

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
MAY 11, 2021 MEETING
MINUTES**

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

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 7:01 pm.

21-21 Lisa Manning (Prosperit): Applicant wishes to remove and replace a dilapidated 11'W x 24'L detached garage with an existing zero foot side setback and an existing 17 foot rear setback and requests the following:

- 1) A Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a 14'W x 22'L replacement structure with a zero foot setback from the easterly side property line where a 10 foot side setback is required, and
- 2) Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a 14W'x22'L replacement structure with an 18'6" setback (+/-) from the southern rear property line where a 25 foot rear setback is required,

for property located at 11-13 Carter Street in an RN Neighborhood Residential District.

Testified: Tim Prosperit. His (garage) building was built on grade in 1922 and it is now to the point where the sill is rotted away. The pictures show the remainder of the structure is badly decayed. He'd like to replace the entire structure and add 4 feet onto the westerly side to make it practical for use for car storage and an area to service a vehicle. He walked all of Carter Street and Kimball Street and out of 22 houses he noted 17 that had similar structures that would also be nonconforming. The design he developed is in keeping with the architecture of the home and the neighborhood.

Carley asked if it was going in the same foot print. Mr. Prosperit explained that it will be going in the same footprint. He did submit a site plan. The Board did have his site plan. Wallner asked if he was just making it smaller in length and larger in width and not encroaching anymore than already is into the setback. Monahan asked Mr. Prosperit if the drive was along the eastern boundary. Mr. Prosperit answered that it was correct. He was advised by the City to use the corner of the sidewalk and he measured by that. Wallner asked if the driveway had been there as long as the garage. Mr. Prosperit stated he believed so. Wallner asked if his lot was the smallest on the street. Mr. Prosperit answered that his lot was 66 feet wide. The home was originally a duplex when built and then in 1937 there was a fire and the top story was removed and it was converted into a single family.

In favor: none.

In opposition: none.

Code: none.

Decision: Carley reviewed the testimony as given.

L. Scott: Reasonable request. Mr. Prosperit couldn't meet the setback requirements without destroying his property and moving the driveway. She's in favor.

Winters: Agrees. They've been inclined to approve this type of request when someone is rebuilding.

Monahan: Agrees. Looking at photos he agrees with Mr. Prosperit's description of a dilapidated garage.

Wallner: Agrees. Values of surrounding properties will not be diminished.

Carley: Agrees.

A motion to approve the requests was made by Wallner and seconded by Monahan. Roll Call Vote. Scott: Aye, Wallner: Aye, Monahan: Aye, Winters: Aye, and Carley: Aye. Motion carries.

22-21 Donald Jewell for Woodpro Inc.: Applicant wishes to develop an industrial zoned property for outdoor warehousing and storage of storage trailers and commercial vehicles, and requests a variance to Article 28-5-37(d), Maximum Area of Lot to be Used or Designated for Outside Storage, to permit the warehousing of storage trailers and commercial vehicles, (Principal use K-7), on a lot with no building "housing the principal use", and to waive the restriction that outside storage is allowed only as a ratio of land area to building area of 1.3 to 1 which is the ratio of the area of outside storage to the gross floor area of the buildings on the lot which houses the principal use for property located at 39 Locke Road in an IN Industrial District.

Note I: Prior to hearing this case the Board must determine whether this request is materially different in substance or content than the requests contained in Case #027-19.

Note II: The request is to allow only warehousing and storage on the property. The property is not proposed to be used for on-site retail sales or other customer based activities.

Applicant was not present at this point in time. Board revisited at a later time in the evening.

23-21 John Radley: Applicant wishes to convert a portion of an existing single-family detached dwelling to 1 accessory dwelling unit (ADU), (Accessory Use A-13), and requests a Special Exception from Article 28-2-4(k), Table of Accessory Uses, and in accordance with the Supplemental Standards contained in Article 28-5-52, Single-Family Detached Dwellings with One (1) Accessory Dwelling Unit (ADU), for property located at 10 Abbott Road in an RS Residential Single Family Residential District.

Testified: John Radley. His mom has onset dementia and they are looking to have her live with them. They are trying to make it accessible for her. The first phase is to get the special exception for the ADU. In NH you can apply for an ADU and the town/city can authorize what they want it to conform to. Carley read the question to him for him to respond. Will it create undue traffic or pedestrian safety? Mr. Radley stated that it would not. There is also ample parking on the property. Will provided with adequate facilities? (Nothing is added. Not increasing any run offs to neighbors or street.) No uses of municipal services will be increased. Out of character? No changes to exterior of the building. Appropriate location: not increases the size of the house, nothing is changing. Consistent with spirit and intent and master plan. (Housing is needed in Concord.)

In favor: none.

In opposition: none.

Code: none. It's a well-traveled street. This use would not be out of character with the neighborhood.

Decision: Carley reviewed the testimony as given.

Wallner: He feels it meets the special exception criteria.

Winters: Established criteria based on his statements.

L. Scott: No concerns. Appropriate use/location for an ADU

Monahan: Agrees.

Carley: Agrees.

A motion to approve the special exception was made by L. Scott and seconded by Wallner. Roll Call Vote: Monahan: Aye, Wallner: Aye, L. Scott: Aye, Winters: Aye, and Carley: Aye. Motion carries.

24-21 Peter J. Miner, Jr. and Sarah A. Miner: Applicants wish to use an accessory building (garage) in conjunction with an "off-premises occupation", to service and repair mechanical equipment, and requests the following:

FM ZBA 5.11.21

- 1) a Special Exception from Article 28-2-4(k), Table of Accessory Uses, and in accordance with Supplemental Standards, Article 28-5-31, Use of a portion of a dwelling or accessory building in conjunction with an off-premises occupation (Accessory Use A-4),
- 2) a Special Exception from Article 28-2-4(k), Table of Accessory Uses, and in accordance with Supplemental Standards, Article 28-7-17, Parking of Commercial Vehicles, to allow the use and storage of a commercial vehicle as an accessory to a principal residential dwelling for use in conjunction with an off-site occupation, for property located at 87 Shaker Road in an RM Residential Medium Density District.

Testified: Attorney Matthew Johnson. Also available to testify were Peter and Sarah Miner. The request is for a special exception. There will be no external changes. There will be no outdoor storage. Parking is limited to one commercial vehicle, which is what the applicants have. The prohibition of fabrication, manufacturing, sales, etc. - the applicants are not doing any of those activities. It does say repair and this is the Miner's business, which is off site. The repair of large equipment is done off site. That is the bulk of their business. In their garage they would like to repair small home owner/residential maintenance and service for things like weed whackers, snow blowers, etc. Not necessarily repairs, but general maintenance and services. This will not be used for a base of operation for employees. Mr. Miner is the only employee. He reviewed the criteria for a special exception. Any equipment dropped off at the property would be very limited, by appointment only, and during regular business hours. Their busiest month about 35% of their actual business was performed at the property. A large majority of the work is done off site. They have adequate and proper facilities because the proposed limited use doesn't call for additional water or sewage. There is no alteration of the building and they will not add impervious materials to the property. The equipment is stored indoors. There is no excessive demand for police or fire protection. There will be no additional solid waste created. The use doesn't create any hazard to the health or safety of the general public. The limited use is not out of character with the neighborhood. Work performed on site is limited in nature and amount and during regular business hours and done indoors. It is appropriate for the location because it's in compliance with Article 28-5-31. The use is consistent with the intent of the ordinance.

Winters asked Attorney Johnson if he had the Miner's at the last Zoning Board meeting. What is the difference between this request and the last one? Attorney Johnson did not represent the Miner's at the last meeting. That request was a variance request for a major home occupation. That application was incorrect for what they are trying to do here. The variance was denied for a home occupation, but this is an off site occupation. The repair type of work and large machinery work is done off site. The sign at the property has been taken down as they understand that isn't allowed under the special exception. Otherwise they comply. Winters asked where is the primary location of the business. Attorney Johnson explained that the primary location of the business is at his client's properties. Carley asked if any of the equipment on the property now does not belong to the Miner's. Attorney Johnson said no. Some pictures were submitted by abutters showing equipment on the property and he has spoken with the Miner's. There was lawn mowers outside, trailer, and tractors. All of those things belonged personally to the Miner's. The tractor has been moved off the property. L. Scott asked Attorney Johnson if what he is saying is that maintenance and service of equipment is not the same thing as repair of equipment. Attorney Johnson explained the prohibited activities. It is not a body shop. Major repairs such as on a bull dozer is not done on the premises. But a weed whacker that needs general maintenance would be done in the garage. The intent of the article is to prevent a junk yard from forming with broken down things on the lot. Monahan asked about the out door storage of commercial vehicles. Attorney Johnson explained that there is a commercial vehicle and they submitted a plan showing where it would be parked. He's not sure what kind of truck that is. Monahan is trying to get a better sense of why this special exception is necessary. Walker explained that per Article 28-7-17, parking a commercial vehicle in a residential district requires a special exception. Carley asked what the definition of commercial vehicle is vs. a person's pickup truck. Walker read the definition. Mr. Miner explained that he has a 2006 F450. It is 8'6" with a crane and air compressor on board. Monahan wanted a better understanding of what is happening in the garage. There was a letter addressing the volume of waste oil on site. Walker wanted to clarify to the Board, at this time, that this request is for a special exception which does not permit any on site repair. This was for off-site. The garage can be used to store material that is ancillary to the off-site activity. This is a special exception for off site work strictly. Monahan asked why they were storing waste oil on site. Sarah Miner explained that when they are done with complete services at others homes, they bring it back to their home. They have contracted a company that comes and gets the oil from their home.

In favor: Letters in file. Alan and Jean Gray of 88 Shaker Road. No issues or concerns opening a small business. No objection to the appeal.

In opposition: Letters in file. Douglas Hicks, 95 Shaker Road. Attorney Moeckel should have submitted a letter that would be sufficient. He'd like clarity of what is happening in the garage. The last application was for a small engine repair. The

only difference is that they took the sign down. The property is not appropriate for a small engine repair shop. That's what he is opposed to. He's also concerned if they leave the property, these rights will transfer to someone else. There will be a business forever on this property. Carley explained that a special exception will go with the property. Mr. Hicks felt that this is a nice family trying to do a good thing, but its not an appropriate place for small engine repair shop. Parking their truck there and going to work, he has no issues with that. They are running a business on this property regardless of what they are saying and it's over 1/3 of their operation.

Letter from Attorney Frederick Moeckel of Tarbell and Broderich PA is in the file.

Letter from Brenda Perkins, Realtor regarding 87 Shaker Road. The Shaker Road area property will not affect other property values.

Letter from Debbie Tardyff of 92 Shaker Road. Her letter included some photographs of equipment on the land. In file.

Letter from Attorney Matthew Johnson. In file.

Code: none.

Rebuttal: Sarah Miner. The ran the percentage of business numbers personally. They do a ton of mobile services. Ms. Minor described the items on site, they currently they have weedwhacker, and edger, and a lawn tractor there. They have nothing big there. The photos from the neighbor shows their own items. They have a trailer and a JD Tractor with accessories. That is their property. A Cub Cadet, is Mr. Gray's that he asked them to service. They did remove the sign when they weren't able to get the variance. This has worked well for them. They have done the paperwork with the state. They were both military police and service members and they would never disrespect the rules. They do 8-10 things at the house per month.

Decision: Carley reviewed the testimony as given.

L. Scott: She is requesting that the 2 special exceptions to be acted on separately. The special exception for the commercial vehicle on site she has no objection or concern about. It is for off-site purposes. She is not in support of the special exception for doing work on site. There is no difference between maintenance/service and repairing equipment. Repair is not allowed per the special exception criteria.

Winters: Agrees with most of what L. Scott says. A special exception to storing one commercial vehicle outdoors he's in favor of. He'd be more in favor of indoor storage of their own equipment and own tools. They are clearly wanting to do some work there.

Walker spoke. He is confused about the discussion happening regarding the Miner's doing work and maintenance at the property. This special exception is solely for doing work and maintenance OFF the property. The purpose of the garage or home is to run the office or keep records. The garage would be used to store equipment or materials i.e. lumber for a carpenter, etc.. It's not for a workshop to do work related to the business. That's not before the Board this evening. This is for off-site work, to store parts, store vehicle on the property but no repairs. Winters noted that the first statement on the application states they want to work on things in their garage. Walker explained that they would have needed to request a variance from a different section. The variance last time was to allow repair work on the site and it was DENIED. If they put something on the application that is note listed in the Notice, its immaterial as it's not before the Board. Carley asked if the board is empowered to grant a special exception for something they are not asking for, etc.? Walker explained that the board can only act on what was noticed and advertised. It was his understanding that this is what they were requesting. If there is confusion, at this point in time, perhaps the board should table the request to get clarification as to what the applicant wants. Winters asked if they deny the request, can the applicant reapply for a special exception? Walker they would be able to only for a special exception that is allowed and defined in the Zoning Ordinance. Winters asked if they are denied are they barred from reapplying? Walker explained the Board would need to find that it is a new case.

Monahan: Would like to take the requests separately. And with the confusion, he's inclined to deny item #1.

Wallner: He is fine with 2nd special exception request. He is not with #1, due to the confusion of on-site maintenance/repairs.

Carley: He feels that the request for the truck is reasonable. It seems to him that the first application for special exception is defective. From his point of view, rather than acting on it, he'd assume table it and let them reconstruct their application.

Special Exception Request #2 – A motion to approve the request was made by Wallner and seconded by L. Scott. Roll Call Vote: L. Scott: Aye, Monahan: Aye, Wallner: Aye, Winters: Aye, and Carley: Aye. Motion passes.

Special Exception Request #1 – A motion to deny the request was made by Monahan and seconded by L. Scott. Repairs are not allowed under the special exception and the application states and the testimony given is that it is what they are planning to do. It does not meet criteria. Wallner would prefer to Table. Roll Call Vote: Monahan: Aye, Wallner: Nay, L. Scott: Aye, Winters: Aye, and Carley: Nay. Motion to deny carries by a 3-2 vote.

22-21 Donald Jewell for Woodpro Inc.: Applicant wishes to develop an industrial zoned property for outdoor warehousing and storage of storage trailers and commercial vehicles, and requests a variance to Article 28-5-37(d), Maximum Area of Lot to be Used or Designated for Outside Storage, to permit the warehousing of storage trailers and commercial vehicles, (Principal use K-7), on a lot with no building "housing the principal use", and to waive the restriction that outside storage is allowed only as a ratio of land area to building area of 1.3 to 1 which is the ratio of the area of outside storage to the gross floor area of the buildings on the lot which houses the principal use for property located at 39 Locke Road in an IN Industrial District.

Note I: Prior to hearing this case the Board must determine whether this request is materially different in substance or content than the requests contained in Case #027-19.

Note II: The request is to allow only warehousing and storage on the property. The property is not proposed to be used for on-site retail sales or other customer based activities.

(Note: Mr. Walker recused himself from participating on this case, Mr. Hall was present for the case.)

Testified: Don Jewell. Wallner Mr. Jewell to discuss the difference between the original proposal and revised one. Mr. Jewell wanted to narrow the request as he felt it better fit the actual need for the property. It is strictly for warehousing and placing and parking of trailers there. Any sales activities will not be not done there.

Carley asked why it should be granted. He bought the property of June 2002. He thought he'd build a new manufacturing facility there. He felt the land on Locke Road was available to him for any of his needs at that time. It already had a driveway entrance, and a culvert put in, he felt he had that as a safety net. Carley asked for the 5 criteria of a variance. Mr. Jewell explained that the City of Concord passed an ordinance requiring a building on the property housing the principal uses that allows outside storage after he purchased the property. He had to place all of his equipment, etc. into storage trailers and he put them off Langdon Street temporarily. The ordinance changed his ability to use the property for his need. He is before the board for a variance. He has been paying taxes on the property for 20 years. He has paid approximately \$81,000 in taxes over the years. He'd hope to use the property for a use otherwise allowed in the industrial district. He's owned the property since June 2002. The change in the ordinance took away his ability to use the property as he needs to and he's trying to keep his business in Concord where he started in 1992.

Wallner asked how this request is different from the case they heard in 2019. Mr. Jewell explained that in 2019 he thought he could do some sales activities. There will be no sales there at this time. Monahan asked if there were products inside the storage trailers he wanted to leave on the property. Mr. Jewell stated that the trailers contain equipment. Monahan asked if the equipment has fuel or oils, or big pieces of steel? Mr. Jewell stated that they are largely just steel equipment, plastic and electrically operated.

Code: David Hall explained that the main difference is that Mr. Jewell thought he could do sales off that site. He'd like to just be allowed to store some trailers on the site, which would be allowed if a building were built. There will be no sales off that site. The original case was heard June 2019. If the Board moves forward, Mr. Jewell will still need to go to Planning for a minor site plan review.

Is this case a new appeal?

L. Scott: She doesn't know if just removing the sales piece makes it a totally different case. It was sales/storage now it's just storage. He's still proposing half of what he was before. She's not sure it is a new case.

Wallner: Feels it's a new case.

Monahan: Feels it's a new case.

Winters: Feels it is not a new case. Winters advised the Board he searched the minutes of the June 2019 hearing and did not see "sales" in the minutes.

Carley: It looks like the same appeal to him. His recollection is that the Board denied it as there was nothing particular about the land or configuration of things or that a hardship was there. He feels it's not a new case.

A motion that this request is not a new case was made by Winters and seconded by L. Scott. It will be dismissed without a hearing. Roll Call Vote: L. Scott: Aye, Wallner: Nay, Monahan: Nay, Winters: Aye, and Carley: Aye. Motion passes by a 3-2 vote that this case is not materially different from case in 2019.

25-21 Shaw's Supermarket for NSM Investments LP: Applicant wishes to install an additional building sign on the north facing façade and requests a variance to Article 28-6-9(a), Table of Maximum Sign Dimensions for Non-residential Districts, to allow the addition of a 19 square foot sign to the northerly building frontage where a non-conforming 274 square foot sign exists, resulting in total building signage on the northerly building front of 293 square feet, when the maximum building signage allowed is 200 square feet, for property located at 20 D'Amante Drive in a GWP Gateway Performance District.

Testified: Doug Boyce of Bailey Sign Co. in Westbrook Maine. They would be installing the wall sign in question. Shaw's is doing on line ordering and customer pickup. They will implement 'drive up and go' program. Most all of Shaw's stores are in the process of implementing this program. The purpose of the variance is that the existing store sign at Shaw's exceeds the allowance of 200 s.f. that was approved in 2005. The board had approved 274 s.f. They want a 19 s.f., 4 foot diameter, illuminated logo of a car with the non-illuminated lettering of drive up and go beneath it. He took a photo from the parking lot and had it superimposed it onto the building for display. Carley said they have a photo with a sketch on it. Walker – said it came in late in the day and he had not been able to forward it along. He shared screen and showed it. It is 48" diameter illuminated. Mr. Boyce gave an overview of the criteria. The size of the sign is 274 s.f. there. 19 s.f. sign and will represent a modest 8% increase. It is a reasonable amount of signage. The building has 300' of frontage. It is not contrary to the spirit or intent of the ordinance. There will be no adverse impact to public safety. It will not be contrary to public interest. The authorization will allow a new sign be installed.

In favor: none.

In opposition: none.

Code: none.

Decision: Carley reviewed testimony as given.

Winters asked Walker if this sign was deemed a directional sign would they need a variance? Walker explained that it does not qualify as a directional sign. Winters thinks that it is a reasonable use. It is a large lot. It is a very commercial area. It will be a minor increase in total signage. He is inclined to approve.

Monahan: Agrees. The building can handle the additional signage. It will help people maneuver in the parking area. Inclined to support the request.

L. Scott: Agrees. It is a small enough sign on a large building. It will be a minor impact. Inclined to agree.

Wallner: Agrees.

Carley: Agrees.

A motion to approve the request was made by Winters and seconded by Monahan. Roll Call Vote: Scott: Aye, Wallner: Aye, Monahan: Aye, Winters: Aye, and Carley: Aye. Motion carries.

26-21 Barlo Signs for Northway Bank: Applicant wishes to install a 27.12 square foot freestanding tenant sign and requests a Variance to Article 28-6-9(c)(2), to allow a setback from the front property line of zero feet where a minimum setback of 5 feet is required from any lot line, for property located at 190 North Main Street in a CU Urban Commercial District.

Testified: Brandon Carrier of Barlo Signs. They are looking for a zero foot setback. The City has a right of way. With the space allowed its impossible to have a sign fit there. They considered how large and tall the previous one was. They reduced the size compared to the previous one. They lowered the overall height. This is a minimal request. It will help maintain corporate identity. There will be no negative impact on the public or neighboring businesses. They are in a business friendly district. Carley asked if this replaces a Merrimack County Savings Bank sign? Mr. Carrier said it does. Is the new sign smaller? Mr. Carrier said it was. The existing sign was 8' wide and higher. They reduced the overall height. L. Scott made the observation that if they met the 5 foot setback, the sign would be flush with building. Mr. Carrier agreed. It would be right against the railing of the porch.

FM ZBA 5.11.21

In favor: none.

In opposition: none.

Code: none.

Decision: Carley reviewed testimony as given.

L. Scott: This is a reasonable request. It is a smaller sign than was there before. To meet the requirement, the sign would be into the railing of the building. Zero setback gives room around the sign for maintenance.

Wallner: Agrees. It is smaller than what was there. Not much room to maneuver in the front.

Monahan: Agrees.

Winters: That area is a little hazardous. You need signage. This is pretty similar to a variance they granted a few months ago.

Carley: Agrees.

A motion to approve the request was made by L. Scott and seconded by Monahan. Roll Call Vote: Winters: Aye, Monahan: Aye, Wallner: Aye, L. Scott: Aye, and Carley: Aye. Motion carries.

Minutes. A motion to approve the May 5, 2021 Minutes was made by Wallner and seconded by Winters and passed by a 4-1 vote with L. Scott abstaining. Motion carries.

A motion to adjourn the meeting at 8:53 pm was made by Monahan, seconded by L. Scott and passed by a unanimous vote.

Next Meeting: June 2, 2021.

Respectfully submitted by,

Rose M. Fife, Clerk

Zoning Board of Adjustment