



CITY OF CONCORD

New Hampshire's Main Street™
Zoning Board of Adjustment

February 7, 2024
MEETING MINUTES

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

Absent: Tedd Evans, Laura Spector-Morgan

Staff: Tracey Hutton, Zoning Administrator
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

REHEARING REQUESTS

[0123-2023](#)

54 N. Main Street; *CBP – Central Business Performance District, Ciborowski Associates LLC, Owner:*

Applicant is proposing a complete redevelopment of 44-52 N. Main Street (CVS) and 54- 56 N. Main St (E&P Hotel) along with a connection to and renovation of 34-42 N. Main Street (Phenix Hall) and is requesting variances to:

1. Article 28-4-1(h), Table of Dimensional Regulations, to allow a portion of the proposed building to be constructed to a maximum height of 88 feet whereas 80 feet is allowed.
2. Article 28-4-1(g)(2), Dimensional Standards, to allow a partial obstruction of views of the State House Dome from Interstate 93.

Mr. Monahan stepped down, and Mr. Davie took his place as a voting member.

Chair Carley explained the process in a rehearing request.

Mr. Wallner stated that after reviewing the testimony, he did not feel the Board made an error.

Mr. Winters stated that he did not feel the Board made an error, however, he pointed out that one of the alleged errors of law by the appellant in the Board's reasoning was that the Board expressed an understanding that it would be inappropriate to consider a financial hardship. The appellant had provided materials that pointed out a case, Harrington vs. the Town of Warner, that stated that a lack of a reasonable return of investment is a reasonable consideration. Mr. Winters had investigated the case further, stating that the evidence cannot be conclusory or mere lay opinion. There needs to be expert testimony with evidence, none of which the Concord ZBA Board had heard. He also noted that the appellant stated that the Board failed to consider whether they even needed a variance for a partial or fleeting obstruction of the State House Dome, however, he stated that the Board's practice has been that if the applicant is claiming that they don't need a variance, that they should have brought an appeal forward instead of a variance. He did not feel there would be grounds for reconsideration.

Ms. Perkins stated that she was not a part of the original vote, and that she did not see anything to justify a rehearing.

Mr. Davie concurred with Ms. Perkins.

Chair Carley stated that the Board has not considered financial hardship as a rule in their decision in the past and wondered if this is an error on the Board's part. He stated it may be worth soliciting their own legal advice whether the Board should be considering it, as the Board has not operated that way in the past. The appellant's citation of a ruling endorsing financial hardship was news to him.

Mr. Winters stated that this caught his attention as well, and that it was interesting, in that it could be an error if the Board should not consider financial hardship at all. If an error was made, it was immaterial because the evidence presented was lacking. There was no expert testimony or anything concrete presented that the lack of additional height would be a such an economic change to the project to make it a reasonable return. If they had presented that evidence and the Board still said no, then he felt that would have been an error.

Chair Carley queried if the Board would rehear the case to allow the appellant to present that evidence. He stated that theoretically, the evidence is supposed to not to be available at the time. The Board has been flexible in the past. He was just raising the question

Ms. Perkins questioned if there was not a lot of facts on that, was it really a part of the actual decision at the time.

Chair Carley stated that the vote was 3-2, and that he voted in favor of granting the appeal. One of the considerations in his mind was that the project was not feasible if they did not have the restaurant on top, even though there was not a lot of information at the time; it did strike him as a significant issue.

Mr. Winters stated that he voted against the appeal, and did not take it into consideration because there was no concrete evidence, and normally the Board would not allow an applicant to

bring new evidence. He is cognizant that maybe they did not bring that evidence forward because historically the Board did not take that into consideration.

Ms. Perkins questioned if accepting new testimony would be proper procedure.

Chair Carley stated it would be a new hearing. He indicated that since this is new legal ground for the Board, he would be more comfortable with recessing the request for a rehearing to get advice from counsel.

Mr. Winters pointed out that as of right now, there is only a four-member board present as Mr. Davie is not ready to vote, and not sure if the applicant has a right to have a five-member board on a rehearing motion. He is inclined to agree on seeking legal advice. It would not be a huge burden to the community as no one needs to show up.

Code: Dr. Hutton was unsure if the applicant had a right to a five-member board when voting on a rehearing request as this has not been brought up in the past.

Chair Carley stated it would be a public hearing and the Board could defer to the next meeting. This is new territory and the applicant might not have given enough financial evidence at the time due to the Board's practice of not considering it as grounds for a variance. It would also be consistent with the Board's practice on variances and special exceptions to ask the appellant if they want to hold off for a five-member board for a rehearing request. He felt the Board should err on the side of caution and defer consideration of the rehearing request until a five-member board is available and legal advice is in hand.

Mr. Wallner questioned if they were considering both variances for a rehearing or just the first variance.

Chair Carley stated that he feels that both variances apply as they both relate to the height of the building.

Code: Dr. Hutton stated that she will reach out to the Assistant Solicitor.

A **motion** was made to recess the case until March by Mr. Winters, to allow the Board to request advice from the City Solicitor's Office, seconded by Ms. Perkins; passing unanimously.

TABLED PUBLIC HEARING ITEMS

[0142-2024](#)

270 Loudon Road; *GWP – Gateway Performance District*, Onyx Steeplegate Concord LLC, Owners:

1. A variance from Article 28-7-2(e), *Table of Off-Street Parking Requirements*, to allow fewer spaces than required.
 - a. Lot 40 and 40-1 (Costco/JC Penney) 943 spaces where 1131 are required;

- b. Lot 40-2 (Mixed-use residential/fitness/recreational/retail) 1019 spaces where 2,055 are required; and
 - c. Lot 41 (Applebee's Restaurant) 56 spaces where 68 are required.
2. A variance from Article 28-7-11(b), *Alternative Parking Arrangements, Construction of Fewer Parking Spaces*, to allow the Planning Board to authorize the construction of fewer parking spaces on Lot 40 and 40-1 (Costco/JC Penney), without "showing that a sufficient land area is allocated and shown on a site plan for the full number of spaces required."

Chair Carley stated that the applicant wished to postpone the hearing until March, 2024.

A **motion** was made by Mr. Wallner to defer the meeting until March 6, 2024, seconded by Ms. Perkins; passing unanimously.

0133-2023

270 Loudon Road; *GWP – Gateway Performance District*, Onyx Steeplegate Concord LLC, Owners:

In the redevelopment of the Steeplegate Mall property into a mixed-use development, for this multi-building/multi-lot project the applicant requests the following variances:

- 1. Article 28-4-1(h), *Table of Dimensional Regulations, Maximum Height*, to allow a maximum height of 59-feet 8-inches where 45' is allowed.
- 2. Article 28-2-4(j), *Table of Principal and Accessory Uses*, to allow a Tire Center (J-8) where prohibited in a GWP.
- 3. Article 28-4-1(c), *Table of Dimensional Regulations, Minimum Lot Frontage*, to allow frontage to be calculated based on the combination of frontages on a corner lot rather than the calculation along "one" street as required.
- 4. Article 28-4-1(h), *Table of Dimensional Regulations, Maximum Lot Coverage*, to allow 91% coverage where 85% is allowed.
- 5. Article 28-7-7(f), *Driveway Widths*, to allow a 30' driveway width where 28-feet is the maximum.
- 6. Article 28-7-7(j), *Illumination of Parking Areas*, to allow light posts at 36-feet and 6-inches in height where 25-feet is the maximum,
- 7. Article 28-7-13(c), *Design Standards for Loading Spaces*, to allow 12-feet wide loading spaces where 14-feet is the minimum.
- 8. Article 28-7-14(e), *Screening of Refuse Containers*, to not screen trash compactors where screening around three sides is required.

Chair Carley stated that the applicant wished to postpone the hearing until March, 2024.

A **motion** was made by Mr. Wallner to defer the meeting until March 6, 2024, seconded by Ms. Perkins; passing unanimously.

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

Owner wishes to reverse the Zoning Administrator's DECISION: that the residential dwelling on the property contains 2 units and is not a legally existing multi-family dwelling.

Chair Carley mentioned the appellant withdrew the application.

PUBLIC HEARINGS

0136-2023 57 Regional Drive; *IN – Industrial District, Gerald P McCarthy Revocable Trust, Owners:*

Applicant requests a variance from Article 28-2-4(j), *Table of Principle Uses*, to permit the establishment of a Non-public Elementary or Secondary School (B-1) where such use is not permitted.

Christi Campbell Heath, Vice President of Related Services of Ready Set Connect, testified. Ready Set Connect has been in the building for 14 years, providing ABA services for children with autism. The services are insurance funded as they provide more of a medical service, with children receiving early intervention services prior to going to school, as well as offering social groups and life skills programs for school age children, ranging in ages 2-14. She stated that schools are prepared for some of their clients, however, there are school districts asking if Ready Set Connect can take some of their students full time as they are not prepared for some of the clients. Ready Set Connect loses approximately 25 clients every fall in their transition to school, however, some are successful and some are not.

They are looking to have two classrooms. It already looks like a classroom model; however, some students have higher needs, with low communication skills using AC devises, requiring functional skills, behavioral modifications, and toileting. Looking for five students per classroom, based on age level and the level of need, such as whether they need 1:1 para, or an ABA, Applied Behavior Analysis, focused classroom. They are looking to help their students, families, and the school districts. Many of the out of district facilities are full or they may not be appropriate as they do not specialize in autism, as they may be more medical or behavioral.

Mr. Winters asked to clarify if this request is considered a change of use, as they are already approved to allow full day services up to school aged, but now would be including school aged children.

Ms. Heath stated that they would become a non-public school for two of their rooms. Funding would change as the school districts would pay instead of the insurance model.

Chair Carley asked if the whole operation would be considered a school.

Ms. Heath stated only two classrooms would apply to this request.

Code: Dr. Hutton stated it is considered a change of use to an elementary/secondary school.

Chair Carley asked if they have any outdoor space for the students.

Ms. Heath stated that they do.

Mr. Winters questioned if it will increase the number of students, or will they be taking fewer of the younger clients.

Ms. Heath stated that they could take up to seventy, however, they currently have 34 clients. They would take in 10 school-aged students, and they would need insurance company approval before taking them on.

Mr. Monahan questioned if all of the students would be tuitioned in from the districts, with no private pay.

Ms. Heath stated that it could be private pay, however it would be cost prohibitive. There have been four students in the past year that school districts have tried to find placements, but it has been difficult for them.

Ms. Perkins stated that some of the other schools are more than a half an hour away which is not convenient.

Ms. Heath stated that it could be even further than that. They are finding that there are many reasons a child might not be successful in public schools. They may not be learning and RSC can provide appropriate services for them. If there is a high intensity in behaviors, school districts are searching for placements.

Ms. Perkins questioned if they will be changing anything on the interior of the space.

Ms. Heath stated that they had one room in the beginning, but have expanded over time. They have approximately 150 clients that come and go. They have after-school programs, with kitchens to help with life skills etc. They have been able to design and build what they need to support the programs.

Ms. Perkins questioned if the landlord has any objections.

Ms. Heath stated that they do not.

Mr. Winters stated that there seems to be a diverse set of neighbors in the building and questioned if there have been any issues.

Ms. Heath stated that they have their own space, with an enclosed playground. The neighbors include an adult day program, as well as a dentist. There is a company on the other side that specializes in making adaptive furniture.

Favor: None.

Objection: None.

Code: None.

DECISION:

Chair Carley stated that there would be a change of use classified as a non-public elementary or secondary school, and this is a modification to services already being offered.

Ms. Perkins stated that she does not see a hardship to the community, as they are in the same space with no exterior changes that would affect the neighborhood. This is a needed service and she would be in favor.

Mr. Winters stated that he sees why they need the variance, as it is a very technical change, no fellow tenants came to complain, and the work they are doing is very critical. He has no objection.

Mr. Monahan agreed with his colleagues.

Mr. Wallner stated that it is not contrary to the public interest, there would be no diminishment in value, it will do substantive justice, and that literal enforcement of the ordinance, without a slight modification of its use, would create an unnecessary hardship. He would be inclined to support it.

A **motion** was made to approve the variance by Mr. Wallner, seconded by Ms. Perkins; passing unanimously.

[0137-2023](#)

158 Manchester Street; *CH - Highway Commercial District*, PRM
Auto/Concord II LLC, Owners:

Applicant requests a variance from Article 28-6-9(a), *Table of Maximum Sign Dimensions for Non-Residential Districts*, to permit a total of 160 sq. ft. in two signs where up to 66 sq. ft. in two signs was permitted by variance in 2015.

Kyle Harvey testified on behalf of the applicant. Capitol City Kia looking for a variance on the maximum dimensions of the signs. One pylon is receiving a face change, and the other pylon is a lollipop style pylon which will be replaced with a monument style sign of the same size, which increases the square footage of the sign.

Mr. Wallner clarified whether the other sign, the one currently reading "Parts & Service" is just receiving a new face.

Mr. Harvey stated that is the case.

Mr. Winters questioned if this change is coming from Kia.

Mr. Harvey stated that these signs are mass manufactured and that Kia is going for a more modern look. A lot of the signs are made down south and shipped up. He stated it would be difficult to have

them redesign the signs to appease the square footage requirements. This is a 20-foot sign, and the new sign is a 20-foot sign.

Mr. Winters clarified that it's not just the sign that is mandated by Kia, but the actual size as well. Also asked if Mr. Heath knew why a variance was granted in 2015.

Mr. Harvey agreed, stating that there are a couple of different sizes, but this sign is the same height. He did not know why a variance was granted in 2015.

Chair Carley asked if Code knew what the 2015 variance was for. He asked for clarification in the case of the existing sign, whether it was just the oval that sits on the pylon that is considered the sign, whereas with the new sign, the additional rectangle would be included.

Code: Dr. Hutton stated that the old system just had the motion for the 2015 variance, which passed by unanimous vote, she could not find the minutes in the system explaining the rationale. She stated that on the new sign the entire structure is included the sign's area calculation, which was not true of the old sign, which rests on a pier.

Chair Carley stated that typically the scale of the sign needs to match the scale of the site and the speed and frequency of the traffic.

Code: Dr. Hutton stated that the applicant worked closely with Code to make sure the new sign meets the setbacks for the new right of way.

Favor: None.

Opposition: Mr. Schweiker testified. He stated that he is turned off by the idea that an out of state company wants a bigger sign and that they want to make the City change their ordinances. He stated that just because Kia wants a bigger sign doesn't mean the Board should comply. He stated that maybe the Planning Board should come together and increase the size of signs across the City instead of coming one by one to have them approved.

Code: Nothing additional.

Mr. Harvey clarified that it is basically the same size, but a monument style instead, same height and width.

DECISION:

Mr. Wallner stated the sign appears to look a little bit smaller than the previous sign. He would approve.

Mr. Monahan agreed, but would add the condition that the black area stays blank.

Mr. Winters stated that the likely reason for the approval in 2015 is for the very important way finding function to the sign, because it is a heavily traveled road with a lot going on, and not having clear signage can cause accidents. He does take the point that we do not want to outsource our

control to other companies, but within reason, most auto dealerships have many conditions put upon them. He stated he is inclined to agree.

Ms. Perkins stated that based on the shape, it appears smaller, and it sits in the new setback requirements. The new look will reduce the impact. She noted that she agreed with Mr. Monahan that no additional signage would be added.

Chair Carley agreed with his colleagues.

A **motion** was made, with the condition that the sign is approved as represented in the application, and that the background remain blank (black), by Mr. Monahan, seconded by Mr. Wallner; passing unanimously.

0139-2024

16 Manchester Street; *GWP – Gateway Performance District*, ROI Irrevocable Trust, Owners:

Applicant seeks a variance from Article 28-6-7(m) to allow an otherwise conforming freestanding directory sign to be located on a premises other than where the uses are located.

Attorney Ari Pollock, Alex Vailas, Consultant, and Bob Duval, Engineer testified on behalf of ROI. The variance request relates to a parcel that is a former residential development, comprised of 1.42 acres, that has public frontage on Manchester Street and Black Hill Road. This parcel is part of a redevelopment of assembled parcels that was a subject of a Comprehensive Development Plan approved by the Planning Board in December of last year. The 16 Manchester Street portion is intended to be redeveloped into a financial institution. The CDP comes first, with Sites Plan coming next. The approved CDP plan shows a proposed development monument sign to be located on 16 Manchester Street. The sign is intended to advertise uses on parcels that are developed on Black Hill Road and behind Black Hill Road, including lot three, tax map 792Z, and lots 33 and 34, tax map 781Z. They are requesting a variance to put a conformingly sized sign; however, the sign would identify off premises uses. All part of a common scheme of development.

When it comes to hardship, even though Black Hill Road is a public road, the frontage is behind the lots on Manchester Street and it is visually blocked by the improvements between the two streets. The ordinance prohibits this sign and because of the visual obstruction of the Black Hill Road lots, the owners and tenants will experience hardship for a lack of visibility and way finding. An off-premise sign would remedy the inferiority of the placement of these properties. The sign will help prioritize the signaled intersection as the entrance to those businesses. One of the concerns of the Planning Board was to prioritize that intersection versus entrances from other connection points of the development to get as many people through the traffic light. The sign is a reasonable use as it will improve business locations and way finding. They are not seeking relief to increase the size of the sign, as they believe the sign can conform. The sign is in the public interest as it supports flexibility in development which is the purpose of the CDP. The spirit and intent of the ordinance and substantial justice are all serviced for the purpose relating to signage as there is a priority for pedestrian and traffic safety. There is no evidence to suggest that surround properties would result in any devaluation. They are just asking to have the sign for off property uses.

Mr. Wallner questioned how big the sign would be, and how many directory units would be on the sign.

Attorney Pollock stated that it would be approximately 100 sq. ft., whatever the allowance is. There would be approximately five or six businesses that would be advertised.

Mr. Wallner stated he is concerned that with directory signs on such a busy road, which comes down a hill at a rapid pace, and if it would distract drivers.

Attorney Pollock stated it is an issue that they have considered and that they have stayed away from relief relating to the sign, as it has not been designed yet. If they need some relief to make sure it is safe and to serve its purpose, they will have to come back.

Mr. Monahan asked what is the height of the businesses are on Black Hill Road, and if they are going to be retail.

Attorney Pollock stated that the buildings closest to the road will be retail and restaurant single-story structures. The multifamily and senior living towards the rear will be four-story buildings.

Mr. Monahan questioned if they will have multiple tenants and could the directory have more than five?

Attorney Pollock stated that the retail could have multiple tenants, but that he does not believe that will be the case as far as how many businesses will be advertised. The sign has not been designed.

Mr. Winters questioned if everything east of Black Hill Road has not been developed yet.

Attorney Pollock stated that everything that the CDP approved has not been developed yet, and still working through conditions of approval.

Mr. Winters clarified that everything has yet to be constructed, and asked where the sign will be for the actual property of 16 Manchester Street.

Attorney Pollock stated that it is intended to be a financial institution and will have a wall sign, which is an entitlement under the ordinance.

Ms. Perkins stated that is quite a major intersection and asked if the City allows for directional signage for businesses at the intersection. Concerned that it is a dangerous spot.

Code: Dr. Hutton explained that it would not be allowed at the intersection, however multi-tenant sites are allowed directional signs that have panels. This puts the sign closest at the intersection where the Planning Board would like traffic to be focused.

Chair Carley stated that the only question before the Board is that it is off its own parcel.

Mr. Winters questioned if it is expected that the sign would be considered common ownership once completed. What happens if they are sold off, could there be a situation where one lot owner would be in control of the sign.

Attorney Pollock stated that an easement would be in place to allow the permanent location of the sign.

Ms. Perkins commented that it looks like they are intentionally curving the driveway so only one lane could enter.

Attorney Pollock stated that was another condition of the Planning Board.

Favor: None.

Opposition: None.

Code: Dr. Hutton explained that as far as readability of the sign is concerned, it must go through the Architectural Design Review and will be addressed in further review.

DECISION:

Ms. Perkins stated that knowing the way that they are trying to direct traffic, seeing where the development is going to be, and that it will be reviewed further, she would approve.

Mr. Winters stated it would not make a lot of sense to put it farther back as far as function. Placement makes perfect sense.

Mr. Monahan agreed.

Mr. Wallner agreed.

Chair Carley agreed.

A **motion** was made to approve the variance by Mr. Wallner, seconded by Mr. Monahan, passing unanimously.

[0140-2024](#)

30 Manchester Street; *GWP – Gateway Performance District*, ROI
Irrevocable Trust, Owners:

Applicant seeks a variance from Article 28-2-4(j)(7) to allow the car wash to be developed as an accessory to the principal gasoline use.

Attorney Ari Pollock, again representing ROI, Alex Vailas, Consultant, and Bob Duval, Engineer testified. Attorney Pollock explained that this site was formally a retail strip center, which is comprised of three parcels with a total of 3.4 acres. All the acreage has frontage on both Manchester Street and Black Hills Road. A CDP was approved for this parcel by the Planning Board, with the property located

in the GWP district. The site will be improved with a sandwich shop, convenience store, retail gasoline, and carwash. The CDP approved the plan for the proposed carwash, however with the understanding it would require a variance. He explained that a carwash is a customary accessory use to an allowed principal use of retail sale of gasoline. However, a carwash is not an allowed accessory use in the GWP district, and in fact not allowed as an accessory use anywhere. It is only a principal use in a few commercially zoned districts. There is a supplemental standard that relates to the sale of retail gasoline, 28-5-20(b); the architectural design of any accessory uses shall be reviewed by the Planning Board. That is an indication that the accessory uses were contemplated by the framers of the ordinance.

Attorney Pollock stated that they are asking the ZBA to allow a carwash to be developed as accessory to and on the same lot as the principal gasoline, sandwich, and convenience retail uses. The hardship is that the retail sale of gasoline is commonly paired with other compatible paired uses, such as sandwich shops, convenience stores and carwashes. There are some examples right in Concord. The gasoline sale use would be paired with bundled purchases. Three of the four typically bundled uses are allowed and the carwash is not, which creates a hardship when the user has a layout that fills the site nicely.

The use is reasonable as it would allow the bundled uses to be in tandem and the carwash would complement the others. If allowed by variance, the entire site would still need site plan review which would be looking at the layout, parking, lighting, environmental impacts, etc. Carwashes have been improved over the years, with minimal sewer loading. There will be no discharge to surface flows or the unprotected environment. The public interest supports flexibility for mixed used projects and bundled uses. The whole intent of the GWP is to pair a mixture of uses that fit together. Public interest supports this bundling for one-stop convenience. The spirit of the ordinance is served, substantial justice is respected, since the variance is consistent with the goals of the GWP district, which is to promote commercial services and uses expected to adhere to high standards. There is no evidence that the surrounding properties would suffer devaluation. The gas, convenience, and sandwich shops are permitted, this is just the exercise to add a car wash by variance. The traffic is a by-product of what is already coming to the site for the other bundled uses, and it is expected that the Planning Board will review these issues in its site plan review.

Mr. Winters asked for clarification if carwashes are accessory to gasoline stations.

Attorney Pollock stated that it is allowed as a principal use in some of the commercial districts and you could have multiple principal uses if they are each allowed on a single lot.

Mr. Winters queried on Manchester Street if there is a gas station with a carwash attached to it. Questioned Loudon Road.

Attorney Pollock agreed that you will find them in the same place.

Code: Dr. Hutton stated that the carwash is separate. She also stated that Loudon Road is a different zone where it is allowed.

Favor: None.

Opposition: The Board presented a letter from Tony Crawford from Circle T and Integra Carwash, which states that the market for carwashes is saturated in the area. Opposed to the public interest. He is concerned about adding a carwash in an area where it is not permitted.

Code: No additional comment.

DECISION:

Mr. Monahan stated that he is inclined to approve, as it sounds more like a technical use that you can have a free-standing carwash, and it seems reasonable.

Mr. Winters agreed. He stated that the applicant did not point out that the carwash does take up a fair amount of space, but in conjunction with the total development they have quite a large parcel. He understands what Mr. Crawford is saying in his reasoning, as there are a lot of carwashes, but noted that is a free market issue.

Mr. Wallner agreed.

Ms. Perkins stated that she does not see a hardship, but it is not so far off that it wouldn't be appropriate. She would be inclined to agree.

Chair Carley stated that he would be inclined to grant the variance as it is consistent with the intent of the ordinance. We are dealing with a distinction without a difference between the carwash with all the uses that are permitted. In that context the prohibition seems to be a bit anomalous. Even though there is nothing physically unique about the lot that requires a carwash, it seems like a sufficiently reasonable use to justify a variance.

A **motion** to approve the variance was made by Mr. Winters, seconded by Mr. Monahan; passing unanimously.

[0141-2024](#)

III Warren Street; *RN – Neighborhood Residential District*, Kyle Valliere, Owner:

Applicant wishes to remodel and expand an existing single-family dwelling to a two-family dwelling and requests variances from:

1. Article 28-8-5(b)(1) *Continuation of Nonconforming Structures*, to allow an enlargement of the structure without being any closer to a property line than the closest dimension of the existing structure; and
2. Article 28-5-2 *Duplex or Two-Family Dwelling*, to allow conversion to a two-family dwelling on an existing lot with 66-feet of lot frontage and 4,356 sq. ft. of lot area where 120-feet of frontage and 15,000 sq. ft. of lot area are required.

Kyle Valliere, owner, and Nick Barrett, Only Plans LLC, testified. They are proposing continuation of a nonconforming structure, and a conversion to a two family/duplex where the lot is not large enough. Mr. Valliere proposes to remove a nonconforming section of the building on the back that is

not structurally sound, and move that square footage to the side of the house to box that portion in. This would allow them to conform more to the rear setbacks. They are trying to create a first-floor apartment and a second-floor unit with a separate egress. He stated that all the abutters in that area must have swapped the houses to a two family or greater prior to the current ordinance. He pointed out that this is the only property that is a single family. They are trying to add availability for housing where there is a shortage, and trying to correct an existing issue. They are not increasing the size of the house on the front or side that abuts to the high school senior parking lot. They are pulling a part from the back, pouring a new frost wall, and reframing most of the house to be code compliant.

Chair Carley questioned if the GIS map is incorrect as far as the scale of the red section and the property line.

Mr. Barrett explained that portion is close to the line. The current fence is almost right on the line.

Chair Carley clarified that the red part is proposed.

Mr. Barrett stated that the red portion on the plan will be removed.

Mr. Valliere stated that they would like to correct the foundational issues, remove the red section on the back, and fill in the side part of the house that has a jog.

Mr. Winters questioned if they are losing square footage.

Mr. Barrett explained that they are losing square footage, but they are not losing conditioned space as it is a barn type area in the back. They are losing about 12 feet of structure space.

Chair Carley asked that the applicants speak to the issue of making the structure a two-family.

Mr. Barrett stated that Mr. Valliere purchased the property and realized that the other properties in the surrounding area were duplexes or multifamily, but this one was not. They understand that the lot size and the building size should allow for a single family, but they are trying to conform to the surrounding properties that have been converted.

Mr. Winters stated that most houses were built probably 100 years prior to the zoning.

Chair Carley asked about the current square footage.

Mr. Barrett explained that the house is currently around 2200 sq. ft., and each unit would be around 1100 sq. ft.

Mr. Winters asked if it is currently in use or vacant.

Mr. Valliere stated that it was in use as a single family, but currently is not.

Ms. Perkins asked about the sq. ft. of the lot.

Mr. Barrett stated it is around 4300 sq. ft.

Mr. Winters asked Code for clarification if duplexes are allowed.

Code: Dr. Hutton explained that it is a nonconforming structure with a permitted use, but this parcel does not meet lot size or frontage for that use.

Mr. Winters questioned what cross street the parcel is near.

Mr. Barrett explained that the parcel abuts the Concord High School senior parking lot.

Favor: Chair Carley presented an email from Elizabeth Corell, of 9 Liberty Street, in which she recommended a provision for a turnaround for the residents so they can exit driving forward instead of backing out into a busy street.

Code: Dr. Hutton explained that provision does not apply until there are three or more units.

Mr. Winters stated that it is relevant as it goes to the lot size issue, asking what the plan was for parking.

Mr. Barrett stated that they will do whatever the Board requires for parking. Certain times of the day are busier than others.

Mr. Valliere added that they are willing to do whatever measures they need to. There is a long driveway, as well as public parking spaces up on the right. He removed all the bushes that could obstruct their view.

Opposition: None.

Chair Carley inquired what the lot coverage limitation was in the District. Dr. Hutton replied that the lot coverage is 50%.

Mr. Monahan stated that reconfiguration of the parking and drive is not required to justify the variance and that he would leave it to the judgement of the property owner.

Code: None.

DECISION:

Ms. Perkins stated that she does not see this as contrary to public interest, not sure about the spirit of the ordinance, but she does not see it as a problem for the area, it is a slow traffic zone and only busy when school is coming in and out. They are not really changing square footage, while coming more into compliance. Inclined to approve.

Mr. Winters commented that variance one continues to be non-conforming but less non-conforming. However, he has concerns with the second variance, stating that the point is to try to guide the future. However, with the demand for housing in the area, while they seem to have enough space, he stated that he would be inclined to approve as there is reasonable use. Could be a hardship to market as single family in this area.

Mr. Monahan stated that he is inclined to agree. The first variance is easy, and the second variance, given the nature of the neighborhood, the square footage of the frontage is fine, and a single-family would be inconsistent.

Mr. Wallner stated he is inclined to support the application as there is reasonable use, with the character on the neighborhood being multi-dwelling, and all on small lots.

Chair Carley stated that he agrees with his colleagues, and that it is a fairly typical example that the Board encounters in the City where houses were built many years ago and which the ordinance does not fit well and zoning relief is reasonable.

A **motion** was made to approve the variances by Mr. Winters, seconded by Ms. Perkins, passing unanimously.

0143-2024
Street);

177 N Main Street (a portion of land will ultimately be transferred to 181 N Main

CU –Urban Commercial District, First Church Holdings LLC, Owners:

Applicant wishes to enlarge and transfer a portion of their parking to an abutting non-residential lot. The applicant requests variances from:

1. Article 28-7-2(e), *Table of Off-Street Parking Requirements*, to permit 42 parking spaces where 60 parking spaces are required;
2. Article 28-7-7(e), *Minimum Aisle Width*, to permit a 16-foot wide one-way aisle with 60-degree angled parking spaces, where an 18-foot aisle is required;
3. Article 28-7-7(a), *Standard Parking Spaces*, to permit standard parking spaces to be 9-feet x 18-feet where 9-feet x 19-feet are required; and
4. Article 28-7-7(g), *Setbacks and Restrictions*, to permit parking in non-residential district to be within 0-feet of a lot line where 5-feet is required.

Jonathan Chorlian testified. He presented a copy of a text message from Ali Sekou, President of the Islamic Center, who is in Niger. The First Church campus is on North Main Street and Washington Street, and includes a small lot on Rollins Street. There is a right of way on the property for the benefit of the Islamic Society property. In August, Mr. Chorlian came to the Board to seek several variances, including allowing 30 units and a reduction in parking spaces to 49 spaces where 60 were required. In August, he stated that even 42 constructed spaces seemed to be more than would be required, given that most likely several people living here will be working downtown with other parking options. They were granted a conditional use permit, which did not require seven spaces of the 49 spaces to be immediately constructed. This meant that only 42 spaces would be built with the project. The Islamic Society opposed the variances in August, and then they asked for a rehearing, which was denied, resulting in a lawsuit against the City of Concord. The situation has been challenging, however they have continued to have good, and productive discussions.

Mr. Chorlian explained that he is here to request several variances around a resolution framework that would involve the sale of property and a lot line adjustment. The Islamic Society has quite a parking pinch. Discussions focused on a way to allow the redevelopment to move forward, while removing the litigation, and helping to address their needs for parking. Mr. Chorlian would be selling a piece of land for the Islamic Center to develop a 12-space parking lot. Without a variance, they would need to keep the land to build the 7 CUP spaces in the future. The objective is to provide safe dimensions and isle widths, but no more than necessary to maximize the amount of lawn retained.

Mr. Chorlian is seeking a variance to allow them to formalize the plan to 42 parking spaces, instead of the 60 spaces required for their 30 units. Also, to allow the impervious surface to be as small as possible in order to preserve the lawn. The request is to have nine standard spaces be 18 ft. deep, instead of 19 ft. deep. Secondly, to have the one-way drive isle that is currently 14 feet to be 16 feet, where the ordinance requires 18 feet of width. The national average is typically around 16 feet, and every foot saved is a foot of lawn preserved. Lastly, there is a five-foot parking setback requirement, but asking that to be slightly encroach so that the setback would be three feet. The strip of land on the north side is paved right to the lot line and a portion with a two-foot section of scrub. They would want to pave that so it is a full 16 feet wide. The bedrooms in the project have decreased, with two thirds of the units that are now one bedroom. He stated that they believe there are enough spaces. Confident that 42 is more than enough, allowing for 1.25 parking spaces per unit, which is more in line with the national standard. Some tenants will work downtown. They are trying to not be an imposition to on-street parking. They are asking for typical parking standards, where 9 x 18 is the standard. They would pave two more feet up to the fence, which would make it 16 feet wide, which would result in a zero-setback.

Mr. Winters asked for clarification of the previous variances, compared to what is being requested now.

Mr. Chorlian stated that they are looking to design the spaces to be a little bit smaller than the ordinance requires, and this would grant a more significant parking lot size for the mosque parking.

Ms. Perkins asked Code if they can get the approvals prior to transferring the land.

Code: Dr. Hutton stated that they can, as it would be like a subdivision that was asking for ZBA approval first. They would have to commence the parking lot development within two years.

Ms. Perkins wanted to be clear on what they were approving.

Code: Dr. Hutton explained that the project has been discussed with the Development Team and the Planning Division.

Mr. Chorlian stated that there will be seven spaces that the Planning Board said did not need to be built, but with this variance it would not be able to be built in the future. That property would be sold to the Islamic Society. However, it will result in 12 spaces for a user that puts a lot of parking on the street. This resolution is a net of 12 more spaces.

Ms. Perkins commented that she is thrilled that the two most impacted neighboring properties have worked together.

Mr. Chorlian said it was not easy, but credited Ali Sekou for the will to get it resolved.

Chair Carley questioned if people would enter the Mosque lot from North Main Street, and how they would exit.

Mr. Chorlian explained they would exit on Pearl Street. The address of the Mosque is 151 N. Main Street and way finding can be difficult. The primary benefit of the resolution is more parking, and another benefit is that there will be a sign on North Main Street to enter, and then to exit on Pearl Street.

Mr. Winters asked for clarification as to which property is seeking the zero-setback approval.

Mr. Chorlian stated that the paving of that small two-foot strip will result in a 16-foot-wide isle for the proposed Islamic Center parking.

Code: Dr. Hutton explained that there are two-family homes close by and an office building.

Favor: Mr. Lemieux, of 7 Washington Street, testified. He stated that he lives closest to the church that is being redeveloped. He was before the Board in August in support of the adjustments and is in support now. They have lived there for 31 years. This will be a benefit to their property and their neighbor's property. If there is any overflow parking needed it would probably be in front of our house which will not be an issue.

Opposition: Mr. Schweiker had sent a letter in, but was in person to testify. He stated that he is unhappy that this zoning ordinance is being used to justify a parking issue. There are more cars every year, and he is concerned about shrinking parking spaces with winter and snow. He stated that the developer has done a great job shrinking the development to more one-bedroom units, but that could hold two adults with two cars. Amazing job coming to an agreement with the Islamic Society, but that doesn't help the rest of the neighborhood with more cars. The Board should be increasing the quantity of parking spaces instead of decreasing.

Chair Carley stated the he wouldn't read the letter submitted by Mr. Schweiker since he spoke.

A member of the audience wanted to speak anonymously. Chair Carley explained the Board cannot hear anonymous statements and if the speaker wanted to identify himself, he could be heard. The speaker refused.

Chair Carley presented a letter in favor of the variances from the President of the Islamic Society, Ali Sekou, written in his personal capacity. He was part of the meetings, and agreed to buy a portion of the lawn. The proposed sale will balance the concerns for both. Supports the variance.

Code: Nothing at this time.

DECISION:

Mr. Wallner commented that it is a very complicated set of issues with these properties. Mr. Chorlian addressed most of the concerns in an adequate way. The parking issues seems to satisfy the Islamic Society and the number of spaces has been addressed properly. He stated he is inclined to support all four variances.

Mr. Monahan agreed, and stated that it was possible to take what is before the Board as it stands on its own. The variances are reasonable, the size differential is within a couple of feet. Comfortable with 18 feet deep instead of 19 feet deep.

Mr. Winters commented that variances two, three, and four are modest requests, and that they are consistent with what has been approved previously. He noted as to variance one, that this was a very litigated case, and that the Board strongly considered many interested parties. The Board did not grant the original request and then the proposal came back in front of the Board scaled back in terms of density. The Board approved it because of the very unique structure. All of those reasons are consistent with going from 49 spaces to 42 spaces, and that the seven spot difference does not materially impact the Board's decision. It is not ideal, but it is a reasonable use.

Ms. Perkins stated that she is in agreement with all four variances. She also added that she had voted no the last time. Knowing that this has been resolved, feels better moving forward.

Chair Carley agreed with his colleagues, stating that the reduction in the number of bedrooms mitigates the pressure on the parking. The size of the parking lot is not unprecedented. All things considered, this is an extraordinary situation, which creates a hardship. He would be in support of the variances.

A **motion** was made to approve variance number one, by Mr. Monahan, who stated that this is a unique piece of property that is trying to make the best use of it. There is reasonable evidence that the required 60 spaces are most likely not necessary given the business decision of the developer, seconded by Mr. Winters; passing unanimously.

A **motion** was made to approve variances two, three, and four by Mr. Monahan, stating that these are all modest dimensional issues to secure additional parking spaces on a unique piece of property, seconded by Mr. Wallner, passing unanimously.

A **motion** was made to approve the Minutes from January 3, 2024, by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

A **motion** was made to approve the Findings of Fact from January 3, 2024, by Mr. Winters, seconded by Mr. Monahan; passing unanimously.

A **motion** to adjourn the meeting at 8:17 pm was made by Mr. Wallner, seconded by Mr. Winters; passing unanimously.

Respectfully Submitted by
Deborah Tuite