

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
OCTOBER 13, 2021 MEETING
MINUTES**

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

Absent: none

Staff: Ernest Cartier-Creveling, Zoning Administrator

Meeting commenced at 7:00 pm.

52-21 Christian Poyant for Carrier Place, LLC: Applicant wishes to reduce the area dedicated as the loading zone and requests a variance to Article 28-7-13(c), Design Standards for Loading Spaces, to permit an area equaling 270 square feet (18' x 15') where an area not less than 1,000 square feet is required, for property located at 265-273 Loudon Road in a GWP Gateway Performance District.

Testified: Christian Poyant and Matt (did not catch name). This building was constructed 3 years ago. The strip mall in location also contains Chipotle, Wrap City, an eyewear store, etc. They would like to have relief from the loading zone requirement. They have a 24 foot aisle width that goes around the back of the stores. There is no circulation that needs to go around the back of the building. The loading space isn't needed. They need parking spaces more than loading spaces. Not having adequate parking interferes with the reasonable use of the property. The 24 foot lanes behind the building create a substantial area for trucks and box trucks and they do not think it will interfere. Carley asked if staff would park back there. Matt said yes. They need more space in the back than they do in the front of the building. They are not impacting city streets or roads. They have the necessary site parameters to operate the site. The tenants at the other end do not use the loading space area. It is for public interest to ensure safe access and this site has this even with the reduction of loading spaces. They will be restriping the area.

Letters of support from the families that own the property on either side were submitted. Carley read the letter into the record from the D'Amante's who own the abutting properties.

Scott asked if the need for parking was because they are looking for a new tenant and can't meet the requirements for new use. Matt explained that the existing tenants are asking for more parking. Scott visits this location during evenings business hours and there are tons of parking spaces available at that time. This made her think that this request was for uses there during the day time. Mr. Poyant explained that they are complying with parking. They only have 1 vacancy right now. Monahan asked if they have loading bays in the back? Matt said they do not, only door access. Scott asked if they were hoping to put another food establishment in that spot. Mr. Poyant explained that another food establishment requires more parking. They need the variance to add another food establishment. Winters asked if all they are doing is restriping. Matt said that was correct.

In favor: none.

In opposition: none.

Code: none.

Decision: Carley reviewed testimony as given.

Winters: There is no construction involved. They are not modifying anything. He is inclined to approve.

Scott: It is a reasonable request. The loading space is quite large for the uses there. They are not storing a lot of product on site. They are reducing the loading zone and it won't have an impact. The request is for their own application for another food user, not just to help other tenants. In favor.

Monahan: In favor. The loading zone isn't backing into a public way and away from the flow of traffic.

Wallner: Agrees.

Carley: Agrees as well. Wanting this relief for an additional tenant strengthens the argument because the configuration of the lot prevents its reasonable use with relief from the loading requirement.

A motion to grant their request was made by Wallner, seconded by Monahan and passed by a unanimous vote.

53-21 Karen Ryan: Applicant wishes to add up to a 750 s.f. accessory dwelling unit (ADU) to an existing single-family dwelling by building a 20 foot X 37.5 foot 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 at 12 Redwing Road in an RS Single Family Residential District.

Testified: Karen Ryan. She's owned this home since February 2017. She has had to relocate her dad from FL to live with her. Her father has a mobility issue so she needs a ground level single family addition to enable them to care for him.

Carley had her point out on the map that was displayed where they would be adding onto her home. Carley asked if they met the setbacks. Ms. Ryan said they did. Winters asked what main road she was closest to. She said East Side Drive. She has spoken to her neighbors and they support her addition. Carley asked if it were residential space. Ms. Ryan explained that it would be and that they are on City water and sewer.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Wallner: He feels that it meets the requirements. It is only 750 s.f. It is a reasonable location. He is in favor.

Monahan: Agrees.

Scott: Agrees.

Winters: Agrees.

Carley: Agrees.

A motion to approve the request was made by Monahan, seconded by Scott and passed by a unanimous vote.

54-21 Storage Ventures, LLC: Applicant wishes to convert up to 12,750 s.f. of first floor space within an existing building to self-storage and requests a Variance to Article 28-2-4(j), the Table of Principal Uses, to allow a Self-storage use (Principal use K-7) to be established where such use is not otherwise permitted for property located at 204 Fisherville Road in a CG General Commercial District.

NOTE: Prior to hearing this appeal, the Board must determine whether this request is materially different in substance or content than the requests contained in case #021-2020.

Carley asked the applicant to explain why this case differs substantially from case #21-2020?

Testified: Doug Lee, Storage Ventures. Also testifying was Attorney Paul Alfano. Mr. Lee explained that this he has been a commercial real estate investor for 20 years. He is also trained as an architect. He has a letter of intent to purchase this building. They have about 15,000 s.f. of vacant space. They read the decision from 2 years ago. Attorney Alfano explained. They propose that the Board attach as a condition that they merge this lot with the adjoining lot at 180 Fisherville Road. This would merge the lots with the storage facility on it and the lot with the car wash on it. The merger is significant as that it presents the expansion of Thirty Pines. Even if it were just the one lot and they wanted to expand, it would exceed the 10% allowed so they would still need a variance. In 2020, the board was concerned that there was a brand new use going on the lot. This would be an expansion of an existing use. The other component is that the scale of this proposal is much smaller than the original one. The previous 2020 case was for 25,000 s.f. but what they will use is 12,000 s.f. +/- . This is a much smaller proposal. Self-storage is not specifically mentioned in the ordinance, but people assume self-storage is an industrial or warehouse use. He submits it is not. Industrial or warehouse use is a commercial use. It is transporting goods from one to another using commercial vehicles. This is ancillary to high density residential housing.

Carley explained to Attorney Alfano that he is entitled to make the argument that the use is misclassified, but not in context of requesting a variance. If he wishes to contest the classification made by the Zoning Administrator, he can do that, but it is a special type of appeal. Attorney Alfano is telling the board this to explain the realities of what is happening. This use is ancillary to the high-density residential use which is permitted in this zone. The smaller the house size the greater the need for storage. This property is 100% occupied. There is a high demand for self-storage. He views this as a housing issue.

Carley asked why this is materially different.

Attorney Eflano explained that the difference is the merger of the lot and the scale is less than 1/2 the size of the original appeal. Mr. Lee explained that last time they wanted to convert the first and second floor. Carley asked if they were converting the garage space into storage. Mr. Lee said that was correct.

Attorney Alfano believes that the use behaves more like a retail use. The users of the facility are 95% homeowners. The hardship is that the use already exists. These properties when merged will give the opportunity to address the demand for more self-storage. This will keep it contained on one lot. Square footage of self-storage is twice the other uses. This is a modest expansion of the existing self-storage use. Mr. Lee said it would be a 25% increase. Attorney Alfano continued with the fact that this is a mixed use zone, which indicates to him a desire to have these other uses near the residences. The only other 2 self-storage uses are approximately 4-5 miles away. The market shows this use is in demand. It is a reasonable use of the property. It is 100% occupied, which goes to the demand issue.

Carley asked the applicant to explain the percentage he testified to. The applicant explained that they will have one big triangular shape lot. Storage is part of that business now. The expansion of the nonconforming use is 25% of the existing storage units. Mr. Lee explained that the buildings are 51,000 s.f. and 204 Fisherville will be about 12,000 s.f. They will not be utilizing the second floor. The first floor is 16 or 17,000 s.f., the second floor is 5,000 s.f. and the portico and access is about 4 to 5,000 s.f. The industry uses rentable square feet.

The Board deliberated.

Winters feels the request is materially different. He is convinced that it's a different design. It is different owners, which isn't relevant. They have a different plan. Similar relief. Factually it's a different plan.

Scott didn't sit on the original case. She agrees there is enough difference.

Monahan: Agrees.

Wallner: Agrees. The big issue the board members had last time was the conversion of the second floor.

Carley: Agreed.

A motion was made by Wallner that the request was materially different. Scott seconded and the motion passed by a unanimous vote.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Wallner: When it was 2 properties they had storage use. It's characteristic of the neighborhood and by combining the properties it makes it more in line with storage use.

Monahan: The applicant was responsive to the Board's 2020 concern. It's an odd building. Making use of it is challenging.

Scott: She didn't hear the 2020 case. She didn't hear a hardship argument. She heard they are 100% rented out. They don't feel the definition is applied to his property correctly. She is not in favor.

Winters: He agrees with Wallner and Monahan. This is a more modest approach than 2020. He thinks the layout and the structure itself does create a hardship. It's unusual.

Monahan: When the building was built it was zoned differently. That may have created a hardship for the new owner.

Carley: He thinks, in general, the effect on the market place is not a consideration for the ZBA. That argument doesn't persuade him. But if he looked at it as one piece of property to begin with, he would say the configuration of the property and what is on it already, which is a substantial investment made before the zoning was changed, does create a hardship. He is in favor.

A motion to grant the request was made by Monahan with two conditions. The first condition is that it is contained to the first floor only. The second condition is that the lots are merged into one lot. Motion was seconded by Winters and passed by a 4-1 vote with Scott in the minority.

59-21 Stephen & Ellen DeStefano: Applicant wishes to convert a non-residential building into a single-family dwelling and requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow the conversion of a building on a legal non-conforming lot with 79.33 feet of frontage where 80 feet of lot frontage is required, for a mixed-use, property located at 46 Pleasant Street in a CVP Civic Performance District.

Testified: Stephen DeStefano and Bill Hickey of HL Turner Group. Bill Hickey explained that Mr. DeStefano's business is located on this property. On the north side of the property is a garage. It was an apartment at one time but hasn't been for quite some time. Mr. DeStefano would like to renovate the garage and create a single-family rental unit. The frontage on the street is 8" short of what it should be.

Mr. Hickey explained that the hardship is that without the variance he will not be able to repurpose the property and the garage will sit as is. Zoning restriction interferes with an allowed use in the zone. It is an 8" shortage on the street frontage. Carley asked if they had the parking they needed. Mr. Hickey explained that there is room to the east of the building that would allow for the parking. Everything east of the garage is paved. The garage is close to the west property line, and they will need to make a modification for the fire rating of the exterior wall. Carley asked if the exterior of the building will change? Mr. Hickey explained that the west side will be changed to comply with the Building Code. The double garage door will be infilled with windows. They will add windows in the back as well. It will be gray siding. Carley asked if it would be a residence, not office. Will the office use stay in the front building? Mr. DeStefano said that was correct. Monahan asked what the square footage would be, and would it be two levels? Mr. DeStefano said it would be approximately 1,300 s.f. and it will be two levels. They have water, sewer and gas. Mr. DeStefano bought the property in 2002 and it wasn't an apartment. In 1926 Sacred Heart Church owned it.

Monahan asked if he had an abutter input? Mr. DeStefano stated that the business next door seems to be in favor.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed case as given.

Winters: They cannot move the building. It's only 8".

Scott: Agreed.

Monahan and Wallner agreed.

Carley agreed.

A motion to approve the request was made by Wallner, seconded by Monahan and passed by a unanimous vote.

Minutes: No action taken on the Minutes of October 6, 2021 this evening.

*Respectfully submitted,
Rose Fife, Clerk
Zoning Board of Adjustment*