

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
FEBRUARY 5, 2020 MEETING
MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, James Monahan, Andrew Winters, and Laura Spector-Morgan

Absent: Rob Harrison Jr.

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

Meeting commenced at 7:00 pm.

PUBLIC HEARINGS

44-19 Samuel & Kim Benton: Applicant wishes to construct a 24' x 24' attached garage and request a Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a building setback of 10 feet +/- from the rear property line where a rear setback of 25 feet is required for property located at 93 Pembroke Road in an RS Residential Single-family District.

Testified: Samuel Benton. He'd like to build a garage where his shed sits. He'd like to move the garage forward towards the front of the property. The property is a unique shape. He submitted a letter from an abutter (Craigie) in favor of his request. The new garage would be 15 feet from his neighbor's garage.

Winters asked if the garage would be as far back as the shed. Mr. Benton said that it would not be. The shed will be relocated and the garage will be placed further forward than the shed. The front of the garage will be a little more forward than the front of the house and attached to the house.

In favor: Matt Turant, 95 Pembroke Road. He's in support of their request.

In opposition: none.

Code: none.

Letter of support from Joshua and Braydon Craigie was read into the record.

DECISION: Carley reviewed testimony as given.

Winters was in support of the request as it is a unique "L" shaped lot. It is smaller than the other lots. It will be similar to others in the neighbors.

Spector-Morgan agrees with Winters. The garage is a reasonable use.

Monahan also agrees. It will be an improvement in the neighborhood. He'd like to commend the applicant on a well done application.

Wallner agreed.

Carley concurred with the others.

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

03-20 Brixmor Capitol SC, LLC: Applicant wishes to expand an existing shopping center by adding additional buildings/floor area for retail and food service uses and requests the following:

- 1) Variance to Article 28-2-4(j), The Table of Principal Uses, to permit a, "Restaurant with drive-through service" (principal use I-3), where a restaurant with drive-through service is not permitted,
- 2) Variance to Article 28-7-7(d), Stacking Spaces, to permit 6 stacking spaces (counted from order station) where 11 stacking spaces (counted from order station) would be required,

- 3) Variance to Article 28-7-2(e), Table of off-street parking requirements, to provide 754 parking spaces where 977 spaces are required (Note: 45 existing on-site parking spaces are currently leased to an off-site business, therefore the total on-site spaces is 799),
- 4) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow a front yard setback of 5 feet +/- where a minimum 15 foot setback is required,
- 5) Variance to Article 28-7-1(a), Applicability, to permit the continuance of existing non-conformities with respect to Article 28-7, Access, Circulation, Parking and Loading Requirements, for the portion of the lot outside of the redevelopment area as defined on the accompanying plan, sheet C-2, dated January 2020,

for property located at 80 Storrs Street in an OCP Opportunity Corridor Performance District.

Testified: Attorney John Arnold of Hinckley Allen Law Firm. Chris Nadeau of Nobis Engineering. Mr. Twersky with First Born representing Brixmor. Attorney Arnold described their request and went over the site plan. They are proposing an addition of 2 buildings in the front parking lot. One building would be a 6,000 s.f. restaurant. The other would be a 2,700 s.f. restaurant with a drive-thru window and a 6,500 s.f. retail building. They are redeveloping the parking spaces within the disturbance area as outlined on the plan. Anything outside the redevelopment area will not be changed.

Mr. Twersky testified. He oversees the development of the northeast corridor for Brixmor. They are looking at this site as an opportunity for redevelopment. They want to revitalize this area. There isn't a lot of vacancy on Main Street due to the redevelopment. 110 Grill will be in the first restaurant building. The second building will house a Starbucks and the remainder of the space will be spec tenants.

Attorney Arnold highlighted the application criteria. The front corner of the building that will have 110 Grill extends into the front yard setback. It comes within 5 feet of the property line. They did that to help with the parking situation. It would make the building more prominent and accessible for pedestrians. The properties on the other side of Storrs Street are in a CBP zone with no setbacks. They are requesting 754 parking spaces vs. 977 required. The site is existing nonconforming and has a surplus of parking spaces. There are 799 spaces on the site. There are 45 spaces they are not including in their count as those are spaces that they lease to the Chamber of Commerce in the rear of the property. That lease has been in place for 20+ years. The proposed use should draw foot traffic from downtown. There has been a historic issue with unauthorized parking on this site. Brixmor proposes to put up a fence along Storrs Street. This is a massive property and the drive thru that is being proposed is in the center of the property. Drive thru service is normally a fast food chain fixture on a small lot. Even in the worst case scenario there would not be back-up queuing off the site. The drive-thru doesn't dictate if the use is pedestrian friendly or not. Without the drive-thru there is more of a demand on the parking lot. There is a side walk connection. There is outdoor seating proposed. There will be green space around the building. The Ordinance requires 11 stacking spaces, but they are proposing 6. Starbucks feels they only need 4.

(It was noted the plan set in the Board packet was an earlier revision. Mr. Walker located the most recent plan set, as submitted by the applicant, and distributed to the Board.) Mr. Nadeau of Nobis Engineering showed a new plan that shows 6 stacking stations and a by-pass lane. Carley asked if the Ordinance specifies where the stacking is counted from. Walker stated that the Ordinance states, from the order window.

Attorney Arnold the last variance they are requesting is to allow the existing nonconformities to continue to exist. The Ordinance requires that if they put a new building on the site they need to bring the entire parking up to Code. They'd like to leave that as is. He and his clients see this as a great opportunity for the City. It is a dramatic improvement to this site as they will improve the existing conditions.

Carley asked how many parking spaces that lot uses regularly. Mr. Twersky explained that they are typically seeing 3.5 per thousand. Carley asked if they now had 754 parking spaces. Mr. Nadeau explained that they now have 885 parking spaces and 45 of those are leased to the Chamber of Commerce (the number of total spaces would be reduced to 754 due to lost spaces for new structures). Carley asked how many square feet were existing. Mr. Twersky said they have 180,000 s.f. existing and are adding 15,000 s.f. Walker gave the parking calculation of 1 per 200 s.f. of gross floor area per Ordinance. Carley asked how many parking spaces they will sacrifice for the buildings. Mr. Nadeau said they would lose about 90 spaces. Mr. Twersky explained that when the restaurant is at its peak use, the retail uses won't be open, etc. It's a good mix of tenants sharing the parking. Carley asked how many spaces they lose to a snow storm. Mr. Twersky was not sure. They will need to review their snow clearing procedures and may have snow removed from the site. The parking spaces in front of the old State Liquor Store building also belong to them. Winters asked if the

agreement with the Chamber was yearly or month to month. Attorney Arnold explained that the agreement is expired, but they still abide by it. Spector-Morgan asked about the parking behind the building. Mr. Twersky explained that is employee parking for the retail uses.

Monahan discussed the letter that was in the packet from Deputy City Manager Carlos Baia. This letter suggests that what they are requesting is inconsistent with what the City's expectations of urban density are. Attorney Arnold thought that Carlos was speaking of the vision of Storrs Street becoming an extension of downtown. They can't do more density now due to the constraints of the existing tenants. There are visibility contractual issues with Market Basket and JoAnn's and possibly Marshall's and Burlington. Laura Spector-Morgan is still trying to understand the request for the drive-thru. How is the parcel burdened by the restrictions of the drive-thru? Attorney Arnold feels that there is a uniqueness to this property. They can put a drive-thru there without offending the purpose of the Ordinance. They can do that due to the unique size of the property. It will not increase traffic.

Winters asked how critical the drive thru is to the total project. Do they need it to make the project work? Mr. Twersky explained that they need it to bring Starbucks to the site, or any coffee or food type tenant. Wallner asked if their alternative would be a double stacking lane. Mr. Twersky explained that Starbucks doesn't need a double stacking lane.

In favor: Tim Sink, President of the Chamber of Commerce. He is in favor of this project. There will be a lot of changes on Storrs Street in the next few years. They have had a long standing relationship with Brixmor. The spaces they use are located behind Marshall's. They provide an inexpensive option for downtown businesses. There are a lot of empty metered spaces on Storrs Street.

In opposition: none.

Code: Walker explained 2020 Vision and the Master Plan. The idea in both documents was that there would be an open plaza, water feature that would connect the downtown with . There was additional retail space, new parking, and relay out of the area.

Rebuttal: None.

DECISION: Carley reviewed testimony as given.

Variance #1 was discussed first.

Spector-Morgan – She has a hard time supporting a drive thru variance which violates intent and alters the character of the neighborhood. A drive-thru is inconsistent with a pedestrian friendly area. She feels that none of the variance criteria are met.

Monahan – He doesn't see this type of use out of character with what would be there.

Wallner – Feels it is a reasonable use. Hardship is a tough one though. They see the character of Main Street and things are changing.

Winters – This is a very unusual district. It contains primarily this plaza and Ralph Pill Building, etc. Walker explained the OCP corridor and that it was zoned to allow for a variety of uses. Winters thinks that this is a great place for a Starbucks. It's just an observation. He has a hard time thinking that they can rewrite the zone. The zone clearly says no drive thru.

Spector-Morgan – agrees that this is a great proposal, but a drive thru isn't appropriate.

Carley – agrees with Winters. He can't see any rationale to grant this. There is nothing peculiar to the nature of the property that requires this use to be granted.

Monahan mentioned Carlos Baia's letter. He'd like to Table this case in order to get more clarity. He doesn't have a complete understanding of what the administration is talking about. He'd like to give the applicant a chance to be successful with that.

Walker suggested the possibility of having a joint zoning/planning meeting.

Carley would like to hear from the City. The number of parking spaces they need forgiveness for is driven by what they put on the property so he recommended tabling the parking request until after the Board hears more from the City planning staff.. From his point of view he'd like to know what the City has to say. Spector-Morgan agrees.

Mr. Twersky asked what the Board meant by Tabling the case. Carley explained that if they can get a commitment from the City, they would take this off the Table at next month's meeting. If not the Board can call a special meeting. They

can ask the City to make someone available to them either at the next meeting or before that. Walker will relay the request. Monahan explained that would allow the Board to take up the case and have a vote at next month's meeting. Mr. Twersky said that would work for him.

A motion to Table Case #3-20 pending a presentation from the City regarding their concerns was made by Spector-Morgan, seconded by Wallner and passed by a unanimous vote.

04-20 Jason Cross: Applicant requests a Variance to Article 28-7-7, Setbacks and Restrictions, Section (g)(2), Setbacks From Lot Lines, to be permitted to extend the driveway/parking area (40' length +/-) to the property line when a minimum 5 foot setback is required for driveway/parking (note: 40 foot setback required for buildings), for property located at 90 Sanborn Road in an RO Residential Open Space District.

Testified: Jason Cross. He's the 2nd owner of this property. The driveway was in bad shape when he bought the property. He had a contractor repave it. Unfortunately he went over the property line. Two or 3 years later the City came through and surveyed the conservation land and they found he had paved over the property line. He had a contractor take out the paving that was over the property line. This fall the City came back through and the driveway is up to the property line, which it shouldn't be. He'd like to leave it in place. Five feet doesn't seem like a lot, but to them it is a lot. They back out and drive out or back up the driveway. They can't park in the garage as its 20 feet and his truck is too long. The garage is not deep enough. He showed a photo of what the driveway looks like now.

Spector-Morgan asked if they could pave further back. He said it's a long narrow lot, so it's difficult. Monahan asked about septic and well. Mr. Cross showed them on the overhead map that his septic is in front and the well is behind the home. Monahan asked about the grade. Mr. Cross explained that it pitches down towards Sanborn Road. Monahan asked if he would have to build it up in the back due to the pitch in order to extend it.

In favor: none.

In opposition: none.

Comments from Code: The City has been trying to get this property into compliance for a number of years trying to get it fixed. The Conservation Commission is adamantly against any encroachment towards their property. Winters asked why an equitable waiver doesn't apply here. Walker explained.

DECISION: Carley reviewed the testimony as given.

Monahan asked if the abutter was the City. Walker stated the Conservation Commission is the abutter, so yes.

Winters asked how much land was in conservation that abutted this property. Walker checked on GIS which notes it is 113 acres.

Wallner – felt it was an honest mistake. Substantial justice would be done by granting the request. It will not diminish property values. He is inclined to support.

Winters – Agrees. It's a long narrow lot. Standards change so fast.

Monahan: Agrees with Wallner.

Laura Spector-Morgan: She doesn't think it qualifies for a variance.

Carley: Not sure what they would accomplish by enforcing the strict letter of the Ordinance. If it were more of an imposition, he wouldn't hesitate to vote to deny, but under the circumstances it seems gratuitous to insist.

A motion to grant the request was made by Winters, seconded by Wallner and passed by a 4-1 vote with Spector-Morgan in minority.

05-20 Daniel Brennan for Concord Plaza – dba – N&P Associates: Applicant wishes to construct an 8' x 8' addition (walk-in cooler) on the rear of an existing building, resulting in the reduction of the adjacent two-way travel lane from 24' to 18' in width and requests a Variance to Article 28-7-7(e), Minimum Aisle Width & (f), Driveway widths, to permit an 18' drive aisle where a 24' drive aisle is required, for property located at 75-77 Fort Eddy Road in a GWP Gateway Performance District.

Testified: Daniel Brennan with Panera Bread. They are remodeling Panera Bread and are proposing putting in a cooler behind their building. It will be a bump out. The cooler is important to their remodel. Carley asked where deliveries were made. Mr. Brennan explained they are delivered to their side door. There is a chance if he doesn't get the variance he will lose 2 or 3 parking spaces where he would have to place this cooler. Winters asked who dictates the direction of traffic. Mr. Brennan explained that they have 2 way traffic around the building. Carley asked if there was customer access in the rear of the building. Mr. Brennan explained that customer's access is in the front of the building.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters asked if 18 feet was wide enough for 2 cars to pass. Walker explained that the minimum requirement for 1 way traffic is 12 feet.

Winters: The lot is unique. Panera gets quite a bit of traffic. Based on the representation that the area is a lightly traveled area and it doesn't seem to be a traffic or safety hazard, he is inclined to approve.

Spector-Morgan agrees with Winters. Having a cooler is a reasonable use. It won't encroach enough to make it difficult for vehicles to see each other. The shape of the lot and the building are uniquely burdened.

Monahan agrees.

Wallner agrees. An 8 foot bump out is not too much of an encroachment.

Carley agrees.

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

MINUTES: A motion to approve the January Minutes was made by Wallner, seconded by Spector-Morgan and passed by a unanimous vote.

Walker asked the Board if they would like to meet with the Zoning consultant and Heather Shank the City Planning regarding the new Zoning Ordinance. Carley and the others present stated they would like to.

*Respectfully submitted,
Rose Fife, Clerk*