

CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
JUNE 7, 2023
MEETING MINUTES

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

Absent: Andrew Winters, Tedd Evans, James Monahan

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

- 1) Chair called meeting to order at 6:00 pm
- 2) Chairperson's comments
- 3) Public Meeting
- 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

PUBLIC MEETING

0056-2023 ***Determination of Regional Impact***

150 Manchester Street, CH – Highway Commercial District and AP – Aquifer Protection Overlay; Manchester Street Concord Auto LLC, Owner: Owner wishes to expand the Auto Sales use on the property to the newly acquired and merged abutting property and requests variances to:

1. Article 28-3-6(d)(3)(m) – Prohibited Uses within the Aquifer Protection District; to allow the expansion of the existing use into the overlay.
2. Article 28-5-37(a) – Required Setbacks; to allow a storage setback of 10 feet where 50 feet is required.
3. Article 28-5-37(b) – Screening Requirements; to allow a 10-foot-wide planted buffer on the border with 8 Integra Drive in lieu of the six-foot high perimeter fence that is required.

Zoning Administrator Hutton had a map up showing the Aquifer Protection Map from the Pembroke Aquifer, not the Concord Aquifer. If the Board determines there is Regional Impact, the Pembroke Aquifer (Town of Pembroke) and the Central New Hampshire Regional Planning Commission will be notified.

Ms. Spector-Morgan wanted it noted for the record that she represents the Town of Pembroke, but that it would not affect her sitting on this case.

A motion that this case does have regional impact given the proximity to surface waters was made by Ms. Spector-Morgan, seconded by Ms. Perkins and passed by a unanimous vote.

PUBLIC HEARINGS

Chair Carley explained that this evening the Board consisted of 4 members. If the applicants elect to be heard by a 4 member Board, it will require 3 votes for any motion to carry. Also, being heard by a 4 member board does not create a reason to request a rehearing.

0041-2023 **70 Storrs Street; TABLED from May 3, 2023 - OCP – Opportunity Corridor Performance District; Brixmor Capitol SC LLC, Owner:**

Owner wishes to install building signage which exceeds the maximum area allowed and requests 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.

A motion to remove this case from the Table was made by Mr. Wallner, seconded by Ms. Spector-Morgan and passed by a

unanimous vote.

Testified: Tedd Jarvis of Spectrum Signs and Graphics. His client would like an additional sign on the parking lot side of the building, which is the second entrance to the building. By doing so, it would clarify the way finding. When people park in the back parking lot, they do not know which door to use to enter. They do not believe there would be any impact. It would help with traffic. They would also like to put some branding on the windows, which are offering products and services. It would be less than 10% of the window space. The additional sign on the building would be the same size as what is on Storrs street or 16.45 s.f. The window graphics would be strips going around the glass and not intrude looking in or out of building.

Zoning Administrator Hutton is not sure that the window graphics were in the calculations. She believes that the 69.845 s.f. is for Playa Bowls only. Mr. Jarvis explained that the window graphics plus the Playa Bowls adds up to that number. The math works.

In favor: none.

In opposition: none.

Code: none.

DECISION:

Ms. Spector-Morgan does not have a problem with the second Playa Bowls sign. She does have issues with window decals as there is nothing unique about building allowing that extra signage. It's not a need; it's a want. There is nothing unique about the property. It is not consistent with other buildings. It will not diminish values, there will be no loss to applicant and visual clutter is real. She is in favor of the 33 s.f. of signage, but not the decals.

Ms. Perkins asked if the windows are on the parking lot side or street side? Mr. Jarvis answered they were on both. Ms. Perkins agrees with Ms. Spector-Morgan, but on the parking lot side she thinks it may be helpful. Ms. Spector-Morgan explained that it isn't the standard.

Mr. Wallner asked about the windows on the side. The side of the building abuts the alleyway between Starbucks and this building. Mr. Jarvis explained that this is a franchise and all the other franchises have them. Mr. Wallner thinks the second sign is needed, but the window graphics is not.

Chair Carley noted that the photograph picture shows only 1 side of the building. Zoning Administrator Hutton noted that the rest of the signage is included in the packet submitted for the May meeting. Mr. Jarvis explained that the decals are 10" high and 37" wide. Mr. Carley is inclined to agree with his colleagues. They have found, in the past, that there is a peculiar configuration that makes sense for signs on 2 sides.

A **motion** to grant the requested a variance for the second Playa Bowls sign as there is a necessary hardship; two entrances, where the building is situated, it being consistent with the character of the neighborhood, they all have 2 signs in the area, no harm to the public interest, substantial justice being done as the public may get lost trying to find the entrance, no loss to property value due to that sign on the wall. Motion was seconded by Ms. Perkins and passed by a unanimous vote.

A **motion** to deny the decal striped signs on the windows as there is no unnecessary hardship; nothing unique about the building; it is not consistent with the character of the neighborhood; other business do not have them; there is no diminution of value, the gain to the applicant is outweighed by the gain to public due to the clutter; there is no justification other than branding. **Motion** failed for a lack of a second.

A **motion** to grant the 7.8 s.f. signs on the back entrance, parking lot side of the building, not the side facing or street facing side was made by Mr. Wallner, seconded by Ms. Perkins. **Motion** was denied by a 2-2 vote with Ms. Spector-Morgan and Chair Carley in the Minority. Zoning Administrator Hutton noted that they could come back before the Board if their request is substantially different.

Carley explained to Mr. Jarvis that the Board approved the signage for the wall, but not on for the windows.

0049-2023 151 Elm Street; RO – Open Space Residential District; Jamie & Jacob Farwell, Owners:

Owners wish to operate an Automotive repair, service, and towing business and requests a variance to Article 28-2-4 Table of Principal Uses to allow use J4 - Automotive repair, service, and towing, excluding body work.

Testified: Attorney Daniel Muller of Cronin, Bisson & Zalinsky PC. Jamie Farwell and Jacob Farwell were also available to testify. Attorney Muller agreed to a 4 member Board. Attorney Muller explained that Mr. Farwell has operated Farwell Cycle and Motorsport on Village Street in Penacook for quite some time until they lost their lease. He and his wife purchased this property at 151 Elm Street and want to run their business from their barn. The classification is for auto repair and towing. There is no expectation that there will be any towing. There will not be any cars worked on at this property. This is for motorcycles, dirt bikes, and atv's. There will be no body work done. He wanted to clarify that for any abutters that may be here this evening. They will not be doing any automotive repair and have no issue if the Board wants to set a condition saying as much.

The property is over 11.5 acres. A portion of the property is in current use, which limits any further expansion. Mr. Farwell does not intent to expand his business. He is the only employee. His business is by appointment. He will have less than 5 customers per week. Mrs. Farwell does the books for the business. There are 4-6 motorcycles on site, and they are stored in the barn. They would be willing to have a stipulation of no outside storage placed on an approval. They have a system set up for disposal of motor oils. His hours will be Tuesday through Friday from 9 am to 6 pm and Saturday from 9 am to 2 pm. There will be no signs. There is 1 metal logo attached to the building right now and they are willing to take that down if it is a problem. The Farwell's reside on the property and would like to keep this more like a home occupation. Mr. Farwell has not received any complaint from the neighbors. The only expansion is to be able to do State inspections and that is all. They believe all 5 criteria have been met given the fact that it is limited to the interior of the barn. There is a storage unit on the property, which is not connected to the businesses. It is there to accommodate a family member and they have been instructed to get a building permit.

The hardship is that this property is over 11 acres, 10 of which is in current use and cannot be developed. The parcel is on the edge of the RO district, but not too far from the Village area where they previously operated. The barn is 35x75 and is located closest to property owned by the City of Concord. The barn is 100 feet back from the road. It is an existing structure, and it would reasonably allow for this use. The property will be kept in a manner that it maintains the residential character. The business operation will be limited to the barn as it will actually allow for a business of his scale to be operated at this location indoors. His clientele want their bikes stored indoors. Given all of these circumstances they believe that there are special circumstances with this property.

Ms. Perkins asked Zoning Administrator Hutton about the category they were placed in. Zoning Administrator Hutton explained that the use category was the closest category to what he was going to do. A new use category that does not exist cannot be created. Ms. Perkins asked if they would be able to approve it with limitation on the work that is being done there or it only allowed to be him. Zoning Administrator Hutton explained that they can put conditions, but the variance runs with the property.

Attorney Muller agrees that you cannot limit a variance to a particular person. If the Board would agree though, they could stipulate that the business could exist as long as the single family home was there. They would not object to that.

In favor: Christopher Esko, Wedgewood Drive in Concord, who is an avid motorcyclist. There is a gap in motorcycle service in Concord. In September of 2020 Heritage Harley abruptly closed its business. At that time there was no other alternative. Mr. Farwell will provide a needed service. The closest service/repair shop is now in Manchester. Mr. Farwell is convenient and needed. Last year in June he was looking to get an inspection and a service done. After calling all around, he was able to get an inspection at National Power Sports in Pembroke, but he couldn't get a service done. A business like Mr. Farwell's would be a good alternative for consumers. As a rider, he is respectful of neighbors and does not 'rev' up the engine to hear his exhaust pipes. The work Mr. Farwell does will be inside the shop and it is not noisy work.

Linda Capacino. She has known Mr. Farwell for about 15 years. She believes the hardship is that without this business he may not be able to earn the living that he needs to keep the home he worked so hard to build.

In opposition: none.

Emails:

- Andrew Stout, 181 Elm Street. Not in favor. Inconsistent with the spirit of the zoning intent for the area.

- Mark Edwards, 203 Elm Street, has lived there 17 years. He has concerns with: a commercial businesses is inappropriate at this location; traffic concern; he believes the land is in the flood zone; concerned with disposition of products that could affect the water.
- Dennis Soucy, 166 Elm Street. Concerned that use will not be a good fit for area; concerned about auto repair and towing business; concerned with traffic.
- James Murphy 166 Elm Street. Concerned that the variance runs with the property; motorcycle repair shop is different from auto repair and towing; he doesn't believe that kind of business would be consistent with the residential nature of the neighborhood. He recommends placing restrictions.
- Angela Johnson, 189 Elm Street. This is a residential neighborhood; concerned with the dangerous curve in the road; concerned with the proximity of the flood zone; and has traffic concerns.
- Jeremy and Jane Lauren, 185 Elm Street. Has lived here since 2001. Has traffic concern; a business use in a residential neighborhood and the traffic it brings is a concern; the noise it would bring is a concern; disposal of waste is a concern as there is a pond across the street as well as the Contoocook River; and concerned with property values going down.
- David Miller, 133 Elm Street. Not in favor. Concerned with speeding.

Ms. Spector-Morgan asked if this application came about from an enforcement action. Zoning Administrator Hutton answered that it did not.

Rebuttal: Attorney Muller. During the busy season he may have 3 customers a day. That is the traffic that he would generate. During the colder months he may have 5 customers a week. No one is waiting at the site. Their bike will be dropped off and it gets picked up later on. There will be limited traffic. As far as the flood zone; the back portion of the property is closer to the river and is in the flood zone. The upper portion of the property is not. Waste disposal is already established. Motor oil is brought to VIP. Speeding is an issue for the Police. This will still look residential. Everything is limited to inside the building. The Farwell's live on the property and want to keep their property looking nice.

DECISION:

Mr. Wallner: The hardship argument is weak. He believes every attempt has been made to be an operation with limited impact on the neighborhood.

Ms. Perkins: The hardship was created with the lease being broken at their other location. The use is encased within the barn. Perhaps if the neighbors who wrote letters understood that it was not automotive and not towing, they may not have sent the letters. She feels okay with restrictions that it is small vehicles, no outside storage, and kept inside the building.

Ms. Spector-Morgan: There is no unnecessary hardship. There is no uniqueness of the property. The abutters agree that it is not consistent with the residential, and very rural, neighborhood. It is contrary to the public interest, and not consistent with the spirit of ordinance.

Carley: There is no hardship that runs with the land. There is prohibition of this use.

A **motion** to deny the request was made by Ms. Spector-Morgan as there is no unnecessary hardship, no uniqueness burdened by use restriction, although the barn may be good to do the business in. Just because the property is well suited for the use does not make unnecessary hardship. The public purpose of the ordinance is not met. She has a concern that it would diminish surrounding property values. **Motion** was seconded by Mr. Wallner and passed by a 3-1 vote with Ms. Perkins in the minority.

0051-2023 254 N State Street; IS – Institutional District; Smokestack Realty, LLC, Owner:

Owners wish to operate a Cornhole Facility and requests variances to:

1. Article 28-2-4, Table of Principal Uses, to allow use C3 – Indoor Recreational Facility
2. Article 28-7-2(e), Table of Parking Requirements, for providing 20 spaces where 64 are required.

Testified: Attorney Daniel Muller of Cronin, Bisson & Zalinsky PC. Anthony (Andy) DeFlorio and Travis Gates were also available to testify.

Attorney Muller explained that this use would be located at 254 N State St, Unit J. They would like to have a corn hole facility. They are also here for parking relief. Unit J was to be used for a retail coffee center when originally approved. There were 20 parking spaces allocated for this use when technically 64 were required. Unit J is 3200 s.f. The proposal is to use approximately 1500 s.f. of that space for 7 corn hole lanes, which would have 2 people per lane. In most cases there would not be too many people there, unless there are tournaments. The most people they would have there would

be approximately 67 people. Their hours would be Monday through Saturday 4 pm to midnight and Sunday hours as well. It would be late afternoon into the evening. The parking plan allocates a number of spaces for each unit. It is also shared parking. They have photographs from a few days in June which show that most of the parking is not taken. There are usually 78 spaces open. The brewery is the primary business open in evenings at this location. There are still enough spaces for the patrons of their proposed use. Unit H is Area 23, which is a bar located next door, that is open during the same hours. This unit was previously used as a gym. The building is located off of Route 3 aka North State Street. Access to property is from a substantial road in the area. There are no cornhole facilities in the area. They are looking for an opportunity to provide that type of facility where people can go and play. The Smoke Stack Center is a mixed use property. It houses a variety of uses. Most of the uses there aren't going to compete for parking due to the different times the uses utilize the parking. The cornhole facility will have 3 Employees and an event coordinator. They would like to serve limited alcohol and prepared foods. There will be no cooking facilities on site.

In favor: none.

In opposition: none.

Code: none.

DECISION:

Ms. Perkins questioned the hardship. It would be a good use of the space. She knows that area and is familiar with the parking lot. There is plenty of parking down there. Having that type of use in Concord would be good for the community. She does not see anything negative.

Mr. Wallner noted that this whole area is a great example of mixed use. He is inclined to support.

Ms. Spector-Morgan agrees.

Chair Carley noted that the Smoke Stack Center is the remains of a granite cutting plant. This creates a unique circumstance there. It is a reasonable use of part of that building. The hardship is implied by the configuration of the lot and the building in this location. They made a good case for the parking request. He is in support.

A **motion** to approve the requests was made by Ms. Perkins, seconded by Ms. Spector-Morgan. Ms. Spector-Morgan gave the reasons, which Ms. Perkins agreed with: it is not contrary to the public interest; it is consistent with the spirit of the ordinance; it is consistent with other uses; there is no gain to the public by denying the request; surrounding properties are residential against mixed uses so it will not diminish property values. As for the parking, the unnecessary hardship is that there are plenty of parking spaces; it will not diminish surrounding property values by less parking being allowed; it is consistent with other uses in the building; there is no gain to the public by strictly enforcing the ordinance. The **motion** passed by a 4-0 vote.

0055-2023 25 Chenell Drive; IN – Industrial District; 25 Chenell LLC, Owner:

Owners wish to operate a Secondary Charter School and requests a variance to Article 28-2-4, Table of Principal Uses, to allow use B-1, Elementary and Secondary Schools.

Testified: John Higgins, co-founder of Synergy Charter Academy. They have received a 1.5 million dollar grant. They would like to bring an alternative high school to Concord. They presented a School model to the Board of Education and their School Charter was approved. They love this property as it is in an area that fits their model; a community service based learning high school. The Christian Academy is also on Regional Drive. It's at the end of a cul-de-sac. The hardship is that this building has been vacant over a year and a half and has been on the market for that time. They cannot rent it as an industrial site as they do not have loading docks. It used to be a lab. This would be a great place for a school with project base focus. The building and its layout is suited to how they would lay out their classrooms. They have already had a walk through with the Fire Marshall. Mr. Higgins has been in the education field for 22 years and had run a charter school for 8 years. The building is 12,000 s.f.

Ms. Perkins asked how many children. Mr. Higgins answered they would have 64 to 120 students. Chair Carley asked if they would have an outdoor recreation space? Mr. Higgins answered they would not, but there is area where they could put something. There will be minimal to zero changes to building. They may create a community garden outside. There is conservation land behind them. Chair Carley asked the age of the students. Mr. Higgins answered they would be 14-18 years old. Ms. Spector-Morgan asked where the other school is located in the area. Mr. Higgins answered that it is located on Regional Drive, about 200 yards up the street. There is an independent living facility within walking distance.

Mr. Higgins explained that the building is a stand-alone building and they would occupy entire space. The children will come to the school via area transit. There is a bus stop at the end of Chenell Drive. The students would be coming from the central part of the city. The location fits a lot of their needs and their model.

In favor: none.

In opposition: none.

Code: none.

DECISION:

Ms. Spector-Morgan is inclined to grant the request. The property is unique. The property cannot be used for industrial purposes without loading docks. It is relatively consistent with surrounding uses. The use will not diminish surrounding property values. There is no gain to public by denying the request.

Ms. Perkins agrees.

Mr. Wallner noted that this is in the industrial district with a variety of uses. He is inclined to support the request.

Chair Carley agrees.

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

0059-2023 4 Merchants Way; GWP – Gateway Performance District; Interchange Development LLC, Owner:

Owner wishes to install building signage which exceeds the maximum area allowed and requests a variance to Article 28-6-9(b), Permitted Building Signs, to install combined sign area of 54.42 square feet, where 26 square feet is allowed.

Testified: Laurie Rauseo of Interchange Development. Chris Covert of TCD Construction Inc. on behalf of Jersey Mike's and Randy Cheyne of TCD Construction Inc. on behalf of Jersey Mike's.

Mr. Covert spoke regarding the uniqueness of the property. He submitted additional photographs of the site. They showed the front and rear of the building. The rear of the building can be seen from traffic circle from Whitney Road. The additional sign imposes no issue to the public as it will help with sales, which creates jobs.

Chair Carley was unclear which unit was Jersey Mike's. Mr. Covert explained which one it was on the projected map. Carley asked if it was the highway side or the parking lot side? Ms. Rauseo explained that it was on the Whitney Road side. Mr. Cheyne explained they would like to put a sign on the front of the building and the back side, which faces the traffic circle. The reason for the two signs is to provide access and better direction to Jersey Mike's. They would like the same size sign. It goes along with the rest of the signs on the remainder of the building. Wendy's has 3 signs on their building. They would like 2 signs.

Chair Carley asked that the appellant point out on the plan where the signs would be placed. Mr. Covert showed him. Mr. Cheyne explained that there will be no sign showing directly onto Merchants Way. Mr. Covert explained that this location is away from downtown and uniquely developed.

In favor: none.

In opposition: none.

Code: none.

Mr. Covert also wanted to add that they have been to Architectural Design Review (ADR) and they were granted based on the Zoning Board's decision.

DECISION:

Mr. Wallner compared this request to the one on Storrs Street. The hardship is the need of visibility from vantage points. He is inclined to grant.

Ms. Perkins did not feel it was contrary to public interest; it is keeping with the spirit of the ordinance; Substantial justice is done as it helps with visibility; it will not diminish property values as it is in keeping with the development and the way the building is situated.

Ms. Spector-Morgan agrees.

Chair Carley agrees.

A **motion** to approve the request was made by Ms. Perkins with the findings as noted, seconded by Mr. Wallner and passed by a 4-0 vote.

Minutes: A **motion** to grant the May 2023 Minutes was made by Mr. Wallner, seconded by Ms. Spector-Morgan and passed by a unanimous vote.

Findings of Facts: A **motion** to approve the May 2023 Findings of Facts was made by Ms. Spector-Morgan, seconded by Mr. Wallner and passed by a unanimous vote.

Respectfully submitted,

Rose M. Fife

Zoning Board of Adjustment