

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
SEPTEMBER 4, 2019 MEETING
DRAFT MINUTES**

Attendees: Chair Christopher Carley, Andrew Winters, Robert Harrison Jr., Nicholas Wallner, Amy Bourgault and Laura Scott (for case#63-18).

Absent: James Monahan

Staff: Craig Walker, Zoning Administrator
Rose Fife, Clerk of the Board

Meeting commenced at 7:00 pm.

34-19 [Angela deOliveira for Ann Marie Gilmartin](#): Applicant requests a variance to Article 28-5-40, Fences, Walls and Hedges, to permit a 6 foot tall fence adjacent to the front property line and within the front yard of a property where the maximum allowed fence height in a front yard may not exceed 4 feet in height, for property located at 38 Franklin Street, in an RN Residential Neighborhood District.

Testified: Angela deOliveira. She is raising her grandchildren that have disabilities, including autism. The children have never lived in a city and it is very difficult for them with strangers. She also has dogs. She doesn't want people to be afraid of her barking dogs. This area is her back yard. She replaced the existing fence with the 6 foot fence that is there now. Winters asked if she installed the fence. She did install it at the beginning of this summer. It is in the same location as the old fence. She had a pool out there. The trees make it difficult. She covered the back yard with river rocks due to topography. Carley asked why she needed 6 feet. She has one dog that can jump over the 4 foot fence. The kids are also there. People do not understand special needs kids. She is in the process of purchasing the home. Winters asked if that was considered her front yard because she's on the corner lot and if there is anything unique about her property vs. the surrounding properties. Ms. deOliveira stated that she put the fence up for the privacy of her grandchildren. Wallner asked if there were a 6 foot fence around the whole property. She answered there was not due to the driveway. Wallner asked about the back area. Was that a 6 foot tall fence? Ms. deOliveira said it was. There is a 6 foot fence in the back and it belongs to the neighbors so she just continued it around. Harrison asked if she used the front yard as her back yard. Is there no other useable land? Ms. deOliveira agreed. There is no other land so she does use that as her back yard. Winters asked if the pool were in the front/side yard. Walker stated that the pool was installed without permits and is in an area where it was not permitted. Ms. deOliveira noted that she is going to take the pool down. She had spoken to someone in Code about the pool and the gentlemen she spoke to said no permit was required. Walker noted that the pool location is not on the agenda this evening. Bourgault asked if she owned or rented the property. Ms. deOliveira she has a contract to purchase the property. She's waiting for the house to pass for an FHA loan so she's upgrading. Until then, she is renting it. Winters asked her what was unique to the property. Ms. deOliveira wasn't sure what he was asking but noted that people in the area have had no problem with her fencing. She's added to the property value. She did ask the Board about her front property and setbacks. Walker explained that she needs a 15 foot back from the front property line. The fence is required to be 4 feet within the required front yard until they reach 15 feet back. He showed her on the map. Ms. deOliveira feels that if the Board doesn't grant this request, it will look horrible.

In favor: none.

In opposition: Joyce Prowse, 42 Lyndon Street. She has lived there for 52 years. When she came home from her summer camp she found her neighborhood altered radically. She felt that her neighborhood has changed. It is like a fort fence. She does sympathize with Ms. deOliveira. She knew Ms. deOliveira didn't have permission to put that fence in. She's been on the Conservation Commission knew that wouldn't be allowed. Ms. deOliveira came to her with a petition. She didn't sign it. There is a blind spot coming up Franklin Street when you are trying to exit. This fence adds to the problem. The homeowner doesn't take care of the grass between side walk and road and there is a car parked there often so it impinges visibility. A good neighbor would think about other neighbors before putting up something that defaces the neighborhood.

Deborah Kimball, 45 Lyndon Street. She asked if once the sale happens and if the property again changes hands down the road, what are the laws locally in terms of whether that fence would be allowed to remain at 6 feet. Carley answered that if a variance were granted, it goes with the land. Ownership is not a factor. Based on that information Ms. Kimball is inclined to object to the fence as it is overpowering in the location that it is placed.

In favor: Margaret Sacco. She knows the applicant personally and has seen the improvements to this home. She thinks it's important that the Board has a total understanding of what Ms. deOliveira has done to the home. It was deplorable. The second lady who spoke doesn't live in the neighborhood anymore.

In opposition: Anne Marie Gilmartin who is the owner of 38 Franklin Street. The fence was put up without her permission and against her wishes. As a tenant Ms. deOliveira should acquiesce to the fact that she owns the property. There has been a lot of contention between this lady and her family and she is hearing possibly the neighbors. The past fence was more pleasing to look at. The yard has not been maintained. The grass and bushes have gotten very tall. She feels it is a hazard if people cannot see past the fence to see the road.

Walker explained to Ms. Gilmartin that as the home owner, if she doesn't wish this application to go forward, she can withdraw it. As the owner of the property she has the right to withdraw the application at this time.

Anne Marie Gilmartin asked to withdraw the application. Walker stated that the application is now nul and void and has been withdrawn by the property owners. Ms. Gilmartin's husband concurred.

63-18 John Radley: (Reversal and Remand) Applicant wishes to construct a new 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 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 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 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 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.

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

Testified: Attorney Jeffrey Christensen. John Radley was also available to testify. Attorney Christensen explained the case. The property is in the RN district. Before Mr. Radley owned the property, it was a single family property. The RN zone allows for single family and two family units. It does not allow for 3 family homes. The house was in disrepair. Mr. Radley renovated the house. The land is large but narrow. The neighborhood is fairly full of Multi-Family units; 2, 3, 4 and 5 units. Around the corner is an apartment complex. It is a dense residential neighborhood. Three families are not generally permitted in this zone but the Ordinance allows old homes to be converted if the property is over 10,000 s.f. and it has enough frontage. The property is 13,000 s.f. but it is lacking frontage. Ultimately he would have been able to renovate and convert the property if it had not been for the narrow frontage and state of disrepair of the home. It is a reasonable use. It is consistent with the neighborhood. Housing in Concord is in short supply. The neighborhood can support this change and it is suited for multi-family use. The lot itself is appropriately sized other than the frontage for a multi-family dwelling. There is plenty of parking in the back. The rehab of the property would be beneficial to Mr. Radley and the neighbors, the City, future residents, etc. Last time they were here there was discussion by an abutter concerned with head lights of vehicles that would park in that driveway. Mr. Radley was and is willing to put up a vegetative buffer to take care of that.

Carley asked why the lot is unique and unlike other lots in the neighborhood. Attorney Christensen explained. The lot is large, but narrow. It is large enough to suit a conversion of the property, but the frontage is at issue. A lot of the lots either have more frontage that would comply or are significantly smaller and better suited for single family use. The condition of the building was also an issue. If the house had been in better repair they could have converted it. Article 28-5-3 allows the conversion of older single family buildings to multi-family buildings. The building on the lot was an old building that could have been converted to a 3 family home but in the process of renovating they found the building was too far gone to save. Because the building had to be removed, the City considered it new construction vs. conversion. They are essentially asking for a conversion status vs. new construction. Walker asked if the building permit that was applied for was for a single family renovations or a multi-family renovation. There was nothing on the permit that stated it was converting to multi-family. Attorney Christensen noted that their intent has been changed since then. Scott asked Walker if they could have converted the home to multi-family. Is it the frontage that doesn't allow the conversion? Would the size of the lot allow the conversion? Walker explained that the lot size would allow it, but the frontage was substandard. In a conversion the minimum unit size is 600 s.f. so the building would have been at least 1800 s.f. of gross floor area. Attorney Christensen explained they could convert it if it was a 10,000 s.f. lot but it is new construction so they needed at least 25,000 s.f. Winters asked what they see as the unique purpose of the frontage requirement as opposed to the lot requirement. Attorney Christensen explained that the lot requirement is to sufficiently support a 3 family home and not overburden the land itself. Frontage requirement is to not overcrowd the neighborhood. Where this is on the same footprint of the original building there is no overcrowding here. The dimensional values will not be affected by this variance. The Board has allowed a 2 family home. Is the interior floor plan with 3 units vs. 2 units reasonable in this neighborhood? There are several multi-family units in this neighborhood to make this reasonable. Carley asked if there were lots in the neighborhood that were similar in size. Walker showed them on the maps. Attorney Christensen noted that it was a dense neighborhood and many had issues with the frontage.

In favor: Jim Fisher who lives at 51 Walker Street. He is a direct abutter. He was the abutter concerned with the head lights shining onto his property. He has an agreement with Mr. Radley to put up fencing. They have already put some fencing up and it should deal with the head light issues. He no longer has an objection as his concern was cleared up.

Kenny O'Mally, 161 Rumford Street. She has a single family home. She spoke at the previous meeting. Mr. Radley has improved the appearance of the home. He's considerate of the neighbors. She has no concerns.

In opposition: Andy Tarbell, 50 Walker Street. He spoke at the prior hearing. It's an undersized lot. He did support the 2 family use. Mr. Radley could have come before the Board prior to building, but he didn't. It is new construction, not a conversion. The foundation has been changed from a rock foundation to a concrete full foundation. It's a completely new structure and should be considered that.

Code: Walker passed out a map showing the mixture of uses in the neighborhood i.e. Single-Family, Multi-Family, etc.

Carley noted that he had some submissions from people that were in favor, including a petition. See file.

Rebuttal: Attorney Christensen. The crux of this case is it new construction vs. replacement. The application treats it as new construction. Justification for the variance is that if it had been treated as a conversion they wouldn't need all these variances. He referred to the map that Craig Walker submitted showing 2 and 3 family homes. If you zoom out there are 3, 4 and 5 family units just outside of the submitted map.

DECISION: Carley reviewed testimony as given. The Board is treating this as a new case.

Wallner – feels it meets the first 4 criteria. He struggles with the hardship issue. He's slightly persuaded by the character of the neighborhood. The lot is narrow but larger in area.

Scott – appreciated the applicant understands that this was not a conversion of a property. She struggles with the hardship. The lot area and the frontage that concerns her less than the hardship for the application.

Winters – The lot is unique. It's not the narrowest shaped lot in that area, but it is among them. He reviewed the Minutes and the Court decision. He voted to approve the variances last time, but to remain consistent; the Court's decision wouldn't change his thought. He thought they only needed a frontage variance, but he's seeing it differently now. It's not out of character with the neighborhood and it is a unique lot, just not incredibly unique.

Bourgault – torn with the buffer issue. There is no buffer there and there is 75 feet required. She thinks it is consistent with the neighborhood.

Carley – The variance that was required for the 2 family was also that two family to be new construction, correct? Walker agreed. That would have required area and frontage? Walker confirmed that it would need 1.5 times the lot size and 1.5 times the minimum frontage. They would only be required to maintain 80 feet of frontage. Carley doesn't see that the characteristics of the lot are unique in creating this problem. Many of the lots in the neighborhood would not permit construction of a new 3 family home. It's not unique. It's insufficient in area and frontage because it's a new house. It is not a unique lot which is a key provision for a hardship which is not met. He opposes.

A motion to deny the variance due to no uniqueness to the subject property was made by Scott for all variances listed and failed for a lack of second. A motion to approve the requests, all of them as they all relate to the lot was made by Winters, seconded by Wallner and passed by a 3-2 vote with Scott and Carley in the minority.

37-19 Gloria-Jean Leighton: Applicant wishes to construct an 18' x 26' attached garage and requests a Variance to Article 28-4-7, Cluster Developments, Section (e)(2), Design Standards, to permit a building setback of 7 feet +/- from the southerly side property line where a setback of 10 feet is required, for property located at 20 Chesterfield Drive in an RS Residential Single-family district Cluster Subdivision.

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

Testified: Gloria-Jean Leighton. She has lived in her home for 40 years. She'd like to age in place in her home. To help her do so she'd like to build an attached 1 car garage to her home. To build it, she would have to remove 1/3 of her deck in order to attach it. She will also need a variance for 3 feet off the 10 foot requirement. The garage is being designed to be small but functional. She would have liked a 2 car garage but she has no room and she's the only person who lives there, so one car will be functional. Bourgault asked if it were a condo community. Ms. Leighton said it was not. It's a cluster development and all single family homes. Bourgault asked if any neighbors had garages. Ms. Leighton stated that some of her neighbors do have garages. There is a 2 car garage, a carport etc. in the neighborhood. There are others with garages under. Her home is a cape.

In favor: none.

In opposition: none.

Code: Walker wanted to point out it was a Cluster/PUD development. The individual lot sizes were reduced in exchange for leaving some open spaces in other areas of the development. The lots were intentionally designed smaller than normal.

Winters asked what the setbacks would be in a Cluster. Walker explained.

DECISION: Carley reviewed the testimony as given.

Bourgault: reasonable use. Consistent with intended use of the land.

Winters: agrees – it is a modest request. The lot isn't unique compared to the cluster, but unique in the zone.

Harrison: reasonable use of the property. There are other garages in the area.

Wallner: meets the first 4 criteria. It is a reasonable use for this neighborhood.

A motion to approve the request was made by Wallner, seconded by Harrison and passed by a unanimous vote.

38-19 TBR, LLC.: Applicant wishes to install a new (70SF) projecting sign, in addition to the existing building signage, and requests the following:

- 1) Variance to Article 28-6-9, Signs Permitted in Non-Residential Districts, Sections (a) & (b) to permit a total combined building signage for "The Draft" and "Concord Casino" of 195SF +/- (125SF +/- existing + 70SF proposed) where 40SF is allowed
- 2) Variance to Article 28-6-7, Signs Prohibited Under this Ordinance, Section (j), to permit a projecting sign that extends greater than 25 feet above grade, is located above the sills of the second story windows and contains more than 12 square feet of sign area, for property located at 67-69 South Main Street in a CU Urban Commercial District.

Testified: Andy Sanborn, owner and Glen Schadlick of Ne-Op-Co Signs. Mr. Schadlick gave out larger printouts for the Board to see. The height of the sign is going to be just under the 25 foot height cap.

Mr. Sanborn testified. He owns 67 S. Main Street, commonly known as The Draft. He has a new start up business named Concord Casino that he owns. He is the 12th operation in the State of NH that has created a vehicle under State Law to raise money for charity by playing poker, roulette, etc. As long as they donate 35% of the gross amount of money to charity. He feels there is a void in raising money for local charity. They will end up doing a charity every week. They are trying to raise money for 56 Concord area charities. They are not full up of charities as they are in a start-up phase. They would like to keep the money in Concord/local. As of today they have raised money for Concord Little League, SeeMar Scholarship fund, Fellowship Housing, Concord High School Wrestling, Habitat for Humanity, etc. The building itself is a long term multi-tenant building. It used to house Merrimack Wayside Furniture. That was there for 46 years. Then it's been a host of tenants. The 50/50 and Snow and Skate businesses both had existing projecting signs that were there. The 50/50 sign would still be there, but he cut off half the building and put a deck on it. What they are looking for is what was already up there in the past. The hardships – under the projecting sign there has always been an awning. The current tenants occupy all the signs on the awning. The hardship is that signage is an important component to a business. There was a projecting sign from 1943 to 1990 for Merrimack Wayside Furniture which was a 6x6 s.f. sign. What he'd like to do is find a way to compliment everything that is going on down on Main Street in Concord. He approached Glen Schadlick as his company did the Concord Theatre sign. The sign is much smaller in size and scope than Concord Theatre, but similar in color and size. Coming up from the south side you won't be able to see much of the sign. They are keeping the sign 10 feet off the ground. It will be below the 25 foot variance requirement. The hardship is that having a sign for a business is fundamental to its success. All the signage is now taken. They would need a variance just to have signage. If they do not get the variance they cannot help the local charities as well. They have looked at recent approvals that the Board has given for signage for this area for guidance. They feel it is a reasonable request. They are trying to work within the confines and esthetics.

Glen Schadlick – of all the signs in the area, this sign fits the spirit of what is already there. It's not going to be an eye sore. It will dress the building up a little. The signs there now are a lot larger so this will fit in with the existing signs in that area. There is no additional area to put the Casino sign up.

Carley asked where in the building the Casino will be located. Mr. Sanborn offered that it will be located in the basement and on the 2nd floor, which was the old dining on the 2nd floor. They have hired 11 employees with 9 of them being from Concord for the casino.

Wallner – The Ordinance only allows 40 s.f. and they have triple that right now. Now they are asking for 4 times that amount. Mr. Sanborn - under the deck and above the awning is lit up at night. They would need to revamp the existing signage and he doesn't believe it would relieve him from requesting a variance for signage. Schadlick noted that there isn't a lot of structural meat to hold the sign there. Bourgault asked if Concord Casino is the name of the charity. Sanborn explained that the LLC is Win Win Win and they would help charities. Bourgault asked if the sign would just say 'Concord Casino'. Sanborn stated that was correct. Winters asked if their overage for signage is grandfathered in. Sanborn thought that when he bought the building in 1990 the awning was there and they just recovered it. Carley believes there was a variance for the Draft, but doesn't recall signage. Mr. Schadlick noted that the calculation of the square footage of the awning signage has changed.

In favor: none.

In opposition: Burt Cox, managing member of DOKLLC and owns 54 and 54.5 South Main Street. When the Draft first came in he was pretty happy with it. It was a nice neighborhood pub and restaurant. Second floor was used for meetings. He opposes the direction Mr. Sanborn is taking for business. The sign is not in keeping with the nice looking area of Concord which was just created. The building is primarily rental. The area is not great for parking. Signage lighting may be an issue for his tenants.

No one else in the audience to speak in favor or against.

Code: none.

Rebuttal: Sanborn testified he's not asking for a variance for the Draft, he's asking for a variance for signage.

DECISION: Carley reviewed the testimony as given.

Winters asked Walker about the sign ordinance. Walker stated that 1 s.f. of signage per linear foot of signage as measured across the front. He explained further.

Wallner: They have over 40 s.f. He is not persuaded by hardship.

Harrison: Not persuaded for a hardship.

Winters: Downtown is unique. They have approved signage semi-regularly in this area on the basis. They are not adding that much more. They are adding less than what is there now. He's inclined to approve.

Amy – doesn't see the hardship.

Carley – when they have found hardship in the past for signs, it was because there was something peculiar at the location. There was some reason why a sign wouldn't work so that was regarded as a hardship. He doesn't see that here as a hardship. He doesn't see a hardship here at all.

A motion to deny the requests was made by Wallner, seconded by Harrison, passed by a 4-1 vote with Winters in the minority.

Minutes from 8.7.19 – A motion to approve the Minutes was made by Wallner, seconded by Harrison and passed by a unanimous vote.

A motion to adjourn was made by Carley and seconded by Wallner.

*Respectfully submitted by,
Rose Fife, Clerk*