

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
APRIL 6, 2022 MEETING
MINUTES**

Attendees: Chair Christopher Carley (conflict with case#4-22), Andrew Winters, Nicholas Wallner, James Monahan, and Laura Scott. Laura Spector-Morgan for case #4-22, 8-22, 3-20, 24-22 and 19-22.

Absent: none

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

Meeting commenced at 7:00 pm.

22-22 [42 Washington Street, Penacook; RD-Downtown Residential District; Property Owner – Wendell J. Butt Funeral Home, Inc.](#): Applicant seeks to change the use of this property and facility from a currently nonconforming use to a use permitted by Special Exception under:

1. Article 28-2-4(j) Table of Principal Uses, to allow a change of use from a funeral home (Use D3) to a Community Center (Use B14).

The Board for case 22-22 consisted of Carley, Winters, Wallner, Monahan and Spector-Morgan.

A motion to open the Case was made by Spector-Morgan, seconded by Wallner and passed by a unanimous vote.

A motion to recess this case to the May 4, 2022 meeting was made by Spector-Morgan, seconded by Wallner and passed by a unanimous vote.

08-22 [Rehearing Request - 120-122 Pleasant Street; IS-Institutional District; Property Owner-Concord Coalition to End Homelessness](#): Applicant proposes to convert two existing residential buildings from a total of 4 units to 8 units, and is seeking variances to:

1. Article 28-2-4, Table of Principal Uses, A11, Conversion of a Residential Building to accommodate not more than five (5) units;
2. Article 28-5-3(b)(1), Minimum Lot Size, to allow a residential conversion on a lot containing 23,087 sf, where 25,000 sf are required;
3. Article 28-5-3(b)(1), Minimum Lot Size, to allow a total of 8 dwellings in 2 buildings (2 dwellings in one building and 6 dwellings in the other building) on a lot containing 23,087 sf of land, where 4.6 dwellings would otherwise be allowed;
4. Article 28-5-3(b)(4), Minimum Size of Dwellings, to allow dwellings of various sizes, with no new dwelling being less than 320 sf in gross floor area where a minimum dwelling size of 600 sf for a one-bedroom conversion is required; and to
5. Article 28-7, Access, Circulation, Parking and Loading, Section 1(a), Applicability to allow the continuation of the current non-conforming parking lot layout with 8 parking spaces, where a fully designed engineered, paved parking lot providing 16 parking spaces would be required.

The Board for case #08-22 consisted of Carley, Wallner, Monahan and Spector-Morgan, a four member board.

Carley explained that the Board must find that they either made an error in law or procedure or that there is new information present that was not available at the original meeting.

Wallner: He found no new information. He did not believe the Board made an error in law or procedure.

Monahan: Agrees with Wallner.

Spector-Morgan: Agrees.

Carley: Agrees.

Winter: Recused himself.

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

03-20 Capitol Shopping Center – 80 Storrs Street - EXTENSION – a request for a one-year extension has been requested regarding action the ZBA took on March 11, 2020.

The Board for Case 3-20 consisted of Carley, Wallner, Winters, Monahan and Spector-Morgan.

Attorney Sokul testified. The project was delayed due to the pandemic, which was declared 3.13.20. The Planning Board approval was granted 8.21.21 and the ADR approval was granted 12.21. These were also delays. The applicant is now ready to move forward and obtain permits. They would like to break ground this Spring.

In favor: none.

In opposition: none.

Code: none.

Decision: Carley reviewed testimony as given. The Covid pandemic and procedure took more than the 2 years allowed.

A motion to approve the request for an extension was made by Monahan, seconded by Spector-Morgan and passed by a unanimous vote. Monahan felt it was reasonable due to the pandemic and the Board urging the applicant to seek approval from City Council.

24-22 10 Whitney Road; IN-Industrial District; Property Owner – Morrill Mill Pond LLC: Applicant proposes to develop retail space on a parcel within the IN-Industrial District and is seeking a variance to:

1. Article 28-2-4(j) – Table of Principal Uses. To allow a retail use in an IN-Industrial District, where it otherwise would not be permitted.

The Board for Case 24-22 consisted of Carley, Wallner, Winters, Monahan and Spector-Morgan.

Testified: Laurie and David Rauseo for Morrill Mill Pond LLC. They submitted a map showing the buildable area. They are asking for a use variance for retail in lieu of the variance they received for a car wash. The car wash became too difficult to fit on the site.

Ms. Rauseo reviewed the concept plans with the Board. The site is narrow and there are only a few ways to use it. The plan shows a restaurant with a drive-thru and a retail building. This layout keeps the pavement in the 75 foot wide easement. There are steep slopes and wetland buffers and wetlands. They thought retail use would fit in this area best. It is a reasonable use. It is located across the street from Merchants Way with their uses of restaurant and retail. It is consistent with the neighborhood. Wetland buffers and utility easements are part of the problems on the site. The site has been vacant and never been developed before. It is unique.

Monahan asked if they added parking. Ms. Rauseo said they had. Monahan asked the number of spaces required. Ms. Rauseo explained they have enough parking. Winters asked if this were a different zone than the retail activity across the street. Ms. Rauseo explained that this is in an IN zone and the retail across the street is in a GWP zone. Mr. Rauseo spoke regarding the elevations. The industrial uses are lower in elevation and Whitney Road is higher, so the retail uses are at a higher elevation. Winters asked if they could see the industrial uses? Mr. Rauseo explained that there are wetland buffers and wetlands, so the vegetation is grown up and it is not visible.

Monahan asked Cartier-Creveling if Whitney Road were going to extend and go south? Cartier-Creveling did not know. Ms. Rauseo explained that Whitney Road is projected to extend to Sewalls Falls Road. Monahan asked how that was zoned. Ms. Rauseo explained that it was zoned Industrial.

In favor: none.

In opposition: none.

FM ZBA 4.6.22

Code: none.

DECISION: Carley reviewed the testimony as given. The property is unique in topography and wetlands/wetland buffers. Winters: They have demonstrated that this sliver of property is unique and not well suited for industrial use. He supports the request.

Spector-Morgan : Agrees. It is consistent with the neighborhood. There is no burden on the public and will not diminish property values.

Monahan: Agrees. The topography makes it challenging.

Wallner: Agrees. The layout is unique.

Carley: Agrees.

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

19-22 49 North Main Street; CBP-Central Business Performance District; Property Owner-PRM Holdings, LLC: Applicant proposes to install a sign and is seeking a variance to:

1. Article 28-6-9 Signs Permitted in Nonresidential Districts, Section (b)(4), to allow a sign for a tenant on an upper floor with no building frontage, to install a sign above the first story, but below the second story windows, which will project a distance of 40 inches with total area of 6.02 sf, where a sign having a total area not exceeding 4 sf must be located in a window on the same floor or at the ground floor entry door if a single principal use.

The Board for this Case consisted of Carley, Wallner, Winters, Monahan and Spector-Morgan. Testified:

Josh Messenger of Advantage Signs as well as Seth Greenblott of Greenblott and O'Rourke.

Mr. Messenger explained that the tenant is a second and third floor tenant. They have worked with Code and the customer. They need the variance as there is no other spot to put the sign. NHFCU has a large sign across the front of the building and one of the ADR members suggested they put this sign in the middle of the band, but the land lord said no. They would like to place it above the band. They would like a 6 s.f. sign vs. the 4 s.f. allowed as 4 s.f. won't be readable from North Main Street. Carley asked why it is perpendicular vs. flat against the building. Mr. Messenger explained that it was because it would be more visible. People walking down Main Street wouldn't see the sign flush to the building. Spector-Morgan asked why they couldn't put the sign in the window. Mr. Messenger doesn't believe they have a window. It is an inset entryway under the arches. Spector-Morgan asked if it could be placed in a window on the second floor, where it is permitted. Mr. Messenger explained that visibility would still be an issue. Attorney Greenblott explained that a sign placed in any of those windows won't serve their purpose. A sign under the arch way is not visible. Without something more visible, it's a challenging space to find. Spector-Morgan asked if there were other signs similar. Attorney Greenblott explained that there are 3 or 4 signs similar down towards the State House. These types of signs are not uncommon in the area any more. There are more tenants in the second or third floor and more retail on first floor taking up signage space.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Wallner: He is not a big fan of perpendicular signs at that level.

Monahan: Asked about the existing banner sign.

Spector-Morgan: Understands why they don't want to put in window, but they can put it there.

Winters: There have been similar signs approved. This is logical for Main Street. And where the Board has approved others, there should be some consistency on rulings. He's inclined to approve.

Carley asked Cartier-Creveling what kind of signs they can have. Cartier-Creveling explained they can have a sign in the window and at the entry, and that is all. Carley mentioned that the assumption is that upper floor businesses weren't in need of foot traffic. Two doors down an architecture firm had an office and didn't have a sign and people found the place.

He can't see the hardship. He's in opposition.

Much discussion regarding hardship and upper level signs. Winters read off sign cases the Board had granted in the past. A motion to deny was made by Spector-Morgan as she doesn't see the hardship. Motion was seconded by Monahan who felt that the hardship is self-imposed by the building owner. Motion passed by a 4-1 vote with Winters in the minority.

04-22 Continued from March 2, 2022 ZBA Hearing - [10 Ferry Street; OCP-Opportunity Corridor Performance District; Property Owner-Flatley Concord Center, LLC](#): Applicant proposes to install a 220 square foot freestanding sign and is seeking variances to:

1. [Article 28-6-9\(a\), Table of Maximum Sign Dimensions](#), to allow a freestanding sign with an area of 220 sf, where a maximum area of 100 sf is allowed; and
2. [Article 28-6-9\(c\)\(3\), Permitted Freestanding Signs](#), to allow a freestanding sign to have a horizontal dimension of 22 feet, when a maximum horizontal dimension of 16 feet is allowed.

The Board for case 4-22 consisted of Wallner, Acting Chair, Winters, Monahan, Scott and Spector-Morgan.

Testified: Attorney John Sokul of Hinckley Allen. They were before the Board in January and 2 variance requests were granted for the number of pylon signs and the height of the pylon signs. The Board asked for additional information and they are back before the board with that information. The illumination of the sign was also questioned. They met with Kimball Jenkins, who was at the first hearing, with concerns on how the sign would impact them. Attorney Sokul and Douglas Richardson of the John Flatley Company met with her. The sign wouldn't have much of an impact on Kimball Jenkins having functions and events. Kimball Jenkins then said they wouldn't oppose the sign. Attorney Sokul spoke with Code Administration regarding the illumination issue. They hired a photometric engineer who did a photometric plan showing that the light would stay on the property. The City still had concerns with brightness of the sign. The City had a photometric professional review it and that person gave a recommendation. Attorney Sokul's client has agreed to abide by those recommendations. The City reached out to NHDOT with what kind of impact the sign would have on traffic. NHDOT said this sign is not within their jurisdiction. They hired a traffic engineering to review the situation and to issue a report. The size of the sign and lettering is appropriate for this location and type of road according to that report. Their sign size for tenant signs is 10-12" and lettering for the Concord Center portion is 14". The report says the sign is in an appropriate location and it takes into consideration safety issues.

Scott questioned the size. The agenda has a different size than what is in the letter from the traffic engineer. The agenda says 220 s.f. and the letter from traffic engineer says 200 s.f. Attorney Sokul reported that the sign will be a 10' x 20' sign. Winters asked if that was lesser size than they original requested. Attorney Sokul explained that they changed the size to 200 s.f. at the first meeting. Wallner asked if the sign only lists the tenants and the building. Attorney Sokul answered that was correct. Wallner was concerned with the confusion this sign will create regarding the entrance based on where the sign would be located. Spector-Morgan asked if it would be same tenants on both sides. Attorney Sokul answered that was correct.

In favor: none.

In opposition: none.

Code: none.

DECISION:

Scott: She understands the tenants wanting signage but where the building is, the signage won't show people how to get to them. It's going to create confusion.

Spector-Morgan: The size is appropriate. They have granted the height variance so they have to look at the size.

Winters: Agrees with L. Scott. He does think it will be confusing as far as the directional piece. The hardship is that it is a unique lot with small frontage. He is pleased they reached an understanding with Kimball Jenkins Estate.

Wallner: He is concern with safety issue.

Monahan: The issue before them is not whether it will work. He is inclined to approve.

A motion to approve both variances was made by Spector-Morgan. The hardship is the depth of the property. She doesn't believe it will diminish property values, and there will be no burden to the city. There aren't other signs around it like this but it is not inconsistent with the neighborhood. Motion was seconded by Monahan, with the notation that it is for a 200 s.f. sign. Motion passes by a unanimous vote.

20-22 **87 South Main Street; CU-Urban Commercial District; Property Owner-87 South Main Street, LLC:** Applicant proposes to install a parking structure as an accessory use to the existing nonresidential principal use and is seeking a variance to:

1. Article 28-2-4(j), Table of Principal Uses, along with supplemental standards contained in Article 28-5-7 to allow the concurrent construction of a single family dwelling on the upper story of said parking structure, where such a use is allowed only as a conversion of an existing nonresidential structure in a CU-Urban Commercial District.

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

Testified: Attorney Maria Dolder. Also available to testify, Pete Hodgkins, owner of property. Attorney Dolder explained that they would like to be allowed concurrent construction of a single family dwelling on the upper story of the building. The applicant is in a zoning district which allows a parking structure by right. If the garage structure were in existence today, they would be allowed by right to convert the second floor to a single family dwelling unit. They would like to do that instead of having to build the parking structure and then come back a couple of months later and ask for for a second permit. Both uses are permitted by right, but not if constructed at the same exact time. It's a 30x40 accessory parking structure with 3 bays on the bottom and a single family unit on the entire upper story. Two bays will be used for the existing commercial use and one of the bays would be for the single family dwelling. The garage will meet setbacks and requires no relief. They are not adding any more impervious surface to property. The intent is to allow the owners to live there. This is a unique circumstance. The property is in the CU district which encourages and permits this type of use. The next door neighbor is a boarding house. The fact that they can't do a conversion at the time of construction is the sole purpose of being here. They met with ADR and with Fire. What they would like is easier to do when constructing this building. The uses are both permitted uses. It meets the spirit and intent of the ordinance. It is not contrary to the public interest. All of the City's needed issues will be addressed at time of construction i.e. fire separation, water, sewer, etc. They showed a drawing of what the structure will look like. This will not diminish surrounding property values. It will complement the area. It would be a real loss to the applicant to build the structure and convert at a later date.

Wallner asked if there was a business there now? Attorney Dolder stated that there is a real estate office there now. Carley asked if this would be built behind the real estate business? Attorney Dolder said that was correct. Mr. Hodgkins noted that behind the new building is Storrs Street. Attorney Dolder noted the steep grade behind the building. Carley asked where the new building would be situated. Mr. Hodgkins noted the steep grade is behind the gas station and Turner Ave.

Winters asked if in this zone a single family dwelling couldn't be built as a matter of right. Attorney Dolder explained that they can only do a conversion int his zone. The way the Zoning Ordinance is worded, you can take an existing commercial use and convert it.

Monahan asked if there will be a continued commercial use on the first level? Attorney Dolder said there would be . Two of the bays will be used with the existing commercial use.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Wallner: Unusual case. Their hardship would be to do it the way they technically would have to do it.

Monahan: Agrees.

Scott: Agrees.

Winters: It strikes him that the code is flawed. The purpose of the zone is for density. Single family units are not permitted.

He is inclined to approve.

Carley agrees.

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

21-22 **112 Merrimack Street; RM-Medium Residential District; Property Owner Robert Bates:** Applicant proposes to construct a 10' by 20' addition to an existing two-family dwelling and is seeking variances to:

1. Article 28-4-1(h) - Dimensional Standards, to construct an addition with:
 - a) a front yard setback two feet greater than that of the existing, nonconforming two-family home, or approximately 15'-6" front property line, where 25' are required;
 - b) with frontage of 125', where 150' are required; and
 - c) with lot size of 16,553 sf, where 18,750 sf are required.

Testified: Robert Bates. He would like to add a 10x20 addition on the side of his home towards the driveway. He wasn't aware of the setbacks. The front of his house is 13'5" from the side walk. He submitted a photograph of his home. He explained the layout. He's coming in 2 feet from the plane of the existing street facade. Same pitch roof. Half way between first and second floor windows will be the roof line for the addition. It will be flush with the deck. Winters asked if the home were currently in the setback. Mr. Bates said he is 13'5" from the sidewalk, so yes. It will be dining and living room space. He has owned the home since 1999. Carley asked if he was coming out to the driveway. Mr. Bates said it is 2 or 3 feet short of the driveway. He says he estimates 3 feet to the driveway.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters: It is a reasonable use. His setback is less infringing than it is now. The frontage and lot size issues are similar to what they are now.

Scott: It is a reasonable use. In favor.

Monahan: Agrees.

Wallner: Agrees.

Carley: Agrees.

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

23-22 **76 Elm Street; RN-Residential Neighborhood District; Property Owner – Toni Mitrano:** Applicant is looking for an after-the-fact variance for a shed that was installed by a previous owner without a permit that encroaches into the side yard setback and is seeking a variance to:

1. Article 28-4-1 Dimensional Standards, Section (h) Table of Dimensional Regulations, to allow location of the shed to be within 2.5 feet of the easterly property line, where 10 feet are required.

Testified: Toni Mitrano. She purchased the home in mid-November 2021, as is. The previous owner said the shed has been there since 2017. She received letter from Concord in January 2022 saying there was no permit on file for the shed. She is trying to make things right. She'd rather not move the shed. It's about 3 feet from the property line. The shed does have heat and electric. She mines and makes jewelry and she was going to use the shed for that. The previous owner used it as a 'man cave'. Wallner asked if there was a bathtub and toilet in it too? Toni said it was not in there at all. Carley asked why it wasn't an equitable waiver. Cartier-Creveling looked it up. Scott explained that an equitable waiver was usually for something that was existing for at least 10 years or it was an honest mistake. Winters explained that it would have to be the prior owner's innocent error or a ten year interval after construction for an equitable waiver to apply. Monahan asked what they would have to do to make it conforming. Ms. Mitrano explained that if approved, she will get the permits needed. If denied, she would have to move it out or move it 10 feet from property line. She spoke with the previous owner and they said they didn't know they needed permits to replace one shed for another. Cartier-Creveling showed on the GIS maps where the shed was located. Board asked about the other shed on the property. Ms. Mitrano explained that the shed in question is 13 x 20 and there is a porch on the shed. Scott asked if it were to be moved, it would not be easy to move. Ms. Mitrano said that was correct. She tried to contact her title company and received no help. Monahan asked if it were on a slab. Ms. Mitrano believes it is on cinder blocks.

In favor: Emilia Anne Lesmerises who is an immediate abutter on the right. Wallner noted there was a letter in the file from her. Ms. Lesmerises explained that the shed doesn't impede her property in any way. It would be a financial disaster

for Ms. Mitrano to move it. She is in favor.

Melody Towle who lives at 110 Elm Street and has been there since 1968. That shed was brought in by Reeds Ferry Lumber and assembled on site. The shed on the other side, the metal one, was where the shed in question sits now. The wooden shed behind the metal shed has been there for about 20 years. Winters asked if she remembered when. She said about 2017. If Ms. Mitrano has to move it, it would be quite an expense. It's probably going to last longer than her mobile home.

In opposition: none.

Code: none.

DECISION: Carley reviewed testimony as given.

Wallner: The hardship would be to move it. The abutters have no issues with where it is. The situation was created by the prior owner. He is inclined to support.

Monahan: Agrees.

Scott: Agrees.

Winters: Disagrees. It's an equitable waiver situation. He thinks they should look at it as if they were starting from scratch. A motion to approve the request was made by Scott based on the fact that the hardship to come into compliance exceeds reasonableness and purpose of the ordinance and the neighbors are not in objection. Motion seconded by Wallner and passed by a 4-1 vote with Winters in opposition.

Carley thinks if the letter of the law were put into play then Winters is probably right. As a practical matter relief is appropriate. Scott doesn't know if the prior owner was ignorant. So even if owner wasn't, Reeds Ferry should have known that a permit was needed.

25-22 60 Snow Pond Road; RO-Open Space Residential District; Property Owner – Daigle Joseph A Family

Trust: Applicant seeks to remove an existing, nonconforming single-wide manufactured home and to install a double-wide manufactured home in a different location and seeks a variance to:

1. Article 28-8-5(b)(3) - Continuation of Nonconforming Structures, to allow replacement of an existing, nonconforming manufactured home with a larger nonconforming manufactured home, which is allowed only in manufactured housing subdivisions and parks per Article 28-2-4(j) Uses A4 and A5 and prohibited in the RO District.

Testified: Joseph Daigle and Christy Smith-Perry. Mr. Daigle gave a handout to be passed out to the Board. He explained that they purchased 7 acres of land a few years ago with the intent to build a house. They have been cleaning up the property the last 2 years as it was an eye sore. It was previous owned by and operated a septic company on that site. They spent \$3,000 on house plans for a home they wanted to build, but the quote for the house came back at \$800,000. They started over and spent more on new house plans. None of which were feasible. He is a real estate agent and his income hasn't been what it was due to Covid. Ms. Smith-Perry thought perhaps a mobile home. Concord Homes has a double wide manufactured home which is 44' x 28' and looks like a small ranch house. This will be placed on a 6" thick slab with tie downs. They have a grand fathered nonconforming use. Last summer they had approval for a larger home, but it was too expensive. This new manufactured home meets setbacks, fits within setback, is more conforming, and away from wetlands. There is less impact on the wetlands. They will replace the septic. The diagram does have the elevations for the new manufactured home on it. If you drove by and looked to the right on Snow Pond Road, you would look right over the existing trailer as it has a 10 foot drop. The manufactured home is same height as existing trailer.

Carley asked if this was or was not a mobile home. Mr. Daigle explained that it wasn't a mobile home, but it is a manufactured home as it is 2 x 6 construction. Cartier-Creveling explained that they wouldn't need a variance to build a single family dwelling.

Ms. Smith-Perry explained that all of the homes in the area that are stick built suffer from moisture damage and flood. The manufactured home won't. The house next door's floors buckled from the moisture. You can't fight the moisture. It's a safer option to have a slab. Carley asked if they would do slab on grade or pylon. Mr. Daigle said they would do a 6" slab and anchors and hurricane straps. He explained that even if they had a stick built home they would still put it on a slab. Ms. Smith-Perry explained that it would be the least intrusive way to get a home on the pond. They would have to take 6-9 months to build a home but this would be done in 3 weeks. They won't have to clear the lot like they would to build a home.

Monahan asked if the existing mobile home was on a slab. Ms. Smith-Perry explained that it was on dirt. Mr. Daigle explained that the new one will look better. There aren't many 'fancy' houses on this side of the road. He doesn't think it will bring down the value of other properties. There are 5 or 6 little cottages built out of scrap materials on this road. Monahan asked how long they lived there. Mr. Daigle answered that they have owned the property for 2 years. Monahan noted that the property is unusually wet, which creates a hardship associated with the property. Ms. Smith-Perry explained that they have spent over \$20,000 and they still don't have a house built. Mr. Daigle asked why the people at 73 Shawmut Street were allowed to place a mobile home on that lot in 1997 in the RD Zone when that wasn't permitted? Why can't he do what they did.

No one present to testify in favor or opposition.

Code: none.

DECISION: Carley reviewed the testimony as given.

Winters: There are a number of aspects convincing him of the hardship; i.e. lot size, water table. They are upgrading what is there now.

Scott: Agrees with Winters. Manufacture homes have come a long way in construction. It is a reasonable use. It is better for the neighborhood.

Monahan: Agrees with Scott. It is an improvement to the property. They are replacing nonconforming with nonconforming.

Wallner: Agrees.

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 March 2022 Minutes was made by Wallner, seconded by Monahan and passed by a unanimous vote.

*Respectfully submitted,
Rose Fife, Clerk*