

City of Keene  
New Hampshire

**ZONING BOARD OF ADJUSTMENT**  
**MEETING MINUTES**

**Tuesday, September 3, 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 6:32 PM, welcomed the public, explained the rules of procedure, and introduced the Board members.

**II. Minutes of the Previous Meeting – August 5, 2019**

Vice Chair Taylor noted corrections. On page 3/20, in the following sentence the word off should be changed to of: “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.”

On page 5/20, the word are should be stricken from the following sentence: “The current parking lot has 20 spaces, which is more for existing personnel than residents are.”

On page 7/20, the word longer should be changed to larger in the following sentence: “Mr. Sanderson agreed that the proposed building is longer.”

On page 10/20, the word from should be changed as to “Vice Chair Taylor said she asked about the number of units because that provision is linked from a condition of the premises and...”

Mr. Hoppock moved to approve the minutes of August 5, 2019 as amended, which Mr. Remy seconded and the Zoning Board of Adjustment carried unanimously.

**III. Unfinished Business**

**IV. Hearings:**

- a. **WITHDRAWN ZBA 19-08:/ Petitioner, Monadnock Affordable Housing Corp., of 831 Court St., Keene, requests a Variance for property located at 105 Castle St., Keene, Tax Map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.**

The Chairman noted this applicant filed to withdraw this and the subsequent two applications. Mr. Rogers advised Chair Gorman to withdraw all three applications together—ZBA 19-08, ZBA 19-09, & ZBA 19-10—and thus there was no need to recognize the next two hearings.

Chair Gorman recognized the withdrawal from the petitioner, Monadnock Affordable Housing Corporation.

The Chairman closed ZBA 19-08 as withdrawn.

- b. **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.**

The Chairman closed ZBA 19-09 as withdrawn.

- c. **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.**

The Chairman closed ZBA 19-10 as withdrawn.

- d. **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.**

Chair Gorman introduced the application and requested staff comments. Mr. Rogers said that 165 Winchester Street, in the Commerce District, is the current location of Andy's Cycle. This property received a Variance in 2001 from the number of parking spaces that are required, which was one space for every 200 square feet; 27 spaces would have been required and the Variance allowed the owners to operate with only 16 parking spaces. He referred to the 2001 meeting minutes on this past Variance, which were included in the meeting packet. Mr. Rogers said that in granting that Variance in 2001, the Board included a condition of Retail use only. The applicant did not propose removing that condition of Retail use only, but instead sought a new Variance based on special conditions of the property and change of use.

Chair Gorman asked if the Anderson's own the Dentistry. He said the way the petition is worded makes it seem as they own the Dentistry, but he thought they owned Andy's Cycle, which the Dentistry would purchase. Mr. Rogers left specifics to the applicant's representative but said his understanding was that the Dentistry would own the building at 165 Winchester Street. The Chairman agreed but said the petition reads as though the Anderson's are the current owners of Andy's Cycle *and* the Dentistry. Mr. Rogers understood and noted the typographical confusion.

Vice Chair Taylor asked Mr. Rogers to clarify that, because Office is a current permitted use in the Commerce District, this application was purely for a Parking Variance. Mr. Rogers replied in the affirmative and noted that the parking requirement for Retail use in 2001 was the same 200 square feet per parking space that is required for Office use today.

Mr. Welsh questioned why the Variance request arose in 2001 for the issue of parking; he asked if the building was expanded, and thus required additional spaces. Mr. Rogers said his understanding was that the building was expanded at that time.

Mr. Remy noted that parking requirements for Retail are per square foot of display area, whereas requirements for Offices are based on gross square feet. He noted a significant discrepancy where the application cites a 10,000 square foot building, which would require 50 parking spaces. He was unsure about the square footage of display area versus

storage in Andy's Cycle, and asked if the discrepancy he mentioned could affect this application. Mr. Rogers said that Mr. Phippard would address the history of the building.

The Chairman welcomed Jim Phippard (of Brickstone Land Use Consultants, of 185 Winchester Street, Keene) on behalf of the applicant, Montshire Pediatric Dentistry. They have a contract to purchase the property at 165 Winchester Street. The property is currently owned by Bruce and Kathleen Anderson, who have operated Andy's Cycle as a Retail use since at least 1999, when Mr. Phippard said he began working on the property. The owners of Andy's Cycle received a Variance in 1999 to construct the original building within the rear and side setback areas, which was the only way to provide parking at the front of the building. Mr. Phippard completed a Parking Variance application for the property in 2001, when an addition was built on the east end of the building. With the new addition, a Parking Variance was necessary because the expanded need for parking exceeded what the property could allow; Mr. Phippard demonstrated how small the parking lot is using site plans.

Mr. Phippard continued explaining the parking disparities that Mr. Remy had mentioned. He agreed that if based on gross square feet, the building would require 50 parking spaces. However, Code Enforcement has historically allowed delineation of uses within the space inside the building. The whole basement of the building and a portion of the mezzanine level were treated as storage areas, which only require one parking space for every 3,000 square feet. Thus, only 27 parking spaces were required for this continued use in the expanded building. Obviously, he said the lot cannot accommodate 27 spaces, and the owner did not have control of nearby off-site parking to meet the requirement. To mitigate insufficient parking, Andy's Cycle applied for a Variance to allow 16 parking spaces where 27 would have been required. This Parking Variance has remained in place since 2001 and Andy's Cycle has operated safely with the 16 spaces since.

At present, Mr. Phippard said the requested Variance in ZBA 19-12, and completion of sale, would allow the Dentistry to take Andy's Cycle's place in the existing building at 165 Winchester Street. He referred to parking calculations based on the proposed use for the Dentistry, which would also require significant storage area for equipment that patients do not see. That equipment would be housed in the basement and the main floor area would be largely dedicated to offices and a lobby. Mr. Phippard said the bottom line is that the 27 parking spaces required for the Dentistry Office use would be identical to the previous Retail use for Andy's Cycle. The applicant sought to continue using the property under the Parking Variance that has been in place for 18 years. However, a condition of that 2001 Variance was that the property be restricted to Retail use only. He referred to the Board minutes from 2001. It seemed to him that the primary concern in 2001 was a future change of use taking advantage of the 16 space Parking Variance and creating a more intense use on the property with inadequate parking. There is no permitted street parking nearby. Thus, more intense use of this lot would create problems, with a large student and pedestrian population using sidewalks and the adjacent bike path. However, Mr. Phippard said that the Dentistry owners and their contractor believe that the Dentistry can operate safely at this location, by carefully scheduling appointments to limit the number of people on the property at any time. He said that a Retail use is open

for business at all times, so activity is harder to control than for an Office use. Thus, Mr. Phippard said he and the applicant felt that the request to change that restriction limiting the use to Retail only is a reasonable one for a low-intensity use like this Pediatric Dentistry. Mr. Phippard said that requesting a new Variance felt odd to him because the Parking Variance has been in place and used successfully on the property for so long; he said only the use is changing.

Mr. Hoppock asked if there is a floor plan available for the proposed Dentistry Office use. Mr. Phippard replied in the affirmative, though he did not have it available at the meeting. Essentially, Mr. Phippard said the Dentistry would be divided into seven office areas with dental chairs for patient services. The existing main entrance and porch would remain at the front of the building, leading patients to the new lobby area, with administrative offices and storage areas to the back of the building. Mr. Hoppock asked, if the Dentistry can see seven patients at the same time, then how many employees would need to staff that demand. Mr. Phippard said the Dentistry would staff approximately 15 employees, with varying hours so that not all are in the building simultaneously; so, he said likely 10 employees would occupy administrative and patient spaces at the same time. Mr. Hoppock said that if only 10 employees occupy the building concurrently with seven patients, for example, then 17 parking spaces would be necessary.

Vice Chair Taylor asked where the Dentistry employees would park. Mr. Phippard said that Dentistry staff would park primarily off-site. Thus, he and the applicant feel they meet Zoning requirements because the Parking Variance exists already. He said parking is available for lease at the end of Foundry Street (a two-minute walk) in a lot that sits empty currently behind the old EMF Inc. warehouse; many students park in this lot today. Vice Chair Taylor asked if the Dentistry contemplates having their employee's park off-site as well. Mr. Phippard replied in the affirmative; employees park in various locations off-site of the current Dentistry office at 340 West Street, which has four parking spaces. While the Dentistry does not currently lease spaces off-site for their employees, Mr. Phippard said they intend to have a formal lease agreement when they relocate to Winchester Street.

Mr. Phippard continued reviewing the criteria for granting a Variance.

*Granting the Variance would not be contrary to the public interest:*

Mr. Phippard said granting this Variance would not be contrary to the public interest. He said the parking requirements for the Dentistry Office are the same as for the Retail use that is on site today at 165 Winchester Street. Thus, he felt the new Office use would be consistent with how the property has been used for the last 20 years. He said the Dentistry is a low-intensity Office use because scheduled appointments are easier to maintain and control compared to the open Retail service there today.

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

Mr. Phippard said that granting this Variance for a lower-intensity Office would uphold the spirit of the Ordinance to protect public health, safety, and welfare. With employee parking proposed off-site, he said patients would be able to use the 16 available parking spaces safely. The applicant does not feel this change of use would create excess traffic. Because of scheduled patient activity (Monday – Friday, 8:30 AM – 4:00 PM), Mr. Phippard said the Dentistry would be open fewer hours daily than the current use.

*Granting the Variance would do substantial justice:*

Mr. Phippard said granting this Variance would do substantial justice because doing so would allow the property to be repurposed and reused. Mr. Phippard recalled that this building is currently legally nonconforming because it occupies a portion of the rear setback on the property. He said the applicant was not adding to that nonconformity and granting this Variance would do justice by allowing the building to be reused.

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

Mr. Phippard said granting this Variance would maintain a low-intensity use of the site so that neighbors are not bothered by increased traffic. To best fit with the nearby residential style, he said the applicant plans to renovate the building's roof, siding, windows, and more. Mr. Phippard thinks it will be a more attractive building and enhance surrounding property values. He noted that he previously owned an adjacent property, where he is still a tenant today. As a neighbor, he thinks granting this Variance for a safe, low-intensity use will enhance the property and the neighborhood in general.

*Unnecessary Hardship:*

*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 purpose of the ordinance provision and the specific application of that provision to the property:*

Mr. Phippard said the property's uniqueness was clear. It is a small lot, with a large building and limited parking spaces for a property in the Commerce Zone. He said finding a commercial business to occupy this building successfully with only 16 parking spaces would be a challenge. The property has been on the market for more than two years and potential commercial tenants have felt their businesses would suffer due to insufficient parking. He said the restriction of Retail use only makes it nearly impossible to replace that use safely and adequately at this location.

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

Mr. Phippard thought the proposed use was a reasonable one because the Dentistry could limit the number of patients and staff in the building concurrently to operate safely at this location. He said the Variance is needed to reasonably use the building on that property

with 16 parking spaces. Without a Variance, he thinks this is a hardship created unnecessarily.

Chair Gorman asked if there is metered street parking nearby. Mr. Phippard said no. Students formerly parked on Foundry Street, which created challenges for the businesses there; upon request, the City posted “no parking” signs. There is no metered parking on this portion of Winchester Street. Mr. Remy noted there is some metered parking on Ralston Street and Mr. Phippard agreed that there is on the west side.

Mr. Hoppock asked if Mr. Phippard was representing the Dentistry or Andy’s Cycle. Mr. Phippard said he represents both. Mr. Hoppock asked if the Dentistry owners would oppose a condition of approval that prohibits employee parking in the lot. Mr. Phippard said he would recommend that the Dentistry oppose that prohibition, because there are several hours during the day when the building is not fully occupied, such as during school hours. He said the building would be fully occupied from 3:00 PM until closing, for example, because that is when parents try to schedule after school. Mr. Hoppock noted that when the Dentistry would be busiest before and after school hours, traffic on Winchester Street is already heavy. Mr. Phippard agreed that peak traffic on Winchester Street is from approximately 7:30 to 8:45 AM. He added that this year is not a good example because of the construction on Winchester Street.

Vice Chair Taylor asked Mr. Rogers if this project would go before the Planning Board. Mr. Rogers thought that the Dentistry applied for administrative approval from the Community Development Department but he was unsure if that approval was granted yet; if administrative approval could not be granted, Mr. Rogers said the project would be referred to the Planning Board. Vice Chair Taylor said that she hoped they would consider traffic, as well as possibly a right turn only restriction out of the parking lot. If this project is approved administratively, and therefore does not go before the Planning Board, she suggested that the Zoning Board should consider a right turn only restriction. She recalled seeing several near misses by people trying to turn left across Winchester Street when leaving Andy’s Cycle. Mr. Phippard said that City staff are still reviewing the administrative approval to determine if the project should go to the Planning Board; in addition to traffic concerns, the issue has come down to the degree of architectural changes the applicant proposes such as new windows, doors, roofing materials, and siding. He talked about traffic circulation with the Community Development Director. One suggestion Mr. Phippard made to the Dentistry is to revise how the curb cuts operate on the property; there is currently only one curb cut for entry and exit. Mr. Phippard wanted to see that curb cut narrowed as enter only, with a new exit only curb cut opposite Butler Court. Changing the curb cuts on the property would require Planning Board approval but Mr. Phippard said that an additional curb cut would make reversing out of at least one parking space safer. He has personally recommended an additional curb cut to the applicant, but they are concerned with delaying building renovations. He thought that once the renovations are underway, the applicant would give him permission to seek curb cut changes from the Planning Board. Vice Chair Taylor said that in any case, her concern about a right turn only would be to minimize some of the traffic conflict she thought conflict could increase with an additional curb cut across from Butler Court.

Mr. Remy asked if the applicant was open to restrictions limiting on-site employee parking. Mr. Rogers said he spoke with Mr. Phippard about leasing parking at the end of Foundry Street, for example. Mr. Rogers said that the Zoning Ordinance includes an option to lease required parking spaces on other lots within 300'. However, the closest available parking at the end of Foundry Street is outside the 300' rule. Thus, one reason this application is before the Zoning Board is that the applicant cannot meet the minimum parking requirements on a different lot per §102-978 of the Zoning Ordinance.

Mr. Phippard spoke to the Board's traffic concerns. He recalled that he has operated his business adjacent to this property since 1987 and he is very familiar with the traffic patterns there. He said that peak morning and evening hours are the most challenging, when it can take two or three minutes for a right turn from his driveway. Since the rotaries were constructed on Winchester Street at Main Street and at RT-101, there are fewer traffic gaps for turning. He said that the additional planned rotaries at Island-Pearl Streets and at Key Road would worsen this challenge. He thinks a system-wide correction would be necessary to ease traffic on Winchester Street; though he said recent construction has made drivers more accommodating to others and he hopes that trend continues. He said he shares the Board's traffic concerns. Vice Chair Taylor countered saying that this proposed project could increase construction, and therefore increase traffic concerns in the area. Mr. Phippard said he was not proposing and does not want more construction; instead, he was recognizing the issue he deals with daily, which he said is manageable.

With no members of the public present, Chair Gorman closed the public hearing.

Vice Chair Taylor clarified her understanding that a Variance was before the Board, as opposed to a change or removal of condition, because it is a different use and procedurally cleaner. She also clarified that she did not think it was correct to say that the building is an existing nonconforming use. The existing building and its incursions into sidelines and setbacks were granted by Variance, which does not necessarily make it a nonconforming use. She wanted everyone to be on the same page that the Board was reviewing a Parking Variance. No Board members opposed that clarification.

Mr. Welsh shared his general impression that the Board was presented an application with an estimate of likely demand for parking, which seemed reasonable to him given the projected use and scheduling possibilities. If the parking estimate seemed too drastically low, he would be inclined to vote negatively on this application. However, he said he was inclined to vote positively because he thinks Mr. Phippard provided a good presentation on the margin of parking with customers plus employees. Mr. Welsh said he was unsure if the off-site parking requirement was necessary; he thought Mr. Phippard already explained that several other potential buyers were scared away by the lack of parking. Mr. Welsh thought a good businessperson would not want to deter clients because of parking. Therefore, he said he was fairly confident that if there is a parking need, the owners will generate a policy steering employees to parking elsewhere, and leaving the



16 spaces for client demand. Mr. Welsh stated he was inclined to vote positively and was comfortable not placing a condition of approval for off-site parking.

Mr. Remy agreed that he was also comfortable with not including a condition of approval. His concern was that in the future, when another kind of Office inhabits this building, whether the Board would have a definition of “low-intensity use” to lean on. He said he understood the concept but did not know how to define the Board’s concerns more so than when the property was limited to Retail. Mr. Rogers said that if the building stays as any type of Office use, there would be no need to return to this Board for a new Variance. If a future owner wanted to change the building use to anything other than an Office, then they would need a new Variance from this Board. Mr. Rogers referenced §102.3 of the Zoning Ordinance, which would require the change of use to meet the off-street parking requirements. Any change of use per the Zoning Ordinance could trigger that to occur. Mr. Remy asked if it was possible to grant approval with a condition limiting the building to a Dentist Office use only. Mr. Rogers said that is the Board’s prerogative, similar to the previous Retail use restriction.

Mr. Hoppock said he was reluctant to approve this application absent some condition putting the owner on notice that the City is serious about enforcing its parking limit. He said he was getting a lot of free market rationale as though the owners are not going to do some things based on economic pressure. Mr. Hoppock said he was also hesitant because a public safety issue could arise by virtue of an overcrowded parking lot.

Chair Gorman said he was inclined to agree that the applicant was asking a parking lot to do a lot, when filled with employees and patients. On one hand, he hopes the Dentistry will be successful and keeps their chairs full; on the other hand, that success means the parking lot could be over full on a street with inarguable traffic issues. He also thought the Dentistry could cumulatively lead to more general activity than Andy’s Cycle. Still, Chair Gorman said the Dentistry is a good use of a building that already exists, so he thought striking a balance was possible. He suggested that perhaps three spaces could be designated for employees, with the remaining employee parking off-site. Mr. Remy agreed he was of similar mind, but unsure how to phrase that condition of approval. Mr. Welsh was happy with the Board developing a well-crafted condition of approval intended to mitigate possible safety issues associated with a successful Dentistry at this location.

Mr. Hoppock moved to approve ZBA 19-12 on the condition that no more than five parking spaces be reserved for employees only during their normal business hours and the rest of the parking spaces be reserved for customers. Mr. Welsh seconded the motion.

Mr. Welsh said his only concern with the motion was enforceability; he questioned signage or if the City could enter the property to enforce. Mr. Rogers agreed that he was unsure how the City could enforce that condition. Mr. Rogers also agreed with Mr. Hoppock that the condition could include signage delineating those parking spaces as for employees only; beyond that, however, it would be likely up to the property owner to

enforce. Mr. Welsh said such a condition would communicate the Board's concerns to this and future property owners who may want to comply.

Mr. Remy asked if it was possible to place a condition so that the property owner must demonstrate that they have leased parking spaces within a certain radius (e.g., ¼ mile), instead of the 300' listed in the Zoning Ordinance. Mr. Rogers said he was hesitant to such a condition because the Board would be granting a Variance to a section of the Zoning Ordinance that provides a specific distance already. Mr. Hoppock asked if enforcement would be easier if no employees park in the lot. Mr. Rogers was also unsure how to enforce that condition of a Variance.

Vice Chair Taylor asked if Mr. Hoppock would be more amenable if the condition was not more than five spaces for employees and that those spaces be marked appropriately. Mr. Hoppock said that was a fine idea.

Mr. Remy recalled that the applicant wanted to limit employees in the lot entirely only during peak business hours (morning and evening) and to allow employees to use some spaces at other times. Mr. Hoppock said he heard Mr. Phippard say that he would advise the owner not to accept a condition like that. Mr. Hoppock said he heard that the owner does not want a condition and said he would not vote to approve the application absent a condition. He thought marking spaces as reserved for employee parking or something of the like might be the sensible solution. He said the bottom line is that adhering to any condition will be on an honor system for the owner. Mr. Hoppock just wanted the Board's concerns to be heard.

Chair Gorman agreed with Mr. Hoppock's comment that the owner would be on the honor system with any condition put in place, but at least the Board would have tried. The Chairman thought that if complaints arose in the future, that listing a condition would better allow the Zoning Administrator to visit the site and remind the property owner of the restriction placed on the Variance. Mr. Rogers agreed.

Mr. Hoppock withdrew his motion and Mr. Welsh withdrew his second.

Mr. Hoppock moved to approve ZBA 19-12 on the condition that no more than five of the 16 delineated spaces be available for employees and that the spaces be marked for their use with appropriate signage. Mr. Welsh seconded the motion.

Mr. Hoppock spoke to how this application met the criteria for a Variance. He said that a Dental Office is a permitted use in the Commerce Zone. He said it appears to be clear, with the condition discussed in mind, that granting this application will not change the essential character of the neighborhood. He thinks the condition goes a long way to ensure that granting the Variance would not threaten public health, safety, or welfare. With the condition in mind, he thought there would be a gain for the public, while also allowing the owner to realize their gain. He said these reasons would do substantial justice in total. Mr. Hoppock said he did not see any evidence of diminished property values and thought Mr. Phippard's comments were correct in that regard. Mr. Hoppock

did consider that the existing configuration of the property—in terms of the size of the building in relation to available parking—does create a special condition of the property, which appears different from others in the area. He said he believes the general purpose of the Zoning Ordinance, with regard to parking and intensity of use (i.e., Retail versus Office), is to control density and protect public safety with respect to parking, traffic flow, and pedestrian use. With that said, he did not think a fair and substantial relationship existed between that general purpose and a specific application of the provision to this application, because the Dentistry can operate with the restrictions placed in the motion. He said that less intense use should result in lesser traffic and therefore enhance safe use of the property. Mr. Hoppock supported the motion with the condition in place.

Mr. Welsh agreed with Mr. Hoppock and said he would add one more thing that was not necessarily per the criteria. Mr. Welsh recalled that Mr. Phippard mentioned possibly reconfiguring the curb cuts and while the Board was not considering that decision, he wanted it on the record that he thinks it is a good idea. Because it will be a Pediatric Dentistry, he thinks the current parking lot configuration is not very safe with child activity. Mr. Welsh said he thinks an easier, quick opening across from Butler Court would be helpful to the overall safety of the parking lot.

Mr. Remy generally agreed with the previous comments and said that with the condition, this application meets the five criteria. He suggested that the signage could even label the remaining 11 of 16 spaces as for customers only, with five spaces that employees could use during appropriate times; he was unsure if that suggestion was clear in the current motion. Mr. Hoppock said that the condition he proposed only called for signage reserving five spaces for employee use; he welcomed the owner marking the remaining 11 spaces, but thought that would require a new motion. Mr. Remy said he believed the current motion fit more so the intent to say that sometimes employees can use those spaces, but most of the time they cannot. Chair Gorman said he understood the motion as designating five parking spaces as hybrids, meaning employees could use them as they see fit, with the remaining 11 designated for customers only. Vice Chair Taylor said the Board can give the applicant direction, but cannot micromanage them. She was comfortable leaving the motion as it was made to mark the five employee's only spaces as such, because there will be times when fewer than five employees will be present. Her instincts indicated that the five employee parking spaces would be enough to handle staffing the seven client chairs.

Vice Chair Taylor continued saying she agreed with almost everything Mr. Hoppock said. However, she felt the standard on substantial justice is sometimes lost. In not granting a Variance, she said the Board must determine whether the loss to the individual applicant is outweighed by the gain to the general public. She thought this application was a good example of the public not gaining an outsized advantage, when balanced with the applicant's loss if the Variance is not granted. She said it is an already busy street and she could not see what the public would gain from strict enforcement of the Zoning Ordinance in this case. She thought substantial justice played a large part in this application. Mr. Hoppock clarified that, regarding substantial justice, he thinks this

condition of approval is win-win for the public and applicant; the owner can do what they like with their property and public safety is upheld.

Chair Gorman asked if Mr. Hoppock's motion mentioned Office use specifically and Mr. Hoppock said it did not. Vice Chair Taylor said it might not be necessary because Office is already a permitted use in the Commerce Zone; a new motion might be necessary if voting on a use not allowed in the Commerce Zone. Vice Chair Taylor asked if Retail was a permitted use in the Commerce Zone when the property was restricted as such. Mr. Rogers said the 2001 Variance was for parking and some setbacks, but the Retail use was always allowed. Mr. Hoppock asked if a more appropriate motion would restrict the property to only Dental Office use. Mr. Rogers said that is at the Board's discretion and recalled that §102-3.b of the Zoning Ordinance states that unless there is a change or expansion in use or expansion of a structure, then this site would be required to meet off-street parking requirements.

Mr. Welsh said his understanding was that this was less so an Office and more so a Clinic in the list of permitted uses in the Commerce Zone. The Chairman and Mr. Hoppock agreed they were thinking of the building as a professional office. Mr. Welsh referenced the definition of Clinic in the Zoning Ordinance and he questioned if this building use would be more appropriately classified as a Clinic. Mr. Rogers replied in the affirmative and shared the definition for Clinic in the Zoning Ordinance: *Clinic means a facility which provides medical, dental, or mental health services for humans, on an outpatient basis, with more than five employees.* Mr. Rogers confirmed that this would be considered a Clinic use if the Dentistry has 15 employees, which is allowed in the Commerce Zone. The Board agreed to maintain the motion.

The Board reviewed the Findings of Fact.

*Granting the variance would not be contrary to the public interest. **Granted 5-0***

*If the variance were granted, the spirit of the ordinance would be observed. **Granted 5-0***

*Granting the variance would do substantial justice. **Granted 5-0***

*If the variance were granted, the values of the surrounding properties would not be diminished. **Granted 5-0***

*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 purpose of the ordinance provision and the specific application of that provision to the property. **Granted 5-0***

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

With a vote of 5-0, the Zoning Board of Adjustment approved ZBA 19-12 on the condition that no more than five of the 16 delineated spaces be available for employees and that the spaces be marked for their use with appropriate signage.

**V. New Business**

**a. Amendments to the Rules of Procedure**

Mr. Rogers recalled that at the last meeting he presented proposed changes to the Board's rules of procedure, which Vice Chair Taylor had suggested. Mr. Rogers researched the bill that changed the NH RSA in question, and said he misspoke when first explaining this to the Board. There was no change to 45 days for rehearing. The change clarified 30 days for rehearing, not 45. Mr. Rogers recalled that the Board also spoke of changes to the rules of procedure to allow sitting alternates to be involved in discussions without the ability to vote.

Vice Chair Taylor moved to accept the revised rules of procedure, which Mr. Hoppock seconded and the Zoning Board of Adjustment carried unanimously.

**VI. Communications & Miscellaneous:**

**VII. Non-Public Session: (if required)**

**VIII. Adjournment**

Hearing no further business, Chair Gorman adjourned the meeting at 7:43 PM.

Respectfully submitted by,  
Katryna Kibler, Minute Clerk  
September 8, 2019

Respectfully revised on September 20, 2019 by: Katryna Kibler, Minute Clerk

Reviewed & edited by: Corinne Marcou & Vice Chair Jane Taylor