

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
APRIL 7, 2021 MEETING
MINUTES**

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

Absent: Robert Harrison Jr.

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.

Meeting commenced at 7:00 pm.

18-21 [Laura Hartz, Esq. for 3G Eagle, LLC.](#): Applicant wishes to renovate an existing industrial building into 3 industrial flex tenant units with an automotive repair facility (Principal Uses J-4&5) as a tenant and requests a Variance to Article 28-3-6, Aquifer Protection District, Section (d)(3), Uses Prohibited, Item (m), ...automotive repair, servicing or automotive body work, to permit such automotive repair, service and, body work where such use is not allowed, for property located at 25 Henniker Street in an IN industrial District with an Aquifer Protection District (APD) overly on a portion of the property.

NOTE Before hearing this case, the Board must decide if the appeal is a "development of regional impact" in accordance with RSA 36:54 – 36:58. Once the determination is made, the Board is requested to recess the hearing to the May 5, 2021 public hearing.

Craig Walker gave an overview. He wasn't sure if the appellant is in attendance. He shared a screen showing the property and the overlay and how it lies on the property. The purpose of the determination is so that if anything is proposed within one municipality that affects an adjacent municipality the other municipality is given opportunity to speak or respond to the notice. He showed where the Pembroke Well Heads are located. The aquifer lines originate in Concord and continue into Pembroke. This could reasonably be anticipated to have regional impact.

Winter asked if it was an RSA that requires them to decide. Walker said RSA 36. Spector-Morgan explained it was RSA36:54.

Walker explained that the applicant is looking for a variance to permit automotive repair and service work within the AP District. Carley asked if the question at hand was if the Board needs to determine if they need to notify Pembroke. (yes) Walker also let the Board know that the Regional Planning Commission has offered some written information on determining Developments of Regional Impact (DRI). Spector-Morgan read RSA 36:54. Carley doesn't recall a case where the Board was asked to decide without hearing from the appellant. Walker explained that the submission is in writing. He thought a representative for the appellant was going to be present but, due to a last minute anticipated leave by their representative there may not be someone available.

Winters is prepared to make a motion. He feels they should provide Pembroke the notice.

A motion that this request be determined as a development of regional impact (DRI) was made by Winters and seconded by Spector-Morgan seconded. Spector-Morgan wanted it in the record that her firm represents the town of Pembroke but she hasn't been contacted at all by them about this issue. Roll Call Vote: AYE: Wallner, Spector-Morgan, Monahan, Winters and Carley.

A motion to adjourn the meeting until 5.5.21 was made by Spector-Morgan and seconded by Wallner. Roll Call Vote: AYE: Wallner, Winters, Monahan, Spector-Morgan, and Carley.

11-21 Bob Harbour: Applicant wishes to construct a 10 foot by 12 foot, 2 story addition (240sf +/-) on an existing non-conforming residence and requests a Variance to Article 28-8-4(c)(1), Expansion of a non-conforming to allow the expansion of a non-conforming use where such use is not permitted for property located at 9 Broken Bridge Road in an IN Industrial District.

Testified: Bob Harbour. Also available to testify Christina Harbour, his daughter. Mr. Harbour testified that he is getting older and his daughter and husband have agreed to move in to help him. The house isn't that big. An addition would allow them to have a full bathroom upstairs and enlarge the bathroom and bedroom downstairs.

Carley asked Walker why they are before the Board. Why are they in violation. Walker explained that the residential property lies within an industrial zone and exists as a non-conforming use. The gas company owns most of land at the eastern end of Broken Bridge Road. It's very much industrial. There are only 2 residential uses left on that road.

Mr. Harbour explained that when the home was built it was a residential neighborhood. The gas company built a building across the street that wasn't there when he bought the house. It won't have an impact on anyone but will have a great benefit to him. He's worked hard to own a home in Concord. He would just like this small concession so he can continue to live in his home.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Wallner: If this was in a residential area they wouldn't come before the Board as they meet criteria for setbacks. The hardship was developed over the years due to the changes in districts. He is in favor.

Winters: This is not a large addition. It is minor. He is supplementing a use already in existence. It feels unreasonable to deny this modest change.

Monahan: Agrees. The property was over taken by the changes to the zoning.

Spector-Morgan: Agrees. It is as natural an extension of a nonconforming use as you can get.

Carley: Agrees.

A motion to grant the request was made by Spector-Morgan and seconded by Monahan. Roll Call Vote: AYE: Spector-Morgan, Monahan, Winters, Wallner, Carley.

12-21 William Young: Applicant wishes to establish the subject property as a buildable lot and requests a Variance to Article 28-4-1(b), Minimum Lot Size, and Article 28-4-1(h), The Table of Dimensional Regulations, to permit the development of a property with 10,000 square feet of land where the minimum lot size required is 12,500 square feet of land for property located at 13 Drew Street (map/block – 603/z 146//) in an RS Residential Single-family district.

Testified: Attorney John Arnold of Hinckley Allen. Walker shared a screen showing the GIS layout of the property. It is located at the corner of Drew and Chase Street. It is 100 x 100. A total of 10,000 s.f. lot. That zone requires 12,500 s.f. to build. The property has a complicated history. It starts in the 1940's. The minimum lot size then was 8,000 s.f. In 1999, the property was inherited along with 11 Drew Street. The lot size at that time had increased to 12,500 s.f., so it was a pre-existing nonconforming lot. Per Zoning at the time, any nonconforming lot in common ownership with an adjacent lot would be merged into a single lot. The inheritor didn't know this and he sold 11 Drew Street separately. He then wanted to build on 13 Drew Street and he was informed that the lots were merged and he didn't have any right to sell 11 Drew Street separately. This was constituted as an illegal subdivision at the time. In 2004 he applied for a variance to the lot size requirement but the Board denied the request by a 3-2 vote. The property has been vacant. Mr. Young bought the property in 2010 and wants to put a single family home on it. There has been a material change since the 2004 application. In 2010 the legislature amended RSA 674:34a to prohibit involuntary mergers. In 2011 they enacted RSA

674:39aa which requires City's to separate lots involuntarily merged. If this were in effect in 1999 this would have been a different outcome. These changes in the law, and the passing of 17 years constitute a material change in circumstances.

Carley asked the Board if they thought this was a materially different request. SM- yes. Material change in law. Monahan agrees. Winters – questions regarding the law change. Spector-Morgan explained. Wallner – yes. Winters – yes. Motion that find is materially different application Spector Morgan, Wallner. AYE: Wallner, Winters, Monahan, Spector-Morgan, Carley.

Attorney Arnold: Public Interest: There will be no change in the neighborhood or impact to health safety or welfare. It was developed in the early 1900's. They were all small house lots. The block this property is on has 2 other lots with the same dimensions that are already developed. Some properties are less than 5,000 s.f. It is consistent with character of neighborhood. Substantial justice: In 1999 the circumstances where that the zoning merged the lots. This created a new substandard lot. This would be consistent with other house lots. It is unique as it is a corner lot with only 2 adjacent abutters. Those lots are already developed. Both of those lots are larger than 10,000 s.f. lot size minimum and are developed. That provides adequate separation. Other benefit of being on the corner, the adjacent streets provide some separation from neighbors. There are very few undeveloped lots in this historic neighborhood. They are only lacking 2,500 s.f. It will comply with setbacks and other zoning compliance. Not being allowed to use this property is unjust. There are similar lot sizes in the neighborhood or smaller.

Spector-Morgan asked if there were any other use that can be made of the property? Attorney Arnold said there were not.

In favor: none.

In opposition: none.

Code: none. The City is supportive of infill development for lots like this.

Carley read a letter of support into record. The letter came from Christopher Knight who owns 6 Drew Street.

Decision: Carley reviewed the testimony as given.

Spector-Morgan: She is in favor of granting. The criteria are focused on if the use would be consistent with neighborhood and it would. No other use can be made of property.

Monahan: Agrees. No other reasonable use can be made of the property.

Winters: Agrees. There is a very desperate need for new housing in Concord. The lot is a perfect square which allows a developer to maximize the use.

Wallner: Agrees. On Drew Street there are 9 lots and 6 of them do not conform by today's standards.

Carley agrees.

A motion to grant the request was made by Wallner and seconded by Spector-Morgan. Roll Call Vote: AYE: Spector-Morgan, Monahan, Winters, Wallner, and Carley.

14-21 Eric Stephens: Applicant wishes to expand a Commercial indoor recreational facility (Principal Use C-3), established by Variance under Case 46-2018, and add a residential dwelling and request the following:

- 1) Variance to Article 28-2-4(j), The Table of Principal Uses, to allow an expansion of the commercial indoor recreational facility by adding a new detached storage building for use in conjunction with the indoor recreational facility,
- 2) Variance to Article 28-2-4(h), Multiple Principal Uses on the Same Lot, to permit a single-family dwelling to be developed on the same lot as an existing non-residential use, for property located at 63 Bog Road which is transected by a RO Residential Open Space District and an RM Residential Medium Density District.

Testified: Eric Stephens, Justin Stephens and his wife Jennifer. Justin: They own the Barn at Bull Meadows which is a wedding and event center. In 2018 the ZBA granted their variance to open a wedding venue. They are lacking in 2 areas. Storage space and security. They would like to construct a 32 x 32 two story garage to use as storage and have someone on the property to allow for security. They lost useable storage space due to utility and HVAC layout. They have stored many more tables and chairs inside of their building due to Covid-19 requirements. They are exceeding the capacity of their storage space. They are storing items in the bridal suite and outdoors. They are renting off site storage to assist in

this, but that is impractical. Jennifer testified. They need an on site dwelling because they need a sleeping space and security presence. They work 14 plus hours on the days before events. Driving home after a 14 hour day is not ideal. Having a place on site would be safer for them and the public. Justin and Jennifer have had a baby boy and having a residence on site for their parents to watch their son while they are working is more stable. Security presence – they have noticed a frequent presence of uninvited visitors. They have walkers and visitors using their private property. They have had people on their security camera looking into windows or walking around their property at night. This building is not visible from street or abutters homes. They have arrived in the morning and found broken bottles in the parking lot, damaged landscaping, burnout marks, snowmobile tracks, and ruts in the driveway. A constant presence on the property would help. The location of the garage would be where all uninvited visitors would need to pass. They have installed signs, cameras, spoken to people, etc. but intrusions still occur. They have also happened during wedding ceremonies. They interrupt a private event going on. Eric discussed unnecessary hardship on the property. He spoke about the special conditions. They have a 1400 foot driveway which makes it reasonable to have a security presence. The rail trail intersects their property. There is no fair and substantial relationship between zoning ordinance and their request. A single family home with a garage would be allowed in an RO zone. Covid-19 has impacted their venue. It hasn't allowed as many guests. They have needed additional storage space. The wedding industry is uncertain. Spirit and intent: A garage with a dwelling unit above it would not interfere.

This use would not alter the essential character of the neighborhood as there are many garages. There are some single family dwellings throughout the neighborhood and a garage will fit the character of the neighborhood. The exterior of the garage will be aesthetically pleasing and it would not appear to be non-conforming. This will not pose threats to the public health, safety or welfare. In fact, it will be used to help reduce the demand on law enforcement which in turn promotes public health, safety and welfare. Substantial justice: the existing business on the properties bring hundreds of visitors in the Concord area every weekend. They will also continue to host the Ward 2 elections annually for the city. They have worked closely with the city to become a benefit to the local area. Theft and trespassing on the property is making it more difficult. Allowing additional storage on site will help cut down on this and allow them to spend more time attracting more guests and aiding the community. They already employ some of the neighbors at the business including a bartender, a landscaper and a groundskeeper. It will allow them to continue hiring necessary staff in the local area. Justin: No noise or traffic will be on the property. Construction of the garage will deter unwelcome visitors. Not granting this request would be an unnecessary hardship to them and their business.

Spector-Morgan asked Walker if this request requires a variance vs. a special exception as the use was originally granted with a variance. Walker explained that it in an RO zone you cannot have a mixed use i.e. a residential and commercial together thus a variance is necessary in this case.

Monahan: When it was before them in the past he recalls this property being wet. Eric answered that was correct and there is wetlands on the property. Monahan asked if they anticipate any problems with the location of the garage being challenged by wet spaces. Eric explained that they are placing the garage in an area where that will be avoided.

In favor: none.

In opposition: Erin O'Toole. This could result in a huge enterprise and they are trying to do it step by step. She feels like it lacked planning on their part for not seeing the need for storage or security. She abuts the rail trail. She can walk 5 minutes and be next to them. She resides at 28 Americana Drive. This is disruptive to the character to the land. It is a wild life corridor. They have built a commercial enterprise with traffic and they should have anticipated these problems. Winters asked if since they have been operating has she noticed issues with noise or traffic? Mrs. O'Toole has heard the party guests when she walks the trail. Winters asked if she could hear this from her home. Mrs. O'Toole said if she were outside, yes. Inside her home, no.

Spector-Morgan asked if the garage required relief or just the accessory apartment. Walker explained that the garage does as it is storage for the wedding venue and is an expansion of a use allowed by variance.

Letters in support: Raymond Mercier, 81 Bog Road. Abuts the property. In favor of granting the variances. He sees a hardship. Mr. Timothy Blagdon, The Friends of Sunapee Rail Trail, President. In favor. Owners are dedicated and professional.

Code: none.

Rebuttal: Eric Stephens. They didn't own the property when they came before the board the first time. They didn't realize the traffic down the rail trail. It was hard to anticipate they needed this amount of security. They have 18-20 people on their property per day that are uninvited.

DECISION: Carley reviewed the testimony as given.

Wallner: Not granting the variance would be contrary to public interest. The hardship is the increased traffic not anticipated on rail trail and that will continue to grow. He is inclined to be persuaded.

Winters: Questioned Walker regarding Variance #2. That would be allowed by right but they need this variance because there is a commercial use there. Walker said yes. He explained. Winters, Variance 1 is consistent with use allowed. Variance 2 – he has difficulty with. Inclined to support.

Monahan: He is fine with variance 1. Variance 2 – adding the residence – he feels it is in keeping with the character of Bog Road. They have had a similar security issue on Hall Street that the Board allowed years ago.

Spector-Morgan: The storage space is fine. The residential use she is inclined to agree. She is in favor of granting both variances. She would condition the residential variance to be occupied only by the owners of the property.

Carley: Agree with colleagues. Configuration and location of the property help create a hardship. Reasonable use criteria is met with the house for security reasons. The storage is an extension of an approved use.

Walker: He appreciates Spector-Morgan's reason to put a restriction on the residential use, but it is difficult to enforce. A condition it be occupied by employees of the property would be legitimate and easily enforceable. Perhaps a condition that it is for a residence caretaker but no restriction on who.

A motion to grant both variances with the condition that the residential unit be occupied by a residential caretaker was made by Spector-Morgan and seconded by Monahan. Roll Call Vote: AYE: Spector-Morgan, Monahan, Winters, Wallner, and Carley.

15-21 Christopher Galbraith: Applicant wishes to construct a 20 foot by 40 foot addition on the westerly side of an existing single-family dwelling and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to allow a setback of not less than 13 feet from the westerly side lot line where a side setback of 40 feet is required for property located at 79 West Parish Road in a RO Residential Open Space District.

(Note: the property was granted an Equitable Waiver in 2001 under case #6-01, to allow a setback of 33 feet from the westerly side lot line where a 40 foot side setback is required)

Testified: Christopher Galbraith. He purchased this property 3.5 years ago. The properties are narrow. He has under 6 acres. He didn't realize that his house was already granted a variance (Equitable Waiver) after it was built. It is a 2 bedroom with an in-law apartment. He wanted to use that space to reconstruct inside his house but now he has moved his mother-in-law in. He has 3 boys. His kitchen is 10 x 11. He'd like to have a 20 x 40 family room/living room onto the right side of his house. It's the only spot he can place it. The septic is in the front. The patio is in the back. To the right is the parking area to the garage. He wants to reconfigure the inside of his house and would like to make a bigger kitchen. He spoke with the abutter who has no objections. This will improve home values. It is for the same size family.

Spector-Morgan asked where his well was located. Mr. Galbraith noted that it is in the back yard to the right. Carley asked if he would be a 2 story addition? Galbraith answered that it was a one story addition. Mr. Galbraith shared his screen to show the plans of what he would like to build.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Spector-Morgan: Given the narrow width of the lot and the location of the home, there is nowhere to add on without a variance. She feels there is an unnecessary hardship and it will not diminish the surrounding property values. She is in favor.

Monahan: Agrees with Spector-Morgan.

Winters: There is plenty of spaces between homes.

Wallner: This lot has an unusual configuration. Hardship argument is good.

Carley: Concurs.

A motion to approve the request was made by Spector-Morgan and seconded by Winters. Roll Call Vote: AYE: Spector-Morgan, Winters, Wallner, Monahan and Carley.

16-21 Hamilton & Pamela Munnell: Applicant wishes to construct a 2nd detached dwelling on a single lot and requests a Variance to Article 28-2-4(h), Multiple principal uses on the same lot, to permit 2 single family detached dwellings on a single lot when no more than 1 detached single family dwelling is allowed on a single lot for property located at 236 South Street in an RS Residential Single-family District.

Testified: Hamilton Munnell. He shared his screen for his PowerPoint presentation. They would like to build an in-law unit for his 85 year old father-in-law. He showed a picture of his lot. He showed where the in-law unit will be built. It would be attached to the garage from the front and from the sides. It makes the most sense. There are natural borders on both sides of his lot. He gave an overview of the plan. In reality it is attached to the garage so it is not separate. This is for his father-in-law. It will never be a rental. It may be for his parents in the future and his father-in-law now. This would need to be a ground level unit as his father-in-law is not able to ascent and descent stairs. They have a fence connecting the house to the garage and looks like a single family home. He showed the picture of his back yard and the things they will need to move or remove to add this structure. There will be no harm to the community. The harm to his family would be enormous.

In favor: none.

In opposition: none.

Letters: Scott Spiewak, 232 South Street. He is in support.

Jemi Broussard, 233 South Street. In favor.

Code: Walker explained that it is an in-law apartment but by definition it is an apartment and the use cannot be restricted to a period of time or an individual. It would be available for rental if the property were sold.

Walker: an ADU is allowed but it would need to be attached with a common door connecting the living spaces through habitable area to be an accessory dwelling unit. It would have to have a common wall or a communicating door. A standard duplex could have a breezeway between, but that isn't a permitted use in this area. This is strictly a variance to allow a 2nd detached dwelling unit on the property.

Winters asked Mr. Galbraith if there was no way to attach the unit through a common wall? Mr. Munnell explained that in order to do that they would have to demolish the back yard. They would lose the scenery back there, lose their outdoor living area.

Walker wanted to reiterate that he is not insinuating they would rent the unit, but if they sell the house the next people could legitimately rent it out.

Mr. Munnell explained that it will improve the neighborhood and look beautiful.

DECISION: Carley reviewed the testimony as given.

Spector-Morgan explained that she was involved in the ADU statute development. The common wall and door was to allow for the property owner to be able to keep a handle on what was going on in that unit. The ADU is not going to be attached to the home, but is attached to the garage and it would be a hardship to destroy the back of the house and the sun room and patio. It will not diminish surrounding property values or be a detriment to the public. The property is unique. She is in favor.

Monahan: Supports the request. There is a lot of logic in an ADU being on the ground level.

Winters: This is a painful case for him as he accepts what the applicant is saying, but has a hard time approving a second dwelling that is completely detached. It is out of character. The difference is that an ADU could be rented out in the future but (the property) needs to be owner occupied.

Wallner: It is senseless to tear down the patio and backyard. Feels it is an unreasonable hardship.

Carley: He is inclined to agree with colleagues in favor of the appeal. As the design is proposed, there wouldn't be any doubt in anyone's mind it would be an ADU. He cannot imagine that anyone would construe it as a second house on the property.

A motion to approve the request was made by Spector-Morgan and seconded by Wallner. Roll Call Vote: AYE: Spector-Morgan, Wallner, Monahan, and Carley. NAY: Winters. Motion passes by a 4-1 vote.

19-21 Michael and Jennifer Liane: Applicants wish to construct a 16'x22' addition on the east side of an existing dwelling and requests the following:

- 1) Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit an 11 foot setback from the easterly property line where a 15 foot setback is required,
 - 2) Variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a total lot coverage not to exceed 51% where a maximum lot coverage of 40% is allowed,
- for property located at 29 Wood Avenue in an RM Residential Medium Density District.

Testified: Michael Liane. He was born in Concord in 1981. His parents bought the house in 1983. His family all have homes within a block of this home. In this neighborhood many homes have been owned by many generations. Curb appeal is important. It is extremely common to have smaller setbacks. Setback variances have been granted in the neighborhood. He would like to add a third bedroom with a master bath and 2 small closets. It would be a 1520 s.f. addition with a full basement. The new roof line will tie into the existing gable one. He shared his screen to show the site and a drawing with the addition drawn in yellow. The location of 31 Wood Ave. has setbacks between 7 and 11 feet. There is a 4 foot setback on some homes. Directly to the rear of his home on Hope Avenue, the property has 2 dwellings. The two story, two bedroom second dwelling is 18" from the property line. He showed the initial drawing he sent in for his building permit. It shows the existing home and the addition. His setback on the left is 11 feet, which is what is in the variance request, but it is really about 12 to 12.5 feet. He wanted to err on the side of caution by asking for 11 feet. The overlay puts the stone retaining wall on his property, according to GIS. But he knows that's not an official survey. He measured the 11 feet from the fence post, not the retaining wall. The addition is setback 30 feet from the front of the home. The neighbors have 25 feet until they get to their home. But their garage is closer. The lot coverage will increase. The RM zone allows 40% lot coverage maximum. He will be 11% over the 40% allowed. His inground pool occupies 14% of that space. It is flush to the ground. He has a 6 foot privacy fence around the pool. Water drainage and runoff is not an issue. He has an 18" berm around his property. He has not had any water drainage issues at this location. This will not change the view or general aesthetics of the area. This will increase the value and square footage of the home. The addition will be to the rear of the home. He loves this home. He will need more space as their daughters grow. He and his wife have hybrid work where they need office space and they are expecting to be needed for elder care for family in the neighborhood. He'd like to hand this home over to his family someday. It will look natural to the home. He has the approval and support of neighbors.

Wallner asked if it were currently a 2 bedroom home? Mr. Liane said it was. Wallner asked if that were typical of the neighborhood. Mr. Liane answered not particularly. There are 3, 4, and 5 bedroom homes on the street.

In favor: none.

In opposition: none.

Letters/emails: Judith Bryant, 28 Wood Ave. She has no objection. Sarah and Gabriel Cohen of 12 Wood Ave. They live diagonal from this home. They have no objection.

Code: Walker submitted into the record one more letter from Brian and Heather Smith of 11 Wood Ave. They are in support.

Decision: Carley reviewed the testimony as given.

Wallner: A 3 bedroom home is reasonable. There is no place to put the addition. He's entitled to have a 3rd bedroom. The encroachment is minimal.

Winters: Agrees. It is a small lot. Almost every house in that area is in the setback. It is a reasonable use.

Monahan supports this. It is creating an overcrowded piece of property but it is a dense neighborhood.

Spector-Morgan: Agrees with all.

Carley: Agrees.

A motion to approve the requests was made by Wallner and seconded by Spector-Morgan. Roll Call Vote: AYE: Wallner, Spector-Morgan, Monahan, Winters and Carley.

Minutes. A motion to approve the March 2021 Minutes was made by Wallner and seconded by Winters. Roll Call Vote: AYE: Carley, Monahan, Winters and Wallner. Spector-Morgan abstained.

Respectfully submitted by,

Rose M. Fife, Clerk

Zoning Board of Adjustment