

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
OCTOBER 4, 2023  
MEETING MINUTES**

Attendees: Chairman Christopher Carley, Nicholas Wallner, Andrew Winters, James Monahan, Laura Spector Morgan and Brenda Perkins (a non-voting member).

Absent: Tedd Evans

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

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Meeting commenced at 6:00 pm.

- 1) Call meeting to order at 6:06 pm.
- 2) Chairperson's comments
- 3) Public Meeting
- 4) Public Hearings
- 5) Review and acceptance of Findings of Fact
- 6) Review and acceptance of Minutes
- 7) Any other business that may legally come before the Board

**PUBLIC MEETING**

**0072-2023 Request for Rehearing from applicant:**

**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.

Chair Carley reviewed the criteria for granting a rehearing.

Mr. Winters believes that the arguments they listed in item #2 and item #3 is same argument they considered. #1 relates to Zoning Administrator Hutton's memo and the attachments. If they don't need a variance they don't need to come forward but that's Code Administration's decision and it wasn't brought forward so its new in that sense. It's past the time to make that request.

Ms. Spector-Morgan agrees with Mr. Winters somewhat. There is a case that says the first thing the ZBA needs to do is define if a variance is required. She is not inclined to rehear this. The provision cited that would allow a rehearing she doesn't believe are correct.

Chair Carley interjected that the Board did discuss if it was a 3 unit building, but Code Administration says it is a 2 unit building.

Zoning Administrator Hutton added that it appears to have been used as 2-unit building, not a 3-unit building. There is ongoing discussion regarding this point with Attorney Arnold. You cannot take a back door into an administrative appeal.

Chair Carley asked if there was Building Permit pulled to make it a 3 unit.

Zoning Administrator Hutton replied that there was a Building Permit in 1983 to make it a 2-unit building. The 3-unit building use has not been used for decades.

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

**0096-2023** **Request for Rehearing from IQRA Islamic Society of Greater Concord: 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.

Chair Carley reviewed the information. This was heard and approved in August. The Islamic Center attorneys are requesting a rehearing.

Ms. Spector-Morgan recused herself as she wasn’t at the August meeting.

Mr. Winters noted that the material change is similar to what they argued at the original hearing itself. He thinks it was a material change given the fact that it was an unusual building for the area that needed to be repurposed and there was no dispute about that. The Board did review the material. He does not see anything new or different.

Mr. Monahan agrees with Mr. Winters. He thinks they decided based upon the record.

Mr. Wallner and Chair Carley agreed.

A **motion** to deny the rehearing request was made by Mr. Winters, seconded by Mr. Monahan and passed by a 4-0 vote with Ms. Spector-Morgan abstaining.

## **PUBLIC HEARINGS**

**0080-2023** **7 Break O' Day Drive; GWP – Gateway Performance District; Big Step LLC, Owner:**  
Applicant wishes to reverse the Planning Board's decision that the City issue Site Plan approval for a Charitable Gaming Hall, Restaurant, and Microbrewery as a permitted use in the Gateway Performance District.

Deferred until Attorney Manzelli arrives.

**0091-2023** **6 Morton Street; RD – Downtown Residential District; Liza and Bruce Clendenning, Owners:**  
The applicant wishes to construct a detached garage adjacent to the existing residential structure. The applicant seeks a variance to Article 28-4-2(h), *Table of Dimensional Regulations*, to construct the garage 5-feet from the side lot line where 10 feet is required.

Mr. Monahan wanted to disclose for the record that the applicant works for a client of his.

Testified: Mr. Bruce Clendenning. He owns 6 Morton Street. He is hoping to put a 2 car garage in the driveway space. There isn't enough room due to the narrowness of the lot.

Chair Carley asked about the hardship.

Mr. Clendenning explained that if they are allowed the 2 car garage, they would like to have a charger in there for an electric car. They cannot put in a 2 bay garage without a variance. The neighbors are comfortable with what they are doing.

Ms. Spector-Morgan asked why they couldn't attach the garage to the house? Mr. Clendenning explained that there is an existing porch that would cost them a significant amount of money to remove.

Mr. Winters asked about the design rationale?

Mr. Clendenning explained that they wouldn't be able to get into the house and it would change the functionality of the house.

Mr. Monahan asked if the porch is it the main entrance? Mr. Clendenning explained that it is their primary entrance.

Chair Carley asked if there will be a bay that aligns with the porch? Mr. Clendenning pointed it out.

Chair Carley pointed out that the footprint in the drawing is inaccurate. Mr. Clendenning concurred that it does not properly align.

Ms. Spector-Morgan asked how much space there is between the proposed garage and the property line. Mr. Clendenning explained . Ms. Spector-Morgan asked if there was 8 feet between houses? Mr. Clendenning answered that it is 5 feet from the garage and property line.

Mr. Winters asked if their neighbors are also well into their setback? Mr. Clendenning replied that they are. The

south end has tiny lots.

Chair Carley asked if this house and lot predate the ordinances? Mr. Clendenning replied that the home was built either in the 1870's or 1880's.

Mr. Wallner asked about the characteristics of neighborhood. To the other homes have garages? Mr. Clendenning answered that it's 50-50. There are a few 2 bay garages.

Mr. Winters asked if they were mostly detached? Mr. Clendenning answered that they were. He has seen about 3 attached garages and the rest are detached.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION: Chair Carley gave an overview of the testimony. The property predates the ordinance and there is no room for 2 car garage in the setbacks without interfering with the house.

Mr. Wallner discussed the characteristic of the neighborhood. The hardship is the lot size. Many residence enjoy the benefits of a garage. He is not persuaded that it will reduce property values.

Ms. Spector-Morgan added that there are other ways to get a garage on the property without getting into setbacks.

Mr. Winters agrees with Mr. Wallner and Mr. Monahan. It is reasonable to have a garage. It is not excessively sized in total. The lot is very small. There is nowhere else to put it. The applicant would have to demolish the porch, which would be a hardship. He asked Zoning Administrator Hutton if when they get a permit, would they consider fire access issues. Zoning Administrator Hutton replied they would not for an accessory structure. Mr. Winters is inclined to approve the request.

Chair Carley agrees with his colleagues who are in favor of a variance. As far as the safety issue, the general concern of the fire code does not require fire apparatus get to every part of a house on a small lot. He is inclined to support the variance.

A **motion** to approve the request was made by Mr. Wallner, seconded by Mr. Winters and passed by a 4-1 vote with Ms. Spector-Morgan in the minority.

**0088-2023 45 S Main Street; CBP – Central Business Performance District; Bindery Redevelopment LLC, Owners:**

The applicant wishes to install hanging signage exceeding the size allowances of the ordinance. The applicant is seeking a variance to Article 26-9(a) *Table of Maximum Sign Dimensions for Nonresidential Districts* to permit 166.5 sq. ft. of total building signage where 150 sq. ft. is allowed.

A **motion** to recess this case to the regular November 1, 2023 meeting was made by Mr. Wallner, seconded by Ms. Spector-Morgan and passed by a unanimous vote.

**0093-2023 N. State Street (PID 4412); IS – Institutional District; City of Concord, Owner:**

The applicant wishes to install an off-premise sign on property owned by the City. The applicant seeks a variance to Article 28-6-7, *Signs Prohibited Under This Ordinance*.

Testified: Ms. Holme is an employee of Mr. Steve Duprey.

Mr. Spector-Morgan asked if this was required as it was an off-premises sign. Zoning Administrator Hutton explained that the applicant has permission from the City Council to make the application, but it hasn't been signed by Council yet.

Ms. Holme explained that this is for an off-site, and it is 3 feet higher than the 40 feet allotted in the district. Zoning Administrator Hutton corrected her.

The Franklin Manse Society wants to put this sign on this off-site location as the museum is located off the beaten path. Putting a sign up front won't bring in tourists as it is hard to find. They want it to be larger so people who drive by can see it.

Chair Carley asked if her argument is that the Pierce Manse being off the beaten path creates a hardship. Ms. Holme answered that was correct. Generally, it is to increase the historical aspect of Concord.

Mr. Monahan noted that part of North State Street has some limited access. There is a public safety issue. Ms. Holme agreed. There is a sign there currently, but they would like to replace it.

In favor: none.

In opposition: none.

Comments from Code: none.

DECISION:

Mr. Winters noted that it seems reasonable and is a logical place to put a sign.

Ms. Spector-Morgan had no objection to it.

Mr. Monahan thought it was a terrific sign and will help with the flow of traffic.

Mr. Wallner agreed.

Chair Carley thought it to be an improvement.

A **motion** to approve the request was made by **???**, **seconded by ???** and **passed by a ??? vote**.

**0094-2023 72 Storrs Street; OCP – Opportunity Corridor Performance District; Brixmor Capital SC LLC, Owner:**

The applicant wishes to install signage in excess of the size allowed. The applicant seeks a variance to Article 28-6-9(b), *Permitted Building Signs*, to construct a total of 51.2 s.f. of signage where 26 s.f. is allowed.

Testified: Jason Gagnon of Sousa Signs. The properties around the area are allowed to have up to 2 signs. This is a narrow tenant spot sandwiched in between multiple businesses and both 110 Grill, Xfinity and Play A Bowls have exterior wall signs on 2 frontages. They would like to match what they have on the back side of the building. This would allow customers to find the place.

Chair Carley asked if this sign was on Storrs Street. Zoning Administrator Hutton answered this sign is on the parking lot side.

Mr. Winters asked which signage they had already ruled on. Zoning Administrator Hutton answered that they had ruled on all of them with the exception of 110 Grill, which did not need relief.

Mr. Monahan asked if this was for the front and rear entrance? Mr. Gagnon answered it was and they are seeking to have a sign on the parking lot side.

Chair Carley asked if the hardship had to do with the configuration of the lot and the two fronts of the building, even though one doesn't count. Mr. Gagnon answered that was correct.

Mr. Monahan asked if it would be illuminated? Mr. Gagnon answered it would be internally illuminated. Zoning Administrator Hutton added that the sign permit will be reviewed by the ADR Committee. Mr. Gagnon added that only the channel letters will be illuminated.

In favor: none.

In opposition: none.

Comments from Code: none.

**DECISION:**

Mr. Monahan noted that there is 2 fronts to the building.

Mr. Wallner agrees. It is an unusual property. They have granted relief for 2 others for the reason. To deny this request would be a hardship.

Ms. Spector-Morgan agrees.

Mr. Winters agrees.

Chair Carley agrees.

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

Chair Carley also noted that there was a letter of support from Eagle Square Associates/Lee Marden.

**0099-2023 9 Redwing Road; RS – Single-Family Residential District; Northway Properties LLC, Owner:**

The applicant wishes to construct a dwelling unit in the walk-out basement of the existing single-family dwelling. The applicant seeks variances to:

1. Article 28-2-4(j), *Table of Principal Uses*, to allow use A-2 (two-family dwellings).
2. Article 28-5-2, *Duplex or Two-Family Dwelling*, to allow a two-family dwelling on a lot with 100-feet of road frontage and 13,500 s.f. of lot area where 150 feet and 18,750 s.f., respectively, are required.

Testified: Robert Gouley and Laura Gouley. They are the current owners of 9 Redwing Road. The application lists the sellers. They are the new owners.

Mr. Gouley would like to create a living space in the walk out basement area. It is finished space upstairs and unfinished space in the basement portion. They want to create a barrier free entrance. They want to create living space for his wife's parents who are becoming unable to navigate stairs. That would be a living space that is safe

for them and easily accessible from the driveway. Given the literal interpretation of the square footage of the structure, it puts them over the 750 s.f. allowed for an ADU. They would like to create an accessory dwelling unit in the basement of their house. The road frontage is 100 feet. All of the changes to the structure would be within the home; nothing outside. They are adding no additional square footage outside. It's a benefit to the neighborhood and the city, in general, to have elderly parents have a safe place to live with family nearby.

Chair Carley asked about the area of the unit. Mr. Gouley testified that there is 1,056 s.f. of living space upstairs and 952 s.f. in the basement from outside wall to outside wall. Ms. Spector-Morgan asked if the finished space will be 750 s.f. Mr. Gouley answered yes.

Mr. Monahan asked if a section is a mechanical room for whole house? Mr. Gouley answered yes and for the ADU. It is not their intent to change the character of the neighborhood at all.

Chair Carley asked if they would consent to a condition that it be owner occupied. The Gouley's answered they would consent to the condition.

In favor: Nancy Guillault, who lives at 54 East Side Drive who is in favor of this request. They have been their neighbors for over 30 years at their present residence. She supports them because she understands what they are going through with Ms. Gouley's parents. Nancy Guillault is a widow and if it wasn't for this family, she wouldn't be able to stay in her home. She's seen their plan.

In opposition: Roberta Kieronksi who lives at 15 Redwing Road and has since 1975. They have families in their neighborhood who have parents, owner and adult son living in one home. She doesn't understand why they need a variance as it is one family. Are they going to live in this home on the first floor if they have a home on Partridge Road? If that is what they want to do she is not in favor of a duplex. It's a nice neighborhood.

Samuel Pennington, 6 Redwing Road. He shares similar concerns. The LLC filing a variance is strange. The neighbors have been discussing it, but he hasn't spoken to these people. The bottom line is that he's against it. He doesn't want to see rental units in the neighborhood. There are various accounts of what the intention is. Renters don't have the same interest as a homeowner in the neighborhood. He sympathizes with families and elders, but his fear is the true intention.

Dale Fifield who lives at 8 Redwing Road. Their stated reasons are commendable. He does not feel it is necessary to divide the home into two separate homes. He's concerned the same as his neighbors. This would become a 2-family dwelling and it could be rented to people that are not vested in their neighborhood. Redwing Road is very quiet. The driveway will allow for a minimum of 4 cars and there is not enough room for that. There would be 3 bedrooms upstairs and possibly 2 bedrooms downstairs. He doesn't want to see a precedent set as there are 5 homes on that street that could be converted. There are multi-generational families in there that didn't divide their home. He doesn't believe they will be living upstairs.

Mr. Winters asked if it would change his opinion if the upstairs must be owner occupied. Mr. Fifield answered that it would not. As one unit could always be rented. There are a lot of children walking and biking on that street. Traffic is an issue. It's a very nice single family neighborhood. No one parks on the street right now.

Kevin and Marcia Leventure who live at 5 Redwing Road. They are opposed to this. It's not that they want their parents to have a nice safe place to live. It's the future. They are trying to lay the foundation to create a commercial property. What will happen 5-10 years down the road. They will be taking a residential area and create a multi-family residential area. Ms. Leventure understands. Her mom is living with her in their home. There is no reason they can't have what they want without it having to be an apartment. Their argument doesn't wash for her. Traffic is a concern. Renters do not care. They do not need duplexes in their neighborhood.

Ed Balich who lives at 10 Redwing Road; directly across the street. He has lived in their home 8 years. He was drawn to this neighborhood because it is a nice residential area. He has no problem with them taking care of their

family; but do they really need it to be a duplex? He agrees with his neighbors. If you put in one duplex, it is a matter of time before there is another duplex. He doesn't see why they have to have a duplex.

Rebuttal by owners: There is a minimum amount of parking required. The driveway that is paved is only half of what they own. They can park 6 vehicles there. They are trying to get their children to rent the upstairs. He understands that as long as one of those units is owner occupied, they meet the requirement for an ADU. Her father is an owner of the property. They are not looking to turn it into commercial. It is simply a way to aid her aging parents to keep them independent as long as possible.

Comments from Code: none.

DECISION: Chair Carley gave a review of the testimony. They want an ADU in the lower level of an existing home. It will be for their elderly parents. They have agreed to a condition that one-half of the building be occupied by owners.

Mr. Monahan is trying to understand why the application is for a duplex. Zoning Administrator Hutton explained that they are calculating the gross floor area. The definition of such is exterior faces of the wall. This would make it greater than 750 square feet. Mr. Monahan noted that last month they had a case before them that was similar and it strikes him that it would be more of an appropriate request. Ms. Perkins still passed it as an owner/occupied duplex. Mr. Monahan noted that most ADU's, the principal home owner would be in the larger space and the auxiliary dwelling unit would be the tenant. This is the reverse of that.

Mr. Monahan discussed the note from Zoning Administrator Hutton which says conditioning it to mimic an ADU special exception. Zoning Administrator Hutton discussed conditions that it be owner occupied. Parking has been conditions before on similar variance requests.

Ms. Spector-Morgan is inclined to grant the request. The only reason it is here is because the exterior measurements are not 750 s.f. If it qualified, one unit can be rented. It is the way the law is written. There will be no changes outside, one unit will be owner occupied, it will not decrease property values, and there is no justice in denying the request.

Mr. Winters noted that, they have granted ADU's or fake duplex ADU's, in every zone of the City. It is a reasonable use.

Chair Carley agrees.

A **motion** to approve the request was made by Ms. Spector-Morgan for reasons stated, seconded by Mr. Wallner, including the restriction of one unit being owner occupied and the parking be adequate. Motion passed by a 4-1 vote with Mr. Monahan in the minority

**0080-2023 7 Break O' Day Drive; GWP – Gateway Performance District; Big Step LLC, Owner:**  
Applicant wishes to reverse the Planning Board's decision that the City issue Site Plan approval for a Charitable Gaming Hall, Restaurant, and Microbrewery as a permitted use in the Gateway Performance District.

Chair Carley addressed the Board. This is an unusual request. As he understands it, they have 3 things to address.

1. Is the appeal timely.
2. Does the appellant have standing.
3. Do they agree with the Zoning Administrator's ruling that the micro-brewery is part of the restaurant and the charitable gaming operation is allowed, by right, or do they not agree.

They have no jurisdiction over anything the Planning Board has done.

Chair Carley proposed to the Board that they rely on the written submission, rather than testimony

He asked the Board which issues would they like to take up first?

Mr. Winters does not have a preference on the order. It does seem that the timeliness, and standing, do have some factual assertions.

Ms. Spector-Morgan: ???

Mr. Monahan asked if they get to a decision of any one of them do they stop. Chair Carley answered that if the decision is that they do not have standing, they stop.

Ms. Spector-Morgan noted that they could make a decision on both, as they do anticipate it will be appealed.

Consensus of Board is that they ought to put a strict time limit on presentations. Five minutes is sufficient. Winters agrees; from both the appellant and the developer.

Ms. Spector-Morgan does not believe she has a conflict, but their office manager is her best friend and she wanted the Board to know that. Their Attorney does not believe she has a conflict.

Attorney Manzelli addressed the timeliness and standing. She wanted to clarify the agenda item. Ms. Cameron is requesting the decision be reversed. Amy Manzelli, is an attorney with BCM Environmental Law office. She testified that Mr. Sanborn has other things going on with the Lottery Commission. If the Zoning Board requires that they have a continuance, they will not object to that.

Attorney Manzelli went on to say that Ms. Cameron does have standing because she will experience increase traffic, increase safety, and because she participated in the Planning Board and the change of the land is drastic. She brought supportive exhibits and passed them out. The applicant designated several spots on the traffic route that Miss Cameron testified she travels on a regular basis. In particular to #6, #3 and #2. This is the exact route that she testified she drives every day to get her kids to school or to camp in the summer. She showed her daily route. They live at 1 Asby Road. Overall the project adds 4,108 traffic trips to this area. At intersection 6, the level of service and queuing is worse than it would be without the project. The afternoon peak overall queuing time with a no build situation is 58 seconds to a 61 second wait in peak.

Chair Carley noted that a traffic report will have details on various affects. Is it her contention that anyone driving through this part of the city and that traffic will have standing? Attorney Manzelli answered that any one participating and living near the project. If the traffic is the only consideration, her answer is yes. If they drove through there on a daily basis, yes. It's because of the large size of the project. This is virgin land with forest and fields; undeveloped land. This is the most drastic kind of change.

Chair Carley noted that the size of the development is something the board does not have jurisdiction over. Attorney Manzelli testified that the nature of the change creates standing. Safety is also a concern. The record is full of evidence about safety. See the Planning Board record. Concord Police department provided hard data.

Chair Carley asked the Board if they felt that was relevant. The Board did not feel it was relevant.

Attorney Manzelli went on to say that her client is the closest residence to this proposed charitable casino. She testified that the Concord Police said the crime calls went up when the Draft became a Charitable Gaming facility.

Timeliness: The appeal was timely. It was filed on June 21, 2023; within the 30 day deadline. June 21<sup>st</sup> the Planning Board rendered a decision and that is when it was appealable to the Zoning Board.

Mr. Winters noted that the use determination was issued much before the determination.

Ms. Spector-Morgan noted that there is a requirement of site plan regulations that it be determined complete. Carley explained that Concord has regulations to do so.

Attorney Manzelli noted that they did site all of the Regulations that the Concord Planning Board uses to make use determinations. The Desonovich case says when they find out about a decision they need to appeal within 30 days, which they did. There was never any notice of that decision or that it was forth coming, etc. Chair Carley asked if she would you say that in this case ignorance of the law was the excuse. Attorney Manzelli testified that it was ignorance of the decision. None of the public had a way to know that the use determination had been made. Allegation that the use memo was in April. She or Miss Cameron did not know about that memo until it was cited in the developer's objection.

Chair Carley asked why that memo would matter in this case. Attorney Manzelli explained. The Zoning Ordinance doesn't say anything about a specific property or specific site plan application, it is general. She is talking about the time when Miss Cameron, in fact, knew about that memo.

Attorney John Cronin, of Cronin Bisson & Zalinski testified. Standing issue: He takes exception to the reference of other things going on and to the pages of the traffic study. Attorney Manzelli testified that this is a massive change. The Planning Board had a building of 43,000 s.f. before them with a pub restaurant and charitable gaming facility. They are talking about a small building when compared to WalMart, Target or 93 apartment buildings that were just approved next door, as well as redevelopment of the mall. Traffic: The Planning Board had an opportunity to require a traffic study. They will need to go through zoning review and planning review. It is one building, not the massive thing represented to them.

Special harm; the appellant here is not an owner of that property, but ownership matters. The harm to her, there is no harm to her articulated other than moral concerns. It is not germane to the 'standing' issue.

Timing: Concord has a provision that is important. If you ask a developer to spend millions of dollars on a project, they need to know if the use is allowed. In Concord, you have a professional staff, that do what they need to do. They review the application, the Table of Uses and determine where it fits. The regulations say that the Planning Board can't accept jurisdiction until use determination has been made. No appeal was taken, none of the comments made by the appellant in this case raised the use. For timing, it should have been known that when the Planning Chair announced this use was fitting, that is when the timing started.

Ms. Spector-Morgan asked when it was stated. Attorney Cronin believes it was stated on the jurisdictional acceptance night. Chair Carley believes it was Heather Shank, the Planning Director that said the use was permitted.

Substance: Did your staff get it wrong? Attorney Cronin doesn't believe so. Also, Makris had charitable gaming for some time. Public safety; this is a Planning Board issue which was specifically raised and addressed in the Superior Court appeal.

Chair Carley asked if the Board was satisfied. The Board answered they were.

Standing: Mr. Winters believes the applicant has met 'standing'. The Board has a lot of discretion on this. He is satisfied she has standing.

Ms. Spector-Morgan is not satisfied. She lives too far away. If her alleged injury is that she will have to wait longer at the traffic light, that doesn't fit. She doesn't suffer an injury that everyone else doesn't have.

Mr. Monahan thinks they are here to just check the box that they exhausted their administrative remedy. He agrees with Mr. Winters. The applicant meets the test of standing. He believes she is closer than the public in general.

To have standing.

Mr. Wallner believes she has standing. Normally, they deal with small neighborhood changes, but here is the gateway community and it is a broad scale development which has mass appeal.

Ms. Spector-Morgan asked if he would grant standing to everyone in Concord. Mr. Wallner thinks it does affect everyone in the gateway community.

Chair Carley does not think she has standing. Similar to Ms. Spector-Morgan's reasons. He doesn't think she is proximate, as she is on the other side of Loudon Road and I-393, which is a different territory to where this development is going. There isn't any direct impact on her, other than her being inconvenienced driving through the intersection which is true for anyone.

A **motion** to find that there is standing was made by **???**, **seconded by ???** and passed by a 3-2 vote with Chair Carley and Ms. Spector-Morgan in the minority.

Timeliness:

Wallner: The final date of the Planning Board approval of June 21<sup>st</sup> started the clock. He believes she made it.

Mr. Monahan struggled with this. He thinks the decision to move forward with the application signaled that there was a completeness determination. There are some threshold issues.

Ms. Spector-Morgan doesn't think the appeal is timely. The law is clear, 30 days from the Planning Board decision; the date of determination and date of final approval. They are not the same in Concord. Site plan regulations say that for an application to be determined be complete the application must be conforming with Zoning. January 18, 2023, the Planning Board found it complete.

Mr. Monahan asked if the public had an opportunity to comment on the completeness. Ms. Spector-Morgan was not sure if it matters. The decision was made.

Mr. Winters is not happy about this issue as he is sensitive to the developer's argument. They put a lot into it as far as money and time. He does understand Chair Carley and Ms. Spector-Morgan's thoughts.

Zoning Administrator Hutton testified that the January 18, 2023 Minutes show that Mr. Hicks confirmed that it was a gateway performance district and there was no waivers, variances, etc. required. Heather Shank, City Planner, confirmed that was indeed the case. The evening they made that determination they asserted that it was an allowed use. Mr. Winters doesn't like how it is done. It's not made crystal clear that it was a decision. Ms. Perkins interjected that if it was clearly stated at a public meeting it was an opportunity to say 'I don't agree' and 'how do I follow through'.

Mr. Monahan noted that the sense is that when the Planning Board determined that it was completed, it was noted that there would be a lot of process after that.

Chair Carley is inclined to agree with Ms. Spector-Morgan. The Ordinance is clear. The City should, perhaps, make it clearer as to when Planning Board takes up a case it means it is agreeing that the zoning is resolved. This has never come up while he's been on the Zoning Board.

Mr. Monahan asked if there was a vote that the application was complete. It was found that there was.

A **motion** by Ms. Spector-Morgan that the Board does not have jurisdiction of the appeal not filed within 30 days of the January 18, 2023 decision, seconded by Mr. Winters. Mr. Monahan noted that the vote was not timely as he is trying to find a balance of the expectation of the developer and the transparency of the process to the citizens. They are asking him to interpret the law which is challenging. **Motion** passed by a unanimous vote.

The Board cannot proceed to the third question.

Other Items:

Zoning Administrator Hutton advised the Board that there are 12 cases in November. She asked if they would like to split that into two meetings. Chair Carley would like to see a draft of the agenda first. Mr. Wallner would like to do it all in one night.

Minutes: No motion to accept minutes.

Adjourn at 8:34 pm.

*Respectfully Submitted by  
Rose Fife, Clerk of the Board*