

CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
OCTOBER 7, 2020 MEETING
DRAFT MINUTES

Attendees: Chair Christopher Carley, Nicholas Wallner, Andrew Winters (Conflict with Case #37-20 and #46-20), James Monahan and Laura Spector-Morgan & Laura Scott for Case #37-20 and #46-20.

Absent: Robert Harrison Jr.

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

Meeting commenced at 7:03 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.

Case 47-20 not being heard tonight – withdrawn. 50-20 recessed to November meeting.

50-20 Bubbles Enterprises, LLC.: Applicant wishes to develop an existing structure for use as a 3 unit multi-family dwelling and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to permit the conversion of an existing residential structure to accommodate 3 residential dwelling units on a lot with no frontage when such conversion requires lot frontage of 80 feet on an accepted City street,
- 2) Variance to Article 28-8-3, Non-conforming Lots, Section (c)(2), Conditions for Development of a Non-conforming Lot, Item a., to permit development of a non-conforming lot, in legal existence at the effective date of the current Ordinance, and which does not have frontage on an accepted City Street when a minimum of 22 feet of frontage is required,

For property located at 85 Pleasant Street in a RN Residential Neighborhood District.

A motion to open and recess this case to the November 4, 2020 meeting was made by Wallner, seconded by Spector-Morgan. Roll call vote: AYE: Wallner, Monahan, Scott, Winters, Spector-Morgan, Carley. Motion passed by a unanimous vote.

47-20 Barbara Mariano: Applicant wishes to lease portions of the subject property, which is adjacent to an existing dealership and requests the following:

- 1) Variance to Article 28-7-16, Parking and Storage of Unregistered Vehicles, to permit the outdoor storage of motor vehicles (principal use K-7), subject to registration under the provisions of RSA 261, Certificates of Title and Registration of Vehicles, which do not have current valid number plates attached, to be stored outside in an area other than a motor vehicle sales area or a recycling center,
- 2) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (b), Screening Requirements, to waive the screening requirements along the northerly (rear) property line and the westerly (side) property lines,
- 3) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (d), Maximum Area of Lot to be Used or Designated for Outside Storage, to permit outdoor storage of inventory on the "Mariano" lease parcel and the portion of the "DMO/Kia" lease parcel, dedicated to outdoor storage to waive the requirement that outside storage be a ratio of building area,
- 4) Variance to Article 28-3-6, Aquifer Protection District, Section (d)(3), Prohibited Uses, Item (m), to allow the development and operation of an, automotive repair, servicing, and with or without auto body repair, facility (Principal Use J-5),

for property located at 10 Integra Drive in an IN Industrial District.

Withdrawn.

A motion to open Case #37-20, 41-20, 43-20, 45-20, 46-20 was made by Wallner and seconded by Monahan. Roll call vote: AYE: Wallner, Monahan, Scott, Spector-Morgan, Carley.

37-20 Rosemary Hinton: (Recessed Case) Applicant wishes to expand an existing single-family dwelling and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow a first & second floor expansion with the closest point 6 feet (+/-) from the westerly side, property line where a 15 foot side setback is required, for property located at 21 Iron Works Road in an RS Single Family Residential District.

Board for this case consisted of Carley, Wallner, Monahan, Scott and Spector-Morgan.

Testified: Ms. Amanda Hinton. Rosemary Hinton was also available to testify if needed. Ms. Hinton has lived at 21 Iron Works Road for the last 8 years. The setback relief sought is on the westerly side property line. The westerly neighbor has been there for about 45+ years and has no issue with the expansion as it doesn't encroach on their property. Renovations would allow them to bring the older parts of the home, which are over 90+ years, up to the building codes. It would make this property safer. They will expand up eliminating 2 front dormers that are currently leaking. The back half of the house has a curved setback and they will be squaring off that section of the house and bringing it up one floor. They would have 2 full functioning bedrooms where the dormers are now. The rear squaring off would allow them to add a second floor bedroom/bathroom which would be functional. The original part of the house was built in 1919.

Wallner: The paperwork doesn't seem to have the same footprints as what is on the GIS. Ms. Hinton explained that the GIS rendition is not accurate. She submitted paperwork showing the boundary pins between the property lines. Wallner thought that Item 2 on the paperwork doesn't look like what is on the aerial. Ms. Hinton explained that the drawings show the proposed addition. The relief is just for the small corner of the property. Carley asked if the entire house was in the setback. Ms. Hinton explained that the current structure is (partially) within the setback. The front part of the home was built in 1919. The middle part of the home was expanded in either 1954 or 1958. Then in 2005 the rear part of the building was added.

Scott asked if the older survey shows the house before the recent expansion and that is why the aerial photos show a different footprint. Ms. Hinton explained that the aerial photos are current. The survey doesn't show the 2005 addition. Scott asked if they were just looking to square off that back piece. Ms. Hinton said yes. And her neighbor has no issue with it.

In favor: Deborah Samaha and Ron Lahey abutters. Mr. Lahey does not contest the expansion of the 1st and 2nd floor as long as this remains a single family home and does not become a rental apartment. He lives at 25 Iron Works Road. Ms. Samaha submitted a letter explaining that they do not contest the expansion per say. There are a lot of vehicles parked there for extended periods of time. They do not object if it is related to family only and stays a single family dwelling.

In opposition: none.

Wallner read into the record letters dated 8.2.20. Ronald Lahey, 25 Iron Works Road – he does not contest as long as property remains as a SF home only. Walker read Ms. Samaha's letter dated 10.5.20 into the record. She has concerns with people coming and going, parking in the front yard. She wanted to know if this would be a rental property or rooming house and if so they are opposed.

Code: The lot lines on the GIS are not surveyed lot lines. They are there for estimation purposes only. The home is in a district where an ADU would be permitted and they appear to have enough frontage and land requirements to be allowed to do that but it would require a special exception if they chose to do so. This request is for a SF dwelling.

Rebuttal: Ms. Hinton. This is for a single family home. There are 4 people residing there, all family. As far as traffic, she grew up in the area so she does have friends in the area and she does have company at the house. They do own a camper that is there right now. She has no intention of renting out the property.

DECISION: Carley reviewed the testimony as given.

Spector-Morgan: The lot is uniquely shaped. The lot is situated towards the property line. The expansion is reasonable. There shouldn't be a diminution of property values. The house is already in the setback so it is within the spirit. She is in favor.

Scott: Agrees.

Monahan: Agrees.

Wallner: Agrees. It is only 2 additional feet into the setback. Not a real hindrance.

Carley: Agrees.

A motion to grant was made by Spector-Morgan and seconded by Monahan. Roll call vote: AYE: Wallner, Monahan, Scott, Spector-Morgan, Carley. Motion carries by a unanimous vote.

46-20 Howard A. Roever: Applicant wishes to construct an elevated, 4'x12' deck/sitting area, and requests a Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to allow a 9.5' setback from the rear property line where a 20 foot setback is required, for property located at 60 Rumford Street in an RD Residential Downtown District.

The Board for this case consists of Carley, Wallner, Monahan, Scott, Spector-Morgan.

Testified: Howard Roever. He's in a downtown area where all homes are in violation (non-conforming) with the code in the area. The rear of the house is in the setback. He'd like a minimal deck to use the property to the fullest extent. It will look better. He spoke with the rear abutter. They wrote a letter in favor and he attached it to his application.

Carley asked if the topography dropped in the back yard. Mr. Roever explained that the front of the home is level and then where they added onto the home it drops down. His back yard drops down about 6 feet or so. There is a retainer wall. Carley asked if the deck would be level or a few inches lower than his home. He said yes.

In favor: none.

In opposition: none.

Carley read letters into the record. Elaine Merchant, 12 Hanover Street dated 7.27.20 was in favor. An email from Carrie Mobile who lives at 43 Rumford Street in favor. A letter dated 7.27.20 from Heidi and Michael Frasika, 58 Rumford Street.

Code: none.

DECISION: Carley reviewed the testimony as given.

Wallner: The rear of the home is almost on the property line. This is 9.5 feet away from property line and a minimal encroachment.

Monahan: It is a dense neighborhood. This seems to be an appropriate use. The additional 4 feet is fine.

Scott: It is an appropriate use. It will enhance the neighborhood and building.

Spector-Morgan: Agrees.

Carley: Agrees.

A motion to grant was made by Scott and seconded by Spector-Morgan. Roll call vote: AYE: Wallner, Monahan, Scott, Spector-Morgan, Carley. Motion carries by a unanimous vote.

41-20 Fred L. Potter for 135 NSS, LLC: Applicant wishes to install 2 freestanding signs, (sign #1 is 4.58 SF in area and 7.9' tall & sign #2 is 24.08 SF in area and 7.4' tall) on a lot, with sign #2 located in the "corner no-obstruction area" and requests the following:

- 1) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (a)(1), to allow 2 Freestanding Signs on a lot in a residential district where only 1 freestanding sign is allowed,
- 2) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (a)(1), to allow 2 Freestanding Signs on a lot in a residential district, with a combined area of 28.66 +/- square feet, where 1 sign is allowed and the maximum sign area allowed is 20 square feet for a single sign,

- 3) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (c), to allow a height of 7.9' for sign #1 where a maximum height of 6' is allowed in a residential district,
- 4) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (c), to allow a height of 7.4' for sign #2 where a maximum height of 6' is allowed in a residential district,
- 5) Variance to Article 28-6-7, Signs Prohibited Under This Ordinance, Item (e), to allow a 7.4' sign to be placed within the thirty (30) foot triangular area adjacent to the corner where no obstruction is allowed between a height of 2.5' and 8' above grade,
for property located at 135 North State Street in an RN Residential Neighborhood District.

The Board from this point forward consists of Carley, Wallner, Winters, Monahan and Spector-Morgan.

Testified: Fred Potter and Josh Messenger of Advantage Signs. Mr. Potter explained that the old rectory home is the building they are discussing. This is the future home of KidsVax. It is a combination of office and residential uses as approved previously by the Board. They need signage to show a demarcation between the pocket neighborhood and this building.

Josh Messenger of Advantage Signs testified. They are proposing to locate the sign 13 feet back from the property line at the corner (north east) of the building. They submitted photos showing the locations. They are trying to create an aesthetically pleasing sign. It's a mirror image of the sign on the other property as well.

Carley: Asked where the sign would be placed. It was explained that it would be behind the bush (shown in photo), 13 feet back from the corner of the stone wall. Carley asked if that was to the west of Church Street. Mr. Messenger stated that was correct. (location is south of Church Street)

Josh Messenger explained that it is a nice architectural look. This will add value to the neighborhood. It would allow for the tenants to be identified, which could be a concern for emergency vehicles or clients doing business.

Mr. Potter added that this sign is almost identical to the sign at 125 N. State Street. If this sign were to be moved back further it would impinge the visibility. Coming from the pocket neighborhood side, it is more like a lamp post signs around the neighborhood. The size is similar to office building signs in the neighborhood. There has been considerable delivery confusion since the pocket neighborhood has moved in and this will help distinguish this building from that neighborhood. Delivery vehicles are having difficulty finding the correct address.

Carley explained that this particular use is in the residential district which seems to have driven the need for this. Potter explained that the property is truly unique. It is an upgrade which allows preservation of a building for similar uses in the building. When the Bishop of Manchester was located there they had residential spaces as well as office/meeting space. The approvals by the Board have allowed them to save the building. This identifier will let them know that they are not in the pocket neighborhood.

Carley asked Walker if Engineering or traffic has weighed in on this. Walker said not officially in writing. General Services did not support this request as they were concerned with obstructions at the intersection. Spector-Morgan asked Walker how many signs in the neighborhood are non-conforming and how many were allowed by variance. Walker was not sure. He spoke of some signs in the area and their size and identified the related uses that were established by Variance.

In favor: none.

In opposition: none.

Letters/emails: Melissa Bernardin, 17 Church Street. Concerned with obstruction of view for drivers eastbound on Church. Jack Hutton, 137 N. State Street. No reason for a sign that large to be needed.

Meredith Hatfield who lives at 5 Perkins Street. She represents Ward 4 on the Council. She is here as a citizen and not on behalf or request of the Council. She thanks Mr. Potter for all the work he has done on the site. She has concerns with the size of sign and visibility for cars and bicyclists. Perhaps a smaller sign would meet their needs. The sign he referenced at 125 N. State Street is in a different situation as it is near a roundabout and it is set back further from the road. Seems like given the safety issue and it is a residential neighborhood it would be nice to have a slightly smaller sign that is more in keeping with the neighborhood. She doesn't believe they have shown a hardship in this case.

Code: The uses that exist here were established by variance. There was a variance to reduce the parking from 50 to 14 spaces based on the representation that there would be a low impact or small need for parking. If it were granted the sign would require ADR review.

Winters asked Walker about the objection of the City and how it relates to the obstruction of the intersection. If it is approved does it go through another round of review for safety? Walker said no. The requirement that there be no obstruction within 30' of the intersection between 2.5' and 8' in height is the safety requirement.

Rebuttal: Fred Potter. All of the signs are in residential zoning areas and this is similar in size to those. The economic hardship is the preservation of this building which has been a monumental task. It will be necessary to use the commercial spaces. Unlike the other building, if they were to drop the professional offices signs, they could drop one of the panels and reduce the sign downward. The net results would be fewer obstructions once the bushes were moved.

Wallner asked about the height of the professional offices sign. Potter explained it was to be 5 slats but will now be 4 slats. Josh Messenger explained that the slat dimension was 8.5 inches. Potter explained that it would be reduced about 10 inches in total by removing one slat.

DECISION: Carley reviewed the testimony as given.

Winters: He should note that one of the signs they are referencing in the area is the sign for his (personal) office. He doesn't believe that creates a conflict. He's further away. He's undecided with regard to the substance of the case. The property is unique. A lot of the properties in this area are unique. It is right on the edge of the district. It's in a residential district in a fairly 'business' intersection with multiple professional offices nearby. There is a uniqueness to the property and he sees some hardship. He's getting hung up on the obstruction mentioned by the City and one of the abutters.

Spector-Morgan: She has many concerns. Why do they need 2 signs? She is not convinced. If General Services isn't in favor of it being in the triangular area, she has a hard time agreeing to it. It seems to be that the large tenant sign could be moved to the location of the other proposed sign location. Then there wouldn't be any objection to the size. She's not convinced that the property is unique. She's not in favor of any of the variances.

Monahan: The applicant made a good case as to why the signage is necessary but he didn't hear why they couldn't utilize a conforming size signage.

Wallner: He is okay with some of the requests. He is okay with 2 freestanding signs and a lamp post sign. He feels that the signage with multiple lists causes distracted driving. He thinks the solution may be to locate it further away from where they want to locate it.

Carley: He agrees with Wallner about the 2 signs and the lamp post sign. But they didn't hear a strong case. The fact that this is a commercial use in a residential neighborhood and that the Board did grant it tends to push him in the direction of seeing a hardship. He is concerned with the corner for safety issues. He's not satisfied that General Services or Engineering have looked at this proposal.

Walker: He strongly suggests that if they are swayed by testimony from General Services that they recess this case and wait for further information from them.

Both Spector Morgan and Winters want to hear from General Services.

Wallner thought the Board could vote on #1 through 4 and recess #5. Carley feels they aren't ready for the height request. #1, 2 & 4 would be okay to act on.

Spector-Morgan – doesn't see any benefit on voting on some now and some next time. She feels information from the City Departments would help her decide on all.

Winters Carley and Monahan agree. Wallner would agree with majority. Monahan asked if since the applicant has heard some feedback and if the Board recesses he requests and they want to adjust what they proposed, can they bring something different forward. Carley explained that they could if it is for less forgiveness.

A motion to recess all 5 requests to the November 4, 2020 meeting was made by Spector-Morgan and seconded by Monahan. The Board is looking to solicit testimony from General Services and Engineering and any other City Staff. Roll call vote: AYE: Wallner, Monahan, Spector-Morgan, Winters, Carley. Motion carries by a 5-0 vote.

43-20 David Claydon for Miranda & Andrew Hardister: Applicant wishes to expand an existing residential structure and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to allow a first & second floor expansion with the closest point 7 feet from the northerly, side property line where a 10 foot side setback is required, for property located at 14 Dunklee Street in an RN Residential Neighborhood District.

Testified: David Claydon. He is an Architect. His daughter and her husband own the 14 Dunklee Street home. He is hoping to move in with them. He's 80 years old and he does need to find a place to live close to the family. He's reviewed the possibilities to giving himself the nicest space that he can. They have a small rear yard. An addition would crowd out the existing house. He's settled on a solution to build a second story and it seemed logical and reasonable to build up what was an existing garage. It provides all the space he needs and architecturally he believes he can put a second story onto a single story building and make it blend in. The existing garage is, in fact, within the setback. It's a 10 foot setback and the garage is 3 feet into that setback. Logically he wants to build up on the garage wall. The side yard is in fact the rear yard of the property on Humphrey Street. They have a larger setback in that area. If he were to build up, he wouldn't be crowding out the neighbors.

Carley asked if the mudroom addition is also in the setback? Mr. Claydon said no.

Winters asked if setback relief were the only variance he needs to do a second floor? Mr. Claydon said yes.

Mr. Claydon also submitted a letter in favor from the immediate abutter stating he was consulted and has no problem with the addition.

In favor: none.

In opposition: none.

Code: none.

Letter from Mark Emmons, 1 Humphrey Street. In support of the requests. Feels there is no negative impact on his property.

DECISION: Carley reviewed the testimony as given.

Wallner: Part of the addition is over an existing addition. It's minimal intrusion into the setback. It will add property values to the neighborhood. It will serve substantial justice. There is no other place to do this.

Monahan: Agrees with Wallner. He's asking for 3 feet of relief in a dense neighborhood. It's well designed. No adverse impact on neighbors.

Spector-Morgan: Agrees. Only other place to add would be in the back yard but that would be very awkward. Given the layout of the houses abutting the property she feels it is reasonable.

Winters: Agree.

Carley: Agrees.

A motion to grant the request was made by Wallner and seconded by Spector-Morgan. Roll call vote: AYE: Winters, Spector-Morgan, Monahan, Wallner, Carley. Motion carries by a unanimous vote.

45-20 Warren and Lucile Runde: Applicant requests an Equitable Waiver of Dimensional Regulations under RSA 674:33a to grant legal status to a 6 foot tall stockade style fence located on the southerly side, property line between the front lot line and the front yard building setback line, for property located at 168 South Street in an RS Residential Single-family District.

Testified: Attorney Kelly Ovit-Puc who represents the Runde's. Warren Runde also testified. Attorney Ovit-Puc gave a brief summary of the application. They are on South Street. They had an existing 6 foot high fence. There is a maple tree on the abutter's property affecting their property so they wanted to extend the fence. They reached out to Code Administration and spoke with a staff member. They wanted to extend the fence to the property line. And they were told they were allowed an 8 foot fence on the side and they could extend it up to the sidewalk. Engineering staff member came out to the property and were told the same thing. Confusion is in the Ordinance says a 4 foot fence is allowed in the front yard and an 8 foot high fence is allowed in the side yard. The interpretation was relied on and shortly after the fence was completed and the Code inspector came out to look at it and sent the Runde's a letter that this fence was not in compliance. It will cost them over \$2,700 to take that down and rebuilt a compliant fence.

Winters: Does this fence separate this home from 172 South Street. Attorney Ovit-Puc said that was correct. They are not disputing the interpretation, but they are asking for an equitable waiver. She submitted photos of other fences that go up to the property line. This doesn't diminish properties in the area. It looks good aesthetically. Its pretty clear her clients were acting on good faith as they reached out to the City.

Wallner asked if it were just 3 panels added. Attorney Ovit-Puc said that was correct.

In favor: none

In opposition: Keith Burbank, 172 South Street. They are an abutter. This fence is about 15 feet from the property line to their driveway. When the fence went up he called Code Administration to find out if it was allowable. He was told it was not up to code in a front yard. This is a safety issue as his driveway is located on the other side of the fence parallel to it. It's a busy neighborhood as far as foot traffic, bike traffic, etc. Backing out of his driveway it impinges his visibility. He is sure he could see over a 4 foot fence, but a 6 foot fence is impossible.

Letter: Keith Burbank, 172 South Street in opposition.

Code: Walker cannot confirm or denied what was asked or answered. It has been long standing practice and interpretation that within the front yard area, which is the space parallel to the nearest portion of the house and street from side line to side line, it cannot exceed 4 feet.

Rebuttal: Attorney Ovit-Puc. She submitted the pictures so they could see the visibility. There is still a strip of grass between the sidewalk and the fence. There is a large maple that blocks a lot of visibility. They don't think the additional 2 feet in height has much of an impact. Carley asked about removing 1 section and replacing it with a 4 foot section. Mr. Runde explained that if this were not granted, they would extend their fence to the sidewalk. As it is now, they left enough space so people could see around it. If he extended it to the sidewalk it would block more.

Monahan asked what the applicant were trying to accomplish with the fence. Attorney Ovit-Puc explained that they are trying to mitigate what is coming over onto their yard from the maple tree and they are trying to have a little more privacy. Winters asked if the maple tree were on the neighbor's side. Attorney Ovit-Puc said that was correct.

Winters has concerns and spoke with Walker regarding the applicant alleging they received an incorrect interpretation. They are alleging they meet all the criteria. They are stating that they spoke with Rose Fife of Code Administration and Paul Gendron of Engineering. Rose Fife (Board Clerk present at hearing) recalls her conversation with Mr. Runde. She spent a fairly large amount of time on the phone with him explaining the 4 foot requirement in the front yard. She thought that at the end of their conversation he had a good understanding of the requirement. Unfortunately, that does not seem to be the case.

Winters noted that under an Equitable Waiver, the cost of correction outweighing the public benefit is the last criteria given. He asked if the Board felt that the Runde's meet any of the other criteria. He would also like to hear testimony from Paul Gendron as he was noted as someone who gave the applicant incorrect information. Spector- Morgan noted that the third criteria of an equitable waiver speaks to the safety factor.

DECISION: Carley reviewed the testimony as given.

Wallner: Lowering one fence section seems to be a good idea, but he doesn't believe they can condition that. Walker explained that the Board could grant the 6 foot height up to within 10 feet of the front property line and then they would have to comply with it from that point forward.

Monahan: It is tricky to negotiate a solution. But the applicant said if they had to lower the height they would extend it to the property line.

Spector-Morgan: She thinks they should grant the request. They made a good faith effort to figure out the rules. There was a misunderstanding. The regulations are not clear. There is plenty of space between where the fence ends. The cost to fix it is not insubstantial. She is in favor of granting the request.

Winters: The Board would have to find an error of ordinance interpretation occurred. The City is denying that.

Walker: The City does not issue permits for fencing nor are plans needed.

Carley: He believes that misunderstanding what an applicant is told, and it is an honest misunderstanding, is a close cousin to an honest error. Fencing could be a problem with an automobile backing out of the driveway. There will be issues with visibility. The safety issue does interfere with the use of the property. It's not a literal interpretation of the Statute (ordinance). He is inclined to deny.

A motion to deny the request was made by Winters. A person in the process of issuing a permit is what is noted in the statute. There is no permit involved. They haven't met that standard. The motion was seconded by Wallner. Monahan will not support it. A 4 foot fence out to the property line is worse than what exists now. Carley issuing a permit is a technicality. He has concerns about safety. A roll call vote for the motion to deny the request: AYE: Wallner, Winters, Carley. NAY: Monahan, Spector-Morgan. The motion to deny was approved by a 3-2 vote.

MINUTES:

A motion to approve the September 2, 2020 Minutes was made by Wallner and seconded by Winters. Spector Morgan abstained. Motion was granted by a 4-0 vote.

Wallner noted that July's Minutes are still in short form.

*Respectfully submitted by
Rose Fife, Clerk*