail store with 16 parking spaces where 27 spaces are required by section 102-793 of the zoning ordinance. The approval included a condition that the use be limited to retail use only. The applicant wishes to change the use to a dental office, which is a permitted use in the Commerce District:

DESCRIBE BRIEFLY YOUR RESPONSE TO EACH CONDITION:

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

The parking requirement of 1 space per 200 sf is the same for retail sales and the proposed office use. The previous use as a bicycle shop was a low intensity use which operated safely with the reduced number of parking spaces. The proposed dental office is operated by scheduled appointments and will limit the number of patients per hour that can be safely accommodated with the 16 parking spaces.

The existing building has approximately 10,000 sf of floor space. Another retail use could result in a much higher intensity use than the use as a cycle shop. It is in the public interest to allow existing buildings to be re-purposed with a use of similar intensity that can be safely accommodated on the existing lot. The proposed use as a dentist office will be a similar intensity use. Granting the variance to allow the change in use will not be contrary to the public interest.

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

The spirit of the ordinance is to protect the public health, safety and welfare by providing adequate parking for a proposed use. The proposed dental office will serve clients by appointment only. This allows them to maintain a low intensity use and ensures that the 16 parking spaces are adequate for the safe operation of the business at the site. The proposed use as a dental office will not create excess traffic and will not result in a threat to public health, public safety or public welfare. This proposal meets the spirit and intent of the ordinance.

3. Granting the variance would do substantial justice because:

This is an existing building with approximately 10,000 sf of floor space. The property is nonconforming due to setbacks and parking. It is difficult to find a commercial use which needs the large floor area but can operate with a low number of parking spaces. The proposed dental office is one such use. Granting the variance will allow the applicant to utilize the property in a manner which will not result in a safety hazard for the public. It will increase the value of the property and result in additional tax revenues for the City of Keene. This property is serviced by a major street (Winchester Street) which has adequate capacity for this use. Granting the variance will do substantial justice because it will allow a use which is not contrary to the public interest and observes the spirit and intent of the ordinance.

4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** The existing 16 space parking lot is adequate for the proposed use as a dental office. The surrounding land uses are all commercial in nature or large scale residential (The Mills student housing). The existing building will be renovated with new windows, doors, roofing and exterior paint. The renovated building will improve the value of the property and will maintain and enhance surrounding property values. The use as a dental office will not generate excess traffic and will not generate excess noise. Granting the variance will lead to improved property value on this lot and will help to sustain adjacent property values. This proposal will not diminish surrounding property values.

5. Unnecessary Hardship

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

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

This is an existing nonconforming commercial lot due to setbacks and the number of existing parking spaces. With an existing building of 10,000 +sf and only 16 parking spaces, there are very few commercial uses that can operate safely with such constraints. This is a unique site feature that severely limits the ability to use the property for another commercial use. It is unfair and an unnecessary hardship to restrict the use to retail sales when allowing a dental office will fulfill the general public purposes of the ordinance by maintaining property values without being a nuisance or hazard to the neighborhood.

And

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

It will utilize an existing nonconforming building and property in a manner that is low intensity, safe, and compatible with the neighborhood. There is adequate onsite parking for the proposed use as a dental office. The existing utilities and streets have adequate capacity for the proposed use. The proposed use will not diminish surrounding property values. It is fair and reasonable to allow a self storage facility under these conditions.

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

ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The existing 10,000 sf building with 16 parking spaces is nonconforming due to building setbacks and the number of parking spaces. By restricting the allowed uses to be retail sales only, it is nearly impossible to find another retail use which can operate safely at this site. Almost every retail use in a 10,000 sf space would be much higher intensity than the proposed dental office and would require many more parking spaces. As a result, the restriction to allow only retail uses creates an unnecessary hardship for this property. It is unfair and unreasonable to restrict this property when allowing a dental office will fulfill the general public purposes of the ordinance by maintaining property values without being a nuisance or hazard to the neighborhood.

A removal/revision of the restriction requiring a retail sales use is necessary to allow the dental office use. The proposed use is reasonable because it meets all other zoning criteria, is consistent with the spirit of the ordinance, and will not diminish surrounding property values.



NOTICE OF DECISION

May 21, 2001

ZONING BOARD OF ADJUSTMENT

CASE NUMBER: ZBA 01-06
Property Address: 165 Winchester Street
Zone: Commerce
Owner: Bruce Anderson
Petitioner: Bruce Anderson

You are hereby notified that the petition for a Variance at the **May 21, 2001**, meeting was approved by a 4 - 1 vote of the Board.

Conditions: The use is limited to retail use only.



Marcia F. White, Clerk

NOTE: Any person affected has a right to appeal this Decision. If you wish to appeal, you must act within twenty (20) days of the date of this notice. The necessary first step, before any appeal may be taken to the Courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. See New Hampshire Statutes, RSA Chapter 677, for details.

Area Code 603

Phone

Airport 357-9835 • Assessment 352-2125 • City Attorney 357-9806 • City Clerk 352-0133 • Code Enforcement 352-5440 • Facility Maintenance 357-9844
Fleet Services 357-9831 • Fire 357-9861 • Finance 352-1013 • Health 352-5440 • Human Resources 357-9858 • Human Services 357-9809 • Information
Management Services 357-9802 • Library 352-0157 • Mayor 357-9804 • Manager 357-9804 • Recycle Center/Transfer Station 352-5739 • Parks, Recreation &
Facilities 357-9829 • Planning 352-5474 • Police 357-9815 • Public Works 352-6550 • Purchasing 357-9800 • Revenue Collection 357-9801
Water Treatment Facility 357-8483 • Wastewater Treatment Plant 357-9836 • Water & Sewer 352-3239 • Youth Services 357-9810

FAX

Airport 357-9853 • Assessment 357-9857 • City Clerk 357-9884 • City Hall 357-9847 • Fire 358-3420 • Recycle Center/Transfer Station 352-8325
Revenue Collection 357-9898 • Library 352-1101 • Parks, Recreation & Facilities 357-9859 • Police 357-9823 • Public Works 357-9848
Water Treatment Facility 358-1008 • Wastewater Treatment Plant 357-9854

Website

www.ci.keene.nh.us

ABUTTERS TO TMP 592-035-000

592-032-000
JCW Riverview Holdings LLC
PO Box 389
Keene NH 03431

Brickstone Land Use Consultants LLC
185 Winchester Street
Keene NH 03431

592-002-000
North American Riverview Holdings
LLC
195 Winchester Street
Keene NH 03431

592-036-000
147 Winchester St LLC
362 Court Street
Keene NH 03431

592-037-000
141 Winchester St LLC
48 Junction Square Dr
Concord MA 01742

591-007-000
MEJB LLC
131 Winchester St
Keene NH 03431

592-035-000
Bruce R Anderson Rev Trust
Kathleen V Anderson Revocable Trust
574 Old Walpole RD
Surry NH 03431

592-033-000
Theroux Properties LLC
12 Colby Road
Litchfield NH 03052

592-001-000
Rebecca W Kiritsy
17 Maple Street
Freedom NH 03836-4361

583-033-000
State of NH
PO Box 483
Concord NH 03302

592-034-000
Stanley M Chickering Living Trust
Cecile F Chickering Living Trust
41 Sweeney Road
Keene NH 03431

591-001-000
University System of NH
Keene State College
229 Main Street
Keene NH 03431

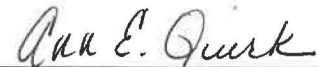
583-029-000
Mills of Keene LLC
PO Box 313
Durham NH 03824

Subscribed and sworn to me by
James P Phippard this

Aug. 12, 2019

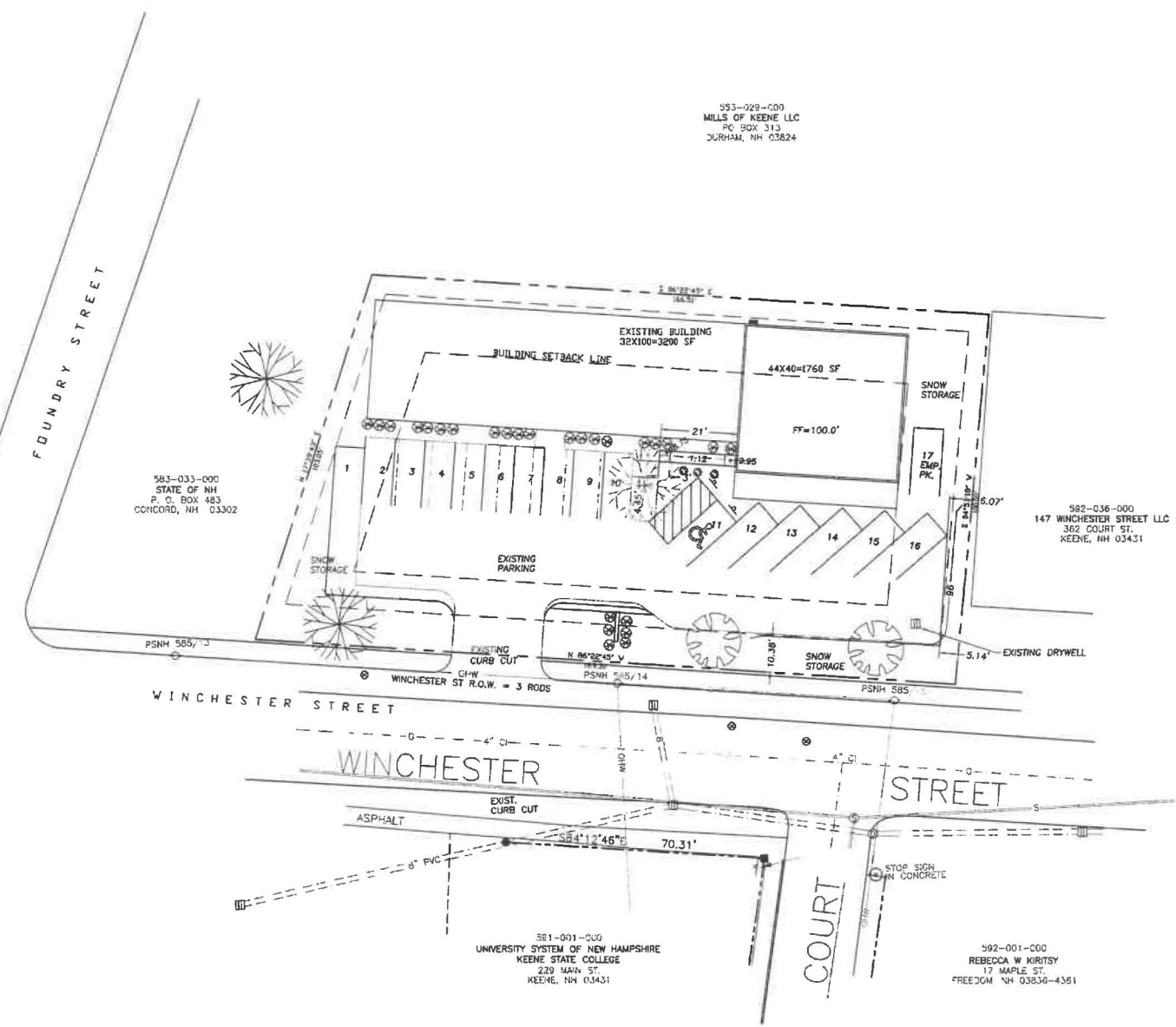
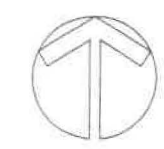
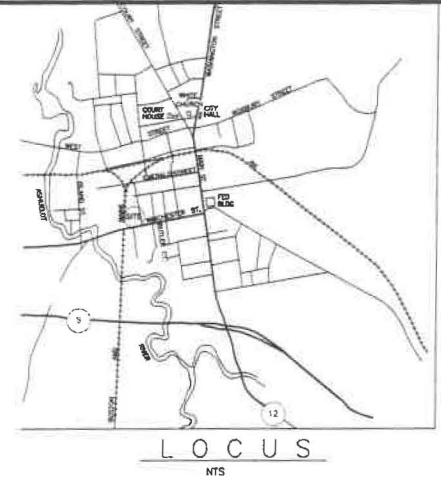


James P Phippard



Ann E Quirk, Notary Public
My commission expires 03/07/2023

REVISIONS: DATE:
 SEPTEMBER 19, 2001
 PLANNING BOARD CONDITIONS
 REVISE TREE TYPE
 OCTOBER 15, 2001
 REVISE TREE TYPE
 JANUARY 17, 2003
 ADD MEZZANINE STORAGE
 AUGUST 12, 2019
 UPDATE ABUTTERS



GENERAL NOTES

1. THIS PLAN IS A COMPOSITE PLAN OF THIS PROPERTY BASED ON AERIAL PHOTOGRAPHY AND GROUND SURVEY OF SITE FEATURES. THIS PLAN IS NOT INTENDED TO REPRESENT A BOUNDARY SURVEY OF THIS PROPERTY.
2. LOCATION OF UTILITIES IS FROM THE CITY OF KEENE ENGINEERING DEPARTMENT RECORDS. LOCATIONS ARE APPROXIMATE. CONTRACTOR TO VERIFY LOCATIONS OF ALL UTILITIES PRIOR TO EXCAVATION.
3. CONTRACTOR TO NOTIFY "DIG SAFE" AT 1-888-344-7233 A MIN. OF 72 HOURS PRIOR TO THE START OF EXCAVATION.
4. THIS PROPERTY IS NOT LOCATED WITHIN THE 100 YEAR FLOODPLAIN FOR THE CITY OF KEENE.

LOT DATA

OWNER	BRUCE R. ANDERSON REV TRUST & KATHLEEN V. ANDERSON REV TRUST
ADDRESS	165 WINCHESTER ST. KEENE, NH 03431
CORD	BOOK 1060 PAGE 0082
ZONING	COMMERCE
TAX MAP #	592-035-000
LOT SIZE	17,785 SF 0.41 ac
LOT COVERAGE	
BUILDING	4980 SF = 28%
PAVING	6490 sf = 36%
TOTAL	11470 SF = 64%
PARKING	4960/200 = 25 SPACES
STORAGE	3200 SF
MEZZANINE	1700 SF
TOTAL STORAGE	4900 SF = 2 SPACES
TOTAL REQUIRED	= 27 SPACES
TOTAL PROVIDED	= 16 SPACES

SEE CITY OF KEENE ZONING BOARD OF ADJUSTMENT DECISIONS ZBA-0106 FOR PARKING VARIANCE
 SEE CITY OF KEENE ZONING BOARD OF ADJUSTMENT DECISION ZBA-04-9 FOR BUILDING SETBACK VARIANCE

BRICKSTONE MASONS, INC.
 185 WINCHESTER ST.
 KEENE, NH 03431
 SUITE 1
 (603) 357 - 0116
 fax (603) 357 - 0118

PROPOSED ADDITION
 ANDY'S CYCLE SHOP
 165 WINCHESTER STREET
 KEENE, NH 03431

SITE PLAN

SCALE: 1"=20'

DATE: 6/27/01

SHEET 1 OF 1



**CITY OF KEENE
NEW HAMPSHIRE**

**ZONING BOARD OF ADJUSTMENTS
May 21, 2001 6:30PM Council Chambers**

Present: John Norton, Chairman
 Kathleen O'Donnell
 Fred Parsells
 John Tasoulas
 Randy Walter

Staff: Medard Kopczynski, Zoning Administrator
 Gary Schneider, Code Enforcement Officer

Chairman Norton opened ZBA-01-06 at 7:50 p.m. and recognized Jim Phippard of Brickstone Masons representing Bruce Anderson. Mr. Phippard stated that granting the Variance would allow 16 parking spaces where 27 would be required for the total square footage of the proposed expansion. He further stated that Anderson Cycle Shop has been operated at this location since 1984.

Mr. Phippard presented a map of the structure and the proposed addition to the right side of the building, which will occupy a number of parking spaces that are currently there. He stated that the location is ideal for the business, being close to Keene State College and adjacent to a dead end street, which allows for safe test rides. He further stated that the expansion is necessary to remain competitive with other similar businesses in Keene.

Mr. Phippard identified the surrounding businesses and explained that many of them are not within the standards set for parking. He stated that the use is low intensity for the Commercial Zone and urged the Board to consider the low impact use with the unreasonable number of parking spaces necessary. He asked that the business be afforded the same exception as other businesses in the area. He stated that the current parking spaces are never all occupied at the same time. He further stated that the current use could be operated safely with the limited number of spaces.

Mr. Phippard explained that the Bicycle Shop falls under the definition of General Retail, which does not recognize any level of intensity when determining a suitable number of parking spaces in the Commercial Zone. He provided a packet of information, which analyzes the approved uses in the Commercial Zone and the required parking per square foot. He stated that the low impact use is not reflected in the Parking Ordinance or the packet provided. He further stated that the City of Keene does not allow, within the Ordinance for Parking, for varied levels of use.

Mr. Walter expressed concern for granting a Variance that would run with the property if the current use was terminated and another business with a higher intensity moved in. Mr. Phippard stated that certain businesses, such as a restaurant, would not find the location or the parking adequate and would not choose to occupy the facility. He further stated that Mr. Anderson is thus limiting selling options for himself.

Medard Kopczynski, Zoning Administrator, offered clarification on the Parking Ordinance. He stated that Parking Ordinances are typically based on a 1960 model, which includes very large cars. He further stated that the current trend is more minimalist addressing issues of smaller vehicles, pedestrians, and a goal to reduce the impact of paved surfaces and run off. He stated that most Parking Ordinances are rewritten today taking into consideration those issues. He stated that one of the goals of the Master Plan is to discourage urban sprawl and encourage development within the core of the City.

Mr. Kopczynski stated that the location is effective for retail use. He further stated that the Board could condition the Variance with the relation to table three as it sees fit.

Mr. Walter asked about the size of the lot. Mr. Phippard stated that the lot is .41 acres.

Chairman Norton asked if the petitioner would have a problem with a condition that the parking variance be tied to a retail store use only. Mr. Anderson stated that he has no problem with that condition.

Mr. Walter asked if the project would go through site plan review. Mr. Phippard stated that the plans would need to go through site plan review given that it is larger than 500 square feet.

Mr. Kopczynski stated that during site plan review the City Engineer and the Police Department would review the plans. He further stated that the project might even need to go through New Hampshire DOT review.

Mr. Walter stated that the addition appears to cross the rear setback of the property. Mr. Phippard stated that there is a provision in the Ordinance which allows for the crossing of the rear setback.

Ms. O'Donnell asked if the 3,200 square feet includes the basement. Mr. Phippard stated that the total area of the building is 6,400 square feet including the basement.

Hearing nothing further, Chairman Norton closed the public hearing at 8:15.

Chairman Norton made a motion to approve ZBA-01-06 subject to the condition that the use be limited to retail use only. Mr. Tasoulas seconded the motion.

Chairman Norton stated that the analysis provided by Mr. Phippard looks at the essence of the parking ordinances and why this use is reasonable without additional parking.

Chairman Norton expressed concern about the Variance and the ability to keep it running with the land, but agreed that the condition would answer that concern.

Mr. Walter expressed concern for the potential retail uses that might move onto the property in the future. He stated that it is unusual, given the history, that the petition makes sense but contradicts the fifth criteria.

Chairman Norton stated that there are reasons for the limitations. He agreed that the 8,000 square feet for another retail use with a higher intensity might have a higher impact.

Ms. O'Donnell stated that most of the approved uses within the Commercial Zone would not be suitable on this property.

Mr. Walter suggested amending the condition to read Retail Sales/Services. Mr. Kopczynski suggested that it would not be necessary and would potentially confuse the Variance as there is no definition for Retail Sales/Services. He further suggested that the Board use the terminology consistent with Table Three.

Finding of Fact

1. The proposed use would not diminish surrounding property values: Pass 5-0
2. Granting the Variance will not be contrary to the public interest: Pass 5-0
- 3a. The zoning restrictions from which a variance is sought, as applied to this property, interferes with applicant's reasonable use of applicant's property considering the unique setting of the property in its environment: Pass 5-0
- 3b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property: Pass 5-0
- 3c. The variance would not injure the public or private rights of others: Pass 5-0
3. Based upon the Board's findings with respect to questions 3a through 3c above, denial of the variance would result in an unnecessary hardship: Pass 5-0
4. Granting the Variance would do substantial justice: Pass 5-0
5. The use is not contrary to the spirit of the ordinance: Pass 4-1, Mr. Walter in opposition.

On a vote 4-1, Mr. Walter in opposition, the Zoning Board of Adjustment granted a variance for ZBA-01-06 subject to the condition that the use be limited to retail only.

CITY OF KEENE
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE

I. GENERAL RULES

- A. **Authority:** These rules of procedure are adopted under the Authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the zoning ordinance and map of the City of Keene. The Zoning Board of Adjustment (ZBA) shall have and shall exercise all of the powers enumerated in RSA 674:33, or as otherwise provided by State statute and City Ordinances.
- B. **Purpose:** The purpose of these rules is to provide guidance to the City of Keene Zoning Board of Adjustment (“Board”) and all persons participating in proceedings held before the Board, and to allow for the orderly and efficient handling of all matters within the jurisdiction of the Board. Proceedings are not to be strictly governed by formal rules of evidence or parliamentary procedure. Instead, these rules are designed so that all parties interested in an application will be allowed a reasonable opportunity to fully participate and share their views, facts, evidence, and opinions for the Board’s consideration in reaching an appropriate decision. The Board is authorized, by a vote of two-thirds (2/3) of the five (5) member Board, to vote at any meeting to suspend, supplement, alter, or amend any specific rule or procedure, as may be appropriate in a particular matter, in order to best accomplish this purpose.
- C. **Officers:** All officers of the Board, including up to five (5) alternate members, shall be appointed by the Mayor of the City of Keene pursuant to RSA 673:6, and applicable City Ordinance.
- a. A *Chair* shall be elected annually by a majority vote of the Board in the month of January. The *Chair* shall preside over all meetings and hearings, appoint such committees as directed by the Board, and shall affix their signature in the name of the Board.
 - b. A *Vice-Chair* shall be elected annually by a majority vote of the Board in the month of January. The *Vice-Chair* shall preside in the absence of the Chair and shall have the full powers of the Chair on matters which come before the Board during the absence of the Chair.
 - c. A *Clerk* (who shall not be a Board member) shall be appointed by the City of Keene Zoning Administrator, to maintain a record of all meetings, transactions, and decisions of the Board, and perform such other duties as the Board may direct by resolution and otherwise assist the Board.

- d. The *Chair* and *Vice-Chair* shall serve for a one (1) year term and shall be eligible for re-election and shall continue to serve until annual elections are next held.
- D. **Members and Alternates:** Up to five (5) alternate members may be appointed by the Mayor of the City of Keene, pursuant to RSA 637:6, and applicable City Ordinance to serve whenever a regular member of the Board is unable to fulfill that member's responsibilities.
- a. At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member, or who have not been appointed by the Chair to temporarily fill the unexpired term of a vacancy, may participate with the Board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters, and the public. Alternates shall not be allowed to make or second motions. ~~Once the Board moves into deliberations, alternates shall remove themselves from the table and no longer participate with the Board.~~ During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the Chair shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.
 - b. Members must reside in the community and are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Clerk as soon as possible. Members, including the Chair and all officers, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration.
- E. **Meetings:** Regular meetings shall be held in the Council Chambers, at 3 Washington Street, Keene, New Hampshire, on the first Monday of each month unless otherwise duly noticed by the Clerk. Other meetings may be held on the call of the Chair provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.
- a. **Quorum:** A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.
 - i. The Clerk shall make every effort to ensure that all five (5) members, and one (1) or two (2) alternates, are present for the consideration of any appeal or application.
 - ii. If any regular Board member is absent from any meeting or hearing, or disqualifies them self from sitting on a particular case, the Chair shall designate one of the alternate members to sit in place of the

absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.

iii. If there are less than five (5) members (including alternates) available, the Clerk, shall give the option to the applicant to proceed or not prior to the scheduled meetings. Should the applicant choose to proceed with less than five (5) members present that shall not solely constitute grounds for a re-hearing should the application be denied. All decisions of the Board shall require the concurrence of at least three (3) members. The option to request to reschedule a meeting of less than five (5) members is not absolute, and the Board may, at its discretion, proceed to consider an application with less than a five (5) member Board.

b. **Public Hearing Limits:** The Board shall not open a new or continued public hearing after 10:00 p.m.

c. **Disqualification:** If any member finds it necessary to disqualify (or recuse) themselves from sitting in a particular case, as provided in RSA 673:14, they shall notify the Clerk as soon as possible so that an alternate may be requested to sit in their place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding.

i. Either the Chair or the member disqualifying before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall step down from the Board table during the public hearing and during deliberation on the case.

ii. Any interested person appearing in a proceeding, having any information or reason to believe that a Board member should be disqualified, shall notify the Chair as soon as possible and in any event before the commencement of such public hearing.

iii. Any Board member or other interested party may, in accordance with RSA 673:14, prior to the commencement of any public hearing, requests the Board to make the determination as to whether or not such Board member should be disqualified.

iv. In deciding issues of disqualification, the Board shall be guided by RSA 500-A:12, pertaining to jury selection and the requirement that jurors shall be “indifferent,” as well as the City of Keene Code of Ordinances §2-1111, *et seq.* (“Conflict of Interest”).

- d. **Voting:** Unless otherwise required by law (i.e. RSA 674:33, III) all actions before the Board (including appropriate findings of fact) shall require only a majority vote of those members acting on any matter. All members hearing a matter shall vote; abstention shall not be allowed.
- e. **Order of Business:** The order of business for regular meeting shall be as follows:
 - i. Call to order by the Chair
 - ii. Roll call by the Chair
 - iii. Minutes of previous meeting
 - iv. Unfinished business
 - v. Public hearing
 - vi. New business
 - vii. Communications and miscellaneous
 - viii. Other business
 - ix. Non-public session (if required)
 - x. Adjournment

(Note: although this is the usual order of business, the Board may change the order of business after the roll call in order to accommodate efficiency or the public.)

- f. **Nonpublic Sessions:** All deliberations of the Board shall be held in public. Nonpublic sessions shall be held only as necessary and in strict compliance with the provisions of RSA 91-A. The Board may also adjourn, as needed, to meet with its attorney to receive legal advice, which will not constitute a nonpublic session pursuant to RSA 91-A.

II. PROCEDURES FOR FILING APPLICATIONS

A. **Application/Decision**

- a. **Applications:** The original application forms may be obtained from either the Clerk or the Community Development Department. Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Clerk who shall record the date of receipt over their signature. The forms provided by the City must be used; correctness of the information supplied shall be the responsibility of the petitioner at all times. Applications should be identified as one of the following: Appeal of an Administrative Decision, Change of a Non-Conforming Use, Equitable Waiver of Dimensional Requirements, Special Exception and Variance. All forms and fees prescribed herein and revisions thereof shall be adopted by the Board and shall become part of these Rules of Procedure.
 - i. Applications to Appeal from an Administrative Decision taken under RSA 676:5 shall be filed within thirty (30) days of the decision or when such decision becomes known or reasonably

should have been known, by the petitioner as determined by the Board.

- b. A public hearing shall be held within forty-five (45) days of the receipt of an application, unless extended by the Board for good cause shown. Public notice of public hearings on each application shall be published in the local newspaper and shall be posted at two locations, of which one posting may be on the City internet website, not less than five (5) days before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, all applicable provisions of the zoning ordinance, the type of appeal being made, and the date, time, and place of the hearing.
 - i. Personal notice shall be made by Certified Mail to the applicant and to all abutters and holders of conservation, preservation or agricultural preservation restrictions not less than five (5) days before the date of the hearing.
- c. **Plot Plans:** A scale drawing showing the location and dimensions of all structures and open spaces on the subject lot and on the adjacent lots. Plans need not be professionally drawn, but must be a sufficient and accurate representation of the property. Plans deemed to be insufficient by the Clerk shall be returned, and no public hearing shall be scheduled until the receipt of an acceptable plan. The plot plan is to be a minimum of 8 ½ x 11 inches.
- d. **Abutter Notification Materials:** For the purpose of abutter notification, the following items shall be submitted with the application:
 - i. An abutters list that includes all owners of properties that directly abut and/or that are across the street or stream from the parcel(s) that will be subject to review, and all owners of properties located within two hundred (200) feet of the parcel(s) that will be subject to review. The two hundred (200) foot measurement shall not include the width of any streets or streams. The certified list shall include all property owner names, property street addresses, property tax map parcel numbers, and mailing addresses if different from the property address. In the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association as defined in RSA 356-B:3, XXIII.
 - ii. Two (2) sets of legible mailing labels (Avery size 5160 or equivalent) for each abutter and including the owner of the property that will be subject to review and his/her designated agent(s).
 - iii. A check in an amount sufficient to cover the cost of legal notice advertising and mailing of certified letters to abutters.

- e. In accordance with RSA 676:5, IV, each application shall require the payment of an application fee to be determined by the Board, together with fees that may be required for investigative studies, document review or other administrative costs and expenses.

B. Other Requirements

- a. **Appeals of Administrative Decisions:** An appeal from an administrative decision, filed in accordance with RSA 676:5, shall be filed within thirty (30) days of such decision.
- b. **Person Authorized to Submit Applications:** To submit a proper application, an applicant must be one of the following persons:
 - i. The title or record owner of the subject property, or such owner's duly authorized agent, and signed as such on the application form.
 - ii. The holder of a valid Purchase & Sales Agreement or the holder of a valid Option for the purchase of the subject property (with a signed written consent of the title or record owner of such property, or such owner's duly authorized agent).
- c. **Documentation of Title or Authority to Appeal:** The Board may require the holder of record title to submit documentary evidence as to Petitioner's title and holders of Purchase and Sale Agreements or Options may be required to submit evidence that they are valid holders of such agreements before the Board will consider their application.
- d. **Inadequate Application:** Any Petitioner who submits an application, plans and/or exhibits that are deemed inadequate by the Clerk shall not be scheduled for a hearing before the Board until such time as the Clerk receives adequate plans or exhibits and application.
- e. **Floor Plans:** When, in the opinion of the Community Development Department, floor plans are necessary in the case of conversions or renovations to an existing structure, Petitioner shall furnish interior floor plans to scale. Floor plans need not be professionally drawn, but must be a sufficient and accurate representation of the floor plan.

C. Deadline for filing: All required information under these rules must be submitted to the Clerk before the scheduled deadlines to be submitted to the Board. The submittal deadline shall be no less than seventeen (17) days' prior to the next months meeting. The application will not be placed on the Agenda until all of the required information is received in a format acceptable to the Clerk.

D. Notification to Abutters and Public: The Clerk will set a date, time, and place for a public hearing and shall notify the applicant and all abutters within two hundred

(200) feet of the property (using the notification materials required by Paragraph A.d.i., above) by Certified Mail, and shall cause a public notice of the hearing to be published in a newspaper of general circulation in the area, at least five (5) days' prior to the date fixed for the hearing on the application (RSA 676:7, I). Pursuant to RSA 676:7, II, the public hearing shall be held within forty-five (45) days of the receipt of a properly completed application (Paragraph A.b. above).

- E. **Fees:** The petitioner shall pay to the Clerk a non-refundable filing fee of One Hundred Dollars (\$100.00), at the time of filing. Additionally, reimbursement of the cost to notify each abutter, owner, and applicant by Certified Mail based on the current USPS postal rate and to publish a legal notice advertisement in the local newspaper, a fee of Twenty Five Dollars (\$25.00) must be paid at the time of filing.
- F. **Assistance by City Staff:** The Zoning Administrator will be available to assist the applicant with the application form, drawings and plans. If necessary, clarification of the Zoning Ordinance can be obtained from the Zoning Administrator, but the City will not provide legal advice as part of the application process.
- G. **Procedural Compliance:** Unless any objection is specifically raised or procedural defect otherwise noticed during a public hearing, the Board shall assume that any application has been properly filed and that due notice has been given as required by these Rules of Procedure, Keene's Zoning Ordinance, and State statutes.
- H. **Consent to Inspection:** Upon filing any application, the owner of the affected land implicitly consents to inspection of property and building by City staff and Board members upon reasonable prior notice and at a reasonable time. In the event that such inspection is refused when requested, the application shall be dismissed without prejudice by the Board.
- I. **Supplemental Information:** Any information and/or evidence that is provided after the submittal deadline which the Board determines to be material and necessary may result in a continuation of the public hearing in order to allow the Board an opportunity to review the information and/or evidence and/or to have City staff, legal counsel, abutters, or other interested persons review and provide input or advice to the Board in regards to such information and/or evidence.

III. CONDUCT OF PUBLIC HEARINGS

- A. **Conduct:** The conduct of public hearings shall be governed by the following rules unless otherwise directed by the Chair:
 - a. The Chair shall call the hearing in session, introduce the Board members, and review the previous meetings minutes for corrections.
 - b. The Chair shall read the application and report on how public notice and personal notice were given and where appropriate, summarize the legal

requirements that must be met by the applicant in order to obtain the relief requested.

- c. The Chair will ask the Staff Liaison to report on the first case, identified by case number.
- d. Members of the Board may ask questions at any point during testimony.
- e. Each person who appears shall be required to state his name, address, and indicate whether he is a party to the case or an agent or counsel of a party to the case.
- f. Any member of the Board, through the Chair, may request any party to the case to speak a second time. The Chair may impose reasonable time restrictions on individuals who wish to speak.
- g. Any party to the case who wants to ask a question of another party to the case must do so through the Chair.
- h. The applicant shall be called first to present his appeal.
- i. Those appearing in favor of the appeal shall be allowed to speak.
- j. Those in opposition to the appeal shall be allowed to speak.
- k. The applicant and those in favor shall be allowed to speak in rebuttal.
- l. Those in opposition to the appeal shall be allowed to speak in rebuttal.
- m. The Board will accept any evidence that pertains to the facts of the case or how the facts relate to the provisions of the zoning ordinance and State zoning law.
- n. After all parties have been afforded a reasonable opportunity to testify, the public hearing shall be declared closed by the Chair and no further testimony will be received from the applicant or any other parties (other than minor technical or procedural information as may be needed from City staff), unless the Board, on its own motion, shall reopen the public hearing to receive additional testimony or information. If the hearing is reopened, all interested parties shall be given the opportunity to speak to the issue requiring the reopening. All deliberations and decisions made by the Board shall continue to be conducted in public. The Board shall, when appropriate, render findings of fact.
- o. The Board may continue a public hearing to a place, date and time certain announced by the Chair without further public notice.

- B. **Voting:** Except as determined by the Board, the Board shall decide all cases immediately after the public hearing. Prior to voting the action, the Board shall render, as appropriate, findings of fact by majority vote. The Board will approve, approve with conditions, deny the appeal, or defer its decision.
- C. **Decisions:** Notice of the Decision will be made available for public inspection within five (5) business days as required by RSA 676:3, and will be sent to the applicant by regular mail. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the Planning Board, the Community Development Department, Assessor, and other City officials as determined by the Board. Decisions shall be based upon (1) all relevant facts and evidence introduced at the public hearing, (2) the application, (3) the Zoning Ordinance, and (4) applicable law.
- D. **Rehearing by the Board:** The Board may reconsider a decision to grant or deny an application, or any other decision or order of the Board, provided a Motion for Rehearing is submitted to the Board no later than thirty (30) calendar days commencing with the date following the date of the action of the Board for which the rehearing is requested. Motions for rehearing can only be received in the office of the Board during normal business hours of Monday thru Friday, 8:00 a.m. to 4:30 p.m., City Hall, 4th floor, Community Development Department.
- E. **Motions for Rehearing:** The Board shall deliberate the Motion for Rehearing within ~~forty five (45)~~thirty (30) days of the date of the filing of the Motion. The deliberation by the Board shall not require a public hearing, and shall be conducted solely by the Board and based upon the contents of the Motion. If the Board grants a motion for rehearing, the new public hearing shall be held within ~~forty five (45)~~thirty (30) of the decision to grant the rehearing provided all notice fees are paid and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.
- F. **Appeal:** Any further appeal of a final decision or order of the Board shall be in accordance with RSA 677:4, *et seq.*
- G. **Records:** The records of the Board shall be kept by the Clerk and made available for public inspection from the Clerk at City Hall, 4th floor, Community Development Department, in accordance with RSA 673:17.
- a. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made. RSA 676:3.
 - b. Minutes of all meetings including names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within five (5) business days of the public meeting. RSA 91-A:2, II.

- c. The official record of the Zoning Board of Adjustment proceedings shall be the minutes after they have been approved (with corrections, if required) by the Board at a subsequent meeting.

IV. MISCELLANEOUS

- A. **Amendments:** Rules of Procedure shall be adopted or amended by a majority vote at a regular meeting of the Board provided that such new rules or amendments are proposed and discussed prior to the meeting at which the vote is to be taken and shall be placed on file with the City Clerk and be available for public inspection pursuant to RSA 676:1.
- B. **Waivers:** Any portion of these rules of procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.
- C. **Joint Meetings and Hearings:** RSA 676:2, provides that the Board of Adjustment may hold joint meetings or hearings with other land use Boards, including the Planning Board, the Historic District Commission, the Building Code Board of Appeals, and the inspector of buildings, and that each Board shall have discretion as to whether or not to hold a joint meeting with any other land use Board.
 - a. Joint business meetings with any other land use Board may be held at any time when called jointly by the Chair of the two (2) Boards.
 - b. A public hearing on any appeal to the Board of adjustment will be held jointly with another Board **only** under the following conditions:
 - c. The joint public hearing must be a formal public hearing on appeals to both Boards regarding the same subject matter; and
 - i. If the other Board is the Planning Board, RSA 676:2, requires that the Planning Board Chair shall chair the joint hearing. If the other Board is not the Planning Board, then the Board of Adjustment Chair shall chair the joint hearing; and
 - ii. The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other Board, shall be followed; and
 - iii. The other Board shall concur in these conditions.

Originally Adopted: May 3, 1993

Revised: October 3, 1994
Revised: February 3, 2003
Revised: May 2, 2005
Revised: August 7, 2006
Revised: December 5, 2011
Revised: June 5, 2017
Revised: ~~August 5~~September 3, 2019