

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
MAY 4, 2022 MEETING
MINUTES**

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

Absent: none

Staff: David Hall, Code Administrator
Rose Fife, Clerk of the Board via YouTube Link

Meeting commenced at 7:07 pm.

22-22 Applicant has Requested Continuance to June 1, 2022: 42 Washington Street, Pena.; RD Downtown Residential District; Property Owner: Wendell J. Butt Funeral Home, Inc.: Applicant seeks to change the use of the property and facility from a currently nonconforming use to a use permitted by Special Exception Under Article 28-2-4(j), Table of Principal Uses, to allow a change of use from a funeral home (use D-3) to a Community Center (Use B-14).

Case was withdrawn by applicant.

26-22 292 Shaker Road; RO-Open Space Residential District; Property Owner: Gaudet Matthew P & Teresa L Rev Trust: Applicant seeks to build an addition of 900 s.f. to the existing principal residential structure, along a 14' x 25' deck on the easterly end of the addition and seeks a variance to:

1. Article 28-4-1(h) - Table of Dimensional Regulations, to allow the construction of an addition of 990 s.f. +/- to the principal residential structure with a front yard setback of 30.49 feet, where 50 feet are required, with a 14 ft x 25 ft deck on the easterly side of the addition, which will have a front yard setback of 31.37 ft, where 50' are required;

Testified: Matthew Gaudet. He bought property in 2017. He renovated the property, with a permit, to spruce up the house. They added a shed and a deck. Steve Palmisano wants to purchase his home and would like to put on an addition on to accommodate his family. They need to add one foot on the front of the home as there is a rock ledge behind. When he spoke with Code Administration they told him it was existing non-conforming. They just need the 1 foot bump to allow for the addition. Carley asked about the offset in the plan and how it contributes to proper drainage. Mr. Gaudet explained that right now it drains into the yard. This will allow the drainage to flow down to the side and into the back of the yard. Carley asked if it would flow into the swale behind the house. Mr. Gaudet said that was correct. Photos were put up on the screen to show what he was asking. The far side of the house, where the addition would go, would allow for proper drainage by pulling the addition forward. They also need to pull it forward as there is ledge there. There is a drainage channel that runs behind the house. The 1 foot coming out as it does will alleviate some of that. Winters asked if he would be doing the construction and selling to his friend. Mr. Gaudet said that he would not be doing the construction.

Steven Palmisano testified as well. Mr. Gaudet explained that he and Mr. Palmisano have been working with a builder and Mark Sargent, LLS as well. Mr. Gaudet explained that Mr. Palmisano has had a difficult time finding a home due to the housing market. Monahan asked if they had septic. Mr. Gaudet explained they do have septic and showed where on the property it was located. The septic appears to be in the front yard. The septic will be upgraded to a 4 bedroom with the State of NH as well. The septic is only a few years old. It was updated in 2017. Due to the addition, they need another 3 rows of enviro-septic. Mr. Hall explained that Code administration would not issue the building permit until the State of NH approves the septic. Winters asked how close to the other houses they would be. Mr. Gaudet explained that there is nothing to the right and they are moving towards the road, not towards the neighbors. This request is due to non-conforming setback and ledge on property.

In favor: none.

In opposition: none.

FM ZBA 5.4.22

Code: none.

DECISION: Carley reviewed the testimony as given. The appellant wants to impose 1 foot further on the front setback.

Winters: 768 s.f. living area is small. He feels it is a reasonable use.

Scott: Agrees. It is a small imposition of a foot and they cannot locate it anywhere else. She is in favor.

Monahan: Agrees with Scott. It is a narrow spot between the septic and the ledge.

Wallner: The hardship of the topography makes it unique.

Carley: Agrees.

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

27-22 29 Tallant Road; RO Open Space Residential District; Property Owner – Mendota Properties LLC:

Applicant seeks to establish a Residential Social Service Center at the subject property and seeks the following variances:

1. 28-4-1(e), Table of Dimensional Regulations, to allow lot coverage in the amount of 14% where 10% is allowed;
2. 28-7-7(f), Parking Area Design Standards, Driveway Widths, to allow the existing 13 foot wide driveway width where 24 feet is required for two-way traffic; and
3. 28-7-7(h), Parking Area Design Standards, Surfacing and Drainage, to permit a gravel surface parking lot and driveway where a paved surface is required.

Testified: Jonathan Mr. Halle, Warren Street Architects, Attorney John Arnold of Orr & Reno and Erin Lambert of Wilcox & Barton.

Attorney Arnold: – The property is being used as a single family residence. It has been converted to a residential social service center. There will be up to 5 people living there with traumatic brain injuries. There will be 5 staff members for 5 people or a 1 on 1 ratio. They will have 8 hour shifts; 3 per day. Residents have private baths and a shared kitchen. The use is allowed. The application seeks 3 variances. One to allow 14% lot coverage vs 10%; one to allow a gravel drive where paving is required and a driveway narrow point is 13 feet where 24 feet is required.

Ms. Lambert testified. The existing site has an existing home and 2 car garage on it. She gave an overview of the sight. The light gray on the plan is a driveway, which is a one way driveway and a gravel drive that extends on the side of the house. The back of the home has a gravel yard. They want to add 5 parking spaces for a total of 10 parking spaces on site. There will be 5 staff members on site at one time and at the shift change there would be 10. There is going to be an ADA parking space added as well. All the doors have multiple steps down and they will make one in the front and one in rear accessible. Right now, they have 12.2% lot coverage so they want to maintain that and add parking.

Attorney Arnold explained that the lot coverage is increasing from 12% to 14% due to ADA ramps and parking increase. Ms. Lambert added that the addition of the generator pad will add to that as well.

Attorney Arnold spoke regarding the lot coverage variance. The 12% existing lot coverage will go to up to 14% which would be a little under a 2,000 s.f. increase. That will include the 5 gravel parking spaces and 2 ADA accessible ramps. The parking spaces are more than required by zoning. The additional parking is essential to the operation as there will be 5 staff members on a shift at any given time and the shift change will double the use. The residents do not drive. There will be occasional visitors. The ADA needs to be added to comply. The 14% calculation includes the gravel around the house that isn't being used for parking. The gravel in the back yard can be removed and replaced with landscaping. That can off-set the increase proposed. If that area of gravel is removed the 12% could be maintained. To get to 10% they would have to remove some of the driveway. There will be no increase of storm water run-off. There will be no change pre and post development. Gravel Surface: the existing drive is gravel. Tallant Road is also a gravel road. Other driveways in the area are gravel. If paved, it would require more site work. Width variance: if the driveway were built up to 24 feet, it would bump up the lot coverage. The 13 foot width is only for a very short portion of the driveway. 18-24 feet in width is the range. There is plenty of room for vehicles to pass. There will not be much traffic other than the shift change. Photos were submitted showing what the driveway looks like today, which is what they are asking to maintain. There will be no impact on traffic off the site. Jonathan Mr. Halle explained that they did go before the Architectural Design Review committee (ADR) yesterday and they had one comment regarding the yellow generator. There will be a dumpster with a cedar fence around it and they wanted them to put a cedar fence around the generator. They also endorsed the variances, but he doesn't know if that is in their record yet. Attorney Arnold explained that changing the driveway wouldn't serve the

site at all. The scope of relief that they are requesting is minor. The requests are reasonable and appropriate given the use going out there. The use is allowed by right.

Winters asked if the driveway width and paved surface requirements derived from the zone or residential social service center use. Attorney Arnold doesn't believe its triggered by the use.

In favor: none.

In opposition: Eric Sommers. They are correct that a gravel driveway makes sense. The real problem is the 10% lot coverage and the use and asking for 12-14% lot coverage. They understood when they bought this property knowing that was there. You can't prohibit the use, but the property was not conforming when purchased. Increasing the lot coverage from 10 to 14% is not minor, as it translates to a 40% increase. It's a big difference and is different from what is allowed in an RO district. It's the wrong lot for that use. He thinks the variances should have been requested before it was developed. He submitted photographs he took today. There has been some addition of the pad for the generator. It's an immense generator with a propane field in front of it. There has been some work done already that made it more nonconforming before coming before the Board. This is not in the nature of the RO zone. There will be 5 people per shift which for 3 shifts a day is 15 people traveling in and out of that property within 24 hours. There are some impacts that haven't been addressed. He wouldn't object to a variance on pavement. He's speaking in opposition to the greater coverage. He lives across the street. He is finishing a house there, but it is not yet complete.

Ben Stevenson, 32 Tallant Road. He approached the City for a 4 lot subdivision but the City wouldn't do that without doing improvements to Tallant Road. If he can't do a 4 lot subdivision and he has to be responsible for the corner of Tallant Road, which a fire truck can't make it up to, and if that burden is being put on him, he doesn't see why the City doesn't share that burden by being part of a variance request for this person. There will be an issue with the 13 foot pinch point. There are significant City services that have to come to facilities of this type, so there will be a number more vehicles in and out on top of the 5 car shift change.

Jennifer Bofinger, 41 Tallant. She is adjacent to the lot they are discussing. She is opposed to the variances. She has lived there for 25 years. She was the first house built on their subdivided property. Tallant Road is a rough road. They couldn't get school bus service up there and during the Spring frost you cannot drive it without 4 wheel drive. She's not excited about all the extra vehicles coming onto the dirt road. When her father-in-law was alive and lived there, he didn't exceed 10% lot coverage and how it got to 12% lot coverage she's not sure. As the next door neighbor, she is feeling she doesn't have enough information about what is happening there. There has been a lot of new construction since her father-in-law lived there.

Monahan asked if Tallant Road were a City or private Road. Ms. Bofinger answered that it was a City road, but difficult to plow, etc.

Lisa Bofinger. She sold the house in question. She did lives at 19 Tallant Road, the house on the other side of this lot. She now lives in Maine, but she did sell the lot to this unknown company in Ohio. They lied about who they were when they bought it. She called the City to see if any permits were pulled. She had been told that there was a permit to add bedrooms inside. Then propane and well was put in and a new septic. The generator pad and propane, that whole system is a big addition and can be seen from the road. When the generator kicks on it will be noisy as it is the size of the generator at Concord High. It's not a residential generator. The size of the generator and pad gets them to the 12% so that does go to the request.

Julie Lane, who lives across the street at 20 Tallant Road. The property has a lot of trees. A lot of trees in the front of their property are now missing and it's been replaced by the generator pad. That's already a bit of an eye sore. How do they get permission to go above 10% lot coverage? When did that happen. Who actually owns the property and making the changes as it isn't clear from the paper work. The paperwork was submitted under one name and owner seems to be another name. Mr. Hall said the variance was submitted by the owner at the time. Sometimes property owners allow someone else to apply for them. The property owner did submit authorization to submit the application today. Winters: explained that Scioto property is the sole owner of Mendota Properties LLC, so they are the same. She opposes the requests. But doesn't oppose the request to keep it gravel. It is the increase of coverage she is opposed to.

Laurel Brown of 19 Tallant Road, which is the next door neighbor on the other side of property. Their road isn't an easily traveled road. She agrees with what the others have said. There is already an eye sore there. They have indicated they will cut down many more trees. She feels they are misrepresenting their increase.

Code: none.

Rebuttal: Attorney Arnold. He reiterated that they can maintain the 12% by removing gravel around the house. The only way to get to 10% lot coverage is to remove part of the driveway. Ms. Lambert explained that the lot coverage square footage includes the house, garage and gravel areas, and back yard. She can't speak to the fact of if the generator is existing, but it is in the proposed numbers. If the generator were taken out they would still be at 12.0%. It wouldn't get the number down. Carley asked if the generator went on land that wasn't impervious to begin with? Ms. Lambert affirmed that. Even if she took out 200 s.f. they would still be over 12%. They did remove trees to put in the generator and underground propane. The yellow color is sand, which needs to be covered with top soil and seed. The ADR committee wanted to put a cedar fence around the generator. They will clear some trees to put in the 5 gravel spaces they are discussing. The increase gravel will be restored by putting in grass in the back yard. Carley asked if gravel was impervious. Ms. Lambert explained that the said City of Concord considers it to be so. Carley asked if they could change from pavement to gravel with a CUP? Mr. Hall will have to look it up but it won't change the lot coverage number. Ms. Lambert explained that for commercial properties the driveway and parking needs to be paved and a CUP doesn't cover it.

Mr. Halle has done projects for SaVida Health, which was then called Neuro Health and then called Neuro Restorative. They have a facility on Loop Road, one in Chichester, and one in Webster. As they expanded, they absorbed the properties. He, Attorney Arnold and Ms. Lambert got involved 60 days ago with this property. He doesn't know how things came about, but when he became involved, he was aware that the City had issued a permit for renovations to a single family home and now they find themselves at this board as when they asked about getting their CO and Planning asked what the use was, it triggered other approvals needed. It was a licensed board and care. They are at the board today so they can maintain the character of Tallant Road. They can do all of this without the variance but the end result is that the site will look far more alien on Tallant Road. Ms. Lambert explained what the driveway would look like if they had to make it conforming. There would be more clearing of the property and feels that would be more detrimental.

Carley asked if their original calculations of 12% was based on their calculations of the lot as they had found it. Mr. Mr. Halle hired Bartlett Survey 60 days ago to do an existing conditions survey. He believes where the propane and generator area is was cleared before he got there. They had a building permit for single family home renovations and they could cut the lot. Winters asked when they started the renovations, what was the lot coverage? The neighbors were saying it was under 10% prior to you being here. Mr. Halle explained that the only thing he believes that has been changed on the site is where the generator and propane lines were put. Attorney Arnold explained that the only change for impervious surface was the generator pad. He doesn't believe any one knows when the lot coverage changed from 10% to 12%. The generator isn't big enough to amount to a 2% change. Monahan asked if no one knows when it exceeded 10%. Mr. Hall explained that a year ago the owners came to do a conversion and explained it would be a business use. They were told they needed a site plan review. The owners wanted a building permit for a single family home and they issued it and it was inspected. They converted a 2 bay garage to bedrooms. The change of use required site plan review. Mr. Halle explained that the addition of the propane field and generator were done under the single family residential permit. Mr. Halle doesn't want to do what Planning wants him to do by paving. If they are denied tonight they will have to go to Planning with paved driveway plans. Monahan asked why the CO hasn't been issued. Hall said they could do a 5 bedroom single family home, but not for a residential board and care. Monahan asked if Mr. Halle had met with the neighbors. Mr. Halle reported that Sovita Health said no one had reached out to them. Mr. Halle did go over, prior to the hearing, to offer to speak to the neighbors and answer questions.

DECISION: Carley reviewed testimony as given.

Wallner: Item 3 is in the spirit of neighborhood. No reason to require paving. He is persuaded for the 13' driveway and lot coverage. The idea of having to redo lot coverage and adding pavement and cutting more trees would alter the character of the neighborhood.

Monahan: It is always better for the applicant to meet with the neighbors before they come to the Board. The suggestion that these variances will make the property less than an eyesore is persuasive.

Scott: The applicant is trying to keep the property more with the neighborhood. They could pave it, clear it and make it more commercial looking. Fencing around the dumpster and the generator will make it look nicer. The 14% lot coverage makes it try to fit within the community. She is in favor of all 3 requests.

Winters: Notes that the property owner should have been here. It would have helped address the neighbor's questions. The core of the issues the neighbors have is with the State Law. It's the increased traffic on the road, the commercial use that is really what is driving a lot of the concerns. Additional changing lot coverage from 12-14% is only 4% higher. He believes the variances are modest. He is convinced if they avoided the variances it would make it less consistent.

Carley: Agrees with others. He'd like to see the reclamation of 2% of the impervious surface as landscaped area rather than go to 14%.

Before the Board proceeds Carley wanted to take a moment to address the audience. He explained that the ZBA is not an adversarial procedure. It's not a debate. It's not a court. Their job, as volunteer servants of the town, is to listen to the information, try to make sure they have their facts as straight as they can get them, and then to apply the 5 criteria, in the case of a variance, that allow a variance. They set up a procedure in order to do that, in an orderly way. Everyone gets a chance to speak. You may recall, that at the beginning of the evening, he laid out that procedure for the audience so they knew what to expect. So that is why, although the audience may feel somewhat affronted by his refusal to let them speak, he refused to let them to continue to speak.

The Board continued onto the decision motion.

A motion to approve the 3 variances was made by Scott, as presented. The impacts are minimal to the property. They are trying to keep it within the spirit and intent of the neighborhood. The extra lot coverage for ADA ramps and other 5 parking spaces will have a minimal impact. The motion was seconded by Wallner and passed by a unanimous vote.

Minutes:

A motion to approve the Minutes from April 6, 2022 meeting was made by Wallner, seconded by Scott and passed by a unanimous vote.

*Respectfully submitted,
Rose Fife, Clerk*