

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
APRIL 5, 2023, MEETING
MINUTES**

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

Absent: Tracey Hutton, Zoning Administrator

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

Meeting commenced at 6:00 pm.

- 1) Call meeting to order
- 2) Chairperson's comments
- 3) Public Meeting - Rehearing Requests
- 4) Public Hearings
- 5) Review and acceptance of Findings of Fact
- 6) Review and acceptance of Minutes
- 7) Any other business that may legally come before the Board

Chair Carley reviewed the processes and procedure for the evening.

PUBLIC MEETING

0027-2023 Request for Rehearing – Tabled from March 1, 2023 – (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.

This request has been withdrawn.

0036-2023 Request for Rehearing (Previous Case number 0016-2022) 106½ South State Street; UT – Urban Transitional District; Kenneth E Blevens Sr & Kenneth E Blevens Jr, Owners:

Owners wish to establish a Retail Store and seeks a Special Exception from Article 28-2-4(j), Table of Principal Uses, Use H-1, Sales of goods and merchandise with no outside storage of inventory.

Chair Carley polled the Board. Have they erred in law or fact or do they think any new information has been presented which was not available at the last meeting which would justify a new hearing.

Mr. Wallner: No.

Mr. Monahan: No new information.

Mr. Winters: The parking issue was raised, which was not material to their decision. The lot has insufficient parking. It is nonconforming and grandfathered, according to staff.

Mr. Evans: No.

A **motion** to deny the rehearing request was made by Mr. Monahan, seconded by Mr. Winters and passed by a unanimous vote. The Board found that they did not err in law or fact and no new information was presented that was not available at the original hearing.

0037-2023 Request for Rehearing (Previous Case number 0017-2022) 9-11 Lake Street; RO/RN – Open Space Residential and Neighborhood Residential Districts; Anderson, Sean Michael, Owner:

Owners wishes to execute a lot line adjustment to transfer the rear acreage to 369 North State Street and

requests a variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow a resulting lot to persist with 65.95 feet of frontage, where 80 feet is required.

Chair Carley polled the Board. Have they erred in law or fact or do they think any new information has been presented which was not available at the last meeting which would justify a new hearing.

Chair Carley noted that two letters were submitted. (1) Trevor Berry, 7 Lake Street, in favor of a rehearing. (2) Attorney Ari Pollack, of Gallagher, Callahan and Gartrell, against the request for rehearing.

Mr. Evans: They have not erred in law or fact and there was no new information presented.

Mr. Winters: There was an additional letter from Swenson Granite concurring with Attorney Pollack. They have not erred in law or fact and there was no new information presented.

Mr. Monahan: Agreed.

Mr. Wallner: Agreed.

Chair Carley: Agreed.

A **motion** to deny the rehearing request was made by Mr. Winters, seconded by Mr. Evans and passed by a unanimous vote. The Board found that they did not err in law or fact and no new information was presented that was not available at the original hearing.

Public Hearing began at 6:09 pm.

PUBLIC HEARINGS

0035-2023 **21 Dakin Street; RD – Downtown Residential District; GMC LLC, Owner:**
(This is a resubmission of a variance request Case #11-16 which was considered and approved by the ZBA on April 6, 2016 and since expired.)

Owner wishes to convert an existing property, formerly used as a mixed-use residence and daycare center, into a two-family dwelling and requests a variance to Article 28-5-7, Conversion of a Non-Residential Building, Section (a), to permit conversion on a lot with 72.9 feet of frontage when 75 feet of frontage is required.

Testified: Victor Montenez.

Chair Carley asked the applicant if anything had changed from his original request of 2016. Mr. Montenez answered that his financial circumstances have changed and he now has funds to complete the project.

Mr. Monahan asked where Dakin Street was located. Mr. Winters asked if it used to be a daycare and asked what it was used for now. Mr. Montenez explained it is unoccupied now. Mr. Winters asked when the property was last used. Mr. Montenez answered 2017.

In favor: none.

In opposition: none.

Comments from Code: none.

Decision: Chair Carley reviewed the request. It is for a renewal of a variance granted in 2016. There are no changes in the request or rationale.

Mr. Evans: It was approved before and only lacks a few feet of frontage. In favor.

Mr. Winters: Has no recollection of the prior hearing. He is inclined to approve.

Mr. Monahan: In favor.

Mr. Wallner: In favor. He noted that substantial justice will be done by granting the request. There are numerous two family properties in the area.

A **motion** to approve the request for a variance was made by Mr. Wallner, and seconded by Mr. Evans. Chair Carley agrees

and the building is larger than a single family home in that neighborhood. Circumstances on the lot justify their claim of hardship. The **motion** passed by a unanimous vote.

0000-2023 10 Wedgewood Drive; RS – Single Family Residential District; Arene Berry, Owner:

Owner wishes to operate a seasonal leaf vacuuming business and seeks variances to:

1. Article 28-2-4(k), Table of Accessory Use, Use A-4, Use of a portion of a dwelling or accessory building in conjunction with an off-premises occupation, where such accessory use is permitted only with a Special Exception; and
2. Article 28-5-31(b), Outdoor Storage Not Allowed, to allow the storage of related leaf vacuuming equipment.

Chair Carley asked Code Administrator Hall to clarify the variance/special exception as written. Chair Carley asked if it were written in error. Mr. Hall answered that it should be a special exception for outdoor storage. The building is not being used for business. He further noted that Zoning Administrator Hutton had texted him information that it is definitely not a home occupation and is a variance for the equipment. Chair Carley replied that the Board will act only on item #2. Mr. Hall clarified that would be for the off premise business.

Ms. Arene Berry testified. The request is to be allowed to park a 20 foot enclosed trailer on their paved driveway. It holds their mowers, etc. They are also requesting to park another trailer, which will have the leaf vacuum on it, which is not approved. The Zoning Administrator told her that was an issue. The leaf vacuum will be on the trailer September, October and November.

Mr. Winters asked if any business came to the property. Ms. Berry answered no.

Ms. Arene Berry is the homeowner along with her husband Michael. Their two sons, age 18 and 20, live at home and have a lawn care business that is registered with the State of NH and insured. It is a unique property with two driveways that are 2 cars wide and 2 cars deep. The leaf vacuum will be there 3 months a year. There will be no customers coming to the property. There will be no employees other than her 2 sons. There will be no machines in the yard as they are all inside the trailer. It is a small business. There will be no additional traffic in the neighborhood or safety concerns. It is no different than an ATV or snowmobile trailer in the driveway.

Mr. Monahan asked if the leaf machine is already approved? Ms. Berry said it is on trailer and Ms. Hutton told her the trailer is not an issue. The vacuum is mounted on the tongue of the trailer to blow leaves into the trailer.

Mr. Winters asked if the open trailer, by itself, does not require any permission, but the enclosed trailer does. Ms. Berry explained that was how Zoning Administrator Hutton explained it to her. Mr. Winters asked if they could store the trailer in the back yard or out of sight. Ms. Berry answered that there is not enough room. They have a triangular lot and the back yard slopes downhill.

Mr. Evans asked if the vacuum equipment hooks onto the trailer. Ms. Berry explained it hooks onto the back of trailer. It's taken off the trailer with an engine hoist. Mr. Evans asked if the trailer is used for other items.

Mr. Winters asked if they had a garage. Ms. Berry answered they do have a 2 car garage which will not accommodate the trailer.

Mr. Monahan asked if the vacuum machine is only 3 months a year? Ms. Berry answered yes. Mr. Monahan asked if the trailer were there year round? Ms. Berry answered yes.

In favor: none.

In opposition: Gail Fisk who is a resident of Woodcrest Heights off of Loudon Road. Mr. Monahan asked how she accessed Loudon Road. Ms. Fisk answered that they have one entrance coming in from Loudon Road and there is a locked entrance to Canterbury Woods. Mr. Winters asked if she passed by this property to go in and out. Ms. Fisk answered that she did not, but they pass by her. She's requesting the Board deny the variance. There are 90 single family homes in the development. She is concerned about the appearance of large equipment in the neighborhood. She feels that allowing this may set a precedent.

Comments from Code: Mr. Hall wanted to clarify Article 28-5-31 was for use of a portion of a dwelling for off premise occupation. They are not allowing a business in the residential area. The variance is to store equipment with no advertisement on it.

Mr. Winters asked how enforceable it would be if the Board granted this for this specific equipment on this specific spot. Mr. Hall answered that if Code receives a complaint, they would evaluate it against the Ordinance. The property owner would be notified if it did not comply with this relief.

DECISION:

Mr. Monahan: The business is not operating on the premises. He is struggling with the hardship around the property.

Mr. Winters: He is struggling with the consistency of the character of the neighborhood with fairly small lots. Uniform type housing. No advertising on the trailer makes the difference to him. Commercial equipment in the front yard is inconsistent with the character of the neighborhood.

Mr. Evans: If advertising appears, would that be a violation? Mr. Hall explained. It is not a vehicle.

Chair Carley asked Mr. Hall if the trailer were put in an enclosed garage or shed, is it an issue. Mr. Hall answered no.

Mr. Wallner: It is a unique property as it has 2 driveways. Many people have snowmobile trailers that are allowed. To require the removal of the leaf collector, to make it legal, is not substantial justice.

Chair Carley: It is not an unreasonable request, but he is struggling with the hardship. He doesn't see that the characteristics of the lot create a hardship.

Mr. Monahan: If the trailer was in the back yard, would it still require a variance. Mr. Hall explained that it is the equipment attached to the trailer that is the challenge.

Mr. Wallner: If the leaf blower was not there, would the trailer be allowed. Mr. Hall answered it would be.

Mr. Winters: He wanted clarification. The 20 foot enclosed trailer is also part of the request along with the leaf vacuum on the open bed trailer. Mr. Hall answered that the enclosed trailer is legal as it is.

Mr. Evans: Neither trailer needs a variance, just the equipment. Mr. Hall replied that was correct.

Chair Carley wanted to reopen the public testimony at 6:37 pm to allow a rebuttal.

Rebuttal: Ms. Berry explained that when Zoning Administrator Hutton came out to the property and met with them she advised them that they had 2 issues. One was the 20 foot enclosed trailer and the second was the leaf vacuum, not the trailer it was mounted on. Ms. Berry showed the Board photos of the trailer/leaf blower that she had on her phone. Ms. Berry asked Zoning Administrator Hutton if she needed 2 variances and she was advised that it could be done all in one variance request.

Mr. Monahan asked if the leaf vacuum was inside the enclosed trailer. Ms. Berry asked Zoning Administrator Hutton if they could put a box over the leaf blower or a tarp and they were told no.

Mr. Monahan asked if there were any safety issues with moving the equipment on and off trailer? Ms. Berry explained it was very difficult.

Mr. Winters is fine with the request now that he has seen photographs. He will vote for the trailer not the vacuum.

Leaf Vacuum:

Mr. Wallner: He discussed substantial justice is done by not requiring them to remove it every evening.

Mr. Monahan: Agrees. He is struggling with the big trailer. There is a reason the property has 2 driveways. The 2nd driveway gives him more tolerance for storage of a large trailer.

Mr. Winters is not persuaded on the larger trailer.

Mr. Evans is ok with both.

A **motion** to approve the leaf blower was made by Mr. Wallner, seconded by Mr. Evans and passed by a 4-1 vote with Chair Carley in the minority. This relief is granted for 3 months a year as noted in the testimony.

Large trailer:

A **motion** to approve this request was made by Mr. Monahan, given uniqueness of the property with a second driveway, seconded by Mr. Evans and passed by a 3-2 with Mr. Winters and Chair Carley in the minority. The reason is the hardship and substantial justice.

0001-2023 103 Old Loudon Road; RM – Medium Density Residential District; Mark and Christine Bogacz, Owners:

Owner wishes to construct a multi-family development and seeks variances to:

1. Article 28-2-4(j) Table of Principal Uses, Use A-4, to allow for Multi-family Dwellings where such use is not allowed; and
2. Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(2), Maximum Lot Coverage and Density, to allow an average density of 21.07 units per acre, where a maximum of 12 units per acre are allowed.

Testified: Attorney Ari Pollack, of Gallagher, Callahan and Gartrell. He is representing Dakota Partners. Mark Pol, Dakota Partner's VP of Development and Chris Nadeau of Nobis Engineering were also present to testify. Mr. Bogacz, the property owner, is in the audience.

They are asking for a variance for multi-family use in a medium density district. They are also asking for relief from the number of units to be developed per buildable acres. This is a 12+ acre lot. Only 4.65 acres are buildable. The rest is sloped and has wetlands. It is bisected by zoning boundaries. The buildable area is in the medium density district and the balance is in the GWP zone. There is a neighborhood map included in the Board's packet. It is an oddly shaped parcel and surrounded by residential and nonresidential uses. The abutter to the west is a church. The properties to the south and east are single family homes.

Due to the slopes and wet areas, the proposal will be on the west side of the site and that is zoned RM. Conceptual layout is in the packets. Nobis plan was shown on screen. There will be 3 buildings that are 3 stories with 98 proposed multi-family units. It is served by water and sewer. The density is limited to 12 units per acres in the non-performance districts. The density is limited to 14 units per acres for elderly housing in non-performance districts. The density formula was discussed for 4.65 acres of buildable land. The project complies with lot frontage, setbacks, lot coverage, parking, buffers and building heights.

Variances criteria summarized. The hardship is that it is bisected by zoning boundaries. The use is allowed on one side, but not the other. Slopes and wet areas on the parcel prohibit development on the portion that it is allowed on. The property is a unique horse shoe shape. The density is such that a buildable area can support 98 units rather than 55 units. No fair and substantial relationship between the constraints of multi-family density vs. what is developable on the site with any other relief. They would like to build 98 units vs. 55 units. The impact on surrounding parcels will be the same. Traffic is an issue that will be closely examined by the Planning Board. The use is reasonable. If density were allowed, it would comply with all other zoning requirements. The request is not contrary to the public interest. The public benefits from affordable housing. State law requires that reasonable opportunities are made available. Attorney Pollack cited 'Concord Next', the new zoning ordinance. He submitted an article in the Registry Review noting that housing listings are at a low. They meet the spirit and intent as well as substantial justice as they are protecting abutting uses by providing buffers, height restrictions, etc. Neither the ordinance nor substantial justice support artificial barriers. They are only requesting relief from density per acre. The ordinance supports the idea of infill projects. This will not affect surrounding property values. A letter from Bill Norton, who is a 40+ year licensed appraiser with experience in the Concord area was submitted. He visited site.

Chair Carley asked for clarification of rationale for the increased density. Attorney Pollack explained. They are building 3 buildings. One building will have 30 units, the next will have 30 units the last one will have 38 units. Chair Carley asked if the unique characteristics of the lot is that so much of it is unbuildable area vs. buildable. Attorney Pollack answered that was correct. Chair Carley asked if the section of land in the GWP zone would allow this type of construction, but is not buildable land. Attorney Pollack answered that was correct.

Winters spoke about the zone being inappropriate for the area and should be redone to allow this here. Why not go to City Council to have them rezone the area. Attorney Pollack answered that may happen. It is a longer process though.

Winters addressed RSA 674:58 being cited in the application. It speaks to the duty of municipalities to allow work force housing. He asked if, in Attorney Pollack's view, does he believe it is the purview of the Zoning Board to take that into consideration, or the drafters of local code. Attorney Pollack answered it is all municipalities.

Mr. Pol spoke from the developers stand point. Going before the board, allows the opportunity for them to make that

decision. They wish to get the project going soon. It made sense to come before the Zoning Board.

Mr. Monahan asked if all 98 units were age restricted, would they be here. Attorney Pollack answered they would.

Mr. Pol spoke with the property owner. They will be leaving the east/west portion as all vacant land.

In favor: none.

In opposition: Alan Herschlag. If this project were approved, it would be difficult to deny Case #0002-2023 as they are very similar. The Master Plan was adopted in 1993. It states a number of reasons why the zoning is not arbitrary. He read the policy. Land objectives were also read. Traffic management was sited. Control uses that would impede traffic. Development guidelines was read, etc. Land Use/Zoning & Housing Tables was read. Density and intensity of development. Under the current Master Plan, it states that under certain circumstances 14 units is the maximum allowed per acre. There is nothing arbitrary to the limitations. They meet all other requirements so the applicant felt that the density should be waived. Situational zoning and situational ethics; how does it affect this property, and other properties in the area if granted the same relief.

Pastor Thomas Peetz, Word of Life Christian Fellowship. The church has been at their location for over 30 years. He feels that the Casino that is proposed in the area will affect this request as well. He added that they should take a look at Old Loudon Road. He also believes they should have a good educated assessment of what this entails.

Code: none.

Rebuttal by Attorney Polack. The Planning Board will address the impacts from the proposed development. If mitigating traffic can be accomplished at the Planning Board he feels they should be approved.

Decision: Chair Carley reviewed the testimony, as given.

Use & Density:

Mr. Wallner: Multiple dwellings is a reasonable use for that area.

Mr. Monahan: The use will be influenced by density. He is comfortable with the use.

Mr. Winters: He likes the project; it is needed. The issue is the that the zone is obsolete or inappropriate. Beyond the scope of what the ZBA can consider, the zone should be changed.

Mr. Evans: Agrees with Mr. Winters. A leap for density of units.

Chair Carley: As far as the use goes, he can make an argument that the property is unique. The configuration of the property creates a hardship. It is a reasonable use for that piece of property. He would support a motion to grant the use. As far as the density goes, the ordinance is clear that it is buildable land that is the base of the calculations. He would vote in favor to grant the use and against the density.

Mr. Monahan is inclined to support both. The same ordinance that created the table gives us circumstances to grant the variance.

Mr. Winters intends to vote against the use, but if allowed, will vote on the density.

A **motion** to approve the use was made by Mr. Monahan, seconded by Mr. Wallner and passed by a 3-2 vote with Mr. Winters and Chair Carley in opposition.

A **motion** to approve the density was made by Mr. Monahan, seconded by Mr. Evans. Mr. Monahan understands this is the first stop with City and there are some issues around traffic flow, etc. that the Planning Board addresses. **Motion** carries at a 3-2 vote with Mr. Evans and Chair Carley in opposition.

0002-2023 **153 Fisherville Road; CG – General Commercial District; Thomas Cheney, Owner:**
(159 Fisherville Road, 165 Fisherville Road, and 169 Fisherville Road are also included in this application; merger of these lots will be required to comply with site's plans.)

Owner wishes to construct a multi-family development on the merged referenced properties and seeks a variance to Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(2), Maximum Lot Coverage and Density, to allow an average density of 20 units per acre, where a maximum of 12 units per acre are allowed.

Testified: Attorney Ari Pollack of Gallagher, Callahan and Gartrell. Scott Francowitz of NH Sustainable Land Consults was also available to testify. In the audience was the owner Tom Cheney.

This request is significant similarity to the last application. The combined site is 8.33 acres, all of which are buildable. Multi-family is allowed. The property is surrounded by other residential uses. There are other similar multi-family projects along the Fisherville Road corridor. They would be constructing 4 buildings, 4 stories, with a total of 160 units. The property is served by water and sewer. Based on 12 units per acre, the 8.33 buildable acres could host 100 units. The property meets the requirements for lot frontage, setbacks, etc. The variance criteria are addressed in the written materials. The hardship is that the buildable area could support 160 units vs. 99 or 100 units. There is no fair and substantial relationship. The impact on surrounding parcels is the same no matter how many units they build. It is a reasonable use. The density complies with all other aspects of the Ordinance. Granting relief is not contrary to the public interest. The Ordinance supports infill projects within the city limits. They have a written document from Max Latona from St. Anslem Center for Ethics and Society. He urges support due to the housing crisis. There is no evidence that this relief would diminish surrounding property values.

Mr. Francowitz has talked with the City Planner for the last 8-9 months. They have tried to design a project that would meet a greater demand for housing in the City. They brought the project to City Council members. There is a need for affordable work force housing. They would be able to place 100 units on this 8.33 acres.

Mr. Monahan asked if they were limited to 99 or 100 units, would they still be rental units. Would those 99 or 100 units be larger? Attorney Pollack answered that the square footage would be larger. Mr. Francowitz noted that this massive construction would be larger in terms of the footprint. Attorney Pollack noted that it would end up being a sprawling set of roofs instead of 4 individual multi-family buildings. Mr. Monahan asked about the abutters. Mr. Francowitz noted that they are residential abutters on both sides of them. There is a multi-family community across street, a self-storage facility across street and a residential community behind them.

Mr. Winters looked over the letters from abutters. Alice Drive abutters talked about there being no good buffer to their back yard. It is a 75 foot buffer and entirely wooded back there. Three stories or higher needs a 75 foot buffer. Attorney Pollack noted that the ordinance requires particular landscaping at site plan level.

Mr. Evans asked Attorney Pollack what was the hardship to the property. Attorney Pollack answered that they comply with all the requirements except the arbitrary number in the ordinance. There is also a sewer man hole on the property within a City easement.

In favor: none.

In opposition: Mr. Alan Herschlag. He testified that the Planning Department is telling people to follow the Form Based Code, which is not what we have in place now. The fact that they cannot build a project that they want does not mean they can't build something on the land. Financial hardship is not enough. There is nothing arbitrary about the limits set for density. There must be special conditions related to the property. Across the street, there is 7 acres and they can build 84 units and they are building 68 condo units there.

Mr. Paul Nylan. His mother Ms. Nancy Nylan is one of the main abutter at 183 Fisherville Road, which is located on the other side of this property. Yes, they need housing in town. He has spoken with many in the community. Will it fit in their community? How will this affect his mother's property value. A letter, which was submitted by Ms. Carol Breau, was mentioned. That is how people in the area truly feel. It's good to have housing coming in, but it will create this area to be like the "heights". The traffic on Fisherville Road is bad now. He rarely sees police at Thirty Pines. If there are 66 units across the street, with 2 vehicles each, that's 132 cars pulling out onto Fisherville Road. If people have children, where will they all go to school. Can the Fire Department handle that extra burden?

Mr. Robert Hosttler and his daughter Ms. Elizabeth Muzzey. Mr. Hosttler understands they should only speak about density. He submits that Mr. Herschlag did a good job with his testimony. Ms. Muzzey noted that her father also submitted a letter. There wasn't a lot of information given to them prior to tonight. The applicant's attorney did reference they conferred with a brokerage firm. Density was not mentioned in their report. It seems that when you apply concept to density to a real location, it doesn't seem arbitrary at all. Lighting, parking, traffic, noise, trash, dumpster, more people are all issues that come to mind. Her father lives at 46 Alice Drive. The proposal runs the entire length of his back lot line. All of the back

yards on Alice Drive are shallow. Bedrooms are facing the back yard. Some of these things, she understands, will be hashed out with the Planning Board. There are single family homes and multi-family developments in the area. They are all 2 and 3 story, which seem less dense and far fewer parking areas required. She understands the real estate prices are increasing. She sees big differences between this area and the request for 103 Old Loudon Road. This backs onto a single family home area. There is no split zoning issue here.

Thomas Cheney, property owner. He noted development to the rear of his property. He had some issues with the property being cut and debris being dumped onto his property. He sold the City a piece of land to put that sewer culvert on. He's been planning for years for a grocery store, so he put these 4 houses together in anticipation of putting a grocery store there. He's paying \$40,000 in taxes on those 4 houses and half the time he leaves them empty. He's lived in Penacook since he came back from the Vietnam war. He owns Apple House Furniture in Penacook. There is traffic on Fisherville Road and it is illegal to back out onto it. He's been waiting to sell this property for a long time.

Mr. Winters asked if he was the current owner. Mr. Cheney answered that he was. He owns it by himself. His ex-wife does not own it.

Comments from Code: none.

Rebuttal: none.

Chair Carley read the letters into the record. Carol Breau, 12 Charles Street, Penacook who is opposed to proposal. She feels it is out of character due to the density. She is concerned with traffic. Robert Hosttler of Alice Drive. Robert Avery, 129 Fisherville Road, concerned with traffic. Pat Peck, feels that the character of the community would be affected negatively. Kathy Stickney, 15 Tower Circle is concerned with traffic.

Rebuttal: Attorney Pollack spoke. The Planning Board will review the traffic impact. Traffic generation is specific to the uses. There is a public transportation stop near this property. Mr. Winters asked if this qualifies for Work Force Housing. Attorney Pollack replied yes.

Decision: Chair Carley reviewed the testimony as given.

Mr. Winters: The hardship arguments is that they meet all the other requirements, which he feels is thin.

Mr. Evans: Hardship argument is an issue.

Mr. Monahan: Hardship is an issue. The applicant said the ordinance is arbitrary. Legislative bodies do not create arbitrary ordinances. He is not convinced of the hardship.

Mr. Wallner: Struggles with the hardship.

Chair Carley: Has same thoughts about the density as with the 103 Old Loudon Road case. The hardship criteria have not been met. Density is there for a reason. Work Force Housing is a hot topic right now, but the zoning boards do not have the power to override. He would support a motion to deny.

Mr. Monahan asked Mr. Hall if the 4 lots have been merged. Mr. Hall answered that they have not.

A **motion** to deny the request was made by Mr. Evans and seconded by Mr. Winters. Mr. Winters wanted to know that there are differences, in terms of characteristics of the neighborhood, between this case and the Old Loudon Road case. Mr. Monahan sees a difference. He thinks Housing is necessary. This property should have housing and hopefully the developer will be able to address this. **Motion** carries by a unanimous vote.

Minutes

A **motion** to approve the March 1, 2023 Minutes was made by Mr. Wallner, seconded by Mr. Monahan and passed by a 4-1 vote with Mr. Winters abstaining.

Findings of Facts

A **motion** to approve all findings of facts was made by Mr. Wallner, seconded by Mr. Winters and passed by a 4-1 vote with Mr. Evans abstaining.

Respectfully submitted,

Rose M. Fife

Zoning Board of Adjustment

FM ZBA 4.5.23