

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
AUGUST 2, 2023  
MEETING MINUTES**

Attendees: Chairman Christopher Carley, Nicholas Wallner, Andrew Winters, James Monahan and Brenda Perkins.

Absent: Laura Spector-Morgan, Tedd Evans

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

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Meeting commenced at 6:00 pm.

**Public Agenda**

- 1) Call meeting to order
- 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**

**0076-2023 Request for Rehearing :151 Elm Street; RO – Open Space Residential District; Jamie & Jacob Farwell, Owners:**

Owners wish to operate an Automotive repair, service, and towing business and seeks a variance to Article 28-2-4, *Allowable Principal and Accessory Uses in Zoning Districts*, to allow use J4 - Automotive repair, service, and towing, excluding body work.

Chair Carley asked the Board if they felt that they had made an error in law or if there was new factual information available that was not available at the time of the hearing that is relevant?

Chair Carley asked the Board if they had read the written submission.

Mr. Wallner noticed a reference in the material that the Board had granted, in an RO zone, the wedding venue on Bog Road. This was precedent in an RO zone. There is also quite a few letters in support from people in the neighborhood.

Mr. Monahan believes there is new information. He was not at the original hearing.

Mr. Winters was also not at the original hearing but reviewed the Minutes. He read the submission. He wasn't sure why this information was not submitted the day of the hearing. He is not in opposition of rehearing.

Ms. Perkins is inclined to support a rehearing. Neighborhood support says a lot.

Chair Carley does not see anything in the submission that qualifies for an error of law or procedure. The submission of additional comments from neighbors is not new information germane to the case. He is not in support of a rehearing.

For the record Zoning Administrator Hutton noted that the Board does not set precedent.

A **motion** to approve the request for a rehearing was made by Mr. Wallner, seconded by Ms. Perkins and passed by a 4-1 vote with Chair Carley in the minority.

## PUBLIC HEARINGS

### 0072-2023 **5 Pine Street; RN– Neighborhood Residential District; Concord Whyte Properties 6 LLC, Owner:**

The owner wished to construct a two-family dwelling on an existing lot where there is an existing multi-family dwelling and seeks the following variances to:

1. Article 28-2-4(h), *Allowable Principal and Accessory Uses in Zoning Districts*, to allow multiple principal uses on the same lot where the existing multi-family use is not permitted by right;
2. Article 28-5-2, *Duplex or Two-Family Dwelling*, to allow construction of a duplex on a lot with approximately 59' of frontage where 120' is required; and
3. Article 28-5-2, *Duplex or Two-Family Dwelling*, to allow construction of a duplex on a lot of approximately 11,400 sf where 15,000 sf is required.

Testified: Attorney John Arnold of Orr & Reno. Dan Whyte is the owner. Attorney Arnold showed a site plan and explained where the new building would be located on the property. The driveway on Pine Street will be closed off. They will be connected with 104 Pleasant Street through a shared driveway. The building on 104 Pleasant Street holds an office space on the bottom floor and 3 residential units on the top floors. This is a redevelopment of the property. The garage will be redeveloped to a duplex. He showed renderings of the new building. It will be about the same size as the garage that is being demolished. Multiple principal uses are allowed on the same lot, if both uses are allowed. This use is grandfathered, but not allowed by right. They are not changing the existing multi-family building which is grandfathered. They would like to add a use to the property that is an allowed use. This will not create any threat to the public health or safety. It is a legal pre-existing non-conforming use. Both uses are lawful for different reasons. This will not create any hazards. There will not be any impact on the neighborhood. There are several multi-family buildings and duplexes in the neighborhood on the same block. There are approximately 6 properties that exist this way. The adjacent property is owned by Mr. Whyte. It meets the substantial justice prong as there is no harm to the general public. There is no meaningful impact on anyone. They will access the property through 104 Pleasant Street. It is a public benefit due to the housing shortage. The surrounding property values will not be affected. It will be an attractive building. The hardship is that it is a very narrow and deep lot. It is only 60 feet wide. There is an existing non-conforming use on it now. It is adjacent to the IS zoning district. If this were shifted 45 feet to the south, it would be allowed by right. 5 Pine Street will be tied into 104 Pleasant Street and developed. The properties will operate cohesively. The two properties will have shared parking and shared access. The restriction prohibits multiple principal uses on a lot. This does not demonstrate any general public purpose to the provision. What purpose does it serve? The additional use does not make the nonconformity anymore nonconforming. If you prohibit the additional use, which is allowed by right, based on the existing use being nonconforming; therein lies the hardship. The lot is an old lot and the dimensions are insufficient for a duplex. A variance from frontage and lot size are required for allowed uses in the first place. 5 Pine Street is getting the benefit of additional land and frontage to use as well as shared access and shared parking. The lot size deficiency is only 3500 s.f. short of the required lot area. Not a dramatic difference.

Chair Carley asked Zoning Administrator Hutton what makes the building nonconforming. Zoning Administrator Hutton answered that multi-family are not allowed in the district. Mr. Winters asked if the parcel was vacant, could they build 2 duplexes? Attorney Arnold explained that a duplex is an allowed use by right, but more than 2 duplexes on a property, would mean it would be a PUD and the ordinance has a separate provision that deals with a PUD. There are specific requirements on how to do those. Ms. Perkins asked if they need to do a deeded right of way. Zoning Administrator Hutton explained that would be at the Planning Board level.

Chair Carley asked Zoning Administrator Hutton if they would need a variance to build the other unit if they combine 2 units into a single unit? Zoning Administrator Hutton answered they would not. Mr. Monahan asked where the frontage was located. Attorney Arnold explained they had 59 feet along Pine Street. The zoning district boundary runs along the property line. Mr. Winters asked about parking. Attorney Arnold explained that the parking that exists now is not great. The driveway comes in and goes to the garage as it sits now. The new plan shows the parking lot being dramatically improved as it will be on both properties and shared. 104 Pleasant Street lower tenants are office space tenants so the parking spaces will not be used in the evening.

In favor: none.

In opposition: Tim Dining, 7 Pine Street. He has lived there 22 years. He is surprised to hear there are grandfathered conditions at 5 Pine Street. Parking has been an issue there for years. When the high school is in session, kids park all along the street. The entrance to 104 Pleasant Street is on his street. This will increase the volume of traffic on Pine Street. He was surprised to hear that the new duplex would be the same size as the garage that is there. He's not sure how they can fit a duplex on the same foot print. It is a very tight lot. 5 Pine Street is already within 6 feet of their property line. There is a negative impact. This is a 3 unit apartment house, but it wasn't until a few months ago when it was converted to 3 apartments.

Jane Boesch, 7 Pine Street. She concurs with her husband Tim Dining. For the past 22 years that they have lived there, that property was occupied by a little old lady. They never realized there was any multi-use zoning for that single family home. There is a reason the City has drawn a line there to demark residential houses from multi-use properties. This would radically change this part of the street. To change this from a single owner to 5 units is a dramatic change. It is not in keeping with the historic nature of the neighborhood. This will dramatically change the nature of her property and drop her property value significantly. Their property line goes up to 12 feet from their house. That's pretty close quarters. To add these units will dramatically change the quiet nature of the neighborhood. Attorney Arnold says they are only 35 s.f. short, but that's with combining the 2 properties. There is a granite wall they will have to remove to combine the 2 properties that is 6 feet tall. That alone will change the noise level and the nature of the neighborhood. She stated that Mr. Whyte has taken down every tree on the property on the corner and to her that has made an increase in noise from Pleasant Street. She is confused why they are even having these conversations when the zoning laws prohibit what they want to do on this property.

A letter was submitted from Ron & Jerry King. They are neighbors at 10 Pine Street. There is an existing multi-family renovation which should never have been allowed. A proposed duplex is not allowed and there is insufficient frontage. They are not in favor. They do not believe there is any unusual irregularity or hardship. They are concerned a precedent will be set.

Comments from Code: Zoning Administrator Hutton noted that she found no building permits on this property since August 2022. She's not sure what construction has taken place. It is listed in the assessor's database as a 3-family.

Rebuttal: Attorney Arnold. The proposed footprint is 25' x 35' which is slightly larger than the existing garage. It is 2 stories. The lot size is 3500 s.f. short, not 35 s.f. short. That is 5 Pine Street all by itself. The property, as a whole is much bigger than it needs to be. The multi-family use is the use not allowed and is grandfathered, per his client. The duplex use, which is proposed, is an allowed use by right. Having multiple principle uses on this property is what is in question.

#### DECISION:

Chair Carley reviewed testimony as given.

Mr. Winters: There seems to be a factual dispute about whether this property is being used as a multi-family or not. That is not relevant to the Board. If a brand new duplex were being built, or an existing duplex were being rehabilitated, then variances #2 and #3 would make sense. It's a transitional area of the City. He is inclined to deny the variances.

Mr. Monahan agrees with Mr. Winters He is not convinced of the hardship. He is not persuaded there is one.

Mr. Wallner agrees.

Ms. Perkins has a concern with the hardship. Thought it was a great concept.

Chair Carley explained that whether it is a 3 family or a single family, that is not relevant to the Board. He will assume what they testified to is true. The configuration of the lot does not create a hardship in this case that would justify adding a new 2 unit building. It's also true that if they made the original building a 2 unit they could build the second building without coming before the Board. They have use of the property in a way the ordinance permits. Density is a concern to the neighbors. He is inclined to agree with his colleagues. He is in support of a finding that a variance is not justified.

A **motion** to deny the variance was made by Mr. Winters, seconded by Mr. Wallner passed by a unanimous vote. Chair Carley asked if the motion was for just the principal use. Mr. Winters intended his motion to be for all 3 variances requests. Mr. Wallner, who had seconded the motion concurred. All who voted also agreed. All 3 variances were denied.

**0074-2023 52 Downing Street; RD– Downtown Residential District; Trace and Antionette Lantiegne, Owners:**

The owners wish to expand the second story of their non-conforming single-family dwelling over an existing single-story foot print that encroaches into the 10-foot side setback. The owners are seeking the following variances:

1. Article 28-4-1(h) *Table of Dimensional Regulations, and*
2. Article 28-8-5(a)(1) *Nonconforming Structures.*

Antoinette Lantiegne testified. Trace Lantiegne also available to testify. The structure is their home that is built within the setback on the west side. They would like to create an addition. They would like forgiveness on the east side as well.

Mr. Wallner asked where they were located. Mr. Lantiegne explained that the proposed addition is going vertical and will not exceed the roof line as it exists now.

Mr. Winters asked about the setback issue and how it was non-conforming. Ms. Lantiegne answered that it is 7'7" from the property line. Zoning Administrator Hutton explained that because the non-conforming structure is being added to vertically within the setback it is making the non-conformity more non-conforming. But they are both within the setback. Mr. Lantiegne noted that it will become more conforming. Ms. Lantiegne explained the west setback will stay the same, the other setback will change. They will be taking off their porch on the east side making it smaller by 3 feet.

A letter of support was submitted from Perry Stockingers of 50.5 Downing Street in favor of their plans.

In favor: none.

In opposition: none.

Comments from Code: none.

**DECISION:**

Ms. Perkins has no objections. The only person impacted wrote a letter in support. They are making it more conforming and staying within the footprint.

Mr. Winters noted that it is an older home and an older lot. It is reasonable to have more space and it is in the same footprint.

Mr. Monahan agrees.

Mr. Wallner is in favor.

Chair Carley agrees. The hardship stems from the configuration and size of the lot and predates the Zoning Ordinance.

A **motion** to approve the requests was made by Mr. Monahan, seconded by Ms. Perkins and passed by a unanimous vote.

**0073-2023 190 Manchester Street; RH– High Density Residential District; Chris Fogg for Top of the Hill Cooperative, Inc, Owner:**

The applicant wished to establish a Commercial Kennel where such use is prohibited for a pet day care. Applicant seeks a variance to Article 28-2-4(j), *Allowable Principal and Accessory Uses in Zoning Districts*, to allow Use H 8.

Testified: Christopher Fogg. There will be no noise or barking concerns. They have a no barking policy. He would like to put in a doggy day care to benefit the City of Concord and residence nearby.

Chair Carley asked about the hardship.

Mr. Monahan asked if they owned the lot. Mr. Fogg explained that they are leasing the lot. Mr. Winters asked if Mr. Fogg wrote the application and Mr. Winters read what he wrote into the record. What is it about this land that makes it appropriate to have a doggy day care there, even though it is zoned RH; which means a doggy day care can't go there. Mr. Fogg explained they are on the edge of a commercial area in a piece of the RH zone. They are far away from a residence and closest to the buildings that are commercial.

Chair Carley asked how the animals are managed and their hours of operation, etc. Mr. Fogg explained that he now operates a mobile dog daycare. They would be using the building for a place for them to be during the day. It will only be doggy day care from 6 am to 6 pm, so dogs can be there while their parents are at work. There will not be a commercial kennel use on site. Dogs will not be there overnight. There will be an outdoor area behind the building. It will not be noticeable. There will be a privacy fence to keep the dogs protected and out of site and to keep them quiet. Chair Carley asked how many dogs would be on site. Mr. Fogg answered they would have about 15 dogs. They currently have 12 dogs and that is what they will start with. Chair Carley asked how far away they are from the nearest residence. Mr. Fogg answered they were about 75 feet away. The rest of the mobile homes are much further away. Mr. Winters asked where it was located. Mr. Fogg explained that it is the building at the entrance of the Top Of The Hill Mobile Home Community. Chair Carley asked if it was across from the Nissan dealership and if it used to have a junk removal business in that building. Mr. Winters asked if it could be used as a residence? Mr. Fogg doubted it. Zoning Administrator Hutton explained that it is in a residential district and when the commercial use was abandoned, they lost that use. Mr. Fogg thought it was a community building at one point. He'd like to have it serve the community again. Mr. Perkins noted that his application states that the property is near an RO zone? Zoning Administrator Hutton explained that there is a City lot across the street which is in an RO zone. That is one of the only areas that a dog related use is allowed. Mr. Monahan asked if it was still going to be mobile? Mr. Fogg answered that they will still be mobile. They will be picked up in the morning and brought to the building to be assigned to their staff members to go on their trips. There will not be multiple cars there at one time. There will be a safety gate so no dogs can get out onto Manchester Street. They follow a quiet dog curriculum. A quiet dog is entertained. They will use a privacy area to make sure all dogs are safe. They will have a ratio of 1 staff to 4 dogs. They will collect pet waste immediately and have a company that picks it up once a week. All dogs need to be vaccinated and licensed and registered with the town. There will be no adverse effect due to traffic. The outdoor space will cause no overall change to the appearance or noise. It will be 100 feet from the road and 75 feet from the nearest mobile home and a privacy fence. It is an added value to the community. They hope to do quite a bit of work on the outside.

In favor: Shawn Whyte, Operation Manager of Top of the Hill Coop. There will be 24 hour surveillance. If the dogs are barking, they would know about it and they made it very clear they cannot have that there. The fence will go right outside the door to the back of the building. He pointed it out on the map. Then tucked in the woods, he would put a fence where the dogs could run around in a pen. It would be fenced off. They cannot fence it from the building to the woods due to a right of way. Mr. Winters asked if it would be completely enclosed. Mr. Whyte said correct. They are trying to rent the building out. There isn't a whole lot of space there. That property pays the taxes for the park. Mr. Monahan asked if that building was ever a home? Mr. Whyte answered no; it's been a few different businesses there.

In opposition: Anthony Marcotte, 190 Manchester Street Lot 1. He took photos and showed them to the Board. He likes dogs. He thought he was going 35 feet from his mobile home not 75 feet. Mr. Winters asked if there was any separation between his trailer and the building. Mr. Marcotte answered there was not. Chair Carley asked what his concerns were. Mr. Marcotte doesn't want a lot of traffic back there. He doesn't want a lot of noise. It's opening at 6 am. Does he have to hear dogs at 6 am and traffic going in and out. He asked where the kennels would be going? He doesn't think Mr. Fogg explained things well.

Code: none.

Rebuttal: Mr. Fogg noted that he had submitted information as to where the fences would be. The space is one enclosed area, like a dog park. It is not a kennel area. It's a fenced in area for the dogs to play off leash. The fence where the dogs go will serve as a divider fence between the play area and the neighbor's home. Mr. Winters asked what the earliest the dogs will be outside. Mr. Fogg answered that they would be out by 7 am for their bathroom break. They go out every hour for bathroom breaks in the morning hours. Chair Carley asked about the waste disposal? Mr. Fogg answered that the pet waste will be picked up by an outside company. Mr. Wallner asked what they would do with it until it is picked up. Mr. Fogg answered they would dispose of it in a dumpster or trash barrel. It will be picked up and put in a dog poop bio degradable bag and put in a dumpster and picked up by the company and disposed of.

Mr. Winters asked Zoning Administrator Hutton how the City would handle the situation if this was approved and there were complaints about barking. Zoning Administrator Hutton explained that the City has a noise ordinance and that is still valid. Mr. Winters asked how enforceable his representations are. Zoning Administrator Hutton explained that they are more enforceable if it is in the motion or in the conditions.

DECISION: Carley reviewed the testimony as given.

Ms. Perkins does not object. The kennel will be 75 feet from the property and is right next to a zone that would allow for this use.

Mr. Winters agrees. He is inclined to vote to approve the request. The neighbor's position is valid. It helps the property values. They need a viable tenant there. It is in close proximity to commercial uses. They need to capture the applicant's representation in the motion.

Mr. Monahan agrees. The applicant's representation was that it would be no more than 15 dogs, which would help control the concerns of the neighbor, the noise, the waste, etc.

Mr. Wallner agrees. They heard from the park board. They are also concerned about noise.

Chair Carley agrees. The lot represents hardship. It is not a residential structure under any circumstances. He would support a motion with conditions regarding hours, management of sound, other activities on site. It is a reasonable use.

Mr. Winters explained that it should either be a condition or summary that in early hours the yard is going to be used to potty but not off leash time so off leash time should be 9 am or later.

Mr. Monahan thought that the mobile home community should come up with the standard.

Chair Carley noted that the conditions or stipulations would be what the appellant made during his presentation.

A **motion** to approve the request, based on testimony given by the applicant which is part of the record, was made by Mr. Winters, seconded by Mr. Monahan and passed by a unanimous vote.

**0077-2023 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 wishes to convert an existing church structure to a 30-unit multi-family development. The applicant seeks the following variances to:

1. Article 28-4-5(d)(2), *Maximum Lot Coverage and Density*, to permit 30 dwelling units on a 0.74 buildable acre parcel where 8 units are permitted (12 units per buildable acre).

**NOTE:** *Prior to hearing this item the Board must determine whether this request is materially different in substance or content than the request contained in ZBA-0057-2023, heard and denied on July 5, 2023.*

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 28-4-1(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.
4. Article 28-7-2, *Off-Street Parking Requirements*, to permit 49 parking spaces for a 30-unit multi-family development, where 60 parking spaces are required.
5. 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 25' is required.

**0078-2023 14-20 Washington Street; RD – Downtown Residential District; Jonathan Chorlian for Concord Coalition To End Homelessness, Owner:**

The applicant wishes to continue the non-conforming use of land as a parking lot and define the parking spaces to measure 8 ½ feet wide by 17 feet long (and 4 spaces to measure 8 ½ by 15 feet long), and seeks a variance to Article 28-7-7(d), *Parking Area Design Standards*, where standard parking spaces are required to measure 9 feet by 19 feet.

Both case #0077-2023 and #0078-2023 were heard together.

Testified: Attorney John Arnold. Jonathan Chorlian. Ben Kelley.

Request #1, to permit a 30 unit multi-family development needs to be addressed first. The Board needs to determine whether this request is materially different in nature or content than the request contained in ZBA-0057-2023 heard and denied on July 5, 2023.

Chair Carley asked the Board if they felt this was a new case and if they it was materially different. A **motion** that this was a new case and materially different was made by Mr. Wallner, seconded by Ms. Perkins and passed by a unanimous vote.

Mr. Monahan asked Zoning Administrator Hutton if they could rely on the record from the previous proceedings? Zoning Administrator Hutton answered that they could. Mr. Monahan asked what was tabled and what was denied. Zoning Administrator Hutton answered that the Tabled requests were withdrawn.

Mr. Winters explained that in context there is an existing church with a large amount of space in it that is now going to have 30 units vs. 34 that they request last month. Mr. Monahan would like to know what changes from last month's request to this month's request. He believes that would be helpful to him.

Jon Chorlian testified. He handed out paper copies to the Board. This is the First Church Redevelopment Project. It is a 265 foot long, 26,000 s.f. building that they are trying to repurpose. They are applying for RSA 79e relief. Matt Walsh let him know it was available to be on the national register of historic building. Mr. Chorlian showed the site in photos as it exists. It consists of 4 different lots in 2 different zoning districts. They have 3 rights of way that burden the property. The new plan retains the right of way for 20.5 Washington Street. He showed the layout of the 30 units. They are not increasing the bedroom count. Ben Kelly testified that the # of bedrooms for the project is 44. The average size unit is 760 s.f. to 865 s.f. including share of common units. The rents have increased due to the increase in size. In Matt Walsh's report, which he provided to the Board, is helpful as it is an independent third party view. He concluded that if it were a 33 unit scheme, it is a marginally viable project. They picked up a few parking spaces. Reducing the project to 30 units from 34 units, the parking dropped by 8 spaces. He showed the site now.

Mr. Monahan how many spaces now and how many were on the plan last month. Mr. Chorlian answered that there are 49 now and 68 last month. Only 60 are required now. They will be 'permit' spaces, not assigned spaces. He believes they have 10 parking spaces too many. They are most proud of adding green space to this project.

Mr. Chorlian discussed the density variance. It is a 265 foot long, 26,000 s.f. building. They are not adding to the footprint, just reusing space. This is one of the largest lots in this zoning district. They are proposing 3 small patios for 3 units and to overlay the existing stairs in the front with a community deck. The trash container is setback from their parking lot. He showed the table used to calculate parking quantity. They are asking for 49 spaces where 60 are required. Hybrid spaces have been granted for other projects.

Chair Carley asked if they would continue to manage building? Mr. Kelley answered they would.

Mr. Monahan asked if the "red spots" will be assigned? Mr. Chorlian explained that signage will be emphatic that those will be for small vehicles or motorcycles.

Attorney Arnold reviewed the variance criteria. Public interest/spirit of ordinance. None of the variances will alter the

character of the neighborhood. The building exists. There is no changes to the exterior of the building. Changes to parking lot are changes to improve the layout and add green space. They will be eliminating nonconformities. Having 30 apartments is relatively minor compared to a church. None of the variances harm the general public in any way. The Memo from Matt Walsh looked at whether the project satisfies any 1 of 5 statutory benefits and he concluded that it meets all 5 criteria. It enhances vitality downtown and protects a historic building. They submitted a broker letter stating it will not negatively affect the surrounding property values. The hardship is that it is an existing building and how that building is situated on the lot. The church has not been there for a few years. The size and configuration of the building drives the number of units and the remaining variances. The church building is close to the lot lines as it exists. There is not physically enough room from the edge of the building for the trash enclosures. Whatever use would go into this building, there isn't enough land to provide parking for it. Green Space is being added. When operating as a church, the burden on the property was much higher. Changes in the plan show they are reducing the burdens even further. Public interest criteria – the Islamic Center's parking deficiency on their lot is greater than what is on this lot. If the project goes forward, it will save an old, beautiful building.

Ms. Perkins doesn't recall there being an issue with tandem parking space. Chair Carley had concerns about it. Mr. Wallner also had issues with it as well.

Chair Carley asked Zoning Administrator Hutton if the parking spaces on Rollin Street do not require relief. Zoning Administrator Hutton answered that they will require Planning Board relief. It is an existing lot.

Mr. Monahan noted that on the last application there was a single family home, an abutter, which was going to have some improvements to their landscape. Mr. Chorlian showed the home at 20.5 Washington Street on the plan. It looks out at nothing but asphalt. It enjoys a 12 foot right of way. The earlier plan would have eliminated the driveway and given them a right of way through their property. The current plan now restores the driveway. Irene Hanslin owns that property and may speak. There is a letter from her son, who lives with her but doesn't own the property. He doesn't like their old plan.

Mr. Monahan noted that this request reduced the units by 12%.

Chair Carley wanted to remind the public that they have heard extensive testimony on this and it would be helpful to the board if they spoke specifically to the proposal before them this evening and not repeat what others have said.

In favor:

John Roxby, 131 N State Street. He lives in the Pocket Neighborhood - Rollins Court. Jon Chorlian developed the property. He is a satisfied resident. Mr. Chorlian made sure that the development was done at the highest standards and created a new community. He is in support.

Brendan Bort, of Penacook. There is an important need for young people to have housing. The parking requirements should be lower because this property is downtown and it is the perfect spot to walk to your job or entertainment. It has access to the bus, or transit. We need to allow development in this section of town to be more.

Irene Hanslin, owners 20.5 Washington Street. She has owned the property for over 40 years. She is in favor of this development. The building is historic and we need the housing units. She is confident they will figure out their access to her home. She understands her son has written a letter in opposition to the proposal but he does not own the property.

Millie LaFontaine, not an abutter, but a neighbor; a Rollins Court resident. #1 it is wonderful to make use of a historical existing structure, #2 they need housing, and #3 having more people living in the neighborhood would help people be committed to the neighborhood.

Dick Lemieux, and Barbara, of 7 Washington Street; across the street from the project. He reiterated what he said last month in support of this project. Agrees with Ms. LaFontaine.

Mark Fagan, Chief Operating Officer of Concord Coalition and has dealt with various parties that have come forward to look at the property and buy it. He is a retired finance executive. He does understand numbers. This is the lowest number of units he has seen. Other offers were far in excess of 30 units up to 50 units. This will impact them in the proceeds they expect to get out of this sale. He discussed the number of units and the financial impact.

Jim Schlosser, of Concord Coalition to End Homelessness board member, and concord resident. They need housing at all

levels. Part of their mission is to help the City with housing deficiencies. He requests the Board seriously consider the request and approve it.

In opposition:

Attorney Brian Shaughnessy of Shaughnessy Raiche PLLC. He is here on behalf of the Islamic Center of Concord. He is addressing legal issues. Not everyone here was here for the prior hearing. This is a new application. The only issue decided at the last meeting was the density. You shouldn't be hearing all of the other issues. He needs the facts to support the findings. There was nothing presented to the Board other than the written record. He cited Brant vs. City of Somersworth and City of Dover vs. Fisher. The Supreme Court found, specifically, that the board committed an error of law. With the Board's findings earlier, he doesn't know if its different in nature or degree as the only issue was the density. It has to be first, then the material change in circumstances. The material change of circumstances affecting the merits of the application and the board has no findings and no facts to support that. The board listened to a lot of economic viability of use. There was no information from the applicant as to whether other churches could use this property. It is a little bit better for parking. Parking had not been discussed at the last hearing. He's created his record. He wants to discuss the density. Spirit of Ordinance: You have a board that has adopted an ordinance under RSA 674:17 which says purposes of zoning to lessen congestion in street, safety from fires, health and general welfare, etc. and created undue population. Zoning allows 8 units by right with this acreage. If they use the back lot they can have 14 units. They no longer have church functions that need parking once or twice a week but a building parking up against the wall of the Islamic Building daily. What about public safety, how do fire fighters get in there? The City of Concord has already made a decision regarding density. Having 30 units is 22 units more than what is allowed by ordinance. The critical issue is the density. The traffic is one way on Washington Street, which gets stacked up during the day. One way to come into parking for 30 units. There will be parking and traffic issues 24 hours a day. People moving in and out with trucks, trash trucks, amazon trucks, UPS trucks, etc. We need more housing. The City of Concord needs to change the zoning ordinance to allow more housing. Parking is a problem, traffic, density, life and safety is a problem. He heard no evidence that no other uses that are allowed in this place other than residential. Islamic Center also has a parking issue in that area. They received a variance before and had a sharing arrangement which is now no longer valid. The green space they created was the parking area for the Islamic Center. He could see 16 or 18 units. How many people will have animals and where will they go and how will they clean up after them? Not enough information.

Mr. Winters asked about the City of Dover case they mentioned. He said the standard is when a material change of circumstances affecting the merits of the application has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the Board of Adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.

Attorney Shaughnessy noted that the Finding of Facts should be based on information and testimony given this evening, not at the last meeting as this is a new application.

Mr. Monahan asked if he was trying to say that it is the ordinance's job and the City's job to decide, but not the board's job to decide. And then you said that 16 units would be okay. Attorney Shaughnessy explained that he said 16 units would still need a variance, but would still be closer to what is allowed than 30 or 34 units.

Ahmed Gabar, member of the Islamic Society and lives on Pearl Street. He has concerns with the number of children. He has 5 children himself. He's concerned there will be too many children in that area. Nothing was mentioned about a playground. That is essential for child development and health.

Michael Lily, Pearl Street resident and small business owner in downtown Concord. He supports the redevelopment of the property. What he opposes is converting it to 30 units of market rate apartments. He believe they have met the criteria of not being contrary to public interest. Concord needs more housing stock. He does not believe they have met the unnecessary hardship for the applicant criteria. The current ordinance was in place when it was purchased on 12/20 by the Coalition. It was purchased using federal money. The applicant entered into the purchase with thoughts to develop it knowing they had to get variances in order to use it for this purpose. He does not believe the Spirit of the Ordinance being observed has been met. They are increasing the units from 8 to 30; a 275% increase. Substantial justice; the variance doesn't right a wrong. Not diminish value of surrounding properties criteria has possibly been met. The last use of that building did diminish the value of surrounding properties. All 5 criteria have to be met. If you don't meet all 5 you can't grant the variance.

Ali Sekau – Islamic Society Member – He believes reducing the units from 34 units to 30 has changed nothing. Uphold the law as they did the last time. None of them oppose apartments, he himself rents. This is a one way street. He is concerned with parking up against the wall of the Islamic Center. He is concerned with parking, safety, traffic, etc. They were given permission to have their center with the parking they utilize on this lot, which is now being taken away from them.

Faisal Arif, a Concord resident and a member of the Islamic Center. 'What is' is the use of the use of property. 'What if' is the intended use. Where will they put the snow.

Roy Schweiker. Agrees. 12% is sufficient to reconsider, but not enough to approve it. They are not trying to get the additional benefit from the City for historic renovation. He agrees and would be willing to give a variance for the patios. The dumpster isn't a consideration as the lots would be merged. The highest and best use would be if the Islamic Society bought it and incorporated it with their property. They should be limited to the number of units allowed by the ordinance. He has parking concerns.

Mohamid Mobeen who has been a Realtor since 1997. He was here for the last hearing. An offer was presented to the owners. That offer would have been a private investment offer. The Islamic Society was not going to buy it but some members were going to buy it and use it for commercial/residential use. Muslim communities need space for some of their parties. The front part of the building could be used as a community hall and some residential units. He wanted to make it clear that there was an offer. Concerned with parking issue.

Code: none.

Letters and emails:

Jennifer and Tom Robson 23 Ridge Road, in favor. Preserve history and character of city.

Lloyd Sederer MD, 101 School Street Unit 1, is in favor of creating housing.

Tyler Semolic Hanslin, 20.5 Washington Street, concerned with traffic, and a peaceful neighborhood being sacrificed.

Jay Schumacker, CCEH Board member and treasurer, feels there is an overwhelming need for housing.

Rosanne Haggerty, 101 school Street, Unit 1, in favor of increasing housing.

Brenda Litchfield Concord Commercial Real Estate, 2.5 Beacon Street, in favor of the housing development.

Jim Schlosser, 7 Badger Street is in favor.

Ruth Perencevich, no address given, is in favor.

Mark Boisvert, 9 Washington Street, in Favor

Claude & Lucy Gentilhomme, 82 North State Street are in favor.

Roy Schweiker's submitted a photo of a truck

Rebuttal: John Chorlian. Parking on Pearl Street is a real issue when there are Islamic events. The use of the parking for the Islamic Center terminated when the building sold to the Coalition. The north side parking spaces were taken away. Those are on the Coalition's property. There is no permission there for them to use it, nor is there a legal right for them to use it. He hopes there are children there. There are many spaces in the building for children to play. The history of offers on the property is not relevant.

Attorney Arnold spoke regarding other viable uses for the church. Other churches in the City have gone vacant and changed uses. Even if there were another viable use for the church building, how would that address concerns about parking and traffic demands.

Mr. Winters asked Attorney Arnold what his thoughts were about Attorney Shaughnessy's argument that the Board should have taken factual evidence before the material change evidence? Can they legitimately consider evidence previously

given? Or do they need to hear the evidence fresh.

Attorney Arnold replied that the Board did accept it in the form of the written application. That was what their decision was based on. All was cited in the application and went to whether there was a material change in circumstances. The application sets it forth, which was also in the merits of the application testimony. The Board, at the last hearing, made an express finding that the Board intended to do that; that you didn't want to accept all new testimony. That is appropriate. There is a record.

#### DECISION:

For the conversion to 30 units:

Mr. Monahan: Based upon what was presented tonight and the written record, he did vote in favor of this last time. It meets the criteria. He is in favor of the 5 requests.

Mr. Winters: The most fundamental aspect of the lot is the enormous structure on it. Whoever will use this, it will be more intense than bare bones zoning permits. Whether it is another church or a commercial use or apartment building. Given it is a 26,000 s.f. building that should be put to some positive use and its not the greatest area in terms of density, it will back up traffic in that area, regardless. This use won't help, but he can't see any other use that would be any better. He feels it is a reasonable use. 34 to 30 units, if they could come down more he'd feel better about it, but realistically 800+ s.f. per unit is a descent size apartment, and it is a hardship to not allow them to put 30 units in there. He is inclined to approve.

Ms. Perkins noted that it will take the applicants 10 years per units to recover the costs. She is struggling, but sympathizes with the Islamic Center. She is in favor of more housing in Concord and loves that the neighbors are in favor/support of it.

Mr. Wallner: The parking and density were the struggle last time and they have been addressed. It is a reasonable compromise.

Chair Carley is persuaded that this is reasonable use under the circumstances. The site and building creates a hardship for anyone who tries to reuse the building. Whether or not they have found fact correctly when they found it to be materially different; he is confident that they did. He is inclined to support a motion to approve. The other variances 2-5 and Case #0078-2023 stem from the same cause from configuration of the building and lot. He understands the concerns of the Islamic Center and does not discount them. However, these 2 buildings are unique. They are going to have to be neighbors. This development is not creating a liability for the Islamic Center.

#### Case #0077-2023

Request #1: A **motion** to approve 30 units vs. 8 unit allowed was made by Mr. Winters. It met the unnecessary hardship criteria as the building itself creates clear hardship as to the literal number of units. Having 30 units, given the 26,000 s.f. size of the building is reasonable. It would be a hardship to have to literally enforce that requirement. It is not contrary to the public interest as there is a need for housing. The current use is not desirable. Housing stock will be a benefit to the public. The spirit of the ordinance is observed as it is close to downtown. Substantial justice is done for the same reason. Property values will not be diminished but be improved. The **motion** was seconded by Mr. Monahan and passed by a 4-1 vote with Ms. Perkins in the minority.

Requests #2, 3, 4, 5: A **motion** to approve all 4 requests was made by Mr. Winters for same reasons as stated for request #1, seconded by Mr. Monahan and passed by a unanimous vote.

#### Case #0078-2023

A **motion** to approve the request was made by Mr. Winters and seconded by Mr. Wallner. Chair Carley noted the configuration of the proposed parking is superior to what would result if they would try to conform to the requirement of the ordinance. The **motion** passed by a unanimous vote.

Minutes of July 5, 2023. A motion to approve the Minutes was made by Mr. Wallner, seconded by Mr. Monahan and passed by a unanimous vote.

Draft Findings of Facts from July 5, 2023. A **motion** to approve the draft Findings of Facts was made by Mr. Wallner, seconded by Mr. Monahan and passed by a unanimous vote.

Other Items

Zoning Administrator Hutton advised the board that there are 13 cases pending for next month's agenda and the deadline has not yet passed.

Mr. Wallner let Zoning Administrator Hutton that he would not be able to make the September 6, 2023 meeting. Chair will not be attending that evening either. Zoning Administrator Hutton explained that the cases have to be heard at the next available meeting.

Chair Carley asked when they could get a board together.

Mr. Winters can be here on that date. Ms. Perkins can as well. Mr. Monahan may be able to make it. Zoning Administrator Hutton believes Ms. Spector-Morgan should be here as well.

Much discussion regarding the meeting night(s) for September. Chair Carley suggested splitting the agenda into two meetings.

Hutton September 13<sup>th</sup> and Tuesday the 19<sup>th</sup>.

It was the consensus of the Board that they would meet on September 13, 2023 at 6 pm and September 27<sup>th</sup> at 6 pm. A full Board will be available at that time.

A **motion** to adjourn was made by Mr. Wallner, seconded by Mr. Winters and passed by a unanimous vote at 9:37 pm.

*Respectfully submitted,  
Rose M. Fife  
Zoning Board of Adjustment*