

**CITY OF CONCORD, NH  
ZONING BOARD OF ADJUSTMENT  
OCTOBER 11, 2023  
MEETING MINUTES**

Attendees: Chairman Christopher Carley, Nicholas Wallner, James Monahan, Laura Spector-Morgan and Tedd Evans

Absent: Andrew Winters and Brenda Perkins

Staff: Tracey Hutton, Zoning Administrator

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Meeting commenced at 6:00 pm.

- 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 HEARINGS**

**0092-2023 39 Fayette Street; RD – Downtown Residential District; United Baptist Church of Concord, Owner:**

The applicant wishes to install an electronic messaging center sign (EMC). The applicant seeks variances to:

1. Article 28-6-7(r), *Signs Prohibited Under This Ordinance*.
2. Article 28-6-8(a)(1), Signs Permitted in Residential Districts, to allow a sign that is 33.25 square feet where 20 square feet is allowed.

Joshua Messinger, Advantage Signs, and Kevin Trombly, Pastor of the Restoration Foursquare Church, presented the application. Mr. Messinger explained that the site is unique in that there are four congregations using the building. The need for the Electronic Message Center Sign (EMC) is the need to change the text four times on Sundays for the four services being held at different times. The lot is on the edge of a residential zonings district, but the sign will be single sided and not face any homes. In addition, the EMC will be text only and not have images or graphics. In addition, there will be no motion to the text.

Mr. Trombly continued by explaining that the only times the signs will change is on the weekend and some midweek evenings. It will be used for services and organizational meetings. Outside of those events it will display a static message or verse.

Mr. Messinger stated that the current sign is legally non-conforming at 25 sq. ft. Because of the way the ordinance is constructed, if they replace the sign it must become conforming. The EMC portion of the proposed sign is 6' x 2' and there is quite a lot of unused space in the sign based on the method used for the City's calculation.

There was no one else in the audience speaking in support of the application.

Sandra Dustin of 18 South Street spoke in opposition to the proposal. She is opposed to having a large electric sign across the street from their home. Ms. Dustin was concerned that the sign would distract drivers more than the current situation and will exacerbate the trouble at that intersection.

Chris O' Connor, also of 18 South Street, furthered those comments by adding that the neighborhood is currently low-key and this sign would not fit with the character of the neighborhood.

Jasmine Mann, S Spring Street, agreed with what the previous speakers have expressed. She echoed the sentiment that the sign would be distracting to drivers and not be consistent with the neighborhood vibe. Her fiancé, Anthony Rivera, stated that an EMC is inappropriate and unnecessary.

Chairman Carley went through the correspondence received by the Board. Laura Miller of the Friends Program and Stephen Totter support the application. Suzanne Isabelle is opposed to the size and potential distraction.

Mr. Trombly offered pictures of the area surrounding the sign. He stated that the sign could be turned off at night and it is currently a burden to change the letterboard.

Mr. Evans didn't have comment on the size since the existing sign is currently non-conforming. He added that he does not feel there has been sufficient testimony offered to reverse Concord's trend away from EMCs.

Ms. Spector-Morgan asserted that the hardship seems to be from the use and not the property which does not meet the standard of a hardship. There is a larger than allowed sign now with changeable letters.

Mr. Monahan commented on the mechanical sign versus an electronic sign. He felt that there is too much evidence working against an EMC, especially how it won't fit in the current neighborhood.

Chairman Carley felt the prohibition of EMCs had been clearly written in the Ordinance and considering the degree of litigation on the issue, he did not hear any compelling reason to approve. He noted that perhaps a sign exceeding the size limitations would be approvable if not an EMC, but they can only vote on what is before them. Another application that was not an EMC would likely be deemed materially different.

Mr. Evans moved to deny the application for the reasons stated in the discussion. The motion was seconded by Mr. Monahan and passed unanimously.

**0095-2023 53 Joffre Street; RD – Downtown Residential District; Meredith and Aletea Bresaw, Owner:**

The applicant wishes to construct an 8-foot by 12-foot shed 48-feet from the front property line where 50-feet is required. The applicant seeks a variance to Article 28-5-32, *Accessory Buildings and Facilities*.

Aletea Bresaw spoke on behalf of the application. She explained that they were gifted a shed and was unaware of the rules regarding accessory structures. They wanted to move in into compliance, but the shed is in the way. The other side of the property has a steep slope. They are requesting a two-foot variance. When the shed is rotated it will be 48 feet from the front line and five feet from the side, as required.

Kevin Desmond, the direct abutter to the left of the subject property, stated that the shed is currently right on the side line. He asserted that his shed meets the setbacks in the ordinance and theirs should as well. He feels that the fence could be disassembled and reassembled once the shed is moved. He is afraid if the shed catches fire, his house would be in danger.

There was no one in the audience speaking for or against the application.

Ms. Bresaw offered a factual clarification that there would be no electricity or flammable gases in the shed and the shed will comply with the setback from Mr. Desmond's property line.

Mr. Wallner was pleased that the shed was being relocated to meet the side yard setback for accessory structures. He feels that the two feet needed to comply with the front yard setback is minor. He did not think such a minor deviation from the standard would be contrary to the public interest or effect surrounding property values.

Mr. Evans agreed that the variance would not affect the proximity to the neighbor or effect any risk to the neighbor's property.

Mr. Wallner moved to approve the application based on the discussion of the application; seconded by MR. Evans. The motion passed unanimously.

**0097-2023 295 Loudon Road; GWP – Gateway Performance District; NRFC Concord Holdings LLC, Owner:**

The applicant wishes to place four 8.5-foot by 40-foot storage containers. The applicant seeks variances to:

1. Article 28-2-4, *Allowable Principal and Accessory Uses in Zoning Districts*, to allow Accessory Use B-7 (Outside Storage of Materials and Inventory) in a Gateway Performance District.
2. Article 28-5-37, *Outside Storage of Materials and Inventory*, to permit outside storage 20 feet from the side property line where 25 feet is required.

Raymond D'Amante, counsel for Dick's Sporting Goods, and Chris Nadeau, Nobis Engineering, presented the application. Attorney D'Amante outlined that the applicant is requesting relief to permanently place four storage containers behind the store. In the past few years they have

reduced the number of contains from 14 to the four they have now and would like them to remain. Dick's has remodeled the store to attempt to create more interior storage area. He described the trees along the side of the property between Dick's and Aldi's has a sufficient natural vegetated buffer. Attorney D'Amante stated that the storage containers would only be accessed from 7am to 8pm to limit any noise disturbances.

Mr. Nadeau described the area in which the storage containers are located. Two of the containers are adjacent to the loading dock and two occupy rear parking spaces across from the loading area.

Attorney D'Amante described the hardship for the applicant. He described the size of the items in stock (kayaks etc.) and the size of the buffer that separates them from other properties. Ms. Spector-Morgan asked what was different about the property itself. Attorney D'Amante responded that the property has a very large parking lot with a significant buffer.

Mr. Nadeau was asked about the storage containers in the setback. He explained that alternate locations are closer to the residential abutters. He was also asked why they did not just alter or expand the building to account for the needed storage. It was explained that when the building was constructed they had no idea that they would need so much storage.

There was no one in the audience to speak in favor of the application.

Brian Vassillion, 51 Old Loudon Road, stated that he has lived in the Heights for decades. He explained that he is the last residential in the area because he is surrounded by either commercial development or higher density multi-family type developments. He was not in favor of the appeal.

Ms. Spector-Morgan moved to deny the application based on the lack of hardship. The setbacks can admittedly be met and the only hardship that was made apparent was from the use not from the land. The motion was seconded by Mr. Monahan and passed unanimously.

**0098-2023 42 Washington Street (P); RD – Downtown Residential District; Wendell J Butt Funeral Home LLC Owner:**

The applicant wishes to use the property for mixed use development. The applicant seeks variances to:

1. Article 28-2-4, *Allowable Principal and Accessory Uses in Zoning Districts*, to allow use A-16 (Conversion of nonresidential building for one or more dwelling unit)
2. Article 28-2-4, *Allowable Principal and Accessory Uses in Zoning Districts*, to allow use H-1 (Sales of goods and merchandise within an establishment occupying up to 5,000 square feet of gross floor area with no outside storage of inventory)

Jay and Penny Robertson were sworn in to present the application. Mr. Robertson explained that the property has been unoccupied since the time it was rezoned Downtown Residential. Currently the structure is dilapidated and in need of restoration. At one time it was a wonderful structure and now is

in an unsafe condition. Ms. Robertson explained that she has two other cigar shops, in Littleton and North Conway, and see the market need for one in the Concord area.

She went on to describe the hardship as being the size and configuration of the structure and the lot. However, in its day it was a stately structure. This makes it perfect for the cigar culture. She continued that the cigar culture has a certain standard of living that this type of property, once restored, would appeal to.

An abutter testified in favor the application that this property has been quiet in the past. He emphasized the need to save the property and that he has seen Ms. Robertson's other shops and they are run well.

There was an e-mail opposed to the application from Fred Regan, from the Merrimack Valley School District, SAU 46. There is concern that if the establishment has a liquor license it would be inappropriate next to a school.

In response Ms. Robertson described being militant about checking ID's before anyone comes into the shop. She also stated that she has a reputation for not overserving the public. There are students of age, ages 17-22, that attend a portion of the school.

Ms. Spector-Morgan inquired with the Zoning Administrator if part of the reason for the variances was the mixed-use aspect of the proposal, to which she replied in the affirmative.

Mr. Wallner stated that, in his opinion, this would be a change for the better. Restoration of the property would likely increase the value of the surrounding properties and he feels the character of the neighborhood would actually be detrimentally affected if the property isn't restored.

Mr. Monahan recalled a history of mixed use on the property and stated this resumption of the discontinued uses is trying to use the property as it was designed.

Ms. Spector-Morgan was struggling a little with a decision on the hardship criteria but decided that the property and its buildings are unique in that area.

Mr. Wallner moved to approve the application for the reasons previously stated; seconded by Mr. Monahan. The motion passed unanimously.

Minutes: Mr. Wallner made a motion to accept the minutes and findings of fact of September 13, 2023; seconded by Ms. Spector-Morgan. Passed 4-0 with Mr. Evans abstaining.

Adjourn at 7:28 pm.

*Respectfully Submitted by*  
*Tracey E. Hutton*