

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
APRIL 1, 2020 MEETING
DRAFT MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, James Monahan, Andrew Winters, Laura Spector-Morgan (Case #15-20), and Laura Scott

Staff: Craig Walker, Zoning Administrator, Rose Fife, Clerk of the Board, and David Hall Code Administrator.

Meeting commenced at 7:06 pm.

Chair Carley explained that due to the Covid-19/Corona Virus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Board was authorized to meet electronically. The City of Concord utilized the Zoom platform for this electronic meeting.

08-20 Aaron Blouin: (Recessed from 3/4/2020) Applicant wishes to expand an existing residence, remove an existing garage and rebuild a garage in a new location and requests the following:

- 1) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit an addition to the dwelling unit with the closest point from the side setback being 13.4' +/- where a building setback of 40' is required,
- 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit an addition to the dwelling unit with the closest point from the front property line being 32' +/- where a building setback of 50' is required, for property located at 145 Silk Farm Road in an RO Residential Open Space Zoning District.

Testified: Aaron Blouin. They are not requesting any relief for the garage this time. These requests are for the addition to the home. That is all that is being discussed. He spoke with Dario Carrara, the Building Inspector, trying to find an alternative (renovate and connect to existing detached garage) so that he doesn't need to do new construction, but the garage doesn't have a good foundation to turn into a livable space. The house is only 800 s.f. in size. They will be moving the addition further away from the current garage. They will not be changing anything that is already there (removing existing detached garage). Both neighbors are in favor. Without a variance he cannot do anything with the lot.

Walker – advised the Board of the overview. The garage as shown on the plan is not under consideration as it is going to be located with the setbacks. The relief is for the addition to the main house.

Carley asked if they had a new sketch. (the most recent plot plan was presented) Mr. Blouin has his surveyor working on giving them a bigger picture but wasn't able to complete it on time. Scott wanted verification that they aren't considering the garage this evening, just the addition to the home. Mr. Blouin said that was correct. Wallner asked if the existing garage is closer to the property line than the proposed addition. Mr. Blouin said that was correct. Mr. Blouin explained the drawing that was displayed for everyone to see. Carley asked if the new garage would not be in violation of the setback. Mr. Blouin said that was correct. Mr. Blouin has spoken to his neighbors and the neighbor was in favor of the request.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the request and testimony as given. The Board was polled.

Winters: He reviewed the Minutes from the past meeting. The Board's primary concern was with the garage the last time. That isn't on the table now. The addition seems like a reasonable use. It is a small house on a large lot. The leach field is in the way. He is inclined to approve.

L. Scott: This would not create any more of an impact to the neighbors or to the setbacks. She has no concerns.

Monahan: Agrees with Winters and Scott. The addition would be away from the frontage and the property is unique.

Carley: Agrees with other Board members.

ZBA DM 4.1.20

A **motion** to approve the requests was made by Wallner, who feels it's less of an encroachment, seconded by Monahan and passed by a unanimous vote. AYE: Winters, Monahan, Wallner, Scott, Carley. NAY: none.

15-20 William & Janet Ulbrich: Applicants request a Variance to Article 28-2-4(j), Table of Principal Uses, to permit Personal Service Uses (Principal Use D-1) such as a hair salon and to maintain Variances granted on April 8, 1987 under Case #4322-1987 to allow general office (Principal Use F-1) where such uses are not allowed for property located at 314-316 Main South Street in an RN Residential Neighborhood District.

Carley is stepping down and Wallner will Chair. The Board for this case consists of Wallner, Monahan, Winters, L. Scott and L. Spector-Morgan is part of the group.

Testified: William Ulbrich. They purchased the property in 2003; with the understanding it was an office complex. It's been very difficult to establish full occupancy of the two buildings. There have had good tenants over the years and they have moved on. Many people now, operate small offices from their homes. He has a pain management doctor in the rear building. The second floor of the rear building is a personnel employment business. In the brick house they have a counselor in the corner who occupies 2 offices on the 2nd floor. They have a tenant on the first floor and they have recently been approached by a hair salon who wants to open up in the rear of the brick structure. She has to have a license to operate within that space. The ramp leads to a separate entrance to that area as well as a rear door going into that area. It's a separate room that actually could be used as a conference room. It has a kitchenette and bathroom in that area. The applicant would like permission to allow a hair salon there. They want to comply with the community. Difficulty is with having 2 structures. They have very little revenue to make improvements. They have a hardship financing this property. They want to bring some life to it and improve the site. They would like to be allowed to have both office uses and other options if a viable tenant comes along. They have 1 viable tenant at the moment. The photo of the house shows a large oak tree which has been removed as it has died. They want to put a flag pole there.

Ms. Ulbrich wanted to note a correction in the address. It is 314-316 South Main Street, not South Street. Walker explained it was written correctly for the notices and sent to the correct abutters.

Wallner asked about his neighbors. Mr. Ulbrich explained that across the street is the office for R&T Electric. Next to that business is Garry's garage. There are homes on the street as well. To the rear of the property they have a CATCH, moderate income property. To the north of the building is an extended piece of the CATCH property which has been unimproved. There are vehicles that are left there.

Winters noted that across the street is a UT zone. Are there any offices or non-residential uses on their side of the street? Also, why was this lot granted an office use in the '80's. Mr. Ulbrich explained that the front building was condemned by the City in 1985 or 1986 as it was falling apart. The building behind it was a large garage that was in disarray. Arthur Bourbeau, who owned A.W. Bourbeau, a construction company, was interested in the property and he improved the site. The back building wasn't torn down but redone as it was a post and beam building. What is now the CATCH property was developed for residential use. In 1985 or 1986 they ran into an economic issue and he thinks Mr. Bourbeau was slightly over extended so he didn't pursue adding more to the property in the rear. They filled in the foundations and leveled out the ground. And put the property up for sale. UCC bought the entire site and subdivided it. The CATCH folks owned part of the subdivided property and he and his wife own the smaller lot with the 2 refurbished structures.

L. Scott asked about the use. In the paperwork it talks about a variance for a portion for the front building. Mr. Ulbrich explained that they would like to have the two buildings brought into the decision. The doctor that is there now may retire soon. They have nothing coming forward for tenants. L. Scott asked Walker about the wording in the notice as the paperwork she has says a portion of the front building to be considered and now the applicant is asking for the entire property to be considered. What are they legally voting on? Walker explained that the notice doesn't make specification to any portion of the property. It is for personal service uses along with existing office uses. There is no restriction of who can occupy what portion of the property.

In favor: Mike Ellis who lives next door at 318 South Main Street. They are good neighbors and hard workers. The property has been improved and is immaculate 90% of the time. He is in favor.

Erik Dellea is not a neighbor (120 Rumford Street) but is in support of the request. It sounds like a good project.

In opposition: none.

Code: none.

DECISION: L. Spector-Morgan: If this property was anywhere else she would be a 'no'. But where it is located and the use it is, there is a hardship for the location. She is in favor of granting the variance.

L. Scott: She's familiar with the site. It's surrounded by residential and commercial uses. Expanding the use to other services is good for the property and the neighborhood.

Monahan: Agrees with L. Scott.

Winters: Agrees. The location is a heavily traveled road. It doesn't have a strong residential type feel. A hair salon won't change the impact.

Wallner: Concurs with all.

A **motion** to approve the request was made by Winters, seconded by L. Spector-Morgan and passed by a unanimous vote. AYE: L. Scott, Winters, Monahan, Spector-Morgan, Wallner. NAY: none.

Mr. Ulbrich thanked everyone.

16-20 Kim Dean: Applicant requests an Equitable Waiver of Dimensional Regulations in accordance with RSA 674:33a to grant legal status to:

- 1) A bluff buffer encroachment for the portion of the house and garage that encroaches into the 50' Bluff Buffer protection zone, as shown on the survey plan prepared by Meridian Land Services for Kim Dean and dated December 10, 2019,
 - 2) A rear setback encroachment with the closest point of the building being 22.4' +/- from the rear property line where a 50' encroachment is required,
- for property located at 147 Elm Street on a lot transected by an RM Residential Medium Density District and RO Residential Open Space District boundary.

The Board from this point forward consisted of Chairman Carley, L. Scott, Winters, Wallner, and Monahan.

Testified: Kim Dean and Wayne Cassin. Mr. Cassin explained that Ms. Dean hired someone to do the site work and do the foundation. They had Meridian do a plot plan. Dean explained that the bank came and did their own survey and sent her a letter stating that it wasn't in accordance with the original plot plan. Mr. Cassin explained that when the bank came to do their final measurement before wrapping up the final construction loan they sent Ms. Dean a letter stating she was not in compliance with the site plan. It wasn't noticed until she was living in it. Carley asked if it was done last year. Mr. Cassin said yes.

Winters explained the bluff buffer. Walker concurred that it is a protective buffer.

Winters noted that it would be costly for the applicant to correct it. Mr. Cassin explained that there is about 22 feet left and the bluff drops off. He doesn't see it being a problem where it is at now. Winters asked if it would be a problem to the environment. Kim Dean said it would not.

Walker stated that the issue was brought to his attention by the applicant after the bank notified her of the discrepancy.

Monahan questioned the septic. Mr. Cassin explained that the septic is on the opposite side. (relocating would not be practical) The foundation is poured for the garage but not built yet.

In favor: none.

In opposition: none.

Code: Walker: This was brought to his attention by the applicant Ms. Dean when she received notice from the bank that there was an issue there.

DECISION: Carley reviewed the request and testimony as given.

ZBA DM 4.1.20

Wallner: Traditionally the Board has been open minded about this type of request. The encroachment is to the rear, not the street side so he sees none or little impact to the bluff buffer.

Monahan: Agrees with Wallner. He feels it meets the equitable waiver test.

Scott: She has no objection to the request.

Winters: Agrees with all. The bluff buffer seems to be a place to protect the environment and he has heard no testimony that this encroachment will risk any problems with the bluff.

Carley: Agrees with all. This fits into the equitable waiver requirements.

A **motion** to grant these requests was made by Wallner, seconded by L. Scott and passed by a unanimous vote. AYE: Winters, L. Scott, Monahan, Wallner, Carley. NAY: none.

18-20 D&J Coburn Properties, LLC: Applicant wishes to expand a parking area for a 5 dwelling multi-family apartment building and pave to within 1 foot of the easterly property line and requests a Variance to Article 28-7-7(g)(2), (Parking) Setbacks from lot lines, to permit a parking area with a 1 foot setback where a minimum 5 foot setback is required, for property located at 49-51 Perley Street in an RD Residential Downtown District.

Withdrawn.

19-20 Michael Goff: Applicant wishes to expand a single-family dwelling and build a 20'x20' +/- addition onto the rear of the existing structure and requests the following:

- 1) Variance to Article 28-4-1(h), The Table of Dimensional Regulations to allow a rear setback at the closest point of 6'-2" +/- where a rear setback of 50' is required,
 - 2) Variance to Article 28-4-1(h), The Table of Dimensional Regulations to allow a side setback from the easterly lot line of 35' +/- where a side setback of 40' is required,
 - 3) Variance to Article 28-4-1(h), The Table of Dimensional Regulations to allow a total lot coverage of 12.8% +/- where a maximum lot coverage of 10% is allowed,
- for property located at 317 Clinton Street in an RO Residential Open Space District.

Testified: Michael Goff. They would like to add onto the rear of their home. They chose the rear due to the layout of the property. The western side holds the leach field. The property is surrounded by farm land and woods. They were going to move and find a bigger home as this home is less than 1,000 s.f., but the neighbors convinced them to stay and look into adding onto the home. 305 and 311 Clinton Street are farm land. 311 Clinton is much like their property. If they build the addition it won't obstruct anyone else's property. Adding onto their home won't impede emergency services. 321 Clinton Street rents their home out. He wasn't able to reach them. They have spoken to him before and he was in favor.

Wallner wanted clarification as to where the property was located. Winters asked about the use at 305 Clinton Street. Mr. Goff stated that it was all farm land and forest. Winters asked if there were any structures on that lot. Goff stated there is a home on that lot that sits far away from their property. It has a circular driveway. Walker showed the original subdivision plan to the Board. Goff explained that the height of the addition will sit lower than the existing home so it will not be visible from the road at all. Wallner asked if there were a garage on the property line. Goff explained that there was a garage on the property. Winters asked why it wouldn't be practical to add on to the west. Mr. Goff explained that the western side has his leach field on it which takes up almost 2/3 of his property. Carley asked where White's Farm was in relation to this property. Walker explained that this parcel is quite a ways away from White's Farm. Mr. Goff explained that his property is 3/4 mile from Exit 2 of I89.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the case and the testimony as given.

Winters: This is a reasonable use. It is a small structure. He approves of the request.

Wallner: Agrees. They meet the criteria. Substantial justice will be done. This will not decrease the property values. The location of the house is unique. He agrees with Winters.

ZBA DM 4.1.20

Monahan: The rear setback is tight to the lot line. But it does abut forest and farm land.

Scott: Agreed.

Carley: Agrees.

A motion to approve all 3 requests was made by Winters, seconded by Monahan and passed by a unanimous vote. AYE: Winters, Monahan, Wallner, Scott, Carley. NAY: none.

22-20 Nicholas R. Call: Applicant wishes to convert a single-family dwelling on a non-conforming lot to a two-family/duplex dwelling and requests a Variance to Article 28-2-4(j), the Table of Principal Use to allow the conversion of an existing single-family dwelling to a two-family/duplex when such conversion is not otherwise allowed on a non-conforming lot, for property located at 122 Rumford Street in an RN Residential Neighborhood District.

Testified: Nicholas Call. He just purchased this home, which is the first home he's purchased. He's in the military. It seems to be already split into two units. There are 4 bathrooms in the house. This is a larger lot on his block. There are multiple 2 family homes that are on his block. Beacon Street has smaller lots. There are duplexes that are on smaller lots. He has ample off street parking. The variance was for the lot size and road frontage. Property near him has the same frontage as he does and is a duplex.

Carley asked about a hardship. Call explained he has no one to look after the house during his long stints of training and having someone there would give him security. He wants to keep the home updated and a tenant would inform him of these needs.

Winters explained that although that is a personal hardship, for a variance to be approved it has to be a hardship related to the land or the lot itself; something that makes it unusual.

Monahan said that in his application he noted the home seems to have a layout for a 2 family building. Call explained that there are 3 egress points. There is a combined hallway between 2 exits of the house. There are 2 bathrooms on each side of the house. There are connections on each side for appliances. So it would seem the home was set up to be a duplex. It does have the space and the layout for a multi-family home and it does have ample parking. Wallner asked how many parking spaces he has. Call has 5 or 6 if you include a car that parks off to the side. He has a 2 car garage and there is space on either side of the garage to put parking.

Winters asked Walker about this being in an RN district and a 2 family being permitted. So why the variance? Is it just for the lot size? Walker said yes. It is to avoid overcrowding of the land. The frontage is not conforming. Winters asked what the frontage requirement is vs. what Mr. Call has. Walker stated that Mr. Call has 47 to 50 feet of frontage and in the RN zone it requires at least 80 feet. Scott asked if he needs the variance for the frontage and that's the only reason. Walker explained that to convert an existing home in RN zone a minimum lot size and frontage is needed. The lot frontage is 45-47 feet where 80 feet would be required. Winters noted that the agenda says Article 28-2-4j, but the actual application says Article 28-4-1h. Walker explained. Article 28-5-3 is a supplemental standard and that's the section that say you need to meet the minimum frontage and lot size. He's not eligible for conversion under that section therefore the request is to allow a duplex conversion of existing structure. He explained further. Winters asked Mr. Call how much frontage he has. Mr. Call said he has roughly 50-55 feet. Winters thought he was short on the lot size too as 10,000 s.f. is needed. Would he meet the setbacks? Walker explained that (setbacks) for an existing building would be grandfathered in. L. Scott reiterated that if he had 10,000 s.f. and 80 feet of frontage he wouldn't be in front of the Board because he could convert the single family to a duplex. Walker agreed. Carley asked if the variance is as if he were building a new two family. Walker explained that was not correct. He would be required to have 1.5 lot size and frontage if it were new construction. Winters asked Mr. Call if there other multi-family and duplexes in the area. What is on your block? What is the ratio of single family vs. multi-family properties? Call explained that on his block there are 5-6 multifamily homes.

Scott asked the applicant to explain the hardship as related to the property. Mr. Call stated he couldn't think of anything.

Carley read a letter into the record from Colleen and Douglas Schwarz who live at 97 Rumford Street. The home has always been a single family home and has been used that way for approximately 150 years. His property is not larger than other properties in the neighborhood. See letter in record.

Erik Dellea who lives at 120 Rumford Street. He's lived there for 3 years. He's not sure if its support or the opposition. The property was previously owned by a single parent with a young child who had a difficult time maintaining it. He can see the value of it being a multi-family dwelling. He remembers when Mr. Call moved in. He would like to see more young families moving to the neighborhood. It does make sense as a multi-family. He could see his property being used that way. Mr. Dellea said that the size of the lot is large and he feels it would be well used as a duplex. The previous owner told him that it was once a duplex.

In favor: none.

In opposition: none.

Code: none.

Rebuttal by Mr. Call. To the letter: he doesn't believe she knows about the off street parking space he has. He saw all the things that the prior owner saw as far as being set up as a duplex.

DECISION: Carley reviewed the request and testimony as given.

Wallner: He did hear hardship arguments. The width of his lot is similar to other lots in that area. Other buildings in the area are duplexes and substantially smaller. He has a larger lot.

Scott: She was looking at the size of the property and it looks like there is enough parking on that property. She sympathizes and thanks the applicant for his service to this country. Having someone to look over his property while away is not a hardship. She is leaning towards approval as there is enough parking.

Winters: He's having a hard time seeing the hardship. This is a tough location of the City. There are a lot of single family and multi-family homes. He's not that close on the frontage. The building may be amenable to a duplex. Walker explained that's not a factor that they can consider and it hasn't been a duplex that the City knows of.

Monahan: The hardship is more with the circumstances and not with the property.

Carley: He agrees with Monahan. The hardship is one that has to do with something other than the physical nature of the property and reasonable use of the property. This has been a single family home for a long time. He is inclined to be opposed to granting the variance.

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

A **motion** to deny the request was made by Winters, seconded by Monahan and passed by a 4-1 vote with Wallner in the Minority. AYE: Monahan, Winters, Scott, Carley. NAYE: Wallner. The Board wanted to thank the applicant for his service. Unfortunately they don't see a hardship.

Minutes from March 11, 2020. A **motion** to approve the Minutes was made by Wallner, seconded by Winters and passed by a 4-0 vote. L. Scott abstained as she wasn't at the meeting.

A **motion** to adjourn the meeting at 8:42 pm was made by Monahan, seconded by Scott.

*Respectfully submitted by,
Rose M. Fife, Clerk of the Board*