

**ZONING BOARD OF ADJUSTMENT
JANUARY 9, 2019 MEETING
DRAFT MINUTES**

Board members present: Chairman Chris Carley (Conflict with Case #3-19), Nicholas Wallner, Rob Harrison, Andrew Winters, Laura Scott and Amy Bourgault. Also present Craig Walker Zoning Administrator.

John Radley: (Request for Rehearing) Applicant wishes to construct a new 4 (3) unit multi-family dwelling and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit the development and construction of a 4 (3) unit multi-family dwelling (Use A-4) where such use is not permitted,
- 2) Variance to Article 28-4-5(d)(1), Minimum Tract Requirements, to permit the development and construction of a 4 (3) unit multi-family dwelling on a lot with an area of 13,068 square feet +/-, when a minimum lot size of 25,000 square feet is required for multi-family development,
- 3) Variance to Article 28-4-5(d)(1), Minimum Tract Requirements, to permit the development and construction of a 4 (3) unit multi-family dwelling on a lot with 66' of frontage when a minimum lot frontage of 80' would be required for the development of multi-family dwellings,
- 4) Variance to Article 28-4-5(d)(2), Maximum Lot Coverage and Density, to allow the development of a 4 (3) unit multi-family dwelling, when maximum allowable density (units/buildable acre) would only allow for 3 units,
- 5) Variance to Article 28-4-5(d)(5), Perimeter Buffer Required, to permit a development of a multi-family dwelling with no perimeter buffers where perimeter buffers of 75' is required,
- 6) Variance to Article 28-8-3(c), Use of a Non-conforming Lot, to permit the use of the subject non-conforming lot for a use not otherwise permitted in the district, multi-family dwelling (Use A-4), where the Ordinance permits the use of the subject non-conforming lot for a single-family dwelling,

For property located at 159 Rumford Street in an RN Residential Neighborhood District.
(Note: Request and hearing was for three (3) units, corrections were made at the December 5, 2018 hearing)

The Board for this case consisted of Carley, Wallner, Winters, Bourgault, and Scott.

Carley reviewed the information presented. He explained the criteria for granting a rehearing needs to be based on factual information presented that was not available at the time that the case was presented, or there was an error in law.

Wallner: Finds no new information or evidence.
Scott: no new information provided.
Winters: finds no new evidence.
Bourgault: concurs.

A motion to deny the rehearing request was made by Winters, seconded by Scott as the Board felt that there was no new evidence presented that was not before the Board at the original hearing. The motion passed by a unanimous vote.

67-18 Martin S. & Kimberly M. Donovan: (Withdrawn per applicant) Applicant wishes to convert an existing retail pharmacy to a banking office with drive-through (use F-1) and requests the following:

- 1) Variance to Article 28-7-7(g)(2), Setback From Lot Lines, to permit a portion of a parking space to encroach into the 10' landscaped strip along the Perley Street frontage such that the narrowest point is not less than 2' +/- from the front lot line,
- 2) Variance to Article 28-7-7(g)(2), Setback From Lot Lines, to allow no landscaping along the south and west side property lines where a 5' perimeter landscaping strip is required,
- 3) Variance to Article 28-7-7(g)(3), Parking to be Located to the Side or Rear of a Building, to permit parking to be located in the front of a building between the building and the street where all parking is to be located to the side or rear of a building,
- 4) Variance to Article 28-7-2(e), Table of Off-street Parking, to allow the provision of 6 compliant parking spaces where 7 spaces would be required,
- 5) Variance to Article 28-7-2(e), Table of Off-street Parking, and 28-7-4, Requirements for Stacking Spaces for Drive-Through Facilities, to allow the provision of 3 stacking spaces where 4 stacking spaces are required,

for property located at 74 South Main Street in a CU Urban Commercial District.

Withdrawn.

68-18 Calvert Ridge 6, LLC: (Withdrawn by applicant) Applicant requests that the Board overturn the Zoning Administrator's determination that the proposed Residential Care Facility is classified as a Residential Social Service Center & instead rule that the use be classified as a single-family dwelling, at 52 Loop Road in an RO Zone.

Withdrawn.

62-18 Thomas Roy: (Request for Rehearing) Applicant wishes to convert an existing street level commercial rental unit to a two bedroom apartment and requests the following:

- 1) Variances to Articles 28-4-5(e)(4), Multi-family Locational Restrictions, to permit a street level non-residential unit to be used for residential uses in a district where the residential uses must be on or above the second story and the first story is required to be used for a permitted non-residential use,
- 2) Variance to Article 28-5-48(a), Multi-family Dwellings (in CBP), to permit a residential use to be located on the first story level where dwelling units are required to be on or above the second story and where the first floor of a building is intended to be used for a permitted principal non-residential use,
- 3) Variances to Article 28-5-48(f), Ground Floor Occupancy and Transparency (in CBP), to permit 100% of the ground floor in a CBP District to be occupied by a residential use where a minimum of 60% of the ground floor "shall be comprised of uses which include the sales of goods and provision of services and entertainment to customers..." ,
For property located at 59 South Main Street in a CBP Central Business Performance District

Amy - no new evidence.

Winters - no new evidence. He felt that the Board considered their arguments.

Scott: doesn't see any new evidence.

Wallner: no new evidence.

A motion to deny the request was made by Winters, seconded by Scott as no new evidence was provided that was not heard at the original hearing. The motion passed by a unanimous vote.

64-18 Capital Plaza Concord, LLC: Applicant wishes to install a projecting sign and requests the following:

- 1) **(Granted)** A variance to Article 28-6-7(j), Projecting Signs, to permit a sign with the lowest point no less than 8'6" above grade where a 10' foot clearance above grade is required,
- 2) **(Recessed from December 5, 2018)** A variance to Article 28-6-7(j), Projecting Signs, to permit a sign that projects 6'4" from the façade where a sign may not project more than 5' from a building,
for property located at 1 Capital Plaza, (a.k.a. 57 – 81 North Main Street), Suite 100, located in a CBP Central Business Performance District.

The Board for this case consisted of Acting Chair Wallner, Scott, Bourgault, Winters and Harrison.

A motion to reopen the case was made by Scott, seconded by Harrison and passed by a unanimous vote.

Testified: Steve Duprey, owner. The sign for Cobblestone is the topic. This request was to have the sign lower, and the length longer than 5 feet. Mr. Duprey explained the photographs. He feels that the sign ordinance, as revised for downtown is not appropriate and needs to be revamped. The current sign limitations are based on the belief that the projecting signs are mainly for pedestrian activity but Mr. Duprey feels the projecting signs are also important for people in vehicles to easily see and read. A large percentage of Cobblestone's business comes from out of town. Their hardship is where they can put a sign. By code, they could move it up under the 2nd floor sill and wouldn't need the depth/height variance that they received. But he would be higher and more visible. If he does that, he'd have to destroy the facade. They are at the bottom of where they can place the sign now. They would like the sign a little longer so that it can stand out. The hardship is that it's a historic building. The hardship relates to the existing architecture of the building which is not shared by anyone else. Their hardship is due to their not wanting to raise the sign up because it would destroy part of an historic structure.

Wallner asked about his application which denotes a 6'4" projection. Mr. Duprey said they took the sign down today. He believes it is 6'4". Scott noted he received the first variance; if they couldn't receive approval for this one, what would he do? Mr. Duprey said he'd put the sign shorter and make them look like all the others. Walker said they already had the variance of the height. Mr. Duprey noted that they carry a \$1,000,000 insurance policy on the projecting sign.

In favor: none.

In opposition: none.

Code: Walker reminded the Board that the Ordinance they are asking for relief from was only enacted in June of 2018. Bourgault asked what the Ordinance was prior to that. Walker explained that it read 10' minimum height, 25' maximum height (or not above 2nd floor sills), or project more than 6'8" and allowed more than 24 s.f. of signage. Scott said they could have done this sign if they had permitted it prior to the updated Ordinance (The sign was installed without permits around September 2017). Walker said that was correct. Bourgault asked if after the Ordinance change, do others get grandfathered in. Walker explained vesting/grandfathered rights. Anything legally permitted before June of 2018 would be allowed to stay.

Decision: Winters summarized that last month, he and Bourgault were against and Wallner and Scott were in favor of this request.

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Winters asked if the hardship was the architecture of the building. Harrison said that it was due to the detailed brick work. They would have to destroy that if they put it where it belonged. Harrison also noted that it was on the corner of the building. Winters stated that it is tough down town because everyone wants their sign to be distinctive. Harrison noted that this is a historical building that they are dealing with. Winters is reconsidering based on the molding on the building.

A motion to grant the request was made by Winters due to the unique structure of the building as it would be a hardship to destroy a historical part of the building, seconded by Harrison. Scott stated that she felt the historic nature of the building and that there was a sign post there they want to utilize. It would be a disservice to grant the first variance and not the second as they do go hand in hand. She is in favor of granting the variance. Bourgault wanted it noted that the applicant's reasoning is reasonable. It's important to have a distinct downtown but the Ordinance does exist.. Motion passed by a 4-1 vote with Bourgault in the minority.

01-19 John Radley: Applicant wishes to develop a new two-family dwelling and requests the following:

- 1) A Variance to Article 28-5-2, Duplex or Two-family Dwelling, to permit development of a two-family dwelling on a 13,068 square foot lot when a lot size of 15,000 square feet would be required,
- 2) A Variance to Article 28-5-2, Duplex or Two-family Dwelling, to permit development of a two-family dwelling on a lot with 66' of frontage when 80' of frontage is required, for property located at 159 Rumford Street in an RN Residential Neighborhood District.

Not heard due to a procedural issue.

02-19 97 Storrs Street, LLC d/b/a/ Concord Antiques: Applicant wishes to install a 60 +/- square foot building sign above the top row of windows on the east façade and requests a Variance to Article 28-6-7, Signs Prohibited, to permit the highest point of the wall sign to be located not more than 40' above grade where such signs are not permitted above the sills of the second floor windows or greater than 25' above grade, for property located at 8-14 Dixon Avenue (to be known as 137 Storrs Street) in a CBP Central Business Performance District.

The Board, from here on consisted of: Carley, Wallner, Bourgault, Winters and Harrison.

Testified: Thomas Ballen Jr. Mr. Ballen owns the building that currently houses Concord Antiques Gallery. Mr. Ballen has plans to redevelop the current building site and the Antiques Gallery plan to relocate to the lowest floor of the (8-14 Dixon Avenue) building. This will be a new location as they will be redeveloping the old location. They have searched for quite a few years for a new location. Concord Antique Dealers is 120 independent dealers operating as a co-op. This will be their 22 anniversary if they receive approval to open in the new location. They are in a 12,000 s.f. building. The new location is 7,000 s.f. The space has much higher ceilings and is a great antique location. Winters asked what was in 137 Storrs Street now. He said it's the basement of 14 Dixon Street; the Samuel Dow Building and has been used for records storage. Because of the proximity of the Loudon Road bridge and the Ralph Pill Building, it's difficult to see the building. Higher signage would be more visible. The Holiday Inn is adjacent on the other side of Loudon Road. They and Horseshoe Pond Medical building all have signs at the height they are requesting. This is a remote part of Storrs Street. They are convinced because they have been in operations for 22 years, they can make this location work. They will have good parking locations. Signage is the most important part of their advertisement. The need for the new store is due to the redevelopment of the old site. They hope to be at their new location in April of 2019. Steve Duprey and Jon Chorlian are a big part of this project. They are asking for height relief so the sign can be higher. Their goal is to have a sign that is adequately sized.

In favor: Steven Duprey. He owns the property and has been working with Mr. Ballen. The space he will occupy is tucked up against the Loudon Road abutment. They built the park up top (adjacent to Dixon Avenue) and a second park on the east side at the Storrs Street level. The lower level was used for record storage for Orr and Reno. They will plant trees in front of the building which will interfere with seeing a sign at the Storrs Street façade level. Feels it's a reasonable request. Feels it's the minimal relief necessary. Bourgault asked where the entrance for the building (the Antiques Gallery) was. Mr. Duprey stated that it's right off of Storrs Street.

In opposition: none.

Code: Walker noted that this is the sign ordinance as written for the City of Concord and it is applied evenly to every business in the downtown area. The Concord Hotel sign is a significant deviation from what is normally allowed in the City of Concord and may be causing a domino effect (noting that Mr. Ballen spoke in favor of the Concord Hotel sign in anticipation of this variance request). If the Sign Ordinance is deficient it is the City Council's responsibility to make changes to the Ordinance, it is not within the ZBA's jurisdiction to correct what may be perceived as a deficiency. Mr Walker continued to explain that there are numerous businesses that operate within the same rules as are being applied to the subject property. The Board should consider the potential for setting a precedent if this is approved.

Rebuttal by Mr. Ballen. The Ordinances are not to be a 100% line in the sand. The variance procedures are there for unique situations. He feels that this is a relatively modest request.

Decision: Carley went over the information that was presented.

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Wallner - feels that the location gives it some uniqueness in terms of being visible to the public. It doesn't enjoy the same kind of visibility as the surrounding uses. He feels that visibility is their hardship. Harrison feels that there is plenty of room to put that sign. Winters sees the domino problem, but he also agrees with Wallner as this particular building is unique even compared to the Storrs Street neighbors as it is the last building on Storrs Street. This building is unique in terms of how low it is. He'd be inclined to approve. Bourgault feels that the problem of the Ordinance should be addressed. She'd be inclined to vote against. Carley's own view is that it's possible to endorse what Walker said and still feel that this is a unique piece of property, which is what variances are used to address.

A motion to approve the request was made by Wallner, seconded by Winters and passed by a 3-2 with Harrison and Bourgault in the minority.

03-19 Capital Hotel Company VI, LLC: Applicant requests a Variance to Article 28-7-9(b), (Pedestrian) Access from Streets and Sidewalks, to not provide for pedestrian improvements to facilitate safe access from adjacent streets and sidewalks to the principal use for property located at 406 South Main Street in a CG General Commercial District.

Testified: Stephen Duprey. They are almost through their Planning Board approvals. Engineering said they should put in a sidewalk. This is more of a practical nature than a hardship. The only sidewalk that exists is directly in front of their building. It ends at the Dunkin Donuts. He gave an overview of where sidewalks do exist in the area. Harrison wanted clarification that they do not want to build a sidewalk. Mr. Duprey said that was correct. They could do a sidewalk that is not ADA compliant. It would be a sidewalk to nowhere. There is a sidewalk coming down South Main Street. There isn't one going over the exit ramps. They can do it; it's not a financial hardship. But it doesn't make any sense as the sidewalk goes nowhere. He doesn't believe that the Ordinance was put in place to ask for things that don't make any sense.

In favor: none.

In opposition: none.

Code: Walker wanted to clarify the relation between the requested relief and references to the ADA requirements. ADA requirements are not part of the Zoning Ordinance. He read the Ordinance section out loud that noted sidewalk connectivity requirements (noting that there was no direct reference to ADA requirements in the Ordinance language). Even if the Zoning Board grants a variance to this section of the Ordinance the Board doesn't have any authority to grant relief from State or Federal regulations.

Decision: Bourgault felt it would be reasonable to grant this request. Winters agreed. Harrison agreed. Wallner said it's a bridge to nowhere.

A motion to approve the request was made by Wallner. Motion failed for lack of a second.

Carley is not in favor of this Variance request. He said that the requirement of the Ordinance's is that it would need to interfere with the reasonable use of the property, this (the connectivity requirement) doesn't interfere with the use of the property or the other aspects of the development.

A motion to approve the request was made by Winters, seconded by Bourgault and passed by a 4-1 vote with Carley in the minority.

MINUTES:

A motion to approve the Minutes from December 2018 was made by Wallner, seconded by Winters and passed by a unanimous vote.

A motion to adjourn was passed by a unanimous vote.

*Respectfully submitted by
Rose M. Fife, Clerk*