

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
MAY 6, 2020 MEETING
FINAL MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, James Monahan, Andrew Winters (Conflict with Case #15-20), Laura Spector-Morgan, and Laura Scott (Case #15-20)

Staff: Craig Walker, Zoning Administrator, Rose Fife, Clerk of the Board, and David Hall Code Administrator.

Meeting commenced at 7:00 pm.

Chair Carley explained that due to the Covid-19/Corona Virus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Board was authorized to meet electronically. The City of Concord utilized the Zoom platform for this electronic meeting.

12-20 Kenneth Graham: (REQUEST FOR REHEARING?) Applicant wishes to build a 14'W v 16'D mudroom addition with a 26'W x 30'D attached garage and requests a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a minimum 8 foot setback from the easterly property line where a 15 foot side setback is required for property located at 87 Manor Road in an RS Residential Single-family District.

that they might have over looked

Carley reviewed the information given to the Board. Carley explained that in order to approve a rehearing request, the Board looks for any new evidence not available at the time of the original hearing or if perhaps the Board committed an error of law or procedure.

The Board has read the submission that came from Mr. Graham.

Monahan: It seems Mr. Graham has done a new survey and is proposing some changes to the design. If that's the case, he wondered if it should be handled as a new application. Walker explained that the fact that information that was available and was not presented is not a reason to approve a rehearing, but if they want to reapply and request a different case they could do that.

Winters: Is Mr. Graham saying there is a change of plan that makes the variance request more modest?

Monahan thinks that the mud room will be reduced to 12 feet vs. 14 feet to get it closer to the home.

Carley reads it the same way.

Winters agrees with Monahan. He looked at the Minutes. He voted against the variance. He thought some variance would be appropriate but it could be less of a request.

Spector-Morgan didn't sit on the original case but has read through the evidence and thinks it should be a new application. She is in favor of denying the request for rehearing.

Wallner recalled that the Board encouraged him to reduce the size. He feels it should be a new application.

Carley agrees.

A **motion** to deny the rehearing request was made by Wallner, seconded by Spector-Morgan. Walker reiterated that a rehearing approval must be based on the information presented with the original application submittal. Wallner's motion is to deny the request for rehearing, Spector-Morgan seconded and the motion was passed by a unanimous vote. Roll call in favor of denying the request for rehearing: Carley, Wallner, Morgan, Winters, and Monahan.

14-20 John Radley: (REQUEST FOR REHEARING?) 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.

Carley reviewed the case. There was a lengthy submission from Mr. Radley's attorney that the Board reviewed.

Wallner: He didn't find any error of law or any missing facts. The applicant has reasonable use of the property.

Morgan: Did not sit on the original application but has read through the material submitted. She didn't see anything that convinced her that the Board erred in law.

Winters: Agrees. The submission was detailed and appropriately presented. There was some indication that he had created his own hardship. That was more of an aside, but not critical to the decision. It's not a reasonable use to this lot. The lot is not so unique that a 5 unit variance is appropriate.

Monahan: Agrees.

Carley: Agrees. Nothing justified a request for rehearing.

A **motion** to the request for rehearing was made by Winters, seconded by Monahan and passed by a unanimous vote. Roll call vote in favor of denying the request for rehearing: Monahan, Winters, Morgan, Wallner, and Carley.

18-20 D&J Coburn Properties, LLC: Applicant wishes to expand a parking area for a 5 dwelling multi-family apartment building and pave to within 1 foot of the easterly property line and requests a Variance to Article 28-7-7(g)(2), (Parking) Setbacks from lot lines, to permit a parking area with a 1 foot setback where a minimum 5 foot setback is required, for property located at 49-51 Perley Street in an RD Residential Downtown District.

Kip Mountain testified for D&J Properties. The current driveway is dirt and in bad shape and unsightly. It is difficult to plow. Allowing it to be paved will improve aesthetics of the area. They are only putting pavement down. They are not changing the driveway. It will improve safety. They have a handicapped tenant that lives there. It's not an expansion. It is just to allow asphalt to be put down. The driveway is 20 feet wide. He has spoken with the abutters and none seem to have an issue with their request. If approved, it will not change much.

Spector-Morgan asked him to address the abutter's letter. Carley will read the letter into the record in a few minutes. Winters noted a letter was submitted by Nancy Weston. Carley has another letter from Barbara Bell.

Mr. Mountain explained that his daughter Jackie lives there. She's spoken with Ms. Bell who was concerned with the fence being run into by a snow plow. They agreed to put up a few safety bollards to protect it from happening. Monahan asked whose fence it was. Mr. Mountain explained that the fence belongs to Ms. Bell's.

In favor: none.

In opposition: Nancy Weston, 57 Perley Street. She lives a couple of blocks away from the proposed change. Her concern is that Perley Street is a narrow street and you can park on either side of it. If anyone parks too close to her driveway she can't make the arch to get out. She has had to drive onto her lawn to get in and out of her driveway as people park too close and is not adhering to the 5 foot setback. Walker asked if she was speaking of vehicles parking in the street. She said yes. But if they don't honor the 5 foot setback on either side of her parking lot (driveway), she can't get out or into her driveway. Carley explained that the 5 feet they are speaking of is a 5 foot buffer between the driveway and property line. Ms. Weston felt that if the Board allows this person to extend and pave their driveway but they are asking to be able to park at the end of that driveway within 1 foot, then eventually you will allow people to park within 1 foot of a driveway down Perley Street. Winters asked if the problem of her getting boxed in is not from the vehicles parking in the neighbor's driveway. She said correct.

Letter from Barbara Bell of 45 Perley Street. She indicates that she understands what the request is about. She has owned her property for 42 years. The applicant's driveway will abut 64' of her westerly property line. She is concerned with runoff. The paving will create an impervious surface that will not absorb runoff. Her fence has been damaged several times from people on that property plowing, etc. See letter in file.

Code: none.

Rebuttal: Kip Mountain. The basic layout of the driveway is going to be exactly the same. The vehicles will be parked in the same spots. The runoff will go towards their building. There will be no expansion of the driveway at all. They have spoken with her and made an agreement to put the bollards in to accommodate safety issues that she has. Winters asked what he did with the snow when he plows. Mr. Mountain explained that they do a lot of back dragging and the grass berm in the front of the building is utilized to put a lot of the snow there. There is an area in the front that the snow can go also.

DECISION: Carley reviewed the testimony as heard with the Board.

Wallner: Having a paved drive is a reasonable use. The character of the neighborhood makes it difficult to meet setbacks.

Morgan: Agrees with Wallner.

Winters: The lot coverage is the problem here. Given that the structure is there the paved driveway is consistent with neighborhood.

Monahan agrees.

Carley agrees with what was said.

A **motion** to approve the request was made by Winters, seconded by Spector-Morgan and passed by a unanimous vote. Roll call vote in favor of approving the request: Winters, Morgan, Wallner, Monahan, and Carley.

20-20 Barlo Signs for Shaheen & Gordon: Applicant requests a Variance to Article 28-6-7, Signs Prohibited, Section (i), to place a wall sign with the highest point 38'-9.25" +/- above grade and above the sills of the first floor windows where wall signs are not otherwise allowed more than 25' above grade or above the sills of the second floor windows, for property located at 107 Storrs Street in a CBP Central Business Performance District.

The Board for this case consisted of Carley, Wallner, Monahan, Spector-Morgan and Scott.

Testified: Brandon Currier, Senior Project Manager of Barlo Signs. They are seeking minimal relief of sign placement. The Thompson and Hoague sign that is painted on the building is creating an issue and they need to relocate their sign higher than that one. The sign is an allowable sign. The existing sign will be removed and replaced. The variance is appropriate because the painted sign is considered a building identifier. Carley asked if the painted sign interferes with the sign they want to put up. Mr. Currier said that was correct.

Spector-Morgan asked why the sign can't go where the existing gold lettering is now. Mr. Currier explained that the client wants better visualization. They would like to be seen as far away as the highway.

L. Scott asked if they are hoping that if the sign location is allowed it is for highway visibility. Mr. Currier explained that it is one of the reasons, but it will also balance the building with the painted sign. They feel the painted sign is historical and there may be issues with removing it.

Walker explained that with a Conditional Use Permit through the Planning Board they could have a sign up at the higher location, but the Thompson and Hoague sign occupies that allowance, as it's a name of a building. If the Thompson and Hoague sign wasn't there they could request a Conditional Use Permit. The existing sign there creates their need to request a variance for the location of the sign.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony.

Monahan: He can see the logic for preserving the Thompson and Hoague sign.

Spector-Morgan: There is no hardship. There's a reasonable place on the building to put the sign. There is a Sheehan and Gordon sign there. They can replace it. The owner's desire for visibility is not a basis for granting a variance. An attorney's office is not a drive-by business. She is inclined to deny.

Wallner: The Board set precedence with the Concord Hotel, etc. He is inclined to support the request.

L. Scott: She has a tough time understanding why the sign can't be bigger where it currently is. She agrees with Spector-Morgan. She's not sure about the precedence setting with other variances. She is not sure there's enough evidence here to grant the variance. She'd prefer not to see the historic sign to go away. There is a place for the sign.

Carley: Agrees with Spector-Morgan and L. Scott. He doesn't see where the hardship is. The need for advertising at the scale for highway visibility is not a reasonable use. He is inclined to vote to deny. The Thompson and Hoague sign is not, in his mind, part of the appeal to the Zoning Board.

Monahan asked Walker how the law firm could approach the Planning Board and what discretion they would have. Walker explained that as long as it meets the requirement of the zoning ordinance the conditional use is very similar to a special exception. He checked with Liz Hengen regarding any history on the sign

A **motion** to deny the request was made by Spector-Morgan based on lack of hardship as there is a conforming place to put sign and seconded by L. Scott. The motion to deny the request was passed by a 3-2 vote. Roll call vote in favor of the denial: L. Scott, Spector-Morgan, and Carley. Roll call vote not in favor of the motion to deny: Monahan and Wallner. Motion to deny passes by a 3-2 vote.

21-20 Desert Brook Enterprises, LLC: Applicant wishes to convert vacant space within an existing building to climate controlled self-storage and requests a Variance to Article 28-2-4(j), The table of Principal Uses, to allow a self-storage use (principal use K-7) to be established where such use is not otherwise permitted for property located at 204 Fisherville Road in a CG General Commercial District.

Testified: Chad Branon, who is a Civil Engineer with Fieldstone Land Consultants. The property consists of 2.63 acres of land. It is developed with a 25,360 s.f. building with associated site improvements. It is a multi-tenant building that is occupied by a carwash, an automotive tire care garage, and 30 Pines self-storage office and truck rental and retail sales. The building on site is unconventional in size and design. The office space on the second floor is over the parking area. That space has been vacant for some time. There is also garage space at the rear of the building. That area has been vacant as well. It is currently used for random storage. Those areas are the areas that his client is proposing to use for a climate controlled self-storage facility. It will fit in well with the existing tenants. The use is consistent with the neighborhood. It would be a low intensity use. The property has one directional traffic flow. It is somewhat limited in access. Not a lot of people want to occupy the second floor space. The garage space doesn't have parking. The proposed use is reasonable. Granting would allow reasonable use of the building. He feels they meet the variance criteria.

Walker explained that this property was developed in the mid to late 1980's. It was zoned industrial he believes and it allowed these types of storage units but that type of use is no longer permitted in the current ordinance. Also for informational purposes, this was one contiguous lot and the owner has come in and subdivided the lot down by the fence line between this building and the abutting self-storage use. Carley asked if it made a difference if the units were climate controlled. Walker said he doesn't know. Mr. Branon explained that the space is already conditioned and he thinks the market is that ideally his client would like to offer it as climate controlled storage.

Spector-Morgan asked what other uses would be permitted in this district. Walker explained restaurant, retail, office, limited multi-family, etc. It's a broad district with many uses available. Mr. Branon agreed that there is a broad spectrum of uses but the history of the site speaks to the unique features of the building. The office area is 4,200 s.f. in size, but the tenants do not seem to stay there for long. He's had no luck marketing the building.

Carley asked if the climate control area would be on second and first floor. Mr. Branon answered that the entire second floor area would be climate control self-storage. The back end of the site, where bay doors are, would be the other area they would propose climate control self-storage. Carley asked if the windows would be eliminated from second floor. Mr. Branon explained that they haven't gone into those details yet. This would require a site plan review. A lot of those details would be handled at that time. Winters asked if it was the same owner as the large storage area. Mr. Branon said yes.

Mr. Branon explained the hardship. In the application they spoke about the site being unique and special as the space they are talking about and the geometry of the site and traffic flow on the site is unique. Not a lot of parking is available in front of the two spaces they are talking about. There was an automotive garage that used the back section with the bay doors but there wasn't very good access and visibility along this section so they moved on. There is hardship in the existing conditions and geometry of the property. It would be a good fit for the existing conditions of the property.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony.

Monahan: It is an odd layout for self-storage.

Winters: The second floor portion of the building is odd. The purpose of avoiding storage in this district is that you want to have retail or vehicle type traffic. It's a minimal change to the character to have storage there.

Wallner: Commercial use is a broad definition of uses. They already have mixed uses there. An abutting property is storage. It would not be out of character to allow storage on the second floor.

Spector-Morgan: Has issues granting this. The zoning was changed to prohibit this use. The fact that it is consistent with a nonconforming use on an abutting lot doesn't factor in. There are many other uses possible on the second floor. There has been lots of retail development in this area. She does not favor it.

Carley: He is inclined to agree with Spector-Morgan, although he has split feelings on the matter. Whatever the future of the second floor, storage was not what the City had in mind when they changed the zoning and created this district. But he could see it as a reasonable use for the garage stalls. Sometimes the configuration of the building does create a hardship but not in this case. He is inclined to deny the request.

A **motion** to deny the request was made by Spector-Morgan, based on the fact that there is no unnecessary hardship and that the appeal is not consistent with spirit of ordinance, seconded by Monahan. Roll call vote in favor of denial: Monahan, Spector-Morgan, Carley. Roll call vote not in favor of denial: Wallner and Winters. The motion to deny the request was approved by a 3-2 vote with Wallner and Winters in minority.

23-20 Contractors Risk Management, Inc.: Applicant wishes to convert an existing building into not more than a 2 unit, duplex type dwelling and requests a Variance to Article 28-2-4(j), The Table of Principal Uses, to permit a two-family/duplex (use A-2) where such use is not otherwise permitted, for property located at 33 Stickney Avenue in an OCP Opportunity Corridor Performance District.

Testified: Attorney Laura Hartz, of Orr and Reno. Judson Ludeking, President for Contractors Risk Management is also available for testimony. Attorney Hartz testified. The property is located in a unique location in Concord. There is a small pocket neighborhood tucked into the highway area. She showed the area on google maps. The property is located on the corner of Stickney Avenue and Herbert Avenue. The bus station is on the right hand side and U-Haul is south of the property. The property is located at the entrance of a residential neighborhood. Both 2 Herbert Street and 6-8 Higgins Place is a 2 family dwelling. This property, 33 Stickney Ave, has been used as offices. Contractors Risk Management has moved to a new location on Main Street and they have not been able to sell this property. It's not able to be used for residential use at this time. It's in the OCP zone. Multi-family is allowed but the property and building is too small to use it as such. There are buffers that provide privacy for the existing residential area. The back of the U-Haul building has some green area and grass. This property sits at the boundary of a residential neighborhood and commercial use. It looks like a split level house. It's one of 7 houses in the neighborhood. When you walk in the front door of this home and go to the right and up 6 stairs there are 3 bedrooms, a kitchen and living room and bathroom. If you were to go to the left, there is almost the same layout. Carley asked who owns the parking lot behind the house. Attorney Hartz explained that the parking lot goes with the property. They are willing to reseed it. Carley asked where the parking would be if it were used as a house. Attorney Hartz explained that there is room on Higgins Place or Herbert Street. This is a commercial district so there is no worry about parking. Attorney Hartz showed the dimensions of the lot and the property and the building layout. The public perception of this building is that it is a residential home. Realtor Chris Moore has marketed the property for almost a year and has had 3 times more interest in it if it were zoned residential vs. commercial. It is in the public interest to allow it to be used as a residential unit. Concord has a housing shortage. Using it as residential won't change the character of the neighborhood. It is consistent with the spirit of the Ordinance. The OCP zone allows multifamily housing. It is consistent with spirit of the ordinance to make use of the existing property. The property is vacant now. There will be no diminution of property values. The other homes behind this house will likely see a benefit. Substantial justice would be done because the house looks like a house and because the owner has not been unable to use it or sell it for uses permitted uses in the OCP zone. It would be substantial justice

to allow it to be used as residential use. The location, the unique setup of the building, the difficulty of selling the property they feel all meet the variance criteria.

Winters questioned the lot size being inconsistent with using the property as a single family or two-family. Multi-family is 3 or more units. Winters asked how much more square footage they would need. Attorney Hartz spoke with Walker regarding the supplemental design standards and how they don't necessarily apply. Walker concurred.

In favor: Judson Ludeking, Contractors Risk Management, Inc. He takes good care of the property. He has landscapers go there. Because it's been vacant for quite some time now, if it continues to stay vacant he will have problems getting insurance and that will make the neighborhood look horrible. Originally it was a modular display home from Kelso Homes.

In opposition: none.

Code: This whole area is being looked at in conjunction of the I93 widening. He hasn't seen any definite plans. But things will change in the next 10 years.

Rebuttal: none.

DECISION: Carley reviewed the testimony.

Spector-Morgan: the variance makes sense. The location of property is unique. She feels it meets all of the variance criteria. She is inclined to grant the request.

Winters: This case is similar to some of the others they have seen. The building is the primary driver. The building looks like a house. It's been set up like a 2 unit. It is consistent with the neighborhood.

Monahan agrees with Morgan.

Wallner: it is in line with character of the building. The abutters are duplexes. He supports the request.

Carley: agrees.

A motion to grant the request was made by Wallner, seconded by Winters and passed by a unanimous vote. A roll call vote in favor of the motion to grant: Wallner, Spector-Morgan, Winters, Monahan, and Carley.

Minutes from 4.1.20

A motion to approve the Minutes was made by Wallner, seconded by Winters, and passed by a 4-1 vote with Spector-Morgan abstaining.

Meeting adjourned: 8:40pm.

*Respectfully submitted by
Rose Fife, Clerk of the Board*