

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
DECEMBER 4, 2019 MEETING  
MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, Andrew Winters, James Monahan, Laura Spector-Morgan

Absent: Rob Harrison Jr.

Staff: Craig Walker, Zoning Administrator

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Meeting commenced at 7:00 pm.

**48-19 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 (129 Manchester Street) 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.

Applicant requested a continuance to January 8, 2020.

A motion to continue this case to the January meeting was made by Wallner, seconded by Morgan and passed by a unanimous vote.

**44-19 Samuel & Kim Benton:** (postponed to 1/8/2020) Applicant wishes to create a duplex/two-family dwelling and requests the following:

- 1) A Variance to Article 28-2-4(j), The Table of Principal Uses, to permit the development of a two-family/duplex dwelling where such use is not permitted,
- 2) A variance to Article 28-5-2, Duplex or Two-Family Dwelling, to permit a duplex/two-family dwelling to be established on a lot with an area of 12,650 square feet where a lot area of 18,750 SF is required (1.5 x minimum lot area),
- 3) A variance to Article 28-5-2, Duplex or Two-Family Dwelling, to permit a duplex/two-family dwelling to be established on a lot with 119' +/- of lot frontage where 150' is required (1.5 x the minimum lot frontage) for property located at 93 Pembroke Road in an RS Residential Single-family District.

Case postponed to the January 8, 2020 meeting.

**45-19 Capital Hotel Company, LLC:** Applicant wishes to modify a Variance granted under Case #28-19 to install a freestanding sign, 80 feet tall and 285 square feet in area, and requests a Variance to Article 28-6-9(a), Table of Dimensional Regulations, to now allow a freestanding sign with a maximum area of 350 square feet, when the maximum allowed is 100 square feet, for property located at 70 Constitution Avenue, Unit #1 located in an OCP Opportunity Corridor Performance District.

Testified: Attorney Laura Hartz of Orr and Reno. They represent Steve Duprey. They would like to request the same Board as sat on the original request of Case 28-19. They understand that only 4 of the 5 members that sat on the original case are available and are agreeable to be heard by a 4 member Board. Laura Spector-Morgan stepped down from sitting on the Board for this request as she did not sit for the original hearing.

Attorney Hartz explained that this is an extension of Case #28-19. The original request was granted by a unanimous vote. She gave an overview of the original request. The only thing that was different is that the notice reflects the actual surface area of the sign (not including the separate 15W sign box). The July 10 hearing gave the dimensions of the top

of the sign and didn't reflect the bottom portion of the sign. The top part of the sign is 285 s.f. That portion is for the Courtyard by Marriott sign. The exit 15W sign area was not included in the request. They are just clarifying the record.

Carley asked Walker if that was the case. Walker agreed it was. Wallner asked if they did see the 15W on the original application. Attorney Hartz said yes. The Minutes do not say whether or not the 15W portion of the sign was part of the decision. Wallner asked if the square footage had increased. Attorney Hartz said correct. This notice shows the bottom portion of the sign. Walker explained that the original application didn't have the graphic in it. The graphic was received a week or so later, the graphics did have the 15W sign in it, but the graphics did not show the sign dimensions. The graphics presented at the July hearing showed dimensions. Winters asked if it was a total of 350 s.f. Attorney Hartz said yes. Winters asked if the 350 s.f. was referenced in the prior hearing. Attorney Hartz said she doesn't believe so as they hadn't calculated it yet.

In favor: none.

In opposition: none.

Walker: none.

DECISION: Carley gave an overview of the testimony.

Winters: They saw the shape, but didn't see the square footage. It doesn't change his analysis due to the unique grade and lack of visibility by the highway for the hotel.

A motion to approve the request was made by Winters, seconded by Monahan.

Wallner: There is already a sign for 15W. He'd still support it.

Monahan: They wanted to be sure people were aware of the exit. He felt it was consistent with his expectations.

Carley: agreed.

Motion passed by a unanimous vote.

**46-19 [The Birches of Concord](#):** Applicant wishes to replace a 6 foot tall chain link security fence with a 10 foot tall chain link security fence and requests a Variance to Article 28-5-40, Fences, Walls, and Hedges, Section (b)(2), to allow a 10 foot tall fence where a maximum 8 foot tall fence is allowed, for property located at 300 Pleasant Street in an RM Residential Medium Density District.

Testified: Paul Botanicom, Executive director. He explained the request for the fencing. They are looking at this as a safety perspective. Their building is a memory care building i.e. Alzheimer's, dementia, etc. They now have younger residence with these conditions. This protects their back yard area. Earlier this summer they had a 6'2" male in his late 60's that was able to scale the fence and get out to the front of the property and cross the street which was a concern for them. This situation made it clear that they need a taller fence. The fence isn't visible to their neighbors due to the way the fence is located on the property. This would be for side and rear fencing on the property. This will create safety for their residences.

Spector-Morgan asked if there are woods in the rear of their property. Is it conservation property? Mr. Botanicom is not sure, but believes that there is 200 feet from the fence to the end of their property line. Walker explained that the property is abutted by St. Paul's school's property with conservation land abutting the SPS property. Spector-Morgan asked what use St. Paul's school had for this property. Walker explained (undeveloped open space with a brook). Winters asked if their neighbors were single family homes. Mr. Botanicom believes they are multi-family homes. Monahan asked if they were required by law to have some sort of barrier. Mr. Botanicom explained that there needs to be some sort of enclosed area. This was included in their plan to the Department of Health and Human Services.

In favor: none.

In opposition: none.

Code: none.

DECISION: Wallner: He feels that due to the type of facility that it is, there is a hardship. They are dealing with a containment issue. There is no impact on the neighbors. There is no devaluation of properties. It is not contrary to the ordinance.

Monahan agrees.

Spector-Morgan: agrees. The property is unique.

Winters: agrees.

Carley: They have in the past taken into consideration the occupants of the property.

Walker: State RSA recognizes that.

A motion to grant the request was made by Wallner, seconded by Spector-Morgan and passed by a unanimous vote.

**47-19 Cynthia Marple:** Applicant wishes to establish a Major Home Occupation (hair salon) and requests a Special Exception, from Article 28-2-4(k), Table of Uses Accessory to a Principal Residential Use, Major Home Occupations (Use A-3) and in accordance with Supplemental Standards, Article 28-5-30(c), Major Home Occupations, for property located at 23 Burns Avenue in a RH Residential High Density District.

Testified: Cynthia Marple. She has had a small hair salon in her (previous) home for a very long time. She's been before the Board before at her North State Street (home) location. She improves the properties. She enjoys continuing her hair studio and it is an important part of her income. Her 178 North State Street facility had too many needs. It took a couple of years to find a property with parking so that they could have a plow truck take care of their needs. She'd like to continue doing what she has been doing i.e. hair salon. On one side of her (current) property is a daycare center at 27 Burns Ave. The other side of her property is a 4 family property. She has her salon open for 10 to 15 hours a week or less. It seems like this wouldn't be a problem. As an individual she feels like she's the perfect person for a special exception. It would be just her, no other employees.

Laura- asked Walker if Ms. Marple would need site plan approval. Walker said no. She will need a few more parking spaces but it won't trigger site plan approval process. Walker explained that the approval (special exception) runs with the land. As long as there was no change to the intensity and is only 1 chair operating in the property it would run indefinitely. If the use increased it would need to come back before the Board.

In favor: none.

In opposition: Stu Wallace, 28 Burns Ave. They have been at this location about a year. It's a nice residential neighborhood. A narrow road. The only business there has been on the street is The Children's Place. It isn't open on weekends or evenings. It has plenty of parking out back. Two weeks ago they received notification from the Zoning Board that another business wanted to be located on the street. Ms. Marple did come and talk with them. It's not a good place for a business. There are many pedestrians. Walker verified that it is for a specific (home occupation) business, owner occupied, as represented to the Board. The approval would run with the land. The next person could do a very similar use but could not expand. Mr. Wallace is concerned this will set a precedent.

Walker went through and read (Article 28-5-33) the requirements for a home occupation. A 20 s.f. sign would be allowed.

Bridget Bequith, 29 Burns Ave. She concurs with Stu Wallace's testimony. She was told 8 years ago a home based business wasn't allowed. Her main concern is that it is a narrow street. The traffic is finally starting to slow down. She is concerned with how to monitor or stop a business from growing. Special exceptions may lead to other special exceptions. Wallner asked about what kind of traffic the Children's Place generated. As of lately there hasn't been as much traffic. Winters asked about the foot traffic she was discussing. Ms. Bequith explained that The Lamplighter Plaza put in an African Asian Market there and they have foot traffic going to that. Winters asked if there were a sidewalk. Ms. Bequith stated that there isn't.

Rebuttal: Cynthia Marple. She thought that you couldn't request a special exception without owning the property. In her previous residence on North State Street the street that abutted her property, Curtice Ave., was very narrow. She has an older clientele. She chose this property because it had a lot of land. It's a mixed neighborhood. Carley asked about frequency. Ms. Marple explained that the average person is there an hour. Carley asked how many clients per day. Ms. Marple explained that there would be a maximum of 3 per day. Because of the snow storm she is seeing 5 or 6 tomorrow and 4 on Friday. She is currently renting a chair and it is costly. Hours of operation are 1 morning a week and starts at 9:30 and that day she would end early. There are 4 to 5 hours a day and a lot of times she starts at 3 pm and goes to 6 or 7 pm. Winters asked if 10 to 12 hours per week is normal. Ms. Marple said that is correct.

Code: none.

DECISION: Winters asked if she adds a second chair she would need to come back. What if she works 40-50 hours a week with one chair? Would she need to come back? Walker explained that a second chair is not part of the request and it that would be impossible to detect or monitor clientele. It is her home.

Winters: He respects the reservations of the abutters. She meets the criteria. If 3 or 4 people lived there she would have more traffic.

Spector-Morgan: As long as the criteria are met. The use will not create excessive traffic. She thinks she meets the criteria.

Monahan: Agrees.

Wallner: Agrees she meets the criteria.

Carley: Agrees.

A motion to approve the request was made by Winters, seconded by Wallner, and passed by a unanimous vote.

MINUTES: A motion to approve the November 2019 Minutes was made by Wallner, seconded by Monahan, and passed by a 4-0 vote.- Laura Spector-Morgan abstained as she was not at the November meeting.

Informational: Walker submitted a copy of the zoning amendment going to council Monday night relative to the automotive dealership with landscaping issues.

*Respectfully submitted,  
Rose Fife, Clerk Zoning Board of Adjustment*