

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
JANUARY 4, 2023, MEETING  
MINUTES**

Attendees: Chairman Christopher Carley, Nicholas Wallner, Jim Monahan, and Tedd Evans. Andrew Winters arrived at 7 pm.

Absent: Laura Spector-Morgan, Tracey Hutton, Zoning Administrator

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

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Meeting commenced at 6:00 pm.

Carley opened the meeting and gave the introduction. He explained that the Board would be going into non-public session. He further explained that the Tabled Case #0003-2022 0 Elm Street will not have any further testimony heard this evening.

A motion to go into non-public session at 6:07 pm was made by Wallner, seconded by Evans and passed by a unanimous vote.

Board came back into public session at 6:15 pm.

A motion to seal the non-public meeting Minutes was made by Evans, seconded by Monahan and passed by a unanimous vote.

The Chair let the audience and appellants know that there was only a 4 member Board this evening and asked if anyone would prefer to wait for a 5 member Board. He explained that if their application were denied, having a 4 member Board would not be a reason to grant a rehearing.

**0003-2022 0 Elm Street, Penacook (141/P 8//): TABLED CASE - RN – Neighborhood Residential District; Kathleen A. and Scott W. Preve, Trustees:**

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

Carley asked Mr. Bernier if they could take the case off the Table with a 4 member Board. Mr. Bernier answered that he would move forward with a 4 member Board.

A motion to remove Case #0003-2022 from the Table was made by Wallner, seconded by Evans and passed by a unanimous vote.

Wallner explained for the record that he was not at the December 2022 meeting but has read the Minutes and watched the hearing from the video archives. His sense is that these are indeed 2 lots. He is not convinced they were merged. They have had two property tax bills. The Preve's were never notified that the lots were merged. They are 2 separate lots. He is inclined to support the Zoning Administrator's determination.

Monahan agrees with Wallner. Getting legal review clarified this matter for him.

Evans agrees. The opinions received helped to clarify the matter.

Carley explained that nothing precludes the appellant from coming back for a variance to build on either of the substandard lots involved in this case.

A motion to deny the request for reversal of the Zoning Administrator's determination was made by Monahan and seconded by Evans. The reason being that the Board accepts the rationale of the Zoning Administrator that the City Ordinance requires contiguous lots under the same ownership to be considered non-conforming

notwithstanding that they were originally created prior to the enactment of the ordinance. Monahan agreed. Motion for denial passed by a 4-0 vote.

**The Zoning Board of Adjustment will hold public hearings on the following appeals:**

**0011-2022 [74 Storrs Street](#); OCP – Opportunity Corridor Performance District; Brixmor Capitol SC LLC, Owner:**

Owner wishes to install new signage and seeks a variance to Article 28-6-9(b), *Permitted Building Signs*, to allow the installation of 2 wall signs, each having an area of 47.33 sf, resulting in a combined sign area of 94.66 sf where a maximum combined sign area of 23.5 sf is allowed.

Testified: Carrie Vaughn of Portsmouth Sign Company. They are the installer. This request is for the Xfinity Store at 74 Storrs St. They would like more square footage than allowed and be allowed to have 2 signs. The size of the sign and logo, when boxed for calculation purposes, increases the sign size. The square footage more accurately reflects the size of the sign. If you calculate the size by taking the measurement from top to bottom it calculates to be 4 feet tall, which would be 47.33 s.f. per sign. If you calculate the size based on the main letter height, it brings it down to 24.65 s.f. per sign, which is more within the allowable size. A sign is needed on both elevations. One for the interior parking lot, as there is no parking for the elevation facing the main road. A 2 foot sign, which calculates to be 18 inches tall, facing the road is out of proportion with a 7 foot tall sign band. There is an additional 4 feet above and below the sign band. This signage fits. This is how the architect rendered the drawings and it is fitting within the parameters of what they purchased and expected for signage for this location.

Carley asked about the square footage. Ms. Vaughn explained that the total square footage per sign is 47.33 and that is what they are asking for, as calculated by boxing the letters in. Carley asked if the box was a physical part of the sign. Ms. Vaughn answered it was not. She doesn't know what other signs in that new plaza are being applied for, but this is how it was rendered and sold to the tenants.

Monahan asked if it was internally illuminated. Ms. Vaughn answered it was internally illuminated. Wallner asked if the sign were not boxed, they would only be asking for 24.65 s.f.? Ms. Vaughn answered that it would be just under 25 s.f. Wallner noted it would still be double what they were allowed. Ms. Vaughn answered that was correct because they are asking for 2 signs. Wallner asked if a smaller size on the east side would not suffice? Ms. Vaughn answered that her clients could accommodate that or make those concessions.

In favor: none.

In opposition: none.

Code: Code Administrator Hall explained that the 110 Grill on the left has applied for signage without variances. He explained the site plan showing signage.

Public session closed at 6:33 pm.

**DECISION:**

Evans noted that this was a brand new building with Zoning Ordinance regulations for the size of signage. He does not understand the Storrs Street rationale. He doesn't believe that one sign should be any bigger. He can possibly see the rationale for the signage on the parking lot sign. He doesn't see the rationale for larger signs there on either side. Possibly the parking lot side, but that is a weak argument.

Monahan asked if the building where Xfinity will be located is one building with 3 signs. Code Administrator Hall answered that was correct. He asked if the frontage for each tenant is how sign size is calculated? Code Administrator Hall answered that was correct. Carley asked about the length of the Xfinity elevation; is it 22 feet or 23.6 feet.

Wallner thought perhaps the hardship would be the style of print. They are calculating the sign size based on it

being boxed vs. the bulk of the sign, which is a small issue. They are penalizing them for 'X' and 'Y' and 'F' and 'T' in their sign script. He could be more forgiving on square footage but he wonders if they really need that size sign for visibility.

Monahan heard testimony that was what the tenant bought into, it was not for architectural reasons.

Carley didn't hear a hardship for the size of the sign. They could make a case for 2 signs. The position of the building on the lot creates this issue. He is prepared to support 2 signs, but not to allow the size of the signs to be that large. He'd like to see the size each sign comply with that allowed for a single sign, which would result in a total area double that allowed. Wallner asked if it would be better to table for a new sign? Carley thought not.

A motion to approve the number of signs (2) was made by Wallner, seconded by Evans and passed by a 4-0 vote.

A motion to deny the size of the 2 signs was made by Monahan, seconded by Evans and passed by a 4-0 vote.

The Board then amended the motion to approve a 2<sup>nd</sup> sign of conforming size, with the rationale that the building has 2 fronts, so if they want to do 2 conforming signs they do not need to come back to the Board. Motion was made by Monahan, and seconded by Wallner. Evans agreed with that amendment. Motion passed by a 4-0 vote.

**0012-2022 [344 Loudon Road](#); GWP – Gateway Performance District; WalMart Real Estate Business Trust, Owner:**

***Note:** Prior to hearing this case the Board must determine whether this request is materially different in substance or content than the request contained in Case #50-92, heard and denied on July 1, 1992.*

Owner wishes to replace existing building signs with a new sign package and seeks a variance to Article 28-6-9(b), *Permitted Building Signs*, to allow a total of 5 signs with an overall square footage of 346.77 sf on the westerly storefront where only 3 signs with maximum square footage of 200 sf is allowed.

Testified: Amy Miles of PB2 Architecture and Engineering. In 1992 they came before the Board for affixed signs for a WalMart brand sign, a pharmacy sign below it and a 'We Sell For Less' sign, a '1 Hour Photo' sign and a 'Satisfaction Guaranteed' sign. The number of signs will be the same, but the text will be different. The "We Sell For Less" gives no material information to drivers and pedestrians as to where they need to go for this service in the building. The 'Pharmacy and '1 Hour Photo' signs could be directional signs to show what is offered in the store. There is a new outdoor sign proposed. 'We Sell For Less' and 'Satisfaction Guaranteed' do not serve any purpose. The grocery and home and pharmacy signs serve as directional signs for drivers coming in off Loudon Road, and pedestrian traffic. It helps maintain vehicular and pedestrian traffic. The 'Pick Up Sign' is going to have a directional arrow added. The WalMart sign is getting slightly smaller.

Carley asked if due to nature of sign Ms. Miles felt that it was a different application? Ms. Miles answered that was correct.

Carley then polled the Board if they felt it was a new or different application.

Wallner: It's a new application.

Monahan: Agrees.

Evans: Agrees.

Carley: Agrees.

A motion that this was a new case was made by Wallner, seconded by Evans and passed by a 4-0 vote.

Ms. Miles continued her testimony to support her variance request. It is the same argument as it was for whether or not it is a new application. The signage they are asking for is directional in nature. The grocery sign and the home and pharmacy sign and the outdoor sign all direct people to specific area of stores.

Carley asked if she was arguing that they don't need a variance? Ms. Miles answered she was not arguing that they don't need a variance. They understand the area allowance and the reasoning for the number of signs. This is to maintain vehicular/pedestrian traffic. Carley asked if he had read in their written submission that these signs cannot be seen from the street. Miss Miles explained that the signs are difficult to see as they are not huge signs. They are intended for drivers to see once they have driven into the parking lot.

Monahan asked how many signs are on the building now. Ms. Miles answered that there are 2 signs on the building now. Monahan asked how they determine the size sign they need for visibility. Ms. Miles was not sure, but WalMart has different sizes and levels of signs. These are not their largest signs.

In favor: none.

In opposition: none.

Code: none.

Public session closed at 6:57 p.m.

**DECISION:**

Monahan is inclined to support it. He is persuaded by the fact that they are trying to better manage pedestrian and vehicular traffic flow. The safety factor is a good reason.

Evans agrees with Monahan. He supports the request.

Wallner agrees.

Carley agrees. The applicant can make an argument that the signs are not just advertisement, but directional.

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

**0013-2022**    **135 Portsmouth Street; RS – Single Family Residential District; Anne Huff, Owner:**  
Owner wishes to build a 24'x24' two car garage attached to an existing single-family dwelling and requests variances to Article 28-4-1(h), *Table of Dimensional Regulations*, to allow a 7.08' easterly side-yard setback where 15' is required.

Winters arrived at 7 pm.

Testified: Ann Huff. She has owned this little white cape for quite a while. She and her husband built it in 1980. They added the second floor on at a later date when they were financially able. They were told, at the time they built, that they had to relocate the placement of their home due to granite or ledge. So they moved the home off to the side. Getting snow off her vehicle is more problematic now and she would like to continue to live at her home and will need a garage. Chris McCallister, her contractor, is here, as well, to testify. Ms. Jay Whitelaw, her neighbor, is here this evening to testify as well. Ms. Whitelaw submitted a letter, in favor of the request, as well.

Monahan asked why a 2 car garage vs. a single car garage. Ms. Huff explained that where she stores her lawn mower and snowblower, and such items, is in disrepair and needs to be replaced. She would be able to store that equipment in the added area of the garage. She also enjoys restoring furniture, etc. and that space would allow her to do so. She'd like to age in place and if someone comes to stay with her they would have parking. It would be a 24 x 24 garage.

Chris McCallister testified. He has lived in Concord most of his life. He owns Sensible Building Solutions. He has built single family homes and garages. He's never built a single stall garage. Single stall garages are 80% of the price of a 2 stall garage. There is a marginal difference in building a single stall garage. There is 83 feet between Ms. Huff's home and her neighbor's porch. Even after the garage is built there would be 53 feet left, which is double the setback on both sides. The area is heavily wooded. Mr. McCallister drove all of Portsmouth Street and there is not another single car garage on that street. A two car garage is in keeping with what exists in the neighborhood. Currently the entire driveway area is impervious. It is paved beyond 7 feet. He would be reducing the impervious area. It would be a salt box style attached 2 car garage.

In favor: A letter was submitted and read into record by Chris Carley from Judith and Thomas Whitelaw who live at 37 Curtisville Road. The garage will improve their arrangement as it will give them more privacy. All other homes in the neighborhood have 2 car garages. They are in favor of appeal.

In opposition: none.

Code: none.

Public portion closed 7:11 pm

**DECISION:**

Winters thought it was a reasonable use in this neighborhood to have a 2 car garage. There is no other logical place on the lot to put the garage. The neighboring lots are wooded. The garage will not alter the character of the neighborhood. He would be in favor.

Evans doesn't put much weight on a 2 car garage vs. 1 car garage vs. what is in the neighborhood. He feels the hardship is the lot shape being difficult due to the angled property line. He would be in favor.

Monahan agrees.

Wallner felt the 2 car garage meets the character of the neighborhood. The width of the garage is 24 feet and includes a front door. He is inclined to approve the request.

A motion to approve was made by Evans as there is sufficient hardship, seconded by Winters, and passed by a unanimous vote.

Minutes from 12.22

A motion to approve the December 2022 Minutes was made by Winters, seconded by Monahan and passed by a unanimous vote. Wallner abstained as he was not at the December meeting.

ZBA Rules and Procedures: Code Administrator Hall explained that the Board last approved the Rules and Procedures in 1992. Monahan noticed a change that the applicant must exercise their approval in 2 years. That is a change from 1 year. Winters asked about bullet #5. Application deadline is changed to 4 weeks. Carley felt that was reasonable. A motion to approve the amended ZBA Rules and Procedures was made by Wallner, seconded by Winters and passed by a unanimous vote.

Election of officers: Chris Carley was nominated to continue to be Chair by Wallner, seconded by Evans and passed by a unanimous vote.

A motion to nominate Wallner as Vice Chair was made by Winters, seconded by Carley and passed by a unanimous vote.

A motion to adjourn the meeting at 7:20 pm was made by Evans, seconded by Winters and passed by a unanimous vote.

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