



CITY OF CONCORD

New Hampshire's Main Street™
Zoning Board of Adjustment

**November 8, 2023,
Meeting Minutes**

Attendees: Chairman Christopher Carley, Nicholas Wallner, James Monahan, Andrew Winters and Tedd Evans

Absent: Laura Spector-Morgan, Brenda Perkins

Staff: Matt Walsh, Deputy City Manager - Development
Deborah Tuite, Board Secretary

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

**0086-2023 13 Lawrence Street U-1; RM - Medium Density Residential District;
Andrew and Christopher Knight, Owners:**

The applicant wishes to construct two additional two-family dwellings on a single lot currently containing a two-family dwelling and seeks variances to:

Article 28-2-4(h), Multiple Principal Uses on a Single Lot, to allow three two-family dwellings on a single lot that is not a PUD; and

Article 28-5-2, Duplex or Two-Family Dwelling, to allow three two-family dwellings on a lot having 165.44 feet of road frontage where 450 feet is required (150 feet per building).

Chair Carley reviewed the criteria for reopening a recessed hearing when new information that has come forth. He mentioned that this case was a continuation and at the time that the case was recessed, they had closed the public testimony portion of the hearing. He stated that typically they do not take new testimony after that. However, new information has been submitted by the appellants and the City concerning the case. Discussed with the Board their thoughts on reopening the case.

Mr. Winters mentioned he might be inclined, but wanted to know past procedures for these types of requests.

Mr. Carley mentioned that general advice is not to reopen a case once the Board has closed testimony. However, new information is not usually offered after testimony closed. This situation is different in that the Board has accepted new factual information after recessing the hearing.

Mr. Winters recalled that he felt it might have been the applicant who requested the recess. He would be inclined to reopen it but cautioned only for new testimony.

Mr. Evans mentioned he was not here for the original meeting.

Mr. Monahan said as long as they were receiving new information and not repeating prior testimony.

Mr. Wallner mentioned that in the minutes it showed that there was a request for a continuation and there was no objection by the Board. He would be inclined to reopen.

A **motion** to reopen the case and to take testimony was made by Mr. Evans, seconded by Mr. Monahan and passed by unanimous vote.

Chair Carley reviewed the case.

Andrew Knight and Chris Knight testified. Chris Knight proceeded to read a letter, addressed to Matthew Walsh. Described that this was a unique, non-traditional subdivision, not a PUD and not a cluster subdivision, and that they were looking to offer diverse and affordable housing options. Mr. Knight then mentioned a memo that they had received from Code Administration that claimed that they were seeking to by-pass all requirements in the PUD process which he found to be insulting. He mentioned that prior to submitting the variance that they had met with Zoning to elicit feedback on pathways forward. The variance request was the best path forward. The proposed project was not a PUD, and did not meet the requirements of a PUD. They met with neighbors, and then at their cost with engineers, when possible water line issues were raised. The process seemed reasonable and they had no intent to circumvent any processes, rather they sought feedback. He stated that they look forward to

continuing to provide affordable options in the City of Concord and to work collaboratively in the future. He mentioned that they had prepared a number of documents including a traffic study, green space plan, and sewer and water extensions designed to City standards. They felt that they were following the permitting path. Given that the permitting path is unclear based on the memo, the applicants then withdrew their application.

**0102-2023 5 Short Street; RD- Downtown Residential District; Local Rentals LLC,
Owner:**

Applicant wishes to pave a driveway 1-foot from the side property line where 5-foot is required and seeks a variance to Article 28-7-7(g), Setbacks from lot lines.

Mark Beauregard testified. Recently purchased 5 Short Street, which is a residential two-family property that does not have a suitable driveway. Looking for a variance. This is a unique street that is very narrow, with minimal parking. There is also a unique traffic pattern. Parents park on the street to drop their kids off and pick them up from school, as well as utilizing the park. There is no parking on the street in the winter months which is problematic. Parking is only allowed for up to two hours during the hours of 7:00 AM until 6:00 PM. When the City engineered the road, there was a 12' cutout for parking.

Mr. Winter and Mr. Monahan asked for clarification.

Mr. Beauregard explained that the driveway would be located one foot away from the neighbor's driveway, and it would be right on the property line. It would afford three parking spaces. The property has two units, allowing for one space for the upstairs unit, and two spaces for the first-floor unit.

Chair Carley noted that if they reduced the driveway by approximately four feet it would not require a variance.

Mr. Beauregard explained the difficulty it would impose if the tenants had to stack their parking. He stated that this section of the city is tight, and that prior to zoning and variances, that most of the 22 properties have driveways that do not conform to the variance. He is the only property without a paved driveway. Parking is only allowed on one side of the street on a first come first serve basis.

In Favor: none.

Opposed: none.

Code: none.

DECISION: Chair Carley reviewed testimony, mentioning that without pavement on the

property there is no option for tenants to park.

Mr. Wallner stated that it is a very tight road and that the hardship is that the owner is denied reasonable use his property, while most of his neighbors have paved parking.

Mr. Evans stated after reviewing all of the aspects, this meets for a variance.

Mr. Winters agreed, stating it was a relatively small lot where duplexes are allowed by right, taking into account the existing use. It is also a safety issue. It is a reasonable amount of space for a duplex.

Mr. Wallner **moved** to approve the application as the hardship issue was addressed, surrounding property values would not be diminished and that substantial justice would be met. Lastly, stating that it would not alter the characteristics of the existing neighborhood and with the existing cutout the driveway is merited. Seconded by Mr. Evans and passed unanimously.

0105-2023 9 Greenwich Street; RS - Single Family Residential District; Tyler and Lauren Robinson, Owners:

The applicant wished to construct additional living space on an existing single-family dwelling and seeks variances to:

Article 28-8-5(b), Continuation of Non-conforming Structures, to allow the expansion of a non-conforming structure,

Article 28-4-1, Dimensional Standards, to allow an expansion of a single-family dwelling 10-feet from the side parcel line where 15-feet is required.

Lauren and Tyler Robinson testified. They have owned the property for five years and recently welcomed their second son. Looking to convert their garage into livable space as well as add on a home office due to the expansion of their family. She mentioned that the neighbors did not have any objections. This expansion would allow them to better utilize their space.

Chair Carley clarified that the garage footprint would remain the same while converting it to usable living space, and then they would be adding an office behind the garage.

Mr. Winters noted that if they put the expansion dead center in the back, or on the other side of the deck, they would avoid the setback issues.

Mrs. Robinson explained there is an existing deck, however it would overlap so they would

have to tear the deck down. Also trying to keep the addition in line with the garage. They would have to reconfigure the entire house if they placed it on the other side of the deck due to the placement of the bathroom.

Mr. Monahan asked if the home had city water and sewer and what side was non-conforming.

Mr. Robinson stated that it was city water and sewer and believed that the existing garage is non-conforming.

In Favor: none

Opposed: none

Code clarified that one side is clearly in the setback and that it is the westerly side that is nonconforming.

DECISION: Chair Carley, reviewed testimony.

Mr. Winters stated that the property predates the zone, and if the house had been rotated it would be conforming. Stated that the owners created their own hardship because of where they built their deck, however, pretty minimal imposition. Inclined to approve.

Mr. Evans stated that the hardship is the narrowness of the lot. It would not have any negative impact on values, and that it meets the criteria.

Mr. Monahan and Mr. Wallner agreed.

A **motion** to approve the request was made by Mr. Evans, seconded by Mr. Wallner and passed unanimously.

0107-2023 10-12 Higgins Place; OCP - Opportunity Corridor Performance District; Mountain Creek Realty, LLC, Owner:

The applicant wishes to construct two single family dwelling units on one parcel and seeks variances to:

Article 28-2-4(j), Table of Principal Uses, to allow use A-1 (Single-family detached dwelling);

Article 28-2-4(h), Multiple Principal Uses on a Single Lot, to allow two single-family dwellings on a single lot;

Tom Villemure testified. He is the owner of 10-12 Higgins for over a year, which is in a

designated OCP zone. Proposing to build two single family houses on one existing lot, included a plot plan for the unique design.

Chair Carley asked why not just subdivide the lot.

Mr. Villemure stated that the lot is small and it would be hard to have one house behind another. Stated that it would be simpler to build a multi-family unit, but instead the lot would have two single family homes with a garage. Stated that the neighbors shed is currently on the lot, which would need to be mitigated as this is where the proposed driveway would be located, otherwise there is open space.

Chair Carley asked Code if a single-family house is allowed in an OCP.

Code: Mr. Walsh stated that it is not. The City created the OCP in the 2001 zoning ordinance to encourage redevelopment of the Opportunity Corridor. He then explained the reasoning for the OCP, similar to Horseshoe Pond that was converted into the Grappone Conference Center. The OCP zone is meant to foster redevelopment of former industrial areas.

Mr. Wallner asked if all of the houses on Hebert Street are in the OCP district.

Code: Mr. Walsh stated that they are, and have been there for a very long time.

Chair Carley stated that the houses well predate the OCP.

Mr. Winters asked if there are multi-family units in the OCP.

Code: Mr. Walsh stated that there are, and that they are allowed. There are currently 54 units of the former Allied Leather Tannery, and no variances were required.

Mr. Winters asked how many units could be built as a matter of right.

Code: Mr. Walsh was unsure.

Mr. Monahan asked if there has ever been anything on the lot previously.

Mr. Villemure stated he was not aware of any. There are 10 houses on the street. There is a single family at the end of Hebert Street.

Mr. Monahan asked if the other houses are multi-family and what was the reason for building two houses.

Mr. Villemure stated that there is a duplex neighboring his. Building two houses gives two owners an opportunity to buy a more affordable house. Price wise, it is more affordable to

build two houses rather than a duplex, economically.

Code: Mr. Walsh stated that in the OCP single family homes are not allowed, neither are duplexes.

Mr. Winters stated that it appears three or more units are required in the OCP zone.

Mr. Monahan asked who the abutters are.

Mr. Villemure stated the railroad and a duplex.

In Favor: none.

Opposed: none.

Code: none.

Mr. Monahan stated that in this zone you are not allowed to have single family residential houses. Inquired as to the purpose of that.

Code: Mr. Walsh stated that part of the reasoning was that there are very little single-family residences in the OCP and the goal was to develop commercial or mixed use properties. This is an unusual island of single-family homes that exist in an OCP zone.

DECISION: Chair Carley reviewed the testimony.

Mr. Monahan stated that this is a bit of a unicorn case, with a legacy residential neighborhood in an OCP zone. Mentioned it is unlikely to get developed to meet zoning expectations.

Mr. Wallner stated that only three units or more are allowed, where mostly duplexes exist. Stated it would not alter the characteristics of the neighborhood. Would tend to lean in support.

Mr. Evans stated that he does not see any impact on the value, felt it was unclear if it is within the spirit of the ordinance, and not clear on the hardship.

Mr. Winters stated that he doesn't see the hardship, but does appreciate the rationale. It's a run-down part of the city that the City is hoping for improvement, which could bring some life to the area. The size of the lot seems to be large enough however to hold three or more units, therefore leaning to deny.

Chair Carley agrees with the unicorn aspect, that this is a pocket in a larger district. The lot sat there before OCP and after OCP undeveloped. The applicant would like to develop it into two

single family residences. Feels that the characteristics of the lot creates a hardship, and because of the other uses in the area, this constitutes reasonable use in the neighborhood. Anomalies are created for zoning boards to deal with. Inclined to grant the variance. Most likely a residential neighborhood for a long time ahead. As far as the spirit of the ordinance, is hard to say, as this case is an oddball.

A **motion** to approve was made by Mr. Monahan, stating that the hardship is the unicorn nature of the neighborhood pulled into a zone that was created after it was already there, not an affront to the spirit of the ordinance. Seconded by Mr. Evans. Motion passed by a vote of 4-1, with Mr. Winters in the minority.

0109-2023 89 Fort Eddy Road; GWP - Gateway Performance District; Planet Fitness RealCo LLC; Owner:

The applicant wishes to change uses from Service (D-1) to Restaurant (I-1) and seeks a variance to Article 28-7-2(e), Table of Off-Street Parking Requirements., to provide 193 parking spaces where 250 are required.

Matt Peterson, Attorney representing the applicant, testified. Explained the history of the lot, where they received a variance in 2020 for 193 parking spaces, where 250 were required. This unit is a former tanning salon, which required 4.8 parking spaces. Requesting a variance for a sub shop type restaurant which will require 16 parking spaces. From an engineering standpoint it is pretty clean and makes sense. Plenty of parking at the site and traffic flow.

Chair Carley asked if any change would require a variance.

Mr. Peterson agreed that any change would require a variance.

Mr. Winters recalled that in the past, parking was not great, where people would have to park across the street. Asked if it has improved.

Mr. Peterson answered that it has substantially improved.

Mr. Monahan asked if there is an existing restaurant in the same building.

Mr. Wallner mentioned that a restaurant is going in and that parking is readily available.

In Favor: none.

Opposed: none.

Code: none.

DECISION: Chair Carley reviewed testimony, that parking has been maximized and any use would require a variance.

Mr. Winters stated that it is an oddity that a restaurant would take up any more space than a tanning salon. Inclined to approved

Mr. Evans agreed, nothing to add.

Mr. Monahan agreed, nothing to add.

Chair Charley agreed that the hardship is that anything would require a variance.

A **motion** to approve was made by Mr. Evans, seconded by Mr. Winters and passed unanimously.

Mr. Wallner moved to adjourn the meeting at 7:00 pm, seconded by Mr. Evans.

*Respectfully Submitted by
Deborah Tuite*