

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
DECEMBER 7, 2022, MEETING
MINUTES**

Attendees: Chairman Christopher Carley, Tedd Evans, Andrew Winters, Jim Monahan, and Laura Spector-Morgan.

Staff: Tracey Hutton, Zoning Administrator
Rose Fife, Clerk of the Board

Meeting commenced at 6:00 pm.

0003-2022 5 Thomas Street: (Recessed Hearing) ***RH-High Density Residential District; ZV Investments LLC:***

Owner wishes to redesign the property and expand from 3 dwelling units to 10 dwelling units on site and requests variances to:

1. Article 28-4-1(d), front yard to be reduced to 9.5 feet to accommodate the structure replacing the existing garage.
2. Article 28-4-5-d(2), density of multi-family to allow 10 units rather than nine;
3. Article 28-4-5-d(3), to allow separation of parking from primary structures to be seven feet as opposed to the required 15 feet;
4. Article 28-4-5-d(5), perimeter buffer requirements will be reduced to accommodate existing and proposed reconstructed buildings;
5. Article 28-7-7(g)(1), five parking spaces will need to be located in the front yard; and to
6. Article 28-7-8(a), to allow 12 of the required parking spaces to back onto the dead-end street.

A motion to reopen the case was made by Spector-Morgan, seconded by Evans and passed by a unanimous vote.

Testified: Dan Martin of ZV Investments and Jeff Lewis.

Dan Martin explained that his company constructs new and high-end homes. They buy older homes and fix them up. He looked at this property 3 years ago. The property is in a mixed-use zone, which makes it unique. It is also a corner lot, which makes it unique. The property is wooded on the west side. This property is one of 8 buildings on the street, and it represents 30% of the street frontage. He'd like to convert this property into a landmark and enhance the neighborhood. They have studied the new Zoning Ordinance that is up and coming. They met with department heads 2 years ago. The project was well received then. City staff indicated that the zoning changes would take 6 to 12 months. It has been over 2 years now, so they are moving forward with the project. A few months ago, they met, again, with City department heads. The project was, again, well received. Multiple slides were shown and explained to the Board. The slides showed what the property looks like now as well as what it would look like after the project was completed. They would like to push the garage back away from the street and remove one bay to make the building more conforming. They will create two single family units on the second floor of the garage structure. A slide was shown of the existing building and what it would look like after the project was done. Thomas Street is a dead-end street with very little traffic.

Jeff Lewis testified. Thomas Street is accessed off Prospect Street. This neighborhood is located behind McDonalds and Dunkin Donuts. It is a mixed-use neighborhood. There are existing multi-family homes on Prescott Street, as well as duplexes and 8 to 10 single family homes. The property is located at the intersection of Loudon Road and Hazen Drive. This 3-unit building will be converted to 6 units. Or they will add onto it for a total of 8 units. The zoning ordinance as it reads now allows for 12 units per acre. He also wants to add 2 living units over the garage and move the garage back to make it more conforming. The final number of living units would be 10. They expect that when the new Zoning Ordinance is implemented, this many units will be promoted. Their variance request is for density. They are allowed to have 9 living units on this site now. The buffer requirement is for perimeter buffers. This is an existing 3 story building and is required to have a 75-foot buffer around the perimeter. They are trying to be sensitive to the existing single family homes in the area. The rest of the parking is in the front of the building. They want to put more of the parking in the rear of the site. They are proposing to extend the turn around at the end of Thomas Street. The second variance is for maximum

density from 9 units to 10 units. It is consistent with the multi-family units in the neighborhood. They are asking for 1 unit more than is allowed.

The buildings need to no closer than 40 feet from each other and 15 feet away from the parking lots. The driveway is separating two buildings which are within 7 to 8 feet from the driveway. They need space for access and sidewalks. Moving the garage back brings the parking spaces closer to the back of the garage. They are trying to keep a 2-way driveway.

Minimum yard requirement speaks to the garage was across the property to the north and exiting it. They are proposing the garage to be 9.5 feet from the front property line. They are trying to place the parking spaces in the rear. The new placement of the garage will be 10 feet from the side setback.

The ordinance does not allow for parking in the front yard. The garage spaces are in the front setback and therefore, they require variances. They are making the situation less non-conforming. Backing into the street is specific to multi-family uses. They need relief for the garage spaces and for the new spaces at the end of the dead-end street that also need to back into the street. There is no traffic at the dead-end section of the street. They are making the existing conditions safer. This is an attempt to make this a better property. It can support the density proposed. He'd like to go from 3-6 units in the building and he'd like to rebuild garage and add 2 units above. As a third phase he will add onto the building and add 2 more units or a SF unit. Renovation of buildings - would like to move forward on that. They are allowed to have 9 units out there. Mr. Martin will accept the 10th unit being contingent on the zoning changes if it helps. The Board responded that if the zoning changed, the 10th unit would be allowed, and he would not need to come back to the Board.

Winters understands that the main building has 3 units now but will be 6 units at the end of the project. He asked if they were adding more space to the main building or making the units smaller. Mr. Martin answered that they are making the units smaller. Winters asked how many bedrooms each unit would have. Mr. Martin answered that in the main building there would be 4 two bedrooms and 2 single bedroom units.

Spector-Morgan asked what the hardship was for the density variance. Mr. Lewis answered that they are trying not to come back to the Board twice. The request fits in with the neighborhood. Ultimately, they are asking for 1 residential multi-family unit more than what is allowed.

Monahan asked if the main building that the 3 units had is currently occupied. Mr. Martin answered that it was.

In favor: none.

In opposition: Mark Swinehart who resides at 12 Thomas Street and has lived there for 37 years. This is a nice, quiet, dead-end street. There are 7 single family homes on the street. There are no multi-family units on Thomas Street, except for 1 duplex and the property before you this evening. Prescott Street has multi-family units. There is very little traffic on the street. Most of the traffic is pedestrian traffic. There is a bus stop at the end of Thomas Street. Employees from the State also walk Thomas Street. The applicant's exhibit implies that they are resolving a non-compliance. He has seen the plans and it looks like they are creating more non-compliance. They are asking to build in the buffer. The plans he has shows the garage is being moved back less than 2.5 feet. The garage is 7'4" from the front property line and they will be end up being 9'6" from the property line. He has a concern with what will happen to the snow in the winter. At present, the city fills the hammer head with snow when they plow. The city comes in with a bucket loader and dump trucks to remove the snow 3 or 4 times a winter. If they are going to park cars there, they will take the snow storage area away. The garbage trucks turn around at the end of the hammer head as well. He was curious General Services had any input. Carley explained that Engineering looks at plans. When Mr. Swinehart bought his home in 1985, those garages were for rent. He thought about renting one but there was a lot of 30-55-gallon drums stored in there. It was a dirt garage at the time. He believes it is sealed over with asphalt and concrete now. Will they remediate the soil? If they have 10 apartments on site, it will up the residential use on Thomas Street by 60%, which is a significant increase. Where will they put their dumpster, or will they have 20 garbage cans sitting out by the road for pick up. Paragraph IV states that this project will raise the value of the surrounding properties. He disagrees. They are putting the maximum units on a $\frac{3}{4}$ acre lot. They are creating a more non-compliant situation.

Csilla Bauman of 8 Thomas Street testified. They reside on the corner of Prescott and Thomas Street. Everyone

has 2 cars these days. There are 9 families, which is 18 cars already there. She is concerned with traffic. They will now have potentially 10 units, or 20 cars and they are asking for 30 parking spaces. That creates more traffic. This is not a big road, and it is a dead end street. Why is there no access to this street from Loudon Road or Hazen Drive? Her property values will go down.

Jeff Bauman, 8 Thomas Street. He is Csilla Bauman's spouse. He is concerned with ingress and egress for this property. This property is further out towards Loudon Road and that is the back side of his property. It is a small property to put 10 residential units on. The neighborhood has nice history dating back to the 30's or 40's. He feels it will lower his property values.

Janelle Marquez, 2 Thomas Street. She agrees with her neighbors. There is a safety issue as people are walking or kids are riding scooters. They purchased their home because of the dead-end street and it being a quiet neighborhood.

Debbie Lafave, 6 Thomas Street. She agrees with her neighbors. She lives directly across from the garage, and she will no longer be able to see anything if they build up. The Prescott Street roadway is not in great shape. She has lived there 42 years. The city patches the road in the spring. Additional cars will make it worse. She doesn't want to look at that across from her home every day. She believes it will devalue her property.

Code: Tracey Hutton. This project has been to Development Team. General Services is at that meeting, as well as Engineering, and have looked at this. Things such as dumpsters will be reviewed at that level.

DR Hutton also noted that there is a letter in the Board's packet in opposition from Kelley Smith of 4 Thomas Street. She does have issues with pavement on Prescott Street and has traffic concern.

Rebuttal: Jeff Lewis. They are moving the garage 10 feet from the side setback. The units on the 2nd floor will overhang a bit, which is why they are asking for 9.6 feet. They are pulling garage back 6 feet. If the Board will not allow 10 units, they will be proposing 9 lot development, which is the allowed density. They have 20 extra parking spaces and the 5 garage unit spaces for a total of 25 parking spaces, not 30. He'd like to move forward with converting the 3 unit building into a 6-unit building. Prescott Street has multi-family buildings. There is 1 duplex on Thomas Street. He's looked at the traffic all the way to Ormond Street and there are 72 dwelling units combined which would be approximately 578 trips per day. The number of dwelling units on this street will increase from 72 units to 78 units. They have met with Development Team. They can grant the City an easement on their property for snow storage.

DECISION: Hearing closed at 6:55 pm. Carley reviewed the testimony as given.

Evans was not sure what the hardship argument would be for the 10th unit. He understands the neighbor's sentiment, but the 9 units are allowed. He has no other concerns with the other variance requests as they are typical for development.

Monahan queried if the 10th unit is granted, does he still need parking variances. Spector-Morgan answered that they do due to their location. Winters answered that they are not asking for fewer than required.

Spector-Morgan appreciates the abutters concerns. They are allowed 9 units. She can't grant the 10th unit variance as there is no hardship. Given the dimension of the lot, variances have to be granted to the buffer otherwise nothing can be built. Parking spaces backing into the road already exist. Separation between buildings and parking are okay, given the size of the lot. Variances would not alter the character of the neighborhood. Substantial justice is done due to the configuration and size of the lot and there is no benefit of enforcing the ordinance for the city. She is inclined to grant all but the density variance. The rest will be flushed out at Planning Board.

Winters agrees with the others. It is a high-density zone. If they didn't add the addition on the side, he's not sure if they would need buffer relief. None of neighbor's concerns go to the variances except for the backing onto the dead-end street.

Carley agrees with the others. Some forgiveness is needed for 9 units. If they choose to have 9 units, the amount of parking required by ordinance could be a lot less than what they are asking for. They would need 18 spaces under the Ordinance. If they were to eliminate 5 or 6 of those spaces, they might be able to reconfigure the parking lot so it is no longer in the setback.

Spector-Morgan has issued with the garage space and setback. DR Hutton noted the driveway and spaces between the building are also issues. Carley would be inclined to grant all but the additional unit.

A motion to deny the variance request to Article 28-4-5d(2), density of multi-family to allow 10 units rather than 9 was made by Spector-Morgan, seconded by Evans and passed by a unanimous vote. The Board found no evidence of hardship to justify relief.

A motion to grant variance 1, 3, 4, 5, 6 was made by Spector-Morgan to reduce front yard to 9.5 feet; to allow separation of parking from primary structures to be 7 feet vs. 15 feet, to reduce perimeter buffer and to allow 5 parking spaces in the front yard as well as backing onto the dead end street for all the facts stated earlier and all criteria met, seconded by Monahan and passed by a unanimous vote.

57-22 138 Hall Street (88-Z-3 and 4): IN and RO-Industrial and Open Space Residential Districts; Amoskeag Realty, LLC and Amoskeag Beverages, LLC, Owners:

Expand existing industrial use into the RO district and cover 45.7 percent of the lot area with the RO District and requests variances to:

1. Article 28-2-4(j), Table of Principal Uses, to allow use L-1 (manufacturing) in the RO District;
2. Article 28-4-1(e), Maximum Lot coverage, to allow 45.7% lot coverage in the RO District where 10% is permitted.

Testified: Attorney Eli Leino, of Berstein Shur Law Firm, Jeffrey Merritt, Granite Eng. Zach Dano, Amoskeag beverages.

Atty Eli Leino testified. Jeff Merritt of Granite Engineering also testified.

Jeff Merritt, Granite Engineering. Both variances are associated with Amoskeag Beverages which is located in Bow NH. This property is unique. A municipal boundary splits the facility. The Concord side is the distribution side of the business. The Bow side is the existing warehouse building. They have a 218,000 s.f. building. The Concord side has parking for tractor trailers and employees as well as a handful of out buildings. The northern lot is undeveloped. There is a field in that lot that has been used for a soccer field in the past. The two properties in Concord are primarily in the Industrial area, but some of the property is in the RO district. They are working on a project for both their Bow property and Concord property. They are reworking the site and building for efficiency reasons. All of the inbound shipments come through 1 overhead door. On the Bow side there will be a building addition and a series of overhead doors. On the Concord side they will rework their entire distribution side of the business, fleet storage, circulation and employee parking out there. It will be reconfigured in a more efficient manner. Carley asked if there would be a new building and new paving.

Mr. Merritt explained that within the RO zone, they will extend their accessory industrial uses further north. They are asking for a variance for use in the RO zone. The lot coverage in the RO zone only allows for 10% lot coverage. The Industrial zone allows for 80% lot coverage. As they expand into the RO zone, they are requesting 45.7% coverage vs. 10% allowed.

Carley asked what they are going to build in the RO zone that is not there now. Mr. Merritt explained. Attorney Leino commented that this would be a spot that if you were between Hall Street and the railroad tracks, you would believe you were in the industrial zone. Attorney Leino reviewed the 5 criteria. Public Interest: Will not do any harm to the public. This is a zone that should be fully industrial as it is fully industrial uses. Observing the Spirit of the Ordinance: They are in conformance on the entire lot with 85% industrial use coverage. Substantial justice: This proposal is consistent with current uses on the property. If the request is not granted, it frustrates the expansion. This is as remote on the property as it can be. The private rights of the applicant can be granted without negatively harming anyone. Property values: This is abutted by a railroad right of way, as well as industrial uses and is far removed from any residential lots. This is as minimal as one can expect. Literal enforcement is not in anyone's best interest. The lot is bisected by town lines and an illogical zoning line. The proposed use is reasonable. It is an existing use. If the whole area were zoned industrial, they would only need 1 variance. The lot remains unique. A house a garage and a shed would be approximately 10% lot coverage in an RO zone. That would not work for industrial uses. The proposed use is consistent with what the lot is being used as now. The whole area is industrial.

In favor: none.

In opposition: none.

Code: Carley asked if beer distribution is industrial, not a warehouse. DR Hutton explained that it is a separate use in the Table of Uses and is allowed in the Industrial district.

Decision:

Winters noted that there are no residential uses near there. It would defeat the purpose if they did not grant it. Spector-Morgan agrees. It will not alter the character of the neighborhood. Neither will it diminish surrounding property values. Literal enforcement will not result in substantial justice. It is a unique lot.

Monahan and Evans and Carley all agreed.

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

0003-2022 0 Elm Street, Penacook (144/P 8//): RN – Neighborhood Residential District; Kathleen A. and Scott W. Preve, Trustees:

Owner wishes to reverse the Zoning Administrator's decision and that the city recognizes the grandfathered status of lot 8 as a separate lot of record.

Testified: Tim Bernier of TF Bernier. Kathleen Preve was also available to testify if needed.

Mr. Bernier explained that Kathleen Preve has owned this property since 1946. The first lot was bought in 1943. She and her husband have owned this property and the one next to it as 2 separate lots and this parcel has always been taxed as a separate building lot. The current assessment is \$119,900. Ms. Preve decided it was time to sell the properties. She kept this property as an investment property. A buyer went to seek a building permit and was told that the lot was stripped of its grandfathered status and a building permit could not be issued. State Statute says it was an involuntary merger. He read the definition (RSA 674:39) into the record. There are many mechanisms for lot mergers. Mr. Bernier explained his background. He is a land use consultant, a former Planning Board member and Chairman. This lot was only merged for zoning purposes. Municipalities do not have the authority to merge the lots. There is a title for this lot at the County Registry of Deeds. Property owners would continue to get taxed as a building lot, even though they couldn't build on it. The Preve's were never notified. They continued to pay taxes thinking it was a building lot. In 2004 the city adopted a new zoning ordinance and Article 28-8-3 codified this act. It essentially says that if you own 2 contiguous parcels and one is nonconforming, the lot is no longer considered nonconforming. Article 28-8-3 consolidates nonconforming lots of record. After 2004 this became the process that the city worked under. In 2010 RSA 674:39 was created. From 2010 to 2022 he received no more phone calls regarding merged lot. Article 28-8-3 is still in the zoning ordinance even though there is a new law on the books.

A builder called him regarding this lot no longer being a building lot. Nothing in the history of this lot shows that this lot was merged by a physical action. The only structure on the lot was the Preve's business. Winters asked what kind of business? Mr. Bernier answered recycled cardboard. They had a baler there. Mr. Bernier met with Zoning Administrator Hutton, and he didn't get the sense that Code Administration understood the history of this law. September 27, 2022, they received a decision from Code Administration that he read into the record. Article 28-8-3 of the Zoning Ordinance excludes land from nonconforming lot status if they do not conform with dimensional requirements and have contiguous ownership. He provided a copy of the new statute to Code for review as they said they knew of no such law. In 2013 NHMA provided information that involuntary mergers are no longer legally enforceable. He read that explanation from NHMA into the record. RSA 674:39a was amended. Mr. Bernier read the amendment into the record. This amendment came into effect 9.18.10. He feels that Code doing this is really cruel. People have these investment properties and now they are worth nothing. There is no value to the property now. They needed to file an appeal to Code's decision within 30 days after Code's decision letter was sent. That is why they are here tonight. Both the Code Administrator and the Zoning Administrator are new to the city and they made a decision. The owner has been a resident for her entire life and has paid taxes. Code Administration put together a memo for the Board to review this evening and he read it. The facts noted in the memo says that the city hasn't voluntarily merged the two lots, etc. The two lots have separate identification numbers. He takes issue with that. Their first statement is incorrect. The lots were involuntarily merged for zoning purposes. Some of the history of the lot in the memo were inconsistent as well. Ms. Preve

owned 2 lots and she sold one of them. She no longer lives in the house and needed to sell it. Her residence was sold and now she just owns this lot in question. Is it a lot of record or not? He showed a copy of the subdivision plan that created this lot. They were created in 1906. Lot 8 is shown as lot 6 on the submitted map. The residence was on lot 7. Because the lots were put in the same name, they are here before the board. He continued reading the memo for code. Spector-Morgan interjected that under State Statute, they should have gone to City Council regarding the involuntarily merged lot. Spector-Morgan went on to say that it is a lot of record and would require variances to develop it. Mr. Bernier disagrees. Under Statute the lots were never merged so they are not asking for them to be restored. These lots were always separate lots of record. They are asking the Board to vacate Code's decision and restore the grandfathering. The NH statute and NHMA has said the ordinance that consolidated these lots is invalid. It's illegal to have a zoning ordinance that does this. It's illegal. They have 75 feet of frontage vs. the 80 feet required. The frontage and lot size are their 2 issues. 1906 it was created as a valid lot of record. They are asking for the Board to restore its value.

Monahan interjected that they are asking the Board to interpret something out of the norm. They are being presented a dense set of issues this evening. Carley indicated the Board could ask for help from Counsel. Winters asked Mr. Bernier if his position is that the involuntary merger occurred September of this year. Mr. Bernier answered that there was no notice to the owner, so he doesn't know when it happened. September was the first time they knew the city took this position. They have always gotten separate tax bills. The lot was surveyed in 2014. A copy of the plan was given to the city and no one said anything.

Code: DR Hutton clarified her background. She has been in Municipal Planning for over 20 years. Her title is actually DR Hutton and she has a degree in Law and Policy Mr. Bernier received his information from NHMA. But it goes on to say restoration of lots does not cure the nonconformity. If they had been merged, which they have not, they could not be sold separately. They did not need permission from City Council to sell a lot. Mr. Bernier is of the opinion that the city cannot apply their definition in the Zoning Ordinance if they are grandfathered nonconforming lot of record. Yes, this is a separate lot, but it needs a variance to meet the standards of the current ordinance. Carley asked if that was due to Article 28-8-3. DR Hutton explained it either does not exist or is exempt of the ordinance. Winters asked if her position was that there was never a merger. DR Hutton answered that was her position. Spector-Morgan explained there is no nonconforming rights without a variance to develop the lot. Only when the Zoning Ordinance gives it permission for non-conforming lots to be developed absent meeting all the conditions can be developed. The city is within its power to say some nonconforming lots can be developed one way and some other. It has nothing to do with the Statute and nothing to do with the merger. Winters asked if DR Hutton agreed. DR Hutton agreed. Winters stated that according to that code it has to do with common ownership at the effective date of this ordinance, which was 2004. DR Hutton noted that Mr. Bernier testified the properties were in common ownership since 1940. Spector-Morgan clarified. The common ownership lost its their nonconforming status but not their status as a lot of record. Monahan asked if they upheld her decision, then the owner could come back for a variance. DR Hutton said correct.

In favor: none.

In opposition: none

Rebuttal: Mr. Bernier testified. The definitions in the ordinance cannot be utilize isn't what he said. If you have a Zoning Ordinance adopted in 2004 and legislature passes a law in 2010 that made something in the ordinance illegal, that section can no longer be enforced. Carley asked if it were fair to say that he disagrees with Code about the definition for involuntary merger. Mr. Bernier does not think the definition that code is using is correct. Involuntary merger can mean many things and Code is saying it means only one thing. Carley asked if it were his contention that they do not have to change the lot lines to be merged. Mr. Bernier answered that was correct. There is no notice to owners doing it this way. Winters asked if what he was trying to say to the board is that the involuntary merger occurred when they adopted the Zoning Ordinance in 2004? Mr. Bernier answered that you could interpret it that way, but that isn't how it is implied with the city. Winters noted that the ordinance itself had public notice. Spector-Morgan interjected that when 2 lots are in common ownership, they will be deemed one lot. That is the way it normally read. Mr. Bernier noted that nonconforming lots cannot be developed. There is a grandfathered provision in State law. Just because you change the Zoning Ordinance doesn't vacate the lots. If it no longer meets setback and frontage they can still be built on as they existed before the ordinance was created.

DECISION: Carley polled the Board to see if they would like further legal advice before they made their decision. Winters, Monahan, Evans all would like further legal advice. Spector-Morgan and Carley did not want further legal advice.

A motion to Table the case, pending consultation with the City Attorney was made by Monahan, seconded by Evans and passed by a unanimous vote.

0007-2022 11 Perkins St; RN – Neighborhood Residential District; Nancy E. Mellitt, Owner:

Owner wishes to execute a lot line adjustment with 13-15 Perkins St and requests variances to:

1. Article 28-4-1(b), Minimum Lot Size, to allow a resulting lot of 5,775 square feet, where 10,000 square feet is required;
2. Article 28-4-1(c), Minimum Lot Frontage, to allow 72.3 feet of frontage, where 80 feet is required.

0008-2022 13-15 Perkins St; RN – Neighborhood Residential District; Sandra A. Longfellow and April L. Woodbury, Owners:

Owners wish to execute a lot line adjustment with 11 Perkins St and requests variances to:

1. Article 28-4-1(b), Minimum Lot Size, to allow a resulting lot of 5,296 square feet, where 10,000 square feet is required;
2. Article 28-4-1(c), Minimum Lot Frontage, to allow 64.47 feet of frontage, where 80 feet is required;
3. Article 28-4-1(d)(3), Minimum Side Yard Requirements, to allow 2.5 feet to the westerly property line, where 10 feet is required.

Both cases were heard at once.

Testified: Mark Sargent of Richard Bartlett & Associates. He is representing both applicants. 11 Perkins is owned by Ms. Mellitt and 13-15 owned by Ms. Longfellow and Ms. Woodbury. They would like to do a lot line adjustment. 11 Perkins Street has an area of .14 acres with 65 feet of frontage. 13-15 Perkins Street has .12 acres with 50 feet of frontage. 13-15 Perkins has a back corner 1.2 feet from the corner of the house. They wanted to straighten the line out and make it perpendicular to Perkins Street. This would cause a net loss of area of 111 s.f. for 11 Perkins and 13-15 Perkins a net gain of 111 s.f. It gives the lot line along the house a little more breathing room. It makes cleaner lots.

11 Perkins Street doesn't meet the minimum lot size today. They are asking to reduce it by 111 s.f. and they will be adding 6.53 feet of frontage but that still doesn't meet the minimum.

13-15 Perkins Street lot size doesn't meet the minimum sizes, but it will be increased by 111 s.f. and the frontage will be decreased. This will make it closer to the same as what the other neighborhood lots have.

Neither lot meet the setbacks as they exist today. 11 Perkins Street will meet the setback after this, but 13-15 Perkins Street will not. The back corner is 1.2 feet, and it will change to 2.5 feet. Front corner is currently 6 feet. He provided justification with the application.

Monahan asked what the motivation was for the lot line adjustment. Mr. Sargent explained that Nancy Millett had a driveway on the other property at one time as they didn't realize where their property lines were. The other property is being sold so it was a perfect opportunity to try to straighten it out a little.

In favor: none.

In opposition: none.

Code: DR Hutton noted that a boundary line adjustment requires a variance.

DECISION: Carley reviewed the testimony as given.

Evans was in agreement with the request.

Monahan, Spector-Morgan, Winters and Carley all agree.

A motion to approve all variances in Case 007-2022 was made by Monahan, seconded by Evans and passed by a unanimous vote.

A motion to approve all variances in Case 008-2022 was made by Monahan, seconded by Evans and passed by a unanimous vote.

SE-0001-yyyy 15 Shawmut St; RN – *Neighborhood Residential District; CUSD & Eastman School, Co-Owners:*

Owners wish to provide part-day Head Start and childcare programs and seek a special Exception from Article 28-2-4(j), Table of Principal Uses (principal use B-4).

Testified: Michael Tabery, Chief Operating Officer of Concord Head Start. They provide head start services throughout the counties. Also testifying was Heather Patten, Child Development Director.

Mr. Tabery explained that they have chosen to set up a new early head start center at the Eastman School location which currently houses the Boys and Girls Club. They will provide early head start and head start for as many as 16 children from 8:30 am to 12:30 pm. This will be minimal impact on the local community. It is a residential area around this location. There will be light additional traffic for drop off and pick up. There will be 3-4 staff members there.

Monahan noted that the Boys and Girls Club was using this as a temporary place. The neighborhood is used to what is there now.

Mr. Tabery explained that the Boys and Girls Club will still be there, but they are taking their non-utilized space.

Winters asked why they need another Special Exception.

DR Hutton explained that the Boys and Girls Club was granted temporary relief. This use is more of a childcare. The school use is permitted, and childcare is a special exception.

Mr. Tabery explained that head start, and early head start is an educational use. Winters asked the ages. Ms. Patten explained that it is only preschool age and a school year classroom vs. childcare is which is normally a full day. She explained that the ages are 3 years to kindergarten. These funded spots were originally in Warner, but the need is greater in Concord, so they moved it here.

In favor: none. A letter from Suzanne Smith-Meyer of 14 Shawmut Street who was in full support was read into the record.

In opposition: none.

DECISION:

Winters felt that the special exception criteria speak to the burden on town resources and this building has historically been used in a similar function for a long time. He is in favor of it.

Spector-Morgan, Monahan, Evans and Carley all agree.

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

0009-2022 58 Pleasant St; CVP – *Civic Performance District; Nonna’s Parking Realty LLC, Owner:*

Owner wishes to convert a professional office building to a two-family dwelling and requests variances to:

1. Article 28-5-7(a), to allow residential conversion on a lot comprised of 3,323 square feet, where a lot size of 7,500 square feet with 5,000 square feet buildable is required;
2. Article 28-7-2(e), Off-Street Parking Requirements, to allow for a reduction in the required parking from four to one.

Testified: Attorney Phil Hastings of Cleveland Waters & Bass. He doesn’t believe a variance is required for parking. The lot is on the corner of Federal and Pleasant Street. It was a law office. It may have been a residence at one time. It is located across from the Federal Court house. It is in a mixed-use district. There are other office buildings there, as well as restaurants and residential property. It is in the CVP zone which permits

a variety of uses. His client is not interested in continuing office use. He would like to convert it to a 2-family dwelling. It is physically situated well for a 2-family dwelling. Two family homes are permitted as a matter of right in the CVP zone. This is treated as a conversion of an office to use to a residential use even though in a CVP district there is no lot size requirement, a conversion from office use to residential use does require a lot size of 7500 s.f., and they have just over 3,000 s.f. The change of use is rendering this property nonconforming. The use is reasonable considering condition and location. Similar uses have similar lot sizes. It will not alter characteristics of the neighborhood. It will benefit the public by adding units to the housing stock in Concord. Without a variance his client will have to continue a non-viable use for the property. It is in the public interest to grant this request. The parking variance is related to the conversion of the office use to a residential use. Under office use this property would require 9 off street parking spaces. That's based on 1 space per 300 s.f. of use. There is a little over 2700 s.f. of office use. There is in fact only 1 on site space. It is already nonconforming. Residential use requires 2 spaces per unit, so it would require 4 spaces. His client is trying to relocate the utility pole. If he can do that, he might be able to get 2 on site spaces. The change of use will make the property less non-conforming. It is predominantly on street parking in that area of the city.

Spector-Morgan asked what was the parking easement was noted on the plan? Attorney Hastings stated that the parking from the adjoining property encroaches over the property line. To straighten that, they may do a parking easement and that is why it is shown. Spector-Morgan asked if when the restaurant is closed, will their spaces be open for residents to use. Attorney Hasting explained that there are 5 condominiums on N. Spring Street that use those spaces.

Winters thought that office vs residential seem to have a similar number of spaces. Office workers can rent off site parking and walk. Laura said parking is only on one side of the street. Attorney Hastings explained that the standard is 1 parking spot per unit. Tenants of one of the dwelling units would have to find alternative parking elsewhere on the street. It is not an ideal situation, but no worse than the existing office use.

Monahan asked if there were metered parking on street? Attorney Hastings does not know. On Pleasant Street he believes it is. Winters noted that Pleasant Street is metered.

In favor: none.

In opposition: none.

Code: DR Hutton spoke regarding parking. She has spoken with General Service, and it is in winter there is a maintenance parking ban and generally offices don't park overnight and residences do. Winters asked if the parking garages are open. DR Hutton noted that if they seek an alternative parking arrangement, which is a conditional use.

DECISION:

Monahan thought it was a productive use of the building. It is up to the property owner to figure out the parking issue.

Spector-Morgan has no problem with either request. Neither would alter the character of the neighborhood, as parking problem exists. It will not diminish property value. Substantial justice is done due to the reduced lot size. The property is unique.

Winters is concerned with the parking. It is minimal. Parking is bad in this area.

Carley agrees. Any permitted use will require parking relief. It is less of an impact than an office use.

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

0010-2022 [388 Loudon Rd](#); GWP – Gateway Performance District; Jeremy Martinson:

Applicant wishes to relocate his transmission shop and seeks a variance to Article 28-2-4(j), Table of Principal Uses, to allow use J-4 (Automotive repair, service, and towing, excluding body work).

Testified: Jeremy Martinson. Attorney Alison McGregor of Orr & Reno.

Attorney McGregor explained that this would be a change in use to allow Aamco Transmission to move from 234 Loudon Road to 388 Loudon Road.

Mr. Martinson has been in business for 15 years. He was hired at that location and worked his way up the ladder. They are the #1 Aamco in the northeast. Their biggest issue is the parking and the flow of it. They share the parking lot with Valvoline. Valvoline would prefer they not be there. He has been actively searching for a location for several years. He strives to do the right thing. He is asking to move the business just down the street.

Monahan asks what is on property now. Mr. Martinson stated it was a rundown biker bar there. It was also a restaurant. There had been complaints from local residents. He approached Chapel Tractor and the law firm that are his abutters, and they would like to see the property repurposed.

Attorney McGregor oriented the Board to the location showing them the map. The building is currently vacant. It was previously a restaurant. Being located across from Chapel Tractor and close to I393 the restaurant didn't survive there. Those types of businesses are being done more in the core area. This is also a 2-acre lot sitting unused right now. It is not functional at this time. Mr. Martinson is currently in the northern point of the GWP zone. And they are moving it up and north. Traffic on Loudon Road is an issue. Where he is at now, there is no traffic slowing measures. When you come to this location there is more traffic slowing conditions. Substantial justice would be done as his business is doing well and he needs to grow and expand and have better access to customers. There will be no public harm. Value of properties will not be diminished as Chappell Tractor is across the street. There is a letter in favor from the law office which is also across the street. Moving his business will be beneficial to him and the district as a whole. They will be redeveloping an under-utilized property.

Spector-Morgan asked if the property behind this one vacant. Mr. Martinson answered that it was. Winters asked if that vacant property had a structure on it. Mr. Martinson answered that it did not. Winters asked what kind of volume of work he does? Mr. Martinson explained that they do 30 to 40 cars a week. They do larger repairs such as transmissions and engines. He does not do oil changes, or state inspections. Winters asked if he would be keeping cars for a few days at a time? Mr. Martinson answered that he did. That is why the parking is so important. Spector-Morgan asked if the current location is non-conforming? Attorney McGregor was not sure.

In favor: none.

In opposition: none.

Code: none.

DECISION:

Evans felt it met all the criteria.

Monahan agrees.

Spector-Morgan was struggling with the hardship. It is no different than any other property.

Winters is surprised it isn't allowed in the GWP zone. He is inclined to approve.

Carley agrees. He felt that they could make an argument that the location of the property creates a problem for some permitted uses.

A motion to approve was made by Evans, seconded by Winters and passed by a 4-1 vote with Spector-Morgan in the minority.

MINUTES:

A motion to approve the November 2022 was made by Spector-Morgan, seconded by Winters and passed by 4-1 vote as Evans abstained.

*Respectfully submitted by
Rose Fife, Clerk of the Board*