

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

Attendees: Chairman Christopher Carley, Nicholas Wallner, Laura Spector-Morgan, James Monahan, Andrew Winters, Brenda Perkins.

Absent: Tedd Evans

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
- 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

0056-2023 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. The owner is seeking the following variances:

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.

Testified: Jeff Lewis of Northpoint Engineering, Dennis Wilson of Capital Subaru and Scott Silverman.

Mr. Lewis was before the Board approximately 18 months ago for the 10 Integra Drive property which is the southern half of this property. A variance was granted to allow sales/rental in the IN zoning district. This property is split between the CH and IN zone. Capital Subaru entered into a Purchase and Sales agreement with Bob Mariana 18 months ago to buy this parcel to expand their dealership. Auto sales is not allowed in the Industrial District. They received their variance on 10 Integra Drive, subject to the parcels being merged. The property is now all 1 property; 3.88 acres and is now 150 Manchester Street. Capital Subaru has started planning for their expansion. It will increase from a 10,000 s.f. building to a 25,000 s.f. building. The dealership is made up of auto sales and auto service/repair. The zoning ordinance has it as 2 distinct uses. They do have the variance for sales, but not for service. Primarily it has to do with the AP overlay district.

Ms. Spector-Morgan wanted to be sure she let everyone know that she represents the Town of Pembroke and the town does not have any issue with her participating on this case.

Mr. Lewis continued. The auto repair/service is a permitted use in the zone, but not in the AP overlay. There are a few performance standards they need to adhere to as well. They pertain to screening of the property. A 50 foot setback and screening applies for outdoor storage as applies to repairs. The storage is vehicles that are being serviced. This is a dealership lot. Request #1 is for relief in the AP district, which is to protect the aquifer.

In this case, stormwater management is the concern. They will upgrade and enhance stormwater management on this site and DES will also review this. They will also have a spill preparation plan in place. There will be a CUP associated with this as well.

The other 2 requests are for setbacks required for screening and display, both are 50 foot from the street. Their vehicle display area is within 50 feet, but they will reserve space in the back of the property for vehicles being worked on. There is no reason to have a fence around this site for security. There are light industrial uses and other dealerships surrounding them.

Chair Carley asked if this request is for 2 areas; one which is designated for display and one which is for vehicles being worked on. Mr. Lewis explained further.

Mr. Winters asked if what Mr. Lewis had said was that most of the other dealerships are also within the AP zone? Mr. Lewis answered yes. The others include the new Grappone Mazda, Dan O'Brien Kia, the Nissan dealership, etc.

Mr. Monahan asked why they needed the second variance. Mr. Lewis answered he was not sure. It is a gray area. Their plan shows a display area within that 50 feet.

Mr. Spector-Morgan asked how many service bays would be there. Mr. Wilson explained that they have 10 now but will have 16 when they are done.

Mr. Winters asked if they saw the Town of Pembroke's requests. Mr. Lewis answered that they had and asked that this Board deferred it to the Planning Board. He's not prepared to address that right now. The Town of Pembroke would be noticed as part of the Planning Board application.

Ms. Spector-Morgan asked what the CUP was for? Mr. Lewis explained that you propose over 2500 s.f. of impervious service you need one.

Mr. Lewis went through the criteria. It is a reasonable use based on what other uses are in the area. They are not asking for anything more than what is out there now. It is not contrary to the public interest. It is an appropriate and reasonable use of the property. The spirit of the ordinance is observed due to the setback. Not having more screening is appropriate due to similar uses. Substantial justice done as it will meet growing demands and meet requirements of corporate Subaru. The hardship is that it is a reasonable use and it is unique in that it lies in an area which is protecting the AP overlay, just like other developments out there.

Ms. Spector-Morgan asked if both vegetative buffers are both independent requirements. Mr. Lewis explained that the requirement for a buffer and a landscape buffer is when they are adjacent to residential or office uses and the only place they have that is on Integra Drive, east of them. They will provide a 10 foot buffer or fencing there. Ms. Spector-Morgan asked if they would do the fencing there and they answered yes.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION:

Mr. Winters: There are multiple other car dealerships and services all within AP district near them. He is inclined to improve. There would be no more or less impact in that area. For item #1 he would add the condition of what Pembroke laid out. For the other 2, he has no problem with those requests. Imposing a fence near another dealership is inconsistent with the character of that neighborhood.

Ms. Spector-Morgan – For the fence variance she is okay with fencing going in next to the other use. Uniqueness is that they are surrounded by other car dealerships, so a fence is not necessary. Storage of inventory and cars to be repairs within 50 feet of road; they don't really need it based on the plan proposed. She has an issue with the request for relief in the AP overlay. They are expanding the nonconforming use. There is nothing unique

about the property. They want it to be treated the same as other properties.

Mr. Monahan - He is fine with request #3 due to their representation. Request #2 they are changing it to allow a display setback of 10 feet. Request #1, he is trying to get to a better understand of the hardship. The test wells should be a State DES issue. He would defer that to other regulatory bodies.

Mr. Wallner – The hardship is that other dealers are enjoying what they are asking to enjoy. They would be denied a reasonable use. Requests #2 and #3 he is fine with. Requests #1, 2, 3 he is fine with as requested by the Town of Pembroke.

Chair Carley – He is inclined to grant the request for relief from the AP overlay. It is a somewhat attenuated interpretation of hardship, but it is a reasonable use for the property. Similar uses have been there for many years. It is unreasonable to deny them. He does not believe that the Board should waive any technical requirements raised by Pembroke memo due to a lack of expertise in the technical issues . He'd like it to be clear in the motion that they do not excuse them from the condition that they place and monitor a well.. He assumes that others, with technical competence in pollution prevention, will review the project prior to construction.

A **motion** to grant request #3 was made by Mr. Monahan with the understanding that they put a fencing in adjacent to the noncommercial use, which was seconded by Ms. Spector-Monahan. The approval will not alter the character of the neighborhood. The spirit of the ordinance is met. Other properties do not have fencing. There is no gain to the public by requiring fencing. Relief will not diminish surrounding property values. The property is unique. The **motion** passed by a unanimous vote.

A **motion** to grant request #2 was made by Ms. Spector-Morgan. This request is for storage of vehicles being serviced. Representation was made that it is for new cars or sales storage and parking of serviced vehicle will not be a common occurrence. The property is unique, it has 2 road frontages. It is consistent with other properties in the area. It will not diminish values of other properties. There is no gain to the public by enforcing the on this lot. **Motion** was seconded by Mr. Monahan and passed by a unanimous vote.

A **motion** to grant request #1 was made by Mr. Winters and seconded by Mr. Monahan. Mr. Winters noted that the hardship is that there is no other functional use for this property other than what they want, and it is reasonable to expand this property. It is clearly in character with the neighborhood. It will not impact others property values. Substantial justice is done for the same reasons. Mr. Wallner seconded. **Motion** passed by a 4-1 vote with Ms. Spector Morgan in the minority.

0057-2032 177 North Main Street; CU – Urban Commercial District; Jonathan Chorlian for 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.)

Applicant wished to convert existing church structure to a 34-unit multi-family development. The applicant seeks the following variances:

1. Article 28-4-5(d)(2), Maximum Lot Coverage and Density, to permit 34 dwelling units on a 0.74 buildable acre parcel where 8 units are permitted (12 units per buildable acre).
2. Article 28-4-5(d)(5), Perimeter Buffer Required, to permit parking, patios, and buildings within the perimeter buffer required for multi-family development.
3. Article 28-4-5(d)(4), Private Yards Required, 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) Table of Dimensional Regulations, to permit private patios to be no less than 5 feet from a front property line where 15 feet is required.
5. Article 28-7-2, Off-Street Parking Requirements, to permit 50 parking spaces for a 34-unit multi-family development, where 68 parking spaces are required.

6. Article 28-7-13(b), Location of Loading Spaces, to permit a loading area requiring backing into or from a street.
7. Article 28-7-13(e), Setbacks for Loading Spaces, to permit a loading area being within 0 feet of a residential district boundary, where a 25' setback is required.
8. Article 28-7-13(f), Screening of Loading Areas, to permit a loading area having no fencing or landscape buffer, where fencing and a landscape buffer is required.
9. Article 28-7-14, Off-Street Loading Area for Refuse Containers, to permit refuse containers to be located within 18 feet of a residential district boundary, where a 25' setback is required.

Case 0057-2023 and Case 0058-2023 were heard together.

Testified: Jonathan Chorlian and business partner Ben Kelley, as well as Attorney John Arnold. This request is for the proposed redevelopment of the First Church campus to be a 34 unit market rate multi-family project.

Attorney Arnold explained that Mr. Chorlian and his partner Ben Kelley are real estate developers. He lives in Concord and Mr. Kelley lives out of town but have roots in Concord. He showed some of the development that Mr. Kelley had done in town as well as some that Mr. Chorlian had done in town.

Mr. Chorlian testified that this project is the First Congregational Church, which was the first church in Concord dating 1730. They now meet at the Wesley Methodist Church. The building is vacant. There was a fire in the building in the 1930's. They added on in 1967. The building is 265 feet long. They will try to preserve the details in the building as much as possible. It has one of the largest lawns downtown. Overall it is a 1.2 acre project. They have 4 different parcels in 2 different zoning districts. They have two parking lot parcels. They have 3 right of ways that exist on their parcels. They will take their 23,000 s.f. building and will create 26,000 s.f. They will have 34 units. Mr. Kelley explained that they will have 1 and 2 bedroom units. They incorporated common area, lounges, and outdoor spaces to bring a social component to the project. Each unit will be roughly 765 s.f. They showed overlays of 1 and 2 bedroom layouts. There are no micro units. They are market rate units. They showed a site plan. They discussed parking lots and parking space sizes. Parking will be reduced from 98% lot coverage. They will maintain a 24 foot drive isle and will reduce the parking space size to 8 x 15 spaces. They added patios to the front and some common patios and decks on Washington Street and Main Street sides. They added green space. They showed a landscape plan. They added trees where asphalt exists. They showed a final site plan including green space, trees and parking. It is a massive building. They are trying to repurpose a building in a viable manner. They showed the parking calculations based on the existing ordinance and the proposed ordinance. They believe they will have 10 parking spaces too many. They will assign tandem spaces to the 2 bedroom units.

Attorney John Arnold spoke about the density variance asking for 34 units where 8 are allowed. The 8 unit number allowance is calculated based on the land area the church is sitting on. Two lots that the church sits on are going to be merged. The two parking lots are lots of record and do not factor in. Density is to manage population density. The unit of measurement is dwelling units. Studio or single bedroom units are 1 dwelling unit. Most of the units will be studios or single family. The total count is 44 bedrooms. The total population is based on that design is 44. As for the variance criteria; 34 units will not threaten public safety, health or welfare. Most units are small. Bedroom count will be 44 bedrooms. This is not new construction. The use will replace a church that closed about 3 years ago. For the past 3 years it has been operated as a cold weather shelter for the homeless. It will revitalize the area if redeveloped. Substantial justice as there is no harm to the public. It provides a significant public benefit. It provides housing at a time when there is a need for it. It will preserve an old church. The church is too big to convert to it to 8 housing units, which is allowed. Due to property values it would not be marketable. The apartments will revitalize the area and be more consistent with other area uses. They passed a letter out from a local realtor stating it will not diminish surrounding property values. This is a 150 year old 23,000 s.f. church building on small and unusually shaped lot. It cannot be repurposed for many uses. Converting the building to the 8 allowed units would mean the units would be 3,000 s.f. units and that would be hard to market and the cost to convert them would be substantial.

Chair Carley asked if they were addressing 0057-2023 and 0058-2023 at the same time. Attorney Arnold answered that they were addressing both cases at the same time. At this point Chair Carley read the variance request 0058-2023 into the record. Attorney Arnold continued his testimony.

Zoning Administrator Hutton addressed the Board regarding the first request under Case #0058-2023. This request to Article 28-7-8(b) is a CUP, not a variance, and will not be addressed by this Board.

Attorney Arnold grouped 3 variances requests, #2, #3, #4 regarding perimeter buffers, it is to allow existing building and parking to remain within the 50 foot buffer and to allow the patios within the 15' setback. The hardship is that the building exists and occupies almost the entire lot. They cannot create 300 s.f. private yards as there isn't enough room around the building. None of these variances are not contrary to public interest and they will not decrease property values.

Requests #6, #7, #8, #9 grouped together. Mr. Winters asked if they were backing into Washington Street? Mr. Kelley answered they would back down Washington Street and pull out. Chair Carley asked if it was a one way street. Mr. Chorlian answered it was a one way street. Attorney Arnold continued that it is an easement and backs to the Islamic Center property. There is no other way to configure it from a hardship prospective. Even if you wanted to connect to the parking lot, it is too tight and parking spaces would be lost. As far as the setbacks for buffers, refuse containers, etc., the property line between the church property and the parking lot is along the loading space. It abuts their own property and their own parking lot, so screening and buffering aren't really applicable. The refuse containers will go up against the building so they cannot go back any further.

Parking Lot variances #5, #11, #12 grouped together. The improvements will make it safer and more accessible. They would have more than they need with 68 parking spaces. Most units are 1 bedroom or studio. They will only have a need for 1 parking space per unit. Tandem parking spaces is a practical way to provide additional parking spaces. Hybrid parking space variances for 8.5 wide by 17 feet long to maintain a 24 foot aisle width. This is the best and most viable option for this property moving forward. The existing church building is main constraint.

Mr. Monahan asked who owns the building. Mr. Chorlian answered that the building is owned by Concord Coalition to End Homelessness. First Church Holdings LLC, which is owned by Mr. Chorlian and Mr. Kelley, will take Title and is under agreement. They are looking at a late August closing. Mr. Monahan asked if they were a taxable entity? Mr. Chorlian answered yes. Mr. Winters asked if there was any access to your property from Pearl or Main Streets or just from Washington Street? Mr. Chorlian answered they have access from Washington Street and North Main Street.

In favor: Irene Hanslin, who owns the little house at 20.5 Washington Street. She's glad something is getting placed at the church. They have addressed her parking issue.

Dick Lemieux, 7 Washington Street, who has lived there 30 years. All these changes would improve their neighborhood. Traffic concern. Cut through traffic is a concern. They are not worried about the additional people in these apartments. They like the addition of trees as a landscape buffer. He is a member of Concord's Bicycle Committee and he would like some secure bike parking on that site.

Barbara Lemieux, 7 Washington Street, supports the project.

Mark Boisvert, 9 Washington Street. His front porch is directly in line with the loading dock that is now the Islamic Center. He's lived there for 26 years. The church building is part of the neighborhood. He hopes the building stays without major changes. The number of apartments and people will be a decrease in people and activity.

Claude Gentilhomme, Architect. He is also on the ADR Board for Concord but is not here in that capacity, but as the capacity of an abutter. The church attendance has declined in New England in the past many years. Now you have a building with wonderful architecture left abandoned. The only other logical use is to turn this building into residential uses. It will contribute to neighborhood. This will preserve the building and contribute to the neighborhood. Looking at the back of his home, they see the asphalt parking lot. They will enjoy seeing it turned into landscaping. They support this project.

Karen Jensen, Executive Director, and Mark Pagan, Concord Coalition to End Homelessness. They thanked the neighbors for their patience with them over the last 3 years. When operated as a day time resource center they had 650 clients. There was a lot of traffic during the day. During the night when it was a winter shelter there was about 200 people utilizing it. They cannot continue to operate there. They have another building down the street they are utilizing. They have approached many different parties trying to sell the building. This is the least number of units based on discussions they have had with building developers.

In opposition:

Roy Schweiker, 12 Chapel Street, who has lived there for 50 years. Concerned with the number of vehicles there. There is a shortage of parking in this area. Where will they put snow? The purpose of the Zoning Ordinance is to balance the needs of the community. The Zoning Board is always in favor of the developer. The building was rebuilt in 1937 and addition was built in the 1960's. Tear down the Sunday School Wing and you will have more parking and more buffers. He read his own interpretation. What they are asking for conflicts with the ordinance. The request is not consistent with the area's use. Values not diminished. Maybe they should have marketed the church to another denomination as a church. His understanding is that they got the property for free and use it for a shelter, the investment they have in this property is not a hardship.

Ahmed Gabir, lives at 11 Pearl Street, which is a one way Street. He has a small back yard. He is a psychiatric social worker. He works at the State Prison in the psychiatric unit. He's raising 5 children. He feels it is a lot of people for such a small space. There are a lot of children in the area and it is crowded. He uses the parking lot for the kids to ride bikes. It is dangerous. A lesser number is better than the number they are asking for.

Moe Djalrabi. He's lived in Concord for 30 years. He lives on Pleasant Street, but lived in that area about 17 years ago. He attends the Mosque. He doesn't oppose the development of the site, but does oppose 34 units on a small parcel that is designed for less.

Testimony was provided by a member of the Islamic Society who has 2 small children. They had an agreement to utilize and share the space. They cannot block the area as there is no exit. Not sure how they can put 34 units there when only 8 are allowed. They are their direct neighbor. They have an Islamic School there. They are asking for 14 variances, not 1 or 2. Washington Street is one way.

Attorney Brett Allard of Shaughnessy Raiche PLLC. They are not anti-development. What is being proposed is far too dense. The lot cannot support it. What is being sought are mechanisms to control overcrowding. It will change the essential character of the neighborhood. Traffic will be coming in and out at all times of the day and night. The Supreme Court is clear that traffic issues can be considered. Those intersections are very busy intersections. They are proposing many curb cuts in that area, tandem parking spaces, undersized parking spaces, and there will be snow removal issues. The Board needs to ask the applicant to produce a traffic study to analyze trip generation of vehicles coming in and out of the site. How does it affect the intersections? The board doesn't have enough information. The request is not consistent with the ordinance which is to control overcrowding. It will affect surrounding property values. The use is dense and more intense than what was previously there or allowed. There is not a whole lot of analysis. How will it devalue surrounding properties? Where they are proposing to place their refuse container will interfere with their clients right of way. The fact that a refuse contain, unscreened with trucks coming in and out, backing into this property, onto his clients right of way, suggests that this project is being built too densely. The frequency of how often they will be backing into Washington Street should be looked into. There will be, at least, weekly trash removal or other deliveries, etc. He hasn't read the appraiser/realtor letter they submitted. He would encourage the board to order a third party review. In order to have an unnecessary hardship they need to determine if there are special conditions of the property. You cannot pick any special condition. If you have an already too large building, that doesn't mean that the oversized building isn't special, or justify doing this project. There are too many variance requests and they are concerned with the nature of them.

Mr. Monahan asked Attorney Allard if there was a traffic study done when the Islamic Center was done. Attorney Allard answered there was in 2017. Chair Carley asked if it was Zoning or Planning that requested it. The answer given was that it was the Zoning Board. Ms. Spector-Morgan asked about the Islamic Center and parking. Zoning Administrator Hutton explained that there was an agreement written, but it dissolves upon transfer. Due to change in Statue, they cannot force them to comply any longer.

Mohamad Mobinetour, Professional witness. He has been a Real Estate broker since 1997 in the state of New Hampshire. What is the best and highest use of this property and if the proposed unit will affect the value of neighboring properties. He has known Ben Kelley for a long time. He is sure they will do a good job on the project if it goes through. He has done a lot of market analysis and broker opinions since 1997. At this property, the best and highest use, in his opinion, would be less units; a mixed use property. Possibly 2 or 3 bedroom units. And a community hall in front for wedding functions, etc. Hybrid parking. Every property and location is unique. At this location, reduced parking space sizes where there is a mosque would be a fire hazard. The present owner said no other buyer presented any use that was better than this particular use. He is personally aware of some investors that would have purchased through him, but their offer was not accepted. That offer would have been less units. If this property were properly advertised in MLS, there would be quite a few people interested.

An economist and a mom who takes her children to the mosque testified. She agrees that there is a parking crisis. Especially when there is a celebration at the mosque. In view of that, if there were to be 34 apartments here, the parking issue would be exacerbated. If they reduce the number of apartments, the apartments unit will be larger. They will be losing profit margin on each unit, but the remaining space could be used for social development. They could still be small units but have a better use of the space and help the community be happy.

Comments from Code: none.

Letters submitted from: Jeff Trovato and Gabrielle DiRenzo of Washington Street. Ryan Hvizda, 11 Washington Street and also owns 9.5 Washington Street in favor. Bianca Contreras, Dippold & Dennehy Real Estate Group, professional opinion that it will not diminish property values. Richard Briggs, opposed to proposal for many of the reasons stated above, including the density. J. Diegel of Gallagher, Callahan and Gartrell of 214, 220 N Main Street in favor.

Rebuttal: none.

DECISION:

Case #0057-2023, variance request #1 to allow 34 dwelling units vs. 8 allowed:

Ms. Spector-Morgan understands the neighbor's concerns. She is in favor of the density variance. It does not alter the essential character of the neighborhood as it is already a residential neighborhood with multi-family dwellings there. It will not diminish property values, just the density as the building is there and outside is not going to be changed much, if at all. There will be no benefit to the public by denying as there will be nothing done to the outside of the building. If they do not get the density variance, they will need larger units which will be harder to market. The property is unique given the size of the building that exists on the lot. As far as not being able to be just a unique feature of the building; the variance being requested relates to a large building on the property. The only feasible way to make this reasonably happen is to increase the density. They have to act on the proposal before them.

Mr. Monahan agrees with Ms. Spector-Morgan. It is consistent with the neighborhood. There are ways to manage the impact. The developers have come forward with a good proposal. He is leaning towards supporting the request.

Mr. Wallner agrees. It is in the public interest to have more housing. It will not alter the character of the neighborhood. It will not diminish surrounding property values. The hardship is that it is a unique structure on a unique lot in two zones.

Mr. Winters discussed the hardship being that it is an existing building and the building's placement on the lot. The number of units is beyond what the hardship justifies. The ordinance is based on the number of units. He is inclined to approve more units than 8 or 14. Having 700 or 800 units is denser than the character of neighborhood.

Chair Carley discussed the building being an anomaly in the neighborhood and it having historically been that for a long time. The physical characteristics and placement on the lot create a hardship. His reservation is the

number of units and the density. Attorney Allard made a legitimate point that the presence of a hardship related to the number of units does not necessarily mean that the appellant is entitled to over burden the lot in other ways. He thinks they may have too many units for the lot itself. He is inclined to agree with Mr. Winters that he would support a lesser number of units, which is not what they are asking for. He is concerned that 34 are too many. Mr. Monahan asked what measure will they use in the future if the applicant comes back with something else.

Ms. Perkins added that as a real estate agent they often use the calculation of 2 people per bedroom, which is 2 drivers.

Mr. Monahan asked if a traffic study is something that the Zoning Board could ask for. Chair Carley noted that they typically do not. Mr. Chorlian interjected that they requested a parking study in the past. Zoning Administrator Hutton inserted that the ordinance says the board can ask for a survey.

A **motion** to approve 34 units based on the reasonings given by Ms. Spector-Morgan was made by Ms. Spector-Morgan, seconded by Mr. Monahan and failed by a 2-3 vote with Chair Carley, Mr. Winters and Mr. Wallner in the minority.

A **motion** to deny the request for 34 units was made by Mr. Winters and seconded by Mr. Wallner. Mr. Monahan wondered if they should recess so they can come back with something different. Chair Carley interjected that if the motion to deny carries, the Board can Table the rest of the requests. The motion to deny passed by a 3-2 vote with Ms. Spector-Morgan and Mr. Monahan in the minority.

A **motion** to Table in case #005-7-2023 items #2, 3, 4, 5, 6, 7, 8 and 9 as well as in Case #0058-2023 items #2, 3 and 4 to the August meeting was made by Ms. Spector-Morgan, seconded by Mr. Monahan and passed by a unanimous vote.

0058-2023 14-20 Washington Street; RD – Downtown Residential District; Jonathan Chorlian for Concord Coalition To End Homelessness, Owner:

Applicant wishes to continue the primary parking use of the parcel to support the development of 177 North Main Street. The applicant seeks the following variances:

1. Article 28-7-8(b), Separation of Driveways in Residential Districts, to permit a 15' separation between driveways where a 30' separation is required.
2. Article 28-7-7, Parking Area Design Standards, to permit 8 "tandem" parking spaces, where tandem spaces are not permitted.
3. Article 28-7-7(a), Standard Parking Spaces, to permit parking spaces to measure 8 ½ feet wide by 17 feet long, where standard parking spaces are required to measure 9 feet by 19 feet.
4. Article 28-7-6, Compact Automobile Spaces Permitted, to allow compact spaces (7 feet wide by 15 feet long) in a residential development.

See Case #0057-2023

0062-2023 23 Montgomery Street; CVP – Civic Performance District; Carolyn E Trembly Revocable Trust 2018, Owner:

Owner wishes to construct a 100 square foot deck and 120 square foot accessibility ramp and seeks a variance, in accordance with RSA 64:33.V, to Article 28-4-1(h), Table of Dimensional Regulations, to allow construction at 5 feet from the property line where 25 feet is required.

Testified: Carolyn Trembly who owns 23 Montgomery St. David Lynch, the builder of the project was also available to testify. Ms. Trembly wants to construct an elevated walkway from a back door of the house to the

deck to access a ramp. Her mother lives there and has difficulty getting in and out of the house. The other egresses have steps. They need a ramp and they want a walk way to get to the porch so her mom can enjoy the porch.

Ms. Spector-Morgan asked how much of this exists there now. Ms. Trembly answered that none of the deck of the walk area exists now. The porch on the bottom right does exist and is accessible by the second floor unit only. They do not meet the 15 foot setback. She questioned the zoning standards as she found one that said a 15 foot setback for the front rear and sides and another one said it was 15, 15 and 25. Zoning Administrator Hutton confirmed the setbacks were 15, 15 and 25. Chair Carley asked where she found the other standards. Ms. Trembly explained she found them under Article 28-4. The attachment said 15, 15, and 15.

Mr. Winters asked if this was in the front yard? Ms. Trembly answered it was in the back yard. The side yard is 25 feet. The porch currently extends 7 feet from the northwest property line ,which is a side line. Mr. Winters asked if the new construction extends further. Ms. Trembly answered that it would be completely parallel with the current porch. The rear one will be within 5 to 7 feet of the back property line.

Ms. Spector-Morgan explained that if she would like to put a ramp on her property to allow someone access who cannot get access, she can but it is conditional that when the person leaves the property, they have to take the ramp down. She asked if Ms. Trembly would like to do it that way? Ms. Trembly answered she did not want to do it that way as she plans on living there to retire as well.

Ms. Spector-Morgan explained that under RSA 64:33 V, relief can only be for that one particular person, and once that person is no longer there she would have to take the ramp/deck down. Ms. Trembly explained that this is a family home. If she needed this ramp, would she have to tear it down and go through this process again? Ms. Spector-Morgan explained that she would not have to tear it down, but she would have to reapply to the Zoning Board for relief. Chair Carley explained the difference to Ms. Trembly.

A letter was submitted in favor from Mike Somers who is the abutter to the rear of this property.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION:

Mr. Wallner: There is no other place to put the ramp. It is not contrary to the public interest. The spirit of the ordinance is observed. It will not impinge on surrounding property values.

Mr. Monahan agrees.

Ms. Spector-Morgan agrees. The Board does not have to find a hardship.

Mr. Winters and Chair Carley agree.

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

0064-2023 21 Jackson Street; RD - Downtown Residential District; Dale J Cunningham Revocable Trust & Charles B Woodhouse Revocable Living Trust 2014:

Owner wishes to enclose an existing external non-conforming feature of a residential structure and seeks a variance to Article 28-8-5(a), Repairs and Maintenance, to an additional living area two feet from the rear property line where 20 feet is required and 8 feet from the side property line where 10 feet is required.

Testified: Josh Brown of JB Design Build. They do not meet the setback as it is now. They will shorten the deck

and bring it in line with the house. They are adding a roof above to allow for more outdoor living space. They will be making the deck smaller.

Ms. Spector-Morgan asked if was to be a 3 season or 4 season area. Mr. Brown answered that it would be a 3 season screened in room. Mr. Winters asked if was to be insulated. Mr. Brown answered it was not going to be insulated, but because they added a roof structure due to the building codes, they are here before the board.

Mr. Monahan asked if they would be more conforming with their setbacks. Mr. Brown answered they would be.

Mr. Brown asked about the shed he had requested relief for. Zoning Administrator Hutton answered that the shed was not part of the written application. Mr. Brown answered that the shed was going to be at the top of the driveway, which would require a variance. Chair Carley answered that the board could not act on that as it was not part of the application before them.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION:

Mr. Winters noted that they are not changing the existing setback. They are improving it. They are not fully enclosing the room. It is a mild modification. Mr. Winters **moved** approval and Mr. Wallner seconded. Mr. Winters reasoning is that it is an existing building. Having a partially enclosed deck is reasonable use. The hardship is to the move structure. It is consistent with the character of the neighborhood. It will not impact property values. Substantial justice done. **Motion** was granted by a unanimous vote.

0065-2023 89 Abbott Road; RS – Single-Family Residential District; Karen Bedard, Owner:

Owner wishes to construct a single-family dwelling and seeks a variance to Article 28-4-1(h), Table of Dimensional Regulations, to allow construction on a lot having 70.16 feet of frontage where a minimum of 100 feet is required.

Testified: Karen Bedard and Michael Bedard. Their lot has 70.16 feet of frontage. They bought the property in July of 2021. The City took some of their frontage back in the 1930's. Bartlett Associates discovered that. They do not have the frontage they need. They wanted to take down the existing structure and build a new home on it. They had to have an asbestos abatement done, disconnect utilities, etc. They are looking to sell it and they need a variance before they do.

Mr. Bedard touched on all criteria in his application. The City is only taxing them on the lot itself as he removed the building. Their buyer will put a new building on it. It is an unnecessary hardship not to grant the request. No fair and substantial relationship exists. The general purpose of the ordinance is kept. The use is a reasonable one. It is a single family lot a residential area.

Chair Carley asked if they were requesting nothing but frontage for relief. Ms. Spector-Morgan asked if they knew how they ended up being the only lot without 100 feet of frontage. Mr. Bedard explained that this was a massive subdivision and as they were creating lots it magically appeared in history. Mr. Wallner asked what existed on the lot now. Mr. Bedard explained that there is nothing there now, he took the house down that had been there.

In favor: Jessica Wheeler-Russell, who lives on Manor Road. She is the daughter of the pending buyers. Her parents would like to live closer to her family. This land is a 3 minute walk from her home.

In opposition: Bill Calvin, on behalf of his in-laws. He read a statement from his father-in-law. They would like more clarity. They would like to see where the new home that will go there will be located. They do not approve. It will infringe on their privacy. The house that was there was built in the 1940's. In order to comply with side setback requirements, their front/rear facing windows will face theirs. It would invade their privacy and be a

sideways home vs. other homes fronting the streets. The owners say that on July 28, 2021, he purchased 89 Abbott Road. The actual date of purchase was August 16, 2023. The only thing he could find for a demolition permit was for 89 Abbott Court. He couldn't find any record for asbestos removal. The size of the home he wants to build will impinge of their privacy. They have not approached the neighbors about plans for this home. His in-laws are Frank and Kathy Roach at 87 Abbott Road.

Comments from Code: none.

Rebuttal: Mr. Bedard. The survey maps out the setbacks. A single family home will fit well within the setbacks.

DECISION:

Mr. Monahan: This is a reasonable use. It is an odd lot size with some historic anomalies to it. This is a reasonable request. Future setbacks are not before the board to act on. He is in favor of the request.

Ms. Spector-Morgan: The lot is clearly unique. Every other lot has 100 feet of frontage. The house will need to fit within the setbacks. It will not alter the character of the neighborhood. A single family home on a lot in a single family neighborhood will not decrease property values. There is no benefits in denying the request.

Mr. Winters agrees.

Mr. Wallner agrees.

Mr. Carley agrees.

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

0066-2023 1 Granite Place; IS – Institutional District; 81 Hall Street LLC, Owner:

Owner wishes to create a lot with no frontage where 150 feet are required and seeks a variance to Article 28-4-1(c), Minimum Lot Frontage.

Testified: Attorney John Arnold of Orr & Reno. This building is the old Lincoln Financial Center. The development was done as 2 separate office buildings with a common lobby for both buildings. The south lot has frontage along Rumford Street and Penacook Street. The right of way comes in on the main drive on the north driveway. The State of NH leases the entire south building with the option to purchase it. It would be 6.5 acres, parking and building. The State is expected to purchase it this summer. Nothing will change other than it transferring from Mr. Duprey to the State of NH. They will separate the lots to become a lot of record to the State of NH. The proposed 6.5 acre lot complies with everything but frontage.

Ms. Spector-Morgan asked if it complies with the setbacks? Attorney Arnold answered that a variance was granted when the building was built.

Attorney Arnold addressed the variance criteria. The property will remain the same. There will be no harm to the general public, no diminution of property values. The property was developed in an unusual fashion. All access has been shared since day one.

Ms. Spector-Morgan asked if they would be doing a deeded easement? Attorney Arnold answered that there will be a deeded easement.

In favor: Martin Piroso who owns property to the west. He doesn't see a problem with this at all. It should not impact anyone.

In opposition: none.

Comments from Code: none.

DECISION:

Mr. Winters: It is a unique lot. The State of NH doesn't need frontage. There is unique access. No neighboring properties being impacted other than Mr. Duprey's lots. A **motion** to approve the request.

Ms. Spector-Morgan doesn't like to create lots without frontage. It is a unique lot. It will be a deeded access down an existing access way. It will not alter the character of the neighborhood. There will be no gain to the public by denying the request. She is in favor of the request.

Mr. Monahan, Mr. Wallner and Chair Carley all agree.

Mr. Winters made the **motion** to approve the request, Ms. Spector Morgan seconded the request with the condition that there be a cross easement and passed by a unanimous vote.

0067-2023 303 Sheep Davis Road; GWP – Gateway Performance District; George Geers Revocable Trust, Owner:

Applicant wished to develop a 48-unit multifamily housing project and seeks a variance to Article 28-7-2, Off-Street Parking Requirements, to permit 84 parking spaces where 96 parking spaces are required.

Testified: Attorney Phil Hastings of Cleveland Waters & Bass. Alexandria Penagiotakos, Vice President and Director of Real Estate and Asset Management of CATCH and Morgan Dunson of Nobis Group also available to testify.

Attorney Hastings explained that this project was already approved for 48 units on Sheep Davis Road for CATCH. They need to close by 9.30.23. They are required to have 96 parking spaces but propose 84 spaces. They asked for a CUP for 84 spaces. And they set aside an area to build it later. That CUP was granted. But to comply, they have been advised they either need a variance to permit the additional 12 spaces which they do not intend to build, which would require a retaining wall within the side setback, or ask for a variance consistent with CUP to have 84 vs. 96 spaces.

Ms. Spector-Morgan asked about the uniqueness? Attorney Hastings answered the odd shape of the lot makes it unique. Ms. Dunson noted that there is a stream and brook abutting. Attorney Hasting noted that the sloping nature of the lot drives the need for a retaining wall. The only space the 12 parking spaces could be located would be the northerly side of the lot, which has the physical constraints. Ms. Spector-Morgan asked why they did not need all those spaces. Ms. Penagiotakos explained that they 400 units. They average 1.25 spaces per unit.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION:

Mr. Wallner did not get any information as to why there is a need for 96 parking spaces. There could be 12 more but they weren't going to build them. Ms. Spector-Morgan interjected that they a CUP saying they don't have to build them.

Mr. Monahan agrees. It is a unique property. It is tough to squeeze those parking spaces in.

Ms. Spector-Morgan agrees.

Mr. Winters agrees.

Chair Carley agrees. The topography and the shape of lot is unique.

A **motion** to approve was made by Winters, seconded by Spector-Morgan and passed by a unanimous vote.

0068-2023 8 Merchants Way; GWP – Gateway Performance District; Interchange Development LLC, Owner:

Applicant wishes to install a sign on the front and rear of their commercial building and seeks a variance to Article 28-6-9(b), Permitted Building Signs, for a combined total of 76 square feet of building signage where 45 square feet is allowed.

Testified: Ben Duval, Classic Signs. Service Credit Union leases the property. The building is oriented sideways.

Laurie Rauseo, property owner available for testimony.

Mr. Duval noted that the unit does not front the access road. The architect renderings shows signage front and back. The tenants thought they could have signage front and back, but then they realized they could not have it. They utilized 40 s.f. on their front side.

In favor: none.

In opposition: none.

Comments from Code: none

Decision:

Mr. Winters noted it was an odd shape lot. In order for them to promote their business they need this signage.

Ms. Spector-Morgan agrees. Orientation of the building makes it unique. The amount of signage is reasonable. It will not alter the character of the neighborhood. It will not diminish property values.

Mr. Monahan agrees.

Mr. Wallner sees similar cases.

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.

0069-2023 6 Midland Street; RS – Single-Family Residential District; Leslie A Barry, Owner:

Owner wished to install an inground pool and seeks a variance to Article 28-5-32, Accessory Buildings and Facilities, to construct the pool 23 feet from the rear where 25 feet is required, and 3 feet from the side where 15 feet is required.

Testified: Leslie Barry. The property line runs at an angle. It creates a short corner on one side of the property. They were looking to put the pool on the left side of the property. The 3 feet is the cement that goes around the pool. It goes up to about 7 feet due to the angle towards to the house end of the pool.

Ms. Spector-Morgan suggested that they could put the pool in the middle of the back yard and meet the setbacks. Ms. Barry answered that it would fit in there tightly. Chair Carley asked why not make the pool 2 feet shorter. Ms. Barry answered that this would be 18/36 with a 4 foot apron that goes around the pool. Mr. Winters asked where the house was situated towards the rear of her home. Ms. Barry noted she had a fence for privacy. Mr. Winters asked if they could put the pool in the middle of their back yard. Why not center it? Ms. Barry answered that she has 3 young children and still needs some grass area for the kids to play. Mr. Monahan asked if she was had well or septic? Ms. Barry answered she has city services. There must've been a variance granted for the neighbor's garage as it looks to be only 10 feet from the property. Other neighbors seem to have pools running the long way on the property.

In favor: Jean Ver Hoeven, 264 South Street. She is use to pool noise. She is not for or against it. 262 and 266 South Street have both asked her to ask if she can fence it in so no one can see the pool. Her patio will be pretty close to the pool when she is out in her back yard.

In opposition: none.

Comments from Code: none.

Letters: Jordan Fithian of Madison St. in favor. Has an inground pool himself. Mark Moore of 5 Mooreland Ave. is in favor. Lynda Levy of 8 Midland Street is concerned it is too close to their property line. She is concerned about damage to the value of their home. William Falkner supports the application.

Rebuttal: Leslie Barry. She invited the neighbors over to see where the pool would be going as they laid out string for a visual. There is a fence in the back yard. They will finish up the fence.

DECISION:

Ms. Spector-Morgan cannot support the variance as there is a conforming place to put it and there is no hardship.

Mr. Winters partially agree. He is inclined to approve the 23 feet vs 25 as it is minimal. The shape is a reasonable size pool for this area.

Mr. Monahan thought the side setback is a matter of choice. It is not a hardship but a matter of convenience and ordinance doesn't allow that flexibility.

Mr. Wallner noted it is a good size pool. He is okay with rear setback of 23 feet, but a little concerned with side setback of 3 feet.

Chair Carley don't see the hardship because the pool could go someplace conforming.

A **motion** to deny the request was made by Ms. Spector-Morgan as there are no special conditions of property which would warrant granting variance as they could place the pool in a conforming spot, seconded by Monahan and passed by a unanimous vote.

MINUTES AND FINDINGS OF FACTS:

A **motion** to approve the Minutes and Findings of Facts from the June 14, 2023 Meeting was made by Mr. Wallner, seconded by Ms. Spector-Morgan and passed by a unanimous vote.

Respectfully submitted,

Rose M. Fife

Zoning Board of Adjustment