

**ZONING BOARD OF ADJUSTMENT  
FEBRUARY 6, 2019 MEETING  
MINUTES**

Board members present: Chairman Chris Carley, Nicholas Wallner, Rob Harrison, Andrew Winters, and Jim Monahan. Also present Craig Walker Zoning Administrator and Rose Fife, Clerk of the Board.

**01-19 John Radley:** Applicant wishes to develop a new two-family dwelling and requests the following:

- 1) A Variance to Article 28-5-2, Duplex or Two-family Dwelling, to permit development of a two-family dwelling on a 13,068 square foot lot when a lot size of 15,000 square feet would be required,
  - 2) A Variance to Article 28-5-2, Duplex or Two-family Dwelling, to permit development of a two-family dwelling on a lot with 66' of frontage when 80' of frontage is required,
- for property located at 159 Rumford Street in an RN Residential Neighborhood District.

Testified: John Radley and Attorney Jeffrey Christensen. Attorney Christensen testified that the property is currently under construction and had been used as a single-family dwelling in the past. A slide show presentation was given. It showed the building that had been on the site and existing property condition photographs. This application is for a two family use only. The original intent was to convert it to a 2 or 3 family building, but due to the condition of the building, renovations showed that it couldn't be salvaged and they had to rebuild a lot of it new. He showed photographs of the rebuilding/replacement of the structure. It is now considered new construction under the ordinance, but it was sitting where the old building was. The neighborhood is mix of single family as well as two, three, four and five family units. This property is unusually large but it is still narrow. It lacks frontage so they can only use it for a single family home or a two family home. Most surrounding properties do not comply with frontage requirements for even a single family home. The area is 13,000 s.f. and under new (2-family) development standards 15,000 s.f. would be required. If it could have been converted instead of being constructed new, they would only need 10,000 s.f. The application addresses all 5 specific variance requirements. He summarized those. They feels this is a reasonable use. A two family use is consistent with what is in the neighborhood now. The rehabilitation of this property is beneficial to the owner, the neighbors and to the City as it increases the property value. Requiring the property to be continued to use as a single family would not benefit anyone.

Wallner: Is this the same size foot print as the previous building? Attorney Christensen said yes. Some of the foundation was re-poured. Wallner asked about the parking. Attorney Christiansen said that there is a driveway that will be expanded to provide parking out back. This request will go in front of the Planning Board. John Radley said he's been in touch with his neighbor who is here tonight and he has told them he would put up a fence or vegetative screening if they'd like. Attorney Christiansen said that they would like to bring forth the testimony from the neighbors from the last meeting and incorporate it as part of this evening's record. Monahan asked if construction were under way. Attorney Christiansen said it was. It is just a shell right now. Monahan asked if the variance isn't granted what would happen. Attorney Christiansen said that they can still use it as a single family and there is an appeal pending at the Superior Court level for the 3 family request. Winters questioned the square footage? Radley stated it is 3600 s.f. They built up, not out. Winters asked if it was the same square footage for the single family for the 3 family. Attorney Christensen said it's the same building as what was proposed for the 3 family. It will be a larger square footage per unit. Winters asked if this was denied will they go forward with the appeal for a 3 family. And if this is granted what will they do? Attorney Christensen wasn't sure. (Comment was made that the question was not germane to the case at hand.)

In favor: James Fisher, 51 Walker Street. He owns the single family home on the corner by the baseball field. His backyard abuts this property. He has no problem with the approval of this appeal. Mr. Radley has graciously agreed to accommodate a screen system so lighting wouldn't be a problem.

Andy Tarbell, 50 Walker Street. He supports the 2 family request. He opposed a 3 family.

Peggy O'Malley, 161 Rumford Street, owns a single family home. She is in favor. They spoke with Mr. Radley about the new construction. She's for the improvement of the lot.

In opposition: none.

Code: Walker noted that this is a stable neighborhood (regarding housing stock). There has not been a lot of change in the housing types and quantities. He supplied a GIS area map of the surrounding blocks showing single-family dwellings, two-family dwellings and three + family dwellings in the neighborhood. Single family homes are important also an important part of the housing stock. There does not appear to be pressure in the neighborhood to reduce the number of single-family dwellings. Prior to the building being purchased Code was not contacted to see if they could convert the property. A permit was issued for renovations of a single family home on 3/2018. A subsequent permit was issued on 7/2018 essentially for a remodel. Mr. Walker stated that he had not been contacted about possible redevelopment of the property for more than one-family use. The property was purchased around 3/18 for \$118,000 according to assessor's records, the assessment was \$239,000 at the time of purchase. Monahan asked if it was occupied at that time. Walker believes it was.

Rebuttal: Attorney Christensen and John Radley spoke. Mr. Radley stated that this year Rumford Street was reclaimed. After that they cannot dig up the street for 5 years. To convert the home they would have to do the sewers over now or not be able to do that for 5 years. Attorney Christensen said there is a demand for single family and two family homes. It bears repeating a 2 family use is permitted in this district; the only question is in the size and frontage. Monahan asked about the other multi-family homes in the neighborhood. Would they also have challenges for the frontage? Attorney Christensen said other homes do not have the 80 feet of frontage for a single family home. The 3 family next door has the same amount of frontage that this property does.

DECISION: Carley gave an overview of the testimony and the requests. Carley confirmed with Walker that the existing house was not eligible for conversion. Walker affirmed that due to the non-conforming lot frontage it was not eligible for conversion for use other than a single-family dwelling. Winters noted he was in the minority last time for the 3 family home request. It's essentially similar. The home is the same size. There will be 2 units instead of 3 units. This is a reasonable use. It is more modest. The lot goes further back. The shape of the lot is distinctive. He thinks this fits. Harrison agrees with Winters. Monahan agrees. The property would be valuable to the neighborhood. Wallner noted he was in the minority last time. He feels it's reasonable. Denying the request for a 2 family would create a hardship. A motion to approve the request was made by Wallner, seconded by Harrison and passed by a 4-1 vote with Carley in the minority.

**05-19 IERE Pizza North, Inc.** Applicant wishes to construct two detached buildings, one for a carry-out "pizza" shop (retail use H-1) and a carry-out "coffee" shop (retail use H-1) and requests the following:

- 1) A variance to Article 28-4-2(e), Buffers for District Boundaries in Collector or Local Streets, to permit a 24 foot +/- wide driveway for two-way traffic to cut through the buffer zone where a 15 foot vegetative buffer is required,
  - 2) A variance to Article 28-7-7(g), (parking) Setbacks and Restrictions, to allow off-street parking to be located in the front of the building between the building and the street,
  - 3) A variance to Article 28-7-2(e), The Table of Off-Street Parking to permit the provision of 6 drive-through queuing spaces for the "pizza" carry-out where 11 queuing spaces are required,
- for property located at 212 Fisherville Road in a CG General Commercial District.

Testimony: Jason Hill, Civil Engineer with TFM. Rick Yeames owner of the (Domino's) pizza shop. Bob Myer development team of Aroma Joe's. Mr. Hill went over the site plan. They will need site plan approval for their next step. They intend construction in the Spring of 2019. This is at the southern end of Penacook. It's about a 1 acre site. It was formerly a single family home. It's been vacant for over a decade. It is a nice commercial site in a commercial district. Penacook neighborhoods about this site. There is a zoning district boundary that runs along Manor Road. There will be a coffee shop and a drive thru carry out and a pizza shop which will be carry out and also have a pick up window. The uses are permitted by right.

Buffer variance: This is needed as they would like to relocate the (former residential) driveway, which interrupts the buffer, for circulation and traffic safety and propose to move it further down (easterly) Manor Road. The reason is due to the circulation of the internal site traffic as well as loading delivery vehicles and such. In a lot of communities it is allowed to have a driveway close to residential areas. They are proposing to preserve a substantial amount of trees. They would also preserve the woodlands at the end of the lot on Manor Road. They are proposing to provide the buffer, but the driveway encroachment is where they will cross through the buffer and they need the relief. He went over the criteria. It is a unique site as it's a triangular lot with double frontage. It limits the placement of the buildings which forces the circulation pattern. Normally they would be allowed to have 2 driveways off of Fisherville Road but because of the narrowness of the parcel it will affect the trucks leaving the site. They are providing a significant natural buffer to residents to the north. They feel it is consistent with the spirit and intent of the ordinance. The applicant's interest is to provide optimal safety and circulation on the site. This will benefit the public. The enhanced screening will mitigate any loss to the public. The use is permitted by right. The hours of operation will be consistent with surrounding areas. They have minimized the width of their driveway.

Variance for stacking: He showed the pizza shop and coffee shop as 2 separate buildings. The Domino's is not a "drive through" window, but is really a pick-up window. It's not designed as a drive thru like a Dunkin Donuts would be. They may see 4 people at a time on a busy night. Rick Yeames explained. The idea is that there is no way to order in the (Domino's) pick-up window lane. You really can't have a drive thru for a pizza place as it takes longer to cook. Mr. Hill says there's no real classification in the ordinance to address this type of use. They are asking for 6 spaces for queuing. The purpose of this regulation is to keep traffic from backing into the street. The proposed design is to allow adequate length. Winters asked about variance #2. You want to allow off street parking (in front of the building). What is in the front of the building? Mr. Hill stated that parking in the front of the building is for 3 spaces by the tip of the triangle. The coffee shop will have a customer walk up window (in addition to the drive-through). Because they have double frontage they only have one area to park vehicles. Safe access to the facilities is one of their concerns. There will be a visual barrier. They have dead space they are not able to utilize. Monahan asked what the difference between a drive thru window and a pick up windows are in other communities. Walker answered Monahan's question (pick up only, no ordering station, is generally related to retail uses. Drive-throughs are usually related to food service and have order stations as well as pick-up windows). Carley asked why 2 buildings? Why not one building with two businesses? Mr. Eames said they have totally different hours. Pizza shop is open at night primarily and coffee shop is mostly in the morning. They are also different companies. One is Domino's and one is Aroma Joe's. Not the same parent company. Bob Myers stated that Aroma Joe's is a drive thru only (no walk-in) and the building design is part of their brand. Winters it seems like they wouldn't need the variances if they had one building. The economic viability is the main argument for why they need the variances. Mr. Hills said it's both. The kitchen design is also an issue. Winters asked if just

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one business won't work here because they couldn't make enough money there. Eames said his present site is half the size of this one and Concord has more density than here. This building is 1500 s.f. vs. 2100 s.f. at his present site. It necessitates bringing in a 2<sup>nd</sup> person to make it viable. Winters: it's been vacant for 10 years but allows for commercial use. There's no 1 single business to fit in there? Eames stated that as a point of fact Aroma Joe's potential owner tried to do it with just their business and it wasn't feasible. Monahan talked about the driveway and Manor Road. He asked if they had to operate with a 15 foot driveway vs. 24 feet would they still go forward. Mr. Hill said 24 foot allows the tractor trailer to make the swing out. The 24 foot allows the exiting truck and it also allows someone coming from Fisherville Road to make a left, etc. Monahan asked if there were any other commercial activity on Manor Road. Hill said it is all residential. Monahan asked how far the commercial zone goes down. Walker said one property further on Manor Road. Rick Eames said south of them is Thirty Pines and is all commercial.

In favor: none.

In opposition: Devin Rodrique, 48 Snow Street. His property spans (fronts on) Snow Street and Manor Road. Almost all of Manor Road is 100% residential. Penacook does need more businesses and needs more economic development but there is space elsewhere. This small lot will have a negative impact on traffic flow and quality of life of people nearby. His main concern is traffic flow and parking. Items 1 & 3 will bring traffic congestion. #1 variance – How will truck deliveries work in such a tight space? The road is tight and the turn will also be tight. Trucks will be diverted to Manor Road according to the applicant. What happens if more than 6 or 7 vehicles arrive at the same time? Where does that traffic back up go? When do they plan on being open? When do they plan on deliveries? The variance for the buffer will affect the residential area. Public safety will be affected when they introduce tractor trailers into a residential neighborhood. Carley asked Walker to show the maps with the aerial photos to get a better idea of the property layout.

Ann Graham, lives in Franconia NH but owns 9 Manor Road which is her dad's home. It is directly across from the proposed site exit onto Manor Road. Her dad bought the house in the 60's and he's lived there since. She is in strong opposition to this request. Having a pizza shop and coffee shop that are open very close to 24 hours a day. No amount of arborvitae will help (shield) the light pollution. The traffic it brings is not good. This is a great neighborhood. The side walk is large and is greatly used. She was in touch with the traffic engineer and learned the traffic count was last done in 2012 and that was about 1900 cars from Monday to Wednesday and she'd argue it's higher now.

Code: Walker noted (in response to a comment) that a 24 foot width drive is for 2 way traffic; 15 foot width is for single lane traffic. Walker read from the Ordinance on the purpose of buffers and how they are intended to mitigate the impact of light, odor, etc. Carley asked if the strip was along Manor Road and Walker said yes and the driveway is cutting through that buffer.

In opposition: Melissa Coulombe, 15 Manor Road (across from the proposed Manor Road exit). She would like to know why and how they will fit a tractor trailer in and out of that entrance. Her husband drives a tractor trailer and there is no way a tractor trailer would be able to make that swing without going onto her property. And how will the parking lot lighting not go into her home? She has her grand kids and there are other kids in the neighborhood. Winters noted that commercial use is allowed there. She understands that. There is another proposed site that could be used and would be better used for them. Carley noted that some of what she was commenting on was not under the purview of the ZBA and commented that the Planning Board would be the place to discuss those issues. She is concerned with lighting. Carley said the Planning Board will discuss that issue. Concern with traffic.

Walker mentioned the pickup window. He would like it to be noted that if, the stacking variance is granted, if there is any future change in business plans or occupants that change how the pick-up window is utilized they will have to come to Code Administration to clarify that.

Rebuttal by Mr. Hill. Traffic flow – They've looked at this based on predicted volumes of traffic. They don't anticipate any additional traffic issues. They spoke with the City Traffic Engineer about the Manor Road. It has a long left turning lane that was overdesigned. There is capacity to provide enough of a space for a cut in on Fisherville Road. Lighting was discussed. Delivery trucks – the truck access will be coming into the property from Fisherville Road. They will exit onto Manor Road. Carley asked how much they exceed the parking requirement. Mr. Hill said it's approximately 8 spaces. Carley asked if that was 8 spaces more than the City's asking of you. Mr. Hill said correct. Carley asked for the hours of operation. Aroma Joe's is open from 5 am to 9 pm. Domino's is open from 10 am until approximately 11pm or 2 am. Mr. Hill said they are planning to preserve the stone wall.

DECISION: Carley gave an overview of testimony and the requests.

#1 – buffer variance – driveway cuts through the buffer on Manor Road. Wallner – the hardship requirement is present as it's a unique lot with 2 front yards. He sees no alternative to moving the Manor Road drive anywhere else. Winters asked if that was true if they only had 1 building/business there. Is the drive necessary because of the 2<sup>nd</sup> business? Carley felt they can't address that as they have been presented with 2 buildings, not one. Winters asked if they only had 1 building, would these variances be necessary. However, if they could put the building there it wouldn't be as profitable, so therefore it's a self-inflicted hardship. They are entitled to have some use of the lot, not maximizing the lot. Monahan said whatever use is on the property it would have to have a curb cut. Walker stated there was an existing curb cut (on Manor Road) but a change in use from vacant property (previously residential) to commercial use requires all the parking regulations and curb cuts to be brought into compliance. Harrison stated that if they can't

have the variance to go through the buffer it makes the rest suffer. Winters asked if they could do it through Fisherville Road. Carley explained. Winters feels the 2 buildings create the hardship. If this was the only way they could get use of this, but if there were only 1 building they wouldn't need this. Carley asked if it came down to the reasonableness question. Winters noted that they admitted that it's the economic viability. Do we accept that? Carley stated the applicant stated that the way the lot is zoned no business that is allowed there will do very well due to the characteristics of the lot. Carley feels it comes down to whether or not it's a reasonable use. Wallner noted they have to consider that the property has been vacant for a long time. A motion to deny the request was made by Harrison, seconded by Winters and passed by a 3-2 vote with Wallner and Monahan in the minority.

#2 variance – parking setbacks: The lot has 2 front yards. Wallner said the Board has approved this type in the past. A motion to approve the request was made by Wallner and seconded by Monahan. Winters felt it was self-inflicted. Carley felt the characteristic of the property support the request. The motion passed by a 4-1 vote with Winters in the minority.

#3 variance – Off-Street parking for 6 drive through queuing spaces. A motion to approve the request was made by Monahan with the condition that any future change be brought forward to Code Administration for review, seconded by Wallner and passed by a unanimous vote.

**06-19 Martin S. & Kimberly M. Donovan:** Applicant wishes to renovate an existing building into a branch bank with drive-up teller and requests the following:

- 1) A Variance to Article 28-7-7(g)(2), Setbacks From Lot Lines, to allow parking with not less than a 2 foot +/- setback from the front property line adjacent to South Main Street and no less than a 4 foot +/- setback from the front property line adjacent to Perley Street where a 10 foot setback is required parking adjacent to a front lot line where it abuts a collector or arterial street,
- 2) A Variance to Article 28-7-7(g)(3), Parking to be located to the side or rear of a building, to allow parking to be located on the east side of the property between the building and South Main Street,
- 3) A Variance to Article 28-8-3(c), Use of a Non-conforming Lot, to allow the development of a non-conforming lot where such development does not comply with all yard, setback, parking or other requirements of the ordinance, for property located at 74 South Main in a CU Urban Commercial District.

Testified: Mark Sargent of Bartlett Associates. Also testifying is Greg Steversen and Jeremy Greeley.

Greg Steversen testified. He gave an overview of the site plan. This property has the old Medicine Shoppe building. They showed the current site plan. There is no green space on the property. Parking is up against the property. Access onto Perley Street and S. Main Street. They have met with Concord officials and presented this to ADR yesterday. The overall objective is to bring this as much as possible into conformance with the Ordinance. They will be adding green space along the S. Main Street and Perley Street sides. They are asking to leave 3 parking spaces against the back property line. There will be one entrance off Perley Street. There will be stacking around the building. They are asking for a variance for parking within the setback. They are eliminating parking in front of the building. The other variance relates to the overall lot. This will be a change of use on a nonconforming lot due to its size. Carley asked if they would be remodeling the existing building. They said yes. They showed pictures of the redesigned building. The location once housed a garage. And then it was converted to the Medicine Shoppe. Mr. Greeley said the only addition to the building is going to be the glass vestibule on the front. Mr. Steversen feels that they fulfilled the City's requirements as best as they can. This will enhance values of surrounding properties. Mr. Greeley noted that they will be adding landscaped areas which reduce the impervious area. Monahan asked if Perley Street was one way. Mr. Steversen said it is. Monahan asked if there were an entrance and exit onto Perley Street. Mr. Steversen said yes based on City staff recommendation. Winters asked if all the variances were essentially because they were currently a preexisting use. Mr. Steversen said correct.

In favor: none.

In opposition: Robert Kirsch, 110 Runnels Road and is one of the owners of the property that surrounds the lot in question. He owns 1 Perley, 3 Perley and 78 S. Main Street. They purchased the property with an eye towards putting something together for the City at the southern entrance to the City. They have spoken to the property owners to the south to combine their properties. The corner lot where the bank is proposing is key to this. Their hope would be that the Board would look close and hard at this request. They would like to see zoning standards applied. Properties values would be more enhanced.

Code: Walker has none.

Mr. Stevenson for rebuttal. Mr. Kirsh's comments have been heard. The bank would have undue hardship if they were to pause. Something of this magnitude is a multiyear project.

DECISION: Carley reviewed the testimony and requests. Winters – they have seen similar scenarios where existing structures and layout necessitates a variance. Harrison agrees with Winters. They are trying to take an existing lot and building and do the best they can to bring it into compliance. Monahan agrees with Harrison. They are improving it. Carley agrees with Harrison too. Reasonable use of the property. Walker said they have spoken with the Traffic Engineer to optimize the location of the curb cuts. Walker stated FM ZBA 2.6.19

that the proximity of the driveways etc. that will require a Conditional Use Permit through the Planning Board. Wallner – its location on a corner lot exacerbates some of the property requirements. A motion to approve all three requests was made by Winters, seconded by Harrison and passed by a unanimous vote.

**07-19 Jeffrey L. Green for the Marilyn G. Curtain and John J. Curtain Revocable Trust:** Applicant wishes to correct a non-compliant building location by adjusting the location of the lot lines and requests the following:

- 1) a Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to allow for a lot line adjustment resulting in a non-compliant lot size of 34,251 square feet +/- where the minimum lot size required is 40,000 square feet of lot area,
- 2) A Variance to Article 28-4, Development Design Standards, to allow the use or development of a non-compliant property that does not meet the minimum lot size for the base district, for property located at 21 Fox Run in an RM Residential Medium Density District.

Testified: Jeffrey Green, Land Surveyor. He gave a little history. In 1980 they (a previous developer) started developing the property. It was done in a couple of different phases. The development started as a cluster (phase I) and was completed as a regular subdivision (phase II) several years after the completion of Phase I. They are in the phase II portion. The development was foreclosed on and sold and they redid the subdivision. The first property was sold the day the new (phase II) subdivision got recorded. The phase II subdivision was subsequently redesigned and a second phase II layout was approved and recorded. (In short approved layouts were changed but the pins were not all relocated.) His clients didn't know that the pins were not relocated. The property was sold in 1996 and a garage was put up on the abutting property. Both clients thought they knew where the lines were. They came to the City and put up a garage with permits. 80% of the garage is on the wrong lot. It is the same owner that owns both properties. Lot 21 went up for sale 6 months ago and they had a buyer come in and they realized the garage was over the line. They wanted to do a lot line adjustment. To resolve the issue, the property owner of lot 19 bought lot 21. So now they are working with one client to resolve the garage issue. Lot 19, which is the lower lot is 40,001 s.f. Lot 21 is 40,338 s.f. So they have very little to work with where a requirement of 40,000 s.f. is needed. Lot 19 has 200.1 feet of frontage. Lot 21 has 338 feet. They would be reduced to 34,251 s.f. for property size. They want to extend one line which would allow him to have the setback requirements met. 21 Fox Run will have a deficit with square footage area after subdivision if approved. There is a banking between the two houses. It is wooded. The survey was done in 1980 had several errors in it. He resurveyed the property all the way back to the original survey. He is trying to make both lots compliant.

Carley asked why it wasn't an equitable waiver. Walker explained, it could be if the request was for relief from the existing property lines. In this case they are proposing to do a lot line adjustment so, the new line locations must be in compliance (without requesting a variance)

In favor: none.

In opposition: none.

Code: Walker appropriate permits were pulled for garage and improvements.

DECISION: Carley reviewed the testimony.

Winters: It seems like its common sense to grant this. To justify it – each lot has a lot of open space. It's not interfering with neighbors or open space. Harrison – reasonable use. Same owner for both lots. Monahan agrees. A motion to approve the requests was made by Harrison, seconded by Winters and passed by a unanimous vote.

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

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK  
ZONING BOARD OF ADJUSTMENT