

CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
JULY 10, 2019 MEETING
DRAFT MINUTES

Attendees: Chair Christopher Carley (Conflict with Case #32-19), Nicholas Wallner, Andrew Winters, Jim Monahan, Laura Scott (Conflict with Case ##29-19 and 30-19).

Absent: Robert Harrison Jr.

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

Meeting commenced at 7:00 pm.

27-19 Donald Jewell for ECNH Realty, LLC: (Request For Rehearing) Applicant wishes to use a vacant property for outdoor storage of vehicles, storage trailers, and equipment and requests a variance to Article 28-5-37(d), Maximum Area of Lot to be Used or Designated for Outside Storage, to permit the outdoor storage of vehicles, trailers, equipment and materials (use K-7) where outside storage areas are allowed only as a ratio of land area to building area of 1.3 to 1 which is the ratio of the area of outside storage to the gross floor area of the buildings on the lot which house the principal use for property located at 39 Locke Road in an IN Industrial District.

Board consisted of Carley, Wallner, Winters, Monahan and L. Scott.

The Board reviewed the information provided.

Wallner: Page 2 of the letter requesting a rehearing notes that Mr. Lafevre mis-spoke or misunderstood without knowledge of what was being done on this site. Item #14 of the letter refers to comments the zoning board made regarding the applicant having no intention to build on that property.

Monahan: He didn't see anything new that he hadn't heard at the public hearing. He doesn't believe there was any suggestion of the applicant needing to build a building.

L. Scott: Was not at the original hearing. Did the abutters testimony play a role in the board's decision? As she reviewed the Minutes she didn't believe the abutter's testimony played a role in their decision. There isn't any new evidence, perhaps clarification.

Winters: He recalls the abutters positions were not relevant as their objection was based on the appearance or traffic. The applicant seems to feel that the Ordinance itself is improper. He doesn't believe that's something they should consider. Paragraph #14 the applicant says that the board misunderstood. He testified he wasn't going to build that's why he needed the variance.

A Motion to deny the request for rehearing was made by Winters, seconded by Monahan, and passed by a unanimous vote.

30-19 Concord Coalition to End Homelessness: Applicant wishes to convert an existing nonresidential building to four (4) one-bedroom dwelling units and requests the following:

- 1) A Variance from Article 28-5-7, Conversion of a Non-residential Building, Section (a), Conversions Resulting in Five (5) or Fewer Units, to allow the conversion of an existing building to accommodate four (4) dwelling units on a 3,702 square foot lot when a minimum lot size requirement for a four (4) unit conversion requires a minimum lot size of ten-thousand (10,000) square feet,
- 2) Variances from Article 28-5-3(b)(4), Minimum Size of Dwelling Units, to permit a conversion resulting in dwelling units no less than five-hundred (500) square feet in gross floor area where a minimum of six-hundred (600) square feet of gross floor area is required for each unit,
- 3) Variances from Article 28-7-1, Access, Circulation, Parking and Loading Requirements, to permit the existing non-compliant parking configuration to continue when access, circulation and parking requirements are required to be brought up to current requirements, including:
 - a. Variances from Article 28-7-2(e), Table of Off-street Parking Requirements, to provide four (4) non-compliant on-site parking spaces where eight (8) compliant parking spaces are required,
 - b. Variances from Article 28-7-5, Requirements for Handicapped Accessible Parking Spaces and 28-7-7(c), Handicapped Accessible Spaces, to not provide a compliant accessible parking space where one (1) accessible parking space for is required and the first required space must be a van accessible space,
 - c. Variances from Article 28-7-7, Parking Area Design Standards, to allow a parking configuration which does not comply with the parking lot design requirements of providing full on-site parking with compliant, individually

- accessible parking spaces, internal drive aisles for vehicle movement and maneuvering, does not provide a five (5) foot setback from the property lines and does not provide for a five (5) foot landscaped strip around the perimeter of the parking area,
- d. Variances from Article 28-7-8, Access and Driveway Standards, Section (a), Restrictions on Backing into a Street, to permit a parking configuration that does not provide adequate onsite room for maneuvering and requires vehicles to back into and maneuver in the street to enter or exit the parking area,
 - e. Variances from Article 28-7-12(b)(3), to permit parking in the front yard, where all parking is required to be to the side or rear of the building,
- 4) Variances from Article 28-4-1(h), The Table of Dimensional Regulations, to permit the installation of an accessible ramp with a 5 foot setback from a front property line where a fifteen (15) foot setback is required, for property located at 10 Green Street in a CVP Civic Performance District.

Testified: Attorney Jeffrey Christianson and Ellen Groh, Executive Director.

Attorney Christianson gave an overview of the site. The property is owned by Merrimack County. The property is currently being used for an office building. It was built over 100 years ago as a residential property. The current use is office and the Coalition wants to convert it to 4 one bedroom units. The building will remain the same. This will only change the interior floor plan. It is located in a fairly dense neighborhood. There are currently residential as well as business uses in the area. The zone does permit multi-family units. Due to the age and size of the building they need these variances to move forward.

To convert an old building into a multi-family building the minimum lot size requirement is 10,000 s.f. This property is under 4000 s.f. There is a requirement that the one bedroom units need to be 600 s.f. Due to the size of the building some units will be less than 600 s.f. and more than 500 s.f. There is parking on the property; enough for 4 cars. They wish to install a handicapped ramp, which will be in the setback.

Generally the only reason they need a variance is due to the size of the property. Multi-family homes are permitted in the district but the parcel is too small. The size requirements that might normally be justified are not as applicable here. There will not be any negative impact or overcrowding. The footprint will stay the same. There will be less people coming and going during the day if they change it from office use to residential use. This will alleviate some traffic. They want to use this for affordable housing for people leaving homelessness. This is primarily for individuals, not families looking to make it a long term residence. The parking spots will not be necessary as most of the residence may have one car if that. The building will be professionally managed. This will provide additional housing that is needed. This will provide housing to people that need it most. It will reduce the demand for public services. It would provide opportunity for people to try to improve their lives.

Ellen Groh of the Coalition testified. They operate a day time resource center. They see 40-60 people a day come in. They see about 600 people within a year. They operate the emergency winter shelter, which served 40 people last winter. They help with rent vouchers. They have a case worker. They have trouble finding affordable housing. Their goal is to end homelessness in Concord. They want to convert the building into 4 one bedroom units. They will be apartments. It's not a group home or congregate living. One person living in each unit. The units are prioritized for people coming from homelessness. The financing is coming from NH Housing Finance Authority. There will be 2 apartments upstairs and 2 downstairs. They will have their own entrance. The units are approximately 600 s.f. each. The Coalition will provide ongoing supportive services to the tenant once they are housed. They will make home visits monthly. They are planning to hire a professional management company. The individuals will have to be substance free. Anyone who is violent, on the sex offender registry list or have substance abuse issues will not be able to apply for these apartments. It is an ideal location as many of their clients do not have cars. They can walk to the resource center. There will be less traffic and parking issues than the office that was there. The office use had, from what they told her, 5 staff members as well as 20-30 visitors each week.

Winters: Would they be able to convert the building to a 2 or 3 unit building as a matter of right? Attorney Christianson said they would still need a variance as the property is nonconforming. Winters questioned if there were something about the building that lends itself to a 4 unit. Ms. Groh noted that the layout of the building itself lends it to 4 units. On the Blake Street side there would be a handicapped access ramp that leads to a downstairs unit. Attorney Christianson noted that a lot of utilities are already there.

Monahan questioned why a handicapped parking space was not being provided. Attorney Christianson explained that any handicapped parking has size requirements that cannot be provided given the space on this property. If a handicapped residence needed a spot, they would designate one. Walker explained that the dimensions vary. A standard parking space is 9' x 19' and an accessible parking space is an 8' x 19' with a 5 foot access aisle next to it. Attorney Christiansen explained that it is the access aisle they do not have space for. Monahan asked who will own the property. Attorney Christiansen explained that the Coalition will own it. Monahan asked if they owned other property. Ms. Groh explained that they also own 238 N. Main Street.

Wallner questioned if they would have staff on board. Ms. Groh explained that there would be no staff on site. They will just have a property management company.

Sakowski questioned if there would be parking in the front yard. Attorney Christiansen explained that the parking area preexists on the lot. The drawing shows where it is. Sakowski asked if the parking were on Green Street. Attorney Christiansen said it was not.

Sakowski asked if the rental agreement would allocate the parking spaces. Ms. Groh said it would. They do not intend to overcrowd the units.

Winters questioned the units being less than 600 s.f. He would like a specific square footage number. Attorney Christiansen explained that some will be less than 600 s.f but most will be close to 600 s.f. They haven't finalized the floor plan.

In favor: Connor Spenn. What they are doing is great.

Roy Schweiker testified. Parking in the front yard is bothering him. He feels it is side yard parking, not front yard parking.

Tenley Callaghan testified. She lives on Main Street. She is a Board member of Concord Coalition to end Homelessness. She's attended some of the steering committee meetings on homelessness. This is a creative solution.

Jonathan Halle, Warrenstreet Architects testified. He will be the architect for the project. He's a supporter of the Homelessness Resource Center. He'd like to remind the Board that this isn't about choosing your neighbors, but this is about zoning issues. Who occupies this building is not the issue before the Board.

Greg Lessard, a Board member for the Coalition. He's been in the building and feels it's a perfect layout for this use.

Tracey Strombom , who is here in a dual role. The parking lot behind this building is owned by them. They own 33 Warren Street, which is a 9 unit building. They have Warren Street Family Counseling in the building. They had concerns and contacted the Coalition. The Coalition responded to him quickly. Their 17 therapists support the requests.

In opposition: Attorney Dan Luker of Preti-Flaherty. He's representing 7 Green Associates who owns 7 Green Street as well as Penacook Fibre Company and Rick Allen who owns 9-11 Green Street. The 7 Green Street property is Frasier Associates and houses a Company and 30 Residence also live in 9-11 Green Street. Mr. Allen submitted a letter this afternoon. He passed a copy out to the Board. They are not opposed to the good will of the Coalition. Neither the Board nor abutters have complete information on this project. This is a neighborhood and they do not feel it is a perfect fit. They don't feel the applicant has provided enough information to meet their burden of persuasion. It is a grandfathered nonconforming use. It's also property that can be sold, used and occupied as is. It's been used as a residence and an office. In a sense the unnecessary hardship was created by the applicant and the owner. In order to get there they have to show the Board they comply with all the standards. The dimensional standards are there to provide more space, more buffering, more parking more room to accommodate a multi-family use. There are 4 parking spaces that are not compliant. They have inadequate parking now and the street is already filled. If granted, the property and property rights of neighbors could/would be injured. These are not the minimum variances necessary to have reasonable use of the property. The applicant said, in their opinion, the property values would not be diminished. That is only their opinion. It's the burden of the applicant to give you information that all the standards have been met. It was baffling that the applicant didn't go to their abutters to let them know what was going on. There will be other visitors, etc. The Coalition will be hands off once this is in place. There are serious safety, parking and traffic issues. They are within 200 yards of a daycare center. The Christa McAuliffe School is nearby. This is a concern. The legal standards shouldn't be waived or lowered because this is a good cause. The variance runs with the land. If this project fails, you have a property with a lot of relief granted. They respectfully request the Board deny the variance requests.

Rick Allen owns 9-11 Green Street. It is 20 units. He has owned the property for over 20 years. Ellen Groh reached out to him late this afternoon to discuss his concerns. Unsupervised visitors on site could be a concern. These units are supposed to be for one person, but there could be 2 people. There could be as many as 12 people there. He doesn't believe this is the best location. Winters asked how many parking spaces he has. Mr. Allen said 20-25 parking spaces.

Karen Maynard, 8 Blake Street. She has lived there for more than 35 years. She doesn't feel that they have been given enough information. A master plan was mentioned. She'd like more information on that. There aren't many single family homes. She has 2 two family homes. Their driveway is opposite of the driveway to her home. She has 6 parking spaces and her tenants use all of them. For the 35 years she's been in the neighborhood, it's always been an office building. Parking is an issue on Blake Street. When people crowd your driveway there is no room to maneuver. She would like to know if they could have numbers for the case workers in case there are issues at night. She said it is difficult to get funding. What if they run out of money? Will it fall into disrepair? Most of her tenants are single women so she would like to keep them safe. Why can't it be a 2 unit, which is more in keeping with the neighborhood?

Carol Royce. She is not an abutter but she would like to see a picture of the ramp design. Where they want to put the ramp is 8 steps. The ramp would be 56 feet long. There is no room for a ramp on that building. Carley said the design of the ramp is not something that the Zoning Board can address. That would be dealt with by the Building Department.

Caitlyn Brennan, 12 Blake Street. She bought it 2 1/2 years ago. She applauds the mission of this project. She needs and wants more information. There isn't enough information to warrant all the requests. The area is congested. Parking is a problem. It's a great home. Handicapped parking is an issue. She is concerned with emergency vehicles being able to come and go. Wallner asked where her home was and she pointed it out. It is a single family home.

Letters: An email from Rick Allen who testified earlier. Gena Balkus CEO of Homecare Hospice at 8 Green Street. They are in favor of the appeal. Practical use of this type of building.

Code: Walker – recognize that it can be difficult to separate emotions from criteria and legal standards. Variances are based on conditions of the land and not the owners or occupants.

Rebuttal: Attorney Christiansen. The parking lot is not intended to change. The number of people going to and from the property will be reduced. The Coalition has reach out to abutters and tried to address their concerns. The Coalition will be retaining property managers. There would also be case workers helping. Ms. Groh testified that the terms of their financing require them to continually use this property for 40 years. It's a forgivable loan. They have enough money to operate. Attorney Christiansen stated that these would not be family units. The types of people living at a property are the same for any residential property. The people that live there is not the issue before the Board. Ms. Groh commented that the Coalition did send their own letter to the same list of abutters that the official letter went out on. The letter had their phone number on it for anyone to contact them if they had questions.

DECISION: Carley reviewed the information and testimony given.

Winters: 50% of what the applicant said and 50% of what the abutters said doesn't have much to do with the application. It looks like a multi-family building. If it was currently a residential building and they wanted to turn it into an office building they may need as many variances.

Sakowski: Concerned with hardship. He doesn't see where that has been met. He doesn't believe 2 units or 3 units would work there either. He doesn't see why the desire to change it translates to a hardship.

Monahan: He agrees with Andrews observations and Sakowski's concerns. He's disappointed about the handicapped parking. The applicant does need to come in and make an effort to resolve the issue.

Wallner: Persuaded they meet 4 of the 5 criteria.

Carley: Agrees with everyone who said that whoever lives there is none of the Board's concerns. It is a question of whether it is a reasonable use of the property given the particular characteristics of property. A 600 s.f. or less apartment is only going to have some people, probably 1 or maybe 2. The density of the number of people won't be a whole lot different than what could be done by right. They haven't talked about allowing apartment units that are under sized. He feels they should address that in their discussions. He can make an argument that it is a reasonable use. The parking side of it, the fact that the tenant may not have cars is not an issue that they can consider. If the subdivision of the building is a reasonable use then it follows that all of the other requests are reasonable with the exception of handicapped parking. His inclination is to grant.

Winters: agrees with Carley. With regard to handicapped parking he doesn't see that they can create one without encroaching into other spots. The size of the units isn't of concern.

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

Request #2: A motion to approve was made by Monahan, seconded by Winters. Monahan stated that the building lends itself to this type of use. Passed by a 4-1 vote with Sakowski in the minority.

Request #3b: A motion to deny the request was made by Monahan, seconded by Sakowski and failed with a 2-3 vote. Carley, Winters, and Wallner in the minority. A motion to approve the request was made by Winters, seconded by Wallner and passed with a 3-2. Sakowski and Monahan in minority.

Request #3a: A motion approve was made by Wallner, seconded by Winters and passed by 3-2 with Sakowski and Monahan in the minority.

Request #3c: A motion to approve the request was made by Winters, seconded by Wallner and passed by a 4-1 with Sakowski in minority.

Request #3d: A motion to approve the request was made by Winters, seconded by Wallner and passed by a 4-1 vote with Sakowski in minority.

Request #3e: A motion to approve the request was made by Winters, seconded by Monahan and passed by a unanimous vote.

Request #4: A motion to approve the request was made by Winters, seconded by Sakowski and passed by a unanimous vote.

32-19 Jefferson & Laura Hall: Applicant wishes to remove an existing 18' x 20' garage and replace with an 18 foot wide x 20 foot deep garage and requests variances to:

- 1) Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure (garage) to be built with a 6" +/- setback from the northerly rear property line where a 25 foot setback is required; and
 - 2) Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure (garage) to be built with 6" +/- setback from the easterly side property line where a 15 foot setback is required,
- for property located at 114 School Street in an RS Residential Single Family District.

The Board consisted of: Acting Chair Wallner, Winters, Sakowski, L. Scott, and Monahan

Testified: Jefferson Hall and Laura Hall of 114 School Street. The garage on the northeast corner of the lot has been there over 100 years. It's in disrepair. It's starting to become a safety problem. It's sinking on the northeast side of the lot and leaning. There are many holes in the garage. It's been a home to raccoons. It's difficult and expensive and not practical to repair the garage. The DM ZBA 7.10.19

neighborhood has many old Victorian homes. Many of their neighbors have garages. To the right of his garage is his neighbor's garage. This garage is an eye sore right now. It's affecting his property value as well as his neighbors. They cannot replace it within the required setbacks. Their house is in the way of meeting those setbacks. They would like to demolish the structure and replace it in kind.

Sakowski: Is there any living space being proposed? Mr. Hall said there was not. Monahan asked if there were a slab there. Mr. Hall said there was.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the variances was made by Monahan, seconded by Sakowski and passed by a unanimous vote.

29-19 [Nancy M. Paul for the Friends Program, Inc.](#): Applicant wishes to physically expand an existing Residential Social Service Center (RSSC) to accommodate a new intake area and convert an existing office to create an additional sleeping room increasing the number of sleeping rooms from eight (8) to (9) and requests the following:

- 1) A Variance from Article 28-5-5, Residential Social Service Center, and Article 28-4-5(d)(1), Minimum Tract Requirements, to permit the expansion of an RSSC on a lot with 8,364 square feet +/- of area where minimum lot size required for an RSSC is 25,000 square feet of land,
- 2) A Variance from Article 28-5-5, Residential Social Service Center, and Article 28-4-5(d)(2), Maximum Lot Coverage and Density, to permit the expansion of an RSSC to accommodate nine (9) sleeping rooms on an 8,364 SF lot and allow an equivalent unit density of forty-six (46) units per buildable acre where a maximum unit per buildable acre of land shall not exceed twelve (12) units per buildable acre of land,
- 3) Variances from Article 28-7-1, Access, Circulation, Parking and Loading Requirements, to permit the existing non-compliant parking configuration to continue when access, circulation and parking requirements are required to be brought up to current requirements, including:
 - a. Variances from Article 28-7-7(a), Standard Parking Spaces, to allow parking spaces seventeen (17) feet in length where nineteen (19) feet is required,
 - b. Variances from Article 28-7-5, Requirements for Handicapped Accessible Parking Spaces and 28-7-7(c), Handicapped Accessible Spaces, to not provide a compliant accessible parking space where one (1) accessible parking space for is required and the first required space must be a van accessible space,
 - c. Variances from Article 28-7-7(e), Minimum Aisle Width, To permit a parking lot configuration with a drive aisle twelve (12) feet in width where a minimum width of twenty-four (24) feet is required for two-way traffic,
 - d. Variances from Article 28-7-7, Setbacks and Restrictions, Section (g)(2), Setbacks From Lot Lines, to permit parking not less than six (6") inches from the easterly side property line where a minimum five (5) foot setback from the adjacent property is required,
 - e. Variances from Article 28-7-8, Access and Driveway Standards, Section (a), Restrictions on Backing into a Street, to permit a parking configuration that does not provide adequate onsite room for maneuvering and requires vehicles to back into and maneuver in the street to enter or exit the parking area,for property located at 30 Thompson Street in an RD Residential Downtown District.

The Board for this request consisted of Chair Carley, Winters, Sakowski, Monahan and Wallner.

Testified: Attorney Philip Hastings. Jason LeCombe also testified. The shelter has been operated since the early 1980's. It has 8 bedroom units. It is staffed 24 hour 7 day a week. Last year they served 53 families. They turned away 250 families that they could not serve. It is housing. The average stay is between 4 and 6 months. They have letters from 2 of their abutters that they are in support. He will make copies. He showed the footprint of the building and the 8 parking spaces they would have with a small shed and an enclosed dumpster area. This property has setback limitations. The building was built in 1880. They have an existing ADA ramp and outside deck. The facility has 8 bedroom units in 3 different units. The plan denotes them as A, B and C. A is on the floor level, B is upper and C has upper and lower. There are also staff offices there. He showed the renovation plans. They propose a small addition which is now the deck. They are taking one office space and making it a bedroom. They are relocating the office.

Attorney Hastings testified. This has been operating on this site for 30+ years. It was approved in 1988 by this Board. It is located in a downtown residential zoning district. There is a mix of properties in the neighborhood including two-family homes, larger apartment buildings, a single family, 3 family, etc. As they are altering the nonconforming building they are required to seek variances. It will not alter the characteristics of the neighborhood. The ordinance is to promote convenience, comfort and quality of life in Concord which is best served by increasing the number of beds in the shelter. An addition of a single bedroom will only promote the purpose of the ordinance. It is in the public interest to support these families. The shelter has been positively received by the neighborhood. The surrounding neighborhood is residential. Parking spaces, as laid out now, are inadequate in terms of size. The ordinance now requires DM ZBA 7.10.19

spaces that are 19' x 9' and these are 17 feet in length. Historically this has been back out parking. Thompson Street is one-way traffic.

Monahan: Asked about handicapped parking. Attorney Hastings said they do not have designated handicapped parking now but they can designate one of those spaces as handicapped parking. It won't meet the dimensional requirements. Monahan would have preferred that the applicant come in and say they will have handicapped parking and here's how they are going to do it.

LaCombe explained that they are not changing the property. This is an existing condition that has existed for the life of the facility. There is no parking changes proposed to this project. Attorney Hastings noted that Mr. Walker suggested that they approve all the variances subject to the condition that they designate a place on a plan. He thinks maybe they table the handicapped space request and move forward with the other ones. Walker suggested that a recess might be more appropriate.

Sakowski: Asked what formula was used to calculate the parking. Walker explained that it was based on the number of beds. Mr. LaCombe stated that it appears as though the first space is striped and sized for handicapped parking. Monahan asked why they asked for the variance if they had an accessible space. Mr. LaCombe explained they are trying to make an existing condition right.

In favor: David Denis, Pastor of the United Baptist Church. They are an abutter. Because of the work that this institution is doing and the shelter they are providing he is encouraging the Board to interpret this generously.

In opposition: none.

Letters: Kevin Twombly, 39 Fayette Street. He is the pastor of that church. (they share the building with the Baptist congregation) He is in favor of the expansion. Letter is in the file.
Miles Tarbell, Keystone Management VP. In favor.

Code: none.

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

Winters: Discussed the handicapped parking space request. Can the Board grant it on the condition that a specific spot were designated for that? Carley doesn't feel the Board should be designing their parking lot. He's inclined to grant it as it's a reasonable use considering their long standing use there. He is inclined to grant all the variances and with 3b, accept their statement that they will be designated one spot but need variance based on the size.

Sakowski: This is not an entire change. It's a moderate modification. He has no strong opinion with regard to how they go forward with the handicapped parking space

Monahan: This is a modest change to the structure. With the exception of 3b he is comfortable with it. He'd like to deny the handicapped parking variance to encourage them to design a compliant parking lot.

Wallner: Feels there is very little change. 1 & 2 he's comfortable with and 3a, c, d, e

A motion to approve request number 1, 2, and 3 with the exception of 3b was made by Wallner, seconded by Monahan and passed by a unanimous.

Request #3B – A motion to recess the request until the August 7th meeting was made by Wallner, seconded by Monahan and passed by a unanimous.

The approval includes 17 feet vs. 19 feet in length but would require the 5 foot access aisle next to it. Carley asked if it was the consensus of the Board that they grant 17 feet deep spaces. All agreed but Monahan.

28-19 Stephen Duprey for Foxfire Property Management: Applicant wishes to install a freestanding sign, eighty (80) feet tall and two-hundred eighty-five (285) square feet in area and requests the following:

- 1) A Variance from Article 28-6-9(a), Table of Maximum Sign Dimensions to allow an eighty (80) foot tall freestanding sign where the maximum allowed height of a freestanding sign is twenty (20) feet,
 - 2) A Variance from Article 28-6-9(a), Table of Dimensional Regulations, to allow a two-hundred eighty-five (285) square foot sign when the maximum allowed is one-hundred (100) square feet,
- for property located at 70 Constitution Avenue, Unit #1 located in an OCP Opportunity Corridor Performance District.

The Board for this case consisted of Carley, Wallner, Winters, Monahan and L. Scott.

Testified: Stephen Duprey and Attorney Laura Hartz of Orr & Reno.

Mr. Duprey gave a history of the property. The hotel and conference center was built in 2000. They reviewed a slide show. The signage is not visible from the highway. He showed designs of different sized signs. They would like an 80 foot sign. Marriott is going DM ZBA 7.10.19

to change the façade color. He showed what the sign would look like where they'd like it placed. It will be 30.5 inch tall lettering on a ground sign. He compared it to the new Concord Hotel Sign which is visible from the highway. Approximately 80% of the business comes from traffic driving south to north. Walk in business is about 25 to 30% of their business. The Comfort Inn had 2,488 guests that came in without a reservation. The Courtyard had 262. The visual barrier which is I-393 makes a significant impact on business. They tried to get an offsite signage, but Concord doesn't allow that. The federal highway regulations stated that you cannot have a sign within 6 feet of any exit of a highway. If granted they will eliminate the one located in front of the Concord Hospital building. He gave an overview of the uses along the highway and the signage they have. There are only 1 or 2 other properties that may need this relief. This would not be contrary to public interest. The spirit of the ordinance is observed. Substantial justice is done. Literal enforcement would create a hardship to them. They have a lower elevation. This is the minimum signage that would work for them in this location.

Wallner: What is the tallest sign on I93 South. Mr. Duprey said they received a variance in 1989 for Comfort Inn to be raised to 30 feet. Wallner: What is the largest square footage of the sign? Mr. Duprey said he believes 100 s.f.

Monahan: He discussed the new hotel building off of Exit 12, which is above the highway. How much higher is that going to be? Mr. Duprey said that the plan there is to have 1 sign shared by the restaurant and hotel and a building mounted sign.

Attorney Hartz: Hotel Concord sign is 256 s.f.

Monahan: Will it be electronic? Mr. Duprey said it would not be electronic. Monahan: If you are going high you need to go bigger to be proportionate? Mr. Duprey agreed. Monahan: Are you removing sign in front of Concord Hospital building? Mr. Duprey said yes.

Winters: Did you apply for a similar variance in 2001. Mr. Duprey said yes. Winters asked if it were materially different. Mr. Duprey said it is as standards have changed.

L. Scott: Is there lighting proposed? Mr. Duprey: It will be internally lit. L. Scott: Will any elevation changes in the proposed highway revamp. Mr. Duprey stated that they have no planned elevation changes to I-393 as part of the I-93 widening that he's aware of.

In favor: none.

In opposition: Roy Schweicker. Opposed as it is contrary to public interest. Large illuminated signage is not welcome. Because you allowed something for the Hotel Concord and Antique Gallery doesn't mean you have to grant this one. Mr. Duprey's walk in business has nothing to do with his sign. It is an expensive hotel so he may get fewer customers for that area.

Code: Walker: There are repeated instances of people asking for variances for signage for visibility from the highway. There is a tipping point where the Zoning Board is effectively changing the ordinance by granting these things where this may be more appropriate to go back to City Council to see if it needs to be an ordinance change.

Rebuttal: none.

DECISION: Carley reviewed the information and the testimony given.

Wallner: In the public interest. Extenuating circumstances.

Monahan: Inclined to support. Applicant is also removing some signage if this is approved.

L. Scott: She would want it a condition of approval is that the sign before the hospital building be removed if approved.

Winters: He agrees. Mr. Duprey may get less walk in traffic than the others. You can't see it.

A motion to approve both variances with the condition that the sign before the hospital be removed was made by Wallner, seconded by L. Scott and passed by a unanimous vote.

31-19 Liberty Utilities: Applicant wishes to construct an office/warehousing/industrial flex, mixed use building (use L-11) and requests a Variance to Article 28-2-2(b), Purposes of the Established Districts, Section (16), The Industrial (IN) District to waive the requirement that the proposed building be serviced by municipal sewer, for property located at 14 Broken Bridge Road in an IN Industrial District.

Testified: Ann Keiner, Pathways Engineering Firm. Douglas Thorn with Liberty Utilities.

Ms. Keiner explained that in 2014 Liberty Utilities came in and constructed 2 facilities. She gave an overview of the site. Other sites have required variances from the Zoning Board. They want to construct a facility and training testing lab. It's a 15,000 s.f. building with parking. The variance is to allow them to create an on-site wastewater system. There is no sewer system on Broken Bridge Road. This is a duplication of the same criteria that was acceptable in 2014 on the abutting site. Municipal Sewer is not available on

this site and the lack of it is a special condition that distinguishes it from other properties. This will not alter character of the neighborhood. It will allow reasonable development on this site.

Carley asked how far they would have to extend the sewer. Mr. Thorn stated that he would have to extend it to Route 3 and all the way up the hill. Water exists, there are hydrants at the end of the road. Carley asked if they did a cost estimate. Ms. Keiner stated that they had not. Mr. Thorn stated that there are 2 houses across the street from their training center. To put sewer down there would be a deal breaker for them as the cost would be exorbitant.

L. Scott asked about the capacity of the septic system they are proposing? Ms. Keiner stated that it is about 900 gallons a day.

Winters asked if it were a necessity to have this located near their training facility. Doug Thorn said yes because they go from testing to training center. It also improves the security of that area. It will be manned 24/7.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the information and testimony given.

Wallner: He feels hardship requirement is met. No senses in requiring sewer hook-up.

A motion to approve the request was made by Wallner and seconded by Monahan.

Winters: Feels this is a unique business and a good reason to have their facilities put together.

L. Scott: The site use is not as intense as the ordinance may have had in mind.

The Motion passed by a unanimous vote.

33-19 Pamela Seguin: Applicant wishes to convert the first floor dwelling unit (992SF +/-) to a personal service use (use D-1) and maintain the second floor dwelling for residential use and requests the following:

- 1) Variances from Article 28-7-1, Access, Circulation, Parking and Loading Requirements, to permit the existing non-compliant parking configuration to continue when access, circulation and parking requirements are required to be brought up to current requirements, including:
 - a. Variances from Article 28-7-2(e), Table of Off-street Parking Requirements, to provide two (2) non-compliant on-site parking spaces where six (6) compliant parking spaces are required,
 - b. Variances from Article 28-7-5, Requirements for Handicapped Accessible Parking Spaces and 28-7-7(c), Handicapped Accessible Spaces, to not provide a compliant accessible parking space where one (1) accessible parking space for is required and the first required space must be a van accessible space,
 - c. Variances from Article 28-7-7, Parking Area Design Standards, to allow a parking configuration which does not comply with the parking lot design requirements of providing full on-site parking with compliant, individually accessible parking spaces, internal drive aisles for vehicle movement and maneuvering, does not provide a five (5) foot setback from the property lines and does not provide for a five (5) foot landscaped strip around the perimeter of the parking area,
 - d. Variances from Article 28-7-8, Access and Driveway Standards, Section (a), Restrictions on Backing into a Street, to permit a parking configuration that does not provide adequate onsite room for maneuvering and requires vehicles to back into and maneuver in the street to enter or exit the parking area,
- 2) Article, 28-7-14, Off-street Loading area for Refuse Containers, to provide no complying onsite refuse container location with an enclosed refuse container area that is accessible without requiring the vehicle to back into or maneuver in the road;
for property located at 27 South State Street in a CU Urban Commercial District.

Testified: Pamela Seguin and Frank Soucey. Frank explained they purchased the property on 5/17. They were looking for a partial commercial use. It's zoned in a commercial area to allow a small business on the first floor and live on the second floor. That is their hope. The building was previously used commercially. Most recently it was used as a lawyer's office. There is ample on street parking. There is a public parking lot on the corner of Fayette and South Street. Currently Pam owns a business on Main Street and there is no parking there.

Carley asked Walker if the uses were permitted. Walker said yes. They are adding a commercial use to the property.

Carley asked what type of business. She has a hair salon on S. Main Street. She had a healing business on the top floor of her S. Main Street business but closed that. She wants to move one chair and the healing business into this location. Carley asked what the healing business is. How many visitors do you get? She only sees one person at a time. Carley asked if it is 2 residential units and its parking doesn't comply as is. Walker said correct. L. Scott wanted verification that there were no other employees but her and that there would be one customer at a time. Ms. Seguin stated that she has 3 rooms there and would want to rent out one room. Winters
DM ZBA 7.10.19

reiterated that she would have two workers and potentially 2 customers at a time with the residence above. Monahan noted that the commercial use on the first floor would require handicapped parking. Ms. Seguin said they can fit it in the driveway. L. Scott asked if the first floor is accessible. Ms. Seguin said it was not yet.

In favor: none.

In opposition: none.

Code: The parking lot down the street is within the proposed redevelopment and may not be available.

DECISION: Carley reviewed information and testimony.

Winters: It's a permitted use. There is no way to accomplish any compliance. The commercial use is reasonable.

L. Scott: The use is reasonable. Parking, except for 1b. There is parking available on the street. She would take up the variances separately for decision/discussion.

Monahan: Agrees with L. Scott.

Wallner: The whole area is low intensity use in terms of customer traffic. He has no issues with the parking including the handicapped parking.

- 1a. A motion to approve the request was made by Wallner, seconded by Winters. Wallner withdrew the motion.
- 1b. A motion to deny the request was made by Monahan, seconded by L. Scott. Winters noted that there is no real way to accomplish this. Monahan said his point is that the applicant should at least go through the effort to try to accommodate it. Motion failed by a 2-3 vote with Carley, Wallner, and Winters in the minority. A motion to approve the request was made by Winters, seconded by Wallner and passed by a 3-2 vote with L. Scott and Monahan in minority.
- 1a, c, d A motion to approve the requests was made by Winters, seconded by Wallner and passed by a unanimous vote.
2. A motion to approve the request was made by Winters, seconded by Monahan. Monahan felt it was a low intensity business and feels they can handle the refuse issue. Applicant said they pay for their dumpster. The motion passed by a unanimous vote.

Minutes A motion to approve the June 2019 Minutes was made by Wallner, seconded by Winters passed by a 4-0 vote with L. Scott abstaining as she was not at that meeting.

*Respectfully submitted by,
Rose Fife, Clerk*