

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
SEPTEMBER 2, 2020 MEETING
DRAFT MINUTES**

Attendees: Chair Christopher Carley, Nicholas Wallner, Laura Scott, and Andrew Winters.

Absent: Robert Harrison Jr., James Monahan

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.

Chair Carley explained that only four (4) members/alternates were sitting this evening and that any applicant wishing to be heard by a full Board of five (5). Chair Carley, by roll call, polled the applicants to determine which cases wished to go forward this evening and which cases would like to recess to a future meeting. A **motion** to open and recess to the September 9, 2020 Zoning Board of Adjustment meeting cases 37-20, 41-20, 43-20, 45-20, and 46-20 was made by Wallner, seconded by Scott and passed by a 4-0 vote. AYE: Scott, Winters, Wallner, Carley.

47-20 Barbara Mariano: Applicant wishes to lease portions of the subject property, which is adjacent to an existing dealership and requests the following:

- 1) Variance to Article 28-7-16, Parking and Storage of Unregistered Vehicles, to permit the outdoor storage of motor vehicles (principal use K-7), subject to registration under the provisions of RSA 261, Certificates of Title and Registration of Vehicles, which do not have current valid number plates attached, to be stored outside in an area other than a motor vehicle sales area or a recycling center,
- 2) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (b), Screening Requirements, to waive the screening requirements along the northerly (rear) property line and the westerly (side) property lines,
- 3) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (d), Maximum Area of Lot to be Used or Designated for Outside Storage, to permit outdoor storage of inventory on the "Mariano" lease parcel and the portion of the "DMO/Kia" lease parcel, dedicated to outdoor storage to waive the requirement that outside storage be a ratio of building area,
- 4) Variance to Article 28-3-6, Aquifer Protection District, Section (d)(3), Prohibited Uses, Item (m), to allow the development and operation of an, automotive repair, servicing, and with or without auto body repair, facility (Principal Use J-5),

for property located at 10 Integra Drive in an IN Industrial District.

The Board was charged with Determination of Development of Regional Impact this evening. Once that decision is rendered, the remainder of the request will be heard at the October 7, 2020 meeting.

Testified: Attorney Peter Imse of Sulloway & Hollis representing Kia. Also available to testify Attorney Amy Manzelli of BCM Environment & Land Law, representing Barbara Mariano.

Walker explained what the Determination of Development of Regional Impact meant. This could impact neighboring municipalities. He reviewed RSA 36:55-Definitions (of Development of Regional Impact). The property is within the Aquifer Protection area for the Pembroke Water System.

Attorney Imse testified. They are in the Concord Aquifer district and near the river. This is the Board's choice to make whether there is a potential impact to the aquifer. Attorney Manzelli had nothing further and left the decision to the Board.

Scott: Asked Walker what is on the property now. Walker answered that the property is it vacant and undeveloped. Scott asked if it were a watershed or an actual aquifer. Walker answered it was an aquifer. It may be within the water shed but he does not know if it is or not. Scott thought that due to the property being vacant, it would be good for the Board to make this determination and deem it as a development of regional impact so they can weigh in on the next meeting.

Winters: Agrees. He's inclined to support it.

Wallner: Supports Scott and Winters.

Carley: Agrees with others board members.

A **motion** to deem the proposed development as Development of Regional Impact was made by Scott and seconded by Winters. Roll call vote: AYE: Scott, Winters, Wallner, Carley. NAY: none. Motion passed by a 4-0 vote.

A **motion** to recess the balance of the case to the October 7, 2020 meeting was made by Wallner and seconded by Winters. Scott thought there was a time constraint for notifying the other municipality. Walker explained the Notification requirements. Roll call vote: AYE: Scott, Winters, Wallner, Carley. NAY: none. Motion passed by a 4-0 vote.

34-20 Michael Chapman: Applicant wishes to covert a 2 unit dwelling to a 3 unit dwelling and requests the following:

- 1) (granted on 8/5/20) A Variance to Article 28-5-3(b), Conversions (of residential buildings) in Districts Other Than Performance Districts, to allow a conversion resulting 3 dwelling units in a single building on a 5,869 sf lot where a minimum lot size of 7,500 sf is required,
 - 2) A Variance to Article 28-7-1(a), Applicability (Parking), to allow a change of use without bringing the property into compliance with all parking requirements including, but not limited to:
 - a. (Recessed Case) A Variance to Article 28-7-2(e), Table of Off-street Parking, to allow the provision of 4 standard 9'x19' onsite parking spaces where 6 spaces are required,
 - b. (granted on 8/5/20) A Variance to Article 28-7-7(e), Minimum Aisle Width, to allow a 10 foot aisle adjacent to the southerly parking space where a 24 foot aisle is required for maneuvering,
 - c. (Recessed Case) A Variance to Article 28-7-5, Requirements for Handicapped Spaces, to provide no designated accessible spaces where 1 space is required,
 - d. (granted on 8/5/20) A Variance to Article 28-7-7(f), Driveway Widths, to maintain a driveway with a minimum width of 12 feet where a minimum width of 18 feet is allowed (CUP) and 24 feet is standard,
 - e. (granted on 8/5/20) Variance to Article 28-7-7(g)(2), Setbacks from Lot lines, to maintain zero foot setback for the driveway along the westerly lot line where a 5 foot setback is required,
- for property located at 27 Fayette Street in an RD Residential Downtown District.

A motion to reopen the case for items 2a and 2c was made by Scott and seconded by Wallner. Roll call vote: AYE: Wallner, Winters, Scott, Carley. NAY: none. Motion passed by a 4-0 vote.

Testified: Michael Chapman. In an effort to expand on item 2a, he submitted a plot plan with mark ups showing the existing spaces. He has 5 parking spaces available, 4 spaces are side by side and one space is in the garage. He's seeking a variance on the 6th spot. In the original drawing the garage was listed as a shed, so it was a gray area as to whether or not it is a garage. It is 9x19 and is a garage. He verified the measurements and redid the plot plan for submission.

Winters asked about the handicap spot. Mr. Chapman explained that next to the 4th space furthest from the building, there is lawn area that he could utilize to add to that space to meet the handicap size requirement. There is approximately 14 feet to the fence from the edge of that spot. Carley explained that Mr. Chapman should submit a plan to the Board showing that layout. Mr. Chapman wasn't sure if he had to create the handicap space now, or if he could do that in the future.

Walker explained to the Board that as this project is a conversion resulting in 3 dwelling units, it will go on to the Planning Board as a minor site plan review. If the Board does not grant relief to not provide an accessible space the applicant will need to present a site layout to the Planning Board that shows the accessible space.

Mr. Chapman asked if he is moving the shed can he move it to the corner of the property. He doesn't want to lose the shed if he doesn't have to. Carley thought he would need to bring that up with the Planning Board's site review. Winters asked about the handicapped spot. Chapman said he could change the lines on the spaces to create more room for one.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given. Carley asked if the Board would be taking action on the handicapped space request. Scott noted that the applicant hadn't withdrawn the request, so they should.

Wallner: the layout of the parking and accessibility will be reviewed as part of the Site Plan Review. He's prepared to grant the relief to the number of parking spaces as he heard that he will be providing 5 spaces.

Winters: Asked if they could grant for 5 parking spaces, not the 4 that was noticed. Walker said they could.

Scott: Wanted clarification regarding whether or not the 6 spaces included the handicapped space or not. Walker explained that the number included the handicapped space. She thought that 5 spaces are fine but one should be accessible.

Carley: Agreed with all.

2a – A **motion** to allow 5 spaces was made by Wallner and seconded by Winters. Roll call vote: AYE: Scott, Winters, Wallner, Carley. NAY: none. Motion passes by a 4-0 vote.

2b – A **motion** to deny was made by Scott and seconded by Winters. Roll call vote: AYE: Wallner, Winters, Scott, Carley. NAY: none. Motion to deny passes by a 4-0 vote.

37-20 Rosemary Hinton: (Recessed Case) Applicant wishes to expand an existing single-family dwelling and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow a first & second floor expansion with the closest point six (6) feet (+/-) from the westerly, side, property line where a fifteen (15) foot side setback is required, for property located at 21 Iron Works Road in an RS Single Family Residential District.

This case was recessed to the September 9, 2020 meeting.

48-20 Mountain Lake Heating/Fuel, LLC.: Applicant wishes to modify Variances granted under Case #33-20 and requests the following:

- 1) A Variance to Article 28-7-7(f), Driveway Widths, to maintain a driveway with a minimum width of 10 feet where a minimum width of 18 feet is allowed (with a CUP) and 24 feet is standard,

OR, in the alternative, the applicant requests:

- 1) A Variance to Article 28-7-7(f), Driveway Widths, to allow a driveway with a maximum width of 17 feet +/- where a minimum width of 18 feet is allowed (with a CUP) and 24 feet is standard,
 - 2) A modification to the lot coverage Variance allowing 65% lot coverage, as granted under case #33-20, to now allow up to a 73% lot coverage where 60% is the maximum allowed,
- For property located at 28 South Street in an RD Residential Downtown District.

Testified: George Newton. He spoke with the neighbor John who owns 30 South Street. This property is to the left of 28 South Street. His house is 2.5 feet from the boundary on the left side. The neighbor would prefer to see the 10 foot driveway due to distance and snow plowing. This would not change the previous variance granted for the 65% lot coverage. Wallner read the previous approval of Case #33-20. There was nothing concerning the driveway.

Walker explained that was an oversight. It appeared they had at least 18 feet for a driveway, which is the minimum width allowed for a CUP. They only have 17'6" so they weren't eligible for the width reduction with a CUP.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed testimony as given.

Scott: Wanted clarification if the driveway is 12 feet or 10 feet. Mr. Newton explained that if measured at the beginning of the driveway it is 10 but then it swells to 15 at the back of the building. Scott wanted clarification that he is basically asking for them to say that the driveway is okay as is. Mr. Newton said correct.

Scott: She would rather see the driveway kept as is vs. a variance and increased lot coverage.

Winters: Inclined to approve.

Wallner: Inclined to approve. Widening the driveway won't improve anything there.

Carley: Agrees with the others.

A **motion** to approve request #1 was made by Winters and seconded by Wallner. Scott asked if they should grant it saying that it is for the existing driveway as is vs. minimum of 10 feet. Walker would be hesitant to put that restriction on there as this would go before site plan review and the review process could request the driveway be adjusted or relocated. Roll call vote: AYE: Scott, Winters, Wallner, Carley. NAY: none. Motion passed by a 4-0 vote.

40-20 [Melissa Chaput & Wendy Sullivan](#): Applicant requests a Special Exception from Article 28-2-4(h), Table of Principal Uses, and in accordance with Supplemental Standards Article 28-5-29, Commercial Kennels and Veterinary Hospitals, to allow a doggy daycare (Principal Use M-8) at 180 Clinton Street in an RO Residential Open Space District.

Testified: Melissa Chaput & Wendy Sullivan. This is a 7.8 acre site surrounded by conservation land. They will not be clearing any additional land. They would like to use the first floor for a doggy day care. They live in the second and third floors of the building. The back yard is already fenced in for their own dog and they will leave it the same as it is now. They will have between 5-10 dogs a day at maximum. They will compost the waste. They are not planning on overnight stays. If they did, they would use 3 bedrooms on the first floor. They are set far back from neighbors. They will not impact wetlands or surrounding areas. They will be subject to a minor site plan review as they have the 6 parking spaces they need. The asphalt area on the property is estimated to be 879 s.f. The dogs will all be picked up and dropped off daily.

Scott: Will they not board over the weekend. Ms. Chaput explained that their business will be Monday through Friday, 6 am to 6 pm for doggy day care during the week. Boarders will be allowed to be boarded over the weekend in the 3 rooms they have on the first floor. Scott asked if they were only doing puppies and senior dogs? Ms. Chaput said that was correct. Their fencing is not adequate for other dogs.

In favor: none.

In opposition: none.

Code: In 2007 there was a special exception granted to permit a commercial kennel to accommodate up to 80 dogs which also included a canine day care. It was approved by the ZBA but never went to Planning Board for site plan review.

DECISION: Carley reviewed the testimony as given.

Wallner: Feels it meets the criteria.

Winters: Good location.

Scott: Location is perfect, size of property, lack of neighbors, small number of dogs and limited hours.

Carley: Agrees with all.

A **motion** to grant the request was made by Wallner and seconded by Scott. Roll call vote: AYE: Wallner, Winters, Scott, Carley. NAY: none. Motion passed by a 4-0 vote.

41-20 Fred L. Potter for 135 NSS, LLC: Applicant wishes to install two (2) freestanding signs, (sign #1 is 4.58 SF in area and 7.9' tall & sign #2 is 24.08 SF in area and 7.4' tall) on a lot, with sign #2 located in the "corner no-obstruction area" and requests the following:

- 1) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (a)(1), to allow two (2) Freestanding Signs on a lot in a residential district where only one (1) freestanding sign is allowed,
 - 2) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (a)(1), to allow two (2) Freestanding Signs on a lot in a residential district, with a combined area of 28.66 +/- square feet, where one (1) sign is allowed and the maximum sign area allowed is twenty (20) square feet for a single sign,
 - 3) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (c), to allow a height of 7.9' for sign #1 where a maximum height of 6' is allowed in a residential district,
 - 4) Variance to Article 28-6-8, Signs Permitted in Residential Districts, Section (c), to allow a height of 7.4' for sign #2 where a maximum height of 6' is allowed in a residential district,
 - 5) Variance to Article 28-6-7, Signs Prohibited Under This Ordinance, Item (e), to allow a 7.4' sign to be placed within the thirty (30) foot triangular area adjacent to the corner where no obstruction is allowed between a height of 2.5' and 8' above grade,
- for property located at 135 North State Street in an RN Residential Neighborhood District.

This case was recessed to the September 9, 2020 meeting.

42-20 Rebecca Bacotti: Applicant wishes to replace and expand a fire damaged 14'Wx10'L detached garage with a 5 foot side setback and requests the following:

- 1) a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a 16'Wx14'L replacement structure with a 3 foot setback (+/-) from the easterly, side, property line where a 10 foot side setback is required and,
 - 2) a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a 16'x14' replacement structure with a 3 foot setback (+/-) from the rear property line where a 20 foot rear setback is required,
- for property located at 7 Harrison Street in an RD Residential Downtown District.

Testified: Rebecca Bacotti. She submitted a site plan for the expansion she would like to do. She explained that the 'hatched in' area on the drawing is where she proposes the expansion of the garage. This would be 2 feet closer to the neighbor to left and rear property line. The existing garage was 14 x 10. The new garage would be 16 x 14. There is green space around it. She has signatures from her abutters on all sides in favor. The porch shown on the GIS map no longer exists and her garage burnt. She submitted photographs with the application showing the existing concrete pad that still remains. The expansion is shown by the poles with orange lines. She has received permission from both abutters for the proposed garage and the vicinity to their property. Her proposal is to modernize the space and take out the existing concrete pad and pour a new monolithic slab. The garage will be done by Reeds Ferry Shed.

Winters: Was the garage that burned within the setback? Ms. Bacotti explained that the garage was 5 feet from the eastern side and 5 feet from the rear. It had a small lean-to attachment to the rear of the building which brought it to a 1 foot setback. The new proposal would increase that setback from 1 foot to 3 feet on both property lines. Winters asked what the motive was for needing a bigger garage. Ms. Bacotti explained it was to store her 2 motorcycles. She stores both bikes and a small car in Allenstown right now and pays for that storage. If she slightly increases the garage size she can keep the 2 motorcycles at home in her own garage and cut her storage costs in half.

In favor: Carley noted that there is a petition in the file in support of the appeal. (See file.) Michael Summerlin, 13 Badger Street submitted an email in favor.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Scott: She understands wanting to have a bigger garage and not want to have to pay for storage, but unfortunately those are not reasons to grant a variance. The garage was already in the setback by 5 feet and now it would be in the setback by 7 feet. Not sure she heard a good justification.

Wallner: It is only a 2-foot increase. The situation in the back would be improved. Adding a garage vs. a tarped unit would be better for the neighborhood. In favor.

Winters: This lot is much smaller than most of the other lots in the neighborhood. For her to have a garage in line with what most of her neighbors would have would be difficult to fit in without relief. Inclined to approve.

Carley: The lot has characteristics that create difficulties. This is a classic case of the ordinance being applied to a neighborhood that was built long before there was an ordinance. They have found on several occasions that a modest garage is a reasonable use. Inclined to agree with Andrew and Nick.

A **motion** to approve both variances was made by Winters and seconded by Wallner. Roll call vote: AYE: Wallner, Winters. Carley. NAY: Scott. Motion granted by a 3-1 vote.

43-20 David Claydon for Miranda & Andrew Hardister: Applicant wishes to expand an existing residential structure and requests, a variance from Article 28-4-1(h), The Table of Dimensional Regulations, to allow a first & second floor expansion with the closest point seven (7) feet from the northerly, side property line where a ten (10) foot side setback is required, for property located at 14 Dunklee Street in an RN Residential Neighborhood District.

This case was recessed to the September 9, 2020 meeting.

44-20 Andrew Brauch: Applicant wishes to construct a 24'x24' garage and, an 11'x11' +/- connecting mudroom addition, to an existing dwelling and requests a Variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow a setback for the garage of ten (10) feet from the northerly, side property line where a setback of fifteen (15) feet is required, for property located at 16 Ty Lane in an RM Residential Medium-density District.

Testified: Andrew Brauch. A garage and mud room are a common accessory in their neighborhood. He has no other place on his property to construct this like his neighbors do. He bought this home when it was 2 years old. They have an electric car so he has to park his car 3 feet from his neighbor to plug in his car. They have 2 kids and it would be great to have this for their bikes and toys.

Carley: The imposition is 5 feet? Mr. Brauch stated that he is one of a very large family and a 6-foot-wide addition would not have enough room to hold the large family for gatherings. Other mud rooms in the area are larger than the 11x11 that they are asking for. His neighbor adjacent to him has a larger lot so he could fit more in there.

Scott: Asked if the reason he doesn't want to make the mud room 5 feet shorter was due to safety issues. Mr. Brauch explained that would create an extremely small mudroom and it wouldn't be consistent with what is in the neighborhood.

Mr. Brauch explained that his home was built about 21 feet from the neighbor's southern side. If the builder had built the home closer to the setback it would have been better situated for this addition. Winters asked if he had it built or if he bought it from a previous home owner. Mr. Brauch bought it from a previous a home owner. He purchased it in 2009 and it was built in 2007.

In favor: none.

In opposition: none.

There is a letter/email in the file from Michelle Cormier and Benjamin Linguli who own 13 Ty Lane to read into the record in favor. Carley did so.

DECISION: Carley reviewed the testimony as given.

Scott: It's only 5 feet but that only leaves a 10-foot setback from the neighbors. They could meet the setbacks by changing the mudroom. Not sure where the hardship is.

Winters: In contrast to the last case, the distinction is that the lots are extremely similar. There is nothing unique about the lot. The request is not unreasonable per say. This is not an old neighborhood that predates the ordinances. There is nothing unique about the lot. He finds no hardship.

Wallner: He heard testimony from the owner that many of the neighbors enjoy a larger mudroom so that sounds like reasonable use.

Carley: Agrees that it is a plausible arrangement that garage could be 24 square and a mud room a little smaller and stay within the setbacks. He is not inclined to grant.

A **motion** to deny the request was made by Scott, due to lack of hardship as there was no unique characteristics of the property as it was presented, seconded by Winters. Roll call vote: AYE: Winters, Scott, Carley. NAY: Wallner. Motion to deny passes by a 3-1 vote.

45-20 Warren and Lucile Runde: Applicant requests an Equitable Waiver of Dimensional Regulations in accordance with RSA 674:33a to grant legal status to a six foot tall, stockade style fence, located on the southerly, side, property line between the front lot line and the front yard building setback line, for property located at 168 South Street in an RS Residential Single-family District.

This case was recessed to the September 9, 2020 meeting.

46-20 Howard A. Roever: Applicant wishes to construct an elevated, 4'x12' deck/sitting area, and requests a Variance from Article 28-4-1(h), The Table of Dimensional Regulations, to allow a 9.5' setback from the rear property line where a twenty (20) foot setback is required, for property located at 60 Rumford Street in an RD Residential Downtown District.

This case was recessed to the September 9, 2020 meeting.

49-20 Pamela E. Sullivan for Richmond-Sullivan, LLC: Applicant wishes to convert an existing office suite condominium into a residential dwelling condominium and requests Variances to Article 28-4-5(e), Development Standards in Performance Districts and Article 28-5-48, Central Business Performance (CBP) District Standards, to allow the lower level and the first level to be used for residential purposes, where residential uses are to be located on or above the second level and the first level is to be used for allowed non-residential purposes, for property located at 6D Hills Avenue in a CBP Central Business Performance District.

Testified: Terry Trier, project manager and also lives in the building. Ms. Trier converted her unit last year and they fit within the guidelines as they are on the lower living area. Ms. Sullivan tried to sell her unit as an office space from November to recently. It is not an ADA compliant space. It is a unique unit as it has a top floor with 2 offices and another level and a half that goes down a floor. She has 2 entrances, one of which comes off of a patio area. The unit is set into the back of the building. Her unit is surrounded by residential units. It's a mixed-use building. Her attempts to sell the unit have failed. The hardship is that she doesn't know what to do. She would keep it if she could convert it. The Hills Court Board is in favor of her request. Ms. Trier is also a member of that Board.

Winters asked what the last commercial use was in that unit. Ms. Trier stated that there was an office there. Ms. Sullivan has since moved her offices up north. She plans to keep it and rent it out as an apartment or keep it for her own purposes. Winters asked what kind of office work was there. Ms. Trier said it was an office for a graphic designer which did not have many clients. It was more of a work space, not much foot traffic.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Scott: She supports the ordinance and not having living space on the first floor. But the ordinance was not written for this type of unit. It is not on the street front; there is no public access; it is not ADA compliant to be used as an office. It is unique. She is in support.

Winters: Agrees. All of the store fronts on Pleasant Street are level. This one is on an incline and not very level. It is unique.

Wallner: Agrees. Also noted that no parking is allowed on the street, further restricting any commercial use.

Carley: Agrees. The property is unique.

A **motion** to grant the request was made by Winters and seconded by Scott. Roll call vote: AYE: Wallner, Winters, Scott, Carley. NAY: none. Motion passes by a 4-0 vote.

No action was taken on the July Minutes.

*Respectfully submitted by
Rose Fife, Clerk*