

CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
MARCH 11, 2020 MEETING
DRAFT MINUTES

Attendees: Chair Christopher Carley, Nicholas Wallner, Robert Harrison, James Monahan, and Andrew Winters

Staff: Craig Walker, Zoning Administrator, Rose Fife, Clerk of the Board. Also in the audience were Code Administrator David Hall and Code Inspector Robert Nadeau.

Meeting commenced at 7:00 pm.

03-20 Brixmor Capitol SC, LLC: (Tabled Case) Applicant wishes to expand an existing shopping center by adding additional buildings/floor area for retail and food service uses and requests the following:

1. Variance to Article 28-2-4(j), The Table of Principal Uses, to permit a, "Restaurant with drive-through service" (principal use I-3), where a restaurant with drive-through service is not permitted,
2. Variance to Article 28-7-7(d), Stacking Spaces, to permit 6 stacking spaces (counted from order station) where 11 stacking spaces (counted from order station) would be required,
3. Variance to Article 28-7-2(e), Table of off-street parking requirements, to provide 754 parking spaces where 977 spaces are required (Note: 45 existing on-site parking spaces are currently leased to an off-site business, therefore the total on-site spaces is 799),
4. Variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow a front yard setback of 5 feet +/- where a minimum 15 foot setback is required,
5. Variance to Article 28-7-1(a), Applicability, to permit the continuance of existing non-conformities with respect to Article 28-7, Access, Circulation, Parking and Loading Requirements, for the portion of the lot outside of the redevelopment area as defined on the accompanying plan, sheet C-2, dated January 2020, for property located at 80 Storrs Street in an OCP Opportunity Corridor Performance District.

A motion to remove the case from the Table was made by Wallner, seconded by Harrison and passed by a unanimous vote.

Testified: Attorney John Arnold of Hinckley Allen testified. Also testifying: Rubin Torsky and Chris Nadeau of Nobis Group.

Attorney Arnold gave a brief overview of the application. They are looking to develop the front corner of the parking lot. It would house 2 new buildings; a 6,000 s.f. restaurant and a 6,500 s.f. retail building along with a 7,500 s.f. coffee shop with a drive thru window. The coffee shop would be a Starbucks and the stand alone restaurant would be 110 Grill. The parking spaces would be updated to be compliant. They are adding landscaping. Both of the uses contemplate outdoor seating which would be pedestrian friendly. They showed the Board plans. It differs slightly from last week's plan that was presented. Variances requests do not change. The loading area was relocated. The outdoor seating area was reconfigured. They had to reconfigure the parking areas to the right of the drive thru lane. The bypass lane also changed a bit. Part of the proposal was to install a fence along Storrs Street. The fence is designed to make it less convenient for people to park there that are not utilizing the stores on the lot. They will step up enforcement of unauthorized parking. There are a number of spaces leased to the Chamber of Commerce and those spaces were not counted. Tim Sink, of the Chamber spoke in favor of the project last week. They want 754 spaces vs. 974+ spaces required. Relief was sought for the 15 foot front yard setback. They are asking for a 5 foot setback. The drive thru variances are for the use of the driveway and for the stacking space relief. The Ordinance requires 11 stacking spaces and they propose 6.

Winters asked how someone coming from Storrs would get to the drive thru. Attorney Arnold explained they would access it by coming in through Pleasant Street. Attorney Arnold explained the outline of the parking and access drive aisles. The rest of the parking lot is not being touched. The final variances are to allow the existing parking lot to remain the same in its nonconforming layout.

Attorney Arnold wanted to update the Board that the Mayor has supported the project and proposed a zoning amendment. The proposed amendment would allow drive thru and allow stacking and would eliminate parking and setback requirements. That went to Council on Monday this week and it was voted to go to Planning (CDD) for comment. If those requests were to move forward it would eliminate most of the variances they are requesting. They would still need the variance for existing nonconforming parking. They still want the Board to consider the requests before them. The discussion at the last hearing focused on the drive thru variance and the hardship criteria and why the property is unique. The Board seemed to struggle with how the property was unique. It is unique because of the size of the property. It is 15.25 acres large. The next largest property is 4 acres on this road which is also in this zone. That is a very long narrow lot running along railroad tracks with limited frontage on Storrs Street. The unique size of this property is such that a drive thru won't affect the public safety. Its street frontage is the longest useable street frontage on Storrs Street by a considerable margin. This allows for multiple accesses. There are 3 separate driveways on the site. It allows for traffic to disperse. This serves the purpose and intent of the Zoning Ordinance. This also allows for pedestrian friendly access. The property's size and frontage make it unique. There is a drive thru adjacent to this property at the bank. There is also the drive thru for Dunkin Donuts and McDonalds on S. Main Street at the end of Storrs Street. The development area is all parking. The area is already very vehicle oriented. This will not have any negative effect on the character of the area.

It was noted by Sakowski that the existence of a drive thru seems to be at odds with pedestrian friendliness. The increase traffic is due to a drive thru. Attorney Arnold explained that it is mixed. Drive thru is not a pedestrian friendly component to the project. Even though there is a drive thru they are still making it pedestrian friendly by putting the buildings near the street with outdoor seating.

Mr. Torsky explained that the placement of the drive thru is different than your typical location. It's not additional traffic as they will attract the same customers. Sakowski asked if it was it intentionally located as it was central to their property. Mr. Torsky said yes.

The Board reviewed the Mayor's letter.

Mr. Baia, Deputy City Manager for Development testified. Carley asked him to summarize the views of the Community Development Department. Mr. Baia testified that the requests will be in line with the new Zoning Ordinance. i.e. setbacks will be 0-10 feet in the new ordinance. The drive thru is not permitted today nor would it be allowed in the new (proposed) Zoning Ordinance. The reason it is not permitted is that over the years there has been plans for Storrs Street to make it compatible with Main Street. i.e. Dixon Ave was redeveloped as well as a few others. The challenge is that a drive thru typically takes up a lot of land area and is more in line with a suburban pattern. Storrs Street is meant to have more density, more growth and perhaps more height. They want the same benefits as the CBP district across the street which encourages all those things. The Mayor proposed the Ordinance amendment and when it gets to Planning and City Council it may be approved. Sakowski noted that the drive thru would not be completely anomalous here. If this is self-contained they are creating it for themselves in their own parking lot. Mr. Baia also noted that Dunkin Donuts is South Main Street so it's not the same area. The Bank of America is a valid comparable as that is a permitted use in the district. Walker explained the difference is that for a restaurant drive thru there is a requirement for 11 stacking where a bank is 5.

Winters asked what purpose the drive-thru has. Is it walkability? Mr. Baia noted that Mr. Arnold did address issues with the drive thru. Mr. Baia noted that you can't put a drive thru or a parking lot downtown on Main Street. From a pedestrian perspective you don't have to worry about meandering through a parking lot. Walker explained that in the CBP zone you are looking for the highest and best use of the land and that driveways and surface lots are not permitted in the CBP along Main Street. The drive thru is convenient for what is there.

Rebuttal: Attorney John Arnold explained that they understand the density. They are limited to how much density they can put on site due to long term leases. They are trying to design this so they can provide the density the City would like to see in the future. This is a small area for the drive thru vs. the 15.25 acre lot size.

Code: none.

DECISION: Wallner: The north end of the street contains banks. There is some drive thru ventures in the downtown area. If Starbucks didn't have a drive thru it would exacerbate the parking.

Sakowski: The property is unique, which is a hardship. It doesn't need as much parking as is currently there. Having the drive thru and what is unique about that and how creates a hardship. It doesn't have to be a Starbucks. They can develop it in such a way that it would not require relief. Setback is in line with what might be the new Ordinance. That Ordinance hasn't passed yet.

Harrison: He doesn't feel there is a hardship for the request pertaining to the drive thru. It can be developed differently.

Winters: There is clearly a unique element to that property. It is very large. The current zoning, even though he personally likes the project, defeats the current Zoning Ordinance that is currently in place.

Carley: Asked the Board if they would want to consider items 1 & 2 together. They concurred.

#1 is for the drive thru use. #2. Is for the stacking space number.

An argument could be made for the drive thru that the large lot creates a special condition that makes a drive thru workable there but it doesn't create a hardship. The Ordinance is clear this use is not allowed. #3 which is the request for the number of parking spaces is a reasonable request. Even with the number of people parking there the lot has plenty of empty spaces. He would be in favor. #4 is consistent with what is going on in that neighborhood. He's in favor. He feels it is a reasonable use. It is an improvement to what is there now. #5 goes with #3. It works as it is. There seems to be no benefit to the City to making it different.

A motion to deny #1 and #2 was made by Winters, seconded by Sakowski and passed by a unanimous vote.

A motion to approve #3, #4, & #5 was made by Sakowski, seconded by Winters and passed by a unanimous vote.

13-20 Christ the King Parish: Applicant wishes to install 3 freestanding signs, one of which is proposed to be an Electronic Message Center (EMC sign) and request the following:

1. A Variance to Article 28-6-9(c), Permitted Freestanding Signs, to allow 3 freestanding signs on the property where a maximum of 1 freestanding sign is permitted,
2. A Variance to Article 28-6-7, Signs Prohibited, Section (r), to allow an electronic message center type sign when such signs are not allowed,
3. A Variance to Article 28-6-9(a), Table of Maximum Sign Dimensions, to allow a freestanding sign (Sign "B", EMC sign) with a height of 18' and area of 52s.f., where a maximum height of 8' and a maximum area of 12s.f. is allowed, (Continued on next page)
4. A Variance to Article 28-6-9(a) to allow a freestanding sign (Sign "C", church monument sign) with an area of 48s.f., where a maximum area of 12s.f. is allowed,
5. A Variance to Article 28-6-9(a) to allow a freestanding sign (Sign "A", school monument sign) with an area of 30s.f. where a maximum area of 12s.f. is allowed,

for property located at 60 South Main Street (aka 61 South State Street) in an UT Urban Transitional District.

Testified: Jonathan Halle of Warren Street Architects, Attorney John Arnold of Hinckley Allen, Father Richard Roberge & Richard Donahue, the Principal of St. John's school.

Attorney Arnold testified. He gave an overview of the property as shown on a plan they submitted. The property takes up a whole block. It is almost 2.5 acres. The main buildings are the Church, St. John Regional School and then there are a number of accessory buildings and the rectory. The church has undergone a major multi-million dollar renovation. They have redone the entry way. They are now looking at the signage to upgrade it to make it more functional and more attractive. They would like 3 freestanding signs. The first is labeled a proposed monument sign for the school which is a granite sign. Sign b is an electronic message board sign used by the church and school. Sign c is a monument sign for the church. Halle presented a video clip of what the site would look like with the signage there. The electronic display sign is attractive as it is black and white. There is no scrolling. The messages would change once every 2 hours.

Father Roberge testified. He gave a brief history of the parish. It is a consolidation of many catholic churches. They are now on one campus. The church is the mother church and built in 1869. It is 150 years old. They wanted to beautify the church and bring elements of all 3 churches into it. They service 2,400 families and 6,000 people on a weekly basis. With the current renovation work, they feel the signage is an important piece. They have 600 feet of frontage on S. Main Street with no curb cuts. Thorndike Street has one curb cut into their

parking lot. S. Main Street has an emergency exit that is gated. The parish has $\frac{3}{4}$ of the block. There are 5 weekend masses. They have week day masses, funerals, weddings, Bible Study, youth ministry, Boy Scouts and Cub Scouts using the property. They also have workshops. They support many non-profits. They have voting on the property. Overall they have about 100 activities in a given month. In the past they had a temporary, portable changeable copy sign. There was an incident not too long ago where the sign box was blown off the supporting structure and into the roadway. They'd like to look more professional and attractive. They want only black and white for signage. They should use current technology. There are two other signs up the road that are electronic.

Principal Donahue spoke. The electronic sign is very important to get the message out to the community. St. John's school has 179 students and 100 families. The main school building was built in 1888. There was little need for signage back then. They have 40 school events during the year they'd like to share with the public. They are looking for 2 signs to help people understand who they are and what they are doing. They will landscape the property. They are interested in an electronic message board on S. Main Street as they will share it with the parish. This will not interfere with traffic.

Attorney Arnold spoke. They are asking for 3 freestanding signs vs. 1. The property is very large with 4 street frontages and multiple uses on the campus. It makes sense to have separate monument signs for the school and church. The electronic sign will be shared. They would like 3 signs even if the electronic component were not approved. It provides important information to the community. Their frontage on S. Main Street is long. If it were subdivided there would be many more signs along that frontage than they are proposing. The signs are well spaced and not over crowded. The 2nd variance for the electronic message sign is important. This is unlike a typical electronic sign. Messages will be in black and white format with no animation, no flashes or frequent message changes. The messages will only change once every 2 hours. It will look and operate more like a traditional sign. It will not be distracting to motorists as it will not be bright and flashy. The property is almost 2.5 acres and encompasses almost a city block. A typical month they have about 100 events at the property which includes events open to the general public. They are held at different times in different buildings. There are 2 other signs like this nearby; the Bank of NH Stage and the Capital Center for the Arts. Their sign won't be out of character with the neighborhood. The justification for the Bank of NH Stage sign was that there would be many shows there. They have 10 times the number of events than the theatre. They have restraints in navigating their property. Given the number of buildings and events on the property they need the identification. There are protections under federal law as to how religious groups are treated. Their sign is at least as compelling as the Bank of NH signage. The remaining variances relate to area and height of sign the sign. The limit is 12 s.f. and 8 feet high. They are cumbersome restrictions for a property such as this. A 12 s.f. sign in front of church building or school which is a massive building would be out of proportion. The property is adjacent to Urban Commercial district which allows 60 s.f.

Sakowski noted that when the variances were approved for the Bank of NH sign the Board conditioned the timing of the sign change. There is a plan to do the change once every 2 hours. If the Board placed a condition on an approval such as that, would they agree to that condition? Attorney Arnold said they would agree to it.

Winters: asked Attorney Arnold about the sign size. Walker explained how sign size was calculated. He explained the difference between the districts of CU and UT.

Harrison wanted confirmation that the variance #3 is for a sign 18 feet high. MR. Halle explained that the 18 feet is to the top of the arch on the sign. Harrison asked if the signage portion is really 10 feet tall. Is it the frame that makes it 18 feet high? Halle agreed. The arch on the sign matches the arch in their vestibule.

In favor: Nicholas Brown, student at St. John's school. He's in favor. This (the sign for St. John's School) is an Eagle Scout project that he's hoping to complete so he can give back to the school. It would be beautification to the property. The electronic sign would look better and give more publicity and would help with events.

Wendy Santiago who is a new parent at St. John's Regional School. It was difficult for her to find the school as there was no signage. The staff and facility work diligent to keep the 179 students safe. Signage would help identify the property and allow other non-school residents realize they are a school and there are children in the area. It would beautify the property and give the community to attend some of their functions.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters: This lot is obviously larger than surrounding lots and has frontage on 4 roads. They could easily have 4 entrances. That should allow them multiple signs. He is convinced that the electronic signage will be less obtrusive. It's strictly directional. He is inclined to approve.

Harrison: Agrees.

Sakowski: Agrees but would like a condition that they could only change the message 1 time every 2 hours.

Wallner: He is persuaded of the hardship as it is a unique lot. The number of signs is reasonable as well as the size. It is the electronic sign he is concerned about. He's inclined to support request #1, #3, #4, and #5.

Carley: He agrees about the number of signs and the scale of the lot being a hardship. The size is reasonable. Electronic sign he is concerned about. The theatres life blood comes from putting it out on the side walk what they are doing. That is different from the church. He has reservation about the electronic sign. He would like to take requests #1, #4, & #5 together and requests #2 & #3 together.

Walker explained that request #3 is for the area and height of the sign.

A motion to approve requests #1, #3, #4 and #5 was made by Wallner, seconded by Sakowski and passed by a unanimous vote.

A motion to approve request #2 was made by Winters, seconded by Harrison with the condition that it be black and white and change only every 2 hours at most. Winters wanted it noted that the Chair made valid points. Motion passed by a 3-2 vote. (Wallner and Carley in opposition.)

09-20 Jonathan Ferguson and Kendall Ferguson: Applicant wishes to construct a barn for the boarding of horses, and other related uses, (Stables and Equestrian Centers, use M-6) on a lot without frontage on an accepted city street and requests the following:

1. A Variance/relief in accordance with RSA 674:41, Erection of Buildings on Streets; Appeals, to permit the construction of a building on a lot with no frontage where a minimum 200' of frontage is required,
2. A Variance to Article 28-8-3(c)(2), Conditions for Development of a Non-conforming Lot, to allow the construction of buildings and establishment of a non-residential use, Stables and Equestrian Centers, (use M-6) on a lot with no frontage where a minimum 200' of frontage is required, (note: currently, the access to the property is over (Victorian Lane, a private lane)
3. Variances to Article 28-4-1, Dimensional Standards, to permit development on a lot with no frontage where 200' of frontage is required,

for property located at 45 Victorian Lane in an RO Residential District.

Testified: Attorney Jeffrey Christensen. He represented the Fergusons. (the Fergusons were not present) This is a unique lot. It's a 28 acre lot created in 2001 by a subdivision which allowed it to be created with no frontage. It has a deeded right of way over the private road. Anything ever done with the lot requires a variance as it has no frontage on an accepted City street. It is used as a single family residence. The owners want to construct a barn on the property. The barn would be used for boarding horses. They own horses for their own personal use. They may rent out a few stalls. They do not have current plans to do that but it is a possibility. The variance is needed as there is no frontage. This property has a hardship and is uniquely burdened. The use is a reasonable use. The RO zone permits agricultural uses and permits equestrian centers. It is an appropriate use on this land as it is a large parcel of land. It is secluded, setback, and wooded. It would be shielded by topography and trees. Allowing the use would allow the prosperity of the property owner. Allowing this would promote economic development of the area. The size of the lot means there is no noise impact. There is a possibility of renting stalls to others. The barn will be small; about 10 stalls. Most stalls will best used by owners. This is not going to harm any neighbors. There is no impact on property values. There is no harm to the general public. It is a reasonable use.

Harrison asked if the 72 x 180 barn were going to house the animals and be used as an indoor arena. Attorney Christensen stated that it will provide storage for tack, feed, etc. There will be room to groom horses and clean stalls. There is no indoor paddock. Harrison asked if the house was built prior to 2001. Attorney Christensen

stated that the house was renovated around 2001. Walker explained that in 2003 a variance was granted to remove the existing structure and build a new home. Winters asked if the easement is deeded and runs with the land. Attorney Christensen said yes and there is no limitation to the use. Sakowski asked if there were any accessibility concerns. Attorney Christensen is not aware of any accessibility concerns. Walker explained that he has discussed the access with Planning and it is his understanding that Victorian Lane was approved as a private lane for a cluster development and would not be allowed to be used in conjunction with a commercial use. He hasn't seen any documentation that would allow them access across the private lane for commercial uses. Harrison asked Walker if Victorian Lane is for residential use only not commercial. Walker said that is the information he was given as it was a cluster development approval per Planning. Attorney Christensen explained that the deed that provides for the right of way pre dates the subdivision that was in 1994 and provides them the right to access the property without any limitation.

Winters asked Walker if the Board were to grant #2 and it turns out that they are not permitted to use the right away for commercial purposes, would that be a problem. Walker said yes. Attorney Christensen stated that if it were granted as requested and there is some prohibition on using the road they could rectify that through the courts. The variances requested are from the frontage to build a permitted use. Whether the use is for their personal use or possible accessory commercial use, they would need the same variances. Walker explained that they would need 22 feet of to develop a non-conforming lot. Carley explained that the Board doesn't have the power to supersede deed restrictions.

In favor: none.

In opposition: Karen Welch and Alex Assler. They are abutters to the property and live on Victorian Lane. She is the president of the association. He is at 38 Victorian Lane which abuts the road going up to this property. Ms. Welch has the original warranty deed that was given on the property in 1986. There is no reference to a commercial property. They are concerned with the privacy of the road. They chose to be in that subdivision for a reason. They did make it a private road. The City chose not to take over the private road. They are concerned with traffic. On a normal basis the traffic that goes by Mr. Assler's house is steady. Currently that parcel of land pays nothing to plow or maintain the road. They don't pay the insurance either. They are concerned with maintenance if it goes commercial. Will they place a sign out there? They chose to be a private road for a reason. There are small children on the road. Mr. Assler's main concern is the truck going up and down. It is a dirt road. It is paved up until they get to that access. During the springtime it is wet and then it is dry and dusty. He is right on the road so it is a nuisance. All the land around them is common land for the association. Ms. Welch's other concern is the entrance to the land also sits on the corner of their land as well. She is concerned with horses being pulled up through their road in large trucks and trailers. Ms. Welch stated that the basic deed says they have an easement to what is there presently.

Sakowski asked if their concern is specific to a commercial use vs. a private use. Ms. Welch stated that they are concerned with the fact that they although they may build it for their 2 horses they will board more horses. Walker explained to the Board that based on the acreage of the property this property could have up to 28 horses on the property. Ms. Welch and Mr. Assler's concerned with the access to the private road. Winters asked Walker if they could rent out the stalls to a third parties as a matter of right. Walker said no. They can own their own animals on that property by right, but to lease horses or stalls becomes a commercial operation and no longer a residential use. Carley asked if it would be allowed by right if they had the frontage. Walker said correct. Walker explained that request #1 & #3 are for construction of the building. Request #2 is for the development of the building and establishment of a non-residential use.

Code: Walker gave an overview of the history of the property. In 1994 the owners, the Richards, were granted a variance to subdivide the property which was not implemented. In 2001 they came back with same variance request which was granted and that subdivision separated a chunk of land off of the parent track and was transferred to the City for recreational a conservation purposes. As part of the subdivision the subject lot was created by Variance to establish a lot and maintain a residence there. In 2003 the Zalinski's, the owners at that time, requested a variance and relief from 674:41 so that they could remove and replace the house, which was granted and they subsequently built the existing residence. One of the concerns is that Victorian Lane is private and their access to the subject property is a dirt road. There is a safety concern with the access to the property. It may be unpassable for an emergency vehicle particularly in the Spring.

Rebuttal: Attorney Christensen. Explained that the right of way and the easement, when it is granted, is for access without any limitation. If there is a concern between the owners of the other lots and the Ferguson's, they can handle it privately. It is not a zoning issue. Walker comment that if the limitations for use of the private lane was a condition of approval from the Planning Board then enforcement of that provision is the responsibility of the Zoning Administrator. This will not be a magnificent business being run. It is a 10 stall private barn that may possibly rent out to 1 or 2 stalls to friends. It's not a large scale operation. No signage has been discussed. The owners would comply with fire safety and building codes. Sakowski asked about emergency access. Attorney Christensen stated that the Fergusons are living there right now, so it would be the same concern. It wouldn't change that condition. The construction of the barn would not increase any risk. Walker wanted clarification. In Attorney Christensen's testimony he says they may or may not have a commercial operation. It needs to be decided if it is or is not a commercial operation. If they aren't going to do it immediately there could be issues because Code won't be able to issue building permits for the barn without site plan approval. Attorney Christensen explained that they are thinking about commercial use. They are treating it as if they were going to be using it commercially to preserve that option. Harrison asked if 10 horses is all they can have there. Can they put a condition on it? Christensen said that was correct. Walker explained that a condition such as that would be difficult to enforce.

DECISION: Carley reviewed the testimony as given.

Wallner: Request #1 & #3 allows the building of a barn. Request #2 expands the potential use. They could approve 1 & 3 but that means they can only use it for personal use. Carley reviewed the requests.

Winters : #1 & #3 are basically the same request.

Sakowski: There was a variance granted for the house.

Harrison: Building a barn for their own uses is reasonable.

Wallner: There is a hardship because of the frontage.

Winters: Agrees with Harrison. Request #1 & #3 strike him as reasonable. Request #2 he's not so sure of as essentially they do not have the frontage for a commercial use and the neighbors have a valid point. The easement was not for a commercial use. He would entertain #2 if there was more specificity.

Walker: Based on the plan done, dated 10.12.01, the existing drive was moved to a new location.

Attorney Christensen: there was the original easement from the 80's and then the deed from the '90's. The easement does not have a limitation on the use. Walker stated that if it was part of a condition of approval by the Planning Board, it does become a zoning issue. If they need to go to the Planning Board to change the use of that road, they would still need to come here first.

Carley: He agrees with Nick that #1 & #3 address the same issue. Request #2 is a separate question because there is no frontage and everything that gets done there needs to be submitted for a variance. That could create conditions where something that is allowed by right is something the Zoning Board might not want to grant.

David Hall, City of Concord Code Administrator testified. If a residential home were to be built with distance to water or hydrants they could restrict building the house. An accessory structure they have no rights to limit the use.

Carley doesn't think the easement question is germane.

Winters: Aside from the safety issue they need a variance for anything they build. They knew that when they purchased the property. The lack of frontage is a factor for considering that if you put a commercial use back there and you have no frontage. That is an imposition on your neighbors.

A motion to approve requests #1 & #3 was made by Wallner, seconded by Winters and passed by unanimous vote.

A motion to approve request #2 was made by Harrison, seconded by Wallner and passed by 3-2 with Winters and Sakowski in minority.

14-20 John Radley: Applicant wishes to develop a 5 unit multi-family apartment building and requests the following

1. Variance to Article 28-2-4(j), Table of Principal Uses, to permit the development and construction of a 5 unit multi-family dwelling (Use A-4) where such use is not permitted,

2. Variance to Article 28-4-5(d)(1), Minimum Tract Requirements, to permit the development and construction of a 5 unit multi-family dwelling on a lot with an area of 24,000 square feet +/-, when a minimum lot size of 25,000 square feet is required for multi-family development,
 3. Variance to Article 28-4-5(d)(5), Perimeter Buffer Required, to permit development of a multi-family dwelling with no perimeter buffers and to allow the placement of buildings and parking within the area designated for perimeter buffers, where perimeter buffers of 50' are required,
 4. Variance to Article 28-7-7(g)(1), Parking Restrictions in the Required Front Yard, to allow the placement of parking within the required front yard setback,
- for property located at 15 Cross Street in an RN Residential Neighborhood District.

Testified: Attorney Jeffrey Christensen and John Radley, property owner. This a 24,000 s.f. lot. It is a large but oddly shaped lot. The property is used as a single family home right now. The proposal is to convert the home to a multi-family home. The neighborhood has many multi-family homes there now. The building on the property is a mixed building. It was partially constructed prior to 1945. There are some new additions. A larger one created to the northwest. The barn is being removed. If the building were built prior to 1945 this building would be allowed to be converted per Article 28-5-3. With the removal of the barn and the addition of the new living space, there is more than enough floor space. The entire building is not constructed prior to 1945 which makes it ineligible for conversion. Either the owner has to leave the building as is or expand the building. The ordinance does contemplate expansion of a building while being converted up to 5%. The property is not eligible for creation of a new multi family. In this district you have to convert, you cannot create a new multi family. The lot is slightly too small. The shape of the lot makes it impossible to build a new development. They would like the property to be treated as if it would qualify under Article 28-5-3 even though a portion of the building was constructed after 1945. The application addresses all of the variance elements. The use is reasonable. The ordinance allows for conversion for multi-family in this district.

Winters asked if they would need any variances if they fell under the 1945 rule. Attorney Christensen said that the only issue would be for the driveway. If removing the barn and building the addition prior to 1945 it would qualify. But because some of the work was done after 1945 it doesn't fit within that category. Harrison asked how much of the building was built. Attorney Christensen asked the Board to look at the plans. The 2 story wood frame house is existing and the addition on the left side of the lot. The existing addition being constructed is 780 s.f.. Carley asked Walker about the 1945 rule. Walker explained that's the way the Ordinance was written. Larger older buildings are the key. On new construction you need to meet the minimum requirement for building codes but a conversion is different. Walker asked when the addition was built. Mr. Radley explained this November. He pulled the permits. Harrison asked if the project is already started. Attorney Christensen stated that the addition is compliant. Mr. Radley stated that the family that is there now plans to stay there. The addition could be used whether the variances were granted or not. Attorney Christensen explained that addressing the housing supply is important. The neighborhood supports multi-family. Mr. Radley explained that all of the parking on his side of the street and is in the front of the homes. Attorney Christensen stated that the parking would go before the Planning Board. Winters asked if this fell under Article 28-4-5, how many units would they be entitled to. Attorney Christensen explained that under Article 28-4-5 they would not be able to build anything. It is an oddly shaped lot. There is no practical benefit to not allow the conversion. The renovation will be a benefit to the city. Denying the application limits the construction on this property. Denying would not protect the neighborhood from multi-family as that already exists.

Sakowski asked if the property functions fine as a single family residence currently. Attorney Christensen said it is functioning as a single family residence. They want to move the current residents into the addition to allow the renovation of the existing portion without displacing the family. The fact that it can be used as single family doesn't make multi-family not a reasonable use.

Harrison asked if the addition is within the setbacks. Attorney Christensen said it was. He also submitted a letter from an abutter in support of the application. She had a concern about parking being too close to her property line. The parking won't be an issue to that abutter.

In favor: Nawaz Azam. Mr. Radley is doing a great job cleaning up property. The addition looks nice. He lives (owns the multi-family conversion of the former Summer Street school currently under renovation) across the street.

Arnold Philbrook. He lives across the street (16-18 Cross Street). It's a good plan. He owns across the street. Parking won't be an issue. He's in favor.

In opposition: none.

Code: Walker gave clarification that there is a significant difference between developing a new multi-family and a conversion. One of the purposes for allowing conversion of existing building is to allow additional housing without physical impacts on surrounding properties. The house was 1,725 s.f. as it was when he (Mr. Radley) purchased it. He could have possibly gotten 3 units out of it. Standard development of multi-family there are buffer requirements. A two story building would require a 50 foot buffer which protects the other adjacent property owners. An email from Mr. Radley to Code Administrator David Hall who was questioning whether this would be a multi-family home was read into the record. In the e-mail Mr. Radley states that 15 Cross Street and addition was to a single family home, not a multi-family. It was represented that the addition was for a single home not a multi-family. Building permits issued reflect the same single-family intent.

Rebuttal: Attorney Christensen. This proposal doesn't have any impact of overcrowding property or the neighborhood. The addition complies with the setbacks. The barn is being removed and the shed is being removed. The amount of building on the property doesn't really change. The addition was sought as an addition to a single family, as that is what the property currently is and it is allowed to be. The addition has use either way. Mr. Radley stated that the email to Mr. Hall was to address a sprinkler system.

DECISION: Carley reviewed testimony as given.

Winters: With modest variances he could have converted the 1945 structure and got in as many units as the ordinance allows. If the lot was vacant and they came in to build they couldn't. Walker explained that they would be allowed to do a single family home on the lot as it exists. Winters stated that they wouldn't be allowed a multi-family. The hardship was self-imposed by adding on and then wanting to convert it.

Harrison: The property currently works as a single family lot.

Winters: Granting 5 units in there with no buffer at all he feels is excessive.

Harrison: It is excessive for the property.

Sakowski: The shape of the property and lot size is not given to buffers, etc. The 5 units has the support of the community and there is a housing shortage. The use is reasonable.

Wallner: If this were a standard rectangular lot they wouldn't be before us. Carley said no, they can't build a multi-family for several reasons. The use is not permitted.

Carley: It is a conundrum to ask for forgiveness for something that doesn't apply (referring to requirements for developing multi-family dwellings). The ordinance is clear it's not permitted. Nothing about the property is peculiar that makes it a hardship. He added onto the building. He (Mr. Carley) doesn't see the hardship. He could have done 2 to 3 units without doing this at all. But the owner added onto the building and created more of a problem and that's not a hardship. He is inclined not to grant the use variance. Suggests they take item #1 first. All the other items become moot if #1 is denied. If item #1 is granted they go on to the others.

A motion to deny request #1 was made by Winters, seconded by Harrison and passed by a 4-1 vote with Sakowski in the minority.

A motion to Table requests #2, #3 and #4 was made by Harrison, seconded by Winters and passed by a unanimous.

Minutes from March 4, 2020: A **motion** to approve the Minutes was made by Wallner, seconded by Winters and passed by a 3-0 vote.

A motion to adjourn the meeting was made by Winters, seconded by Carley and passed by a unanimous vote.

*Respectfully submitted by
Rose Fife, Clerk*