

CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
MARCH 1, 2023
MINUTES

Attendees: Chairman Christopher Carley, Nicholas Wallner, Jim Monahan, Laura Spector-Morgan, and Tedd Evans

Absent: Andrew Winters

Staff: Tracey Hutton, Zoning Administrator

Chairman Carley called the meeting to order at 6:00 pm

0023-2023 42 D'Amante Drive; GWP – Gateway Performance District; Home Depot USA Inc #3485, Owner: Owner wishes to reduce required parking by replacing 27 spaces with outside sale and display areas and seeks a variance to Article 28-7-2(e), Table of Off-Street Parking Requirements, Use H, Retail Trade, to reduce the number of required parking by 27 spaces, from 660 required spaces to 633 spaces.

Chairman Carly invited the applicant to speak to how this application is substantively different than the one that was denied in 2006. Matt Shea, Store Manager, spoke on behalf of Home Depot USA Inc. stating that the current request is approximately 1/3 of what was previously requested and 16 of the spaces will only be used seasonally to support providing variety to customers during the growing season. Mr. Wallner asserted that he felt this application was materially different than the previous submission. Ms. Spector-Morgan added that the variance criteria have also been changed by the Legislature since that time. Mr. Wallner moved that 0023-2023 is materially different than the previously denied application; second by /Ms. Spector-Morgan. The vote was unanimous.

Chairman Carley then asked the applicant proceed with his explanation of how the application meets the 5 standards for a variance. Mr. Shea stated that the sales volume for the store does not support the need for 660 parking places. The request is not contrary to the public interest because the relief would serve the public to offer a greater diversity of available product. Mr. Shea continued that there is no inconvenience to the public as this would increase the product offerings available. The surrounding properties would not have their views effected, the look of the neighborhood would remain unchanged, Home Depot would simply be able to stay competitive in the market.

Ms. Spector-Morgan asked Mr. Shea what was unique about the property necessitating the variance. Mr. Shea responded that the large amount of pavement and parking for their use was unique. Chairman Carly noted that there was no one in attendance to speak in favor or opposition to the application; he then asked Dr. Hutton if there was any comment form Code Enforcement. She responded that this application takes a slightly different approach than the 2006 application and merely asks for relief from a small percentage of the required parking.

Mr. Monahan said that the seasonality of the request is helpful and believes that it is unique that the requirement is so much more parking than have proved to be needed. Ms. Spector-Morgan agreed. Mr. Evans was also satisfied with the responses of the applicant. Mr. Wallner moved to approve the application stating that the request keeps with the spirit and intent of the Zoning Ordinance, there

would be no diminution of surrounding property values, and it is a hardship that there is no need for such a large parking lot. The motion was seconded by Ms. Spector-Morgan continuing that the standard had made a unique condition with such a large amount of pavement and that using some of this area for garden display would not alter the essential character of the neighborhood. The motion passed unanimously.

0024-2023 68 Storrs Street; OCP – Opportunity Corridor Performance District; Brixmor Capitol SC LLC, Owner: Owner wishes to install building signage which exceeds the maximum area allowed and seeks a variance to Article 28-6-9(b), Permitted Building Signs, to install combined sign area of 86.48 square feet, where 31 square feet is allowed.

Andy Serrato from Serrato Signs was representing the applicant. He stated that the site is unique in that the building is longer than it is wide. The door is on the shorter frontage. If the door were on the longer side the sign dimensions would be conforming. Ms. Spector-Morgan asked Dr. Hutton if this were current. She verified with the applicant that the longer side of the building is 80 linear feet; this would allow 80 square feet of signage.

Chairman Carley noted there was no one to speak in favor or opposed to the application, the hearing was closed.

Mr. Monahan noted that the additional sign area was for the “drive thru” portion of the signage and would help the public negotiate the parking lot.

Mr. Evans requested clarification of the reason for the variance. Dr. Hutton explained that the ordinance dictates that the frontage for which the sign area is calculated is where the entry door is, in this case the “short” side of the building. There was a question about the signage for the I10 Grill on the other end of the building and if that sign required a variance. Dr. Hutton replied that it was a conforming sign due to the frontage of that unit.

Mr. Evans stated that he feels the application meets the criteria in that the request is not contrary to the public interest and the signage needs to indicate the drive through area. Mr. Wallner elaborated that the need is due to the uniqueness of the building not the lot and it is a long building sited with the door to the parking lot side.

Ms. Spector-Morgan added that there is no diminution of surrounding property values. She then moved to approve based on the findings discussed. The motion was seconded by Mr. Monahan and approved unanimously.

0025-2023 20 Second Street; RS – Single Family Residential District; Joseph Picott, Owner: Owner wishes to renovate the second level of an existing attached garage structure to create an Accessory Dwelling Unit (ADU) containing 750 square feet of living area and seeks a Special Exception under Articles 28-2-4(k) Table of Accessory Uses (Use A13) and Article 28-5-52 Single Family Detached Dwellings with One (1) ADU.

Joseph Picott and Christy Charlesworth represented the application. It was confirmed that this is an application for a Special Exception for an ADU to house Ms. Charlesworth’s mother. The living area is partly existing; they would like to add a small kitchen and update it to make it more livable. Chairman Carley noted that the application covered all of the criteria. He next noted that there was no one in the

audience to speak for or against the application. Ms. Spector-Morgan clarified with Dr. Hutton that both the specific ADU criteria and the general Special Exception criteria has been met.

Ms. Spector-Morgan moved to approve the Special Exception based on the factual assertions in the application. The motion was seconded by Mr. Evans and approved by unanimous vote.

0026-2023 0 Elm Street, Penacook (141/P 8//): RN – Neighborhood Residential District; Kathleen A. and Scott W. Preve, Trustees: Owner wishes to construct a single-family dwelling and seeks a variance to Article 28-4-1(h), Table of Dimensional Standards, to allow construction on a lot having 75 feet of frontage where a minimum of 80 feet is required.

Brett Allard, attorney for Kathleen Preve, and Ms. Preve were present at the hearing. Attorney Allard outlined the descriptive facts of the parcel and the history of ownership. This parcel, located in an RN district is five feet short of the 80 feet of required lot frontage. Attorney Allard stated that all other dimensional requirements could be met.

Attorney Allard began to address the five criteria of a variance. He stated that the proposed use as a single-family dwelling does not conflict with the public interest nor will it change the essential character of the neighborhood. The current shared driveway will be removed from this property and a dedicated driveway established. This reconfiguration of the driveway will provide for safer ingress and egress from the property.

He continued his review by describing the parcel as being seven times the minimum lot size which eliminates the threat of overcrowding. In terms of substantial justice, this proposed use inflicts no injury to the public and would only create a loss to the applicant. Attorney Allard further explained that this parcel has been taxed by the City as a buildable lot and it would be an injustice to deny the ability to build at this time. To this point the value of the surrounding properties would be unaffected as the proposed structure would meet all other dimensional requirements.

The hardship test, he continued, is due to the unique shape of the lot being a large narrow parcel that is only five feet short of the minimum required frontage. If Ms. Preve had not been an owner of the abutting parcel, it would have been an existing non-conforming lot of record, buildable without the need for a variance.

Chairman Carley noted there was no comment from the public either in favor or opposed to the application and Dr. Hutton had nothing to add from the Code Division.

Mr. Monahan stated that Mr. Allard made a case for the requested relief being reasonable as it is an established lot that is only five feet short of the required frontage. Ms. Spector-Morgan added that the development of this parcel as a single-family dwelling would not alter the essential character of the neighborhood and that the safety of the public will be improved with the reconfigured driveway. Mr. Evans agreed with these statements. Mr. Wallner stated that this lot is unique and unusual in its long and skinny shape. Chairman Carley agreed with Mr. Wallner adding that the hardship is due to the configuration of the lot.

Mr. Evans moved the variance be granted based on the criteria discussed; seconded by Ms. Spector-Morgan. The vote passed unanimously.

0027-2023 Request for Rehearing (Previous Case number 0003-2022) 0 Elm Street, Penacook (141/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.

Ms. Spector-Morgan moved to table the rehearing request to the following meeting, April 5, 2023; seconded by Mr. Evans. The motion passed with a unanimous vote.

0034-2023 262 Sheep Davis Road; GWP – Gateway Performance District; Keith Donald Wuest, Owner: Owner wishes to construct a second single-family dwelling on the lot and seeks a variance to Article 28-2-4(h), to allow two principle uses (single family detached dwelling) on one lot.

Chairman Carley explained that he has a conflict of interest on this case, recused himself, and joined the audience. Mr. Wallner assumed the role of Chairman for this application.

Keith Wuest, owner-occupant of the singly family dwelling currently on the parcel, explained that he would like additional space for his family when they visit. It was clear to him over the holidays that his home has inadequate space to meet the need and it was cramped this past year. He explained that he used the ADU standards as a guideline, but is unable to attach the units. For that reason, he is asking for a second single family dwelling be permitted on his parcel.

Mr. Wuest explained that the hardship was created in 1950 when the Zoning made the residential use of the parcel non-conforming. He stated that there is only one other residence left on in the GWP. He purchased the home in 2020 noting that the lot is deep and additional space could be obtained away from the bluffs and outside of all setbacks. He furthered that there would be no harm or injury to the abutting businesses. He stated that he would be adding value to the property with the addition of the second dwelling unit.

Chairman Wallner noted there was no one in the audience to speak in favor or opposed to the application. Dr. Hutton stated that the Code Division would like to see a condition, if the relief is granted, that the units may not be condo-ed or sold separately as the proposal is to piggy-back the water and sewer utilities.

Ms. Spector-Morgan inquired why the unit could not be attached to the main dwelling. Mr. Wuest asserted that is would not work logically with the log home construction of the main home. On one side of the home there are utilities for the bedroom and bathroom obstructing the ability to share a wall with the main home, on the north there is a bird watching patio in the way. Also, on this side of the log home there would be interference with the setback from the bluffs.

Mr. Evans commented that if it could be attached this would be an ADU not a variance for a second dwelling unit. It is unfortunate to have two home sharing public utilities. Ms. Spector-Morgan stated that, based on the representations of the applicant, this appears to be a reasonable use. There is no harm to the public and no diminution of surrounding property values. She is not thrilled with the prospect of a second unit, but based on the facts is inclined to be in favor. Mr. Monahan was convinced since the uses would not be legally separated that is was more of an extension of the primary residence.

Ms. Spector-Morgan moved to approve the application for a second detached single-family dwelling unit based on the representations of the applicant with the conditions that the dwelling unit comply

with all ADU regulation and not sold separately or condominiumized; seconded by Mr. Monahan. Motion passes 3-1 with Mr. Evans as the dissenting vote.

0028-2023 135 North State Street; RN – Neighborhood Residential District; 135NSS LLC, Owner: Owner wishes to:

1. Seek a variance to establish three principal uses under Article 28-2-4(j), Table of Principal Uses, in addition to the existing General Business Use (F-1) to include; Three-room Rooming House (A-15), Commercial Indoor Recreation (C-3), and Conference, Trade, or Convention Center (G-4), all of which are not permitted in the District;
2. Seek a variance from the 113 parking spaces required by the above uses in Article 28-7-2(e), Table of Off-Street Parking, to allow the providing of 38 spaces (26 of the parking spaces are projected to be off-site parking located at 125 North State Street and shared with those uses subject to a Planning Board Conditional Use approval of an Alternative Parking Arrangement under Section 28-7-11(c)).
3. Seek a variance from Article 28-7-11(c), Shared Parking Arrangements, to allow for a maximum 606.1 feet between the principal use and off-site parking in connection with a shared parking arrangement with nearby 125 North State Street.

Kelly Ovitt Puc, attorney, and Mat Miller, property manager, for 135NSS LLC were present to present the application before the Board. Attorney Ovitt Puc briefly summarized the property's history before the Board. There have been a number of variances approved for this site in its conversion from a church property to mixed use. Mr. Potter, owner, has been using the property as he thought was permitted, until the Code Administrator issued a determination that the activities were outside of the scope of the approval.

She continued that the Rollins Court Pocket Neighborhood, was once parking connecting the uses at 125 and 135 North State Street. Both 125 and 135 North State Street are currently owned by entities of Mr. Potter. The renovation of 135 North State Street was both extensive and expensive and included handicap accessibility features. Through this renovation the properties have retained their historic nature and remain on the National Register of Historic Places.

The site contains two buildings; the Rollin Manse and the Carriage House. The Manse has a first-floor kitchen and conference area; it has large-scale spaces with limited uses. The second floor is office space, while the third floor and basement contain living area. The Carriage House has the community meeting room and kitchen on the first floor and recreational uses on the second floor (racing and golf simulators).

With respect to parking, actual parking counts were taken last June and July. At this time on-street parking counts included the side streets not North State Street. The maximum total parking utilized during this time was 23 cars. The parking needed at 125 North State Street, based on the applicant's information, is limited to the daytime use of the offices, but does include the use of on-street spaces. A variance has already been granted for the parking lot at 125 North State Street, at this time a variance is being requested to use the lot in off hours for 135 North State Street events. The primary use at 135 North State Street is 606 feet away from the 125 North State Street parking lot. It is being requested that 26 of these spaces supplement the 12 spaces currently constructed on site.

According to the calculation of primary uses of the carriage house and the uses in the Manse, 113 spaces are required by the Zoning Ordinance. Attorney Ovitt Puc states that at 125 North State Street a variance has already been granted for the parking so we can assume what is there is what is needed.

Mr. Monahan asked if the applicant would be willing to accept a condition limiting the quantity of guests at the Carriage House at any given time, to which Attorney Ovitt Puc answered in the affirmative. Ms. Spector-Morgan asked if the recreation areas and the conference areas would be used simultaneously in the Carriage House and what the noise spill over was like. Mr. Miller replied that there is very little noise heard in other parts of the building when the simulators are in use, so they could be used simultaneously with the conference area, but typically this is not done. Again, the applicant was asked if this would be accepted as a condition of approval, which was agreed.

Mr. Monahan asked about the size of the residential units. Mr. Miller stated that there are two rooms that are approximately 300 square feet and one 3rd floor apartment at approximately 750 square feet. There was recollection of the Board that there used to be four units. Attorney Ovitt Puc stated that the space is included in the 10-year lease of the office tenant in the Manse, they are aware that if this unit is to be used for residential use in the future that the owner will have to return to the Board for authorization.

Ms. Spector-Morgan asked if these units meet the statutory definition of workforce housing? Mr. Monahan asked about the chronology of the approval of the residential use. Attorney Ovitt Puc responded that it seems that it is no longer the inclination of the Code Division to use a use characterization that is not in the Ordinance, like "Live/Work." At this time, the owner needs more flexibility, including the ability to rent to outside parties.

Chairman Carley asked if there was anyone present to speak in favor of the application.

James Doherty, 28 Church Street, described his neighborhood as mixed-use. He stated that there has been a fair amount of traffic and parking demand in the neighborhood, but that the applicant has been upfront about the redevelopment of the site and has been putting a lot of time and money into that redevelopment. This redevelopment has had positive impacts of the look and value of the neighborhood and it has not had any ill effects on the neighborhood. He further stated that there are lots of uses of the on-street parking and that the traffic impacts of events in the Carriage House are unnoticeable.

Tory Hersch, former Legacy-Wise Fellow and current employee of Fred Potters law firm, stated that she used to live on the property. She walked to 125 North State Street to work and never thought that there were a lot of cars demanding space on the sites. She also asserted that the managers do a good job of screening renters.

Chairman Carley asked if there was anyone present to speak in opposition to the application.

Chris Boldt, attorney for the Rollins Court owners, spoke opposed to the current application. He stated that he is amazed that this applicant is before the Board again for additional requests. He could speak to the flaws in the application, but he will confine his comments to a few main points. First, on the use, the applicant is proposing a hold over use from when the site was owned by the Diocese, but not only has there been a change of use from a Church, but the uses being proposed were not historic uses of the property. The argument that this the "functional equivalent" of prior uses is flawed.

Attorney Boldt continued that the parking for proposed uses is supposed to be on-site and the 606.1 feet had been calculated to the closest spot at 125 North State Street, not the majority of the parking. Additionally, since 125 North State Street already has a variance for parking, and now as proposed, these spaces are being double counted. In summary the parking is too far, too few, and too much use. To build the required parking would require almost a half-acre of land, not including parking isles. The whole site is barley that large.

He continued, there is also inadequate snow storage on site, he presented a photo of snow being stored in a handicap accessible parking spot. The request is for there to be allowed the construction of only 10% of the required parking. Also, about 10 years ago the ability to consider the economic impacts to the applicant was removed from the variance criteria by the legislation, so all of the testimony related to the economic impact is moot.

The approval of this application would be an injustice to the owners/residents of Rollins Court. The proposed uses are a substantial change from what was there when they purchased their units. There is no unnecessary hardship apparent in this application, nothing unique to the parcel.

Natalie and Lindsay Harrington, 19 Church Street, spoke about the public safety impacts of the increased traffic that would be a result of the proposed public uses of the site. The streets surrounding this property are narrow and the on-street parking is already being demanded by the residential uses, and the proposed uses would further constraint the limited on-street parking available.

Nicholas Holmes, 131 North State Street Unit 7 (Rollins Court), reminded the Board that variances run with the land and future owners may not have the same policies as the current. In terms of whether there are current problems, this site came on-line just as the pandemic was ramping up and the use is sure to be more intense as many of the gathering restrictions have been lifted. There have already been problems with vehicles blocking the deeded easement to his property and the noise from the gatherings is audible and will surely be a problem if allowed to function as the applicant proposes.

Chairman Carley summarized various e-mail testimony that came into the Code Division opposed to the application. And asked Dr. Hutton if the Code Division has comment. Dr. Hutton expressed concerns for the enforceability of the conditions on gathering that were discussed. Additionally, upon her visits to the site, Dr. Hutton noted that individuals are not parking in compliance with the approved site plan making safe ingress and egress in a vehicle a challenge.

The applicant asked if there were any factual clarifications they would like to make. Attorney Ovitt Puc wanted to clarify that the uses at 125 and 135 North State Street would not occur during the same hours of the day. Additionally, the on-street parking was used only in the functional analysis of the parking not the actual counts since it is considered by the applicant as "available." The applicant presented a real estate opinion that the values of the surrounding properties will only increase with the full used of 135 North State Street. As for the questions on snow removal, Mr. Miller stated the they have their own plow truck and perform snow removal themselves, they are prepared to remove snow from the site if necessary. Attorney Ovitt Puc reminded the Board that if the property is sold, any owner must comply with the approvals and associated assertions made.

Chairman Carley suggested that the Board consider the application in pieces, the Board agreed. First will be consideration of the uses; rooming house, indoor recreation, and conference facility. Second, is consideration of the number of parking spaces; and third is the distance to the off-site leased parking.

Mr. Monahan stated that the use seems peculiar as the basis for the investment in the lot. Providing for flexible housing options with the rooming house seems reasonable in comparison to the other requests. The indoor recreation and conference facility uses seem to be far outside what the Zoning Ordinance contemplates for this district. These uses would present pressure on the parking exceeding what the neighborhood could support.

Ms. Spector-Morgan agrees elaborating that the indoor recreation and conference facility uses are not consistent with the intent of the Ordinance and would alter the essential character of the neighborhood. She further stated that there is nothing unique about the property and the mere fact that it was built at great expense is not a basis for approval. In terms of the rooming house use, it was built under a variance and may not have been allowed as new.

Mr. Evans agreed with that was previously stated. Mr. Wallner supported the housing request, as sees it as a reduction from four units to three. Chairman Carley clarified with Dr. Hutton how many units were proposed and whether there was a variance request missing. Dr. Hutton was of the opinion that the dwelling unit fell under the previous variance and this request was for the rooming house units. Chairman Carley continued that this may be a peculiar property with a unique configuration but this property has been vetted several times with various Zoning Board Decisions made.

Ms. Spector-Morgan moved to deny the use requests; motion dies for lack of a second. Mr. Monahan moved to approve the residential uses as presented since this is part of a unique property and the status as a National Historic Site limits the property use; seconded by Mr. Wallner. Motion passed with a 4-1 vote; Ms. Spector-Morgan dissented.

Ms. Spector-Morgan moved to deny the request for the indoor recreation and conference center uses based on the fact that they would alter the essential character of the neighborhood, diminish surrounding property values, and there is no hardship unique to the property; seconded by Mr. Monahan. Motion passed by unanimous vote.

Ms. Spector-Morgan then moved to deny the variance for the number of parking spaces down from 113 required. Even if 29 spaces are available at 125 North State Street many cars would be forced into the already limited on-street parking which would alter the neighborhood. While there may be a hardship due to the size of the property, this is unduly exacerbated by the proposed uses. The motion was seconded by Mr. Evans and passed unanimously.

Ms. Spector-Morgan moved on the final request of the distance to the off-site alternative parking be denied. The purpose of alternative parking arrangements is that they be close, the fact that this proposed parking is divided by a larger parcel limits this and there is no evidence that individuals would walk around Rollins Court, thereby increases foot traffic on private property. The motion was seconded by Mr. Evans and passed unanimously.

0029 thru 32-2023 391 Loudon Rd; GWP – Gateway Performance District; Bradcore Holdings LLC, Owner: Owner wishes to expand their operations and seeks variances to:

1. Article 28-8-4(c)(1), Expansion of a Non-conforming Use, to allow the construction of an 8,250 square foot addition (88.5%) and expansion of the outdoor storage area in support of the existing non-conforming Sales, Rental and Repair of Construction Equipment use (Use J-3) where such use is not permitted;
2. Article 28-5-37(a) Required Setbacks, to allow outdoor storage 10 feet from a street, where 50 feet is required;
3. Article 28-5-37(b) Screening Requirements, to allow outdoor storage without screening from view from adjacent streets and properties.
4. Article 28-5-37(d) Maximum Area of Lot to be Used or Designated for Outside Storage, to allow a storage ratio of 2.25:1, where 1.3:1 is allowed.

Brian Bouchard, attorney, Brent Cole, Granite Engineering, and Cory and Brad Chappell, owners, were in attendance to present the application. The current owners acquired the property in 2017. Before that the property had operated as an equipment sales business since 1950. Being a successful business, the time has come to make improvements on the property. Currently the 9000 square foot building has four service bays; the sales lot is mainly gravel.

The proposal includes merging the two lots and expands the building 152 feet to the north and adds 6 more service bays, including a wash bay. The site will be reorganized for safety and security. The additional equipment storage area will allow for grouping the equipment in a logical order. Ultimately the site will be more code compliant. The front area along Loudon Road is an important storage area, this area will be expanded in front of the new bays and give the appearance of a car dealership.

Attorney Bouchard explained that the Gateway Performance District is intended to provide well designed large-scale commercial development. This property will not alter the essential character of the development in the district. The owners take pride in the look of their high-end equipment sales lot, that being said, there will be no threats to the health, safety, and welfare of the public through the granting of the requested relief. There would be nothing gained by the public by the denial of this request, but there is a benefit to the owners.

It was further expressed that this proposal is a reasonable expansion of a use that has existed for decades. The outdoor display is analogous to an auto dealership and will not alter the aesthetic of the area as it already exists. The outdoor display regulations were written with materials and equipment in mind not product. This is reflected in the screening requirements and doesn't align with Chappell's current business model.

Ms. Spector-Morgan stated that all 4 applications have no impact on the health, safety, and welfare of the public. This is an existing operation proposing a reasonable expansion. There is no gain to the City in the denial of this application and the proposed location of the outdoor display has built in screening. Mr. Monahan added that this seems like a good project that is bring a site into compliance. Ms. Spector-Morgan moved to approve all four variances; seconded by Mr. Evans. The motion was approved unanimously.

Ms. Spector-Morgan reviewed some changes she would like to make to the forms of the Findings of Fact; stating that the substance was fine. Her first comment was to correct the pre-populated dates, second the title should indicate whether the relief requested was granted or denied. She would also like to see a description of the application in the leading statements. The criteria are set up as questions, but

there is no answer; there should be an answer or set the criteria up as statements. And finally, there should be a tally of the final vote.

Ms. Spector-Morgan moved to make the changes to the forms from this rendition to all going forward; seconded by Mr. Wallner. The Board approved the change by unanimous vote. First, they are all pre-populated with a 2022 signature date. That's easily changed.

Ms. Spector Morgan moved to approve the February 1, 2023 minutes and Findings of Fact, as written; seconded by Mr. Evans. The vote was unanimous.

There being no other business before the Board; the meeting the adjourned at 9:05 pm.

-Respectfully submitted by

Tracey Hutton, Zoning Administrator

DRAFT