

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

Attendees: Chairman Christopher Carley, Andrew Winters, Nicholas Wallner, and Laura Spector-Morgan.

Absent: none

Staff: David Hall, Code Administrator  
Robert Nadeau, Code Inspector

---

Meeting commenced at 7:00 pm.

Chairman Carley announced to the gallery that four Zoning Board members are sitting for tonight's meeting of the Zoning Board of Adjustments. Applicants have the right to be heard by a full five-member board. Decisions will still require three members to affirm. An opportunity was provided for any petitioner to delay their hearing until the September meeting, rather than this evening. If heard tonight with a four-member board, the fact that there was only four members is not grounds to contest a decision. No petitioner elected to delay their hearing.

Chairman Carley further announced that the first case, 34-22, would be heard by only a three-member board, as one sitting member has a conflict and needed to recuse himself. The petitioner, Attorney Friedrich Moeckel, representing the owners, 45 Centre St Frnt, agreed to proceed with a three-member board.

**34-22 72 Washington Street; CN-Neighborhood Commercial District; 45 Centre St Frnt: (Remaining Items Recessed from July 6, 2022 ZBA Meeting)**

Applicant proposes to locate a restaurant with a gross floor area less than 5,000 sf with no drive-through service (Use I1 in the Table of Principal Uses) and is seeking variances for this proposed change of use to:

5. Article 28-7-5, Requirements for Handicapped Accessible Parking Spaces, to allow no off-street accessible parking spaces, where two spaces are required;
11. Article 28-7-14, Off-Street Loading Area for Refuse Containers, to allow for no provision of off-street loading area for refuse containers, where there is no area available on the existing site to provide it;

Board member Winters recused himself from this case and was not present.

Chairman Carley provided an overview that several requests incorporated into this case were reviewed and decided at last month's Zoning Board meeting. Tonight's agenda only includes two outstanding items that were recessed from last month's meeting and will be heard tonight. Discussions relative to issues already decided will not be the focus for this evening's hearing.

Testified: Attorney Friedrich Moeckel, for Owners, 45 Centre St Frnt, and Miles Tarbell, for Keystone Management.

Attorney Moeckel summarized that two issues remain outstanding relating to handicapped parking and the handling of refuse. Relating to the handicapped parking, he is exploring with the city, exercising an option provided in the Code of Ordinances, coordinated through the Parking Committee of the General Services Department, to have the City of Concord designate a portion of on-street public parking as an official handicapped parking spot. They have already submitted the paperwork to request a hearing with the Parking Committee to get the process started. The ultimate permission will need to be granted by the City Council.

Attorney Moeckel reviewed the concepts and challenges of designating a spot on either Washington Street or Lyndon Street. He stated it makes more sense to locate handicap parking at the street level because the subject building is the only building in the immediate vicinity that has a street level main entrance; there are no steps or rise to have to deal with. It makes no sense to place handicap parking on the property, in the rear, first because there is a steep slope that would need to be

addressed, but also, modifying the layout of parking area would necessitate amendments to the approved site plan, relating to the apartment building parking.

Spector-Morgan asked of probability of successfully gaining spot by the city. Moeckel cannot say.

Attorney Moeckel then reviewed the potential solution they have devised to deal with the refuse. The prior business utilized a wooden shed located along the Lyndon side of the building, near a loading door, where their garbage was stored. This shed would be replaced with the same size structure that would contain eight 96-gallon totes. The totes would be picked up by a service.

Spector-Morgan asked if variance is still needed if utilizing the same location and general method? Attorney Moeckel indicated that yes, a variance is still needed as this arrangement doesn't meet code. Attorney Moeckel further clarified that recyclable items will be stored within the store until trash day.

Spector-Morgan asked Code Administrator Dave Hall why a variance is needed? Hall indicated that the ordinance specifies screening and access requirements that cannot be satisfied with this arrangement.

In favor: None

In opposition: Tracy Boisvert, 8 Lyndon St. Raised concern for trash being stored outside next to the sidewalk. Previous business used space for refuse and it was very untidy. Trash was used by public as they passed by and it became messy. Concerned trash in neighborhood will reduce value of properties. She believes a better location would be somewhere in the interior of the property, maybe some grassy areas would be better suited. Concerned that Lyndon Street will look like an alley, with trash strewn all over. Understands access is narrow, but other businesses do it, they should be able to do it too.

Carley noted that a memo from Mr. Paul Savage has been received in opposition as well.

Code: None

Rebuttal: Attorney Moeckel is aware of esthetics of the mis use of trash, but the site is vacant at this time. With a tenant on site, concerns can be tracked and the problem will go away.

Spector-Morgan asked if storage location will have covers and be locked? Attorney Moeckel confirmed that the structure will have a door and can be locked.

Miles Tarbell added that the structure will be constructed with vinyl, wood and composite material.

Spector-Morgan asked if they considered a dumpster on property? Attorney Moeckel indicated that they looked into that and it is not feasible. The grade is steep, the driveway narrow, and they would need to request a site plan revision.

DECISION: Chairman Carley summarized testimony relating to handling of refuse, item number 11.

Wallner: Demonstrated a hardship and would favor the granting of a variance.

Spector-Morgan: Will agree with granting the variance providing the containers are secured and locked.

A motion to grant the variance for item number 11, with the condition that access is secured and locked was made by Wallner, seconded by Spector-Morgan and passed by a unanimous (3-0) vote.

Chairman Carley summarized testimony relating to handicap parking, item number 5.

Spector-Morgan: In favor of granting, providing approval is received by the city for on-street parking alternative. This would actually be more beneficial than parking in the rear of the building.

Wallner: Agrees.

A motion to grant the variance for item number 5, with the condition that approval is received from the City for the designation of an official on-street handicapped parking spot was made by Spector-Morgan, seconded by Wallner and passed by a unanimous (3-0) vote.

Board member Winters returned to the Board and a four-member Board was present to hear the remaining cases.

Chairman Carley announced that case number 36-22 for 32 Manchester Street had been withdrawn and will not be heard.

**37-22 270 Loudon Rd–Steeplegate Mall; GWP-Gateway Performance District; Property Owner- Steeplegate Mall Realty LLC & Steeplegate CH LLC & Steeplegate Nassim LLC: (Recessed from July 6, 2022)**

Applicant wishes to utilize +/- 2 acres of the parking lot on the easterly side of the overall property, which is currently part of the Steeplegate Mall site plan, to allow its use for truck and automobile maneuvers as part of a Commercial Driving School, which is not an allowed use. The applicant seeks a variance to Article 28-2-4(j) to allow a commercial driving school (Use B3) where such use is not allowed.

Testified: James Amico and Kathleen Amico, co-owner of Commercial Driving School, LLC.

James Amico testified that their business currently operates at 70 Pembroke Road, but are losing their current location and need to relocate to a new site. The identified area of the mall parking lot is desirable and would suit their needs quite well. They entered a lease for the area and hope to gain permission to operate there. Mr. Amico went on to describe that double swing gates would be installed to secure the area. These gates would be mounted on cement blocks that could easily be removed when they stop using the area. They would install a porta-potty for their students. They would only operate Monday through Friday, from 8am to 5:30pm and would only have maneuvers on site about two hours a day. Most times the trucks would not be moving and there would be no risks to neighbors or the public.

This is a private school serving students who are at least 18 years old. It is an area of the mall that is not currently used, and even when the mall was at its peak, was not extensively used. They are looking for a one-year arrangement and have entered into a one-year lease. They support about 150 students per year and have been voted most successful trucking school.

Wallner asked if trucks would be stored on site? Mr. Amico indicated that 50% would be located here and the other 50% would be parked at 70 Pembroke Road.

Carley asked if the trucks are tractor trailer trucks? Mr. Amico indicated yes.

Winters confirmed they are looking only for a one-year lease? Mr. Amico indicated that yes, that is all the mall owners would agree to. Pembroke Road would not renew their lease, so they are looking for a short-term solution while they explore long-term options.

Spector-Morgan asked what about the property is different or special that would justify a variance? The Amico's explained that the property is separate from the rest of the mall area and it is more private and secure, that the flood lights stay on all night and that it is safer and that the layout would work perfectly for the truck maneuvers.

In favor: None

In opposition: None

Code: Hall indicated that City is working with the mall owner to obtain a master plan for the site. It is his understanding that the variance runs with the land, that it is unclear if we can restrict the area to be used, and that a variance cannot have a sunset date.

Winters questioned if this qualifies as a school? Hall indicated yes, it is considered a post-secondary school. Hall also wasn't certain if any issues arise by the use of a port-a-potty.

Rebuttal: Mr. Amico indicated that a charter school had operated on the site within the mall.

DECISION: Chairman Carley reviewed the testimony.

Winters: Petitioners didn't address Spector-Morgan's question well, but he sees this as an obscure portion of land, not utilized for parking much. Assumes we can limit the use to the specific area, but cannot limit time. Seems to be a reasonable use.

Spector-Morgan: This is a great use for the space, but there is nothing about the portion of the property that speaks to a hardship.

Wallner: Agrees with Winters, that is a great area for this use and a variance for a charter school had been previously granted.

Carley: Agrees with Spector-Morgan that no hardship has been identified.

A motion to approve the variance was made by Wallner, seconded by Winters and fails by a 2 to 2 vote. (In favor – Winters and Wallner. Opposed – Spector-Morgan and Carley.)

A motion to deny the variance was made by Spector-Morgan, seconded by Carley and fails by a 2-2 vote. (In favor – Spector-Morgan and Carley. Opposed – Winters and Wallner.)

Where neither motion achieved a three-vote minimum to pass, no decision was made, and the variance was not granted.

**39-22 40 Rockingham Street; RM Medium Density Residential District; by Brian Sartorelli, Owner:** Applicant wishes to remove an existing 6-foot by 8-foot porch with steps and replace with a 6-foot by 24-foot farmers porch with steps, on the front of an existing single-family dwelling and request a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 13.75 feet +/- from the southerly front property line where a 25-foot setback is required.

Testified: Greg Behr, Brian Sartorelli

Mr. Behr explained that they are trying to replace a rotted porch with a larger porch, but will extend laterally along the house, no closer to the street.

Mr. Sartorelli reviewed the scope of the safety hazard from the rotted porch, resulting in the need to have it removed. A farmer's porch would be more aesthetic and functional. Mr. Behr emphasized that it is no closer to the front property line than the porch, which was removed. The front setback requirement is 25 feet and this porch will be about 13 feet, as was the old porch.

Mr. Sartorelli noted that most houses in the neighborhood have structures in the front setback and this is less than most. He has the support of his neighbors.

Wallner asked to confirm replacing existing structure? Mr. Behr confirmed that it will be larger than the existing, but laterally only. It is no closer to the street.

In Favor: Chairman Carley noted that an e-mail was received from Anthony Tenczar, 33 Rockingham in favor.

In Opposition: None

Code: None

DECISION: Carley reviewed the testimony as given.

Wallner: No additional setback concern. Encroachment is only lateral. Not opposed.

Spector-Morgan: Does not alter neighborhood, no benefit to deny.

Winters: Agree.

Carley: Agree.

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

**40-22 9 Eldridge Street; RS-Single Family Residential District; by Orr & Reno, PA for William Young Properties, LLC, Owner:**

Applicant wishes to rebuild a home on an existing foundation and seeks variances to:

- 1) Article 28-8-3(c)(2)a., Conditions for Development of Non-Conforming Lot, to permit the reconstruction of a single family dwelling on a non-conforming lot lacking a minimum of 22' of frontage on an accepted City street, and
- 2) Article 28-4-1(d), Minimum Yard Requirements, to permit the reconstruction of a single-family dwelling with a front yard setback of approximately 24.6' where 25' is required, a westerly side yard setback of 12' where 15' is required, and an easterly side yard setback of 14.9' where 15' is required.

Testified: Attorney John Arnold with Orr & Reno and William Young.

Attorney Arnold provided an overview that the house previously on this lot, and on the existing foundation, was destroyed by fire in 2017. He had intentions to repair and rebuild, but the damage was too extensive and it was removed in 2021, except for the foundation. He is now wishing to rebuild on a non-conforming lot on an existing foundation.

This is a private road with no frontage on a public street is available. The original house was built in the 1950's and has been at this location since, but the foundation sits with a minor encroachment into the setbacks. It is unreasonable to remove the foundation and repour it to shift it by inches.

Winters asked why the Zoning Code would require public access? Attorney Arnold indicated that it is likely to ensure the road is under control for emergency vehicles.

Spector-Morgan questioned if the road on the other side of the next property is a public road? Attorney Arnold responded that it is, but it doesn't pass through to Eldridge Street.

In favor: None

In opposition: None

Code: None. Chairman Carley noted that no variance would have been necessary to rebuild if work had been performed within one year of the fire.

DECISION: Carley reviewed the testimony as given.

Wallner: Setback is the hardship for this lot. Nothing to gain by denying.

Spector-Morgan: The house not being rebuilt is an unnecessary hardship. It makes no sense to move the foundation for just inches. In favor of both variances.

Winters: Agrees. Believes the owner made good faith effort to renovate, but not possible.

Carley: Agrees with all that has been said.

A motion to approve both variances was made by Spector-Morgan, seconded by Winters, and passed by a unanimous vote.

**43-22 4 Park Ridge Road; RS-Single Family Residential District; by Brian Oswald & Dann Elise, Owners:**

Applicant wishes to build a 14-foot by 22-foot screened porch on the northernly side of an existing single-family dwelling and request a variance to Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 13.7 feet +/- from the easterly side property line where a 15-foot setback is required.

Testified: Peter Howe.

Mr. Howe is the contractor working with the owners. He indicated that the property has hardships. The owners are operating under a lead order and it needs to be address. This porch and deck would be built in the back yard. It would upgrade the home and the neighborhood.

Spector-Morgan asked if it can be placed on the driveway side of the house? Mr. Howe indicated there are issues with access to a walk-in basement. Spector-Morgan then asked if porch can be made shorter to comply? Mr. Howe indicated that it could but they would like to utilize their full yard.

Carley asked if it can be shifted, making the deck shorter? Mr. Howe responded that one window is already being lost with the addition, and that shifting would make them lose another.

In favor: None.

In opposition: Marlene Goldman and Michael Ellenbecker, 125 Centre St. Mr. Ellenbecker stated that at the time the property was purchased, it needed a lot of work and the owners are having difficulty completing. They are concerned that if this variance was granted, the owners would be taking on an additional project when others are not finished. This is having an adverse impact on the neighborhood and it has been going on for two years. Request that this is not approved until other projects have been completed. Not against the project, just want to have the property presentable.

Code: None.

Rebuttal: Mr. Howe indicated he is working with the owners to address all their issues. They have had problems with contractors. They want to help the neighborhood and believe this will help values in a positive way when finished.

DECISION: Carley reviewed the testimony as given.

Winters: Modest request, not substantial reason why it is placed where is. No real hardship.

Spector-Morgan: Agree. No unreasonable hardship. They can comply without a variance.

Wallner: They will lose a window. Spector-Morgan added, that only if they move it; they can make it shorter.

Carley: No hardship can be identified.

A motion to deny the variances requested as there is no unnecessary hardship and it can be built outside of the setbacks was made by Spector-Morgan, seconded by Winters and passed by a unanimous vote.

**44-22 179 Pembroke Road: OFP-Office Park Performance District: by Jeremy Eggleton, Esq. for Proverbs 16:3 LLC, Owner:** Applicant seeks review of Administrators Decision interpreting permissible uses under the ordinance. Code Administrator letter dated June 1, 2022 determined that the complex of 62 monolithic domes to be used for short and long-term rentals is not an allowed use in districts zoned OFP without zoning relief.

Chairman Carley clarified that this case is before the Board for a review of the Code Administrator's decision only; no variance is requested at this time.

Testified: Attorney Jeremy Eggleton, Casey DeStephano.

Attorney Eggleton reviewed the overall concept for this project, and hopes to provide a case to the Zoning Board why this project is right for the City of Concord and the legal basis to allow it. The plans identify 62 monolithic concrete dome cottages. It is a different concept and he understands how it might terrify some in a conservative area such as New Hampshire, but it is innovative and "cool" and a creative solution for a serious public policy issue. He went on to review the overall layout of the lot, consisting of several cottages placed along a winding road, reminiscent of travel cottages that were more popular in the 60's and 70's. Parking would be along the road, at the end would be a turnaround area. There would be a building consisting of an office where guest would check in, perhaps a store and laundry facilities.

Examples were presented of similar projects that have been successfully implemented in several other parts of the country to address housing and lodging. Concord lacks solutions for short-term housing. This proposal would help address this need. The units will not be purchased, rather they are for rent on a temporary basis, just like a hotel, motel or inn. If Concord accepted this, it would place the city on the map for supporting innovative housing solutions.

Turning to the question of legality, the Code Administrator's denial demonstrates an effort to determine how the project would fit into Concord's Zoning Ordinance. Hotels and Motels were excluded through the analysis as the proposed units are not contained within a single building. A review of the Zoning Ordinance definition for Hotel and Motels makes no mention of a building, but rather of a facility. No definition of facility is found in the Zoning Ordinance, nor is there a useful definition within other codes used by the City of Concord. Turning to a dictionary definition, it refers to something that is built for a particular purpose, certainly not limited to a building. It is a stretch to say that a lodging facility is synonymous as a building.

Questions arose during discussions regarding duration of stays. Transient is referenced in the definitions within the Zoning Ordinance, but again are not defined, nor can definitions be found in other city codes. It is reasonable to assume, therefore, that the Zoning Ordinance use of the term transient means that the user does not own it, simply passing through, which is consistent with the dictionary definition.

Carley asked which use does comply? Attorney Eggleton replied that Hotel and Motel, or Inn, either one.

Carley asked Code Administrator Dave Hall if there the Zoning Ordinance has a provision for what is referred to as a tourist cabin? Hall replied none; campgrounds, yes, but tourist cabins, no.

Spector-Morgan noted that the Zoning Ordinance references a "lodging facility" as not having individual cooking facilities. How would we get around that? Attorney Eggleton replied that this a relatively minor issue that could be a condition for approval or a variance could be sought. He further noted that the individual cabins are not supported by individual utilities; all utilities will be linked to the facility as a whole. If cooking is a concern, they may need a variance. But that is not why the Code Administrator denied it.

Winters asked if the potential is there for rentals to last 6-9 months. Is there any limitation on duration? DeStephano replied that there is no real limitation, but that the arrangement is set up under hotel or motel rulings and that rooms and meals tax is charged on top of rent.

Winters asked what is the cut-off when rent is not paid? DeStephano replied that this would run like any extended stay hotel, if a guest doesn't pay, they can be removed.

Winters asked Attorney Eggleton what deference is given to the Code Administrator. Attorney Eggleton replied none, De Novo, that is, the Board stands in the shoes of the Code Administrator.

DeStephano reinforced that individual units cannot be sold, or converted to condos. The units are consistent with hotel rooms. All utilities are consolidated through the hotel. There is no HOA. Additional services are on-site such as a front desk and laundry.

Attorney Eggleton summarized that the Zoning Ordinance doesn't define this issue, but it should be interpreted as a hotel or motel or inn.

In favor: None

In opposition: Attorney Dan Luker, Mark and Patty LaRosa

Attorney Luker, speaking on behalf of the LaRosa's are opposed to whatever this project is. The petitioners have used a creative argument to define a lodging facility to support their use, and should not overrule the Code Administrator's decision. The decision was thoughtful and thorough. Housing is not permitted in the Office Park District; there is no provision for housing except for hotels and motels. The Zoning Board should not allow the Zoning Ordinance to be turned on its head on a concept. Each unit, as defined in the concept, is a dwelling unit, as defined in the ordinance; each contain cooking and cleaning components.

As long as rent is paid, people can stay. This could essentially become a permanent residency without any restrictions normally incorporated into site reviews for mini residential subdivisions. This project has similarities to a manufactured home park, an RV park and small homes.

It is a cool concept, but without protections, could become housing, not lodging. The Code Administrator is correct; it is most similar to a residential housing subdivision and not provided for in the Zoning Ordinance.

Winters asked what the nature of LaRosa's interest was to this location? Mr. LaRosa replied that he is a neighbor, he lives there in in a legal non-conforming property and he runs his small business out of there as well. He would be in favor if it were a normal hotel, but this concept isn't controllable and it seems like studio dwelling units.

Code: Hall reported that a lot of discussion and research went into the analysis. The duration of stay was a concern, but the Zoning Ordinance is not clear. It is clear that the Zoning Ordinance does not support a travel cottage concept such as this. The IRC and IBC defines hotel and motel as single structures with multiple rooms. Cooking facilities within the units is a challenge and is not supported in the Ordinance. The evaluation was not taken lightly, but could not get to a hotel or motel definition.

Carley asked if he sees this as single-family Housing? Hall indicated that single-family housing is best suited.

Carley asked if the units meet the code as dwelling units? Hall indicated that yes, they meet the city code and IRC requirements.

Winters followed up with whether the Ordinance has a minimum size requirement? Hall replied no; ADUs have a minimum size, but otherwise, no.

Winters asked where something like this can be placed? Hall indicated that a single can be place on one property, that is fine. Multiple units on a property, depending on the details, may be able to be considered within cluster developments.

Rebuttal: Attorney Eggleton indicated that relative to the question to ability to stay, that we are in a free market, if a guest can pay, they can stay. Yes, this is a rental use, but not long-term housing. This is not a variance, they are not seeking to contradict the ordinance, simply looking to determine if this can be done.

DECISION: Carley reviewed the testimony as given.

Winters: Understands that when a use does not fit, the Administrator needs to determine the best fit into another category. Clearly this is not a hotel or motel because they contain a kitchen, but it's not really a single-family dwelling either. The use is closer to a hotel. Some residential dwellings are used like a hotel, such as with an Air-B&B, and some hotels are used as residences. It would clearly be best if the city had provisions within the Ordinance for extended stay hotels. He is concerned he doesn't have enough information. It doesn't fit and it can be disqualified for any category.

Spector-Morgan: Correct decision for wrong reason. Seems to have characteristics that define it as a single-family dwelling, but does not belong in the hotel and motel category, because of the kitchen. No clear place to put it.

Wallner: Concur, no clear place to put it, elements of residential and elements of lodging.

Winters questioned the ability to have a 300 square foot house and be compliant with our ordinance.

Spector-Morgan noted that the size of a dwelling is not in our Zoning Ordinance definition and is not relative to our decision.

Carley: Asked Hall if under the Zoning Ordinance, a kitchen in a unit makes it a dwelling unit? Hall replied that there is more to it than that, but a kitchen in a unit disqualifies it as a hotel or motel.

Winters: Asked Hall if the units would comply if they had no stove, maybe a microwave? Hall replied that he considered the information in front of him and he didn't pursue to determine what could be done to make it compliant.

Carley: Noted that without a kitchen, it would be a better fit within hotel or motel. With a kitchen, it is best defined as a dwelling unit. Its real use is a tourist cabin.

Winters: Agrees, but is disappointed. The city should have something to support this type of project and maybe the City Council will address at some point.

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

**45-22 220 Loudon Road; CG-General Commercial District; by SV Property SS LLC, Owner:** Applicant wishes to expand its legal, non-conforming self-storage facility (Use K7, Warehousing, in the Table of Principal Uses) by adding an additional 4,000 square foot warehouse and seeks:

1. A Special Exception under Article 28-8-4(c)(2), Expansion of a Non-conforming Use, to allow an increase in floor area in the amount of 9.9 percent; and
2. A Variance to Article 28-7-1(a), Applicability, which requires that whenever a building is constructed or enlarged, off-street parking and loading spaces shall be provided for the entire use or combination of uses; the applicant is proposing to provide a net decrease in nonconformity by proposing 7 standard parking spaces and one van accessible space, where 34 standard spaces and two accessible spaces are required.

Testified: Doug Lee, Attorney Paul Alfano, Sean McDowell.

Mr. McDowell recapped the objective of the project. They are seeking approval of a Special Exception to allow an addition to the self-storage facility and a variance for parking. Five parking spaces currently exist along Loudon Road, in between the buildings and the road. With the widening of Loudon Road, the city will be taking some land and the parking spaces will need to be moved. Relative to the second variance, the current calculated requirement for parking is 31 spaces, they currently have 5. With the proposed expansion, the calculated requirement is 34 and they will have 7.

Attorney Alfano spoke regarding the Special Exception request. The self-storage facility is a legal non-conforming use in the General Commercial District and the Zoning Ordinance allows for up to a 10% increase in floor space of a legal non-conforming use through a Special Exception, providing all the criteria is satisfied. Attorney Alfano reiterated that the proposed expansion is for a use that has been successfully operating at this location for many years. No problems have been identified, and there is no reason to expect that the expansion will be any different. There is negligible change in traffic and there will be no additional draw on city resources.

With respect to the variances, Attorney Alfano noted that two variance requests are noted in the application, but the legal notice referenced a variance to General Applicability, which in a greater respect, captures all the issues under consideration; they are comfortable with the approach taken.

Attorney Alfano expanded the discussion to address the five parking spaces along Loudon Road. The city will be expanding Loudon Road at some time. As a result, a portion of this lot, where five parking spaces are currently located, will be relocated. They are seeking a variance to allow the spaces to be placed between the buildings and Loudon Road. The Zoning Ordinance does not allow parking in this area for this district, although the existing spaces have always been located in this area. These spaces are rarely used, primarily by customers doing business in the office. Again, no problems have been identified with the former placement and there is no reason to believe any issues would arise going forward.

Relative to the overall calculated parking needs, the Zoning Ordinance places an unreasonable burden for dedicated parking for this type of business. The parking calculations are based on a warehouse storage facility, not specifically for self-storage. The typical use is that customers park in the area in front of their rental unit. It is unreasonable that a separate parking area be provided when sufficient area in front of units is already available. Again, the use has been in place for years, with no identified problems, it is unreasonable to expect issues to arise going forward.

Carley asked Code Administrator Hall if there is an issue with the way the variance is listed verses the way it was requested. Hall replied that they are comfortable with proceeding as listed.

In favor: None.

In opposition: None.

Code: None.

DECISION: Carley reviewed the testimony as given regarding Special Exception request.

Wallner: All criteria has been met, we are in position to grant.

Spector-Morgan: Based on information provided, all criteria has been met.

Winters: No burden on City resources.

Carley: Agrees.

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

Carley reviewed the testimony as given regarding Variance requests.

Winters: Parking for warehousing is different than rental units. This is low impact parking. It is reasonable to consider that customers will park in front of units. Front parking spaces is not eye sore. It is low volume, again reasonable.

Spector-Morgan: Agrees. This won't alter the character of neighborhood. No justice to deny. The property is unique and the parking calculations don't make sense for this specific use.

Wallner: Agrees.

Carley: Agrees.

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

**46-22 135 North State Street: RN-Neighborhood Residential District; by 135NSS LLC, Owner:** Applicant seeks review of Administrators Decision regarding the current uses of 135 North State Street in comparison to the permitted uses and current zoning relief for the property. Variances were granted for the principal use of F1 with 3-4 Live/Work units. During a recent review of the property and website, it was determined that the Carriage House is being used in a different classification than general professional business and was classified as Commercial Indoor recreational Facility, use C3.

Testified: Attorney Kelly Ovitt Puc, Fred Potter.

Chairman Carley noted that an extensive memorandum was received late and since it is late, asked that the presentation be as concise as possible.

Atty Ovitt Puc noted that this property has been before this committee before. She proceeded with a presentation to review the scope of the original property, the transformation to the current status and an overview of the variances granted to facilitate the use and renovation of this project. Original variance, June 2018, was for the Manse property only, as the carriage house was originally anticipated to remain part of the pocket neighborhood. This variance was to permit the use of an existing building for general office use, Use F1, plus "live-work" for 3-4 residential units in this building. A use that was consistent with prior use and we wanted to continue the same kind of use, but in a business setting.

In September 2018, an additional variance was received to use the carriage house building as community room, fitness room, and garage storage as accessory uses to the Manse property.

In June 2019, the project went to Planning and approval was granted for the project. All along the plan was for very high-end office uses, as that was the only thing that fit the building and would support the historical significance of the building, and 3-4 live-work units. The carriage house would be used as a community room, a fitness room and a golf simulator room. It was accessory to be used primarily by occupants. Early on there was discussion that it would be open for use by the occupants of Rollings Court, but that never came to fruition. There was always discussion that it would become open for external uses on limited basis, available to non-profits similar to the way that many businesses allow non-profits to use their board rooms and rent out office space on a limited, as-needed basis.

In 2020, they needed to return to the Zoning Board to modify the use of the carriage house slightly to remove parking spaces that were planned to be part of that building, as it was determined that structurally, the carriage house could not support the configuration as originally contemplated.

This leaves us with where we are now. We have variances for F1 office use of the Manse, live-work residential uses, and accessory uses of community, gathering space, game rooms; that is how we are using it.

They are now up-and-running. The buildings have been updated, beautiful and preserved. Plans dating back to 2018, show conference space and game room; really all the same space. The revised configuration, after parking spaces removed, show 97 chairs, needed to depict this way as a life-safety plan, those are not fixed seats. Occupancy is never intended to be that high. The greatest number of people in that space so far has been 25. The equipment takes up large amount of space, restricting the number of people that can be in the room at once. Policy is that only 8 people will be in the room at one time. Typical configuration for community room is set up as a classroom style. It is available to the Manse occupants, non-profits and others on a limited basis. Parking seems to be the real concern. We have tracked parking for June and July; 14 spaces constructed and rarely reach half of that. Additional parking is available on-street and at other property in neighborhood, as needed.

A complaint to Code resulted in the Code Administrator Hall to visit the site and question if the use is consistent with approvals. After two visits made he made the determination that the use is not consistent. It is our position that he is attempting to reclassify the uses and this should not be permitted, that we are operating as intended. After the fact changing of the use is unreasonable.

There are 3 main issues:

The first is with the Manse. 4 live-work units, contemplated to be used with Fred's Business, Legacy Wise. Law school graduates could work for Legacy Wise and live on-site, building community and connections. Being slow, he had a vacant space and a member of community needed housing; agreed to lease out one of the spaces until next term starts. Largely works out of her space, not working for BFA or Legacy Wise, we believe the use is consistent with live-use. The space is

FM ZBA 8.3.22

primarily residential use and live-work coexists with office use of that building. Flexible use that is consistent with prior use. Live-work is not a defined term, but classified as residential. In June 13, 2018 ZBA meeting, Zoning Administrator reported term is not defined but is a type of use that is used in the community, such as an artist doing art out of a studio apartment they live in. Parking calculations were are calculated for portion of each use.

Winters asked if she were reading a transcript or the Minutes. Attorney Puc indicated that she was reading from the transcript of the meeting.

Spector-Morgan followed-up by clarifying that the minutes read that 3-4 live-work space will exist and that the living space will not be offered to the public. Attorney Puc indicated that was the intent all along and remains the intent. On the other-hand it doesn't make sense to have space that sits vacant. It was represented at the hearing to the Board that the use of the space will be flexible, a residential use that coexists in harmony with the business use.

The remaining two issues are with the amenities within the Carriage House. Code Administrator Hall reviewed its use and determined that they met different classifications than original classification. Because the gaming room is available for rent on a very limited basis, that it should be classified essentially as C3, which is totally different use and the parking calculations needed to be redone. Similarly, with the community room it was reclassified as public assembly use, and again the parking calculated needed to be redone. However, the uses are exactly the same and are primarily used by businesses occupying space, businesses occupying neighboring space, and only available to the public on very limited basis.

Fred Potter has a "Governor's Center" program which includes all office spaces at 125 and 135 North State Street and allows people to become members in the Governor's Center and use facilities on limited basis by reservations only and allows non-profits to use spaces on reservation basis and only when space is available, others can lease spaces on a reservation basis.

Spector-Morgan asked if this is documented anywhere? Attorney Puc stated that agreements are in place with tenants and Potter clarified that Governor's Center members sign an agreement. Spector-Morgan asked where policy is that details when space is available to the public. Potter indicated that the space, on an available basis, is not open to the public at all times, primarily used by residents and businesses on the property. Amenity packages by businesses and amounts to about 80% of uses, becoming larger over time. There is no cap for use.

Potter added that this takes what was an intensely public use by the church previously and reduces the uses to one parcel. Consider it a continuation of the type of uses, a lot of community uses by non-profits. Continuation of church community focus. Tried to comply all along, and thought they had.

Spector-Morgan noted that a lot of information is presented and she is unprepared to make a decision this evening. Attorney Puc agreed that this has been a long and complicated process and a lot of information over several meetings needs to be considered.

Discussion ensued regarding the classification of a racing simulator as fitness facility equipment.

Potter closed with a summary that the use is a continuation of the same type of historical uses at site. Rental uses were disclosed from the very beginning and well known. He believes they have done everything we were supposed to do.

Chairman Carley, addressed the Board members. He indicated that the time is after 10:00pm, and it is the practice of the Zoning Board to try to wrap things up by 10:00pm. He suggested that the case be recessed and continued next week.

Winters suggested that the Board hear the testimony of those present to provide public input, so they don't need to return the next week. It was clarified that the public testimony would not close this week, allowing others that could not make it this week to testify next week. The Board, by consent, agreed to hear the public testimony of those present, then recess the case until next week and then resume the case starting with public testimony at that time.

In favor: Alberto Hernandez, Grateful Itiowe

Mr. Hernandez, stated that he is a Legacy Wise Fellow and resident of the Manse and utilizes the resources provided. He is grateful that is there and he hopes it can remain. Ms. Itiowe, also a resident of the Mance, stated that the space is conducive to a community space, where people can gather and make new friends. It is provided for free and she has met made new friends there.

In opposition: Nick Holmes

Mr. Holmes lives in the pocket neighborhood, 131 North State Street, Unit 7, next to the carriage house. He questioned if the rentals of the carriage house to the general public are permitted uses that are consistent with the variances granted. The carriage house is not being used exclusively by students. The property is being advertised in manners not consistent with approvals and should go back to get variances to allow. The space is supposed to be used by the residents of the Manse, but that is not what is happening. He is concerned with growing commercial use in the neighborhood.

Mr. Holmes handed out photo of the sign board from the property, bringing attention to the third sign which advertises "Simply the Best Reception". The property is advertised for receptions. A press release advertises that events can be hosted at the facilities. The web site shows how the space has been set up to support a bridal shower or wedding. All of these are advertising to the public and are not consistent with the intent of the variances. It is clear that this is not what was originally disclosed, if it was, it wouldn't be a problem.

Code: Hall reported that activities identified on the website and the Minutes relating to the approved uses don't agree and this was the basis for the review. Code has a responsibility to respond when complaints are raised. As a result, Code has observed the differences.

The real issue is whether the use is consistent with the intent of the variances. The activities are relatively new and not much time has passed to identify the issues. Long-term uses can become real issues if not addressed now.

Winters asked if they had the Minutes for the case? Hall indicated that the document he provided them reflects all the Minutes regarding all cases associated with this issue.

Rebuttal: Not at this time.

A motion to recess this case until Wednesday, August 10, 2022 was made by Spector-Morgan, seconded by Winters and passed by a unanimous vote.

*Respectfully submitted,  
Robert Nadeau for Rose Fife, Clerk*