

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
JANUARY 5, 2022 MEETING
MINUTES**

Attendees: Chair Christopher Carley (Conflict with Case #4-22), Nicholas Wallner, Andrew Winters, James Monahan, Scott and Laura Spector-Morgan Evans (For Case #4-22).

Staff: Ernest Cartier-Creveling, Zoning Administrator
Rose Fife, Clerk of the Board (Remote)

Meeting commenced at 7:00 pm.

04-22 10 Ferry Street; OCP-Opportunity Corridor Performance District; John J. Flatley Company: Applicant wishes to install a third freestanding sign on the site, and also requests the following determinations from the ZBA:

- A. If the proposed freestanding sign that directs illumination (not reflected light) onto adjacent streets or onto property other than the premises on which the sign is located, is prohibited under Article 28-6-7(n).

Variances to:

- 1) *If the ZBA determines under Item A above that such a sign is prohibited, applicant seeks a variance under Article 28-6-7(n), Signs Prohibited*, which prohibits illuminated signs that direct the illumination onto adjacent streets or onto property other than the premises on which the sign is located.
- 2) *Article 28-6-9(a), Table of Maximum Sign Dimensions*, to allow a freestanding sign with a height of 50' and area of 440 s.f., where a maximum height of 20' and maximum area of 100 s.f. is allowed.
- 3) *Article 28-6-9(c)(3), Permitted Freestanding Signs*, to allow a freestanding sign to have a horizontal dimension of 22', when a maximum horizontal dimension of 16' is allowed, and
- 4) *Article 28-6-9(c)(7)*, to permit a third freestanding sign on the property, even though the property now contains 2 freestanding signs and is less than 10 acres with less than 1,000 feet of street frontage.

The Board for this case consisted of Acting Chair Wallner, Winters, Monahan, Scott and Spector-Morgan.

Testified: Douglas Richardson of the John Flatley Company and Attorney John Sokul of Hinckley Allen Law Office. Attorney Sokul testified. The property is largely invisible. He submitted two letters of support that he was given from other tenants in the building. He brought copies of the Master Signage Plan as well. They submitted an application several months ago which the Board continued while they spoke with City Staff. They had proposed an electronic message center originally, but they learned from City staff that they were adamantly opposed to electronic message centers. They then revised the application, and sign, and they are now proposing a back lit freestanding pylon sign. At the bottom of the sign will be the City Seal and "Downtown Concord Welcomes You" and on the opposite side will have the City Seal and say "Drive Carefully Come Back Soon". They wanted to have a civic or municipal component to it. They are flexible as to what script goes on the sign. The sign will need to go to Architectural Design Review. The goal is to create visibility for the property and have the opportunity to identify four tenants at any given time. The building was built in the 1900's. There are 91 occupiable spaces within the building. Of those 91 spaces 58 are occupied and 33 are vacant. This is a competitive market place for offices. There is 188,215 s.f. of useable area in this building. The Flatley Company is being proactive in recruiting new tenants and most want increased visibility. The hardship usually relates to special conditions of the property. He submitted a plan showing the property and building within the context of the neighborhood. It is a long, narrow, large building compared to others around it. It is 864 feet long. It doesn't have frontage on the east or on the south sides. It does have limited frontage on Main Street. The access is off Ferry Street. It does have frontage on Route 202, but it does not count under the ordinance as far as legal, accessible street frontage. The property slopes west to east downward from Main Street. Where the property meets Route 202 is about 20 feet below grade. The northern side of the building sits in a hole when looking from the highway. The pylon sign will be placed at the northeast corner of the property and be 50 feet tall and 220 sf. There are other elevated signs on the highway. This is an 8 acre property with 91 spaces and 864 feet of frontage. They have a modest sign now. The property runs parallel to North Main Street, but has limited frontage. Signage as it exists does not specify tenants that are in the building now. The special conditions of the property are the topography, the elevation and the size of the property. To apply the Zoning Ordinance to the property was difficult due to the limited frontage. The request is measured and appropriate. A lot of the sizes proposed are similar to what was considered at last month's meeting for the Exit 17 property.

Spector-Morgan asked why he was asking the Board to find if the sign is prohibited in the district. Why are you are asking for a determination. Attorney Sokul threw that request in for caution sake. He doesn't believe the backlit sign throws light onto other properties. He doesn't believe he needs a variance or the board's determination. Spector-Morgan asked him to address the variance
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criteria as it relates to the illumination issue. Why does the sign need to be so large? Attorney Sokul answered that they want it to identify the property and have some visibility for some tenants. The traffic is moving faster so the sign needs to be this size.

Winters asked about calculation of the area of the sign. Attorney Sokul explained the use of frontage and the calculations. Winters noted that there isn't any entrance to the facility where they are placing the sign. Attorney Sokul confirmed that was correct. Winters felt that would be misleading as they cannot enter the property near the sign. Mr. Richardson explained that they need the signage for visibility. Attorney Sokul discussed that the December ZBA meeting there was some discussion about GPS coordinates. Even if you use a GPS to find this location, it's nice to see a few tenant names and the Concord Center so they know they are getting close. Winters asked if they weren't worried that someone coming south on North Main Street would take a left on Route 202 to get to the Concord Center and find that they cannot access the property there. Attorney Sokul explained that the signage is for people traveling East/West on Route 202.

Scott asked why there is signage shown for leaving Concord if they are anticipating this sign directing people coming into Concord. Mr. Richardson said it was for brand awareness. There is no benefit of visibility. The market is changing. It is a difficult situation for the 'office' market. Scott asked if the City agreed to have their name on their signage? Mr. Richardson stated that if the City doesn't want it, they could use that area as a directional piece.

Monahan asked for clarification regarding the illumination. Attorney Sokul explained that it would be back lit, like the Market Basket sign. It is internally lit. Monahan asked if it would cast light on other properties? Will the light be only on their property? Attorney Sokul doesn't believe it casts light on other properties. They only mentioned it for conversation with the Board.

Winters noted that when the board has seen this issue before, it is because there was a determination by Code that a variance is required.

Scott asked if variance request #1 is being withdrawn? Attorney Sokul noted that no City staff has said a word about it. He thinks Code is fine with it. He is not asking for that variance tonight; he withdraws the request.

Monahan stated that by right they could construct a sign that is 100 s.f. and 20 feet high. Attorney Sokul agreed. Monahan confirmed with Attorney Sokul that the elevation is still an issue and 20 feet isn't high enough.

Winters asked if there were any other privately owned frontage the entire length of Route 202 or is it all State owned? Scott was concerned with their limited access. Winters asked if there were any other private signs existing? Attorney Sokul noted that they are pretty far west of Route 202 and he doesn't believe there are any signs between there and the East Concord exit.

Monahan asked about a roof mounted sign. Attorney Sokul answered that City staff didn't seem to like that idea. Also, a meaningful portion of the building where there is wall space is all glass. It is not very visible from I93. He showed photos.

Mr. Richardson testified that a lot of the tenants are local tenants. They are trying to build brand awareness. This is something that integrates with the downtown.

Monahan asked if their parking had any previous variance relief. Mr. Richardson will have to investigate that. They do not have any issues with parking. It is always under-utilized. Monahan explained that his point was that not a lot of people come to this location that don't know where it is. You want to raise the profile? Mr. Richardson said they do and they want their larger tenants to have more visibility.

Spector-Morgan asked if they wanted visibility from I93 or Route 202? Attorney Sokul explained. Spector-Morgan asked if you could see the proposed sign from I-93. Attorney Sokul doesn't believe so.

In favor: none.

In opposition: Julianne Gadoury, Executive Director of Kimball Jenkins Estate. Kimball Jenkins is an abutter to the property. They are an arts and culture organization. They have buildings that date from 1790 to 1882. They are the beginning of Concord's historic district. This sign would be directly visible from their property. A significant portion of their income is from weddings, rented events and community organizations specifically because of its historic character. They feel this sign would be detrimental to their income and being able to maintain the character of the historic district of Concord. They employ 6 staff members and 15-22 faculty at any point during the year. They also have 12 full time staff for summer camp. There are many other historic landmarks in that area. The neighborhood is primarily 19th century small scale businesses and residential. This sign would be equivalent to a 4 story building and as wide as the highway. They do not feel that the intent is that of the ordinance. It's not compatible with the area. They ask that the Board to think about the long term character of the City as a whole and especially the historic district. Monahan asked if the applicant had reached out to them. She said they did not.

Code: none.

Winters asked Cartier-Creveling if this were granted would it go before the Planning Board or any other committee in terms of safety. Cartier-Creveling explained that it would go before the Architectural Design Review Board. There are any engineering concerns, that would also be dealt with then.

Letters in favor: Beth Richard, who has been a tenant for the last 5 years. She attests that the location is a challenge. E-Commerce Logistics is in support of the signage.

Rebuttal: Attorney Sokul is well aware of the Kimball Jenkins Estate's location and they would be happy to speak with them. They spoke with the City staff at length about the sign. No one from Kimball Jenkins reached out to them. The sign is setback from the highway and placed on the far eastern corner of this property. They are in an OCP zone. This is to promote this large, long standing commercial property and it meets the setbacks from the highway. Applicant proposes to limit the sign height to 40 feet vs. the proposed 50 feet. The thought being they are 20 feet in a hole and the ordinance allows 20 feet sign height and 40 feet would allow 20 feet above the grade of the highway. The 200 s.f. vs. 220 s.f. is only double what's allowed under the Ordinance for a building that is 8 or 9 times the size of any surrounding building. They feel the sign is warranted here.

Winters wanted confirmation. The hearing notice says you are requesting 440 s.f. Attorney Sokul explained that it is 220 s.f., but it is double sided. Cartier-Creveling explained that they changed the design of the sign. Spector-Morgan asked if it were 220 s.f. per side. Attorney Sokul confirmed and explained it is less than 18 inches in width. Scott wanted to confirm they wanted a 40 foot high sign and 220 s.f. Attorney Sokul explained that they are proposing 220 s.f. but are now offering 200 s.f. and 40 feet high. Scott noted that the hearing notice shows you are requesting relief from Article 22-6-9a which reads 50 feet high and 440 s.f. You are now asking for 22' horizontal, 40 foot height and 200 s.f. with no illumination. She just wants to be sure. Attorney Sokul stated that they still need a variance for 3 signs where 2 are allowed. Mr. Richardson testified that 1 of the 2 signs there is a historical sign. Winters asked if the 200 s.f. request includes all 3 signs. Attorney Sokul said it did not. He is asking for a variance for this particular sign.

DECISION: Spector-Morgan has no concern about the number of signs. Considering what it is, adding 1 more sign is not unreasonable. This is a uniquely shaped property This will not diminish property values. The height request – it is a unique property due to the topography. She has concerns about the spirit of the ordinance and public portions of the criteria. As discussed, this sign is not consistent with what is out there now. She is having an issue with the size variance as what they heard is that it is what the tenants want and need and what land lord wants and need. That's not a basis for hardship. Concerns were raised about the impact to surrounding properties.

Winters noted that the property has an unusual history It has limited frontage. They have little frontage on Main Street. Cartier-Creveling noted that the size is limited as shown in the chart in the Ordinance. Spector-Morgan asked if it maxes out at 100 s.f. Cartier-Creveling explained that it is based on the frontage. The parking lot is being used as frontage. Winters noted that the Board has denied signs this large in the not so distant past. He is getting caught up on location of the sign.

Scott noted that if those who benefit from the sign are those coming into Concord. If you are leaving Concord, it doesn't make any sense. She doesn't have a problem with the 40 foot height. She is glad to not be dealing with the illumination. They should have another sign as property is huge and weirdly configured. She has had no problem finding that property. She doesn't know how reasonable it is to advertise a property not near the property. She is having a hard time justifying the variances.

Monahan is torn as it is a giant building. It is a lot of signage for this space. Most of the tolerance he's had for sign variances has to do with safety issues. Applicant was up front that this wasn't about safety.

Wallner has driven this road, I393, for the last 20 years as often as 8 times a day going back and forth to work. He's seen traffic zooming down there 70 mph. He's seen accidents there. His concern is that now you have a huge sign with 4 tenant names on it, that will add to the distractive element of driving. He feels it is a safety issue.

Spector-Morgan suggested that they continue the case and let the City Engineer weigh in on it.

Monahan supported that suggestion. Maybe they applicant should meet with the Kimball Jenkins Estate and address some of their concerns.

Winters thought that most of the Board is willing to agree on the height and the third sign as well as the horizontal dimension. If those were granted, they wouldn't need another variance.

Attorney Sokul asked if the hearing were continued after it had been closed, would he be able to speak at the continued hearing. Spector-Morgan said they could re-notice it. Monahan thought yes. Spector-Morgan noted that since it has been closed, to be safe, they would re-notice it at the City's expense. Scott suggested that they could also take comments on any new information presented at that meeting.

A motion to approve the request #2 to Article 28-6-9(a), request #3 to Article 28-6-9(c)(3), and Request #4 to Article 28-6-9(c)7 was made by Scott. The board then decided to take each request individually. This motion was withdrawn.

Scott made a motion to approve 28-6-9a, (40 feet), seconded by Spector-Morgan. Motion passed by a 3-2 vote with Monahan and Wallner in the minority.

Scott made a motion to approve 28-6-9(c)7 for a 3rd freestanding, seconded by Spector-Morgan and passed by a 4-1 vote with Monahan in the minority.

Scott made a motion to continue the hearing to give the applicant opportunity to present new information and obtain the City Engineer's input regarding the 200 s.f. sign and horizontal of 22 feet, seconded by Spector-Morgan and passed by a 3-2 with Winters and Wallner in the minority. This will be continued to the February 2, 2022 Zoning Board of Adjustment meeting.

1-22 16 White Street; RN-Neighborhood Residential District; Michael & Christina Frary: Applicant seeks approval to replace an existing garage, with a new larger, attached two-story garage with an added bedroom/bathroom above, which would be connected to the principal home and would require the following variance(s):

1. 28-4-1 (h), Table of Dimensional Regulations, to allow a larger garage to be constructed, which will result in less nonconforming rear and side property line setbacks and a smaller percentage of lot coverage, which brings the lot coverage into conformance with the zoning ordinance.

The Board from this point forward consisted of Chairman Carley, Wallner, Winters, Scott, and Monahan.

Testified: Michael Frary and Christina Frary. Mr. Frary explained that their existing garage is too small for modern cars. It is a 20x20 garage. His wife has a Jeep Wrangler and he has a truck. They would like a larger garage with a master bedroom and bath above. They would like to attach it to the house. He's getting closer to retirement and would like to have less stairs if possible. Mrs. Frary testified that they like the area and would like to stay. Mr. Frary testified that they have been there 3 years now. Sketches of the plan showed 2 things that were of concern to his neighbor at 18 White Street. The neighbor noticed that they were looking for a dormer on the backside of the garage and she thought it would be an invasion of her privacy. They told her the dormer they were looking for is on the front side, not the back side of garage. Carley explained they would need the dormer for the bathroom they are proposing there. Mr. Frary said they would put privacy glass there. Carley asked them if they wanted the Board to consider the case with the dormer or without the dormer? Mr. Frary thought they should consider it, but do not want to invade their neighbor's privacy. They are making a larger garage and they will be losing some of their driveway. Carley discussed that their existing plan shows the building 3.5 feet from property line. The new sketch shows it at 10 feet. Mr. Frary stated that it would not be any closer than it is now. They want to keep it at 3.5 feet and be a 26x26 garage. Carley noted that it said 5 feet on the plan. Mrs. Frary doesn't want to move it the 10 feet. Carley explained that the Board can only consider what is presented on the plans in the application this evening. It would have to be re-noticed if it is different. Winters asked if it would be closer than 10 feet? Mrs. Frary said it would be. They were thinking they would do 5 feet. Carley thought that it sounded like there is confusion about dormers, and placement etc. If the Board approves or denies this, it stands as is. They cannot adjust the plan on the fly.

Scott discussed the setbacks with the Board. They are currently at 3.5 foot and 4 foot side and rear setbacks. The north is 3.5 foot setback then 4 foot. As long as they are making it more conforming, not less than 4 feet on the front and 3.5 feet on the side, isn't it still being less nonconforming. Carley agreed, but it's still not conforming. They need the exact proposal. If the Board approved 10 feet and 5 feet and they changed it to 6 feet and 11 feet the Board may not consider that material change, but it certainly would if it went the other way and got closer. He's not sure they can move it back, and if they do it's not the plan submitted with the application.

Mr. & Mrs. Frary were not sure if they would want to start the process over if they want to change it. They understood what Chairman Carley was explaining. Scott noted that they could move forward as is and they can come back if they decide to change it.

Wallner suggested the Board take the next case and then come back to this so Mr. & Mrs. Frary could discuss it.

A motion to recess this case until after the next case was made by Scott, seconded by Wallner and passed by a unanimous vote.

03-22 1 Whitney Road; GWP-Gateway Performance District; Barlo Signs on behalf of Interchange Development, LLC: Applicant seeks relief from *Article 28-6-7(h)*, to allow a mechanical scrolling sign on a freestanding monument sign to be located at 1 Whitney Road solely to advertise fuel prices for the gas station/convenience store located within the retail development project. A mechanical scrolling sign is a sign utilizing track or roller mounted alpha-numeric copy that is changed by mechanically-driven means and is non-digital.

Testified: Laurie Rauseo of Interchange Development LLC. Brandon Currier of Barlo Signs.

Carley asked Cartier-Creveling if this is a mechanical sign and not electronic sign a variance is still needed. Cartier-Creveling answered that they do need a variance because the mechanical sign itself is prohibited. Carley wanted confirmation that it is not the placement of the sign that is before them. Cartier-Creveling said that was correct.

Mr. Currier testified that they are seeking approval for a mechanical scrolling price changing sign. It's internally illuminated. The mechanical scroller is used to control prices in a safe manner. This is to address a safety issue. This property is going to have a roundabout. There is now going to be constant traffic passing this sign. It will be close to the road. There is a sharp decrease in elevation into a drainage swale. Having to change tiles for the price sign puts employees of the gas station in danger. They are proposing ZBA FM 1.5.22

a mechanical scrolling system. No issues with brightness. No distraction of motorists or passersby. This will be a huge safety savings for employees there. That is the hardship.

Winters asked if their argument is that their station varies from others because the sign is on a roundabout and it would be a greater safety hazard. Mr. Currier said that was correct. Winters asked if it were in the roundabout primary because of their design choice or is the roundabout being created by them. Mr. Currier explained that the roundabout is being created by the City of Concord to handle the influx of traffic. With the new roundabout, they are required to move the sign back.

Monahan asked if the scrolling is controlled. Mr. Currier explained that it is a mechanical component on the sign. An employee can change the sign from the building.

In favor: none.

In opposition: none.

Code: Cartier-Creveling stated that the City recognizes that the redesign of the rotary has created some of this issue and the City is in favor of this proposal.

DECISION:

Winters: They didn't create the rotary and it is a safety issue. This addresses the issue without offending the City's standards. The property is unique.

Scott agrees.

Monahan felt it was a rational solution to a problem that the City, in part, created.

Wallner agrees. It doesn't fit the definition of an EMC.

Carley agrees.

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

1-22 16 White Street; RN-Neighborhood Residential District; Michael & Christina Frary

A motion to reopen the case was made by Wallner, seconded by Scott and passed by a unanimous vote.

Mr. Frary would like to continue on with the plan submitted as is.

Carley noted that this request is for an addition of a garage with some living space above which is closer to the house and further from the property lines than what is there now.

Mrs. Frary testified that their neighbors are happy with the plans.

Winters reminded the Chair that there was a letter in the file from Mary Deal. Wallner asked for an aerial map of where Mary Deal lives. Winters noted that she cites concerns with privacy, the neighborhood, and her view. Mr. Frary explained that Ms. Deal lives 3 houses away and he doesn't believe she can see their house. Winters asked if she lived at 22 White Street. Mr. Frary said that was correct.

Mr. Frary went on to say that Shari Small at 18 White Street is in favor. She lives is behind them. Madeleine & Neil Olson at 4 Rowell Street are in favor. Karen Shields at 2 Rowell Street is in support of the request. Fran Witte-Holland of 26 Essex Street is in favor.

Code: none.

No one is present to speak for or against.

Mary Deal who lives at 22 White Street submitted a letter. She raises some concerns. She is concerned about when the neighbors were notified as she felt there wasn't enough time for the neighbors to respond. She had a question about privacy because of the windows being up higher. She seems to be defending the privacy of the inhabitants of 18 White Street but she doesn't live there. Carley asked if the Board had all read the letter? The Board concurred it had. Ms. Deal asks that they postpone hearing. They have chosen not to do that because the City's standard notification process and schedule were followed.

Winters asked about participation virtually at this point as the governor's orders have lapsed and they are now holding meetings in person. Do they have a way for people that have concern to appear by phone or zoom? Cartier-Creveling will check into that. Winters asked if they had the authority. He would be willing to allow that. Scott had concerns with that. Carley suspects that it could be arranged. Carley asked Cartier-Creveling to look into this. Monahan felt there was a way to do that.

Carley reviewed testimony as given.

Wallner felt it was a reasonable request. A 20x20 garage to accommodate 2 cars is not realistic anymore.

Monahan agrees.

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Scott agrees. This is bringing it into more conformity.
Winters agrees. It is consistent with character.
Carley agrees.

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

Minutes: A motion to approve the 12.1.21 Minutes was made by Wallner, seconded by Winters and passed by a 4-1 vote with Scott abstaining.

Respectfully submitted,
Rose M. Fife
Zoning Board of Adjustment