

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

Attendees: Chair Christopher Carley (call in for case 18-21 and 22-21), Nicholas Wallner, Laura Scott, James Monahan, Laura Spector-Morgan and Andrew Winters

Absent: none

Staff: Craig Walker, Zoning Administrator  
Rose Fife, Clerk of the Board

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Meeting commenced at 7:00 pm.

(The Board for Cases 18-21 & 22-21: Chris Carley (phone in for both cases), Nick Wallner, James Monahan, Laura Scott and Andrew Winters.)

**18-21 Laura Hartz, Esq. for 3G Eagle, LLC.** (Recessed from April 7, 2021) 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.

Testified: Attorney Jeremy Eggleton, of Orr and Reno Also available to testify, Erin Lambert of Wilcox and Barton Engineering.

Attorney Eggleton gave an overview. 3G Eagle is affiliated with NH Distributors. They provide beer for the State of NH. They propose to use the property to lease a portion to a tenant, Kris-Way Trucking. They will be bringing the distribution and trucking aspects under 1 roof. They are located in the Aquifer Protection District (APD) which overlays the Industrial zone. If they did not have the APD they would not be before the board. They showed the layout of the property and what portion of the property is in the APD. The APD zone cuts the building in half. The building was built prior to the APD district being created. If their building were moved 10 or 12 degrees they would not be here today. They have industrial neighbors. He showed the boundary of the APD on a map. Showed a layout of where the loading docks were and where trucks would be serviced. This case is in front of the Planning Board.

Erin Lambert: This requires major site plan review and two conditional use permits. They are deferring some parking so they are building less impervious surfaces and all of that is in the APD area. The building was built in 2008 when the APD did not exist. They have met with Conservation Commission who recommended approval of both CUP permits. They went to the Planning Board and were granted major site plan approval and both CUP permits. Suite 2 tenants would like 4 loading docks and parking for trucks and they will be going back to the Planning Board for some minor adjustments. CUP approval requires Stormwater Pollution Prevention Plan, Salt Minimization Plan, and Spill Control and Counter Measure Plan. They looked to minimize impervious surface by deferring some parking which is not needed at this time. They are adding perimeter shade trees and collecting storm water from the loading area and the new parking. The soils there drain quickly. Attorney Eggleton discussed the operations. They are a highly sophisticated fleet servicing enterprise which uses the latest technology. The surrounding uses are similar. Only a small sliver of the building is in the overlay. Right now, Kris-Way is in the middle of APD-5 and have been there for quite some time. This proposal will be taking a business that raises questions, but is a clean operation, and moving it to a different APD district. The building is unique because it is a very small portion that is in the APD.

Monahan asked what the 'hoods' were that they were discussing for the catch basins. Ms. Lambert explained that a catch basin has an inlet and outlet. They hoods make it so the greases cannot go into the basin and it get captured in the hoods. Monahan asked about the recommendations of Pembroke Water Works. Attorney Eggleton said he spoke with Mr. Gagne and they are willing to work together. They are asking for 1 monitoring well and they would be happy to do that. Monahan asked if they would be willing to have conditions set that were in the letter from Pembroke Water Works. Attorney Eggleton

said they would be willing to accept those conditions. Monahan asked if there were any industry standard that the future tenants would do the same. Attorney Eggleton cannot promise what will happen 20 years down the line. This operation is clean. Ms. Lambert explained that as part of the CUP permit approval, a Spill Control and Counter Measure Plan is required.

Winters asked if the building was previously being used for manufacturing according. That is what he is seeing in the paperwork. Ms. Lambert said that the original user was Land and Sea. The building is vacant. Walker explained that previously there was a manufacturing firm there. Winters asked how long it has been since it has been used. Ms. Lambert saw tenants there when last she visited.

In favor: none.

In opposition: none.

Letter: John Robinson of Pembroke Road is in favor. He is concerned with heavy trucks using Pembroke Road. Walker looked at Mr. Robinson's and he is at 60 Pembroke Road, which is west of Canterbury Road crossing.

Code: none.

#### DECISION:

L. Scott: She had concerned prior to their presentation. But they have been through the Planning Board and have requirements in place and she doesn't have the same concerns.

Monahan: Agrees with L. Scott.

Carley: He believes the requirements for a variance have been satisfied. There are peculiar characteristics of the building. He believes it is a reasonable use. He is inclined to support it.

Winters: Agrees.

Wallner: agrees

A motion to approve the request was made by Monahan and seconded by Winters. Monahan wanted to take note of representation of the work the Planning Board did and wanted a condition of the recommendations made by the Pembroke Water Works stated in their June 1, 2021 letter, on the last page. There are 4 recommendations. Roll Call Vote: Scott: Aye, Monahan: Aye, Winters: Aye, Carley: Aye and Wallner: Aye. Motion passes by a unanimous vote.

**22-21 [Donald Jewell for Woodpro Inc.](#):** (See Note 1 below for rehearing request) 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:** (Request for Rehearing **only** on the determination of whether or not the case is materially different than Case #027-19. If the Board determines there are reasons to nullify the decision made by the Board on May 11, 2021 the applicant will need to return to the Board with a new request for consideration at a later date.) 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.

The Board needs to find that the rehearing request is different materially in substance or content. Walker explained that this is not a public hearing but the applicant is here for comment if necessary.

Winters: At the 2019 hearing Mr. Jewell stated that he sells hardwood lumber and then Mr. Walker explained to Mr. Jewell that he understood this to be storage only. There is nothing in the Minutes as to whether Mr. Jewell confirmed that or not. It does seem that it was not his intent to sell material there even back then. He stands by his remarks he made a few months ago that there is nothing materially different this time around, and there was nothing apparent stating he was to sell material from that site.

Laura Scott: She didn't sit on the June 2019 case but did sit on the May 2021 case. They wouldn't have had the same board from 2019 to 2021. She didn't receive the revised material before the meeting in May but did during the meeting. The applicant explained the difference between the 2 packets during the meeting.

Carley: He didn't see anything in the applicant's request that caused him to look at it differently. The items struck him as procedural. He'd be inclined to vote against the request for rehearing.

Walker: Tonight's request is to rehear the determination of whether there was material differences in the new proposal from the previous hearing. The question before the Board is **if** an error was made at the last hearing which resulted in the Board's determining there was no change in scope. Was there an error made at that meeting that directly influenced the decision that was made? Carley said no.

Monahan: Agrees with Carley. He found no material errors that were made that would change the outcome. He is not in support of the request.

Wallner: Sees no changes. He is not inclined to vote in favor.

A motion to deny the request for rehearing was made by Monahan and seconded by Winters. Roll Call Vote: Carley: AYE, Winters: Aye, Monahan: Aye, Scott: Aye and Wallner: Aye.

(The Board for the remaining cases: Nick Wallner, Laura Scott, James Monahan, Andrew Winters and Laura Spector-Morgan.)

**31-19 Liberty Utilities Corp.:** (Recessed from June 2, 2021) Applicant requests a one (1) year extension of a Variance granted on July 10, 2019 for Case #31-19 and in accordance with Article 28-9-3(c)(6), Expiration of a Variance, original variance request as follows:

*"31-19 Liberty Utilities: Applicant wishes to construct an office/warehousing/industrial flex, mixed use building (use L-11) and requests a Variance to Article 28-2-2(b), Purposes of the Established Districts, Section (16), The Industrial (IN) District to waive the requirement that the proposed building be serviced by municipal sewer, for property located at 14 Broken Bridge Road in an IN Industrial District."*

Testified: Douglas Dorn of Liberty Utilities and Ann Kynor of Pathways Consulting.

Mr. Dorn explained that they ran into a financial issue at the end of last year and then Covid-19 deterred them going forward as well.

Wallner asked the applicant if there was anything materially different? Mr. Dorn said there was not.

Spector-Morgan asked if there were any changes. Walker explained that there were no changes to the neighborhood, the area, or the zoning ordinance.

Walker explained that this is not a reconsideration of the variance, just an extension of the variance if it is determined there were reasons beyond the applicant's control that prevented them from going forward.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the extension was made by Monahan, seconded by L. Scott and passed by a unanimous vote.

**33-21 Linda B. Yuhas:** Applicant wishes to remove a dilapidated 10'W x 16'L detached garage and replace with a 10'W x 24'L carport/shed structure, and requests the following:

- 1) A Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a 10'W x 24'L structure with a 23-inch +/- setback from the north-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 10'W x 24'L structure with a 30-inch +/- setback from the south-easterly side property line where a 10-foot side setback is required, for property located at 69 Washington Street (C), a corner lot in an RD Residential Downtown District.

A motion to recess this case to the end of the meeting as a representative was not available at this time was made by Monahan, seconded by Spector Morgan and passed by a unanimous vote.

**35-21 Shampney and Sons Four Season Landscaping for Marie Blais:** Applicant wishes to establish a Contractors Trade Shop (Principal Use L-8) and accessory outdoor storage of materials, vehicles and equipment (Accessory Use B-7) business and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to allow a construction trades shop (Principal use L-8) where such use is not permitted, and
- 2) Variance to Article 28-2-4(K), Table of (uses) Accessory to a Principal Non-Residential Use, to allow the outside storage of vehicles, equipment and materials (Accessory Use B-7), in conjunction with the operation of a construction business where such a use is not allowed, and
- 3) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (a), Required Setbacks, to allow the storage of materials, construction vehicles and equipment within the 50' required buffer along the southerly (side) property line, adjacent to Black Hill Road, and
- 4) Variance to Article 28-5-37, Outside Storage of Materials and Inventory, Section (b), Screening Requirements, to waive the requirements for installing solid or opaque fences, walls or enclosures to screen the outside storage areas from view along the northerly (front) property line, the southerly (side) property line and the westerly (rear) property lines,

for property located at 36 Manchester Street in a GWP Gateway Performance District.

Testified: David Shampney, owner. Hillary Annance, Office Manager.

Mr. Shampney explained that he would like approval for outdoor storage of vehicles and materials to run their landscaping business. Ms. Annance explained that they would like to tear up the pavement that is there, installed natural fence line, and utilized the existing trees and bushes on the property. The proposal shows that the arborvitae will go along Manchester Street and it will block the view of the vehicles and storage facility. They will utilize commercial grade gates. They want to upgrade and spruce up the property. It will be more aesthetically pleasing. Mr. Shampney explained that the arborvitae get 15 to 25 feet tall. Ms. Annance explained that they will be about 6 feet tall to start. Mr. Shampney stated that the privacy hedge line fence would be created with the arborvitae. Monahan asked if there were nothing there now? Mr. Shampney said there was not. Hillary said they will have 7 vehicles on the property at any given time. Spector-Morgan asked what would be stored outside. Mr. Shampney answered that trailers, trucks, and landscaping material will be stored outside. Ms. Annance explained that they utilize the services of Dumpster Depot to haul away items removed from job sites. Spector-Morgan asked if outdoor storage were not permitted or if the main use is not permitted. Walker answered that both are not permitted. Spector-Morgan explained that they need to demonstrate that the property is unique. How is the use restriction different? Ms. Annance explained that this property is zoned for a gas station. The building and land, as it sits, is not set up that way. She believes the property is grandfathered for auto use. There are similar uses nearby.

Winters asked where they were storing their trailers and such now? Ms. Annance explained that they are storing them at the property currently. Winters asked how long they have occupied the property. Ms. Annance stated that they have been there since October 2020. They rent the property. They moved there not knowing they needed a variance. Bob Nadeau, Code Inspector, after they moved in regarding the use not allowed at their location. They had to get Bartlett and Associates out to do a survey. Winters asked if it were vacant prior to their occupying the site. Mr. Shampney explained that Grappone had used it as an auto lot. Winters asked if there were a structure there before? Both Mr. Shampney and Ms. Annance said there was a structure there that existed. It is used for office space and a garage.

Winters asked if they would prefer to install the trees because they felt it looks better. Mr. Champney felt it looks better. They may still install a fence at a later date. Ms. Annance wanted the board to know that if they set a condition that they needed to install a fence, they were fine with that condition.

Laura Scott thinks their modifications will enhance the property. But she doesn't know why the rules shouldn't apply here on this property. She would like the applicant to help her understand why the rules shouldn't apply to them. What are their special circumstances. There are a lot of other uses that could be established on this lot. Ms. Annance explained that the property next to them has a similar use. There are sales uses up and down the road. They also provide sales. There will be a lot of renovations of the property site opposite to them. They will not be providing anything that isn't currently there. This property is not currently nor has it even been used for anything other than auto. It would have to be overhauled by anyone else going in there. They are utilizing what is there.

Morgan asked why they need a setback variance to store materials in the 50 foot buffer along Black Hill Road. Ms. Annance explained that the storage will be towards the Black Hill Road area. Walker shared a photo of the site. Ms. Annance explained that there is a tree line along both sides. It may just miss the mark of the 50 foot line and their parking is along Black Hill Road and along the front on Manchester Street.

Wallner asked what the setback was in his zone. Walker answered that in the GWP zone the rear setback is 25 feet.

Winter commented that a letter in the file from the owner Ms. Blais said it is impossible to rent the lot. Ms. Annance explained that they are willing to put in the funds to improve the property on their own. It brings jobs to community.

Monahan explained that the board is constrained in granting the variance as they need to understand there is a hardship on the property. Is he hearing the physical condition and history would make it unlikely they would attract a tenant. Ms. Annance said that was correct. Without approval they would have to vacate the premises.

In favor: Ari Pollock of Callahan and Gartrell. He is representing ROI Trust. They are an abutter and own land to the rear and west of the parcel. They support the proposal as the use preserves the existing building and brings curb appeal. It fills a vacancy. The vegetative buffer will be well maintained and enhance the area. They submitted a letter in support for the record. They have a mixed use project coming forward soon on Black Hill Road and Manchester Street.

In opposition: none.

Code: Walker spoke. The use, as it is being proposed, is a heavy industrial use and belongs in an industrial district. Vehicles come and go at various times of the day. There is open storage. It is a use not in character with the intent of Gateway Zoning. It is intended for well-designed large scale commercial development. They want to see retail, restaurant, high end office uses. For the new proposed ROI development (adjacent lands) everything that exists there will be removed to the southwest of this site and be replaced with restaurants, supermarket, brew pubs, apartment houses, elderly housing, etc. It is a huge redevelopment of that whole entry area of the City. There are a few non-conforming commercial uses and semi-industrial uses established under prior ordinances but they are being replaced by conforming uses. Mayo Roofing construction has closed and their building has been removed. Steenbeke & Sons was there and has been removed. The nature of the corridor is changing. This type of outdoor storage and maintenance of vehicles is not compatible with the expectations or plans for the zoning district.

Monahan noted that the developer was heard to say they were supportive of it. Walker explained that there is a lot of pressure to improve parcels there as the area is moving in another direction. The direction is development that is intended for this district. Non-conforming uses tend to fade away and be replaced with allowed uses.

Winters asked about the map showing the development. Walker explained that it was being reviewed by the Planning Board and is public record. The developers were ready to start before the pandemic.

Rebuttal: David Champney and Ms. Annance spoke. Ms. Annance wanted to note that the photograph shared by Walker made the property look ill kept as without the variance they do not want to invest money into the property. They are looking for the opportunity to enhance the property. Even if it is a 2 year variance to go find a building they can use.

**DECISION:**

Spector-Morgan: She appreciates the position they are in and what they are trying to do. They presented nothing to convince her of a hardship. Just because there are nonconforming uses around this property that area similar doesn't convince her. She cannot support the use variances as there is no hardship. She doesn't think that the spirit of the ordinance is met or that substantial justice is met. She could support the variance to not do solid fences. The live fencing makes more sense. She is not in favor of request 1, 2 and 3. Also, the Board cannot grant temporary variances.

Winters: Agrees with Spector-Morgan.

Monahan: Agrees.

Scott: Agrees. While she is sympathetic to their situation, the presentation and materials provided do not satisfy the legal criteria the board needs to look at. She is okay with requests 3, and 4, but not 1 and 2. The potential of other upcoming proposals for that area does not weigh on their decision.

Wallner: Agrees with Laura about requests 3 and 4. No hardship.

A motion to deny requests 1 through 4 was made by Scott, seconded by Morgan and passed by a unanimous vote.

**36-21 Andrew Julian for NH Six Realty Trust.:** Applicant wishes to establish a Veterinary Hospital (Principal Use M-9) and accessory outdoor area to be used as a dog walking yard, and requests the following:

- 1) Variance to Article 28-2-4(j), Table of Principal Uses, to allow a veterinary hospital (Principal Use M-9) where such use is not permitted, and
- 2) Variance to Article 28-5-29, Commercial Kennels and Veterinary Hospitals, as follows:
  - a. To allow an outdoor dog walking yard in conjunction with the operation of a Veterinary Hospital in a district where such an accessory use is not permitted, and
  - b. To waive the requirements that an outdoor dog walking yard not be located closer than 150' to any property boundary and to allow an outdoor dog walking yard be located within zero feet of the southerly property line, adjacent to Tanner Street, and zero feet of the easterly property line, adjacent to Village Street,

for property located at 339 Village Street in a CBP Central Business Performance District.

Testified: Andrew Julian. Mr. Julian is a veterinarian. He owns, since 1997, a veterinarian hospital in Pembroke which is now a 5 doctor hospital. He'd like to buy the old Citizen Bank building in Penacook and convert it to an animal hospital. He has lived in Canterbury since 1991 with his wife who is also a vet. His daughter just graduated from veterinarian school as well. Covid hit and when that happened people started staying home and getting pets. New pet ownership is up 33% in the state. The animal hospitals in the area are overwhelmed. They have gone from 2 to 6 or 7 new patients a day. A lot of the area hospitals are not taking new clients. Or there is a 3 to 4 week wait to be seen. There is a need. What he is proposing is to put in a satellite clinic for their Pembroke Animal Hospital. It will pick up the overflow for outpatient purposes. They will come in be seen, treated, spay and neuter etc. No boarding, no day care, no kennels inside or out – they will go home same day. No changes to the outside of the building, no fences. Strictly an outpatient clinic. CBP zone. A general hospital is not a permitted use. Veterinary hospitals are not a permitted use. But what is, E3, office of health care practitioners including clinics and outpatient health care. It conforms to that area. Next door is Penacook Family Dental, which is outpatient. Down Canal Street is Penacook Family Physicians. This is a conforming use and this is a big need. There is a lot of development in that area. He likes that area because it is between Fisherville Animal Hospital down the road and Riverside Veterinary. This area would be more appropriate for an outpatient clinic.

Wallner asked about the request for dog walking. Mr. Julian explained that on the south side of that building is the only part of the building that is not paved. It's not going to be fenced and will not be a holding area. If people park out back and walk their dog to the front area and in that area the dog would be able to relieve themselves. There is a park behind them that has a sign asking them to pick up their dog's remnants.

Spector-Morgan's animals are patients at Riverside so she appreciates and knows there is a need. But she would like to know what it is about this property that makes it different, that makes it so the zoning doesn't need to apply to them. Mr. Julian explained that the bank has been empty for a couple of years. It is conforming as you have an outpatient family dentist next door. What is the difference? It is a healthcare place to care for animals. A variance is needed because it is called a veterinary hospital which implies kennels, boarding, daycare, which none of that will be there. There is nowhere else to put this type of use.

Laura Scott felt it was more the definition of what they are using, and the zoning hasn't caught up with the differences in animal care. This is more a doctor's office that happens to be for pets. What are you doing with the drive thru. Dr. Julian said they could use the drive through to talk to clients and then run their meds out to them, etc. They will not be creating a fenced in area for dogs.

Monahan asked Walker if there was a definition for an animal hospital in the ordinance. The kennel definition is for a facility for housing dogs and pets. They aren't boarding anything there. Walker has no definition for a veterinary hospital in the ordinance but it is in the Table of Uses. Monahan thought they were treating this more like a kennel than an outpatient facility. Walker explained that the clientele is significantly different, there is barking and defecating outside. Veterinary hospitals traditionally have horses, cows, sheep and that is why they are allowed in more rural areas and not in dense commercial downtown areas.

Winters asked if they had not challenged the Code Administrator's interpretation of whether or not this would be considered a veterinary hospital. Walker stated that was correct.

Scott asked him to explain why this property is unique and why the rules shouldn't apply to this property. Dr. Julian thought it is unique in that it is used by practitioners already for outpatient healthcare. It's situated between 2 vet hospitals. There is a park there, there are dogs being walked. It has a health care facility there and down the road. The area is growing.

In favor: none.

Opposition: John Jordan, 51 Tanner Street. He lives right behind the property in question. He's not sure if he's against it. The hardship is in question. What are the hours of operation? If it were granted he would be concerned with noise. He's an architect. If a vet hospital were granted it would allow them to board and keep animals overnight. Spector-Morgan explained that his testimony is an implied condition of approval (no boarding). Mr. Jordan doesn't want to be the zoning police in this neighborhood. He hasn't heard anything about a hardship. There are 2 veterinary hospitals in close proximity. He's not sure this is an underserved area. He doesn't think they can grant it based on what he heard the board do on the case before this. Where would the dumpster go? He is against the location shown in the plan. Walker explained that in a CBP zone there is a downtown solid waste committee. Mr. Jordan doesn't want a dumpster facing his property. Spector-Morgan asked Walker if they would need a site plan review. Walker said it would.

Code: Wasn't certain a site plan would be required, but the board can place site plan approval as a condition if they choose to approve the request.

Rebuttal: Dr. Julian. His hours would be bankers' hours. In Pembroke they are open 7:00 am and close at 5:00 pm. It would be regular hours 9:30 to noon and 2-4 would be appointment times. He has no intention of boarding there. If they need boarding they would be sent to his main hospital in Pembroke. If they are critical they send them to C.A.V.E.S. Noise shouldn't be a problem. Dogs leave with their owners. This area is in need of veterinary care. This isn't just for his personal growth, it is to meet a need.

#### DECISION:

Spector-Morgan: There is a reason that people and animal outpatient clinics are different. Putting a vet's office in this area isn't consistent with the neighborhood, which is primarily residential and for people patient. She doesn't see a hardship. She is not in favor.

Winters: Agrees. It is similar to last case. It's a good idea, but there is no hardship.

Monahan: They do not have the flexibility under the ordinance to do what is asked of them.

Scott: Agrees. It would be used and needed but doesn't meet the legal requirements to grant.

Wallner: Agrees.

A motion to deny all requests was made by Spector-Morgan, seconded by Monahan and passed by a unanimous vote.

**37-21 Aaron Fracht-Monroe:** 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 second-floor expansion with the closest point 1.3 feet (+/-) from the westerly side property line, where a 10-foot side setback is required, for property located at 9 Short Street in an RD Downtown Residential District.

Testified: Aaron Fracht-Monroe. Has lived at 9 Short Street since 2004. He would like to put a second floor addition. He submitted his application with site plans, elevation drawings and photos of the nonconforming setbacks in the neighborhood. The nonconformity is on the west side 1.3 feet from the property line. The footprint of the house won't change. There will be no increase in the nonconformity. The addition would have a new roof line. He believes the application meets all the criteria. The existing setback is 1.3 feet and it would be impossible to construct any addition without encroaching on the setbacks. The variance does not change the character of the neighborhood. It will not diminish the value of surrounding properties. He has a letter of support from the neighbors across the street.

Winters asked if were raising the roof. Mr. Fracht-Monroe stated that he is raising the roof and going up. Page 6 is the site plan in the packet.

Morgan asked why not go out and expand towards the rear of the property. Mr. Fracht-Monroe believes it would infringe on the rear setback. The intent is to get more room on the second floor. In 2011 a similar request was granted for him to rebuild the garage within the existing setbacks. Monahan asked how many square feet the addition would be. Mr. Fracht-Monroe said the addition would be 20 x 10, possibly a bit longer.

A letter was submitted from a neighbor.

In favor: none.

In opposition: none.

Letter: There is a 5 page letter from abutters Richard Mahar and Kathy Everest of 34 Rumford Street. from an abutter who is objecting to the request. Wallner summarized. They object to the distance to their property line and there isn't enough room to maintain the addition.

Rebuttal: Aaron Fracht-Monroe He has spoken to Mr. Mahar about this. His primary concern was the water run-off. He felt he had addressed this. The homes are very close together. There is going to be some potential difficulty in accessing it for maintenance, but the contractor said he can do all his work without going over the fence line. Future maintenance could utilize similar techniques. What is the difference between 1 story vs 2 story and what is the difference in setbacks. Walker stated there is none. Item #4 in Mr. Mahar's letter - he doesn't believe there is an opportunity to add to the rear of the building as it impinges on rear setbacks. They would have no more back yard. It would also create a lot coverage issue.

Letter in favor: Joe Messineo, 38 Rumford Street.

DECISION: A motion to approve the request was made by Spector-Morgan. The addition is not any closer to the property line. The property is unique. It is consistent with neighborhood. She is not concerned about maintenance as the contractor found a way to build it, there is a way to maintain it. She feels the variance criteria are met. Scott seconded the motion and it passed by a unanimous vote.

**38-21 Lisa A. Mistler and David W. Lynde:** Applicants wish to add a 740 square foot accessory dwelling unit (ADU) to an existing single-family dwelling by converting approximately 228 square feet (+/-) of the existing structure and by building a 16' X 32' addition to the existing structure, and requests a special exception from Article 28-2-4(k), Table of Accessory Uses, (Accessory Use A-13), 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 a 38 Timberline Drive in an RO Open Space Residential District.

Testified: Lisa Mistler and David Lynde. Ms. Mistler explained that her parents are in 80's and are finding it difficult to live independently. Rather than going to an assisted living facility they have asked to come and live with them. They would like to have a little place to prepare food and a living space to themselves. They would like to add a 740 s.f. ADU. Mr. Mistler explained that they have a 12 x 12 first floor bedroom with a guest bathroom off of it. He'd like to add to that so they can be on one floor and have some privacy. It falls under the ADU provision. They are not setting up a separate apartment, just a space. They are not adding a bedroom or a bathroom. They are not changing municipal water flow or have a separate water meter. Have a FHA system. They would add a heat pump in the area for them. They will not need to add parking spots. They have 5 full parking spots. They have a 3 car garage with an extra bay under.

Monahan asked about septic. Mr. Mistler stated that they have a septic system on the property. It is in the left front lawn. Winters asked if it were well within setback. Mr. Mistler said it was.

In favor: Daniel Marstaller, who lives across the street. He has no issue with this request. The home is not visible from the road. The paperwork related to when the houses were constructed envisioned this kind of thing. This will not have a negative impact on the character of the neighborhood.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Monahan, and seconded by Scott. Motion passed by a unanimous vote. Monahan noted that this is exactly how the ADU process is to work.

**33-21 Linda B. Yuhas:** Applicant wishes to remove a dilapidated 10'W x 16'L detached garage and replace with a 10'W x 24'L carport/shed structure, and requests the following:

- 1) A Variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a 10'W x 24'L structure with a 23-inch +/- setback from the north-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 10'W x 24'L structure with a 30-inch +/- setback from the south-easterly side property line where a 10-foot side setback is required, for property located at 69 Washington Street (C), a corner lot in an RD Residential Downtown District.

Testified: John Dahood. Linda Yuhas asked him to build this for her. The garage is falling apart. She cannot open or close door anymore and it is ugly. She bought the home knowing she wanted to build a new garage. She decided on a carport instead. She wasn't aware of setbacks where the lot was so small. The carport can come closer to the street, which makes it easier on the rear setback. It won't be as unsightly. Having the shed will make it look not so cluttered. Without this, it is a hardship for her.

Scott asked if it were more conforming? Mr. Dahood explained it would be moved closer to the street. Wallner asked if the setbacks would change. What was the original setback for the garage as it exists now? Mr. Dahood explained it is 33 inches and he's going to bring it forward a foot or so. Wallner asked if they were adding 8 feet to it? Mr. Dahood explained that the carport/shed would be moved closer to the driveway. It will give it more room to the rear fence. There is a photo in the packet showing the proposal.

Walker explained that the carport will move forward a foot or so and then the original length plus 8 feet towards the house. Mr. Dahood said that the setback on the side would remain the same. They will stay in the footprint of the garage now. Walker explained it would be more conforming.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Scott and seconded by Spector-Morgan. Scott felt they were bringing the property more into conformance. Motion passed by a unanimous vote.

MINUTES: Motion to approve the Minutes from June 2, 2021 was made by Spector-Morgan and seconded by Scott. Motion passes by a unanimous vote.

Next meeting: August 4, 2021 at 7 pm.

*Respectfully submitted by,*

*Rose M. Fife, Clerk*

*Zoning Board of Adjustment*