

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
MAY 3, 2023,
MEETING MINUTES**

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

Absent: James Monahan

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

Meeting commenced at 6:00 pm.

- 1) Call meeting to order
- 2) Chairperson's comments – Chair Carley opened the meeting and explained the processes and procedures of the Zoning Board of Adjustment.
- 3) Public Hearings
- 4) Review and acceptance of Findings of Fact
- 5) Review and acceptance of Minutes
- 6) Any other business that may legally come before the Board

PUBLIC HEARINGS

0040-2023 **74 Storrs Street**; ***OCP – Opportunity Corridor Performance District; Brixmor Capitol SC LLC, 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 #0011-2022, heard and denied on January 4, 2023.***

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 47 square feet, where 23.5 square feet is allowed.

Chair Carley explained to the Board that they needed to determine if this request is materially different from a previously denied variance request. The Board was polled. Mr. Wallner noted it was substantially less square footage. Mr. Evans agreed with Wallner. Ms. Spector-Morgan agreed. Mr. Winters also agreed. A **motion** that this request was materially different was made by Mr. Wallner, seconded by Mr. Evans and passed by a unanimous vote.

Testified: Cortney Bazarian of Portsmouth Sign – They are allowed 22.34 s.f. but are requesting 23.5 s.f. There are 2 entrances to building. One on the parking lot side and one on the Storrs Street side. The last time they were before the Board, the Board wanted them to have 2 signs. She gave a history of the request. Her justification is that when they initially came before the Board with 2 signs, it was denied. It was approved with the caveat that they needed to come back to get the second sign approved. Chair Carley asked for the rationale for a variance.

The representative from Portsmouth Sign testified that it was special because of the two entrances to the building; one on Storrs Street and one on the Parking Lot side, therefore they need two signs. If the sizes were approved in the original requested, they would have gone over the square footage allowed.

Mr. Winters asked for clarification of whether this is all on one lot. Portsmouth Sign representative explained that it is all one lot. This is in the middle lot. The storefront is between 110 Grill and another unit. These are new buildings on Storrs Street. Mr. Winters asked if these were 2 new structures with several occupants. Zoning Administrator Hutton explained it is one building with 5 units and she listed the units. Ms. Spector-Morgan noted it was one lot but each unit had a different address.

Chair Carley asked if they were applying for 2 signs? The Portsmouth Sign representative explained they already received approval in February from the Zoning Board for one sign. They need a second sign on Storrs Street.

Mr. Evans asked for clarification of the sign photographs on page 7 and page 9 of the packet with the Xfinity 1 shown larger on page 9 than page 7. The Portsmouth Sign representative explained that was for a visual of what each size looks like on the building. Shown in the packet are the sizes of 47.33 s.f. and 36.23 s.f. and 22.34 s.f.

Ms. Spector-Morgan asked which size is she requested. Portsmouth Sign representative is asking for 24.65 s.f. Chair Carley asked if it would be a total of 47 s.f. Zoning Administrator answered it would be.

In favor: none.

In opposition: none.

Comments from Code: none.

Rebuttal: none.

Decision: Chair Carley reviewed testimony as given.

Mr. Winters is inclined to grant the request. It is a fairly unique lot. It's part of the City's new concept for the area. It seems like a functional signage. It seems an appropriate size for what is needed to direct traffic in that area. The hardship is that a smaller sign would not fit for the concept of the area and would be hard for traffic.

Ms. Spector-Morgan noted that all 5 criteria have been met. Special circumstances exist given the location and configuration of the building. Having a sign of 24+ s.f. on both sides is reasonable. It is consistent with what is in the area. There is no gain to the public if denied.

Mr. Evans agreed.

Mr. Wallner agreed.

Chair Carley agreed.

A **motion** by Mr. Evans to approve the request, seconded by Mr. Wallner and passed by a unanimous vote.

0041-2023 **70 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 69.8 square feet, where 21 square feet is allowed.

Applicant did not come to the meeting to testify. Chair Carley chose to move to the next case and come back to this later in the evening.

A **motion** to adjourn the case to a later time in the evening was made by Mr. Wallner, seconded by Evans and passed by a unanimous vote.

0042-2023 **Bow Street (7941/Z 1//); RN – Neighborhood Residential District; John Reardon, Owner:** Owner wishes to construct a single-family dwelling and seeks variances to Article 28-4-1(h), Table of Dimensional Regulations, to allow the use on a lot:

1. that has 77 feet of frontage, where 80 feet is required and
2. with a lot size of 5,924 +/- square feet, where 10,000 square feet is required.

Testified: Attorney Maria Dolder. Also available to testify, property owner John Reardon.

Attorney Dolder testified that this parcel is in a densely populated residential district. It was a camp established in the 1920's. The City says it is abandoned, but it still stands there. City taxes the lot as a buildable lot with structures on the property. All is in disrepair. Both buildings are located within the side setback. The neighborhood is made up of small lots with closely located homes. It is a very populated area and densely build up. As a result, properties existing fail to meet the sizes or setback requirements. 62 and 62.5 Stone Street only have 10 feet and 40 feet of frontage and .08 and .108 acres in size and both houses are built within the setbacks. Since 1966 this lot was owned in common with 70 Stone Street. At that point both properties had an established principal use on it, so they could not be merged. They are not sure when the residential camp ceased to be used. The applicant wants to construct a single family residence on the property. It does not meet the lot size and frontage requirement, but they can use the buildable area on the lot and meet other requirements such as set back and lot coverage requirements and driveway requirements. It lacks only 3 feet of frontage. The applicant didn't buy these properties without doing his due diligence.

He spoke with the Planning Department and Building Department and asked if this lot was a grandfathered buildable lot and both departments said yes it was. He had no reason to think the information was incorrect. He went ahead and bought the 2 properties. Then he found that he needed a variance to do anything on this lot as it doesn't meet the zoning requirements. If these 2 lots had never been in common ownership, or if the camp had stayed in use, he wouldn't need zoning relief. The unnecessary hardship is that it is a unique property and a unique situation. It's only due to the fact that they were once in common ownership. Otherwise it would be a grandfathered buildable lot. The use is consistent with the neighborhood.

If granted, the residential structure would be more conforming with the majority of properties in the neighborhood. There is a large amounts of lots in the neighborhood that fail to meet lot size and frontage requirements due to the fact that they are older homes. The applicant can construct a modest home within the buildable area within the setbacks. The zoning restrictions interfere with the reasonable use of the property. This is not a self-imposed hardship. The applicant reasonably relied on information he received from the City. If this is not granted, the applicant will not be able to construct anything on the property.

Fair and substantial relationship is that the proposed use is within an existing residential neighborhood. The use is permitted by right and it is in keeping with the residential neighborhood. Other properties in the neighborhood fail to meet the zoning requirement so there is no fair justification in denying this. This will fit into the neighborhood. It will not adversely impact the neighborhood or property values.

Not granting this request will be contrary to the spirit and intent of the ordinance; this is a use permitted by right and it fits. They do not meet the lot size requirements but they can meet the setbacks and lot coverage requirements. They are only 3 feet short of frontage, but can meet the driveway requirements. The house proposed will be consistent with the design of the neighborhood. There will be no noticeable difference to the neighborhood. RN zone was specifically designed for substantially developed urban neighborhoods. If they had not been in common ownership they would not be here today.

They do not believe it is contrary to the spirit and intent of the ordinance. The Zoning Ordinance has a grandfather clause which does allow lots of this nature to be built upon. The authorization will not be contrary to the public interest; this use will not threaten public health and safety. The use is permitted by right. Concord lacks available housing. It is only one more single family home, but it adds to the available housing and it will be in a well-established neighborhood. They are within close proximity to schools and downtown. It will benefit public interest. Authorization will result in substantial justice: The applicant meets the requirement.

If the City denies his request it will be a tremendous loss to the applicant and no justified gain to the public. Substantial justice will be done as it will not adversely impact other property owners. They will be able to use this lot consistent with the neighborhood.

Authorization will not diminish surrounding properties. They will be taking down the residential camp and shed, which significantly encroach on the side abutter. This will increase values in the area. The applicant approached 2 abutters and neither expressed concern at that time to him. One of the neighbor asked for plans for the house, but he doesn't have those yet.

Mr. Winters asked how confident the owner is that the structure will fit on this site. John Reardon explained that the house is a 24' x 36' colonial and will fit within the setbacks. He doesn't expect the footprint to change.

In favor: Brian Vasillian – he’s known John for 25 years. He paints for him. This will put him to work.

Paul Halverson, the abutter to the north. Mr. Reardon and he spoke by phone and he explained the plan. It is not out of character for the neighborhood. He has no issue with the variance being granted. Water electric and sewer come off of Bow Street. Most of the homes in the south end were cottages. It is in character with the neighborhood and he is in favor.

Todd Anderson, who is not a direct abutter. He resides at 62.5 Stone Street. He has faced similar challenges. He has lived there for about 20 years. The building on there has been vacant and dilapidated. He’s in favor.

In opposition: Laura Cassidy who lives at 70 Stone Street which abuts the propose construction on rear and south facing size. She’d like a modification to the plan. It is a 5,924 s.f. lot. She bought her property from John Reardon in March 2023 and he did a great job rehabilitating her home. She was aware prior to the sale that a portion of the land would be subdivided. She was surprised it is 40% smaller lot and surprised it is 10 feet from her property. If the Board approves it, she would like 4 conditions placed on the approval. 1. She’d like the garage and driveway placed on the north side of the lot. 2. The home be one story high; a ranch. 3. She can’t find property line markers and wants it done prior to construction. She submitted photos showing from her back deck as well as from her back yard looking into this back yard. 4. Due to tight property lines, and she shares 2 property lines with this property, she’s concerned with construction debris. She is worried construction vehicles will drive on her yard. Mr. Reardon has a history of driving off pavement. Due to the small lot size, she is concerned about encroachment by people that buy the home after it is built. She wants an 8 foot privacy vinyl fence installed. And that it be installed prior to demolition or construction activities. She doesn’t believe those are unreasonable requests. She wants to reduce undue hardship imposed upon her for the upcoming summer months and beyond.

Comments by Code: Zoning Administrator Hutton explained that her fence request will violate the zoning ordinance. Fencing cannot be higher than 4 feet high in the front yard.

Rebuttal: Attorney Maria Dolder spoke. This lot has not been newly subdivided. It is a preexisting lot of record. This is not a new subdivision. Ms. Cassidy mentioned that Mr. Reardon did tell her what he intended for this lot. Limiting it to one story is not generally what the Zoning Board of Adjustment approves. They approve the use. They meet the height requirements. Some of her requests violate the zoning ordinance. Mr. Reardon is going to have it surveyed, or at least mark all of the boundaries before he starts. That will be done prior to construction. All other comments are outside the prevue of the board.

DECISION: Chair Carley reviewed testimony as given.

Mr. Evans thought that there was unique characteristics that justify a variance.

Mr. Wallner noted that the homes on Stone Street have less frontage than this one. The square footage doesn’t meet requirements, but other properties in the neighborhood do not meet that either. It is a reasonable request.

Ms. Spector-Morgan sympathizes with abutters, but the Board doesn’t have jurisdiction to impose those requests. It is unique as they were held in common ownership and used as residential uses and without a variance the lot cannot be used at all. It is not contrary to public interest. It is in keeping with the neighborhood. Substantial justice would not be done as the loss to the owner is huge vs. the loss to the public. There will be a gain to the public with a new structure within the setback. No property values will diminish.

Mr. Winters agrees. Without a variance they have no functional use of the property. The neighbors concern is beyond what the Board can address. They will meet setbacks. As far as construction debris or noise, the neighbors can address that.

Ms. Perkins noted the actual square footage of the house is only 20 to 25% of the square footage of the lot. Chair Carley agrees.

A **motion** to approve the requests based on findings noted was made by Ms. Spector-Morgan, seconded by Mr. Evans, and passed by a unanimous vote.

0043-2023 33 Old Loudon Road; RM – Medium Density Residential District; 33 Old Loudon Road LLC,

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

1. Article 28-4-1(h), Table of Dimensional Regulations, to allow a building height of 41.5 feet where a maximum of 35 feet is allowed; and
2. Article 28-4-5(d)(3), Building Dimensions and Separations, to allow a building length of 343.5 feet where a maximum of 160 feet is allowed.

Testified: Attorney Bob Best, of Sulloway & Hollis. Jim Palmisano, owner of land, Jason LaComb, Architect, Scott Thornton, Matt Peterson, Lisa Vindetti and Karen Spencer also available to testify.

Attorney Best explained that this is an over 55 development. It is a very unique and exciting approach to senior housing.

Chair Carley asked if they would minimize their explanation of the history of the property and explain the criteria as the Board has read their packet.

Lisa Vinditi, CPM Property Manager who oversees property spoke. She understands the detail of the building. She showed a power point presentation and gave an overview of who CPM Construction Planning & Management Inc. are. They keep what they build. She managed 175,000 s.f. of commercial space and specialize in over 55 and over housing for years. A building with amenities that caters to 55 and over. These buildings will be amenity rich. There will be resident lounges in each building, fitness centers, game rooms, library, craft rooms, and heated garages. Included in this property are 3 buildings with each its own set of amenities. They will have outdoor patios, fitness and outdoor activities, as well as a pub style game room with billiards. There will be heated garages in each building. They will have a library, book clubs and craft rooms. It will be 100% non-smoking. It will be pet friendly. There will be on site management and 24/7 maintenance. They will be upscale apartments with open concept floor plans. Units will have multiple baths rooms, washer and drier and private patios. A one bedroom unit will be 950 s.f. and a two bedroom unit will be 1,140 s.f. These features create a community to have people involved. The buildings will have 48 unit. This will create a home for the 55 and over residence which allows them to age in place. The turnover is very little. They chose Concord as 1/3 of the residence are 55 and over. Concord is a dynamic and attractive community. This development is 100% 55 and over. They chose 33 Old Loudon Road as it is a transitional property.

Attorney Best spoke regarding the 2 things they are asking relief for which are the height requirement of 41.5 vs. 35 and the length requirement of 343 feet vs. 160 feet permitted. The relief would allow them to have a 3 story building with 48 apartments in the buildings. Community size is important. There is a new error of senior housing. This property has wetlands and topography that need to be navigated. There is no way to get the number of units on this property in smaller buildings. They are trying to attract effective high quality senior housing. This property abuts a lot of commercial uses. If it was the next lot over, the zone on that lot would allow the height. This property and the larger building make a great transition from commercial buildings to residential uses. The hardship/special circumstance are the size and shape of the lot, the wetlands, and the slopes allow only a portion of the lot being able to be used. It would be a hardship if they were limited to 2 story buildings or if they were half as long. Engineers and designers did their best to minimize height. Garages are under the building and they are subsurface. Fire and safety equipment being able to get there will not be an issue. The buildings have central stairs, elevators and stairs at each end of the building. There will not be a visual impact. The fire department wouldn't be going any further down the hall way if they were shorter buildings. It is a larger site. It's within the spirit of ordinance to maintain attractive buildings. A traffic study was done and included with the variance application. There is no significant impact.

Jim Palmisano, property owner spoke. He believes this project works; the property works. They have done this type of development in residential neighborhoods where it fit in nicely in multiple towns. These are not straight faced buildings. He just built two of these developments in Merrimac MA in similar zoning. He has done multiple developments in Manchester NH abutting residential homes. Atty Best directed the Board to the photographs in the packet which are of a similar development that Mr. Palmisano has done. There is a demand for senior housing. On opening day, the last development they did had 98% of the units booked.

Chair Carley asked about the number of units permitted on the property as opposed to the size of the property and buildable area of the property. Attorney Best answered that 145 units would be the yield of the property. The yield is calculated by the of units per acre. Winters noted 14 units per buildable acre. They are trying to get 144/145 units on this site. Attorney Best answered that if the buildings were 2 story and smaller, they need to be 40 feet apart. You also need to take into

consideration the wetlands, etc. It would not work. Chair Carley asked to confirm that they are saying that the ordinance permits 145 units, but given the configuration of the lot, the only way they can do that is that the buildings need to be longer and taller than permitted. Atty Best answered that was correct.

Matt Peterson, Engineer testified. The total acres is 16, which would calculate to 225 units. He doesn't believe putting units on the Portsmouth Street side of the property makes sense. Placing them on the Old Loudon Road does makes more sense. They would have to put half on both streets to make it work. By allowing a bigger building and length, it allows them to not put any units on the other side. They do not think it would fit in the surrounding area. This is the first 3 buildings that have the facilities in each building. Each building is its own community. They needed to balance how low they went to include the garage under and how he could deal with drainage issues. Has done a lot of design work before they came to the Board. This would be transitional from commercial to residential uses. This works.

Mr. Palmisano, who is the owner and developer. They spend time and energy to make sure each project works in the area they place it. Mr. Peterson further explained that this property now has a homeless camp on it.

Ms. Spector-Morgan asked about the Portsmouth Street area. Are they subdividing out a 3 acre lot? Mr. Peterson answered that they were subdividing approximately 3 acres. Ms. Spector-Morgan asked if that lot existed now as a separate parcel. Mr. Peterson answered that it did not exist right now.

In favor: none.

In opposition: Carl Sargent, lives at end of Portsmouth Street. His property is between Portsmouth Street and Old Loudon Road. The size of the building has an impact. Look at the size of the homes in the area. They are all single residents. They plan to keep some forest area along Old Loudon Road, but there is a big gap where they will see the big buildings. He'd like to see plantings put in there. At the entrance into it, there should be greenery so you wouldn't look into this whole development. He didn't realize it's for senior citizens so he's happy with that. He'd like to see some evergreens put there so there wouldn't be as much of a visual impact. He has safety concern with the location of the side walk going across Old Loudon Road. That is a dangerous corner. Chair Carley asked where his property was relative to the site. Mr. Sargent showed him on the map. Mr. Winters asked if they met his concerns, would he object to the project. Mr. Sargent answered he would be okay with senior housing. He also noted he has been in this neighborhood since 1954.

Brian Desilian, who abuts. He showed where the pond was located on this parcel, and he showed where his home is located. He is a direct abutter. Carl Sargent's concerns are his concerns. Pine trees abut this whole property. There is wild life there. He'd like to leave the vegetation around the area. He'd prefer not to look at the large buildings. The run off from these homes can't go down into the pond area. It does dry in the summer though. Runoff concern and he'd like tranquility.

Roy Schweiker, who is not an abutter. He is concerned about us having zoning regulations for a reason. He wonders why they are limiting building to 160 feet. Why not have a zoning ordinance that would allow it.

Russ Perkins of 299 Portsmouth St. He showed his home on the map. All around are single family residences; small houses. The commercial buildings are not real tall. No one is there at night so it is relatively quiet. He wonders how putting a conglomeration of these 3 story buildings is considered a transition between small commercial buildings and residential housing. He wrote up some concerns and read them into the record. This proposal is not the only allowed use for this property which would not require these variances. It is not a suitable location for this development. This is trashing existing zoning regulations, which have been carefully thought out is not the way to proceed. Reasonable use of the property is subject to interpretation. This is not the only use for this property. Authorization not being contrary to public interest is due to the developer's request which is based on visual impact of the building and accessibility by emergency services. He disagrees. Three buildings of this size is visually imposing. Spirit of the Ordinance/Substantial justice being done is dependent on the developers' interpretation. People living in this area are not considered a community. This development doesn't meet any of his needs. He's part of the community. Have they done individual appraisals to show that there will be no decrease of surrounding property values? He's been in this neighborhood for over 30 years.

Comments from Code: Zoning Administrator Hutton noted that there is a 75 foot buffer requirement for a 3 story building. She has concerned that they don't fully understand buildable acreage. She'd like to have the applicant clarify how much could be on this lot. Winters asked if the definition of buildable land excludes wetlands. Zoning Administrator Hutton answered that it does. There is quite a bit of wetlands and a lot being taken out of their plan. She is concerned that they

stated they could put 240+ units on this lot and they cannot. Winters heard him say he could put 100+ units.

Rebuttal: Attorney Best. This applicant owns what they build. They want to be good citizens and get along with their neighbors. The visual screening/wetlands/drainage etc. are within the Planning Board's purview. DES will be involved with the wetlands. There is a 'no disturb' line behind buildings where trees will not be disturbed. If the Planning Board says they need to do plantings, that may change that. They intend to have 144 units. Mr. Peterson testified that they gave great consideration to the distances for all the homes for the people that just spoke. He can put these units on the other side of Portsmouth Street. He listed the distances to the residential homes. They have hired one of the best landscape architects around who is from Hopkinton NH. This is a 16 acre property and when you subtract the power line easement, and the wetlands and slopes, which are 15%, you end up with 12.5 or 12.75 acres which comes out to be 182 units. They want 144 units. They do not want a 300 foot long straight building. They angle the buildings for aesthetic. Sidewalk crossing, they will work on. Attorney Best gave a copy of the power point presented. Mr. Winters asked what was on the closest lots. Mr. Peterson answered a cell tower to the left and a single family home. Mr. Winters asked how close. Mr. Peterson answered 238 feet.

DECISION: Chair Carley reviewed the testimony as given.

Mr. Winters heard that the point of their argument is that they are not exceeding the number of units they can build but put them in a place most suited for the lot and most respectful of the neighbors needs. The variances they are seeking are not excessive. They are barely going higher than the height requirement. He is inclined to approve.

Ms. Spector-Morgan is not inclined to approve the variances. It is a great project in a great location with great design in an effort to protect the abutters. But the fact remains they can accomplish the same density in smaller building if they use the 3 acres on Portsmouth Street. The hardship arises from the design choices and their decision to maximize density. Gain to the public by denying the variances is small given the location, but loss to the individual is also small as it could be designed differently. There is no evidence in the record, only a representation that property values will not diminish. They give them a traffic study, but no real estate appraisal. Public interest/spirit of the ordinance; she heard conflicting testimony. The height and length is consistent with the neighborhood. They don't cause public health, safety or welfare issue. There is no hardship, and no proof of property values not being diminished. The extra lot does not exist right now. Does the 145 unit total assume that the other lot is already subdivided? Attorney Best answered that they were subdividing out the 2 acres; he still has 145 units.

Mr. Evans: The proposal is reasonable. The height does not concern him. He is unsure about the length. Comments were made about visibility, which will be covered by site plan review. He doesn't believe this development will affect single family home property values in the area. He is inclined to approve.

Mr. Wallner heard testimony that the abutters would be at least 2 football fields away. If they deny both variances, they would have to build 7 or 8 buildings to accommodate this unit number. They would have to be on Portsmouth Street which would create abutters issues. He is in support.

Ms. Perkins felt it was not inconsistent, but a bridge. This will have a 75 foot buffer. It will be privately located. It is not a heavy traffic development. It will not impact of values of properties, with her experience. It makes sense to compact the neighborhood and leave open land open, which is a good thing for an environment.

Chair Carley asked about the buffer requirement being based on proposed height. Zoning Administrator Hutton answered that was correct. Both sides of the argument are strong. The hardship is created by slopes and wetlands. The use is compatible with what is there in the area. It's allowed by right. Physical characteristics are being asked to be addressed. He doesn't believe property values will be diminished. He is inclined to approve.

A **motion** to grant both variance requests was made by Mr. Evans and seconded by Mr. Wallner. Mr. Winters thought the hardship is the location of the buildable spaces, which would make it a hardship for them to be able to use all their allowed units in this location. They don't typically have appraisals. There is no evidence of diminution of values. Chair Carley takes into account that the lot was not taken out of the property yet. They will be complying with the buffer requirements. Zoning Administrator Hutton asked if they changed the description of the lot, would that void this variance. If they subdivide out the 3 acres, after the variances were acted upon, would this void out the action of the Board? Chair Carley noted that they have ruled on proposed subdivisions in the past that had yet to be done and that he believes the board can rule as if the subdivision were complete and conditional upon it being completed. Mr. Winters noted that the applicant has capable

council. They need to make that determination. If this variance turns out to be invalid they build at their own risk. The **motion** was made and seconded and approved by a 4-1 vote with Ms. Spector-Morgan in the minority.

0044-2023 **20 Tallant Road; RO – Open Space Residential District; Julie A Lane & Eric M Sommers, Owners:**
Owners wish to add a second dwelling unit within the basement of their single-family dwelling and seeks a variance to Article 28-2-4(j), Table of Principal Uses, (Use A-2), to allow a Duplex or two-family dwelling, where such use is not allowed.

Testified: Eric M. Sommers, property owner. He gave a brief background of the property. The back of the house slopes and the basement is a walk out basement. This was done to give them room to expand. Their original plan when they built the house was to put an ADU in the basement. When they went to finish the basement, they found that the renovated area was calculated by measuring the outside walls, which increases the size of the ADU. The finished space is about 650 s.f. and 120 s.f. of utility room. They would like a one bedroom, with a small kitchen, an ADA compliant bathroom and a living space. Finishing the basement is for more room for the time being. In the RO zone they would be allowed to have an ADU, but due to the measurements and literal interpretation of the ordinance, the size makes this a duplex, not an ADU. The hardship is not so much the land, but the way the land is situated. This is the most appropriate place to put this. It keeps the foot print smaller. They could have a 750 s.f. addition to the house, but this proposal keeps it more compact by putting it in the basement. The minimum variance is to allow that measurement to be allowed in the existing home. The neighbors will not see anything different visually. It is in keeping with the Ordinance and the statute that allows ADU's. It meets all the criteria. There is no impact on the neighborhood. If not here, they would have to build something extra but that would be a visual impact.

Mr. Winters asked Zoning Administrator Hutton if the ADU has to be owner occupied in the primary space. Zoning Administrator Hutton was going to recommend that if they want to treat it as an ADU, they can condition it to meet all the ADU requirements and never be condo. Mr. Sommers explained that it has always been the intent to have it for aging parents or caretaker for he and his wife as they age in place. Mr. Winters recollected that Mr. Walker didn't like that kind of condition. Zoning Administrator Hutton stated that she and the Deputy City Solicitor had used it on another case.

Mr. Evans asked what the square footage issue was. Are they including storage space or just the rectangle for living spaces and utility area? Mr. Sommers asked what they considered habitable space. Mr. Evans asked what the square footage was for the living space. Mr. Sommers explained that from the inside of the finished walls, that perimeter, comes to 860 s.f. inside that rectangle and he was going to subtract the 130 s.f. for the utility room, which brings him to 730 s.f. Mr. Evans asked if the mechanical room area was for the entire house. Mr. Sommers answered it was. Mr. Evans asked if they can authorize an ADU with a variance. Zoning Administrator Hutton explained that they cannot authorize a variance for something that needs a special exception. Ms. Spector-Morgan explained that they cannot grant a variance for special exception criteria.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION:

Mr. Wallner noted that the Board has seen a lot of these for the last few years and the Board has granted them.

Mr. Evans agrees. It is a reasonable use.

Chair Carley noted that the configuration of the house does create a hardship in this case. He is inclined to support.

Ms. Spector-Morgan concurs with the condition of approval be that one unit must be owner occupied and one not conveyed.

Mr. Winters is fine with the space being finished. It is consistent with the structure.

A **motion** to approve the variance to allow a second dwelling unit based on the plans submitted was made by Ms. Spector-

Morgan. The hardship is in the configuration of the house. Nothing about this is inconsistent with the neighborhood or created health of safety issue. It will not diminish property values. The motion was conditioned that the lots not be conveyed separately or be placed in condominium status and one unit be owner occupied. The motion was seconded by Mr. Evans and passed by a unanimous vote.

0045-2023 **0 Washington Street (6414/Z 36/ /); RD – Downtown Residential District; Concord Coalition To End Homelessness, Owner:** Owner wishes to modify an existing non-conforming parking lot and seeks the following variances:

1. Article 28-7-7(a), Standard Parking Space, to allow 8.5'x17' parking spaces where 9'x19' spaces are required;
2. Article 28-7-8(b) to permit a 15' separation between driveways where a 30' separation is required; and
3. Article 28-7-7 to permit 8 "tandem" parking spaces, where tandem spaces are not permitted.

Jonathan Chorlian, the developer requested that Case 0045-2023 and Case 0046-2023 together be recessed to the June 2023 hearing.

A **motion** to recess both Case #0045-2023 and Case 0046-2023 to the June 2023 hearing was made by Mr. Wallner, seconded by Ms. Spector Morgan and passed by a unanimous vote.

0046-2023 **177 North Main Street; CU – Urban Commercial District; Concord Coalition To End Homelessness, Owner:** (177 Rear North Main Street is 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 the following variances:

1. Article 28-4-5, Development of Attached and Multi-family Dwellings, Section (d)(2), Maximum Lot Coverage and Density, to allow 34 units on .74 buildable acres where 8 units are allowed;
2. Article 28-4-5(d)(5) to permit parking and patios within the perimeter buffer required for multi-family development;
3. Article 28-4(d)(4) to permit residential units with direct outdoor access to have private yard areas of 100 sf, where 300 sf private yard areas are required;
4. Article 28-4-1(h) to permit various private patios to be within 5' of the relevant lot line, where 15' front/rear/side setbacks for structures are required;
5. Article 28-7-13 to permit a multi-family development with more than 20,000 sf of gross living area not to have a 1000 sf loading area, where one such loading area is required; and
6. Article 28-7-14 to permit refuse containers to be located within 0 feet of a residential district boundary, where a 25' setback is required.

See motion above with previous case number.

0047-2023 **99 Peaceful Lane; RO – Open Space Residential District within the SP – Shoreland Protection District overlay; Robert Baskerville, Owner:** Owner wishes to remove a damaged 6'x19' addition on the northern side of the dwelling and replace with a 12'x26' addition and seeks a variance from Article 28-4-1, Table of Dimensional Standards, to allow a side yard setback of 26' where 40' is required.

Testified: Robert Baskerville. He purchased the building March 30, 2023. He gave a history. It is a great old structure made out of Carolina red pine. There is no insulation and no wall board in the camp. It has hardwood floors, hardwood ceiling, walls etc. It was built in 1920. The hardship is that it was built on the highest part of the land. In 1920 there were no setbacks. When the outhouse went in around 1920, it was the state of the art sanitation building. It is not used now. There has been no maintenance to the property for a very long time with the current bathroom. A tree fell on it and broke the roof over the indoor toilet. The ceiling and floor is rotten. He'd like to take it down and replace it with a modern bathroom. He'd like to put in a bathroom. He lives in Bedford in an apartment. But in the summer, he can't get outside. It's for his use long term as a seasonal home. He loves the old windows and is not going to replace them. He's keeping the same siding, same design. There is an addition is on back eastern part of the house. The rear abutter is about 1,000

feet away. This is 4 acres and he owns 1,000 feet of river frontage. He has a letter in favor from the abutter on the east side. He'd like to modernize the house and put an addition on.

Ms. Spector-Morgan asked if he would be no closer to side property line? Mr. Baskerville answered he would not be any closer. He would be no closer to the river either. This property has been used lightly in the last 20 years. The architect has told him that he would have to put a foundation under the whole house. Along the west side, when they put the septic system in, it tilted the piers. He loves the place and wants to update it.

Mr. Winters asked if the main road dead-ends into his driveway. Mr. Baskerville answered yes. He also owns 59 River Road. They didn't get access to Peaceful Lane until 20 years ago.

In favor: none.

In opposition: none.

Comments from Code: Zoning Administrator Hutton noted there was a letter referenced in their packet.

Chair Carley read the letter from Ryan Schrapler, who was in support, into the record.

Decision:

Ms. Spector-Morgan is inclined to grant. There are special condition of property due to the flood plain and the location of the existing house, which is entirely in the 40 foot setback. They are not getting closer to the side property line. Granting will not alter the character of the neighborhood or create health or safety issues. It will not devalue property values of surrounding homes.

Mr. Evans agrees.

Mr. Wallner agrees.

Mr. Winters agrees.

A **motion** to approve the request was made by Ms. Spector-Morgan, seconded by Mr. Evans and passed by a unanimous vote.

0041-2023 **70 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 69.8 square feet, where 21 square feet is allowed.

The Board came back to this case which was not heard earlier. At this time, there was still no one available to testify.

A **motion** to continue this case to the June hearing was made by Ms. Spector-Morgan, seconded by Evans and passed by a unanimous vote.

Minutes: A **motion** to approve the Minutes of April 2023 as well as Finding of Facts was made by Mr. Wallner, seconded by Mr. Evans and passed by a 4-1 vote with Ms. Spector-Morgan abstaining.

Zoning Administrator Hutton informed the Board that June's hearing will have 11 cases. Chairman Carley agreed with having 2 meetings in June.

A **motion** to adjourn was made by Mr. Evans, seconded by Mr. Wallner and passed by a unanimous vote.

Respectfully submitted,
Rose M. Fife
Zoning Board of Adjustment
DM ZBA 5.3.23