

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
OCTOBER 2, 2019 MEETING
DRAFT MINUTES**

Attendees: Acting Chair Nicholas Wallner, Andrew Winters, James Monahan, Scott Sakowski and Laura Spector-Morgan

Absent: Rob Harrison Jr., Christopher Carley

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

Meeting commenced at 7:00 pm.

39-19 Troy Morrill: Applicant wishes to construct a 23'(w) x 20'(d) attached garage and requests a Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a building setback of 3 feet +/- from the southerly side property line where a setback of 10 feet is required, for property located at 8 Grover Street in an RH Residential High Density District.

Testified: Troy Morrill. He purchased the home on July 23rd. It is a 4 bedroom, 2 bath home. He is the 2nd owner. It was built in the 1950's. They've been improving the home. They want to remove the porch on the south side near the driveway and put a 2 car garage in. They discovered that the property line is closer than they thought. They tried to look at other options such as the back yard but have come up with no viable option. The automotive property to their back property line impinges their access. This is the only area they could place a garage. It is a residential area but it has other uses around such as a sandwich shop, tattoo shop, church etc. The four bedrooms create the potential for 4 vehicles. This would allow less obstruction for snow removal, etc. It would add value to the property. It won't have any effect on the neighbors. The hedgerow on the left side of the driveway will not be touched.

Wallner: Asked about the character of the neighborhood. Are there other homes in a similar situation? Or do most of the homes have garages. Mr. Morrill: A few homes have garages. The neighbors at #10 and #9 have huge lots. The rest have small lots. Their lot is the smallest.

Spector-Morgan: Did the Fire department weigh in? Are there any concerns? Walker said the fire department didn't weigh in.

Monahan: What is the square footage of the home? Mr. Morrill: The home is approximately 1800 s.f.

Sakowski: Is it strictly a garage with no living space above? Mr. Morrill: No living space above.

Wallner: Is the porch in the setback? Mr. Morrill: No.

Mr. Morrill: The garage will be back about a foot from the front house line. Monahan: Is it a 2 car garage? Mr. Morrill: Yes.

Sakowski: Would they have to move the driveway? Mr. Morrill: Yes. They may have to run it at a little bit of an angle.

In favor: none.

In opposition: Kevin Temple, 10 Grover Street. He and his wife have lived there for 13 years. They want to be good neighbors. He has concerns with fire. Their bedroom, living room and fill pipe for their fuel tank is on that side of the property. They would ask that fire rated materials be used. Snow removal and drainage is a concern. Where will they push the snow? There is also a tree along the property line. He wanted to be sure that the newly constructed garage has no habitable space. Finally, they stated it would increase their property value, but he and his wife feel that it would diminish their property value.

Winters: The applicant suggested they didn't realize their lot line is right where the driveway was. Did they not know where their lot line was? Mr. Temple : He has always known where his lot line is. Winters: do you have a garage? Mr. Temple: No. Sakowski: What about snow removal. Mr. Temple: He has a bigger property and can snow blow it to the side.

Code: none.

Rebuttal: Troy Morrill: He has a snow blower. Fire rated materials on that side of the garage is not a problem. He will have his contractor put it into the plans.

DECISION: Monahan: This is a tight spot. The opinion of neighbor is valuable. The conditions are completely reasonable. There is nowhere else on the property that he can place the garage. Winters: It is a tight lot. The lot is not particularly unique. Is a 2 car ZBA DM 10.2.19

garage a hardship? He's inclined to vote against. He may be inclined to approve a 1 car garage. Sakowski: This is a reasonable use for the area. This is the only way they can get it done. With Mr. Morrill's requested condition, he is for the project. Spector-Morgan: Lot smaller than the other lots in the neighborhood. A two car garage for a 4 bedroom home is a reasonable use. Fire shouldn't be an issue. There is no real evidence about the diminution of the value of the property. She finds it hard to believe adding a garage will diminish surrounding property values.

A **motion** to approve the request was made by Monahan with conditions that the garage is fire rated (the fire rating should be consistent with IRC fire ratings for structures that have less than 5' separation) and that the record shows that snow not be thrown on the neighbor's property, and that the garage not be used for any living space. The motion was seconded by Sakowski and passed by a unanimous vote.

40-19 Brenda Perkins: Applicant wishes to convert an existing two-family dwelling into a 3 family dwelling and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, and applicable supplemental standards under Article 28-5-3, to permit the conversion of an existing residential building to accommodate 3 units (use A-11) where such conversions are not permitted,
- 2) Variance to Article 28-7-7(f), Driveway Widths, to permit a 17 foot driveway width where a 24 foot width is required (Note a reduction to 18' is permissible with a Conditional Use Permit).
- 3) Variance to Article 28-7-7(g) Setbacks and Restrictions to allow a parking area as exists to the property line where a 5 foot setback is required,

For property located at 195 East Side Drive in an RS Residential Single-family district

Testified: Attorney Philip Hastings testified. Brenda Perkins also testified. Walker noted case # is 40-19, not 40-10.

Attorney Hastings testified. The purpose of the application is to allow conversion of existing 2 family to a 3 unit building.

Ms. Perkins: She has been a realtor in Concord for 24 years. She purchased the home knowing that legally it was a 2 family home. She's had it for 18 months. There is a basement apartment but she hasn't rented it as it isn't approved for that third unit. East Side Drive is a busy main street. In the vicinity, there are 2 churches, a very large day care, Heritage Heights senior living community and a mile away there are several multifamily homes. The house was built in 1972. The basement apartment exists and has been occupied for approximately 30 years, but she hasn't used it for 18 months. The accesses to the units are completely separate. There is no access to the basement unit from first or second floor. This space has existed for 20 plus years as the previous owner said it was there when she purchased it. The property has 2 driveways. The upstairs tenants have their own driveway. The second driveway, she has the 2 car garage for herself, and she has a 13 foot span next to the garage which can accommodate the parking. The downstairs apartment is a 2 bedroom 1.5 bath. She wants to remove one of the bedrooms and have it be a 1 bedroom apartment. She will close off the 2nd bedroom and use it for storage. She understands there is a requirement for sprinklers and will take care of that.

Attorney Hastings: They are proposing no physical changes to the exterior of the building. The parking area is not changing at all. The entry way will change a little for fire safety privileges. There is sufficient parking for at least 6 spaces. One of the parallel parking spaces will be designated as handicapped parking. Multi-family uses are not permitted in the RS zone but in accordance with Article 28-5-3, certain older buildings are allowed to be converted to no more than 5 units. The driveway does not meet the aisle width of 24 feet. The driveway is narrow to 17 feet and widens to the parking area. The 2nd parking variance is with respect to setback. The driveways, as exists now, are right to the property line and they want to propose they stay as is. It is a reasonable use. It will not alter the neighborhood's character. The property is large enough to support the use of a 3 family home. It is uniquely situated as it is in a high traffic, mixed use area. The parking configuration is safe and adequate. The request is consistent with purpose of the ordinance. There is no negative impact and no harm to the public.

Winters: Asked about the 1945 date for conversion. Walker: That doesn't qualify in the RS zone. They would still need the variance. Sakowski: Are they asking for driveway relief because the driveway is existing? Spector-Morgan: How is this property uniquely burdened by this provision of the ordinance? Attorney Hastings: It is a unique location. It is on a large lot. It is more than adequate to support a 3 family. There is no impact on traffic or parking. The surrounding character of the neighborhood is consistent with a 3 family. Winters: Were the previous owners renting that unit? Ms. Perkins: Yes, they were renting or occupying. Attorney Hastings: It is unclear how the basement unit was used or built. Monahan: Are there 2 exits. Brenda: There are. With sprinkler system installed she will construct an hour rated fire wall. She will create access to the exterior. Walker asked about window well requirements. Brenda: No as she will be doing a sprinkler system.

In favor: none.

In opposition: none.

Code: none.

Letter: Lorraine Brown, 194 East Side Drive. She is in opposition. The use is already in violation. The property has always been a business enterprise.

Rebuttal: Attorney Hastings: This property has not been operated as a business. It will be multi-family use, not a business. Ms. Perkins: Every room has windows. There is and will be no business being run there.

DECISION: Monahan asked Walker if there were any special conditions they need to think about, i.e. entrance and exits. Walker: Ms. Perkins has been speaking with the Fire Department and Building Department, so those issues will be addressed. They will need to be brought up to 2015 codes. Walker: This property was established as a 2 family home when it would have been permissible and then the zone changed.

Monahan: This is a big burden on the property. Spector-Morgan: She continues to believe that this property is not uniquely burdened by the zoning ordinance. If the basement space wasn't already there, she doesn't believe they'd be inclined to grant it. It's not necessarily reasonable to put a Multi-family in a residential neighborhood. Sakowski: It is unique in its zone alone. Winters: This is not the biggest lot in the area, but it is a big lot. Traditionally they look at pre-existing structures. Based on the land, it is a very long lot and it's functioned this way with no apparent issues. He's inclined to approve.

A **motion** to approve all 3 of the variances was made by Winters and seconded by Sakowski. Discussion amongst the Board as to how they would (should) look at it if it were a vacant lot. But it isn't a vacant lot. Spector-Morgan: Because this is not a legal non-conforming use, it doesn't have vested rights. They should look at it as if the apartment weren't there. Monahan: What is the square footage of the property? Ms. Perkins: 1200-1300 s.f. Motion passed by a 3-2 vote with Spector-Morgan and Monahan in the minority.

41-19 [Daval Realty Associates, LP., for Sanel Realty Co., Inc.](#): Applicant requests that the Zoning Board reverse the Zoning Administrator's decision that, in accordance with Supplemental Standards, Article 28-5-19, Motor Vehicle and Recreational Equipment Sales, the landscaping requirements under Article 28-7-10 applies to motor vehicle display areas as well as the designated vehicle parking areas, in relation to property at 129 Manchester Street in a CH Highway Commercial District.

If the Board upholds the Zoning Administrator's decision the applicant requests what is written as Case 42-19

Testified: Attorney Laura Hartz of Orr and Reno who is representing Daval Realty. Also present to testify Tracey Banks, Bill Jasak and Fred Booth.

Attorney Hartz wishes to speak about Case 42-19 first. They have the same fact pattern. They need a variance because they have a hardship. Wallner: Why they are hearing 42-19 before 41-19. Hartz: It requires the Board to evaluate if a parking lot is different. The reduction in the number of trees would only come under a variance, not an appeal.

Monahan: He thought that this issue has come before the Board before. Because of the changes of franchise requirement they needed to store vehicles. He feels this should be before the City Council so they can change the Ordinance.

Hartz: In 2013 Banks came before the Board to store un-plated vehicles at the Banks Collision Center off of Airport Road. Since that time the motor vehicle industry has changed. The number of cars they turn over on a monthly basis has increased from 300+ to 540 cars a month. Most people who buy a car don't actually go to the lot to see the car. They look on line first. Here they have motor vehicle display and storage. And it is in the CH zone. Whereas the banks lot, collision center is in a different district. Walker showed where the Collision Center was and it is in the Industrial zone and outdoor storage is on a ration of outdoor storage are to building area. Un-plated vehicles may be stored in a motor vehicle display area. Attorney Hartz: The collision center is purely storage. No customers should be viewing that lot. Monahan: Will the customers come to 129 Manchester Street? Attorney Hartz: Yes. They are here for landscape requirement, not the use.

Walker: Case #41-19 is his interpretation that the Ordinance requires landscaping.

Attorney Hartz: She requested to present a slide show to the Board to show how Banks Chevrolet uses the property. Walker said they should open one case at a time.

Winters: The review of Walker's decision is strictly an interpretation of the Code. He suggests they review that first. Sakowski concurs. Monahan concurs.

Wallner read the case #41-19 into the record. Testimony continued.

Case 41-19

Laura Hartz: A slide show was presented. The first slide is of Article 28-5-19 Motor Vehicle and Recreational Equipment Sales as well as 28-7-10 b and d (Parking Lot Interior Landscaping Required and Landscape Material Standards, respectively). These are the Articles that present the challenge. This reliance on the number of parking spaces is throughout this definition. This is not accurate legally ZBA DM 10.2.19

when applied to Banks Chevrolet. Cars are stored on Banks Chevrolet property. They are not 'parked'. There are no parking area dimension standards for motor vehicle storage or display. The requirement of a 9 x 19 space doesn't apply. It only applies to the parking area. There are no stripes, lines or aisles. This is a private lot. They are going to buy the lot and merge it with their main lot. Banks owns all of their vehicles. They are a private owner. There are no multiple owners that require different treatment. There is no public access. Motor vehicle storage inventory turns over constantly. This lot would entirely turn over every 30 days. Without imposition of striped parking aisles etc. they can park their cars anywhere they want. The ordinance treats parking area (which is defined & permitted in 6 districts) differently than motor vehicle storage, which is only permitted in 1 district.

Banks Chevrolet is concerned with equating storage of cars with parking lot. The Ordinance says they need 1 live shade or ornamental tree for every 1,000 s.f. of parking area. The use is motor vehicle display, not parking. Attorney Hartz displayed via slide show a visual of the landscape plan approved for Banks in 2010. Showed also displayed the calculations for the landscape requirements of 2010.

Erin Lambert of Wilcox Barton testified. Ms. Lambert explained the requirements.

Monahan: Are you trying to convey that this is not a parking lot. Why is it outdoor storage? Attorney Hartz: Banks Chevrolet is planning to buy the property and merge the lots. Tracy Banks explained that it is the Sanel Auto Parts property.

Walker: What is before the Board right now is a narrow, direct question. The question is what does Article 28-5-19 say. That's what he responded to. There is a letter in the back of the package from the Zoning Administrator regarding the applicability of 28-5-19 (provided to the Board as part of the appeal). Spector-Morgan: It does not make sense to classify it as a parking lot. The argument Attorney Hartz has been making goes more towards the variance. Why do the parking lot standards apply? Attorney Hartz: It is impossible to apply Article 28-7-10. It's a fiction to say there are spaces for stored vehicles. Administrative Gloss says that where planning & code have made an interpretation in the past that has a result they may not reverse that interpretation. They have not changed the zoning ordinance. Only thing that has changed is a flip in the interpretation.

Walker: The question that he was asked to respond to is whether or not this section applied to the parking (display) area. And his answer was yes. A question of Administrative Gloss was not requested of him so he's not prepared to speak to that this evening. Administrative Gloss does need to be a specific intent to show that a specific provision is not being applied. Walker commented that it appears the landscaping requirements were not applied, in full, to other dealers on Manchester Street if they were revamping the property for an existing use.

Winters: It's an interpretation issue. The argument is more along the lines that it's not 'fair' to apply it to outdoor storage and sales of vehicles as it would lead to an unfair result. That would be an argument for City Council. Winters agrees with Walker's interpretation. Administrative Gloss requires more evidence than we have tonight. He's prepared to uphold Walker's interpretation. Sakowski: Doesn't the zoning ordinance have to be ambiguous for Administrative Gloss to come into play. Attorney Hartz: Correct. Spector-Morgan: There is no evidence here and she agrees with Walker's explanation to be true.

Attorney Hartz: Bank's Chevrolet received the benefit of no islands and trees in 2010. Ms. Lambert: Showed the 2010 redevelopment plan. Landscaping was done around the perimeter or around the designated parking spaces. She went over the calculations for that 2010 approval.

Winters: He found the Administrative Gloss definitions. It has to be ambiguous. He doesn't feel it's ambiguous. It can be applied.

Ms. Lambert: They have the minimum dimensions for landscape islands. They do not traditionally put them in the center of displays. Attorney Hartz: Manchester Street has a lot of auto dealers on it. The Nissan location was a redevelopment. Kia Auto was a complete redevelopment of the property. Ambiguity in how to apply the ordinance. If there weren't ambiguity there wouldn't be a history.

Spectrum-Morgan: It seems that it was from Planning Board approval, not Zoning staff. Walker: (In response to comments about statements made by the Associate Planner) He felt that the Planner should be here to respond to questions about statements.

DECISION: Monahan: Things change for the industry. Manchester Street has become a big storage facility area which was a change that the Board was aware of. It was incumbent upon people looking at how that changed and the way they were going to use their property. He doesn't believe it's a matter for ZBA but for City Council. There are enough changes in the industry that it invites a change to the ordinance. That's why he is going to support the interpretation.

A **motion** to uphold the Zoning Administrator's interpretation was made by Monahan, seconded by Winters and passed by a unanimous vote.

42-19 Daval Realty Associates, LP., for Sanel Realty Co., Inc.: Applicant wishes to expand an existing motor vehicle sales business (Bank's, 137 Manchester Street) onto an adjacent property and requests the following:

- 1) Variance to Article 28-7-10(b), Parking Lot Interior Landscaping Required, to not provide landscaping within the perimeter of an area designated for motor vehicle display,

- 2) Variance to Article 28-7-10(d), Landscape Material Standards, to allow a ratio of 0.21 trees for every 1,000 square feet of parking and display area where 1 tree per every 1,000 square feet of parking and display area is required, (i.e. provide 51 trees where 238 trees are required),
For property located at 129 Manchester Street in a CH Highway Commercial District.

Testified: Attorney Laura Hartz of Orr and Reno. She presented a slide show. A customer's first exposure to Banks Chevrolet will be through the web site. The customer would then go to the location. They want permission to store vehicles at 129 Manchester Street. There will be a 6% decrease of impervious surface. Banks will build an on-site filtration system for storm water. There will be an approximate reduction of 4.7 million gallons to the site. They propose to add trees around the outside of the property line. They would need to add 238 trees per the Ordinance requirements and that make it difficult to utilize the site to park vehicles. The landscape islands: If all cars on site there is a safety issue. The landscape islands create an obstacle course for snow removal. The plows are almost 2 parking spaces in width. Proposed 51 trees and no islands.

Hardship – unique circumstances and conditions. Motor vehicle storage and display has to be associated with the building that the cars are being sold at. Unique nature of car industry. Size of inventory. Most unique is that this lot (the current Bank's display and sales lot) is one of the nicest looking lots on Manchester Street. No one else has been held to these standards on Manchester Street. Spirit and intent of the Ordinance they meet. Banks has offered to put in trees, just not the total number, because landscape isles are too wide. They are still providing green space. No threat to public health and welfare and no change in the character of the neighborhood. They will be reducing storm water to the City's system. Property values are likely to go up.

Sakowski: Are they buying the property regardless of whether the variances are granted? Attorney Hartz: They have entered into a Purchase and Sales agreement which would be hard to get out of. Without variance approval it is a tough decision for Banks Chevrolet.

Winters: Are there no variances enforced now for any of the other deals? Attorney Hartz: There is a variance for the Volvo dealer, but it's for the size of the atrium. Although there are other auto dealers, Banks Chevrolet takes care of their property on Manchester Street. It is aesthetically pleasing. Monahan: If another dealer comes in and wants to have a display area, not a parking area, they may be coming in to say that we allowed Banks Chevrolet to do it; it would set precedence. Winters: If Banks left this location and sold to another auto dealer, this variance would stick with the land. Attorney Hartz: Banks is very happy to impose a condition that if a variance is approved, it stays with the property. And because the application is deviated; motor vehicle display and sales was linked to the variance. Walker: Any change of use in the future would have to adhere to the current landscaping standards.

Ms. Lambert: One of the challenges they have with landscape isles in display area, it is difficult to layout. The size of vehicles, space required, constantly changes. The challenge is that they are taking parking lot standards and imposing them in someone's display area. She explained further. Sakowski: The ordinance shouldn't apply to display spaces seems to be their argument. Banks feels it's a different standard.

Monahan: This should be brought before the City Council.

Attorney Hartz: Banks has priority to receiving certain models. Other dealers also call Banks for a certain makes and models. Sakowski: Will they stop using the collision center for storage of inventory?

Attorney Hartz: The previous variance received for the collision center (on Airport Road) is different because this is a permitted use (auto display and sales) on Manchester Street.

In favor: Robert Segal. His family owns 129 Manchester Street property. They have owned that property for about 70 years. He supports this request. His family could sell this property to anyone and for a higher value, but the issue here is that they have an ongoing concern. This is the most successful dealership. They employ 250 people. He has high regard for Tracy Banks and the service they provide as well as their dealership. He would like to see the Board approve this request.

In opposition: Robert Sullivan, 117 Manchester Street LLC who owns the abutting property. His concern is that people come off of Manchester Street and come through his lot and park or go through to Old Suncook Road. He's concerned with traffic flow. He saw no access area on the proposed lot. He'd like to work with them on a design change for access. He has been before the Board for parking and had to come into compliance. They lost 23 parking spots and had to put in vegetation.

Code: Walker: The Board needs to sift down to the basic request which is to allow the outdoor storage of a vehicle on the lot where landscaping is required.

Rebuttal: None.

DECISION: A **motion** to deny the requests was made by Monahan. It is consistent with previous decisions. The Board didn't overrule the interpretation of 41-19. The industry change is driving this type of issue. Walker stated that he is more than willing to work with Banks for an Ordinance change. That type of change will also have to go before the Planning board to be reviewed. The **motion** was

seconded by Spector-Morgan. All variance criteria are met except the unnecessary hardship. Winters concurs. Winters stated that the Board is a quasi-judicial Body and he wanted to state that for Mr. Segal. The **motion** was approved by a unanimous vote.

MINUTES: A **motion** to approve the September 2019 Minutes was made by Winters, seconded by Wallner, passed by a 4-1 vote. Spector-Morgan abstained.

Motion to adjourn was made by Monahan, seconded by Spector-Morgan and passed by a unanimous vote.

*Respectfully Submitted by,
Rose Fife, Clerk
Zoning Board of Adjustment*

DRAFT