

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
MARCH 3, 2022 MEETING
MINUTES**

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

Absent: none

Staff: Ernest Cartier-Creveling, Zoning Administrator
Rose Fife, Clerk of the Board via YouTube Link

Meeting commenced at 7:00 pm.

18-22 10 Integra Drive (undeveloped lot); IN-Industrial District; Property Owner–Barbara Mariano, LLC:

Applicant is seeking the expansion of two existing automobile dealerships onto a parcel in the Industrial District, which does not permit that use and the applicant seeks the following variances:

1. Article 28-2-4(j), Table of Principal Uses, Use J1, to allow the Sale or Rental of Motor Vehicles other than Construction Equipment where such use is prohibited in the IN-Industrial District. This action is proposed to allow the legal extension through a series of lot line adjustments of two established automobile dealerships into an abutting lot currently in the In-Industrial District. One dealership is located at 146 Manchester Street and further identified as Map-Block-Lot 783/Z 17/ /, to which 1.07 acres of the lot at 10 Integra Drive is proposed to be added; the other is located at 150 Manchester Street and further identified as Map-Block-Lot 783/Z 16/ /, to which 1.96 acres of the lot at 10 Integra Drive is proposed to be added.

Testified: Amy Manzelli, Esq. BCM Environmental Law. Jeff Lewis, Northpoint Engineering. Attorney Manzelli noted that Mr. Lewis had handed out supplements to the application. There are two existing dealerships. Bob Mariano will be purchasing 1.07 acres behind their dealership from 10 Integra Drive. That will be merged. The Subaru Dealership will be purchasing 1.97 acres behind their dealership from 10 Integra Drive. They have an agreement to merge the lot to theirs. Those two properties will be extended. The lot line adjustment application that was pending before and the Planning Board has been approved for a lot line adjustment. They are one step closer to being able to close on this purchase. They just need an approved variance. When they were before the Board last month, they were looking for 4 different variances. They looked at this again and came up with just needing one variance to 28-2-4(j). Mr. Lewis updated the Board on the plans he gave the Board. Last month they were talking about the large parcel being merged with 150 Manchester Street. Now they are talking about an additional piece going with 146 Manchester Street. Both will be paved parking lots for additional inventory storage. He also showed the existing GIS map in the handouts as well as what is happening after the lot line adjustment. Those two lot lines will be removed. One through a lot line adjustment and one through a merger. They showed the same proposed pavement area. These are just extensions of the dealerships. They showed the lot line adjustment plan approved by the Planning Board.

Carley is unclear what happens with the long sliver piece. Mr. Lewis says it will be merged with 12 Integra Drive. Carley asked if it were not part of this appeal. Mr. Lewis answered that was correct.

Attorney Manzelli explained that this is just the use variance for the dealerships, both of them, before they use portions of 10 Integra Drive. It will be coming before the Planning Board. Attorney Manzelli went over the points of the variance. This is not contrary to the public interest and does observe the spirit of the ordinance. The whole crux is 10 Integra Drive is the on the other side of the zoning boundary district even though it is right within the geographic reach of Route 3. They have sited all of the law in their application. Essentially, the use that would be placed on 10 Integra Drive does not differ with the intent and purposes of the zoning ordinance. This accomplishes what that area was meant to accomplish. It will not be contrary to public interest. Substantial justice: There is no less to individuals and it outweigh the gain of the general public. If the variance is not granted, the loss to the applicant is very high. Without the variance the dealerships may not be able to continue. Dealership franchise agreements are requiring more cars to be stored at the dealerships. Many dealerships that existed cannot satisfy franchise agreements. That loss to the applicant is huge. There is no disservice to the public by granting these variances. This will not diminish values of surrounding properties. Converting the vacant land to a professional, well managed, dealership will increase property values. The unique situation of this land is that it is on

the wrong side of the zoning district. Not granting this would be a hardship to the owners. This use is reasonable. This is a unique situation of the land. They have met the unnecessary hardship provisions. This test meets all 5 criteria.

Winters asked how they went from many variance requests last month, to just one request this month. Attorney Manzelli answered that those two things were not related. If this use is allowed, the other variances they were requesting are not necessary.

Cartier-Creveling explained that outdoor storage is related. There is a separate section in the ordinance that talks about auto dealerships. Winters spoke that if the use is allowed by definition, the parking would be allowed. Winters noted that last month there was discussion about looking into the Banks case from a few years ago. How is this different than that case? Mr. Lewis isn't familiar with that case at all. Monahan asked if 10 Integra Drive disappears and it and it becomes 150 Manchester Street. Attorney Manzelli answered that was correct, subsequent from the merger.

In favor: none.

In opposition: none.

Code: If the Board does deliberate it would be conditioned on the merger.

DECISION:

Wallner: Applicant addressed their concerns from a month ago. It meets the hardship requirements. He'd be prepared to make a motion to approve it based on lot lines defined and merged.

Monahan: Agrees.

Winters: Thinks that every dealership will have this problem. Carley thinks they can take this case on its own merits. He sees a unique element as it is on a neighboring abutting zone but that alone isn't a hardship. But they are merging a lot. It is a reasonable use.

Scott: By merging the lots, it erased any concerns she had. This is a good use of the property. It is consistent with the neighborhood. A motion should be conditioned on lot merger.

Carley: Agreed.

A motion to approve the request was made by Wallner and seconded by Monahan with the condition that the lots be merged. Motion passes by a unanimous vote.

17-22 [10 Whitney Road; IN-Industrial District; Property Owner – Morrill Mill Pond LLC](#): Applicant proposes to build a car wash and a restaurant and is seeking variances to:

1. [Article 28-2-4\(k\) - Allowable Principal and Accessory Uses in Zoning Districts](#). To allow two principal uses comprising a restaurant with a drive-through service (Use I3 from Table of Principal Uses) and a car wash (Use J7 from Table of Principal Uses), which are currently not permitted in the IN-Industrial District.
2. [Article 28-7-2\(e\) - Off-Street Parking Requirements](#). To allow 27 off street parking spaces for a use which requires 30 parking spaces; and to
3. [Article 28-4-1\(h\) - Dimensional Standards](#). To allow a use to be established and structures to be constructed on a lot having less total area and less buildable land area than the minimum amounts indicated in Section 28-4-1(h).

Testified: Laurie Rauseo and David Rauseo. Ms. Rauseo explained that this parcel is on the west side of Whitney Road. It is a 5 acre site. It is currently vacant. This request is for a fast food restaurant and a car wash with setback relief. They do not have signed deals for specific tenants, so things could change. It is not contrary to the public interest. It is consistent with spirit of the ordinance. Values of surrounding properties will not diminish. It is for a fast food restaurant and a car wash use. The use is consistent with the area. Other uses in the area include a Mobile gas station, and a Dunkin Donuts drive through. Also, under construction in the area are Market Basket, Home Goods and Marshalls. Wendy's will be under construction in the spring. This will bring more customers to the area. It is a shallow lot with steep slopes leading into a wetland. Public interest is served. Granting variances will allow for substantial justice to be done as the property is challenged by topography. She provided a few photos to Ernie Creveling.

Scott brought to Creveling's attention that the agenda and the application says two different things. The cover sheet they received is different than the agenda and the application. The application says 35 feet from the front property line where 50 feet is needed. Request #3 is what they are asking for on the agenda? Ms. Rauseo said that was correct. They have

a building laid out for a 35 foot setback. Scott asked if notice didn't say that, can they consider that. Request #3 on the agenda doesn't match the cover sheet and their application. If they are asking for what was in the hearing notice, great, but if it is on the application, that wasn't noticed. Page 2 of their application references the setbacks. Carley asked if the carwash violates the setback. Ms. Rauseo said that was correct. Scott asked if the third variance is a setback variance and not a buildable land variance. Monahan thought that the board could consider it and if later counsel says it needs to be re-noticed then they will need to come back. Or they can go forward with the first 2 but not the third. Carley asked if not going forward with request # is the consensus of the Board. The Board said it was. Ms. Rauseo wants to move forward with the first 2 now and deal with the third later. Items #1 and #2 re for off street parking and principal uses. Photographs of the site were shown. Mr. Rauseo showed the site they were discussing on the photograph. There are wetlands on the property. He showed the sloping topography. Ms. Rauseo explained that there are 3 industrial uses surrounding the property. Monahan asked if perhaps the council should change the zone? Ms. Rauseo explained that from what she understands, City staff doesn't like to rezone one parcel at a time. Wallner asked if there were a cross walk depicted on the map. Mr. Rauseo explained. Ms. Rauseo noted that they have shown this plan to City staff at a meeting. Carley asked about the easement.

Carley asked about the hardship. Is it created by the wetlands and the topography? Ms. Rauseo said that was correct. Carley asked if it were not feasible to use the land for an industrial use that is permitted. Ms. Rauseo said that was correct. They would have to do a retaining wall of a significant length and height which is expensive. Really only a commercial use could justify the building of that retaining wall. Mr. Rauseo explained that they wouldn't be situated in the wetland buffer. It may also require storm water detention.

Scott understands the 2 variances they are asking for. She debates if they couldn't find a use allowed there.

In favor: none

Opposition: none.

Code: none.

DECISION: The third variance will be dealt with at a later date.

Scott: Like the uses. They would be good there. Didn't hear enough about the hardship as to why it should be granted. She heard industrial uses wouldn't want to pay for the cost. She didn't hear anything about the parking. 27 parking spots would be fine, but she didn't hear anything about why.

Winters: It is a unique lot in that they've got the easement which cuts off a part of it and the wetlands. It is a narrow sliver. He believes it would be hard to think of an industrial use that would go in there and make sense. They didn't talk about the parking. They are only asking for a variance for 3 spots. He is inclined to approve.

Monahan: Whitney Road is becoming more of a commercial space vs. an industrial space.

Wallner: It is quite a sizeable lot, but only a small portion can be used. Parking 27 vs. 30, they have a huge stacking potential for their drive through, so he doesn't feel it is unreasonable.

Carley: Agrees that the lot itself does pose some unique problems. The City's intent when rezoning was commercial to be on that road. It is consistent with the intent of the Ordinance. Not a good spot for industrial use. He is inclined to support.

Request #1: A motion to approve Winters and seconded by Wallner. Scott is voting against it, and didn't hear enough of how it met the criteria. Motion passed by a 4-1 vote (Scott in the minority.)

Request #2: A motion to approval was made by Wallner and seconded by Scott. Monahan felt they should have created more of a record. It is a small imposition in this case. Scott thought most will be the drive thru. Motion passed by a unanimous vote.

Request #3: No action taken.

10-22 [66 Carter Hill Rd; RO-Residential Open Space District; Property Owner –Christopher Lee & Samantha Q S Allen](#): Applicants are seeking a Special Exception to:

1. Construct a one-bedroom Accessory Dwelling Unit (ADU) containing 642 gross square feet of living area in accordance with Articles 28-2-4(k), Table of Accessory Uses (Use A13) and Article 28-5-52, Single Family Detached Dwellings with One (1) ADU.

Christopher Lee testified. He is currently building a home at 66 Carter Hill Road. They would like to use a portion of the new structure for a 1 bedroom, small kitchen and living area. It would be an ADU for his parents to come and visit from

Arizona in the summer. Carley asked if there would be any expansion of the building? Mr. Lee said there would not be. Monahan asked if it were single level or multiple levels. Mr. Lee explained that it would be a single level.

In favor: none.

In opposition: none.

Code: none.

DECISION: Monahan asked if the City keeps an inventory of ADU's. Creveling explained that it is on file in Project Tracker. A motion to approve the request was made by Scott, seconded by Wallner who feels criteria A through I were met, and passed by a unanimous vote.

13-22 10 Kipling Circle; RO-Residential Open Space District; Property Owner – Shahab Moossavi:

Applicant proposes to install an in-ground pool and is seeking variances to:

1. Article 28-4-1(h), Table of Dimensional Regulations, to allow installation of a pool to within 1'0" from the easterly side property line and 1'0" from the rear property line; and to
2. Article 28-5-32, Accessory Buildings and Facilities, to allow more than 250 sf of accessory structure (pool) to be located in a rear yard setback and a side yard setback (approx. 270 +/- sf in side setback 1,026 +/- sf in the rear setback).

Testified: Shahab Moossavi. Also available to testify: Thomas MacMullin. Mr. Moossavi would like to build a pool. He gave an overview of his neighborhood. He showed where his well and septic are located on his property. This will not affect any of his neighborhood. He is a cardiologist at Concord Hospital. He is on call 120 nights of the year. He needs to be 20 minutes from the hospital. He can't get out of town in the summer. He's on call 26 weekends of 52 weekends. He'd like a pool to entertain himself as he can't get away. He has a 2 year old autistic daughter. Going to the pool is not in the best interest for her due to her anxiety. This location is the only place to locate this pool. Carley asked if there were anywhere else? Mr. Moossavi explained. Due to the septic and well, it is the only area. Carley asked what is to the west of the pool location. Mr. Moossavi stated there are woods to the west. Mr. MacMullin explained that the home owner's association owns the abutting land. It is conservation land. Monahan asked what year the development was done. Mr. MacMullin stated it was done in 2003. Scott asked if the pool could go to the left of the house? Mr. Moossavi stated that that area has the septic system. Winters asked about variance request #2 and the 250 s.f. in the rear or side setback. How many total s.f. is the pool. Mr. Moossavi stated the pool is 21'x40'. Carley asked for the definition of a structure. For example, if they wanted to build a terrace out there could they do that? Mr. Creveling explained. Carley asked how a pool qualifies as a structure. Mr. Creveling stated that per definition in Article 28-5-32.

In favor: none.

In opposition: none.

Code: none.

Decision:

Wallner: He is limited where he can place the pool. The septic system is in the way. The land to the rear is unbuildable. There are no neighbors.

Monahan: Agrees with Wallner. The association is comfortable with it.

Winters: Agree.

Scott and Carley: Agree.

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

15-22 4 Liberty Street; RN-Neighborhood Residential District; Property Owner – Alger Hagedorn Family Revocable Trust of 2020:

Applicants propose to construct a detached garage and are seeking variances to:

1. Article 28-4-1(h), Table of Dimensional Regulations; to permit rear and side setbacks of 5' on the easterly and southerly lots lines to allow the construction of a detached garage, where 25' and 10' are required

respectively; and to

2. Article 28-5-32 - Accessory Buildings and Facilities; to allow more than 250 square feet of the proposed garage to encroach into the rear setback along the easterly property line.

Testified: Alger Hagedorn and Fred Hagedorn. They want to build a garage. 2 car garage. It is a strange shaped property. It is wide in the front and narrow at the back and goes back 100+ feet to the end of the property. They would like to site the garage in the corner he showed on the map. It would be 5 feet from the lot lines. It is a rear lot line though it acts like a side lot line. He showed how he wanted to site the garage. Liberty Street is narrow and can barely handle 2 cars. People like to go in excess of the speed limit in the area. It is a rise from Pleasant Street. For a safety sake they want to be able to situate it as he showed. There are neighbors on either side. There is a 4 or 5 unit rental property and their parking area goes up to the edge of the property line. It is pre-existing non-conformance to an IS zone which requires a 5 foot setback for parking. He has a shed in the long rear piece of the property. It is not a flat lot. It is as far back as they can get it so that it doesn't affect the road scape. It is consistent with other garages in the neighborhood. They feel they meet the sense of the Ordinance.

Carley asked if they said they were rotating the garage 90 degrees so they wouldn't have to back into the street. Mr. Hagedorn said that was correct. It would also put them very close to the house. Winters asked if they would consider attaching it to the house. Mr. Hagedorn said that there is nowhere to attach it to the houses due to the configuration of the home.

Wallner asked if they were one of the few houses that doesn't have a garage on that end of Liberty Street. Mr. Hagedorn said that was correct.

Letters were received from: Randy Blossom, Dan Whyte, and the Greenwoods.

In favor – none

In opposition: none.

Code: none.

Carley read letters into record. Dan Whyte of 112 Pleasant Street in favor. David Greenwood of 6 Liberty Street in favor. Randy Blossom of 116-118 Pleasant Street in favor.

Decision:

Scott: Reasonable use. To meet the setbacks, it would create a hazard. In favor.

Winters: Agrees. Unusual shaped lot. Location is consistent with the character of the neighborhood.

Monahan: Agrees.

Wallner: Reasonable use.

Carley: Agrees.

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

MINUTES: No Minutes to approve.

Respectfully submitted,

Rose Fife, Clerk