



CITY OF CONCORD

New Hampshire's Main Street™

Zoning Board of Adjustment

**November 1, 2023
Meeting Minutes**

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

Absent: Laura Spector-Morgan and Tedd Evans

Staff: Tracey Hutton, Zoning Administrator
Deb Tuite, Board Secretary

Meeting commenced at 6:03 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

0101-2023 5 Pine Street; RN- Neighborhood Residential District; Concord Whyte Properties 6 LLC, Owner:

Owner wishes to reverse Dr. Hutton's decision that the residential dwelling on the property contains 2 units and is not a legally existing multi-family dwelling.

The applicant has requested to be continued until the next regular meeting. Mr. Wallner made a motion to recess the application until December 6, 2023. The motion was seconded by Mr. Monahan and passed unanimously.

0104-2023 13 Currier Road; RO - Open Space Residential District; Kimberly Rae and Anthony Bailey, Owners:

The applicant wishes to construct a second dwelling unit attached to a new garage. 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 no road frontage where 300 feet is required.

Mr. Bailey described the project to the Board. The addition does not qualify as an ADU (accessory Dwelling Unit) due to size and the lack of a common wall. The garage will be in between the two dwelling units, and both units will have access to the garage. The lot is different in that it has no road frontage but contains 6 acres of land.

Mr. Winters inquired why the unit needs to be so large. Ms. Bailey stated that after a discussion with the Planning Division she discovered that the 750 square foot ordinance limitation was intended for in-town lots and in the ordinance being considered this number would likely increase. The proposed unit is 864 square feet in area.

It was asked why the located is proposed where it is. The Bailey's explained that, due to the shape of the lot, any other placement would violate a setback limitation.

Mr. Winters explained that ADUs in the Ordinance must be owner occupied. He asked the applicants if they would be comfortable with this condition. Ms. Bailey explained that they do intend to occupy the main house and would be comfortable with such a condition.

In Favor:

Jeffrey Newman, 15 Currier Road, explained the history of the subdivision and how he ended up with all of the road frontage. He added that he has no objections to the proposal and that it would be a positive development. He has observed where the garage construction has started and feels this is an appropriate location.

Opposed:

None.

Chairman Carley stated the needs for the variance are lack of frontage and development of a second dwelling unit and asked the Board members for their opinions. Mr. Wallner expressed that he feels this proposal meets the standards of a hardship due to the shape of the lot. He asserted that the unit is only about 100 square feet over an ADU and that

substantial justice would be done.

Mr. Monahan explained that he feels the applicant's design meets the spirit of the ADU regulations in the ordinance and changing the placement of the unit on the lot would bring its own issues.

Mr. Winters feels that if the condition is added that one unit be owner occupied he would be in favor of approving. He furthered that if both were rental units it would be inconsistent with the character of the neighborhood.

Ms. Perkins and Chairman Carley agreed with these statements. Chairman Carley asked for a motion.

Mr. Wallner moved to approve the application for the reasons stated with the condition that one unit be owner occupied. There was a second from Mr. Monahan; the motion passed unanimously.

0106-2023 79 Warren Street; RN- Neighborhood Residential District; Brian Byle and Lyn Vinskus, Owner:

The applicant wished to reconstruct a dilapidated carport/garage on the existing footprint and seeks variances to:

1. Article 28-8-5(b), *Continuation of Nonconforming Structures*, to allow the expansion of a non-conforming structure,
2. Article 28-4-1, *Dimensional Standards*, to allow an expansion of an attached garage approximately 1-foot from the side parcel line where 10-feet is required.

Mr. Byle explained that the carport is a roof overhang from the garage. They would like to add walls for safety and aesthetics. There is currently no slab under the carport and the one under the garage is in disrepair.

Mr. Winters and Ms. Perkins asked questions relating to why this is considered an expansion. Dr. Hutton explained that this increases the intensity of the structure's use. Currently with no walls and no foundation there is minimal impact, however, converting the open-air structure to part of the garage increases the non-conformity. She furthered explained that case law lays some discretion on this in the hands of the municipality.

In Favor:

None.

Opposed:

Molly Rossignol, 81 Warren Street, explained that she shares a driveway with this property and had a difficult time turning around to park. There are occasions when she may be slightly over the property line. She expressed concern that when she makes the 4-point turn to face forward that a walled structure at the property line would be impeding.

Mr. Winters asked if she has an easement over that portion of the applicant's lot. She explained that she has a deeded right of way through their lot for her driveway and parking space, but may be creeping outside it to turn around.

Jill Blackmer and Merle Thorpe, 73 Warren Street, expressed concerns over constructing of a foundation or slab so close to the property lines. It was explained that installing a foundation to front depth would put their trees in jeopardy. This harm came to many of their trees when another abutter, 6 orchard street, performed a similar project. He furthered, that there is a lot of congested construction occurring in this corner of the lots. Ms. Thorpe added that there is an eight to nine-inch drop in elevation from this area of the abutting property to theirs and there is concern about the run-off.

Clarification:

Mr. Byle stated that when they were planning the project they were presented with two options by their contractor. The first option included a full frost wall, which would have killed the trees. They discussed right away that this was not an option, they do like the trees. The second option is a pad with no front wall. This garage foundation is different than the attached carriage house. The current slab cannot be repaired and must be replaced. This is less invasive than a frost wall.

Ms. Vinskus stated that she understands the backing situation of her neighbor, but there is no legal agreement in place granting that right. She wants to make the area nicer to look at the for the abutter.

Chairman Carley went over with Dr. Hutton why this project needs a variance.

Ms. Perkins stated that she understands the concerns of the neighbors, but if there was no expansion they could still rebuild what is there currently, having the same impact on the vegetation.

Mr. Winters also validated the neighbors' concerns, but fundamentally that is a civil matter with separate remedies and not a zoning issue. Without an easement the turning-around issue has no grounds.

Mr. Monahan stated that the current garage could be rebuilt and that he is inclined to deny the application.

Chairman Carley stated that he does not feel it is true expansion because the roof extends to that point already. He agreed with Mr. Winters that the tree issue is a civil one and not in the Board's purview. As for the turning radius, the abutter needs to use the space allocated in her easement. He further stated that he is inclined to approve the application.

Mr. Monahan moved to deny the application. The motion died for the lack of a second.

Mr. Winters moved to approve the application as a reasonable activity since there is already a roof and posts. Seconded by Ms. Perkins. Motion passes by a vote of 4-1, with Mr. Monahan in the minority.

0108-2023 30 River Road; RO - Open Space Residential District/ SP - Shoreland Protection District and FH - Flood Hazard District Overlays; 30 River Road Properties, LLC; Owner:

The applicant seeks to renovate an existing single-family dwelling that resides in the 100-year floodplain and seeks a variance to Article 28-3-2(j), *Substantial Improvements to Existing Residential Structures Within the 100-Year and 500-Year Floodplains* to substantially improve the building without elevating the basement as required.

The applicant has requested to be continued until the next regular meeting. Mr. Monahan made a motion to recess the application until December 6, 2023. The motion was seconded by Mr. Winters and passed unanimously.

0110-2023 200 Sheep Davis Road; IN - Industrial District/ RO - Open Space Residential District/ SP - Shoreland Protection Overlay District; Sabbow and Co Inc, Owners:

The applicant proposes a precast concrete manufacturing development. To meet the needs of that use and the accessory retail operations the applicant seeks variances to:

1. Article 28-2-3(e) to allow Outdoor\Storage to extend 315-feet into the Open Space Residential District where 40-feet is permitted.
2. Article 28-5-37 Section (d), *Maximum Area of Lot to be Used or Designated for Outside Storage*, to permit the Outside Storage in excess of the 1.3:1 ratio of outside storage to gross floor area permitted to allow storage of 266,500 square feet where 68,250 square feet would be allowed;
3. Article 28-5-37(b), *Screening Requirements*, to permit use of existing natural vegetative screening; and
4. Article 28-5-37(c), *Buffer for Residential Districts and Offices Within Industrial*

(IN) Districts, to permit use of existing natural vegetative buffers.

Chris Nadeau, Nobis Group and Biron Bedard, Ransmeier & Spellman, were present for the applicant. Mr. Nadeau began with a brief history of the project. The applicant's operation is now located at 77 Regional Drive; this project would move the whole application to this site. The site is 34 acres and provides space for a two 25,000 square foot buildings and ample outdoor storage for product.

This parcel is unique in that there is residential zoned property along the river as well as a 75-foot conservation easement. To the north is an industrial use. This parcel has an island of Industrial zoning surrounded by Open Space Residential. In addition to requesting the industrial uses be allowed to extend 315 feet into the RO, they are requesting a ratio of 1:5 or 26,500 square feet of outdoor storage exceeding the 1:3 building to storage ratio allowed.

Attorney Bedard added that this operation is unique in that their products are very large and meant to be outdoors. The RO surrounding the IN zoning is not suitable for residential development, once you subtract the conservation and flood prone areas.

Mr. Nadeau stated that only outdoor storage will be in the RO, no portion of the structure. To comply with the 1:3 ratio there would need to be a much larger building increasing the impacts on the land, such as stormwater. There is natural vegetation buffering the project from Rt. 106 and steep slopes to the north. This is the old Manchester Sand and Gravel pit.

Attorney Bedard stated the project meets the spirit and intent of the ordinance and that there will be no impact on the property values of surrounding properties.

In Favor:

None.

Opposed:

The Town of Pembroke submitted a letter for the record. Chairman Carley paraphrased the letter. There are two issues that the Town is concerned with. The first is noise from manufacturing; the second Stormwater runoff into the River.

Richard Hill and Ronald Mahoney, who live across the street, were concerned that their driveway looks down the driveway for the site. There were questions about the noise and traffic that would be generated by the site. When the trees are leaf-off they can see right into the site.

Chairman Carley explained that there would likely be permitting from NH DES in addition to the City's Site Plan process.

Clarification:

Mr. Nadeau explained the all the manufacturing would be indoors to cut down on the noise. Outside of the building all stormwater must be captured and treated; resulting in little to no environmental impact. There would be approximately 20-30 trucks 2-3 times a day; which is not a dramatic increase from their current location up the road.

Chairman Carley asked if they would need a variance if the entire development was outside of the RO. The applicant stated it would due to the ratio of building to outdoor storage. It was explained that this is the first step to a multi-step process. There will be permits from NH DES, NH DOT, and the Planning Board.

Chairman Carley stated that there are steep slopes on portions of the parcel and the nature of the business that make it unique.

Mr. Monahan expressed the sentiment that it is not impactful to store finished product outdoors, but they knew the site restrictions when the property was purchased.

Mr. Wallner noted that the concerns raised but the abutters would be addressed in the Planning Board review. He also noted that it would not be possible to develop the RO into residential uses; if this property is used IN the RO would remain mostly intact.

Mr. Winters asked about which portion of the RO was being impacted. It is the portion furthest away from the abutter. He noted that beyond the buildings there are hardly any IN zone property. Then explained that the buildings to storage ratios were put into place to limit just having all storage. Here the storage is a key element of the use. The buffers are remaining largely intact and the Planning Board will deal with the site details.

Ms. Perkins states that the portion of the lot that is RO is well tucked in behind the IN and could never be developed residentially. The abutter has the rare home in the area. Chairman Carly had nothing to add.

Mr. Winters moved to approve all four variances; seconded by Mr. Wallner. The motion passes unanimously.

Minutes: Mr. Wallner moved to accept the minutes of September 27, October 4, and October 11, 2023; seconded by Chairman Carley. Passed 4-0 with Ms. Perkins abstaining.

Findings of Fact: Mr. Wallner moved to accept the findings of fact of September 27, October 4, and October 11, 2023; seconded by Mr. Winters. Passed 5-0

Mr. Wallner moved to adjourn the meeting at 7:36 pm; seconded by Ms. Perkins.

*Respectfully Submitted by
Tracey E. Hutton*