

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
NOVEMBER 6, 2019 MEETING  
DRAFT MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, Andrew Winters, James Monahan, Scott Sakowski

Absent: Rob Harrison Jr.

Staff: Craig Walker, Zoning Administrator

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Meeting commenced at 7:00 pm.

**41-19 Daval Realty Associates, LP., for Sanel Realty Co., Inc.: (Request for Rehearing)** Applicant requests that the Zoning Board reverse the Zoning Administrator's decision that, in accordance with Supplemental Standards, Article 28-5-19, Motor Vehicle and Recreational Equipment Sales, the landscaping requirements under Article 28-7-10 applies to motor vehicle display areas as well as the designated vehicle parking areas, in relation to property at 129 Manchester Street in a CH Highway Commercial District.

Carley explained the procedure for rehearing requests.

Attorney Bob Carrie testified. He submitted paperwork to the Board for their review. He wanted to discuss Administrative Gloss as it had come up in last month's hearing to clarify the standard they used for claiming administrative gloss. He discussed two ways that Administrative Gloss could be established. One being ambiguity and one being if there is a defacto policy of non-enforcement regarding similarly situated applicants. That is what they have here. In 2010 the landscaping ordinance was not applied to them. In 2010 Nissan did a major site plan review and they were not required to comply with landscaping. 2014 Key Auto also went through site plan review and was not made to comply with landscaping. This shows a consistent defacto policy. Under that legal standard they believe that looking over the review that there was ample evidence that Administrative Gloss had been applied.

Carley asked for some explanation. Attorney Carrie presented a Supreme Court case to the Board (Anderson v. Motorsports Holdings, LLC, 155 N.H.491 (2007)) and explained what Peter Loughlin, who is the dean of land use in NH meant regarding Administrative Gloss in the write up that he presented to the Board. (Winters) If there is no ambiguity you don't get administrative gloss? Winters asked if a provision of unambiguous is that it is historically interpreted incorrectly. Attorney Carrie isn't sure that it is an incorrect interpretation.

Walker responded. The issue that he sees, Administrative Gloss is a legal standard and to his understanding its one that needs to be determined as factual before it can be claimed. To this point he doesn't believe the Board has been presented sufficient evidence that would prove Administrative Gloss. Administrative Gloss is a fact has not been established.

Carley's recollection from reading through the testimony is that they did make reference to other dealerships in the neighborhood. Attorney Carrie said that was correct.

Carley reviewed the information. The standards for granting a rehearing are that there is new information available that wasn't before or that there was an error of law or procedure. Walker stated that they could also grant a rehearing if the Board felt the record was incomplete and the Board if a rehearing is necessary fill in any missing information or to ensure that the hearing record is complete.

Jim Monahan spoke. He is inclined to grant the rehearing due to information presented. He did think his comment regarding changing the ordinance may not have been clearly explained or understood.

Andrew Winters. Administrative gloss issue – he thinks what this case is saying (referring to Anderson v. Motorsports) is that it has to be ambiguous. If it is ambiguous they should correct it. He didn't see the provisions being ambiguous. He doesn't think they failed to consider the doctrine of administrative gloss. He doesn't believe it was given any deference. As far as Craig's decision, he doesn't see the ambiguity. Scott Sakowski: He agrees with Winters. Administrative Gloss – he's open to be convinced otherwise but he is not seeing it here. He explained further. He's inclined to deny the request for rehearing. Wallner: He feels there is a little ambiguity for him in terms of the Administrative Gloss.

DECISION: A motion to grant the rehearing was made by Monahan and seconded by Wallner. Carley he is inclined to agree with Sakowski. He's not persuaded that there is new information that would sway him. He's inclined to vote nay. Motion failed by 3-2 (Wallner and Monahan in the minority). A motion to deny the rehearing request was made by Winters, seconded by Sakowski and passed by a 3-2 vote (Wallner and Monahan in the minority).

**42-19 Daval Realty Associates, LP., for Sanel Realty Co., Inc.: (Request for Rehearing)** Applicant wishes to expand an existing motor vehicle sales business (Bank's, 137 Manchester Street) onto an adjacent property and requests the following:

- 1) Variance to Article 28-7-10(b), Parking Lot Interior Landscaping Required, to not provide landscaping within the perimeter of an area designated for motor vehicle display,
- 2) Variance to Article 28-7-10(d), Landscape Material Standards, to allow a ratio of 0.21 trees for every 1,000 square feet of parking and display area where 1 tree per every 1,000 square feet of parking and display area is required, (i.e. provide 51 trees where 238 trees are required),

For property located at 129 Manchester Street in a CH Highway Commercial District.

A submission from the applicant was presented siting that the Board made several errors in its consideration.

Winters: He'd be inclined to grant the rehearing, simply because he had concerns with the variance merits. Sakowski: Was it a necessary hardship. He remembers trying to see that. Is this a "Banks Chevrolet" problem or an "auto dealership" problem? He doesn't think they failed in their decision. Monahan: It's completely fair to suggest that he was hung up in the 2013 decision and the similarities in the two. He'd like to give the applicant the opportunity to complete the record. He's still trying to understand how it is other dealerships are able to use their lots for this type of storage and did they get approval from the Planning Board/Zoning Board/Code Enforcement and thinks a rehearing would help him. Wallner: hardship issue was difficult for him. Agrees with Monahan. Carley – Item A of their packet – he doesn't believe the Board did that. Item B – that's a comment that the Board often makes to appellants. After reading the record he wasn't clear if hardship wasn't proven. He'd be inclined to approve rehearing. A motion to grant the rehearing was made by Wallner, seconded by Winters and passed by a 4-1 vote with Sakowski in the minority.

**43-19 Remi Hinxhia:** Applicant wishes to convert an existing dwelling into 2 dwelling thus creating 3 dwelling units on the property and requests the following:

- 1) Variance to Article 28-5-3, Conversion of a Residential Building, Section (b)(1), Minimum Lot Size, to permit the conversion of a building from 2 dwellings to 3 dwellings on a lot with 5,465 square feet of lot area were a minimum lot size of 7,500 square feet is required,
- 2) Variances to Article 28-7 Access, Circulation, Parking and Loading as follows:
  - a. Section 7(f), Driveway Widths, to permit a driveway width of 19 feet where a driveway width of 24 feet is required;
  - b. Section 7(g)(1), Parking restrictions in the required front yard, to permit parking to be located within the required 10 foot front yard area,
  - c. Section 7(g)(2), Setbacks from lot lines, to maintain parking not less than 3 feet of the westerly lot line where a minimum 5 foot setback is required,
  - d. Section 8(a), Restrictions on Backing into a Street, to maintain parking that does not provide individually accessible parking spaces for each unit or space for on-site maneuvering and requires vehicles backing within or into a street to enter or leave a parking space,

For property located at 16 Thompson Street and 56 Chesley Street in an RD Residential Downtown District.

Testified: Remi Hinxhia. He has lived in Concord for 24 years. He's lived at 16 Thompson Street for 19 years. The majority of the neighborhood is multi-family. He's been trying to sell the property since last September. He's had no offers. His sister lives in the unit on the other side of the property. His home is a 4 bedroom, 2 bathroom home. There are other multi families on Thompson Street. They want to make 1 two bedroom on the first floor and 1 one bedroom on the second floor. He's had the fire department out to the property to review. Walker said the lot doesn't have (the required) 7,500 s.f. and the parking is not compliant. (Hinxhia) He's lived there with his wife, his mom and his sister and they had 6 vehicles and they fit with no issue.

Carley asked why two addresses. Mr. Hinxhia explained. When he bought the property there were two units there. The house across the street from the Chesley Street unit has 4 or 5 units. He's not changing the neighborhood as they have multi-family there already. He will be providing affordable housing for the area. Winters asked if the parking is in existence right now. Walker stated that they would be maintaining existing conditions. Winters asked Walker about the parking. Wallner asked if they were doing 3 apartments. Mr. Hinxhia said no, he would take his 2300 s.f. condo and create 2 units. He'd like to take 16 Thompson and divide it in half. The 56 Chesley Street unit would stay the same. (Walker: the result is three (3) dwelling units on the lot)

In favor: none.

In opposition: Ross McFarland. He lives at 15 Thompson Street. His driveway is a little askew from 16 Thompson Street. He is concerned with having a 3 unit in that building because they have overflow parking and it makes it difficult to maneuver. All the parking is off of Thompson Street. It could possibly be more than 6 vehicles. It is a very narrow street. His home is a single family home with a narrow driveway with 2 vehicles and a camper, which is now relocated for the winter. People use this road as a cut through from one street to the other (speed and safety concerns).

Suzanne Isabelle. She lives at 18 Thompson Street. She's lived there over 50 years. She's concerned with the parking. That home was always a 2 family home. The stacked parking has always been an issue there. There is always someone parked just past her home. Parking makes it difficult to get in and out of her home.

Ms. Harnett at 13 Thompson Street. She is concerned with parking. Multiple families in there may not be managed well in a driveway that small. Sakowski asked if there were legal parking in front of 16 Thompson. She stated that it is supposed to be no parking. There is no parking on one side of the street. Sakowski asked if her concerns were with people parking in the existing driveway that were not related. She felt that right now they are family members and can work it out. Non family members wouldn't.

Code: none.

Rebuttal: Remi Hinxhia. The neighbor's driveways do not impact his parking lot. Others have bigger driveways than his. Others may be parking on the street that are not his tenants. His sister is going to stay living there so he will not rent to people that would be problematic for her. It is his obligation as a land lord to make the parking arrangements.

DECISION: Carley reviewed the information that was given. They want to convert the building from 2 units to 3 which requires parking relief.

Wallner: Character of the neighborhood is that there are multi families and nonconforming lots. If the variance were granted it would go with the property. Monahan: What are the consequences of approving #1 but not parking? Carley noted they could arrange for parking elsewhere. Walker explained that parking is a requirement for the use. This all needs to be granted together. Monahan asked what the limitation was on this property. Walker stated that it was 2 parking spaces per unit so 6 total. Monahan agrees with Wallner. Sakowski – there is evidence of the difficulty of selling the property. The neighborhood is multi-family homes. He's sympathetic to the neighbors' concerns. He's inclined to grant both variances. Winters: he is okay with the additional unit. He doesn't know how they can fit 6 vehicles on the property. There will be parking issues. Carley: The Board, in the past, has considered that a large building on a small lot is a physical condition that might create a hardship for an owner. This building could easily accommodate 3 units. He thinks Wallner is correct that it is a self-regulating issue. The request is not inconsistent with the character of the neighborhood.

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

**Minutes** A motion to grant the October 2019 Minutes was made by Wallner, seconded by Winters and passed by a unanimous vote.

*Respectfully Submitted,  
Rose Fife, Clerk Zoning Board of Adjustment*